

# **Arbitration Act, 2055 (1999)**

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1. The Act Amending Some Nepal Acts, 2064

2064.5.9

## **Act No. 1 of the year 2056 (1999)**

### **An act made to make legal provision on arbitration**

**Preamble:** Whereas it is expedient to update the prevailing legal provisions relating to arbitration,

Now, therefore, be enacted by the Parliament in the 27th year of the reign of His Majesty King Birendra Bir Bikram Shah Dev.

## **Chapter 1**

### **Preliminary**

1. **Short Title and Commencement:** (1) This Act may be called as “Arbitration Act, 2056 (1999).”

(2) It shall come into force immediately.

2. **Definitions:** In this Act, unless the subject or the context otherwise requires,-

(a) “Agreement” means a written agreement reached between the concerned parties for a 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 purpose of this clause, the concerned parties shall be deemed to have entered into a written agreement in case any of the following documents exists:

- (1) Any contract containing provision for arbitration or any separate agreement signed in that connection.
  - (2) Letter, telex, telegram or telefax message, or any other similar at time message exchanged through telecommunication media whose records can be maintained in a written form, between the concerned parties which provide for referring their disputes to arbitration.
  - (3) In case any party has presented a claim for referring any dispute to arbitration and the objection to that claim submitted by the party objecting to that claim without rejecting the proposal for referring the dispute to arbitration.
- (b) “Party” means any party connected with arbitration.
- (c) “District Court” means the District Court of the place prescribed in the agreement as the place of arbitration, if any, and if no such place has been prescribed, the place where the dispute has arisen or where the arbitration proceedings have been conducted and decisions taken, or the territorial jurisdiction over the place where any party generally resides.
- (d) “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 place where the dispute has arisen or where the arbitration proceedings have been conducted and decisions taken, or the territorial jurisdiction over the place where any party generally resided.

- (e) “Dispute” means a dispute which can be settled through arbitration under this Act.
- (f) “Counter-claim” means a claim made by the Respondent on the Claimants.
- (g) “Rejoinder” means a claim to the counter-claim by the Claimants.
- (h) “Arbitrator” means an arbitrator appointed for the settlement of a dispute and the term also includes a panel of arbitrators.

## **Chapter 2**

### **Settlement of Disputes through Arbitration**

- 3. Disputes to be Settled through Arbitration:** (1) 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.

(2) 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 prevailing laws, file an application for its settlement through arbitration, such dispute shall also be settled through arbitration.

- 4. Cancellation of Records of the Suit:** (1) The court may order for cancellation of the records of a suit filed in connection with a dispute which the concerned parties have sought to settle through arbitration pursuant to Sub-section (2) of Section 3.

(3) Notwithstanding anything contained in Sub-section (1), the court shall not order for the cancellation of a suit in the following circumstances:

- (a) 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
- (b) 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:** (1) The number of arbitrators is as specified in the agreement. In case the agreement does not specify the number of arbitrators, there shall ordinarily be three arbitrators.

(2) 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:** (1) Notwithstanding otherwise contained 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.

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

(3) In case the agreement has made any separate provision for the appointment of arbitrators, arbitrators shall be appointed accordingly.

(4) Notwithstanding otherwise contained in the agreement, each party shall appoint one arbitrator each and the arbitrators shall appoint the third arbitrator who shall work as the chief arbitrator.

7. **Appointment of Arbitrators by Court:** (1) Any party may submit an application to the Appellate Court for the appointment of arbitrators in the following circumstances:

(a) In case no arbitrator can be appointed upon following the procedure contained in the agreement.

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

(2) The application to be filed pursuant to Sub-section (1) must explicitly mention the full name, address, occupation and the field of specialisation of at least three persons who can be appointed as arbitrator, and also be accompanied by a copy of the agreement.

(3) Upon receiving of an application pursuant to Sub-section (1), the Appellate Court shall notify all the parties and shall appoint arbitrators from the persons proposed by them in the case of consensus in that connection, and in the case of fail to consensus, the persons deemed appropriate by the Appellate Court, within 60 days from the date of receipt of the application. The decision taken by the court in that manner shall be final.

8. **Fullfulment of Arbitrators in Special Circumstances:** (1) In case appointed arbitrator for the purpose of arbitration falls vacant by reason of his resignation or refusal to function in that capacity or of his/her death or 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.

(2) In case of vacant arbitrator was not filled up within the time limit mentioned in Sub-section (1), any 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 filed, the Appellate Court shall appoint an arbitrator ordinarily within 15 days subject to section 7.

