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**Nepal: Law and Practice
& Trends and Developments**

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Law and Practice

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Reliance Law Firm was founded in 1985 and is one of Nepal's leading corporate and commercial law practices, consistently ranked in Chambers Asia-Pacific. The firm's dispute resolution practice covers domestic and international commercial arbitration, constitutional litigation and complex cross-border transactions, with particular strength in banking and finance,

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1. General

1.1 Prevalence of Arbitration

Litigation before the ordinary courts remains dominant for domestic disputes, but international arbitration is steadily gaining ground as an established method of resolving commercial disputes in Nepal, particularly in cross-border matters involving foreign investment, foreign contractors, hydropower, infrastructure and public procurement.

Domestic parties are also increasingly turning to arbitration for commercial disputes. Litigation and court-annexed mediation nonetheless remain more common for smaller-value or non-commercial matters, the latter given further emphasis as a pre-trial step under the National Civil Procedure (Code) Act, 2074 (2017).

Arbitration is used in Nepal on two principal bases:

- contractual submission – parties voluntarily insert arbitration clauses into commercial contracts, including loan and joint-venture agreements, engineering, procurement and construction (EPC) and construction contracts, and public procurement contracts under Section 58 of the Public Procurement Act, 2063 (2007); and
- statutory submission – Section 40 of the Foreign Investment and Technology Transfer Act, 2075 (2019) (FITTA) prescribes arbitration for disputes between the government of Nepal or Nepali counterparties and foreign investors, requiring the arbitration to be seated in Nepal and, absent contrary agreement, conducted under the UNCITRAL Arbitration Rules.

This legislative trend was reinforced by the 2081 (2025) amendments to the Arbitration Act, 2055 (1999), which introduced a fast-track arbitration option under Section 13A and narrowed the grounds for setting aside an award under Section 30 (3)(b) (see **2.2 Changes to National Law**). These developments are expected to further improve the attractiveness of Nepal-seated arbitration relative to litigation.

1.2 Key Industries

International arbitration in Nepal is concentrated in infrastructure, construction, hydropower and energy,

with notable activity in telecommunications and foreign investment.

As a developing country, Nepal continues to invest heavily in large-scale infrastructure – hydropower plants, roads, transmission lines, airports and other public works – mostly procured by the government of Nepal, the country's largest purchaser of construction and consulting services. Disputes arising from public procurement contracts accordingly account for a substantial share of arbitration proceedings, driven by Section 58 of the Public Procurement Act, 2063 (2007). Many of these projects also involve foreign contractors, consultants, suppliers and technology providers, making arbitration the preferred neutral forum for cross-border disputes.

Financing structure reinforces this trend: many large infrastructure and hydropower projects are financed by multilateral development banks, including the World Bank and Asian Development Bank, whose standard procurement documents typically mandate arbitration.

Hydropower generates particularly significant activity. Although Nepal's economically feasible potential remains substantially undeveloped, the financing, construction, engineering, procurement and power purchase arrangements for existing projects involve significant foreign investment, long life cycles and technically complex obligations – factors that favour arbitration over litigation.

Telecommunications and foreign direct investment have likewise generated notable arbitration, including investor-state proceedings such as *Axiata Investments (UK) Ltd and Ncell Pvt Ltd v Nepal*. As with infrastructure, substantial foreign capital and sophisticated contractual arrangements make international arbitration a more suitable forum than domestic litigation.

1.3 Arbitration Institutions

The Nepal Council of Arbitration (NEPCA), established in 2048 (1991) as an autonomous, non-profit body, is the most widely used institutional arbitration centre in Nepal and administers the majority of institutional arbitrations seated in the country. NEPCA maintains

its own Arbitration Rules and panel of arbitrators, and its Arbitral Procedures Regulations, 2072 (2015) draw on UNCITRAL principles for arbitrator appointment and challenge. Its hearing room facilities and secretarial services further support its position as the preferred venue for arbitration seated in Nepal.

Parties also commonly select foreign institutions, including the Singapore International Arbitration Centre (SIAC) and the International Chamber of Commerce (ICC).

No new arbitral institution has been established in Nepal in the past 12 months. Policy discussion has instead focused on strengthening NEPCA's institutional capacity and aligning its rules with the 2025 amendments to the Arbitration Act (see **2.2 Changes to National Law**).

1.4 National Courts

Nepal does not operate a dedicated commercial or international arbitration court. Supervisory jurisdiction over arbitration is instead distributed across the ordinary court hierarchy, structured into three tiers:

- the Supreme Court;
- the High Court (referred to in the Arbitration Act by its pre-2017 name, the “Appellate Court”); and
- the District Court.

The High Court of the seat of arbitration holds the primary supervisory role. It hears applications for the appointment and removal of arbitrators, challenges to jurisdiction, interim measures and applications to set aside or enforce awards, including foreign awards.

The District Court at the seat plays a more limited, supportive role: it assists arbitral tribunals in taking evidence under Section 23, enforces domestic awards under Section 32 and enforces foreign awards forwarded to it under Section 34 (3) of the Act.

The Supreme Court sits at the apex, hearing limited supervisory and constitutional matters and, under Section 43 of the Act, framing the procedural rules governing arbitration proceedings before subordinate courts.

Nepal has also established dedicated commercial benches within the High Court to hear commercial disputes, including arbitration-related matters. While this reflects an institutional effort to improve the efficiency and expertise of commercial dispute resolution, the commercial benches have yet to have a significant practical impact: arbitration-related matters continue, in practice, to be handled similarly to ordinary matters despite the designation, and the anticipated benefits of specialisation have yet to be fully realised.

2. Governing Legislation

2.1 Governing Law

The Arbitration Act governs both international and domestic arbitration in Nepal. It is supplemented, for foreign investment disputes, by Section 40 of FITTA, and, for public contracts, by Section 119 of the Public Procurement Act.

The Act is not a verbatim enactment of the UNCITRAL Model Law on International Commercial Arbitration (1985), but draws heavily on its underlying principles, including:

- party autonomy (Section 3);
- separability of the arbitration clause (Section 16.3);
- competence-competence (Section 16.1);
- camera hearings (Section 19); and
- a largely closed list of grounds for setting aside an award (Section 30), mirroring Article 34 of the Model Law.

Notable divergences from the Model Law include:

- the absence of any distinction between “domestic” and “international” arbitration, the Act applying uniformly to both;
- the absence of express provision for tribunal-ordered interim measures to be independently enforceable through the courts; and
- until the 2025 amendment, the absence of any fast-track procedure (see **2.2 Changes to National Law**).

2.2 Changes to National Law

The most significant recent development is the Act to Amend Some Nepal Acts Relating to Improving Economic and Business Environment and Enhancing Investment, 2081 (2025), in force from 18 Chaitra 2081 (31 March 2025), together with a further amending act in force from 14 Shrawan 2082 (30 July 2025), both amending the Arbitration Act (see **2.1 Governing Law**).

Key changes include the following.

- Fast-track arbitration: a new Section 13A permits parties to agree to fast-track arbitration; the District Court must enforce a fast-track award within 15 days of an enforcement application.
- Accountability of government officials: a new Section 14.7 exposes government officials to departmental action for delaying or failing to submit a claim, counterclaim, defence or rejoinder within the prescribed time.
- Interest regime: interest may now be claimed only up to the day before the arbitrator-appointment process begins (Section 27 (e)), with none accruing until the deadline for implementing the award under Section 33.
- Narrowed setting-aside grounds: “public interest” has been removed as an independent ground under Section 30, leaving “public policy” as the sole residual ground alongside the enumerated procedural grounds.
- Restriction on merits review: a new Section 30 (4) prohibits the High Court from re-evaluating evidence or reviewing the merits on a set-aside application.
- Automatic stay removed: filing a set-aside petition no longer automatically suspends enforcement. A stay is available only where the High Court is satisfied there is prima facie evidence of corruption or fraud in the award or agreement.

These reforms are widely regarded as a shift towards a more pro-enforcement, minimal-court-intervention regime. Further proposals remain under discussion, including an express domestic/international distinction and codification of emergency-arbitrator and tribunal-ordered interim relief.

