

NEPAL

The Arbitration Act, 1999

NEPAL RECORDER

Year 23, No. 17 Kathmandu : June 24, 1999

ARBITRATION ACT, 1999

Preamble : Whereas it is expedient to update the current legal provisions relating to arbitration, now therefore, the parliament has enacted this law in the 27th year of the reign of His Majesty King Birendra Bir Bikram Shah Dev.

Chapter 1

Preliminary

1. Short Title and Commencement

This law may be called the Arbitration Act, 1999. It shall come into force at once.

Definitions

Unless otherwise meant with reference to the subject or context, in this act,

(a) Agreement means a written agreement reached between the concerned parties for settlement through arbitration of any dispute concerning any specific legal issue that has arisen or may arise in the future under a contract or otherwise.

Explanation : For the purposes of this clause, the concerned parties shall be deemed to have entered into a written agreement in case any of the following documents exists:

Any contract containing provisions for arbitration also, or any separate agreement signed in that connection.

Letters, telex, telegram or telefax messages, or any other similar messages exchanged through communication media whose records can be

maintained in a written form, between the concerned parties parties which provide for referring their disputes to arbitration.

In case any party has presented a claim for referring any dispute to arbitration, the objection to that claim submitted by the party objecting to that claim without rejecting the proposal for referring the dispute to arbitration.

2 Party means any party connected with arbitration.

© District Court means the district Court of the place prescribed in the agreement as the the place of arbitration, if any, and if no such place has been prescribed, the District Court of the place where the dispute has arisen or where the arbitration proceedings have been conducted and decisions taken, or the District Court with territorial jurisdiction over the place where any party generally resides.

Appellate Court means the Appellate Court of the place prescribed in the agreement as the place of arbitration, if any, and if no such place has been prescribed, the Appellate Court of the place where the dispute has arisen or where the arbitration proceedings have been conducted and decisions taken, or the Appellate Court with territorial jurisdiction over the place where any party generally resided.

Dispute means a dispute which can be settled through arbitration under this act.

Counter-claim means a claim made by the objecting party on the party which has made the claim.

Rejoinder means the objection made by the party which has made the claim to the counter-claim.

Arbitrator means an arbitrator appointed for the settlement of a dispute; the term includes a panel of arbitrators.

Chapter 2

Settlement of Disputes Through Arbitration

3. Disputes to be Settled Through Arbitration

In case any agreement provides for the settlement of disputes through arbitration, the disputes connected with that agreement or with issues coming under that agreement shall be settled through arbitration according to the procedure prescribed in that agreement, if any, and if not, according

to this act. Notwithstanding anything contained in sub-section (1), in case of concerned parties to a civil suit of a commercial nature which has been filed in a court and which may be settled through arbitration according to current law, file an application for its settlement through arbitration, such dispute shall also be settled through arbitration.

4. Cancellation of Records of Suits

The court may order the cancellation of the records of a suit filed in connection with a dispute which (the concerned parties) have sought to settle through arbitration under sub-section (2) of Section 3.

Notwithstanding anything contained in sub-section (1), the court of a suit in the following circumstances:

In case it is deemed necessary to pronounce a decision on any issue which cannot be arbitrated together with an issue which can be arbitrated, or

In case there appears any appropriate reason why the dispute cannot be settled through arbitration.

Chapter 3

Appointment of Arbitrators and Their Office

5. Number of Arbitrators

As many arbitrators as specified in the agreement shall be appointed. In case the agreement does not specify the number of arbitrators, there shall ordinarily be three arbitrators.

In case the number of arbitrators appointed under the agreement is an even one, it shall be turned into an odd one by designating an additional arbitrator chosen by them.

6. Appointment of Arbitrator

Except when otherwise provided for in the agreement, the process of appointing arbitrators must be started within 30 days from the date when the reason for the settlement of a dispute through arbitration arises.

In case the agreement mentions the names of arbitrators, they themselves shall be recognised as having been appointed as arbitrators.