**9. Arbitrators to Take Oath:** (1) 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 to the Appellate Court and keep the other copy in the case-file.

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

**10. Qualifications of Arbitrators:** The following persons shall not be disqualified for appointment as arbitrators: -

- (a) Disqualified for entering into contracts as per prevailing laws.
- (b) Punished by a court on criminal charges involving moral turpitude.
- (c) Become insolvent or been declared bankrupt.
- (d) Any personal interest in the dispute which has to be settled through arbitration.
- (e) Not having any specific qualification specified in the agreement for becoming eligible for appointment as an arbitrator.

**11. Removed of Arbitrators:** (1) The condition and procedure for removal of an arbitrator shall be as mentioned in the agreement.

(2) In case the condition and procedure has not been mentioned in the agreement pursuant to 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/her appointment or from the date when the party learns that the concerned arbitrator has failed to act:

- (a) 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;
- (b) In case any arbitrator engages in improper conduct or commits fraud in the course of arbitration;
- (c) In case any arbitrator frequently commits mistakes or irregularities in the course of arbitration;
- (d) 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;
- (e) In case any arbitrator takes any action which is opposed to the principles or rules of natural justice; or
- (f) In case any arbitrator is found to be lacking the necessary qualifications, or to have ceased to be qualified.

(3) Upon received an application pursuant to Sub-section (2), the arbitrator whose removal has been demanded does not relinquish his/her post voluntarily, or other party does not agree with grounds on which his/her removal , the arbitrator must take a decision on the matter within 30 days from the date of application.

(4) A complain may be filed before the Appellate Court against the decision pursuant to Sub-section (3), and the decision of the Appellate Court shall be final.

**12. Location of Office of the Arbitrator:** (1) The office of the arbitrator shall be located at the following place:

- (a) At the place specified in the agreement, if any.
- (b) If the agreement does not specify the location of the arbitrators office, at the place selected by the concerned parties.
- (c) 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.

(2) 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 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 claimant shall submit its claim to the arbitrator in writing explicitly mentioning the details of the subject-matter of the dispute 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 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 pursuant to 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 shall provide a time limit of 15 days to claimant submit its rejoinder over such counter-claim. In case a rejoinder is so submitted a copy thereof shall be supplied to the party making the counter claim.

(4) In case any party fails to submit its .....<sup>∞</sup> 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

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<sup>∞</sup> Deleted by the Act Amending Some Nepal Acts, 2064

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/she 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, shall also be submitted. In case the parties wish to substantiate any point through witness, they must mention the full name and address 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/her.

(6) Each party submitting documents to the arbitrator in connection with arbitration proceedings under this Act shall 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/her 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 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 the verdict on the basis of the evidence that has been submitted or in case any party does not present itself or does not submit any written evidence at the time of hearing prescribed by the arbitrator. Arbitration shall send a copy of the verdict to the party not submitting its objection as well.

**16. Power of the Arbitrator to Determine Jurisdiction:** (1) In case any party claims that the arbitrator has no jurisdiction over the dispute which has been referred to him/her for settlement, or that the contract because of which the dispute has emerged is itself illegal or null and void, it may claim so before the arbitrator. The arbitrator shall take a decision on his/her jurisdiction or the validity or effectiveness of the contract before starting the proceeding on the matter referred to him/her,.

(2) Any party 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 pursuant to 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 pursuant to Sub-section (1) after the expiry of the time limit for submitting objections prescribed pursuant to Sub-section (2) of section 14.

(5) No party shall be deemed to have been deprived of the opportunity to claim pursuant to 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 pursuant to Sub-section (2) shall not be deemed to have prejudiced the power of the arbitrator to continue the proceedings and pronounce the decision before the petition is finally disposed of by the court.

**17. 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 him/herself.

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

(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/her 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 pursuant to Sub-section (3).

(6) After the completion of the process of hearing, the arbitrator shall issue an order with the effect that the hearing has concluded and keep a record thereof in the case file. No evidence may be examined or the parties heard thereafter.

(7) Notwithstanding otherwise claimant in the agreement, the arbitrator must read out his/her written decision within 30 days from the date of issue of an order pursuant to Sub-section (6).

**18. Substantive Law to be followed by Arbitrators:** (1) The Nepal Law shall be the substantive law to be followed by the arbitrator, except when otherwise provided for in the agreement.

(2) The arbitrator may settle the dispute according to the principle of justice and conscience (*Ex aqua et bono*) or natural justice (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, arbitrator shall also pay attention to the commercial usages applicable to the concerned transaction.

