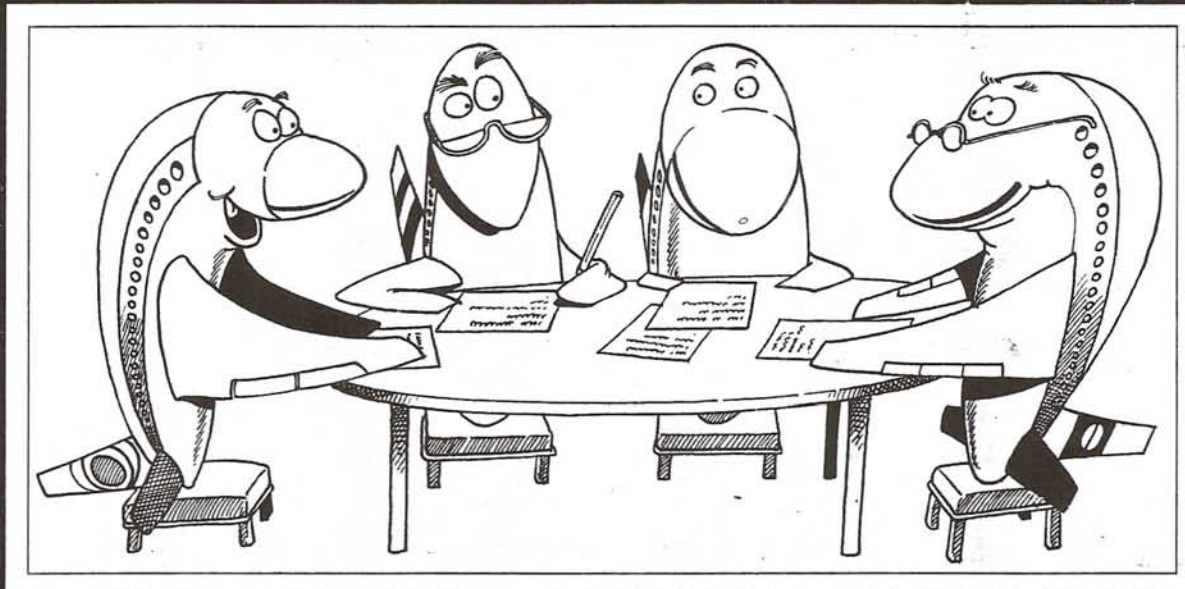


# International Business Lawyer



## 'Aeronautical Round Table' issue

- Competition Rules and the Single Market
- US View of Aviation Liberalisation
- EU/US Aviation Pact
- Airline Alliances: Competition Policy
- Impact of Global Airline Alliances



International  
Bar Association

Section on  
Business Law

for a clear and binding set of guidelines, going beyond the minimal legal duties of confidentiality and good administration which currently bind the Commission.

*Contributed by Stephen Kinsella,  
Herbert Smith, Brussels.*

## Nepal

### Arbitration Act 1999

Arbitration is popular in Nepal as a method of resolving disputes of a commercial nature. The previous Arbitration Act of 1981 became ineffective in dealing with modern developments in arbitral procedures. In 1997, Nepal also acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. In this scenario, the need for a comprehensive law relating to arbitration proceedings was identified and a new Arbitration Act entered into force on 15 April 1999, which repealed the previous Arbitration Act of 1981. The Act applies to all arbitration proceedings commencing after that date. The Act contains 44 sections, which lay down comprehensive procedures relating to arbitration proceedings. The Act envisages that whereas an agreement provides for arbitration, a dispute can only be settled through arbitration and no jurisdiction of a court of law will prevail notwithstanding anything written in other existing laws. Therefore, arbitration is regarded as the exclusive remedy for resolving disputes.

### *Transfer of a lawsuit from courts of law to arbitration*

Section 3 of the Act envisages that a civil lawsuit of a commercial nature pending before a court of law can be referred to arbitration if the parties to the lawsuit make an application requesting for the same. In such circumstances, the court may give an order to transfer such lawsuit to arbitration. However, a court will refuse to transfer a lawsuit to arbitration if the court has to render its decision on an issue that cannot be referred to arbitration or if the court finds there is a cogent reason why the dispute cannot be settled through arbitration.

### *Jurisdiction of arbitration tribunal*

Before proceeding with any action regarding the dispute, a tribunal may have to determine its jurisdiction if any of the parties challenges the validity of jurisdiction of the tribunal. A party who is not satisfied with the ruling of the tribunal regarding jurisdiction, can file an application before the Appellate Court against the ruling of the tribunal. The decision of the Appellate Court in this regard will be final and binding to the parties.