3. The Arbitration Agreement

3.1 Enforceability

An arbitration agreement is enforceable in Nepal if it satisfies the formal requirement of Section 2 (a) of the Arbitration Act: it must be in writing. This is satisfied by:

- an arbitration clause within a contract;
- a separate submission agreement; or
- an exchange of letters, telex, telegram, fax or similar recorded telecommunication evidencing an agreement to arbitrate.

A written claim invoking arbitration to which the respondent replies without objecting is also treated as a written agreement.

The written agreement should not merely provide that disputes “shall be resolved through arbitration”; it should also set out the arbitral procedure, appointing authority, the number of arbitrators, and applicable procedural law and forum. In *Hanil Engineering* (Decision No 10138, NKP, 2017), the court held that, absent such a recorded exchange or explicit submission agreement, a party’s unilateral reference to arbitration is not legally valid.

Beyond this, the general contractual validity requirements of Section 505 of the National Civil Code, 2017 apply, including capacity, free consent and a lawful object. No separate seal, registration or notarisation is generally required.

Nepali courts have consistently upheld parties to their agreement to arbitrate, holding that no court has primary jurisdiction over a dispute the parties agreed to refer to arbitration (the *Oriental Insurance* case, DN 8078, NKP, 2009).

3.2 Arbitrability

Section 2 (e) of the Arbitration Act confines “dispute” to matters “which can be settled through arbitration”, and Section 30 (3)(a) permits an award to be set aside where the underlying dispute was not arbitrable under Nepali law. On this basis, the following fall outside the scope of arbitration:

- traditional civil and criminal disputes (held by the Supreme Court in the *Oriental Insurance* case);
- questions of personal status, guardianship and capacity; and
- matters engaging the state's sovereign or regulatory functions.

Labour disputes are partly restricted. Collective disputes may be arbitrated under Sections 119–122 of the Labour Act, 2074 (2017), but individual statutory employment rights treated as matters of public policy are generally reserved to the labour courts and cannot be contracted out of by an arbitration clause.

Nepali courts generally treat commercial, contractual and investment disputes including construction, supply, joint-venture, loan and licensing disputes as freely arbitrable. Disputes inseparable from a non-arbitrable public-interest issue, however, fall under the exception in Section 4 (2)(a) of the Act, under which a court will decline to cancel the record of its own proceedings.

3.3 National Courts' Approach

Nepali courts apply Nepali conflict-of-laws principles to determine the law governing the arbitration agreement. Section 30 (2)(a) directs the High Court, on a set-aside application, to examine capacity and validity first under the law the parties expressly or impliedly chose to govern the arbitration agreement, and only under Nepali law where that choice is unclear.

In *Hanil Engeneering* (see 3.1 Enforceability), the Supreme Court confirmed that the governing law of the arbitration agreement must be determined independently, rather than assumed to follow the law chosen for the main contract.

Where no distinct choice has been made for the arbitration clause itself, Section 18 (1) fills the gap, so Nepali law typically governs the arbitration agreement as the residual outcome of this analysis rather than by default assumption.

On the enforcement of arbitration agreements, the courts' approach is robust. Section 39 ousts the ordinary courts' jurisdiction over any matter regulated by the Act, and Section 4 permits, and in most circumstances requires, a court before which a dispute

covered by an arbitration agreement has been filed to cancel the record of the suit at the parties' joint request. A court will refuse to do so only where:

- the claim is inseparable from a non-arbitrable issue; or
- there is another appropriate reason (Section 4 (2)).

This reflects a longstanding judicial policy. Even before the current Arbitration Act existed, the Supreme Court, in *Anang Man Sherchan* (NKP 1963, DN 220), directed parties who had agreed to arbitrate to pursue that remedy rather than litigate.

3.4 Validity

Nepal fully recognises the doctrine of separability. Section 16 (3) of the Arbitration Act expressly provides that where an arbitration clause forms an integral part of a wider contract, it is to be treated as a separate agreement, so that even a tribunal decision that the underlying contract is null and void does not, by itself, invalidate the arbitration clause. This allows a tribunal whose jurisdiction is challenged on the ground that the main contract is void to nonetheless proceed to determine that very question. Section 16 (1), the competence-competence principle, vests the tribunal with power to rule on its own jurisdiction and on the validity of the contract from which the dispute arises before addressing the merits.

Judicial precedent reinforces this statutory position. In *Hanil Engeneering*, the Supreme Court affirmed that a dispute resolution clause is a distinct agreement, independent of the main contract, with two practical consequences:

- status independence – the legal status or validity of the main contract does not affect the arbitration agreement's own validity; and
- autonomous governing law – the law governing the arbitration agreement, and its procedure, may differ from the law governing the main contract.

4. The Arbitral Tribunal

4.1 Limits on Selection

Party autonomy in selecting arbitrators is the starting default under Section 6 of the Arbitration Act. Where an agreement names arbitrators, they are deemed appointed; where it prescribes an appointment procedure, that procedure governs.

Statutory limits nonetheless apply. Section 10 disqualifies a person from acting as arbitrator where they:

- lack capacity to contract;
- have been convicted of an offence involving moral turpitude;
- are insolvent or bankrupt;
- have a personal interest in the dispute; or
- lack a qualification specifically required by the arbitration agreement.

Section 5 (1) further requires an odd number of arbitrators, defaulting to three where the agreement is silent, and Section 5 (2) requires an even number specified by the parties to be converted to an odd number by adding a further arbitrator.

Before assuming office, Section 9 requires every arbitrator to take a written oath of impartiality and honesty, and to disclose beforehand any matter reasonably giving rise to doubt as to their impartiality or independence.

4.2 Default Procedures

If the parties' chosen method of selecting arbitrators fails and if there is no specific appointing authority, Section 7 of the Arbitration Act allows either party to apply to the High Court. The applicant must identify at least three prospective arbitrators, together with their names, addresses, occupations and fields of expertise, and provide a copy of the arbitration agreement. The High Court must, within 60 days, appoint the persons proposed if the parties can agree, or otherwise appoint whomever it considers appropriate; its decision is final. The procedure for such applications is set out under Rule 5 of the Arbitration (Court Procedure) Rules.

Section 6 (4) supplies a default mechanism for the routine two-party, three-arbitrator case: absent contrary agreement, each party appoints one arbitrator, and the two party-appointed arbitrators appoint the third, who chairs the tribunal.

The Act contains no distinct default mechanism tailored specifically to multiparty arbitrations. In practice, such disputes are addressed through the same Section 7 court-appointment mechanism or through the parties' contractually agreed procedure, with NEPCA's own rules providing supplementary machinery for institutional cases.

4.3 Court Intervention

Court intervention in the selection of arbitrators is limited to two specific circumstances under the Arbitration Act:

- failed appointment procedure (Section 7) – where the parties' agreed method for appointing arbitrators fails, or the agreement does not specify one, the High Court makes the appointment instead; and
- unfilled vacancy (Section 8 (2)) – where an arbitrator's position becomes vacant through resignation, refusal to act, death or another reason and has not been filled within 30 days as required by Section 8 (1).

In both cases, the High Court's decision is final and not subject to further appeal, limiting the scope for satellite litigation over the tribunal's composition.

The court's intervention is otherwise circumscribed. It may act only on application by a party, must attempt to secure the parties' unanimous agreement on a proposed appointee before exercising an independent choice and has no power to appoint arbitrators of its own motion or to review the substance of an appointment validly made by the parties themselves.

4.4 Challenge and Removal of Arbitrators

Section 11 of the Arbitration Act governs the challenge and removal of arbitrators. Where the agreement is silent, a party may, within 15 days of the arbitrator's appointment or of learning of a disqualifying event, apply to the arbitrator concerned, rather than directly

to court, for permission to remove them on one of six enumerated grounds:

- clear bias or discrimination against a party;
- improper conduct or fraud in the arbitration;
- frequent mistakes or irregularities;
- unexcused non-attendance or refusal to participate on more than three occasions apparently intended to delay the proceedings;
- action contrary to natural justice; or
- loss or absence of qualification required to act as an arbitrator.