In case the agreement has made any separate provision for the

appointment of arbitrators, arbitrators shall be appointed accordingly.

Except when otherwise provided for in the agreement, each party shall appoint one arbitrator each and the arbitrators so appointed shall appoint the third arbitrator who shall work as the chief arbitrator.

7. Appointment of Arbitrators by Court

Either party may submit an application to the Appellate Court pleading for the appointment of arbitrators in the following circumstances:

In case no arbitrator can be appointed according to the provision contained in the agreement.

In case the agreement does not mention anything about the appointment of arbitrators.

The application to be filed under sub-section (1) must explicitly mention the full names, addresses, occupations and the fields of specialisation of at least three persons who can be appointed as arbitrators, and also be accompanied by a copy of the agreement.

On receipt of an application under sub-section (1), the appellate court shall notify all the parties and appoint as arbitrators the persons proposed by them in case they reach a consensus in that connection, and in case they fail to reach a consensus in that connection, the persons deemed appropriate by it, within 60 days from the date of receipt of the agreement. The decision taken by the court in that manner shall be final.

8. Appointment of Arbitrators in Vacant Posts in Special Circumstances

In case the position of an arbitrator appointed for the purpose of arbitration falls vacant by reason of his resignation or refusal to function in that capacity or of his death or for any other reason, it shall be filled up by appointing another arbitrator ordinarily within 30 days from the date when the vacancy has occurred in the manner in which the arbitrator had originally been appointed.

In case the position of an arbitrator which has fallen vacant be filled up within the time limit mentioned in sub-section (1), either party may apply to the appellate Court within 15 days from the date of expiry of that time limit. In case such an application is filled, the appellate court shall appoint an arbitrator subject to section 7 ordinarily within 15 days.

9. Arbitrators to Take Oath

Before starting the proceedings of arbitration, the arbitrator must affix his signature on two copies of a written oath as indicated in the schedule regarding impartiality and honesty and send one copy thereof of the

Appellate Court and keep the other copy in the case-file.

Before taking oath under sub-section (1), the arbitrator must make clear matters, if any, which raise a reasonable doubt about his impartiality or independence in respect to the dispute which he has to settle.

10. Qualifications of Arbitrators

The following persons shall not be qualified for appointment as arbitrators:

Those are disqualified for entering into contracts under current law.
Those who have been punished by a court on criminal charges involving moral turpitude.

Those who have become insolvent or been declared bankrupt.

Those who have any personal interest in the dispute which has to be settled through arbitration.

Those who do not possess any specific qualification specified in the agreement for becoming eligible for appointment as an arbitrator.

11. Power to Remove Arbitrators

The circumstances in which an arbitrator may be removed and the procedure to be followed for the purpose shall be as mentioned in the agreement.

In case the circumstances (in which an arbitrator may be removed) and the working procedure (to be followed for the purpose) have got been mentioned in the agreement as mentioned in sub-section (1), any party may, in any of the following circumstances, submit an application to the arbitrator requesting for permission to remove an arbitrator within 15 days from the date of his appointment or from the date when the party learns that the concerned arbitrator has failed to act according to the provisions of this sub-section:

In case any arbitrator is clearly seen to have shown a bias toward or discriminated against any party instead of working in an impartial manner;

In case any arbitrator engages in improper actions or commits fraud in the course of arbitration;

In case any arbitrator frequently commits mistakes or irregularities in the course of arbitration;

In case any arbitrator does not attend arbitration meetings or refuses to take part in arbitration proceedings for more than three times without furnishing satisfactory reasons with the objective of prolonging or delaying the arbitration proceedings in an improper manner;

In case any arbitrator takes any action which is opposed to the principles or rules of natural justice; or

In case any arbitrator is found to be lacking the necessary qualifications, or to have ceased to be qualified.

In case an application is received under Sub-Section (2), and in case the arbitrator whose removal has been demanded does not relinquish his post voluntarily, or in case the other party does not agree with grounds on which his removal has been demanded the arbitrator must take a decision on the matter within 30 days from the date of application.