A party may participate in the proceedings of a tribunal declaring its protest of the validity of jurisdiction of the tribunal, provided that such protest shall be made prior to the deadline for a counter-claim envisaged by section 14 which is 30 days from the date of receipt of the claim. A party who fails to challenge the jurisdiction of a tribunal within the stipulated time shall be deemed to waive its right to challenge the

jurisdiction. A party will not be barred from challenging the jurisdiction of the tribunal on the ground that it has appointed an arbitrator from its side or participated in the proceedings of appointment of arbitrators or consented on the appointment of arbitrators. The above provisions provide an option to a party to challenge the validity of the jurisdiction of a tribunal or to participate in the arbitration proceedings (section 16).

### *Procedures and applicable law*

A tribunal will follow the procedures if so provided in the agreement. If the procedures of arbitration are not defined in the agreement, the tribunal will follow the procedures in accordance with the Act. A tribunal can set its own procedures rather than those contained in the Act with the consent of the parties (section 17).

The substantive law applicable to the arbitration shall be Nepalese law unless otherwise provided in the agreement. The tribunal can settle the dispute on the ground of *ex aequo et bono* and *amiable compositeur* only if so clearly authorised by the parties. However, a tribunal shall give consideration to commercial practice while resolving disputes (section 18).

The Act provides wide powers to the arbitration tribunal. An arbitration tribunal has equal powers to a court of law, ie it can examine witnesses, take opinion from experts, produce documents, ask for guarantees or bonds, pass interim and interlocutory orders, pass conditional decisions, etc. If necessary, a tribunal can request for the assistance of the District Court in taking evidence relating to the dispute. In such

circumstances, the District Court has to provide necessary assistance to the arbitral tribunal pursuant to the existing laws (sections 21 and 23).

#### *Award and enforcement*

The Act has laid down time-limits to be followed by an arbitration tribunal when settling a dispute. A tribunal generally has to provide its written award within 30 days of the date of completion of the hearing. A tribunal is barred from passing its award while an issue of the dispute is not within the jurisdiction of the tribunal but is associated with the issue of the arbitration. In such circumstances, the parties have to avail the jurisdiction of the courts of law after being notified by the tribunal (section 25).

The parties are required to voluntarily enforce the award of the tribunal within 45 days of the receipt of the copy of the award. A party may apply to the District Court for enforcement of the award if it could not be voluntarily enforced by the parties. The District Court upon receipt of such an application from a party will usually enforce the arbitral award within 30 days in the same way as it enforces its own decision (sections 31 and 32).

The Act provides for the enforcement of foreign arbitral awards in Nepal. The party intending to enforce an arbitral award made in any foreign jurisdiction has to file an application before the Appellate Court along with the certified copies of the agreement and award. The Act provides for recognition and enforcement of an arbitral award in Nepal made in any foreign jurisdiction which is a party to a treaty for the recognition and enforcement of

foreign arbitral awards to which Nepal is a party. In such circumstances, the arbitral award will be enforced in Nepal pursuant to the conditions of accession and the provisions of the treaty unless enforcement of the award goes against public policy.

#### *Cost*

The cost of arbitration shall be borne by the parties as determined by the tribunal. Unless provided otherwise in the agreement, the remuneration of arbitrators shall be determined by the arbitration tribunal in consultation with the parties.

#### *Appeals*

The Act provides for challenges against the order or award of the tribunal in certain circumstances. The Appellate Court has been appointed as appellate jurisdiction against the tribunal. Generally, three types of challenges rest with a party: first, a challenge against the irregularity of the arbitral proceedings, ie biases and misconduct of arbitrators, irregularity and mistakes, absence from the proceedings intending to delay the procedures, violation of the principles of natural justice, etc; secondly, challenges against the jurisdiction of the arbitration tribunal; lastly, challenges on a point of law. The Appellate Court may quash the award of the tribunal and refer the dispute to the tribunal again for rededecision if it finds that the challenges made by a party are genuine. The decision of the Appellate Court is final and binding on the parties.

#### *Conclusion*

The provisions of the Act are heavily influenced by the

UNCITRAL Model Law on International Commercial Arbitration as various provisions in the Act have been borrowed from the Model Law. The preamble to the Act envisages that it has been introduced to fulfil the requirements of time. The Act made various changes to the previous Act and introduced many new provisions to simplify arbitration proceedings. The Act ensures that arbitration is a simple and exclusive method for resolving disputes of a commercial nature. The Act will play a significant role in the path of the development of arbitration law in Nepal.

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## **Spain**

### **Mandatory merger notification**

Strictly speaking, under Spanish Law No 16/1789 for the Defence of Competition of 17 July 1989 ('LDC') there was no formal obligation to report a concentration in Spain. The LDC encouraged voluntary notification of concentrations, but the results were not satisfactory.

Pursuant to the recent reform of the LDC, by Royal Decree No 6/1999 of April 1999 ('the Royal Decree'), which entered into force on 18 April 1999, important changes have occurred within the Spanish merger control system. The most noticeable are the obligation to notify, an option for the parties concerned to submit undertakings or amendments, new fines and an increase in the