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Domestic and International Arbitration in Nepal

A Legal and Practical Handbook



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ARBITRATION • COMMERCIAL DISPUTES • ENFORCEMENT

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FOREWORD

Arbitration has become an important mechanism for resolving disputes arising from Nepal's commercial relationships and infrastructure development. A construction agreement may bring together an employer, contractor, subcontractor, lender, consultant and insurer, each operating under a different contract and sometimes from a different jurisdiction. Disputes within such arrangements may raise technical and legal questions concerning delay, payment, valuation, defects, termination, risk allocation and the interpretation of dispute resolution provisions. Arbitration allows parties, within the limits of applicable law, to refer such disputes to an independent tribunal in accordance with procedures they have agreed or those prescribed by law.

The practical value of arbitration, however, depends on more than the inclusion of an arbitration clause. The clause must be effective, the dispute must be capable of arbitration, the tribunal must be properly constituted, the parties must receive a fair opportunity to present their cases, and the resulting award must be capable of recognition and enforcement. The choice of arbitral seat, governing law, institutional rules and method of appointing arbitrators can have consequences that become apparent only when a dispute arises.

This handbook examines arbitration from the perspective of Nepalese law and its interaction with international commercial practice. It is intended for legal professionals, businesses, public entities, contractors, investors, engineers and researchers. Particular attention is given to construction and commercial contracts, while recognising that arbitration is also relevant to other categories of disputes where the law permits it.

The publication distinguishes three questions that are often conflated: whether parties have agreed to arbitrate; how the arbitration must be conducted; and how the award may be challenged or enforced. A legally sound approach requires each question to be considered separately. It also recognises that an arbitration seated outside Nepal may be supervised by a foreign court even though the substantive contract is governed by Nepalese law and the resulting award may eventually be enforced in Nepal.

The handbook is informational and educational. It is not advice on a particular dispute, and it does not guarantee that any specific arbitration clause, procedural step or enforcement strategy will succeed. Contractual terms, current legislation, treaty reservations, applicable procedural rules and the facts of each case must be examined before professional action is taken.

HOW TO USE THIS HANDBOOK

Each chapter follows a common structure: legal principles, the Nepalese statutory framework, practical consequences, an illustrative scenario and key drafting or procedural considerations. Where the applicable answer depends on the wording of an arbitration agreement or on a particular edition of institutional rules, the handbook identifies that dependency rather than presenting a universal deadline or procedure.

Terminology. "Arbitration agreement" means the parties' agreement to submit a defined dispute or class of disputes to arbitration. "Tribunal" means the arbitrator or panel deciding the dispute. "Seat" refers to the juridical home of the arbitration, distinct from the physical venue of a hearing. "Award" refers to a decision issued by the tribunal in the exercise of its adjudicative mandate. The term "High Court" is used in describing the current judicial hierarchy, although older translations of the Arbitration Act refer to the former Appellate Court.

CHAPTER 1 — INTRODUCTION TO ARBITRATION

1.1 Meaning and legal nature of arbitration

Arbitration is a method of dispute resolution in which parties submit a dispute to an independent arbitrator or arbitral tribunal for a determination that is intended to bind them, subject to the statutory grounds of judicial recourse and enforcement. Unlike negotiation, where the parties themselves decide whether to settle, and mediation, where a neutral assists negotiation without ordinarily deciding the merits, arbitration culminates in a reasoned adjudicative determination or award.

Arbitration rests principally on consent. Parties generally express that consent in a clause within their commercial contract or a separate agreement made after a dispute has arisen. Their agreement establishes the scope of the reference and often identifies the procedure, language, seat, number of arbitrators and applicable rules. Party autonomy is significant, but not unlimited: mandatory law, fair-hearing requirements, arbitrability and the courts' supervisory powers continue to apply.

Under Section 3 of Nepal's Arbitration Act, 2055 (1999), where an agreement provides for arbitration, disputes within its scope are to be resolved through the agreed procedure or, in the absence of an applicable agreed procedure, pursuant to the Act. The proper interpretation of the clause therefore matters as much as the parties' general intention to avoid litigation.

1.2 How arbitration differs from litigation, mediation and dispute boards

Litigation is the exercise of the state's adjudicative authority through the ordinary courts. Jurisdiction, procedure and appeals are principally statutory. Arbitration is a consensual adjudicative process, although courts may assist and supervise it under the governing law. Mediation is generally a consensual process directed toward a negotiated settlement. Dispute boards are commonly used in construction contracts as an earlier, contract-based mechanism for determining or assisting with disputes during project implementation. Their legal effect and whether a notice of dissatisfaction is required depend on the governing contract and rules.

Arbitration is not necessarily faster or cheaper than litigation. A three-member tribunal, complex technical evidence, international representation and expert hearings may produce considerable cost. It is therefore more accurate to assess arbitration according to the dispute, the quality of the clause, procedural design and enforcement considerations than to describe it categorically as an inexpensive alternative to court proceedings.

1.3 Principal advantages and limitations

The potential advantages of arbitration include the ability to select decision-makers with suitable expertise; the possibility of choosing a neutral seat; procedural flexibility; a defined mechanism for presenting evidence; and the potential cross-border recognition of qualifying awards under the New York Convention. Its limitations include tribunal and institutional costs, jurisdictional disputes, the difficulty of binding non-signatories, restricted appeal or review, and practical challenges in locating assets for enforcement.

Privacy and confidentiality require particular care. Private hearings and restricted public access do not automatically establish an unlimited legal duty of confidentiality over all documents, testimony and awards. The parties should review the applicable statute, institutional rules and express confidentiality provisions.

1.4 Domestic, international and foreign-seated arbitration

A domestic arbitration generally has its principal factual and legal connections with one jurisdiction. An international commercial arbitration involves a cross-border element, such as parties established in different countries, foreign performance, or a seat outside a party's home jurisdiction. These are useful descriptive categories; however, the Nepalese Arbitration Act is broadly applicable to arbitration within its legislative scope and does not create a comprehensive separate procedural code for international arbitration.

Three legal concepts must be kept distinct:

Substantive governing law: the law regulating the contractual rights, obligations and remedies in dispute.

Law governing the arbitration agreement: the law relevant to the existence, validity and interpretation of the arbitration clause. It may differ from the law of the underlying contract.

Law of the seat (lex arbitri): the procedural law that principally governs the arbitration and identifies the courts exercising supervisory jurisdiction.

Institutional or ad hoc arbitration rules are a further and distinct source of procedure. Selection of rules administered by an institution does not automatically choose that institution's country as the juridical seat.

1.5 Why arbitration matters in construction and infrastructure

Large projects are frequently implemented through layered contractual structures, including development agreements, EPC contracts, subcontracting arrangements, supply agreements and financing documents. A dispute may involve an employer's failure to provide access, a contractor's delay, an engineer's valuation, payment certification, variation instructions, force majeure events, or termination following alleged default. Such disputes often require programming evidence, contemporaneous correspondence, technical records and contractual analysis.