An appeal may be filed with the Appellate Court against the decision taken under sub-section (3), and the decision taken by the Appellate Court on the application shall be final.

12. Location of Office of the Arbitrator

The office of the arbitrator shall be located at the following place:

At the place specified in the agreement, if any.

If the agreement does not specify the location of the arbitrator's office, at the place selected by the concerned parties.

In case the concerned parties do not select such place within 15 days from the date of appointment of the arbitrator, or in case the concerned parties fail to reach an agreement in that connection, at the place specified by the arbitrator in the light of all the relevant circumstances.

Notwithstanding anything contained elsewhere in this section, the arbitrators may, except when any other arrangement has been made by the concerned parties, designate through mutual consultations the location of their office at any other appropriate place which is convenient for them to record the statements of witnesses, obtain the opinion of experts, and inspect any document, object or place.

13. Language to be Used by Arbitrators in their Proceedings

The language to be used by the arbitrators in the course of their proceedings shall be as specified in the agreement, if any. In case the agreement does not specify any such language, they shall use the language determined by them through mutual consultations. In case the arbitrators fail to determine the language to be used by them, the language used in the agreement shall be the language to be used by the arbitrators.

Chapter 4

Arbitration Proceedings and powers of Arbitrators

14. Submission of Claims, Counter-Claims, objections or Rejoinders

(1) The party making a claim shall submit its claim to the arbitrator in writing explicitly mentioning the details of the subject-matter of difference and the remedy sought, along with evidence, and also supply a copy thereof to the other party within the time limit mentioned in the agreement, if any, and within three months from the date when a dispute requiring arbitration has arisen in case only the name of the arbitration has arisen in case only the name of the arbitration has been mentioned in the agreement without mentioning any time limit, and from the date of appointment of the arbitrator in case the arbitrator has been appointed after the dispute has arisen.

(2) After a claim is filed under sub-section (1), the other party shall submit its objection to it within 30 days from the date of receipt of the claim, unless otherwise provided for in the agreement.

(3) The other party shall submit its objection, as well as its counter-claim, if any, in that connection within the time limit mentioned in sub-section (2). In case it submits a counter-claim also, the arbitrator must provide a time limit of 15 days to arbitrator must provide a time limit of 15 days of the party making the claim to submit its rejoinder over such counter-claim. In case a rejoinder is submitted in that manner, a copy thereof must be supplied to the party making the counter claim.

(4) In case any party fails to submit its claim, objection, or rejoinder within the time limit mentioned in sub-section (2) or (3) due to circumstances beyond its control, it may submit an application to the arbitrator for an extension of the time limit within 15 days from the date of expiry of the time limit, explicitly mentioning satisfactory reasons for its failure to do so. The arbitrator may, if he finds the reasons mentioned in the application to be satisfactory, extend the time limit for not more than seven days.

(5) While submitting claims, counter-claims, objections or rejoinders under this section, all documents, as well as evidence substantiating them, if any, must also be submitted. In case the parties wish to substantiate any point through witnesses, they must mention the full names and addresses of such witnesses in their claims, counter claims, objections or rejoinders, and they shall themselves be responsible for presenting such witnesses before the arbitrator on the day prescribed by him.

(6) Each party submitting documents to the arbitrator in connection with arbitration proceedings under this act must supply copies thereof to the other party.

15. Circumstances in which Arbitration Proceedings shall Terminate or Continue

Except when otherwise provided for by the parties, arbitration proceedings shall terminate or continue in the following circumstances:

(a) The arbitration proceedings shall terminate in case the claimant does not submit his claim within the time- limit mentioned in Section 14 (1).

(b) Even if no objection is submitted within the time limit mentioned in Section 14

(2), this alone shall not be taken as the acceptance by the party not submitting its counter-claim to the claim made by the claimant, and the arbitrator shall continue his proceedings in such a manner as to evaluate the claimant's claim and the evidence submitted to substantiate the claim.

