Future of Arbitration in Nepal

B. Deoja 15 August, 2016

Arbitration of Disputes in Nepal

- Arbitration Act 2038 (1981)
- Arbitration Act 2055 (1999 A.D.)
- NEPCA founded in 1991
- ▶ NEPCA Rules of Arbitral Proceedings, 2003
- ▶ NEPCA Arbitration Rules, 2016



Volume of Disputes

- ▶ NEPCA Venue/Facilitated 293 cases since 1990
- Currently:
 - 28 cases of Arbitration Contract Price NRs. 3 billion (appx)
 - 17 Cases of Adjudication Contract Price NRs.13 billion(appx
- Claims: Adjudication/DB 20 % of contract price (appx)

Arbitration - 3 % of Contract Amount

Awards: Adjudication- 50% of Claim amount (appx)

Arbitration - 70 % of Claim amount

 Almost equal amount of arbitration cases are probably dealt by outside NEPCA (adhoc and international arbitration centres)

Future

Accelerated Development Goals

- More Infrastructures
- More Investment
- More Contracts
- More Disputes



Impact of Disasters

Surge in Claims and Disputes:

- Earthquake of 25 April and 12 May 2015
- Blockades of border



Causes of Claims and Disputes

Time and Cost Overruns due to:

- Political Instability
- Good Governance issues
- Contract Planning and Management Capabilities
- Capacity/Technology Issues
- Procurement Issues
- Socio-cultural environment



Role of ADR / Arbitral Institutions

- Provide fair, inexpensive, expeditious and high quality dispute resolution services in resolving trade, commercial, investment and dispute of similar nature among public and private business enterprises.
 - Facilitate smooth Implementation through
 - Adjudication/Dispute Board
 - Improve Party Confidence in Final and Binding settlement by Arbitration

Role of Arbitral Institutions

- Minimization of disputes
- Research and Feedbacks from Arbitration Awards
- Improve Awareness in reliability of designs and cost estimates
- Adoption of contract types other than DBB(Employer design)/FIDIC Red book model.



Issues

Arbitration Agreement

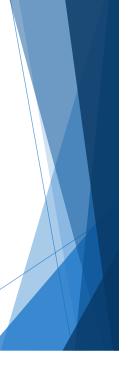
- Governing Law
- Procurement Act
- Standard Bidding Document
- ▶ Time, cost and venue of arbitration in ICB contracts

Implementation of Arbitration Award

Arbitration Act Article 30 - Implementation of award

Future

- Cooperation among Arbitral Institutions
- Accessibility of Awards for Research and Feedbacks
- Improvement of Design and Cost-estimate reliabilities
- Training on Contract Management
- Adoption of D&B and EPC type contracts
- Institutional arbitration
- Homogeneity of Arbitration Agreement
- Compatibility of Fees
- Place of Arbitration



Cooperation with SARCO

- Exchange of Panel of Arbitrators
- Referral of disputes
- Regular Communication
- Regular Visits



