Future of Arbitration in Nepal

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Arbitration of Disputes in Nepal

- Arbitration Act 2055 (1999 A.D.)
- NEPCA founded in 1991
- 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

Thanks