A properly drafted arbitration clause gives the parties an agreed final forum. It does not, by itself, consolidate separate proceedings arising under multiple contracts. In a project involving a developer, main contractor and subcontractor, each relevant contract should be reviewed for compatible dispute resolution provisions, rules on joinder and consolidation, and provisions allocating responsibility for related claims.

Illustrative scenario: delayed site access

A contractor is engaged to construct part of a hydropower project under a contract providing for arbitration seated in Kathmandu. The contractor alleges that delayed site access caused disruption and additional costs; the employer argues that the contractor was independently behind schedule. The tribunal may need to determine contractual notice compliance, the critical path, causation, mitigation and valuation. The governing construction contract decides whether the delay event is compensable; the arbitration agreement and applicable procedural law determine how the dispute is heard; the Arbitration Act governs relevant supervisory and enforcement questions.

Key lesson

A successful arbitration begins long before the notice of arbitration. Contract drafting, recordkeeping, notice management and identification of the correct parties are central to the legal position ultimately presented to the tribunal.

CHAPTER 2 — THE LEGAL FRAMEWORK OF ARBITRATION IN NEPAL

2.1 Historical and legislative setting

Nepal's modern statutory arbitration framework is principally founded on the Arbitration Act, 2055 (1999), which replaced earlier arbitration legislation and regulates matters including arbitration agreements, appointment of arbitrators, proceedings, awards, judicial recourse and enforcement. Its provisions must be read with subsequent amending legislation, relevant court procedure and statutes applying to particular sectors or categories of disputes.

The Act adopts familiar international arbitration principles, including recognition of party autonomy, the separability of arbitration clauses and the tribunal's authority to decide jurisdictional questions. It should not, however, be assumed to reproduce the UNCITRAL Model Law verbatim. Practitioners should apply the operative Nepalese provisions rather than importing procedures or remedies from another jurisdiction merely because they are common in international practice.

2.2 Core statutory provisions

The following provisions are central to the initial study of an arbitration matter:

Section 2: statutory definitions, including the written arbitration agreement.

Sections 3–4: the relationship between arbitration agreements and disputes brought before the courts, subject to statutory conditions and exceptions.

Sections 5–10: the number, appointment, eligibility and responsibilities of arbitrators.

Section 16: the tribunal's ability to determine its jurisdiction and the legal separability of the arbitration agreement.

Section 17 and related provisions: arbitral procedure, notice, hearings and decision-making.

Section 21: tribunal powers, including certain interim and evidentiary directions.

Sections 30–34: judicial recourse, implementation and enforcement of awards, including awards made outside Nepal.

This list is a navigational guide, not a substitute for the complete Act. In particular, any statutory deadline should be verified against the consolidated operative law and applicable transitional arrangements before an application is filed.

2.3 The 2025 amendments and their implications

The Act to Amend Some Nepal Acts Relating to Improving Economic and Business Environment and Enhancing Investment, 2081 (2025), introduced important reforms to arbitration law. Further amendments were also reported in 2082 B.S. The reforms include the introduction of an agreed fast-track arbitration mechanism under Section 13A, modifications to provisions governing awards and interest, a narrowing of the public-policy-based grounds for setting aside, and changes concerning the relationship between challenges and enforcement.

These developments strengthen the importance of examining the date of commencement and the actual operative text in a particular case. A lawyer should not assume that an earlier English translation reflects the current law, or that an amendment necessarily applies identically to an agreement concluded or arbitration commenced before its commencement.

The availability of fast-track arbitration does not mean that every arbitration must proceed on an expedited timetable. Its application depends on the statutory conditions and parties' agreement. Likewise, changes limiting the grounds for judicial interference do not eliminate statutory safeguards relating to jurisdiction, notice, procedural fairness or enforceability.

2.4 Courts and the arbitral tribunal

Arbitration is independent of ordinary litigation in the determination of the merits, but it is not wholly detached from the judicial system. Courts may be called upon to assist with appointment or challenge of arbitrators, address specified jurisdictional or interim applications, consider statutory challenges to awards and enforce awards.

In Nepal's present court hierarchy, High Courts commonly exercise significant supervisory jurisdiction in arbitration-related matters, while District Courts undertake specified enforcement and assistance functions. The historical English translation of the Arbitration Act uses "Appellate Court"; that term must be understood in light of the constitutional and judicial restructuring of Nepal's courts.

Judicial control differs from an appeal on the merits. A statutory application to set aside an award is not ordinarily an opportunity to reargue the entire contractual dispute or request a fresh assessment of all evidence. The permissible grounds, jurisdiction and relief are matters of statute.

2.5 Institutional arbitration and ad hoc arbitration

In an institutional arbitration, an administering body performs functions under the chosen rules, which may include receiving requests, facilitating appointment of arbitrators, providing case administration and applying fee schedules. In ad hoc arbitration, the parties and tribunal organise proceedings without administration by an arbitral institution, usually under agreed procedural rules or a procedure established within the limits of applicable law.

The Nepal Council of Arbitration (NEPCA) is an established Nepalese arbitration institution. Its published procedures and dispute-board materials may be relevant where the parties have selected them. International commercial contracts may instead refer to rules of another institution or to the UNCITRAL Arbitration Rules. The chosen rules should be examined in their applicable version; neither the identity of the institution nor the words "international arbitration" independently determine the seat.

2.6 Arbitration under sector-specific arrangements

Certain commercial fields contain additional dispute resolution requirements. Public procurement contracts may prescribe contract-based review and arbitration processes. Construction contracts may provide for a dispute board, negotiation, a notice of dissatisfaction and then arbitration. Foreign investment disputes may raise statutory and treaty-based questions beyond ordinary commercial arbitration.

Contractual arbitration should not be confused with investment treaty arbitration. A dispute under an EPC contract may arise from the parties' arbitration clause, while a treaty claim may depend on a state's consent in an applicable investment treaty or statute, as well as jurisdictional conditions concerning nationality, investment and subject matter. The availability of one route does not establish the other.

2.7 Nepal and the New York Convention

Nepal acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the "New York Convention"), on 4 March 1998. The United Nations treaty status information records its entry into force for Nepal on 2 June 1998. Nepal made reciprocity and commercial reservations under the Convention. Accordingly, the Convention's application must be assessed with reference to those reservations and the Nepalese statutory procedure for recognition and enforcement of foreign awards.

The Convention does not mean that an arbitral award made anywhere in the world is automatically executable in Nepal. The party seeking recognition must satisfy the applicable treaty and domestic statutory requirements. Questions concerning the originating jurisdiction, arbitration agreement, notice, finality, public policy and arbitrability may arise. A later chapter examines these matters in detail.

Practical research method

Before relying on a statutory proposition, identify (i) the authoritative Nepali text; (ii) all relevant amendments; (iii) the commencement date and transitional clauses; (iv) any procedural or institutional rules chosen by the parties; and (v) relevant reported decisions, checking the primary judgment wherever possible.