**19. Arbitration Hearings to be held in Camera:** Except when otherwise desired by the parties, arbitration proceedings shall be held in-camera.

**20. Saving Notices and Summon:** (1) Notwithstanding anything contained in the prevailing law, any notice to be served in connection with arbitration, or any notice or summon to be furnished in the name of any party residing within or outside the Nepal in connection with the hearing by the arbitrator, or with the dispute under 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 served at the place of business or permanent residence of the concerned party. Notice or summon so served shall be deemed to have been duly served.

Provided that notice or summon to be served by the postal service shall be served only after registering it .

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

**21. 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/her to submit documents, and record their statements as required .
- (b) To record statements of the witness.

- (c) To appoint expert and seek their opinion or cause examination on any specific issue.
- (d) In case party is a foreign national so that the decision pronounced by the arbitrator is not likely to be implemented for that reason, to obtain a bank guarantee or any other appropriate guarantee as determined 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/her own initiative if he/she 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 by the parties.
- (g) To issue preliminary orders, or interim or inter locating 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 copy of document.
- (i) To exercise the other power conferred by this Act.

(2) Any party which is not satisfied with the order issued by the arbitrator pursuant to Clause (g) of Sub-section (1) may submit an application to the appellate court within 15 days, and the decision made by the Appellate Court shall be final.

**22. Parties to have Equal Opportunity:** (1) Each party shall be provided with an equal and adequate opportunity In the arbitration proceedings to present its case subject to this Act.

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

**23. Assistance of the Court May be Sought to Examine Any Evidence:** Notwithstanding anything contained in the prevailing law, in case the arbitrator requires the assistance of the court to examine any evidence concerning a dispute under the consideration, the arbitrator him/herself may, on his/her 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 the prevailing law.

## **Chapter 5**

### **Decision of the Arbitrator and Implementation**

**24. Period Within Which Decision Must Be Taken:** Except when otherwise provided for in the agreement, the arbitrator shall pronounce the decision ordinarily within 120 days from the date of submission of documents under Section 14 pursuant to Sub-section (7) of Section 17.

**25. 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 the decision, the arbitration shall not pronounce decision on that issue.

(2) In a situation in which the arbitrator cannot take a decision pursuant to Sub-section (1), the arbitration must inform the concerned parties accordingly.

(3) The concerned party may file a complaint to the Court within 35 days from the date of receipt of a notice pursuant Sub-section (2), Notwithstanding anything contained in the prevailing law.

**26. Decision of Arbitrator:** (1) In case there are three more arbitrators, the decision of the majority shall be deemed to be the decision of arbitration.

(2) In case the arbitrators have dissenting 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 signature on the decision subject to Sub-section (4)

Provided that in case there is any special reason why any arbitrator cannot affix signature on the decision, the other arbitrators shall affix their signatures explicitly mentioning the reason .

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

**27. Matters to be mentioned in Decision:** The arbitrator must explicitly mention the following matters in the 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 falls under the jurisdiction of arbitration.
- (c) The arbitrator's decision, and reasons and grounds for reaching that decision.

- (d) Claims which must be realized or amounts which must be compensated.
- (e) Interest on amount to be realized, and the additional rate of interest to be charged with 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.

**28. 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 him/her along with a copy of the decision after indicating the same.

**29. Prohibition to Revision of Decision:** (1) Except the Appellate Court has issued an order under Section 30, the arbitrator shall not take another decision on the matter referred to him/her for arbitration after once reading out his decision on the matter, except correcting arithmetic, printing, typing or similar other minor errors and inserting omitted particulars without prejudice to the substance of the decision.

(2) In case any party observes that any mistake contained in the decision of the arbitrator needs to be corrected pursuant Sub-section (1) one 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/her 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 deems it appropriate to make such correction, he/she 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 in 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.

**30. Circumstances in which decision may be invalidated:** (1) Any party dissatisfied with the decision taken by the arbitrator may, if one wishes to invalidate the decision file a petition to the Appellate Court alongwith the related documents and a copy of the decision within 35 days from the date the decision heard or notice received thereof under this Act. Petition shall also supply a copy of that petition to the arbitrator and the other party.

(2) In case a petition is filed pursuant 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 as per necessity:

- (a) In case any party to the agreement was incompetent for any reason to sign the agreement at the time of signing the agreement, or in case the agreement is not valid under the law of that the nation which governs jurisdiction over the parties, or in case such law is not clear and agreement is not valid under the laws of Nepal.
- (b) In case the due petition was not given a notice to appoint an arbitrator or about the arbitration proceedings in time.
- (c) In case the decision has been taken on a that disputed matter which had not been 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 in case there is no such agreement it has not been done as per this Act.

