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between the two states and provided any judicial procedure has respected the guarantees of due process. Furthermore, it is widely accepted in the international community that whenever a binding treaty among states does not exist, enforcement of foreign judgments is a matter of comity, ie a friendly gesture or courtesy extended to one state by another without any legal obligation. Absent a binding treaty, it is the policy of the Argentine Republic to enforce foreign judgments whenever procedural principles generally recognised and accepted within the international community have been followed. Act No 24,871 also goes against this traditional policy.

A reimbursement mechanism has also been established for those who have been condemned by a foreign court to pay compensation, damages or fines on account of the application of such foreign laws. By means of this mechanism, any person who was so condemned may demand the reimbursement of all sums paid plus interest, expenses and legal fees before Argentine Federal courts.

Additionally, Argentine courts may enforce foreign judgments and awards ordering the payment of compensation, expenses and fees in favour of persons that have, in turn, been condemned on the grounds of a foreign law referred to in section 1 of the Act.

In order to provide a wider degree of protection, the Act allows the filing of a reimbursement action and the action outlined in the preceding paragraph against controlled entities of individuals or entities that are beneficiaries of foreign laws considered to be inapplicable in Argentina under the Act, provided such controlled entities are incorporated in Argentina or are subsidiaries of those beneficiaries of invalid foreign laws.

Contributed by Julian Hermida and Vanesa Orti, Asorey & Navarrine, December 1997, Buenos Aires.

Brazil

Foreign participation in financial institutions

On 9 September 1997, the Brazilian Monetary Council issued Communiqué 5796, announcing that the increase of foreign participation in Brazilian financial institutions and the opening of new branches of foreign financial institutions authorised to operate in Brazil are subject to prior approval by the Brazilian Government, upon the presentation of a formal inquiry to the Central Bank of Brazil, according to the provisions of Article 52 of the Temporary Constitutional Provisions Act (*Ato das Disposições Constitucionais Provisórias* – ADCT) of 5 October 1988.

Article 52 of the ADCT conditioned the increase of foreign participation in the capital of Brazilian financial institutions, and the opening of new branches of foreign financial institutions in Brazil to:

(i) the enactment of a supplementary law setting forth the conditions for such participation; or

(ii) the existence of national public interest.

The supplementary law mentioned above has not yet been enacted by Congress, and consequently cases are being scrutinised and approved individually by the competent authorities. Accordingly, the interested parties should address a formal inquiry to the Central Bank of Brazil before taking any step towards formalisation of related transactions.

Reprinted from 'Legal Letter', Pinheiro Neto, October 1997, Rio de Janeiro.

Nepal

Company Act 1997

Both houses, the House of Representatives and the National Assembly, passed the Company Bill 1997 and the Royal consent thereon was granted by His Majesty the King on 5 March 1997 for the enactment of the said legislation. Accordingly, the Company Act 1997 was published in the Royal Gazette on 5 March 1997 as legislation No 35 of 1997. The newly enacted Company Act 1997 repealed the existing Company Act 1964 which was in use for more than three decades. The newly enacted Company Act 1997 has made tremendous changes in existing company legislation and introduced many remarkable provisions.

Minimum number of shareholders

One of the most significant changes introduced by the Company Act 1997 is a provision for incorporation of a private limited company comprising only one shareholder. Prior to the enactment of the Company Act 1997, the requirement of the minimum number of

shareholders in regard to a private limited company was three. Section 3 of the said Act envisages the incorporation of one man companies. The said section has also waived the pre-existing requirement of a minimum of seven shareholders for the incorporation of a public limited company where a public limited company is being incorporated by another existing public limited company. Nevertheless, the provision of the requirement of the minimum number of seven shareholders is still a requirement if the individual shareholders and legal entities other than a public limited company incorporate a public limited company. However, the waiver of the minimum number of shareholders in regard to a private limited company introduced by the said Act has simplified the process of incorporation of a private limited company. This provision has long been advocated by entrepreneurs, lawyers and all concerned in the field of company law. Section 3 has also introduced the provision of incorporation of a company wholly owned by a foreigner or a legal entity of foreign origin, who has obtained permission for foreign investment in the Kingdom of Nepal pursuant to the existing law, ie the Foreign Investment and Technology Transfer Act 1992.

Conversion of a public limited company into a private limited company

Another significant introduction of the Company Act 1997 is the provision for conversion of a public limited company into a private limited company. Section 13 of the Act effects the said conversion through a special resolution passed at a general meeting if the number of shareholders of the public limited company becomes 50 or less.

General meeting of the company

Section 54 of the Act envisages only two kind of general meetings – the Annual General Meeting and the Extraordinary General Meeting. The provision of the Preliminary General Meeting laid down in the Company Act 1964 has been repealed.