CHAPTER 3 — ARBITRATION AGREEMENTS: FORMATION, VALIDITY AND DRAFTING



Figure 1. Different laws may govern the merits, arbitration agreement and arbitral procedure.

3.1 The arbitration agreement as the foundation of jurisdiction

An arbitration agreement is the legal foundation of consensual arbitration. It identifies the disputes the parties have committed to the arbitral process and is the starting point for the tribunal's jurisdiction. A claimant cannot ordinarily create an arbitration agreement merely by declaring that an opponent must arbitrate. The existence and scope of consent require examination of the contract, later written agreements, recorded communications and the statutory rules on formation.

Section 2 of Nepal's Arbitration Act recognises arbitration agreements in writing, including a clause in a contract, a separate agreement, and certain recorded exchanges evidencing agreement. The wording and surrounding record matter, particularly where the parties never signed one consolidated contract or where the arbitration clause appears in general conditions, a purchase order or an incorporated document.

3.2 Minimum questions concerning enforceability

The assessment of an arbitration agreement should examine the legal capacity of the parties, authority of the signatories, formation and consent, the existence of an identifiable arbitration commitment, the scope of disputes covered, and whether the subject matter is legally capable of arbitration. Where an entity signs through an agent or representative, corporate authority and the applicable law of agency may become material.

An agreement to negotiate in good faith is not equivalent to an agreement to arbitrate. Similarly, describing a technical expert's determination as "final" does not necessarily convert an expert determination into arbitration. The clause must be considered as a whole to establish whether the parties intended adjudication by an arbitral tribunal.

3.3 Separability of the arbitration clause

Section 16(3) of the Arbitration Act recognises the separability of an arbitration clause contained in a larger contract. This means that a contention that the principal contract is invalid does not, by itself, necessarily invalidate the agreement to arbitrate. The arbitration clause may remain effective for the purpose of resolving the dispute over the contract's legal status or consequences.

Separability does not cure every defect. If the alleged invalidity specifically affects consent to the arbitration agreement—for example, an absence of authority to agree to arbitration—the tribunal or relevant court must examine that question on its own terms.

3.4 Competence-competence and jurisdictional objections

Section 16 also provides for the tribunal to address objections to its jurisdiction. This is commonly referred to as the principle of competence-competence. It allows an arbitral tribunal to examine, in the first instance and subject to the applicable statutory review route, whether it has authority to determine the submitted dispute.

Jurisdictional objections may concern the absence or invalidity of the arbitration agreement, a claim outside its scope, an improperly constituted tribunal, a non-signatory party or a legally non-arbitrable matter. A party asserting such an objection should act promptly. Participation without objection can create important procedural consequences, and statutory deadlines for jurisdictional challenges require close attention.

3.5 Arbitrability: which disputes may be referred?

Commercial and contractual claims are frequently suitable for arbitration, including disputes arising from construction, supply, joint ventures and payment obligations. Nevertheless, the existence of a commercial connection does not automatically make every issue arbitrable. Questions that the law reserves for courts or regulatory bodies, including certain criminal, public-law and personal-status matters, require separate examination.

A construction dispute illustrates this distinction. A contractor's claim for unpaid work may be arbitrable under the project contract; a request to invalidate a sovereign regulatory decision may raise a different jurisdictional and public-law question. Where a controversy combines arbitrable and non-arbitrable issues, careful separation of relief and parties may be necessary.

3.6 Essential drafting choices

A well-considered arbitration clause ordinarily addresses the following:

Scope: whether disputes arising out of or in connection with the agreement are included, including disputes about existence, validity, performance, breach and termination.

Rules and administration: whether proceedings are institutional or ad hoc, identifying the chosen rules precisely.

Seat: the juridical place of arbitration, distinct from possible hearing locations.

Tribunal: the number of arbitrators and an operative appointment mechanism.

Language: the procedural language and arrangements for translations.

Governing law: the substantive law of the contract and, when appropriate, the law of the arbitration agreement.

Multi-tier procedures: negotiation, engineer determination, dispute board or other pre-arbitration steps, with clear triggers and consequences.

Multiple contracts: compatibility of provisions concerning joinder, consolidation and related proceedings where the project structure requires it.

The governing law and seat should not be left implicit in cross-border transactions merely because parties have selected an international institution. The seat determines the primary judicial framework for the arbitration, and uncertainty can complicate jurisdictional challenges and enforcement.

3.7 Defective or pathological clauses

A defective arbitration clause can create disputes before the merits are ever heard. Examples include naming a non-existent institution; requiring appointment through an authority that has ceased operating; simultaneously granting exclusive jurisdiction to courts and mandatory arbitration without explaining the relationship; naming an uncertain seat; or imposing conditions that are impossible to satisfy.

Courts and tribunals may, depending on applicable law, seek to give effect to a sufficiently clear intention to arbitrate, but they cannot be assumed to reconstruct an unusable clause. The most effective response is careful drafting before signature, rather than relying on later judicial rescue.

3.8 An illustrative drafting framework

The following is a drafting framework, not a ready-to-sign model clause. Parties should adapt it to the chosen institution, applicable rules, seat, governing law, the status of the contracting entities, and any mandatory statutory requirements:

Any dispute arising out of or in connection with this Agreement, including a dispute concerning its existence, validity, interpretation, performance, breach or termination, shall be finally resolved by arbitration in accordance with [accurately identified arbitration rules]. The juridical seat of arbitration shall be [city, country]. The tribunal shall consist of [one or three] arbitrator(s) appointed in accordance with those rules. The language of the arbitration shall be [language]. The substantive law governing this Agreement shall be [law]. [Any agreed preliminary dispute resolution procedure and its interaction with commencement of arbitration shall be expressly stated.]

For Nepal-seated arbitration, the clause should be reviewed against the current Arbitration Act. For international arbitrations, professional advice should also address recognition and enforcement in jurisdictions where the counterparty's assets are located.

3.9 Practical illustration: inconsistent clauses in a project chain

Assume an employer and main contractor agree to arbitration seated in Nepal under one set of rules, while the main contractor's subcontract provides for arbitration seated in another country under different rules. The subcontractor incurs costs as a consequence of an employer instruction and seeks payment from the main contractor. The main contractor may have a corresponding claim against the employer. Although the underlying events are related, there may be two separate arbitration agreements, distinct tribunals, and different procedures.

The legal team should examine the proper parties and causes of action, subcontract pass-through provisions, notice requirements, the possibility and limits of consolidation, confidentiality restrictions, and the practical risk of inconsistent determinations. Alignment of dispute resolution clauses at the drafting stage can reduce this procedural exposure.

3.10 Arbitration agreement checklist

Before a contract is executed, verify that the arbitration clause identifies an enforceable commitment to arbitrate, a workable appointment mechanism, a clear seat, the correct procedural rules and version, an appropriate language, and a coherent relationship with the governing law and any mandatory pre-arbitration steps. Confirm that the entities signing the agreement have the requisite authority and that the chosen dispute resolution mechanism is suitable for the likely categories of disputes.