(c) The arbitrator may pronounce his decision on the basis of the evidence that has been submitted in case any party does not present itself or does not submit any written evidence at the time of hearing prescribed by the arbitrator. He must send a copy of the decision to the party not submitting its objection as well.

15. Power of the Arbitrator to Determine Jurisdiction

(1) In case any party wishes to make a claim that the arbitrator has no jurisdiction over the dispute which has been referred to him for settlement, or that the contract because of which the dispute has emerged is itself illegal or null and void, it may do so before the arbitrator. The arbitrator must before starting proceeding on the matter referred to him, take a decision on his jurisdiction or the validity or effectiveness of the contract.

(2) Any part which is not satisfied with the decision taken under sub-section (2) may file an appeal with the Appellate Court within 30 days from the date of decision, and the decision taken by that court on the matter shall be final.

(3) For the purpose of taking a decision on the validity or effectiveness of a contract under sub-section (1), in case the contract contains provisions for the settlement of disputes through arbitration as its integral part, such provisions shall be taken as a separate agreement, and even if the arbitrator takes a decision holding the contract as null and void, such provisions shall not be held to be legally null and void for that reason alone.

(4) No claim may be made under sub-section (1) after the expiry of the time limit for submitting objections prescribed under sub-section (2) of

section 14.

(5) No party shall be deemed to have been deprived of the opportunity to make a claim under sub-section (1) simply for the reason of having appointed an arbitrator on its behalf, or participated in or agreed to the appointment of the arbitrator.

(6) The filling of a petition with the Appellate Court under sub-section (2) shall not be deemed to have prejudiced the power of the arbitrator to continue his proceedings and pronounce his decision before the petition is finally disposed of by the court.

16. Working Procedure to be Adopted by Arbitrators

(1) The procedure to be adopted by the arbitrator while taking a decision on a dispute shall be as mentioned in the agreement, and in case no such procedure has been mentioned in the agreement, it shall be as laid down in this act.

Provided that the procedure not laid down in the act shall be as prescribed by the arbitrator with the consent of the parties, and in case the parties fail to reach an agreement in that connection, it shall be as prescribed by the arbitrator himself.

(2) The arbitrator must start arbitration proceedings immediately after receiving all such claims, objections, counter-claims or rejoinders as need to be received by him.

(3) The arbitrator must inform the parties about the type of proceedings to be held, and the day and time fixed for the purpose and also keep records thereof in the concerned case file.

(4) In respect to a dispute which has been referred to three or more arbitrators, the arbitrators who are present may conduct all arbitration proceedings other than taking the final decision or issuing the final order.

(5) The arbitrator may continue arbitration proceedings and pronounce his decision on the basis of the available evidence even if any party does not present itself on the day and at the time of arbitration proceedings after receiving a notice under sub-section (3).

(6) After the completion of the process of hearing, the arbitrator shall issue an order or the effect that the hearing has concluded and keep a record thereof in the case file.

Evidence may not be examined or the parties heard thereafter.

(7) Except when otherwise provided for in the agreement, the arbitrator must read out his written decision within 30 days from the date of issue of an order under sub-section (6)

17. Substantive Law to be applied by Arbitrators

- (1) The Nepal Law shall be the substantive law to be applied by the arbitrator, except when otherwise provided for in the agreement.
- (2) The arbitrator may settle the dispute according to the principle of *ex aet et bono* or *amiable compositor* only when explicitly authorised by the parties to do so.
- (3) Notwithstanding anything contained elsewhere in this act, the arbitrator shall settle the dispute according to the conditions stipulated in the concerned contract. While doing so, he shall also pay attention to the commercial usages applicable to the concerned transaction.

18. Arbitration Hearings to be held in Camera

Except when otherwise desired by the parties. Arbitration proceedings shall be held in camera.

