

PART VII

**APPLICATION TO COURTS RELATING TO AWARDS (INCLUDING RECOGNITION AND
ENFORCEMENT OF FOREIGN AWARD)**

Application
for filing
and
Enforceme
nt of
award.

31. (1) A party to an arbitration agreement pursuant to which an arbitral award is made may, within one year after the expiry of fourteen days of the making of the award, apply to the High Court for the enforcement of the award.

(2) An application to enforce the award shall be accompanied by ---

(a) the original of the award or a duly certified copy of such award : and

(b) the original arbitration agreement under which the award purports to have been made or a duly certified copy of such agreement.

For the purposes of this subsection a copy of an award or of the arbitration agreement shall be deemed to have been duly certified if ---

(i) it purports to have been certified by the arbitral tribunal or, by a member of that tribunal, and it has not been shown to the Court that it was not in fact so certified : or

(ii) it has been otherwise certified to the satisfaction of the court.

(3) If a document or part of a document produced under subsection (2) is written in a language other than the official language of the court or other than in English, there shall be produced with the document a translation in such official language, or in the English Language, of that document or that part, as the case may be, certified to be a correct translation.

(4) For the purposes of subsection (3), a translation shall be certified by an official or a sworn translator or by a diplomatic or a consular agent in Sri Lanka of the country in which the award was made or otherwise to the satisfaction of the Court.

(5) A document produced to the court in accordance with this section may upon its production be received by the Court as sufficient evidence of the matters to which it relates.

(6) Where an application is made under subsection (1) of this section and there is no application for the setting aside of such award under section 32 or the court sees no cause to refuse the recognition and enforcement of such award under the provision contained in sections 33 and 34 of this Act, it shall on a day of which notice shall be given to the parties, proceed to file the award and give judgment according to the award. Upon the judgment so given a decree shall be entered.

Application
for setting
aside arbitral
award.

32. (1) An arbitral award made in an arbitration held in Sri Lanka may be set aside by the High Court, on application made therefore, within sixty days of this receipt of the award ---

(a) where the party making the application furnishes proof that ---

- (i) a party to the arbitration agreement was under some incapacity or the said agreement is not valid under the law to which the parties have subjected it or failing any indication on that question, under the law of Sri Lanka ; or
- (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case ; or
- (iii) the award deals with a dispute 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 :

Provided however that, if the decision on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside ; or

- (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with the provisions of this Act, or, in the absence of such agreement, was not in accordance with the provisions of this Act : or

(b) where the High Court finds that ---

(i) the subject matter of the dispute is not capable of settlement by arbitration under the law of Sri Lanka: or

(ii) the arbitral award is in conflict with the public policy of Sri Lanka.

(2) Where an application is made to set aside an award, the High Court may order that any money made payable by the award shall be brought into Court or otherwise secured pending the determination of the application.

Recognition and enforcement of foreign arbitral award.

33. A foreign arbitral award irrespective of the country in which it was made shall subject to the provision of section 34 be recognized as binding and, upon application by a party under section 31 to the High Court, be enforced by filing the award in accordance with the provision of that section.

Grounds for refusing recognition or enforcement.

34. (1) Recognition or enforcement of a foreign arbitral award, irrespective of the country in which it was made, may be refused only ---

(a) on the objection of the party against whom it is invoked, if that party furnishes to the Court where recognition or enforcement is sought, proof that ----

(i) a party to the arbitration agreement was under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it, or failing any indication as to the law to which the parties have subjected such agreement, under the law of the country where the award was made : or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceeding or was otherwise unable to present his case ; or

(iii) the award deals with the dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration ;

Provided, however that, if the decision on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contain a decision on matters submitted to arbitration, may be recognized and enforced : or

- (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, in the absence of such agreement, was not in accordance with the law of the country where the arbitration took place: or
- (v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made : or

(b) if the Court finds that ---

- (i) the subject matter of the dispute is not capable of settlement by arbitration under the law of Sri Lanka ; or

- (ii) the recognition or enforcement of the award would contrary to the public policy of Sri Lanka.