CHAPTER 4 — CONSTITUTION AND INDEPENDENCE OF THE ARBITRAL TRIBUNAL

4.1 The tribunal as the decision-making body

The authority of an arbitral tribunal is founded on the parties' agreement, the applicable arbitration legislation and the procedural rules governing the reference. Unlike a court, a tribunal cannot assume general jurisdiction over all disputes between the parties. Its mandate is defined by the relevant arbitration agreement, the identified parties and the dispute submitted for determination. A fundamental threshold enquiry is therefore whether the proposed arbitrator or panel has been validly constituted.

The number of arbitrators may be fixed in the arbitration clause or subsequently agreed. Some parties prefer a sole arbitrator for relatively contained disputes; others choose three arbitrators for complex engineering claims or high-value cross-border transactions. The number should be assessed against cost, technical complexity, the amount at stake, and the risk of deadlock or scheduling difficulty. An even number is generally undesirable because of the possibility of an evenly divided decision.

4.2 Appointment mechanisms and the role of the courts

In a three-member tribunal, an often-used arrangement allows each side to nominate one arbitrator, with the two nominated arbitrators or a designated institution selecting the presiding arbitrator. The clause or chosen rules should specify the appointing authority, fallback procedure, eligibility conditions and timing. Where a party refuses to participate, an effective appointment mechanism prevents that refusal from defeating the agreed arbitral process.

The Arbitration Act, 2055 includes provisions on the number and appointment of arbitrators and provides for court assistance in specified circumstances. However, a lawyer should verify the current statutory wording and court jurisdiction rather than automatically applying an appointment mechanism taken from foreign arbitration law. Where institutional rules are chosen, the appointment process must also be read together with the mandatory rules of the seat.

4.3 Independence, impartiality and disclosure

Arbitrators must be both independent and impartial. Independence generally concerns relationships or interests that may affect objective decision-making; impartiality concerns the absence of predisposition toward a party or outcome. The two concepts overlap but are analytically distinct. A candidate should disclose relevant financial, professional, personal or other circumstances that could reasonably raise doubts about neutrality.

Disclosure is a continuing obligation. A relationship arising after appointment may become relevant even where no issue existed when the arbitrator first accepted the mandate. Parties should adopt a proportionate conflict-check procedure, maintain a record of disclosures, and raise concerns promptly in the manner required by law or the applicable rules. A party should not withhold an objection tactically and assume it may preserve the issue for a challenge after receiving an unfavourable award.

4.4 Challenges, resignation and replacement

Challenges to an arbitrator must be grounded in the applicable legal or procedural criteria. Mere dissatisfaction with a procedural ruling or an indication that an argument may fail is not, without more, evidence of bias. A proper challenge should identify the relevant facts, documents, legal standard, and relief requested. If an arbitrator is removed, resigns or cannot continue, the replacement process and the effect on prior proceedings must be determined under the law and agreed rules.

Practice note — appointment checklist

Before accepting the constitution of a tribunal, verify the arbitration clause; the legal seat; the number of arbitrators; the nominating and appointing authorities; qualifications; disclosures; any objections to independence; and the procedure for replacing an arbitrator. Record the date on which each procedural step occurs and preserve the correspondence establishing consent or objection.

CHAPTER 5 — JURISDICTION, ARBITRABILITY AND PROCEDURAL POWERS

5.1 Competence-competence and the threshold enquiry

The principle of competence-competence permits an arbitral tribunal, within the governing legal framework, to determine objections concerning its own jurisdiction. Nepal's Arbitration Act recognises this function in Section 16. That authority does not make the tribunal's determination immune from statutory court review. The correct sequence and deadline for challenging a jurisdictional decision must be examined under the operative Act and the procedural history of the reference.

Jurisdiction may be disputed because the arbitration agreement is allegedly invalid; a party did not consent; the claim falls outside the clause; a mandatory pre-arbitration step was not followed; or the relief sought is not capable of determination by arbitration. These objections are not interchangeable. A tribunal may have authority to determine a contractual payment claim but not a statutory question reserved for a public authority or court.

5.2 Separability and the position of non-signatories

Separability treats the arbitration clause as legally distinct from the underlying contract for specified purposes. Consequently, an allegation that the principal contract was terminated or breached does not necessarily eliminate the agreement to arbitrate. However, a challenge specifically directed at consent to the arbitration clause may remain material.

A complicated issue in infrastructure projects is whether an arbitration clause binds a person who did not sign the relevant contract. Parent companies, consortium members, guarantors and subcontractors should not automatically be treated as parties merely because they belong to the same commercial project. The outcome depends on consent, the applicable law, documentary evidence, assignment or succession, and any legally recognised basis for extending the agreement. Parties should not rely on broad, untested theories of group-wide liability.

5.3 The scope of arbitrability

Arbitrability asks whether the subject matter may lawfully be decided by an arbitral tribunal. Commercial claims for payment, damages and contractual performance are commonly amenable to arbitration where a valid agreement exists. Criminal liability, certain public-law determinations, insolvency-wide questions and matters involving rights against the world may raise distinct statutory limitations. The governing law and particular relief must be analysed; it is unsafe to assume that all disagreements containing a commercial element can be arbitrated.

5.4 Procedural authority and fairness

Arbitral tribunals need authority to manage the process, including directions on submissions, production of documents, witnesses, hearings and the orderly determination of issues. Party autonomy remains subject to basic procedural fairness. Each party should have a reasonable opportunity to know and answer the case against it. Equality does not require identical amounts of hearing time regardless of the issues; rather, case management must avoid unjustifiable prejudice.

Procedural orders should specify who must act, the required format, the deadline, and the consequences of non-compliance, consistently with the applicable law. Proportionality matters: a narrow dispute over certification should not automatically require the same disclosure exercise as a multi-year delay claim with thousands of contemporaneous records.

Illustrative scenario — jurisdiction and subcontracting

A main EPC contract provides for arbitration in Kathmandu, while a subcontract provides for arbitration under a different set of rules in a foreign seat. A subcontractor cannot assume that the EPC tribunal will have jurisdiction over its independent contractual claims. Counsel should examine each agreement, the identity of signatories, any assignment or joinder terms, and the availability of agreed coordination rather than treating the project as one legal relationship.