The challenged arbitrator must decide the application within 30 days, unless they voluntarily withdraw, and the other party must accept the grounds for removal. A complaint against that decision can be made to the High Court, whose ruling is final under Section 11 (4). Section 10 separately renders a person ineligible for appointment in the first place on largely overlapping grounds.

4.5 Arbitrator Requirements

The Arbitration Act imposes a general, if not highly granular, statutory standard. Section 9 (2) requires an arbitrator, before taking the oath of office, to disclose any matter that could give rise to reasonable doubt as to their impartiality or independence, a duty mirrored in Rule 21 (a) of the NEPCA Rules, 2015. Section 11 (2)(a) separately allows removal where an arbitrator is “clearly seen” to have shown bias towards, or discriminated against, a party.

The High Court, Patan has read this removal ground narrowly. In *Constructora Sanjose SA Case* (Registration No 076-FJ-0037, 2020), the Court held that:

- a collective, institutional decision of the tribunal does not itself amount to bias under Section 11 (2) (a);
- a removal claim must be directed at a specific arbitrator, supported by clear grounds and evidence tied to that individual, rather than framed as a general challenge to dissolve the tribunal; and
- a party dissatisfied with the tribunal’s collective conduct has its remedy at the award stage, through a set-aside application under Section 30, rather than removal under Section 11.

This “clearly seen” threshold is narrower than the “justifiable doubts” standard used internationally, and this case reinforces how targeted a removal claim must be to succeed. Commentators have increasingly called for NEPCA and the courts to supplement this standard with the International Bar Association (IBA) Guidelines on Conflicts of Interest, particularly its “traffic light” system, to bring Nepali practice closer to international expectations.

5. Jurisdiction

5.1 Challenges to Jurisdiction

Competence-competence is expressly recognised. Section 16 (1) of the Arbitration Act empowers the tribunal to determine its own jurisdiction as a threshold matter, before proceeding to the merits. This includes the power to rule on the validity of the underlying contract whenever a party contends that the contract from which the dispute arises is void.

A party is not treated as having waived its right to raise a jurisdictional objection merely because it appointed, or agreed to the appointment of, an arbitrator (Section 16 (5)). The objection must nonetheless be raised no later than the deadline for filing objections to the claim under Section 14 (2) (Section 16 (4)).

5.2 Circumstances for Court Intervention

Nepali courts may address the jurisdiction of an arbitral tribunal only within a narrow statutory channel and do so with marked reluctance. Section 39 of the Arbitration Act ousts the jurisdiction of the ordinary courts over any matter governed by the Act, leaving Section 16 (2) as the sole route by which a jurisdictional ruling may reach the courts.

A party dissatisfied with the tribunal’s decision on its own jurisdiction under Section 16 (1) may appeal to the High Court within 30 days; the High Court’s decision on that appeal is final, with no further avenue of appeal.

This channel applies equally to positive and negative jurisdictional rulings, Nepali law provides no separate mechanism for reviewing a tribunal’s negative ruling, distinct from the general Section 16 (2) appeal; both

are subject to the same 30-day route and finality. Nor does an appeal suspend the tribunal's authority: under Section 16 (6), the tribunal may continue the proceedings and render its decision on the merits while the appeal remains pending.

The courts' underlying posture is one of restraint, grounded in a broader judicial view of the tribunal's institutional role. In *Department of Roads* (NKP 2020, DN 10645), the Supreme Court affirmed that an arbitral tribunal, as a specialised body of experts selected by mutual agreement of the parties, functions as "a court of its own kind" once the parties have accepted its jurisdiction and is the primary adjudicator of both factual and jurisdictional questions.

Nepali courts have accordingly declined to treat post-award challenges under Section 30 as an opportunity to re-examine the facts or merits of a tribunal's decision, as doing so would undermine the Act's purpose of providing a fast, self-contained mechanism outside the ordinary court system.

5.3 Timing of Challenge

Nepali law confines the right to challenge an arbitral tribunal's jurisdiction to a specific window within the arbitration itself, rather than at will.

A jurisdictional objection must be filed with the tribunal no later than the deadline for objecting to the claim under Section 14 (2), ordinarily 30 days from receipt of the claim, unless the parties agree otherwise (Section 16 (4)). Once the tribunal rules on the matter, either party may appeal to the High Court within 30 days (Section 16 (2)).

There is no separate avenue for raising a jurisdictional challenge for the first time after the award is rendered. A party that failed to object, and did not appeal a ruling when made, is generally confined to a set-aside application under Section 30, where lack of jurisdiction remains an available, if overlapping, ground (Section 30 (2)(c)).

The Supreme Court has gone further, applying a substantive waiver principle against parties who sit on their rights. In *Department of Roads* (NKP 2020, DN 10645), the petitioner argued that proceedings had

breached a 14-day contractual time limit for initiating dispute resolution, yet it had itself ignored the respondent's repeated requests to appoint an adjudicator, later accepted a court-ordered appointment, and participated throughout without objection. The Court held it could not raise that ground for the first time after the award was rendered.

This case illustrates that a party's conduct during arbitration, not only the formal timing rules, can determine whether a jurisdictional objection survives to the award stage.

5.4 Standard of Judicial Review for Jurisdiction/Admissibility

The Arbitration Act does not articulate a separate, codified standard of review, such as "de novo" or "deferential", for jurisdiction and admissibility questions. An appeal under Section 16 (2) has historically involved a full, independent review of the tribunal's jurisdictional ruling, since the statute gives the High Court the final word. More recent developments point towards a markedly more deferential posture.

The 2025 amendment's Section 30 (4) bars the High Court from re-evaluating evidence or the merits when hearing a set-aside application, reinforcing the Supreme Court's characterisation of the reviewing court's role as correctional rather than original in *Krishna Chandra Jha* (NKP 2009, DN 8128).

Kanchanjunga Tamang JV (NKP 2024, DN 11322) confirms this directly. The Supreme Court held that the reviewing court may not examine an award as though hearing an appeal on the merits and may intervene only where a serious error of law is apparent on the face of the record. Even on remand, it must identify the specific ground relied upon under Section 30 (1) and may not reassess the tribunal's factual findings, since doing so would exceed its supervisory jurisdiction.

This extends the "error of law" ground beyond the bare statutory language, without expanding the court's role into a merits review. An award may additionally be set aside where it is:

- affected by bias;

- contrary to prevailing law or established legal principles;
- vitiated by an apparent error of law;
- so vague or ambiguous as to be defective;
- contrary to the parties' agreement; or
- based on an erroneous legal principle.

These bases elaborate the existing statutory grounds; they do not license the court to substitute its own view of the dispute for the tribunal's.

5.5 Breach of Arbitration Agreement

Nepali courts show a marked reluctance to entertain proceedings brought in breach of a valid arbitration agreement, generally declining jurisdiction in favour of the agreed forum rather than allowing the litigation to proceed.

This reluctance is rooted directly in the statutory framework. Section 39 ousts the jurisdiction of the ordinary courts over any matter governed by the Act, and Section 4 requires a court before which such a dispute has been filed to cancel the record of the suit, declining to do so only where the claim is inseparable from a non-arbitrable issue or another appropriate reason exists (see 3.3 National Courts' Approach).

Phewa Meat (Regn No 072-RB-0031) illustrates how firmly this is applied even where a party frames its claim under general contract law rather than as a direct challenge to the arbitration clause. Facing termination of a land lease and the loss of structures built on the premises, the petitioner sought relief under Section 87 (2) of the Contract Act, 2056 (2000), rather than arbitrating under its lease's dispute resolution clause. Both the Pokhara Appellate Court and, on appeal, the Supreme Court held no legal basis existed for relief under the Contract Act once the parties had agreed to resolve disputes under the Arbitration Act and dismissed the appeal.

This case confirms that a valid arbitration clause displaces not only competing litigation on the same claim but also attempts to secure equivalent relief through an alternative statutory route. A party's assertion of urgency or irreparable harm, without more, will not persuade the courts to bypass the agreed forum.

