

of such security by the person seeking to enforce it as the court may think fit.

(3) If a party seeking to resist the enforcement of a foreign award proves that there is any ground other than the non-existence of the conditions specified in subsection (1)(a), (b) and (c) above, or the existence of the conditions specified in subsection (2)(b) and (c) above, entitling him to contest the validity of the award, the Court may, if it thinks fit, either refuse to enforce the award or adjourn the hearing until after the expiration of such period as appears to the Court to be reasonably sufficient to enable that party to take the necessary steps to have the award annulled by the competent tribunal.

35 Evidence

(1) The party seeking to enforce a foreign award must produce-

- (a) the original award or a copy thereof duly authenticated in the manner required by the law of the country in which it was made;
- (b) evidence proving that the award has become final; and
- (c) such evidence as may be necessary to prove that the award is a foreign award and that the conditions mentioned in section 34(1)(a), (b) and (c) of this Act are satisfied.

(2) In any case where any document required to be produced under subsection (1) above is in a foreign language, it shall be the duty of the party seeking to enforce the award to produce a translation certified as correct by a diplomatic or consular agent of the country to which that party belongs, or certified as correct in such other manner as may be sufficient according to the law of the Island.

(3) Subject to the provisions of this section, rules of court may be made with respect to the evidence which must be furnished by a party seeking to enforce an award under this Part.

36 Meaning of 'final award'

For the purposes of this Part, an award shall not be deemed final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made.

PART III ENFORCEMENT OF CONVENTION AWARDS

37 Replacement of Part II in certain cases

Sections 38 to 40 of, and paragraph 5 of Schedule 1 to, this Act shall have effect with respect to the enforcement of Convention awards; and, where a Convention award would, but for this section, be also a foreign award within the meaning of Part II of this Act, that Part shall not apply to it.

38 Effect of Convention awards

(1) A Convention award shall, subject to the following provisions of this Part, be enforceable either by action or in the same manner as the award of an arbitrator is

enforceable by virtue of section 27 of this Act.

(2) Any Convention award which would be enforceable under this Part shall be treated as binding for all purposes on the persons as between whom it was made, and may, accordingly, be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in the Island; and any reference in this Part to enforcing a Convention award shall be construed as including references to relying on such an award.

39 Evidence

The party seeking to enforce a Convention award must produce-

- (a) the duly authenticated original award or a duly certified copy of it;
- (b) the original arbitration agreement or a duly certified copy of it; and
- (c) where the award or agreement is in a foreign language, a translation of it certified by an official or sworn translator or by a diplomatic or consular agent.

40 Refusal of enforcement

(1) Enforcement of a Convention award shall not be refused except in the cases mentioned in this section.

(2) Enforcement of a Convention award may be refused if the person against whom it is invoked proves-

- (a) that a party to the arbitration was (under the law applicable to him) under some incapacity; or
- (b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (c) that he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
- (d) subject to subsection (4) below, that the award deals with a difference not contemplated by, or not falling within the terms of, the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration; or
- (e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country where the arbitration took place; or
- (f) that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.

(3) Enforcement of a Convention award may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration, or if it would be contrary to public policy to enforce the award.

(4) A Convention award which contains decisions on matters not submitted to arbitration may be enforced to the extent that it contains decisions on matters submitted to arbitration

which can be separated from those on matters not so submitted.

(5) Where an application for the setting aside or suspension of a Convention award has been made to such a competent authority as is mentioned in subsection (2)(f) above, the Court may, if it thinks fit, adjourn the proceedings and may, on the application of the party seeking to enforce the award, order the other party to give security.

PART IV SUPPLEMENTARY

41 Interpretation

(1) In this Act, unless the context otherwise requires-

'the appointed day' means the day on which this Act takes effect;

'arbitration agreement' means-

- (a) in section 5 and in the definition below of 'Convention award', an agreement in writing (including an agreement contained in an exchange of letters or telegrams) to submit to arbitration present or future differences capable of settlement by arbitration; and
- (b) elsewhere, a written agreement to submit present or future differences to arbitration, whether an arbitrator is mentioned therein or not;

'Convention award' means an award made in pursuance of an arbitration agreement in the territory of a State, other than the United Kingdom, which is a party to the New York Convention;

'the Court' means the High Court;

'the Geneva Convention' means the Convention on the Execution of Foreign Arbitral Awards signed at Geneva on behalf of His late Majesty, King George V, on the 26th September 1927;

'the New York Convention' means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on the 10th June 1958;

'the Protocol' means the Protocol on Arbitration Clauses signed on behalf of His late Majesty, King George V, at a Meeting of the Assembly of the League of Nations held on the 24th September 1923.

(2) If Her Majesty by Order in Council declares that any State specified in the Order is a party to the New York Convention, the Order shall, while in force, be conclusive evidence that that State is a party to that Convention.

42 Transitional provisions and savings

The transitional provisions and savings in Schedule 1 to this Act shall have effect.

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