CHAPTER 6 — COMMENCEMENT OF ARBITRATION AND CASE PREPARATION

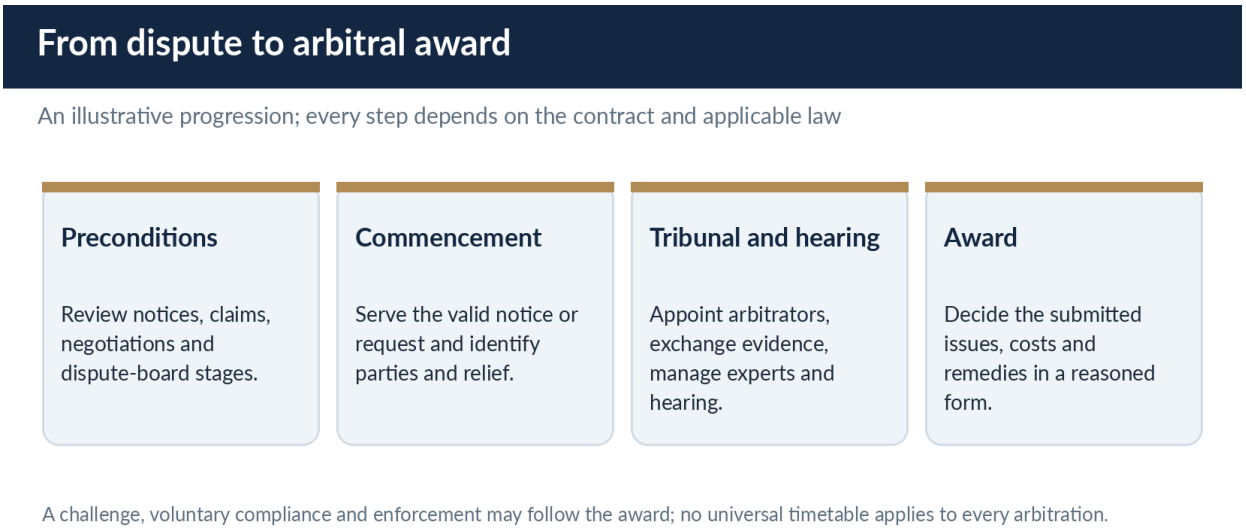


Figure 2. An illustrative arbitration journey from preconditions to award.

6.1 The decision to commence proceedings

A notice of arbitration should follow, not precede, a disciplined assessment of the dispute. Counsel should confirm the correct legal entities, contractual basis of the claim, arbitration clause, jurisdiction, preconditions to arbitration, limitation position, and documentary support. A demand letter and notice of arbitration may serve different purposes. The first may preserve commercial dialogue or trigger a contractual process; the second may formally initiate arbitration under the specified rules.

Construction contracts often contain multi-tier clauses requiring engineer determinations, dispute-board referrals, a notice of dissatisfaction, or an amicable settlement period. Whether a step is mandatory, waivable or satisfied through conduct depends on the language and governing law. Lawyers should also preserve any statutory rights that could expire while negotiations continue.

6.2 The initiating document

A properly prepared notice identifies the parties, the agreement and arbitration clause, the essential facts, the dispute, the relief sought, the legal and contractual basis, the proposed number of arbitrators, and any nomination or procedural request. The document need not always contain the same detail as a complete statement of claim; the governing rules determine its minimum requirements.

The claimant should avoid overstating the relief before the record is analysed. A defensible preliminary claim calculation should distinguish principal sums, contractual adjustments, interest, costs and alternative remedies. When seeking a declaration rather than payment, the requested declaration must be framed precisely enough to be capable of inclusion in an enforceable award.

6.3 Defence, counterclaim and set-off

The respondent should undertake an independent review of jurisdiction and the merits immediately on receipt of the initiation documents. A response should address admissions and denials; identify dispositive defences; preserve objections that must be raised promptly; and distinguish affirmative counterclaims from deductions or defences based on set-off. The legal requirements for counterclaims may be affected by the clause and applicable rules.

A party should not assume that denying liability relieves it of the duty to preserve documents or comply with procedural directions. Failure to participate may permit proceedings to continue in accordance with applicable safeguards; it does not ensure that the claim will be rejected.

6.4 Procedural timetable and statement of issues

At the first procedural meeting, the parties and tribunal commonly address jurisdictional objections, the hearing format, language, documentary exchange, witnesses, experts, confidentiality, electronic filing, and the anticipated award date. A procedural timetable should reflect the complexity of the evidence and the practical ability of each side to comply.

An agreed list of issues can improve efficiency by separating questions such as entitlement, causation, quantum and limitation. A tribunal may hear a preliminary issue first where a decision could materially narrow the remaining dispute, provided the division does not create unfair duplication or prejudice.

Practice note — commencement file

Keep one indexed commencement file containing the executed contract and amendments, notice provisions, pre-arbitration correspondence, corporate authorisations, principal claims documents, the limitation analysis, and a chronology of all procedural dates. Include the contractually specified service addresses and maintain proof of delivery.

CHAPTER 7 — EVIDENCE, HEARINGS AND EXPERT TESTIMONY

7.1 Evidence in commercial and construction arbitration

Arbitration permits the presentation of evidence relevant to the contractual dispute, while the exact admissibility and weight of that evidence depend on applicable law, party agreement and tribunal directions. Written contracts, purchase orders, instructions, payment certificates, site diaries, baseline and updated programmes, meeting minutes, email correspondence, invoices and bank records often carry significant weight in construction disputes.

Contemporaneous records are usually more persuasive than retrospective descriptions prepared after relations deteriorate. A record-management system should preserve document metadata, dates, authorship, revisions and relevant attachments. Parties should maintain a defensible process for identifying originals, verifying translations, and explaining gaps in the record.

7.2 Document production and proportionality

A request for documents should describe a sufficiently identified category, explain relevance and materiality, and be proportionate to the amount and complexity of the dispute. Fishing expeditions may increase cost without improving the reliability of the determination. Parties may rely on agreed procedures or international guidance, but external rules on document production do not automatically govern Nepal-seated proceedings unless adopted.

Confidentiality and legal privilege may limit disclosure. The applicable privilege rules must be considered carefully where the parties, lawyers and documents are connected with more than one jurisdiction. Public-entity document retention and disclosure duties may also raise separate legal questions.

7.3 Witness statements and examination

Fact witnesses should describe matters within their own knowledge rather than repeat legal arguments. Statements should identify each witness's role, the relevant period, personal observations and supporting documents. Counsel should distinguish a witness's recollection from a reconstruction based on records. Honest uncertainty is preferable to unwarranted precision.

The tribunal may use cross-examination to test contested assertions, but the procedure should be determined fairly and with sufficient advance notice. Interpreters, remote attendance and hearing logistics should be arranged early where the project team or experts operate in different languages or countries.

7.4 Experts on delay, quantity and valuation

Technical expertise can be decisive where a claim turns on the critical path, the cause of delay, measured quantities, productivity losses, variations, defects or market pricing. An independent expert should explain instructions, documents reviewed, methodology, assumptions, sensitivity and limitations. A technical report that states only a claimed sum without showing how it was derived is difficult to test.

In delay analysis, the chronology matters. Counsel should identify the accepted baseline, updates, critical activities, actual events, concurrency issues and mitigation. The contractual extension-of-time mechanism determines entitlement; the expert's programme analysis provides evidence relevant to the factual inquiry but does not itself create the legal entitlement.

7.5 Hearings, transcripts and submissions

An effective hearing plan identifies disputed issues, witnesses, documentary bundles and time allocations. A coherent opening submission should explain the theory of the case and the evidence supporting it; closing submissions should connect established facts to the contractual clauses and requested relief. Written skeleton arguments may be preferable to lengthy oral repetition in document-heavy matters.