5.6 Jurisdiction Over Third Parties

Nepali law permits a non-signatory to become bound by an arbitration agreement only through ordinary contract succession, not through any arbitration-specific doctrine such as group of companies, alter ego or estoppel. The Arbitration Act makes consent the foundation of arbitral jurisdiction and contains no statutory mechanism for binding non-parties as such.

Section 530 of the National Civil Code codifies privity of contract, limiting the right to demand performance to parties themselves, subject only to a narrow exception for contracts made for a third party's benefit. Section 529 of the National Civil Code provides the sole route around this: a party's rights and obligations may be transferred to another person with the counterparty's consent, provided the transfer is:

- in writing, unless the contract states otherwise);
- unconditional;
- not prohibited by law or contract; and
- accompanied by timely notice to the other party.

Where these conditions are satisfied, the transferee is bound as successor to the original party's position, not as a true non-signatory.

Nepali courts have declined to resolve non-signatory objections at the threshold appointment stage, leaving the question to the tribunal itself. In *Manjil Khanal* (Registration No 081-FJ-0063), the High Court, Patan ordered a non-signatory company to nominate an arbitrator despite its privity objection, treating the objection as a jurisdictional matter for the tribunal to determine under the competence-competence principle in Section 16 (see 5.1 Challenges to Jurisdiction), rather than as a bar to appointment.

The Arbitration Act draws no distinction between domestic and foreign non-signatories. Because the governing analysis rests on ordinary Nepali contract law rather than an arbitration-specific doctrine, the same test, a valid Section 529 transfer or a Section 530 third-party-beneficiary arrangement, applies regardless of the non-signatory's nationality.

6. Preliminary and Interim Relief

6.1 Types of Relief

Nepali arbitral tribunals may grant preliminary and interim relief. Section 21 (1)(g) of the Arbitration Act expressly empowers the arbitrator to issue preliminary, interim or interlocutory orders, or to make a conditional decision, on any matter connected with the dispute at a party's request.

The Act also provides for specific categories of interim measure:

- security against non-enforcement – under Section 21 (1)(d), the tribunal may require a bank guarantee or other security where a party is a foreign national and there is a risk that any eventual award would not be enforceable against it; and
- preservation of perishable property – under Section 21 (1)(e), the tribunal may order the sale of perishable or depreciating property connected with the dispute and hold the proceeds on deposit.

Such orders are treated as binding directions of the tribunal rather than as merely recommendatory. A party dissatisfied with an interim order under Section 21 (1)(g) may appeal to the High Court within 15 days; the High Court's decision on that appeal is final (Section 21 (2)). The High Court must ordinarily dispose of such appeal within 30 days from the date of filing, under Rule 9 (4) of the Arbitration (Court Procedure) Rules.

6.2 Role of Courts

The ordinary courts play a supporting, rather than concurrent, role in interim relief. Section 23 of the Arbitration Act allows a tribunal, on its own initiative or on a party's request, to seek the District Court's assistance in examining evidence. This assistance can extend to compelling attendance or production in support of measures the tribunal itself cannot enforce directly.

Beyond this evidentiary-assistance function, and the Section 21 (2) appellate review of a tribunal's own interim order (see 6.1 Types of Relief), the Arbitration Act does not expressly empower the courts to grant free-standing interim relief in aid of Nepal-seated arbitrations. The Act is silent on interim relief in aid of foreign-seated arbitrations, reflecting the Act's design

around a single arbitral seat rather than a supervisory jurisdiction detached from the seat.

The Act also does not recognise the concept of an emergency arbitrator. This is regarded as a significant gap by comparison with the 2006 amendments to the UNCITRAL Model Law. Reform proposals under discussion following the 2025 amendment include:

- express provision for both tribunal-ordered and court-ordered interim measures, modelled more closely on the Model Law, and
- institutional emergency-arbitrator procedures to be adopted by NEPCA.

6.3 Security for Costs

The Arbitration Act does not contain an express, free-standing "security for costs" mechanism analogous to those found in many international rules. Nepali legislation is generally silent on cost allocation and security, leaving the matter to be addressed by the arbitration agreement or by the tribunal.

In practice, security-related orders are made under the two general tribunal powers:

- the Section 21 (1)(d) power to require a bank guarantee or other security from a party that is most commonly a foreign respondent where there is a risk an eventual award would not be satisfied (see 6.1 Types of Relief); and
- the general power under Sections 35 and 36 to fix and require advance payment of its own remuneration and the costs of the arbitration.

There is no reported practice of the ordinary courts making security-for-costs orders in support of a pending arbitration.

7. Procedure

7.1 Governing Rules

Procedure is governed, in the first instance, by whatever the parties have agreed. This may include institutional rules such as NEPCA's Arbitration Rules, or to the UNCITRAL Arbitration Rules, with the latter commonly incorporated for FITTA-governed foreign

investment disputes under Section 40 (see **1.1 Prevalence of Arbitration**).

Failing agreement, the procedure is governed by the default procedural provisions of Chapter 4 of the Arbitration Act, (Section 17 (1)). Where neither the agreement nor the Act addresses a particular procedural question, the proviso to Section 17 (1) allows the arbitrator to determine the procedure with the parties' consent or, failing that, at the arbitrator's own discretion; this gives Nepali arbitration a high degree of procedural flexibility within the statutory floor set by the Act.

7.2 Procedural Steps

The Act prescribes a small number of mandatory procedural steps.

- Every arbitrator must take a written oath of impartiality and disclose beforehand any matter giving rise to reasonable doubt about impartiality before commencing proceedings (Section 9).
- The claimant must submit its claim, with supporting evidence, within any contractual time limit or, failing that, within three months of the dispute arising (Section 14 (1)); the respondent then has 30 days to respond and to raise any counterclaim (Section 14 (2)–(3)). Hearings must, unless the parties agree otherwise, be held in camera (Section 19).
- Once the tribunal formally closes the hearing, it must issue its written decision, ordinarily within 30 days of that closure and, in any event, within 120 days of the claim documents being submitted, unless the parties agree a different period (Sections 17 (6)–(7) and 24).
- The decision must then be read out to the parties, with a copy given to each (Section 28).

7.3 Powers and Duties of Arbitrators

Section 21 of the Arbitration Act confers a broad array of powers on Nepali arbitrators, including the power to:

- summon parties to produce documents and give statements;
- take witness evidence;

- appoint experts and obtain or direct expert examination of specific issues;
- require security, including a bank guarantee, from a foreign party;
- inspect places, objects, products or processes connected with the dispute, and order the sale of perishable property;
- issue interim or interlocutory orders;
- issue certified copies of documents; and
- exercise any other power the Act confers or the parties grant by agreement.

Arbitrators are subject to corresponding duties. Section 18 imposes a duty to apply Nepali law as the substantive law, unless the parties agree otherwise, and to decide *ex aequo et bono* or as *amiable compositeur* only where expressly authorised. Section 22 imposes a duty to give each party an equal and adequate opportunity to present its case. Section 27 imposes a duty to give reasons and to record specified particulars, including the basis for jurisdiction if contested, in the award.

7.4 Legal Representatives

Section 22 (2) of the Arbitration Act entitles a party to attend arbitration proceedings in person or by proxy, and to designate a legal practitioner to represent it, without imposing any qualification requirement specific to arbitration.

Section 25 of the Nepal Bar Council Act, 2050 (1993) prohibits any person from appearing, pleading or arguing before the ordinary courts without having obtained a licence as a legal practitioner. It further permits a foreign lawyer to appear before a court only with that court's express permission.

This restriction, however, is understood to apply to court proceedings and not to extend to arbitral proceedings. Foreign-qualified counsel may accordingly represent parties in arbitrations seated in Nepal, including international commercial and FITTA-governed disputes, without separate Bar Council authorisation.

Foreign counsel are nonetheless not authorised to hold themselves out as advising on Nepali law. As a matter of practice, submissions on Nepali substantive

or procedural law are supported by the involvement of Nepal-qualified counsel.

8. Evidence

8.1 Collection and Submission of Evidence

Evidence is submitted principally in written form at the pleading stage. Section 14 (1) of Arbitration Act requires the claimant to file its claim together with all supporting documents and evidence, and to identify any witnesses by name and address; the burden is on the party relying on a witness to produce that witness at the hearing. Section 14 (6) requires each party to supply copies of any document it submits to the other party, ensuring basic disclosure between the parties.

