

NIUE (New Zealand)

NIUE LAWS

LEGISLATION AS AT DECEMBER 2006

ARBITRATION CLAUSES (PROTOCOL)

AND THE ARBITRATION (FOREIGN AWARDS) ACT 1933

1933/4 (NZ) – 28 October 1933

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To give effect in Niue (1) to a protocol on arbitration clauses signed on behalf of His Majesty at a meeting of the Assembly of the League of Nations held on 24 September 1923 and (2) to a convention on the execution of foreign arbitral awards signed on behalf of His Majesty on 26 September 1927

1 Short title

(1) This Act is the Arbitration Clauses (Protocol) and the Arbitration (Foreign Awards) Act 1933.

(2) This Act shall be read together with and deemed part of the Arbitration Act 1908 (the principal Act).

PART 1

PROTOCOL ON ARBITRATION CLAUSES

2. Interpretation

In this Part "the said protocol" means the protocol the terms of which are set forth in Schedule 1.

3. Stay of court proceedings

Notwithstanding anything in the principal Act, if any party to a submission made in pursuance of an agreement to which the said protocol applies, or any person claiming through or under him, commences any legal proceedings in any Court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking other steps in the proceedings, apply to that Court to stay the proceedings, and that Court or a Judge of it, unless satisfied that the agreement or arbitration has become inoperative or cannot proceed, or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred shall make an order staying the proceedings.

PART 2

ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

4. Application of Part 2

This Part applies to any award made after 28 July 1924 –

(a) In pursuance of an agreement for arbitration to which the protocol set out in Schedule 1 applies; and

(b) Between persons of whom one is subject to the jurisdiction of one of the powers which is a party to the Convention and of whom the other is subject to the jurisdiction of another of those powers; and

(c) In one of the territories to which the Convention applies.

5. Effect of foreign awards

(1) A foreign award shall, subject to this Part be enforceable in Niue either by action or under section 13 of the principal Act.

(2) Any foreign 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 Niue, and any references in this Part to enforcing a foreign award shall be construed as including references to relying on an award.

6. Conditions for enforcement

- (1) In order that a foreign award may be enforceable under this Part it must have –
- (a) Been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed;
 - (b) Been made by the tribunal provided for in the agreement or constituted in manner agreed upon by the parties;
 - (c) Been made in conformity with the law governing the arbitration procedure;
 - (d) Become final in the country in which it was made;
 - (e) Been in respect of a matter which may lawfully be referred to arbitration under the law of Niue; –

and the enforcement of it must not be contrary to the public policy or the law of Niue.

(2) A foreign award shall not be enforceable under this Part if the court dealing with the case is satisfied that –

- (a) The award has been annulled in the country in which it was made; or
- (b) The party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or was under some legal incapacity and was not properly represented; or
- (c) The award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration:

Provided that, if the award does not deal with all the questions referred, the Court may either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it.

(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 section 6 (1) (a), (b) and (c), or the existence of the conditions specified in section 6 (2) (b) and (c) entitling him to contest the validity of the award, the Court may, 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.

7. Evidence

- (1) The party seeking to enforce a foreign award must produce –
- (a) The original award or a copy of it duly authenticated in manner required by the law of the country in which it was made; and
 - (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 6 (1) (a), (b) and (c) are satisfied.

(2) In any case where any document required to be produced under subsection (1) 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 under the law of Niue.

(3) Subject to this section, rules of Court may be made under section 70 of the Niue Act 1966 with respect to the evidence which must be furnished by a party seeking to enforce an award under this Part.

8. 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.

9. Saving

Nothing in this Part shall –

(a) Prejudice any rights which any person would have had of enforcing in Niue any award or of availing himself in Niue of any award if this Part had not been enacted; or

(b) Apply to any award made on an arbitration agreement governed by the law of Niue.

SCHEDULES

SCHEDULE 1

PROTOCOL ON ARBITRATION CLAUSES

The Undersigned, being duly authorised, declare they accept, on behalf of the countries which they represent, the following provisions:

1. Each of the Contracting States recognises the validity of an agreement whether relating to existing or future differences between parties subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any Contracting

State which avails itself of this right will notify the Secretary-General of the League of Nations, in order that the other Contracting States may be so informed.

