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c 25 Foreign Arbitral Awards Act, 1986

Ontario

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CHAPTER 25

**An Act to Implement the
United Nations
Convention on the
Recognition and Enforcement of
Foreign Arbitral Awards**

Assented to July 7th, 1986

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1.—(1) In this Act,

“convention
d'arbitrage”

“arbitration agreement” means an agreement in writing, whether in the form of an arbitration clause in a contract or in the form of a separate agreement, under which the parties undertake to submit to arbitration all or any disputes which have arisen or which may arise between them in respect of a legal relationship, whether contractual or not, concerning a subject-matter capable of settlement by arbitration and recognized as commercial by the law of Ontario;

“sentence
arbitrale
étrangère”

“foreign arbitral award” means an arbitral award made pursuant to an arbitration agreement and made outside Canada;

“convention
d'arbitrage
internatio-
nale”

“international arbitration agreement” means an arbitration agreement in respect of a legal relationship,

- (a) that involves property that is outside Canada,
- (b) that envisages substantial performance or enforcement outside Canada, or
- (c) at least one party to which is domiciled or ordinarily resident outside Canada;

“partie”

“party” means a party to an arbitration agreement and includes a person claiming through or under a party.

Arbitration
agreement in
writing

(2) An arbitration agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication that provide a record of the arbitration agreement or in an exchange of statements of claim and defence in which the existence of an arbitration agreement is alleged by one party and not denied by another.

Application

2. This Act applies to foreign arbitral awards and international arbitration agreements whether made before or after the coming into force of this Act.

Referral
to
arbitration

3.—(1) If a proceeding commenced in any court includes a matter that the parties have agreed to arbitrate under an international arbitration agreement, the court, on motion of a party, shall refer the parties to arbitration, unless it finds that the arbitration agreement is void, inoperative or incapable of being performed.

Time of
making
motion

(2) A party making a motion under subsection (1) shall do so no later than the time the party serves a document addressing the merits of the claim that gives rise to the motion.

Stay of
court
proceedings

(3) If the court refers the parties to arbitration, the court shall stay the proceeding with respect to the matter to which the arbitration relates, unless that matter is contained in a defence of set-off in which case the court shall strike out the defence with respect to that matter.

Application
to court

4.—(1) A party seeking to enforce a foreign arbitral award in Ontario shall apply to the Supreme Court of Ontario or to the District Court for recognition of the foreign arbitral award.

Documents
to be
produced

(2) A party making an application under subsection (1) shall produce to the court,

(a) the original arbitral award or a sworn or notarized copy of it; and

(b) the original arbitration agreement or a sworn or notarized copy of it.

Proof of
award

(3) A sworn or notarized statement of an arbitrator or an officer of an arbitral tribunal or board identifying a document as the arbitral award is, in the absence of evidence to the contrary, proof that the document is the original award.

Language
of award
or agreement

(4) Where a document referred to in subsection (2) is in a language other than English or French, the party seeking to

enforce the foreign arbitral award shall produce to the court, in addition to the document, a translation of it into English or French and a sworn or notarized statement of the translator that the translation is accurate and complete.

Recognition
of award

5.—(1) Subject to subsections (2) and (3), the court, if satisfied that subsections 4 (2) and (4) have been complied with, shall recognize a foreign arbitral award.

Refusal to
recognize

(2) The court may refuse to recognize a foreign arbitral award if the person against whom it is invoked satisfies the court that,

- (a) a party to the arbitration agreement was under a legal incapacity at the time the agreement was made;
- (b) the arbitration agreement is not valid under the law to which the parties subjected it or, where no law is expressly made applicable, under the law of the place where the award was made;
- (c) the person was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present a case;
- (d) the award deals with a 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;
- (e) 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 place where the arbitration took place; or
- (f) the award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the place in which, or under the law of which, it was made.

Idem

(3) The court may refuse to recognize a foreign arbitral award if the court finds that the subject-matter of the dispute is not capable of settlement by arbitration under the law of Ontario or recognition or enforcement of the award would be contrary to public policy.

- Severability (4) If the court refuses to recognize a foreign arbitral award under clause (2) (d) and the decisions on matters submitted to arbitration can be separated from those on matters not so submitted, the part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced.
- Enforcement **6.**—(1) A foreign arbitral award recognized by the court is enforceable in the same manner as a judgment or order of the court.
- Idem (2) A foreign arbitral award recognized by the court binds the persons as between whom it was made and may be relied on by any of those persons in any legal proceeding.
- Stay of enforcement or proceeding **7.** When an application for the setting aside or suspension of a foreign arbitral award has been made to a competent authority of the place in which, or under the law of which, it was made, the court may, on motion, stay the enforcement or the proceeding on the enforcement of the award and may, on the motion of the party seeking to enforce it, order the other party to give suitable security in respect of any damage that the party seeking to enforce it may suffer as a result of the stay.
- Crown bound **8.** This Act applies to an arbitration to which Her Majesty is a party.
- Rights saved **9.** Nothing in this Act affects any rights that otherwise exist to enforce a foreign arbitral award.
- Commencement **10.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.
- Short title **11.** The short title of this Act is the *Foreign Arbitral Awards Act, 1986*.