There is no general documentary discovery obligation of the kind familiar from common-law litigation, no formal doctrine of privilege codified in the Act and no default requirement for cross-examination. Tribunals in practice nonetheless permit examination and cross-examination of witnesses and experts, under their general procedural discretion (Section 17 (1)) and their power to record witness statements and appoint experts (Section 21 (1)(b) and (c)) (see **7.3 Powers and Duties of Arbitrators**).

Tribunals seated in Nepal commonly adapt their evidentiary approach to the parties' expectations. In international cases, they frequently look to instruments such as the IBA Rules on the Taking of Evidence for guidance, notwithstanding that those rules have no formal status under Nepali law.

8.2 Rules of Evidence

The Arbitration Act does not import the Evidence Act, 2031 (1974), which applies to proceedings before the ordinary courts, or its rules on admissibility, competence of witnesses or standard of proof. Section 17 (1) of the Arbitration Act instead leaves procedure, including the treatment of evidence, to the parties' agreement and, failing agreement, to the tribunal's own discretion exercised in consultation with the parties.

Arbitral tribunals are accordingly free to adopt a more flexible and less technical approach to evidence than

a Nepali court would apply in domestic litigation. This freedom is always subject to the overriding requirement in Section 22 (1) that each party be given an equal and adequate opportunity to present its case (see **7.3 Powers and Duties of Arbitrators**). A departure from that requirement can found a due-process objection at the set-aside stage.

8.3 Powers of Compulsion

A tribunal seated in Nepal has no direct coercive power over non-parties. Section 21 (1)(a) allows the tribunal to direct the parties themselves to appear, produce documents and give statements, but this power runs only against the parties to the arbitration (see **7.3 Powers and Duties of Arbitrators**).

Where compulsion of evidence from a party or a non-party is required, Section 23 allows the arbitrator, on its own motion or a party's request, to seek the assistance of the District Court (see **6.2 Role of Courts**). The District Court will then examine the evidence in question "according to the prevailing law", effectively using the court's own coercive powers to compel testimony or production the tribunal cannot compel directly.

This mechanism is available regardless of whether the person concerned is a party or a third party. In practice, it is most often invoked to secure the attendance or co-operation of non-parties who are not otherwise obliged to co-operate with the tribunal.

9. Confidentiality

9.1 Extent of Confidentiality

Nepali arbitration is presumptively confidential. Section 19 requires that hearings be held in camera unless the parties agree otherwise (see **7.2 Procedural Steps**).

Section 42 (4) reinforces this at the award stage: the arbitrator must deposit the complete case file with the District Court once proceedings conclude but is prohibited from giving a copy of the award or related documents to anyone other than the parties without their approval. Confidentiality thus extends to the

award and record even after the file passes into court custody.

The Act does not, however, contain a comprehensive confidentiality regime covering every stage and category of document. There is no express default obligation, for example, applying to the parties' own use of pleadings or evidence outside the arbitration; the precise scope is generally left to the parties' agreement or the tribunal's procedural orders, supplemented by NEPCA's institutional rules where NEPCA administers the case.

Once a set-aside or enforcement application reaches the High Court or District Court, the proceedings become part of the public judicial record in the ordinary way, subject to whatever redaction the court may permit.

10. The Award

10.1 Legal Requirements

Section 27 of the Arbitration Act specifies the mandatory contents of an award. It must include:

- a brief statement of the matter referred to arbitration;
- where jurisdiction was contested, the grounds on which the tribunal found the dispute to fall within its jurisdiction;
- the tribunal's decision, together with its reasons and grounds;
- the sums to be paid or compensation to be made;
- the applicable interest rate, including any additional rate after expiry of the time for compliance; and
- the place and date of the decision.

Where there are three or more arbitrators, the award is that of the majority or – absent a majority – that of the chief arbitrator, unless the parties agree otherwise (Section 26). Every arbitrator must sign the award, and anyone who declines must have the reason recorded by the others.

The award must ordinarily be rendered and read out, within the timelines set out in **7.2 Procedural Steps** (Sections 24 and 17 (7)). The 2025 amendment's

fast-track enforcement timeline under Section 13A is addressed in **2.2. Changes to National Law**.

10.2 Types of Remedies

The Arbitration Act does not enumerate or restrict the categories of remedy a tribunal may award. Section 27 (d) and (e) contemplates monetary awards, sums to be realised or compensation together with interest as the paradigm remedy (see **2.2 Changes to National Law**). Section 18 (3) directs the tribunal to decide according to the terms of the contract and applicable commercial usage, which in practice channels most awards towards compensatory damages, specific contractual sums and interest.

There is no statutory bar on non-monetary relief such as specific performance, rectification or injunctive-type orders, where the contract and the tribunal's mandate permit them. Section 21 (1)(g) separately empowers preliminary, interim or conditional orders during the proceedings (see **6.1 Types of Relief**).

Punitive damages are not a recognised head of relief under Nepali substantive contract law, which will ordinarily apply absent a foreign governing law validly chosen under Section 18 (1). A punitive award would accordingly be vulnerable to challenge as exceeding the scope of the reference under Section 30 (2)(c) or as contrary to public policy under Section 30 (3)(b) (see **11.1 Grounds for Appeal**).

10.3 Recovering Interest and Legal Costs

Interest is expressly governed by Section 33 of the Arbitration Act. Where an award orders payment of a sum, the tribunal must fix the applicable interest rate having regard to the nature of the underlying business, capped so as not to exceed the prevailing commercial bank rate for comparable transactions.

Interest may, however, be claimed only up to the day before the arbitrator-appointment process is initiated (see **2.2 Changes to National Law**). No interest accrues thereafter, including during the period between that point and the expiry of the 45-day period allowed for voluntary compliance under Section 31.

Costs are addressed by Sections 35 and 36. Unless the agreement provides otherwise, the parties must

pay the tribunal's fixed remuneration and bear the expenses of the arbitration in the proportions the tribunal determines having regard to the circumstances of the case. The Act does not prescribe a "costs-follow-the-event" rule, nor does it mandate equal cost-sharing; allocation is left to the tribunal's discretion. In practice, tribunals seated in Nepal frequently apportion costs by reference to relative success, broadly consistent with a costs-follow-the-event approach, while retaining flexibility to share costs where success is mixed.

11. Review of an Award

11.1 Grounds for Appeal

There is no merits-based appeal for an arbitral award under Nepali law. A party's sole recourse is an application under Section 30 to have the award set aside, filed within 35 days of the award being read out or notice received, at the High Court, with copies served on the arbitrator and the other party.

The grounds are exhaustively listed. An award may be set aside where:

- a party lacked capacity to sign the agreement or the agreement is invalid under its governing law – or, if unclear, under Nepali law (see **3.3 National Courts' Approach**);
- the required notice of the arbitrator's appointment or the arbitration proceedings was not given;
- the decision addresses matters not referred, is contrary to the terms prescribed for the arbitrator or exceeds jurisdiction (see **5.1 Challenges to Jurisdiction**);
- the appointment procedure or tribunal's conduct did not conform with the parties' agreement or, absent agreement, with the Act;
- the dispute was not arbitrable under Nepali law (see **3.2 Arbitrability**); or
- the award conflicts with public policy — the sole residual ground since the 2025 amendment removed "public interest" (see **2.2 Changes to National Law**).

Under Section 30 (4), the High Court may not re-evaluate evidence or review the merits of the tribunal's decision when determining a set-aside application.

Procedurally, Rule 11 of the Arbitration (Court Procedure) Rules requires the application to state the ground relied upon and be supported by evidence; the court will call for the case file and issue process only where the claim appears, on its face, capable of substantiation. The opposing party is summoned within seven days and may file a response, and the court must ordinarily dispose of the application within 15 days of appearance, notifying the arbitrator and any absent party of its decision.

11.2 Excluding/Expanding the Scope of Appeal

The grounds for setting aside an award in Section 30 are framed as a mandatory, closed list rather than as a default rule from which the parties may contract up or down. The Act contains no provision allowing parties to expand judicial review to the merits, or to exclude the Section 30 remedy altogether.

