

Proposal to Accede to the Montreal Convention 1999

This Client Briefing is prepared in connection with a proposal tabled by the Government of Nepal (“GON”) at the Parliament on August 8, 2018 to accede to the Convention for the Unification of Certain Rules for International Carriage by Air 1999 (“Montreal Convention”). The proposal was tabled after it received approval from the Council of Ministers of the GON on July 16, 2018.

The Montreal Convention and its Liability Regime

The Montreal Convention, which entered into force on November 4, 2003, is a treaty in international aviation sector and applies to international carriage of passengers, baggage and cargo. As of this date, 132 countries have acceded to the Montreal Convention. The Montreal Convention adopts higher liability regime for airlines and provides more generous compensations to passengers in the event of death or injury of passengers and/or delay or damage of baggage and cargo as compared to previous international conventions *vis-à-vis* international carriage of passengers, baggage and cargo. It imposes a strict liability (without any defense by airlines) in case of death or bodily injury in the amount of SDR 113,100 (approximately USD 158,000), SDR 1,131 (approximately USD 1,580) for baggage and SDR 19 (approximately USD 26) per kilogram for cargos. Similarly, compensation for delay is SDR 4,694 (approximately USD 6,561).

Background of the Proposal

Nepal acceded to the Convention for the Unification of Certain Rules Relating to International Carriage by Air 1929 (“Warsaw Convention”) and the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air 1955 (“Hague Protocol”) on February 12, 1966 and became a party to on May 13, 1966.

In its proposal to the Parliament, the GON stated that it has become a necessity for Nepal to accede to the more passenger-friendly Montreal Convention to address the challenges and risks associated with air travel as the Warsaw Convention and the Hague Protocol have not sufficiently addressed the risks associated with air travel with respect to passengers.

In its proposal, the GON further stated that accession to the Montreal Convention:

- will result in the increase in the morale of air passengers and tourists;
- will increase the amount of compensation to be received by passengers significantly;
- will enhance the image of Nepal in the international sphere; and
- will not pose any economic obligation on the GON.

Non-applicability of the Montreal Convention to Domestic Flights

The proposal stated that the Montreal Convention shall only apply to international flights and shall not be applicable to domestic flights and a separate law shall be enacted in the future for the latter. Currently, the liability regime prescribed by the Warsaw Convention and the Hague Protocol are made applicable to domestic flights through the Air Operator Certificate Requirements 2012, a regulatory manual of the Civil Aviation Authority of Nepal.

Our Analysis

Upon ratification of the Montreal Convention by the Parliament and on the sixtieth day after the deposit of the instrument of accession by the GON with the International Civil Aviation Organization (ICAO), Nepal will become a party to the Montreal Convention. As per Section 9 of the Treaty Act 2047 (1990), a treaty to which the

GON is a party, upon ratification by the Parliament, shall carry the force of law in that particular matter and shall prevail over the existing domestic laws in case of any conflict.

The initiative of the GON to accede to the Montreal Convention is a positive move by the GON. The current liability regime adopted by Nepal under the Warsaw Convention and the Hague Protocol is significantly lower as compared to the Montreal Convention. Accession to the Montreal Convention will certainly enhance the credibility of Nepal in the international aviation sector.

DISCLAIMER: INFORMATION CONTAINED IN THIS DOCUMENT IS ONLY FOR GENERAL INFORMATION PURPOSE AND SHALL NOT BE CONSIDERED TO BE LEGAL OPINION.

For further information about the subjects covered in this Client Briefing, please contact:



Pradhan & Associates

37-9 Gaurav Marg, Maitighar, Kathmandu, Nepal

Tel: +977 1 425 2272 Fax: +977 1 426 6422

Email: office@pradhanlaw.com Web: www.pradhanlaw.com

If you do not wish to receive further Client Briefings from Pradhan & Associates, please send an email to office@pradhanlaw.com.