Procedural fairness includes adequate opportunity to respond to new evidence. If a tribunal raises a determinative legal issue not argued by either party, it should consider whether additional submissions are needed. The final award should rest on matters properly within the record and reference.

Evidence matrix — an illustrative approach

For each claim, map: (1) legal or contractual basis; (2) event; (3) required notice; (4) causation evidence; (5) contemporaneous records; (6) calculation; (7) mitigation; and (8) disputed points. The matrix should be kept separate for each distinct cause of action.

CHAPTER 8 — INTERIM PROTECTION AND COURT ASSISTANCE

8.1 Purpose of interim measures

Interim measures seek to preserve rights or the effectiveness of an eventual award while a dispute is pending. They may concern property, evidence, contractual obligations or other urgent circumstances. An application must identify the threatened harm, legal basis, urgency, proportionality, the measure sought, and why ordinary adjudication after the final award may be insufficient.

Section 21 of Nepal's Arbitration Act includes powers of the arbitrator relevant to interim and evidentiary directions. The availability of effective court support and enforceability of a particular tribunal order must be considered separately. A party should not assume that every procedural order has the same enforcement status as a final arbitral award.

8.2 Preservation of evidence

Electronic data may be altered or deleted as a project moves forward. Counsel should identify critical emails, server files, site measurements, progress photographs, inspection reports, and original instruments. A preservation notice should be proportionate and clear. Where necessary, seek agreement on a neutral inspection or an appropriate legal order rather than collecting documents through unauthorised access.

8.3 Security and asset-related applications

A party contemplating security for costs, asset protection or an interim payment should review the legal source of the remedy, procedural standards, risks of overreach, and possible adverse-cost consequences. The existence of a substantial claim alone is not necessarily sufficient. Applications affecting a non-party may be especially sensitive because a tribunal's jurisdiction primarily rests on party consent.

8.4 Court assistance without surrendering arbitration

Court assistance does not necessarily waive an arbitration agreement. The governing statute may permit specified applications in support of arbitration while leaving the merits to the tribunal. However, counsel should distinguish applications assisting the arbitral process from court proceedings that seek to decide disputes already committed to arbitration.

Illustrative scenario — threatened removal of equipment

During a dispute over termination of a construction subcontract, one side learns that equipment claimed as security may be transferred. Counsel must first establish ownership, contractual rights, the authority of the tribunal or court, and the evidence of impending disposal. An application framed without proper identification of property or affected parties risks failure even where the underlying payment dispute is serious.

CHAPTER 9 — CONSTRUCTION AND COMMERCIAL ARBITRATION IN PRACTICE

9.1 Why construction arbitration is distinctive

Construction disputes frequently combine legal, engineering, scheduling and financial issues. A single claim may implicate the employer's site access duty, a contractor's programme obligations, the engineer's certification, weather records, variations, insurance proceeds and the performance of subcontractors. Cases are often document-heavy and require disciplined management of project history.

The central task is to connect a contractual entitlement with the factual event and resulting loss. Liability, causation and valuation should be analysed separately. A claimant may prove that an employer caused delay without proving a recoverable amount of additional cost; conversely, a contractor may incur actual costs that the contract allocates to its own risk.

9.2 FIDIC and bespoke dispute procedures

International construction projects frequently use FIDIC-based contracts, often with extensive Particular Conditions. The handbook refers to contractual mechanisms descriptively; proprietary provisions are not reproduced. Parties must identify the exact form and edition, any amendments, notice provisions, engineer or employer's representative powers, and the dispute resolution sequence governing their contract.

Some contracts require determinations or dispute-board decisions before arbitration. A notice of dissatisfaction may have consequences for finality or timing. Because different editions contain different procedures, a standardised statement that 'every FIDIC claim must be notified within X days' would be misleading. Read the executed contract and agreed conditions before calculating a deadline.

9.3 Delay, extension of time and disruption

Delay analysis should distinguish an excusable delay from a compensable delay. The first concerns relief from the consequences of late completion; the second concerns entitlement to additional payment. Both depend on the contractual allocation of risk. A contractor asserting disruption must also explain how productivity was affected, rather than relying only on a chronological overlap between an employer event and increased expenditure.

Useful evidence includes the approved programme, updates, contemporaneous notices, instructions, resource records, site access logs, contractor correspondence, photographs and expert reports. Counsel should test competing causes, concurrency, mitigation and whether the programme reflects actual progress.

9.4 Variations, quantity changes and valuation

A variation claim should identify the contractual source of authority, the instruction or event relied upon, the affected work, applicable valuation mechanism and supporting quantity or cost records. A technical instruction may be disputed as a variation if it merely clarifies existing obligations. Equally, a change in specification may be substantial even if the employer labels it an administrative clarification.

The existence of an instruction and the valuation of the resulting change are separate issues. An expert quantum report should explain the rates, assumptions and contemporaneous information used.

9.5 Risk events, disasters and insurance

Natural disasters, extraordinary flooding and other serious events may trigger provisions concerning exceptional events, force majeure, insurance, suspension, extensions of time or termination. The legal analysis must distinguish impossibility, delay, physical loss, insured risk, contractual notice, and allocation of consequences. The fact that an event was beyond a party's control does not automatically excuse every contractual obligation or establish entitlement to compensation.

Insurance may protect against particular property losses without covering every category of delay, consequential loss or liability. Construction contracts should be reviewed alongside the actual policies and exclusions. Any claim should preserve notice requirements and avoid double counting the same loss under different contractual routes.

Case study — hydropower tunnel delay

A contractor encounters unexpectedly difficult geological conditions during tunnelling and requests an extension of time plus additional payment. The employer argues that the conditions were foreseeable under tender documents and that the contractor failed to provide timely notice. A legally sound case separates (i) site information supplied, (ii) contractual allocation of physical-conditions risk, (iii) timely notice, (iv) effect on the critical path, (v) mitigation, and (vi) actual costs. An arbitral tribunal then determines liability and relief within the scope of the contract and applicable law; it should not simply select whichever expert presents the higher or lower cost estimate.

CHAPTER 10 — ARBITRAL AWARDS: FORM, REASONS AND REMEDIES

10.1 The function of the award

The arbitral award records the tribunal's resolution of matters submitted to it. It should identify the parties, jurisdictional basis, issues, factual findings, legal and contractual analysis, operative relief and allocation of costs where appropriate. Its reasoning should be sufficiently clear to explain how the material issues were decided. The operative part must be precise enough for a court or enforcement authority to understand what is owed or required.

The Act contains provisions addressing the award's form, signature, decision-making, time limits, correction and implementation. The legal requirements must be checked against the current consolidated statute and the parties' procedural framework. Where there is a three-member tribunal, the applicable rule for majority decisions, dissent and signatures should be confirmed rather than assumed.