19. Delivery of Notices and Summonses

(1) Notwithstanding anything contained in current law, any notice to be furnished in connection with arbitration, or any notice or summons to be furnished in the name of any party residing within or outside the Kingdom of Nepal in connection with the hearing by the arbitrator, or with the dispute under the consideration of the arbitrator, may be delivered directly to the concerned party or sent to its telex, telefax or telegram address or to the address of any other communication media whose printed records can be maintained, if such address is mentioned in the agreement, or if the concerned parties have supplied such address to each other or to their respective arbitrators after signing the agreement, except when otherwise provided for in the agreement. In case the address of such communication media or any other address has not been supplied, such notices or summonses shall be delivered at the place of business or permanent residence of the concerned party. Notices or summonses so sent shall be deemed to have been duly delivered.

Provided that notices or summonses to be sent by post shall be sent only after registering them.

(2) Notwithstanding anything contained in sub-section (1), this provision shall have no prejudicial impact on the functions and proceedings of the court.

20. Power of the Arbitrator

(1) The powers of the arbitrator shall be as follows, except when otherwise

provided for in the agreement:

(a) To direct the concerned parties to appear before him and submit documents, and record their statements according to need.

(b) To record statements of witnesses.

(c) To appoint experts and seek their opinions or have them examine any specific issue.

(d) In case any of the parties is a foreign national so that the decision pronounced by the arbitrator is not likely to be implemented, to obtain a bank guarantee or any other appropriate guarantee as prescribed by the arbitrator.

(e) To inspect the concerned place, object, product, structure, production process or any other related matter which are connected with the dispute on the request of the parties or on his own initiative if he so deems appropriate, and in case there is any material or object which is likely to be destroyed or damaged, to sell them in consultation with the parties, and keep the sale proceeds as a deposit.

(f) To exercise any specific power conferred on him by the parties.

(g) To issue preliminary orders, or interim or provisional orders in respect to any matter connected with the dispute on the request of any party, or take a conditional decision.

(h) To issue certified copies of documents.

(i) To exercise the other power conferred by this act.

(2) Any party which is not satisfied with the order issued by the arbitrator under clause (g) of sub section (1) may appeal to the appellate court within 15 days, and the decision taken by the Appellate Court in the connection shall be final.

21. Parties to have Equal Opportunities

(1) In the arbitration proceedings, each party shall be provided with an equal and adequate opportunity to present its case subject to this act.

(2) Any party may attend the arbitration proceedings either personally or by proxy, and also designate a legal practitioner on its behalf.

22. Assistance of the Court May be Sought to Examine Any Evidence

Notwithstanding anything contained in current law, in case the arbitrator

requires the assistance of the court to examine any evidence concerning a dispute which is under his consideration, the arbitrator himself may, on his own or on the request of any party, request the District Court for such assistance. In case any such request is received, the District Court shall provide assistance in examining the evidence according to current law.

Chapter 5

Decision of Arbitrators and Implementation Thereof

23. Period Within Which Decision Must Be Taken

Except when otherwise provided for in the agreement, the arbitrator must pronounce his decision ordinarily within 120 days from the date of submission of documents under Section 14 subject to sub-section (7) of Section 17.

24. Circumstances in Which Decisions Must Not Be Taken

(1) In case any issue requiring arbitration is found to be inextricably linked with any other issue on which the arbitrator cannot pronounce his decision, he shall not pronounce any decision on that issue.

(2) In the event of a situation in which the arbitrator cannot take a decision under sub-section (1), he must inform the concerned parties accordingly.

(3) The concerned parties may file a complaint with the Court within 35 days from the date of receipt of a notice under sub-section (2), Notwithstanding anything contained in current law.

25. Decision of Arbitrator

(1) In case there are three and more arbitrators, the decision of the majority shall be deemed to be the decision of arbitration.

(2) In case the arbitrators have divergent opinions so that the majority (opinion) cannot be ascertained, the opinion of the chief arbitrator shall be deemed to be the decision of arbitration, except when otherwise provided for in the agreement.