(2) If an application for setting aside or suspension of an award has been made to a court on the ground referred to in sub-paragraph (v) of paragraph (a) of subsection (1) of this section, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

Power to consolidate an application to set aside with an application for filing of an award.

35. (1) Where applications filed in court to enforce an award and to set aside an award are pending, the court shall consolidate the applications.

(2) Where an application to set aside the award under section 32 has been refused, the court shall not permit a party to an arbitration to object to the enforcement of the award on any of the grounds specified in section 34.

Remissions to arbitral tribunal.

36. (1) The High Court may order the staying of an application to set aside an award for such period as it may consider necessary to enable the arbitral tribunal to resume arbitral proceedings or to take such measures as may be necessary to eliminate the grounds for invalidating the award.

- (2) No order shall be made by the High Court under subsection (1) unless ---
- (a) all the parties to the arbitration request the making of such order: or
 - (b) one of the parties to such arbitration requests the making of such order and the Court is satisfied that there are grounds for invalidating the award.

37. (1) Subject to subsection (2) of this section no appeal or revision shall lie in respect of any order, judgment or decree of the High Court in the exercise of its Jurisdiction under this Act except from an order, judgment or decree of the High Court under this Part of this Act.

Appeals.

(2) An appeal shall lie from an order, judgment or decree of the High Court referred to in subsection (1) to the Supreme Court only on a question of law and with the leave of the Supreme Court first obtained.

(3) The Supreme Court may in the exercise of its jurisdiction under subsection (2) of this section affirm, reverse or vary the order, judgment or decree of the High Court, subject to the provisions of this Act.

(4) The parties to an arbitration agreement may agree in writing (hereinafter referred to as an " exclusion agreement ") to exclude any right to appeal in relation to the award.

38. (1) The Supreme Court shall not in any event grant leave to appeal under subsection (2) of section 37 if there is in force an exclusion agreement between the parties to the arbitration agreement in relation to the award appealed against.

Exclusion
Agreement

(2) An exclusion agreement may be expressed so as to relate to a particular Award, to awards under a particular arbitration agreement or to any other description of awards, whether arising out of the same arbitration agreement or not.

(3) An agreement may be an exclusion agreement for the purposes of this section whether it is entered into before or after the appointed date and whether it forms part of an arbitration agreement or not.

Delay in
prosecuting
claims.

39. (1) It shall be an implied term of the arbitration agreement that in the event of a dispute arising to which the agreement applies. It shall be the duty of the claimant to exercise due diligence in the prosecution of a claim.

(2) Where there has been undue delay by a claimant in instituting or prosecuting a claim pursuant to an arbitration agreement, then, on the application of any party to the dispute, the arbitral tribunal may make an order terminating the arbitration proceedings.

(3) The arbitral tribunal shall not make an order under subsection (2) unless it is satisfied ---

(a) that the delay has been intentional or inordinate : or

(b) that the delay will give rise to a substantial risk of it not being possible to

have a fair determination of the issues in the arbitration proceedings or

is such as it likely to cause or to have caused serious prejudice to the other parties to the arbitration proceedings either as between them-

selves and the claimant or between each other or between them and a third party.

(4) A party aggrieved by any order of the arbitral tribunal made on an application under subsection (2) may appeal to the High Court.

PART VIII

PROCEEDINGS BEFORE THE HIGH COURT

Procedure.

40. (1) Every application to the High Court under the provision of this Act, whether by way of appeal or otherwise, shall be by way of petition and affidavit and all parties to the arbitration other than the petitioner or petitioners shall be named as respondents to such petition and shall be given notice of the same.

(2) Upon the petition and affidavit being presented to the court it shall by order appoint a day for the determination of the matter of the petition and grant the parties named as respondents to the petition a date to state their objections, if any, in writing supported by affidavit, and making available a copy thereof to the petitioners.