Fiduciary duties of directors

In order to develop a fiduciary relationship among the directors and the company, Section 69 of the Company Act 1997 introduces the provision of mandatory disclosure of interest to the company by every director in writing within seven days after the director assumes charge of office as a director if said director is:

- directly involved in any sale or purchase or any kind of contract or agreement connected with the business of the company,
- interested in the appointment of the managing director, company secretary, director general of the company;
- working as a director of another company; or
- involved in any transaction involving shares, debentures or other securities of the company or of any subsidiary of the company.

While disclosing such an interest to the company the director must produce a copy of the written agreement signed with the director or any member of his family and if no such agreement has been signed, he must furnish the principal and essential matters connected with such business, interests or involvement. This provision is a departure from the British Company Act. Section 73(1)(e) of the Act has imposed a restriction on an individual being appointed as a director if that individual has a personal interest in any business or any contract or agreement with the concerned company. Nevertheless, such a person may be appointed and remain in the post of director pursuant to Section 73(3) of the Act if the majority of shareholders agree in general meeting, after the provision of full information about the agreement signed by him and the company and his interests in it. Notwithstanding Section 73 of the Act, regarding the disqualification of directors of the company, past actions taken in the capacity of company director shall be held valid even though it is subsequently found that a provision of the Act has not been complied with in regard to the appointment of any director. The said provision is laid down in Section 79 of the Act. Though Section 79 provides for the validity of the past actions of a disqualified director, Section 80(3) provides for the recovery of such amount to the company in the form of a loan from such a director, who is found to have derived any personal benefit in the course of conducting the business of the company.

Unanimous agreement

In regard to private companies, Section 123 of the Act concerns unanimous agreements between the shareholders over the management of the company. In addition to the provisions of

the Act, various essential matters may be inserted in the unanimous agreement, ie:

- management, business and transactions of the company;
- restriction to transfer of shares;
- right of one or more shareholders to dissolve the company;
- the exercise of the right to vote;
- the conditions of appointment of employees, workers or officers of the company including the appointment of an officer, director or person shouldering the final responsibility;
- the payment of dividends or sharing of profits and provision if there shall be no board of directors.

A unanimous agreement has equal status with the articles of association which can be amended through the unanimous written consent of the parties to the agreement – any shareholder acquiring shares after the execution of the unanimous agreement shall automatically become a party to it in the same way as they affirm the articles of association of the company.

Minority shareholders' rights

Section 131 of the Act provides for the protection of minority shareholders' rights. Any shareholder has a right to access to the District Court by submitting a petition for the remedy if the functions of the company are running or about to run contrary to his interests or in case the company is not doing or going to do what it should have done. Similarly, Section 132 of the Act provides the right to a single shareholder holding 2.5 per cent or more shares or a group of shareholders holding at least 5 per cent to file a lawsuit at the District Court on behalf of the company against any director or employee or against shareholders who control the company under a unanimous agreement or against any other person in order to make the rights or interests of minority shareholders of the company operative if the company does not do so. This statutory right for minority shareholders is of great significance to the development of company law in Nepal.

The Company Act 1997 will play a significant role in the development of corporate law in Nepal.

Contributed by Devendra Pradhan, Advocate, September 1997, Kathmandu.

Netherlands

New Competition Act: merger control

On 1 January 1998, a new Competition Act entered into force in the Netherlands. One of the major changes which this law entails is that the newly established Netherlands Competition Authority (the 'NMA') will have to give prior permission for mergers, takeovers and joint ventures of a certain size ('merger control').

A concentration will fall under the Act if:

- the total worldwide turnover of the companies involved exceeds NLG 250 million;
- the turnover in the Netherlands of at least two of the companies involved amounts to at least NLG 30 million each.

All concentrations to which the Act applies must be notified to the NMA and, in principle, may not be effected without a permit. After notification, the NMA has a period of four weeks within which to decide whether a permit is required in order to effect the concentration. This will be the case if the NMA is of the opinion that it cannot be ruled out that the concentration will create a dominant position which could significantly hinder competition in the Netherlands or a part thereof.

If the NMA decides that a permit is required, a request to that effect must be submitted. This request heralds a further investigation period of 13 weeks. Within these 13 weeks, the NMA must decide whether the permit will be granted. The NMA may attach certain conditions to the permit, such as changes to certain parts of the intended transaction.

If a concentration is effected within either the above periods of four and 13 weeks, respectively, the concentration is null and void. In addition, the NMA may impose administrative sanctions, such as penalties up to a maximum amount of NLG 50,000 and order that 'the eggs be unscrambled'.

The NMA must publish the notification of a concentration as soon as possible in the Official Gazette. This means that special consideration must be given to the timing of compliance with the Merger Code and/or the Act on Works Councils where these are applicable. In connection with the above periods of four and 13 weeks, it is recommended that sufficient time be set aside for the NMA procedure.

Contributed by Willem J L Calkoen, SBL Chairman; Nauta Dutilh, December 1997, Rotterdam.