

Recognition and Enforcement of Foreign Arbitral Awards in Nepal

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Abstract : Arbitration is one of the prompt and efficient methods of alternative dispute resolution, especially of a commercial nature, by a neutral arbitrator outside the formal court structure. Due to the globalization of trade, privatization, and global investment, recognition and enforcement of foreign arbitral awards attract prime concern. Arbitral awards are generally based on arguments and evidence presented by disputing parties. The foreign investor wants to secure the investment by appropriate legal measures and an amicable way of dispute settlement if it arises. Now, arbitration as a mechanism of commercial dispute settlement has gained international recognition. It can take place in any State, in any language and with arbitrators of any nationality. There are various international institutions to conduct arbitral proceedings and render awards. Once an arbitral award is delivered, it can be enforced as a court judgment. However, it is really challenging to execute foreign arbitral awards in Nepal. Any party willing to execute an award made in a foreign country in Nepal should submit an application to the High Court along with essential documents prescribed by domestic law (The Arbitration Act 1999). Arbitrarily and public policy are also the requirements regarding the recognition and enforcement of foreign arbitral awards in Nepal. Nepal is a signatory State to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, 1958. It is crucial to acknowledge that Nepal has liberalized its economy as well as opened the door for a liberal and market-oriented economy through the Constitution of Nepal, 2015. Nepal is trying to expand business from local to global level. Commercial trade is expanding day by day. So in this context, acceptance of arbitration as an alternative means to solve commercial disputes is a matter of prime importance. India ratified the New York Convention, and also being a neighborhood country of Nepal, in practice, does not enforce arbitral awards provided by Nepal in the name of reservation. India has published a gazette notice in which it lists the countries in which the award will be recognized in India, but it does not include Nepal. As the largest trade partner of Nepal, India should rethink this in order to make trade smooth.

Keywords : commercial arbitration, foreign arbitral awards, recognition and enforcement of foreign arbitral awards, requirements

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