10.2 Types of relief and limits of the mandate

Monetary damages, contractual debt, declarations and other relief may arise under the applicable substantive law and the tribunal's mandate. A party should request each category expressly and explain its legal basis. A tribunal should not grant relief outside the issues referred or substitute a different contract for the agreement before it.

A monetary award should identify currency, principal sum, interest basis, allocation of costs and relevant payment obligations. Awards involving several currencies or joint parties require particular clarity about whether liability is joint, several or allocated by distinct causes of action.

10.3 Interest after the 2025 amendments

The 2025 reforms affect the statutory treatment of interest in arbitral awards. Published contemporary analyses discuss changes restricting the period for which interest may be claimed and the relationship between compliance periods and post-award accrual. The precise calculation must be checked against the operative wording of Sections 27 and 33, the applicable substantive law, and any transition provisions before preparing the final relief schedule.

Counsel should distinguish contractual interest from statutory interest, and should not assume that a contractual interest clause necessarily displaces mandatory statutory requirements. The claim should state the basis, rate, period and arithmetic transparently.

10.4 Correction, interpretation and additional awards

An award may contain clerical, computational or typographical errors, ambiguities, or an omission concerning a claim that was properly submitted. The Act and agreed rules may permit requests for correction, interpretation or additional determination within defined periods. These mechanisms are not ordinarily a substitute for a fresh merits review. The applicant should identify the exact error and requested correction without using a correction application to introduce an entirely new claim.

10.5 Confidentiality and publication

An award may contain trade secrets, technical specifications, personal information, pricing or confidential correspondence. Before publishing or sharing it, assess the applicable confidentiality obligations, institutional rules, professional duties and any court order. A law firm should not treat involvement in an arbitration as permission to publicise client identities or results.

Award quality checklist

Confirm the correct names of parties; reference to the arbitration agreement; issues; reasons; jurisdiction; relief; currency; interest and cost treatment; dates; signatures; service; and any applicable correction mechanism. Examine whether the operative orders can be understood without reading the entire narrative.

CHAPTER 11 — CHALLENGING AN ARBITRAL AWARD IN NEPAL

11.1 Limited judicial recourse

Arbitration is designed to produce a final determination subject to the statutory grounds of court intervention. An application to set aside an award is not a general merits appeal. Section 30 of Nepal's Arbitration Act identifies the limited grounds for such recourse. A party that believes the tribunal misunderstood a witness or gave insufficient weight to a document must distinguish ordinary factual disagreement from a recognised statutory defect.

Recognised issues can include the validity of the arbitration agreement, capacity, proper notice, opportunity to present a case, jurisdictional excess, improper constitution or procedure, arbitrability, and public policy. The 2025 amendment removed 'public interest' as a separate formulation in the setting-aside regime, while preserving the applicable public-policy ground. The statutory language and current authoritative version govern.

11.2 Time, forum and supporting material

Section 30 is commonly described as providing a 35-day period for filing a setting-aside application before the competent High Court, triggered in the manner specified in the Act. This is a deadline-sensitive area: counsel must verify the operative text, the date of reading or notification of the award, calculation of time, holidays, and any procedural rules or transition provisions before filing.

The application should state the statutory ground precisely. It should be accompanied by the arbitration agreement, award, relevant procedural orders, service records and targeted evidence supporting the alleged defect. Wholesale repetition of the statement of defence is generally less useful than a focused demonstration of the statutory violation.

11.3 Public policy and procedural fairness

Public policy is an important but limited concept. It should not be used as a synonym for every alleged error of law, factual dispute or commercial unfairness. In assessing public policy or a due-process objection, counsel should identify the fundamental legal principle implicated and the actual procedural prejudice. Courts should not be invited to retry the arbitration merely through a change of label.

11.4 The effect of a challenge on enforcement

The 2025 reforms materially affect the relationship between setting aside and enforcement. Contemporary analyses describe the general position that filing a setting-aside application does not, by itself, suspend enforcement; a stay requires satisfaction of the statutory requirements for court intervention. Parties should not assume an automatic stay and should urgently assess any protection that may be required.

Illustrative scenario — a disputed email

A respondent argues that an award must be set aside because the tribunal relied on an email from the claimant. If the email was on the record, the respondent had an opportunity to address it, and the complaint concerns only evidentiary weight, a merits challenge may be unavailable. If the tribunal relied on decisive undisclosed material without allowing a response, the procedural analysis may be different. The precise facts and statutory grounds control.

CHAPTER 12 — RECOGNITION AND ENFORCEMENT OF DOMESTIC AWARDS

12.1 The distinction between recognition and execution

Recognition establishes that an award has the legal status needed to be relied upon; enforcement involves coercive steps to obtain performance where voluntary compliance does not occur. Parties should distinguish an award directing payment from the execution measures necessary to realise assets or recover funds.

Domestic award enforcement is principally addressed by Sections 31–33 of the Arbitration Act and related procedures. The current statutory framework should be examined alongside any amendments governing compliance periods, enforcement applications and the effect of pending challenges.

12.2 Voluntary compliance and the enforcement application

Published descriptions of the Nepalese framework identify a statutory period for voluntary compliance following notice of the award and a further period for seeking execution if compliance does not occur. The practitioner must confirm the exact operative periods and triggers from the authentic statute before relying on them in a live matter. Preparation should begin immediately upon receipt of an award, because obtaining the underlying bank, property and corporate information may require time.

A well-prepared enforcement file ordinarily includes the award, evidence of communication or receipt, proof of non-compliance, certified copies, the correct identity and address of the debtor, and information on assets or sources of payment. Counsel should also establish whether a court has issued any effective stay and whether a correction request changes the operative obligation.

12.3 Enforcement against corporate or public counterparties

A company's liability does not ordinarily extend automatically to its directors, shareholders or affiliates. Execution must be directed against property legally subject to the award and applicable enforcement law. Public-entity awards raise additional questions concerning appropriation, administrative responsibility and statutory execution procedures. The existence of an arbitration agreement does not remove public-law safeguards governing execution against public assets.

12.4 Fast-track awards

Section 13A, introduced through the 2025 reforms, allows fast-track arbitration in circumstances contemplated by the Act. Contemporary legislative summaries describe an accelerated enforcement requirement for qualifying fast-track awards. Whether an award qualifies and the steps for implementation should be checked against the agreement, procedural record and current Act. It would be misleading to describe every domestic award as automatically subject to the fast-track timeline.

Enforcement checklist

Identify the correct award debtor; confirm service and compliance period; obtain complete award and corrections; determine any applicable stay; verify the competent court and prescribed form; identify available assets; record filing and hearing dates; and calculate recoverable interest, fees and costs under the current law.