(3) Every arbitrator must affix his signature on the decision subject to sub-section

(4) Provided that in case there is any special reason why any arbitrator cannot affix his signature on the decision, the other arbitrators shall affix

their signatures explicitly mentioning the matter.

(5) In case any arbitrator does not agree with the decision of arbitration, he may express his dissident opinion.

26. Matters to be Indicated in Decision

The arbitrator must explicitly indicate the following matters in his decision, except when otherwise provided for in the agreement:

(a) Brief particulars of the matter referred to for arbitration.

(b) In case any party had questioned the jurisdiction of arbitration, grounds for deciding that the matter came under the jurisdiction of arbitration.

(c) The arbitrator's decision, and the reasons and grounds for reaching that decision.

(d) Claims which must be realised or amounts which must be compensated.

(e) Interest on amount to be realized, and the additional rate of interest to be charged after the expiry of the time limit for implementing the decision of the arbitrator in the event of the limit mentioned in section 31.

(f) Place and date of decision.

27. Decision to be Read Out

The arbitrator shall read out the decision in the presence of the concerned parties, hand over a copy of that decision to each party, and keep evidence thereof in the case file. In case any party is absent at the time fixed for reading out the decision or refuses to accept a copy of the decision even after being present at the time fixed for reading out the decision, a notice shall be furnished to it along with a copy of the decision after indicating the same.

28. Prohibition to Review Decision

(1) Except when the Appellate Court has issued an order under Section 30, the arbitrator must not take another decision on the matter referred to him for arbitration after once reading out his decision on the matter, except correcting arithmetic, printing, typing or similar other minor mistakes and inserting omitted particulars without prejudice to the substance of the decision.

(2) In case any party feels that any mistake contained in the decision of the arbitrator needs to be corrected under sub section (1) it must submit an application to the arbitrator within 30 days from the date of receipt of a copy of the decision. In case the arbitrator deems it appropriate to correct such mistakes or insert any omitted particulars, he may prepare a separate note thereof and have the omitted particulars inserted or mistakes corrected within 15 days from the date of receipt of the application. In case the arbitrator himself deems it appropriate to make such corrections, he must do so by preparing a note thereof and informing the parties accordingly within 30 days from the date of decision.

(3) Notwithstanding anything contained elsewhere in this section, in case the arbitrator has not taken a decision on any point from among the points contained in the claims made by any party, the concerned party may submit an application for a decision on the point to the extent of the matter covered by it after securing the approval of the other party within 30 days from the date of decision by the arbitrator. In case such an application is received, a supplementary decision may be taken by confining it to the matter covered by the point within 45 days from the date of application.

(4) If the parties so agree, any party may, by notifying the other party, request the arbitrator to explain any point contained in or any part of the arbitrator's decision which is not clear within 30 days from the date of decision. In case any such request is received, the arbitrator may explain and clarify any unclear point within 45 days.

29. Circumstances in which decision may be invalidated

(1) Any party which is dissatisfied with the decision taken by the arbitrator may, if he wishes to have the decision invalidated, file a petition to the appellate court along with the related documents and a copy of the decision within 35 days from the date when it heard the decision or received a notice thereof under this act. It must also supply a copy of that petition to the arbitrator and the other party.

(2) In case a petition is filed under sub-section (1) the Appellate Court may, in case the petitioner proves that the arbitration decision contains any of the following matters, invalidate that decision or issue an order to have a fresh decision taken according to need:

(a) In case any party to the agreement was incompetent for any reason to sign an agreement at the time of signing the agreement, or in case the agreement is not valid under the laws of the nation which exercises jurisdiction over the parties, or in case such laws are not clear, under the laws of Nepal.

(b) In case the party which has submitted the petition was not given a notice to appoint an arbitrator or about the arbitration proceedings according to rules in time.

(c) In case the decision has been taken on a matter connected with the dispute which had not be referred to the arbitrator, or in a manner contrary to the conditions prescribed for the arbitrator, or by acting beyond the jurisdiction prescribed for the arbitrator.