Section 39's general ouster of the courts' jurisdiction over matters regulated by the Act reinforces this (see **3.3 National Courts' Approach**). Because the right to challenge an award is itself a creature of the Act, rather than an inherent judicial power, parties cannot lawfully agree either to widen the High Court's review to a full merits rehearing or waive the Section 30 remedy in advance, and any such agreement would likely be regarded as contrary to the mandatory scheme of the Act.

11.3 Standard of Judicial Review

The prevailing standard is markedly deferential and, since the 2025 amendment, expressly so (see **5.4 Standard of Judicial Review for Jurisdiction/Admissibility** for the Section 30 (4) codification and the *Krishna Chandra Jha* and *Kanchanjunga Tamang* authorities).

This deference extends to the Supreme Court's narrow, procedurally focused construction of "public policy" in *Hanil Engineering* (see **3.1 Enforceability**). Only a denial of a fair opportunity to be heard, or a serious procedural irregularity, will justify refusal

– mere disagreement with the tribunal's factual or legal conclusions will not.

12. Enforcement of an Award

12.1 New York Convention

Nepal acceded to the 1958 New York Convention on 4 March 1998, following a declaration of accession by the House of Representatives published in the Nepal Gazette on 27 September 1997. The Convention entered into force for Nepal on 31 May 1998.

Nepal's accession is subject to the two reservations expressly permitted by Article I(3) of the Convention:

- reciprocity – Nepal will recognise and enforce only awards made in the territory of another contracting state; and
- commerciality – the Convention applies only to disputes arising out of legal relationships considered commercial under Nepali law.

In *Sanghi Brothers* (NKP 2022, DN 10904), the Supreme Court upheld the High Court's refusal to enforce an Indian arbitral award due to the absence of formally established reciprocity.

Nepal is not a contracting state to the 1965 ICSID Convention; it signed but never ratified it. Nepal has nonetheless appeared as a respondent in ICSID Additional Facility proceedings brought under a bilateral investment treaty, most notably the *Axiata/Ncell* proceedings under the Nepal-UK bilateral investment treaty of 1993 (see **1.2 Key Industries**), which Nepal successfully defended.

12.2 Enforcement Procedure

A domestic award is enforced under Section 32. If the losing party does not comply voluntarily within the 45-day period allowed by Section 31, the successful party may petition the District Court within 30 days of that period's expiry. The District Court must, ordinarily within 30 days, enforce the award as if it were its own judgment, subject to the 0.5% enforcement fee prescribed by Section 41.

A foreign award is enforced under Section 34. The applicant petitions the High Court with the original or a certified copy of the award and arbitration agreement, with a certified Nepali translation if needed. Where Nepal and the award's country of origin are both party to a relevant treaty such as the New York Convention, the High Court will recognise and forward the award to the District Court for enforcement, provided:

- the Section 34 (2) conditions are met – proper appointment and procedure, timely notice, an award confined to the matters referred, finality under the law of the seat, no bar under the petitioner's or the seat's law and an application filed within 90 days; and
- none of the Section 34 (4) grounds for refusal apply – non-arbitrability under Nepali law or conflict with public policy.

Because of the reciprocity reservation, the applicant must also show Nepal is recognised as a reciprocating jurisdiction by the courts of the seat.

Failure to do so proved fatal in *Sanghi Brothers* (see **12.1 New York Convention**), where the Supreme Court declined enforcement because the petitioner could not show Nepal had been notified in India's official gazette as a reciprocating territory.

The Arbitration Act does not expressly address an award set aside, or set-aside proceedings pending, at the seat; the 2025 amendment addresses only the domestic position (see **2.2 Changes to National Law**).

12.3 Approach of the Courts

Nepali courts apply a narrow, pro-enforcement construction of the public-policy ground for refusing recognition and enforcement, whether under Section 30 (3)(b) for a domestic set-aside application or under Section 34 (4)(b) for a foreign award. The case law traces a consistent divide between what will and will not justify refusal.

Amadeus IT Group SA (Case No 081-FJ-0032,2025) shows the courts favouring enforcement where the statutory conditions are met. The High Court, Patan recognised an award rendered by a three-member ICC tribunal seated in Singapore, finding the award final,

the Section 34 (2) requirements satisfied, enforceability uncontested, and both the seat and Nepal signatories to the New York Convention.

NEA v Swanta Electrical (High Court, Case No 071-DP-1341) confirms that even a properly framed public-policy objection will fail without evidence: a bare invocation of Section 30 (3)(b) does not suffice, and the petitioner must produce an objective basis showing how the award is inconsistent with public policy.

Refusal is reserved for narrower circumstances, the denial of a fair opportunity to be heard or serious procedural unfairness (*Hanil Engineering*; see **3.1 Enforceability**), or the absence of established reciprocity (*Sanghi Brothers*; see **12.1 New York Convention**).

This suggests the courts apply an international, rather than purely domestic, conception of public policy, reserving refusal for the clearest cases of procedural unfairness, corruption, fraud or fundamental incompatibility with Nepali legal or constitutional order – a posture reinforced by the 2025 amendment (see **2.2 Changes to National Law**).

13. Miscellaneous

13.1 Class Action or Group Arbitration

Nepali law does not provide for class action or group arbitration. The Arbitration Act is drafted throughout on a bilateral, party-to-party model – claimant, respondent, counterclaim and rejoinder under Section 14 (see **7.2 Procedural Steps**) – with no procedural mechanism for representative claims, opt-in or opt-out classes, or aggregated group proceedings of the kind found in some other jurisdictions’ consumer or securities arbitration regimes.

Multiple claimants or respondents may in principle participate in a single arbitration where they are all parties to the same arbitration agreement. This is joinder by virtue of a shared contract, however, rather than class or group arbitration in the technical sense. NEPCA’s rules likewise contain no dedicated class or collective arbitration procedure (see **1.3 Arbitration Institutions**).

13.2 Ethical Codes

Nepal-qualified counsel appearing in arbitration are bound by the Nepal Bar Council Act, 2050 (1993) and the Bar Council’s Rules of Professional Conduct (see **7.4 Legal Representatives**). These prohibit contingency fees, success-based remuneration, and any arrangement giving counsel a financial interest in the subject matter or proceeds of a dispute and further prohibit lawyers from providing or accepting loans connected with funding a case.

Arbitrators are bound by the statutory oath of impartiality and honesty, and the disclosure obligation, in Section 9 of the Arbitration Act (see **4.1 Limits on Selection**) and, where the arbitration is administered by NEPCA, by NEPCA’s own Arbitral Procedures Regulations (see **1.3 Arbitration Institutions**). There is no separate, codified ethical code specifically for arbitrators in Nepal comparable to the IBA Guidelines on Conflicts of Interest. Reform commentary has, however, called for NEPCA and the courts to adopt the IBA’s 2024 Guidelines, including its traffic-light system, as a supplementary standard (see **4.5 Arbitrator Requirements**).

13.3 Third-Party Funding

Nepali law neither expressly authorises nor prohibits third-party funding of arbitration by external, non-lawyer funders. Such arrangements remain unregulated and are not, at present, widely used in the Nepali market.

The relevant restriction operates instead at the level of legal ethics, rather than funding regulation as such. The Nepal Bar Council’s Rules of Professional Conduct restrict lawyer-provided funding arrangements (see **13.2 Ethical Codes**), though they do not directly regulate funding by independent commercial funders.

13.4 Consolidation

The Arbitration Act contains no express power, for either a tribunal or a Nepali court, to consolidate separate arbitral proceedings, whether those proceedings share a tribunal, a contract or common parties.

In the absence of a statutory consolidation mechanism, related disputes seated in Nepal can be brought together only by the parties’ express agreement; for

example, by conducting linked arbitrations before a single tribunal or agreeing to determine multiple disputes within a single reference. NEPCA's rules likewise do not currently provide a developed multi-contract or multiparty consolidation procedure of the kind increasingly common in major institutional rules elsewhere (see **1.3 Arbitration Institutions**), an area regarded as ripe for future reform.