(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 pursuant to Sub-section (1):

- (a) In case the dispute settled by the arbitrator 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.

**31. Implementation of Award:** The concerned parties shall be under obligation to implement the award of the arbitrator within 45 days from the date when they receive a copy thereof.

**32. Implementation of Award by Court:** In case a award 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 that purpose to implement the award. In case such a petition is filed, the District Court shall implement the award ordinarily within 30 days as if its was its own judgment.

**33. Interest to be paid:** Except when otherwise provided for in the agreement, in case the arbitrator has taken a award providing for the payment of any amount by one party to another, the concerned party shall also pay interest at the rate prescribed by the arbitrator in the light also of the nature of the business related to 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 charged for the period between the date of decision by the arbitrator and the time limit prescribed for the implementation of the award under this Act.

**34. Implementation of award Taken in a Foreign Country:** (1) A party which willing to implement an award made in foreign country in Nepal shall submit an application to the Appellate Court along with the following documents:

- (a) The original or certified copy of the arbitrators award .

- (b) The original or certified copy of the agreement.
- (c) In case the arbitrators award is not in the Nepali Language, an official translation thereof in 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 Nepal in the following circumstances subject to the provisions of that treaty and the conditions mentioned at the time of entering into the treaty .

- (a) In case the arbitrator has been appointed and award made 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 upon 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 petitioner or the laws of the country where arbitration proceedings have been conducted, do not contain provision under which

arbitration award taken in Nepal cannot be implemented.

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

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

(4) Notwithstanding anything contained in this Section, no award made by an arbitrator in a foreign country shall be implemented in the following circumstances.

- (a) In case the awarded settled dispute cannot be settled through arbitration under the laws of Nepal.
- (b) In case the implementation of the award is detrimental to the public policy.

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#### **MISCELLANEOUS**

**35. 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 their in consultation with parties for conducting the arbitration proceedings.

(2) Except the otherwise provided in the agreement, each party shall bear the expenses required for the arbitration proceedings in the proportion prescribed by the arbitrator taking into account the relevant circumstances.

**36. 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 shall pay the remuneration fixed by the arbitrator in consultation with them. Such remuneration shall be paid as a full payment or in the form of advance payment as ordered by the arbitrator in consultation with the concerned parties.

**37. Arbitrator To Refund Payments:** In case no hearing has been made on the dispute referred to the arbitrator, or the position of arbitrator falls vacant for any reason, the concerned arbitrator, if he/she has already received remuneration under Section 36, shall 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/she shall fully refund the remuneration amount received by him/she prior to that, if any.

**38. 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/her relative who is entitled to inherit his/her property upon the prevailing law.

**39. Court to Have No Jurisdiction:** Notwithstanding anything contained in the prevailing law, no court shall have jurisdiction over any matter regulated by this Act, except when otherwise provided for in this Act.

**40. Parties may Compromise:** In case the parties to a dispute which has been referred for arbitration under this Act desire to reach a compromise 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 such award except on issues concerning actions not taken according to the condition for compromise.

**41. Payment of Fees for Implementing the Award :** (1) Notwithstanding anything contained in the prevailing law, a fee amounting to 0.5 percent of the amount received through the implementation of the award of the arbitrator shall be paid to the concerned court in the form of a fee for having implemented the award. In case the award to be so implemented does not concern for 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/- shall be paid by the party requesting for the implementation of the award.

(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 the prevailing law.

**42. Case Files Relating to \*Arbitrator:** (1) The arbitrator shall prepare a case file of the document, evidence, statement of the concerned persons award and all other documents connected with arbitration mentioning date and time in a chronologically order .

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

(3) The District Court shall keep the case-file received pursuant to Sub-section (2) as safely as it keeps the case-files of its judgments.

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\* Amended the Act Amending Some Nepal Acts, 2064

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

**43. 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.

**44. Repeal and Saving:** (1) The Arbitration Act, 2038 (1981) has been repealed.

(2) In the case of an arbitration whose proceedings have been started prior to the commencement of this Act, 2041(1984) the procedure laid down in the 1984 Arbitration Act itself shall be adopted.

(3) The Time limit and grounds for filing appeal against the award taken through arbitration under the Arbitration Act, 2038 (1981) shall be as mentioned in the Arbitration Act, 2038 (1981).

**Schedule**

(Relating 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