(d) Except when an agreement has been signed contrary to the laws of Nepal, in case the procedure of designation of arbitrators or their functions and actions do not conform to the agreement signed between the parties, or to this act in case no such agreement has been signed.

(3) Notwithstanding anything contained in sub-section (2), the Appellate Court may invalidate the decision of the arbitrator in the following circumstances in case a petition is filed under sub-section (1):

(a) In case the dispute in respect to which the arbitrator has taken a decision cannot be settled through arbitration under the laws of Nepal.

(b) In case the decision taken by the arbitrator is likely to be prove detrimental to the public interests or policies.

30. Implementation of Decision

The concerned parties shall be under obligation to implement has decision taken by the arbitrator within 45 days from the date when they receive a copy thereof.

31. Implementation of Decision by Court

In case a decision cannot be implemented within the time limit prescribed in Section 31 of this act, the concerned party may file a petition to the District Court within 30 days from the date of expiry of the time limit prescribed for the purpose for having the arbitration decision implemented. In case such a petition is filed, the District Court shall implement the decision ordinarily within 30 days as if its was its own judgment.

32. Interest to be paid

Except when otherwise provided for in the agreement in case the arbitrator has taken a decision providing for the payment of any amount by one party to another, the concerned party must also pay interest at the rate prescribed by the arbitrator in the light also of the nature of the business connected with the dispute and by ensuring that it is not higher than the rate of interest currently charged by commercial banks in respect to similar transactions.

Provided that no interest shall be payable for the period between the date of decision by the arbitrator and the time limit prescribed for the

implementation of the decision under this act.

33. Implementation of Decision Taken in Foreign Countries

(1) Any party which wishes to have a decision taken in a foreign country implemented in the Kingdom of Nepal must submit an application to the Appellate Court along with the following documents:

(a) The original document of the arbitrators decision or a certified copy thereof.

(b) The original document of the agreement, or a certified copy thereof.

(c) In case the arbitrators decision is not in the Nepali Language, an official translation thereof in the Nepali language.

(2) In case Nepal is a party to any treaty which provides for recognition and implementation of decisions taken by arbitrators in foreign countries, any decision taken by an arbitrator after the commencement of this act within the area of the foreign country which is a party to that treaty shall be recognised and implemented in the Kingdom of Nepal in the following circumstances subject to the provisions of that treaty and the conditions mentioned at the time of becoming a party to it:

(a) In case the arbitrator has been appointed and decision taken according to the laws and procedure mentioned in the agreement.

(b) In case the parties had been notified about the arbitration proceedings in time.

(c) In case the decision has been taken according to the conditions mentioned in the agreement or by confining only to the subject- matters referred to the arbitrator.

(d) In case the decision has become final and binding on the parties according to the laws of the country where the decision has been taken.

(e) In case the laws of the country of the person who has applied for the implementation of an arbitrator's decision, or the laws of the country where arbitration proceedings have been conducted, do not contain provisions under which arbitration decisions taken in the Kingdom of Nepal cannot be implemented.

(f) In case the application has been filed for the implementation of the decision within 90 days from the date of decision.

(3) In case the Appellate Court is satisfied that the conditions mentioned in Sub-section (2) have been fulfilled by an application filed under sub section (1) it shall forward the decision to the District court for its

implementations.

(4) Notwithstanding anything contained elsewhere in this section, no decision taken by an arbitrator in a foreign country shall be implemented in the following circumstances.

(a) In case the dispute after settling which the decision has been taken is a dispute which cannot be settled through arbitration according to the laws of Nepal.

(b) In case the implementation of the decision is detrimental to the public policy.

Charter 6

MISCELLANEOUS

34. Cost of Arbitration Proceedings

(1) Except when otherwise provided for in the agreement, the parties seeking arbitration must pay to the arbitrator the amount fixed by him in consultation with them for conducting the arbitration proceedings.