13.5 Binding of Third Parties

Consistent with the position on jurisdiction over non-signatories discussed in **5.6 Jurisdiction Over Third Parties**, a third party can become bound by a Nepal-seated arbitration agreement or award only through ordinary principles of privity, assignment, novation or agency recognised under the National Civil Code (Sections 529 and 530).

This may occur, for example, where a party's rights and obligations under the contract containing the arbitration clause are validly assigned or novated to a successor – or under Section 38 of the Arbitration Act, where, if a party dies, disappears or is declared of unsound mind during the proceedings, that party's rights and liabilities then devolve on the heir entitled to inherit its property under the prevailing law.

Outside these recognised routes, Nepali courts have not developed a group-of-companies or alter-ego doctrine permitting a tribunal to bind an unwilling non-signatory – domestic or foreign. The Arbitration Act provides no express joinder mechanism to bring a non-consenting third party into an existing reference.

Trends and Developments

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Reliance Law Firm was founded in 1985 and is one of Nepal's leading corporate and commercial law practices, consistently ranked in Chambers Asia-Pacific. The firm's dispute resolution practice covers domestic and international commercial arbitration, constitutional litigation and complex cross-border transactions, with particular strength in banking and finance,

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Nepal's international arbitration practice has entered a period of unusually rapid legislative change. For a quarter of a century, the Arbitration Act, 2055 (1999) provided a stable, if increasingly dated, framework built around principles borrowed from the UNCITRAL Model Law on International Commercial Arbitration (1985) without formally adopting it. In the last 18 months, however, the government of Nepal has amended the Act for the first time in a generation; hydropower and infrastructure financing have continued to push cross-border disputes towards arbitration rather than the courts, and practitioners have begun openly debating whether Nepal's arbitrator-conduct and interim-relief rules meet the expectations of the foreign investors the country is trying to attract. This chapter surveys the most significant of these developments and considers what they mean for parties contracting with Nepali counterparties or investing in Nepal-seated projects.

A Reform Two Decades in the Making: The 2081 (2025) Amendment

The centrepiece of the recent changes is the Act to Amend Some Nepal Acts Relating to Improving Economic and Business Environment and Enhancing Investment, 2081 (2025), which came into force on 18 Chaitra 2081 (31 March 2025), together with a further amending act in force from 14 Shrawan 2082 (30 July 2025). Although the amendment touches on several commercial statutes, its treatment of the Arbitration Act, 2055 (1999) is the most consequential for the arbitration community. Three changes stand out.

- First, a new Section 13A introduces fast-track arbitration for the first time, requiring the District Court

to enforce a fast-track award within 15 days of an enforcement application.

- Second, the grounds on which the High Court may set aside an award under Section 30 have been narrowed: "public interest" has been removed as an independent ground, leaving "public policy" as the sole residual ground alongside the enumerated procedural grounds.
- Third, and most significant for practitioners used to protracted set-aside litigation, the new Section 30 (4) expressly prohibits the High Court from re-evaluating the evidence or reviewing the merits of the tribunal's decision when hearing a set-aside application, and enforcement is no longer automatically suspended merely because a set-aside petition has been filed. A stay is now available only where the High Court is satisfied that there is *prima facie* evidence of corruption or fraud in the making of the award or agreement.

That legislative intent echoes, and to some extent formalises, a position that the Supreme Court had already been moving towards. In *Krishna Chandra Jha v Dinesh Bhakta Shrestha* (NKP 2009, DN 8128), the Court had already described the reviewing court's jurisdiction over an arbitral award as *correctional* rather than *original*. In the *Hanil* case (NKP 2017, DN 10138), the Court had already confined the public-policy exception to serious procedural unfairness rather than substantive disagreement with the tribunal's reasoning. More recently, the *Kanchanjunga Tamang JV* case (NKP 2024, DN 11322) held that a reviewing court may not examine an award as though hearing an appeal on the merits and may intervene only where a serious error of law is apparent on the

face of the record – a decision that sits close in time to, and anticipates, the statutory restriction that Section 30 (4) now imposes. The 2025 amendment gives that judicial trend statutory force.

Hydropower, Foreign Direct Investment and the Continuing Rise of the State as a Counterparty

Nepal's arbitration caseload continues to be shaped disproportionately by its energy and infrastructure ambitions. With an estimated hydroelectric potential exceeding 80,000 MW and only a modest fraction currently developed, hydropower concession, construction and power-purchase agreements remain the single largest generator of high-value arbitration in the country, frequently involving multilateral development banks, foreign engineering, procurement and construction (EPC) contractors and long project life cycles that make a neutral, technically competent arbitral forum considerably more attractive to investors than sequential litigation before Nepal's ordinary courts.

A recurring theme in these disputes is the government of Nepal's own position as a contracting party. In *Kumar Pandey v Ministry of Energy and Others* (NKP 2017, DN 9753), the Supreme Court held that the government cannot invoke sovereign immunity once it has voluntarily entered into a commercial agreement, a principle reinforced in practice by the government's own contracting behaviour: key project agreements, including the Arun III Hydroelectric Project development agreement (Section 15.8), contain express undertakings by the government not to assert immunity from either jurisdiction or execution.

This is consistent with the general statutory position under Section 9 (3) of the National Civil Procedure (Code) Act, 2074 (2017), which expressly denies the government of Nepal, and provincial and local governments, any special status, privilege or immunity in civil proceedings unless the law or a court otherwise provides. For foreign investors, the practical message is that a well-drafted arbitration clause with the government or a state-owned entity as counterparty is, in principle, as enforceable as one between private commercial parties, though careful attention to enforcement mechanics remains essential.

Investment-treaty arbitration has also entered the Nepali conversation more concretely following *Axiata Investments (UK) Ltd and Ncell Pvt Ltd v Nepal*, a claim brought under the Nepal-UK bilateral investment treaty of 1993 and administered by the International Centre for Settlement of Investment Disputes (ICSID) under its Additional Facility Rules, with Nepal itself never having ratified the ICSID Convention. Nepal successfully defended the claim, which practitioners on both sides of the table have read as an early indication of how Nepali courts and the government are likely to approach treaty-based claims arising from tax, licensing and regulatory measures affecting foreign investors going forward.

Public Procurement Disputes and the Construction Claims Backlog

Away from headline hydropower and telecoms disputes, the steadiest source of day-to-day arbitration work in Nepal remains public construction and infrastructure contracting under the Public Procurement Act, 2063 (2007), whose Section 58 directs unresolved disputes between a procuring entity and a contractor, supplier or consultant to arbitration once mutual negotiation has failed. Road, irrigation and building contracts generate a disproportionate share of this caseload. In practice, disputes in this sector tend to cluster around variations, unforeseen site conditions and delay-related claims, with matters often remaining pending for years before resolution.

Two structural features of the Nepali public contracting market help explain this backlog. First, standard public procurement contracts in Nepal have traditionally been drafted in an owner-favourable form that leaves contractors with limited contractual entitlement to claim for many categories of loss, encouraging disputes over entitlement itself rather than mere quantum. Second, contractors, particularly smaller domestic firms, often have limited familiarity with their contractual rights and the procedural steps needed to preserve a claim, resulting in claims being raised late or inadequately particularised.

For foreign contractors and lenders financing Nepali infrastructure, the practical lesson is to negotiate clear, time-bound claims and variation procedures at the outset, since the arbitration process itself, once

engaged, now operates under the same accelerated and pro-enforcement framework introduced by the 2025 amendment.

Persisting Gaps: Interim Relief, Emergency Arbitrators and the Model Law Question

Notwithstanding the 2025 reforms, several structural gaps between the Arbitration Act and contemporary international practice remain unaddressed.

Section 21 (1)(g) empowers a tribunal to issue interim or interlocutory orders, and Section 21 (1)(d) allows it to require security, including a bank guarantee, from a foreign party. However, the Act does not expressly address court-ordered interim relief in support of a Nepal-seated arbitration independent of the tribunal's own powers, the District Court's role under Section 23 is confined to assisting the tribunal with the taking of evidence, not granting free-standing protective relief, and the Act is silent altogether on interim relief in aid of arbitrations seated outside Nepal.