2. The arbitral procedure, including the constitution of the arbitral tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The Contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing differences.

3. Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory under the preceding articles.

4. The tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom article 1 applies and including an arbitration agreement, whether referring to present or future differences, which is valid in virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the arbitrators.

Such reference shall not prejudice the competence of the judicial tribunals in case the agreement or the arbitration cannot proceed or become inoperative.

5. The present protocol, which shall remain open for signature by all States, shall be ratified. The ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who shall notify such deposit to all the signatory States.

6. The present protocol shall come into force as soon as 2 ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one month after the notification by the Secretary-General of the deposit of its ratification.

7. The present protocol may be denounced by any Contracting State as giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other signatory States and inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State.

8. The Contracting States may declare that their acceptance of the present protocol does not include any or all of the under-mentioned territories – that is to say, their colonies, overseas possessions or territories, protectorates, or the territories over which they exercise a mandate.

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as possible of such adhesions. He shall notify such adhesions to all signatory States. They will

take effect one month after the notification by the Secretary-General to all signatory States.

The Contracting States may also denounce the protocol separately on behalf of any of the territories referred to above Article 7 applies to such denunciation.

SCHEDULE 2

Convention on the Execution of Foreign Arbitral Awards

Article 1

In the territories of any High Contracting Party to which the present convention applies, an arbitral award made in pursuance of an agreement, whether relating to existing or future differences (hereinafter called "a submission to arbitration") covered by the Protocol on Arbitration Clauses, opened at Geneva on 24 September 1923, shall be recognised as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

To obtain such recognition or enforcement, it shall, further, be necessary –

(a) That the award has been made in pursuance of a submission to arbitration which is valid under the law applicable to it;

(b) That the subject matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;

(c) That the award has been made by the arbitral tribunal provided for in the submission to arbitration, or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;

(d) That the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition, appel or pourvoi en cassation (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(e) That the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

Article 2

Even if the conditions laid down in article 1 are fulfilled, recognition and enforcement of the award shall be refused in the Court is satisfied –

(a) That the award has been annulled in the country in which it was made;

(b) That the party against whom it is sought to use the award was not given notice of the arbitration proceeding in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;

(c) That the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it think fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

Article 3

If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in article 1 (a) and (c), and article 2 (b) and (c), entitling him to contest the validity of the award in a Court of law, the court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration of it, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

Article 4

The party relying upon an award or claiming its enforcement must supply, in particular:

(1) The original award or a copy of duly authenticated under the requirements of the law of the country in which it was made;

(2) Documentary or other evidence to prove that the award has become final, in the sense defined in article 1 (d), in the country in which it was made;

(3) When necessary, documentary or other evidence to prove that the conditions laid down in article (1) and (2) (a) and (c) have been fulfilled.

A translation of the award and of the other documents mentioned in this article into the official language of the country where the award is sought to be relied upon may be demanded. Such translation must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

Article 5

The provisions of the above articles shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

Article 6

The present convention applies only to arbitral awards made after the coming into force of the Protocol on Arbitration Clauses, opened at Geneva on 24 September 1923.

Article 7

The present convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified. It may be ratified only on behalf of those members of the League of Nations and non-member States on whose behalf the Protocol of 1923 shall have been ratified. Ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who will notify such deposit to all the signatories.

Article 8

The present convention shall come into force 3 months after it shall have been ratified on behalf of 2 High Contracting Parties. Thereafter, it shall take effect, in the case of each High Contracting Party, 3 months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations.

Article 9

The present convention may be denounced on behalf of any member of the League or non-member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy of it, certified to be in conformity with the notification, to all other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it, and one year after such notification shall have reached the Secretary-General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail, ipso facto, the denunciation of the present convention.

Article 10

The present convention does not apply to the colonies, protectorates, or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this convention to one or more of such colonies, protectorates or territories to which the Protocol on Arbitration Clauses, opened at Geneva on 24 September 1923, applies, can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect 3 months after the deposit of it.

The High Contracting Parties can at any time denounce the convention for all or any of the colonies, protectorates, or territories referred to above. Article 9 hereof applies to such denunciation.

Article 11

A certified copy of the present convention shall be transmitted by the Secretary-General of the League of Nations to every member of the League of Nations and to every non-member State which signs the same.