(2) Except when otherwise provided for in the agreement, each party must bear the expenses required for conducting the arbitration proceedings in the proportion prescribed by the arbitrator in the light of the relevant circumstances.

35. Arbitrator's Remuneration

(1) The arbitrator's remuneration shall be as prescribed in the agreement.

(2) In case the arbitrator's remuneration is not mentioned in the agreement, the concerned parties must pay the remuneration fixed by the arbitrator in consultation with them. Such remuneration must be paid either in a lump sum or in the form of an advance payment as ordered by the arbitrator in consultation with the concerned parties.

36. Arbitrator To Refund Payments

In case no hearing can be made on the dispute referred to the arbitrator, or the position of the arbitrator falls vacant for any reason, the concerned arbitrator, if he has already received payment of remuneration under Section 36, must refund the balance left after deducting.

The amount covering the period for which he has worked, in consultation

with the parties.

Provided that in case any arbitrator is removed under Section 11, he must fully refund the remuneration received by him prior to that, if any.

37. Devolution of Rights and Liabilities

In case any party dies, disappears or becomes insane after the commencement of arbitration proceedings under this act, all his rights and liabilities shall devolve on his relative who is entitled to inherit his property under current law.

38. Court to Have No Jurisdiction

Notwithstanding anything contained in current law, no court shall have jurisdiction over any matter regulated by this act, except when otherwise provided for in this act.

39. Right of Parties to Reach a Compromise

In case the parties to a dispute which has been referred for arbitration under this act desire to reach a compromise between themselves, they may submit an application to the arbitrator explicitly mentioning the conditions under which they wish to do so. The arbitrator shall approve the application so filed, and no appeal may be filed against the decision except on issues concerning actions not taken according to the compromise.

40. Payment of Fees for Granting Claims

(1) Notwithstanding anything contained in current law, a fee amounting to 0.5 percent of the amount received through the implementation of the decision of the arbitrator must be paid to the concerned court in the form of a fee for having implemented the decision. In case the decision to be so executed does not concern payment of any amount, a fee amounting to 0.5 percent of the current market value or amount of the action to be taken or has to be taken according to the decision, if the same can be determined, and if not, a sum of Rs 500, must be paid by the party requesting the implementation of the decision.

(2) In case any party who pays the fee mentioned in Sub-Section (1) wishes to have it realized from the other party, the district court shall have it realized from the other party as in the case of court fees according to current law.

41. Case Files Relating to Arbitration

(1) The arbitrator must prepare a case-file and attach thereto according to serial number the documents and evidence submitted by the parties, the statements recorded from them, his parties, the statements recorded from them, his decision and all other documents connected with arbitration after recording time and date of doing so.

(2) After the finalization of the arbitration proceedings, the arbitrator must submit the concerned case-file to the District Court.

(3) The District Court must keep the case-file received under Sub-Section (2) as safely as it keeps the case-files of its judgments.

(4) Notwithstanding anything contained in current law, no copy of the decision of the arbitrator and the documents related thereto shall be given to any person other than the concerned parties without their approval.

42. Power to Frame Rules

The Supreme Court may frame necessary rules in respect to the procedure of regulating the functions to be discharged by courts under this act.

43. Repeal and Saving

(1) The 1981 Arbitration Act has been repealed.

(2) In the case of an arbitration whose proceedings have been started prior to the commencement of this act, the procedure laid down in the 1984 Arbitration Act itself shall be adopted.

(3) The Time limit and grounds for filing appeals for invalidating the decisions taken through arbitration under the 1981 Arbitration Act shall be as mentioned in the 1981 Arbitration Act.

Schedule

(Pertaining to Section 9)

In the dispute referred to me/us for arbitration between and, I/we shall work in an impartial and honest manner without any bias toward any party.

Name Signature Date

Copyright © Katholieke Universiteit Leuven | Reactions as to the content: [Johan Verlinden](#)
Production: [Johan Verlinden](#) | Most recent update: 19-08-2011 | [Disclaimer](#)
URL: <http://www.law.kuleuven.be>