The concept of the emergency arbitrator, now a standard feature of most major institutional rules and reflected in the 2006 amendments to the UNCITRAL Model Law, has no equivalent under Nepali statute. These gaps matter in practice: a party seeking urgent protective measures, an injunction to preserve assets, a freezing order or interim relief pending the constitution of a tribunal cannot currently look to a Nepali court for a made-to-measure interim remedy in the way that parties in Model Law jurisdictions routinely can.

Practitioners have accordingly begun to call for a further round of amendment that would ensure a more thoroughgoing alignment with the Model Law, including an express domestic/international distinction (which the current Act, applying uniformly to both categories of dispute, does not draw), codified tribunal- and court-ordered interim measures, and a statutory basis for emergency arbitrator procedures that the Nepal Council of Arbitration (NEPCA), as Nepal's only institutional provider, could then adopt into its own rules.

Arbitrator Conduct: The Case for the International Bar Association (IBA) Traffic Light System

A related but distinct debate concerns the standard applied to arbitrator independence and impartiality. Section 9 (2) of the Arbitration Act requires an arbitrator to disclose, before taking office, any matter reasonably giving rise to doubt about their impartiality or independence, but the operative threshold for removal under Section 11 (2)(a) is that the arbitrator must be “clearly seen” to have shown bias or discriminated against a party. In *Constructora Sanjose SA v NEPCA and Others* (Case No 076-FJ-0037, 2020), the High Court, Patan read this ground narrowly, holding that a collective, institutional decision of the tribunal does not itself amount to bias, and that a removal claim must instead be directed at a specific arbitrator with clear, individualised grounds reinforcing just how targeted a removal claim must be to succeed under the statutory standard.

Nepali commentators have pointed out that the “clearly seen” threshold sits well below the “justifiable doubts” standard that has become the international norm, and considerably below the granular, colour-coded framework of the IBA Guidelines on Conflicts of Interest in International Arbitration, most recently updated in 2024. The practical consequence is a degree of unpredictability for foreign parties and counsel unfamiliar with the “clearly seen” standard, particularly where an arbitrator's prior relationships with a party, its counsel or a co-arbitrator would readily fall on the IBA's Orange or Red List but might not, without more, meet Nepal's statutory bar for removal.

There is a growing and, in the firm's view, well-founded call for NEPCA and the courts to adopt the IBA Guidelines, including the traffic-light system, as a supplementary interpretive aid, even without formal legislative amendment. Doing so would cost the legislature nothing and would materially improve the confidence of foreign parties selecting Nepal as a seat.

Cross-Border Enforcement: The Reciprocity Reservation in Practice

Nepal acceded to the 1958 New York Convention in 1998, subject to the reciprocity and commercial reservations permitted under Article I(3) of the Convention. The reciprocity reservation means that Nepal will

enforce a foreign award only where the award was made in the territory of another contracting state and, in practice, where the applicant can demonstrate that the country of the seat itself treats Nepal as a reciprocating jurisdiction under its own domestic implementing legislation.

This requirement is not merely theoretical. In *In Sanghi Brothers (Indore) Pvt Ltd v High Court, Patan* (NKP 2022, DN 10904), the Supreme Court declined to enforce an Indian arbitral award because the petitioner failed to demonstrate that Nepal had been notified in India's official gazette as a reciprocating territory, a formal step required under Indian enforcement legislation quite apart from anything Nepali law itself demands. The case is a useful cautionary tale for parties structuring cross-border contracts with a Nepali counterparty: the choice of seat should not be made on the assumption that New York Convention membership alone guarantees smooth enforcement in Nepal, and counsel advising on enforcement strategy should verify, at the contract-drafting stage, whether the intended seat's own domestic law recognises Nepal as reciprocating, and vice versa.

Beyond the reciprocity point, the substantive standard the Nepali courts apply to enforcement is genuinely favourable to award creditors. The *Hanil* case confined the public-policy exception, for both foreign and domestic awards, to cases involving a denial of a fair opportunity to be heard or serious procedural irregularity, rather than any dissatisfaction with the tribunal's substantive findings. This approach is echoed in *Amadeus IT Group SA v Himalayan Airlines Pvt Ltd* (Case No 081-FJ-0032, High Court Patan, March 2025), where the High Court recognised an ICC award seated in Singapore on straightforward proof of the New York Convention conditions, and in *NEA v Swanta Electrical* (High Court, Case No 071-DP-1341), which confirmed that a bare invocation of the public-policy ground, without an objective evidentiary basis, will fail. The 2025 amendment's removal of the broader "public interest" ground for domestic awards reinforces the same pro-enforcement posture across the board.

Institutional Development and the Road Ahead

NEPCA, established in 2048 (1991), remains, more than three decades on, the only dedicated arbitral

institution in Nepal, and no new institution has emerged to challenge or supplement that role in the past year. Institutional development has instead taken the form of incremental modernisation of NEPCA's own rules, alongside broader professional discussion about whether NEPCA's procedures, panel composition and case-management practices need to evolve to match the ambitions of the 2025 legislative reform.

For foreign investors, financiers and counsel considering Nepal as a seat, the direction of travel is encouraging. The 2025 amendment has:

- narrowed the grounds for challenging awards;
- restricted the courts to a genuinely correctional role;
- curtailed automatic stays of enforcement; and
- introduced a fast-track option for straightforward disputes.

What remains is a shorter, but still meaningful, reform agenda: codifying interim and emergency relief along Model Law lines, formally embracing international norms on arbitrator conduct and continuing to build NEPCA's institutional capacity so that Nepal's statutory improvements are matched by practice on the ground.

Parties transacting in Nepal today are operating under a materially more enforcement-friendly regime than existed even two years ago, and the trajectory of reform gives good reason to expect that trend to continue.

Arbitrator Independence Under Strain: When the Tribunal Becomes a Litigant

In most Model Law jurisdictions, a set-aside or vacatur application is understood as a contest between the parties to the arbitration, not a claim against the tribunal itself. Under the UNCITRAL Model Law, Article 34 gives the court a narrow remedy: to set aside the award on limited grounds or, at a party's request, to suspend the proceedings so the tribunal can resume and cure a defect. The tribunal is not cast as a respondent required to defend its own reasoning; the mainstream position is that a challenge runs against the opposing party, with the arbitrator drawn

in, if at all, only where a personal allegation against them specifically requires an answer.

Nepali practice has drifted from that position. It is increasingly common for a set-aside application under the Arbitration Act to name the arbitral institutions and the individual members of the arbitral tribunal as respondents in some instances ahead of, or even to the exclusion of, the actual opposing party in the underlying dispute. Tribunal members are routinely expected to appear at the hearing, or to formally appoint counsel to represent them, and to file written submissions defending the award functioning, in effect, as defendants rather than as neutral decision-makers whose reasoning speaks for itself in the record. The pattern is not confined to set-aside proceedings under Section 30 either; it has appeared in constitutional writ petitions naming the tribunal alongside the parties.

This matters because the Arbitration Act says nothing at all about arbitral immunity: there is no statutory protection, even a limited one for acts done in good faith, that shields an arbitrator from being drawn personally into the litigation their own award has generated. An arbitrator who knows that ruling in a genuinely contested case may mean personally appearing in court, retaining representation and submitting a defence – win or lose on the substance of the challenge – faces a direct, structural disincentive that has nothing to do with the merits of any particular dispute. That is a cost the Model Law's framers deliberately routed around parties, not tribunals, for good reason: an arbitrator's independence is difficult to reconcile with a personal stake in the outcome of a challenge to their own decision.

The fix here does not require Nepal to import a foreign immunity doctrine wholesale. A narrower legislative or procedural clarification, that naming the arbitrator or tribunal is for notice purposes only, and that the tribunal's institutional record stands as its answer absent a specific personal allegation, would bring Nepali practice into line with the Model Law position without displacing any of the substantive grounds for challenge that Section 30 already provides. Absent that clarification, the practical burden of being named as a respondent remains a quiet but real cost of serving as an arbitrator in Nepal.

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