CHAPTER 13 — FOREIGN ARBITRAL AWARDS AND THE NEW YORK CONVENTION

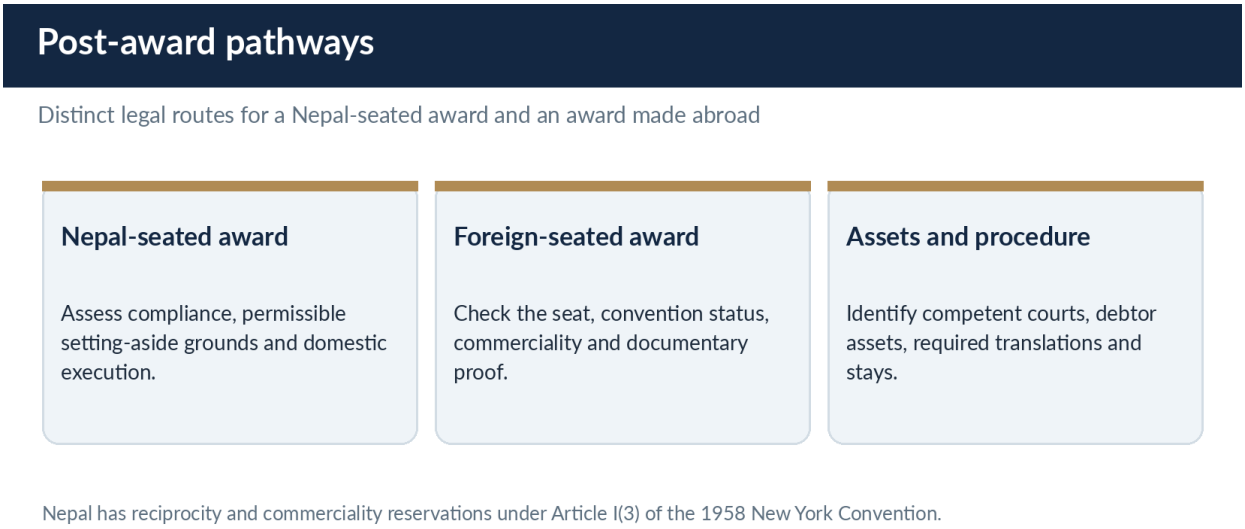


Figure 3. Different post-award routes for Nepal-seated and foreign-seated awards.

13.1 International framework and Nepal's treaty status

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the New York Convention), establishes a major international framework for recognising arbitration agreements and enforcing qualifying arbitral awards. Nepal acceded on 4 March 1998; the Convention entered into force for Nepal on 2 June 1998, according to the United Nations Commission on International Trade Law's treaty status record.

Nepal made the reciprocity and commerciality reservations permitted under Article I(3). Accordingly, convention-based enforcement involves awards made in another contracting state and disputes arising from relationships regarded as commercial under Nepalese law. These reservations make the seat of arbitration and the legal character of the dispute materially relevant to enforcement planning.

13.2 The seat and the place of hearings

The seat of arbitration determines the primary supervisory jurisdiction; the location of a witness hearing or meeting does not necessarily change it. An arbitration seated in Singapore may conduct an evidentiary hearing in Kathmandu without becoming Nepal-seated merely because of that hearing location. Conversely, an arbitration seated in Kathmandu does not become a foreign arbitration because participants appear remotely from other countries.

When drafting cross-border contracts, state the legal seat unambiguously, in addition to naming institutional rules and a hearing venue if needed. Vague references to 'arbitration in Asia' or the institution's office may lead to avoidable jurisdictional disputes.

13.3 Section 34 and the enforcement application

Section 34 of Nepal's Arbitration Act governs recognition and enforcement of awards made abroad, subject to the Act's conditions and applicable international commitments. The required documents may include the award and arbitration agreement, duly authenticated or certified copies, and a translation meeting the relevant procedural requirements. Counsel should consult the authoritative consolidated Act for statutory application periods, grounds for refusal and the division of functions between courts.

The enforcement enquiry is not a fresh trial of the commercial merits. Questions commonly concern the agreement's validity, proper notice, tribunal constitution, scope of reference, finality and binding status of the award, applicable public policy, arbitrability and treaty eligibility. The applicant should provide clear evidence of the seat and the award's status in that jurisdiction.

13.4 Grounds for refusing enforcement

Article V of the New York Convention recognises limited grounds for refusing recognition or enforcement, including certain defects in the agreement, notice, opportunity to be heard, scope of submission, tribunal composition, procedural conformity, and award status. The requested state may also consider non-arbitrability and public policy. The Convention's structure is not an invitation to reopen all factual and legal issues decided by the tribunal.

Nepal's domestic statutory conditions must be read together with the treaty framework. A successful party should anticipate documentary and procedural requirements rather than assuming that a foreign award automatically becomes executable upon presentation in Nepal.

13.5 Cross-border enforcement strategy

Enforcement planning should begin when the contract is drafted, not after the award is issued. Counsel should consider the jurisdiction in which counterparties hold assets, the likely governing law, the treatment of multi-party obligations, the seat, treaty coverage and realistic costs of collecting a judgment or award. An internationally recognisable award may still have limited practical value where the debtor has no accessible assets or legal restrictions impede execution.

Illustrative scenario — foreign-seated construction award

An international contractor obtains an award in a contracting state against a Nepalese project company and seeks enforcement in Nepal. The application must establish the arbitration agreement, qualifying award, seat, status and compliance with Nepalese statutory documentary requirements, while addressing any recognised grounds of objection. The fact that the underlying project was in Nepal does not by itself justify a merits rehearing of the foreign tribunal's decision.

CHAPTER 14 — PROFESSIONAL PRACTICE, LEGAL RESEARCH AND RISK MANAGEMENT

14.1 Managing a dispute before arbitration begins

Dispute avoidance and dispute readiness are closely connected. A party that preserves accurate contract records, provides notices when required and documents technical events is often better positioned both to negotiate and to arbitrate. Contract teams should understand the legal distinction between a claim notice, a project-management instruction, an admission of responsibility and an offer to settle.

A structured early case assessment should identify the commercial objective, forum, jurisdiction, recoverable remedies, procedural risks, evidence, counterclaims, enforcement prospects and costs. Settlement should be considered at appropriate stages without assuming that commencing arbitration necessarily prevents negotiated resolution.

14.2 Counsel's professional responsibilities

Legal counsel must provide objective advice on strengths and weaknesses, maintain confidentiality, avoid conflicts, preserve professional independence and refrain from misrepresenting evidence or law. Responsibility toward the client includes explaining uncertainty, procedural cost and possible outcomes rather than guaranteeing success. The Nepal Bar Council's applicable conduct rules should be observed in publicity, professional fees, client communications and handling of case information.

14.3 Use of technology and cross-border collaboration

Modern arbitration often involves electronic bundles, remote hearings, cloud-hosted records, translation software and foreign technical experts. These tools can improve efficiency but require safeguards for confidentiality, accuracy, authorised access and data integrity. Automated translation or summarisation should not replace review by qualified professionals where legal wording, technical terminology or witness credibility matters.

14.4 Identifying and using judicial decisions

A professional handbook should not present an unverified case name, docket number or quotation as authoritative. Research should begin with official judgments, the Nepal Law Commission and Supreme Court/Nepal Kanoon Patrika records where available. For each decision, record the court, date, bench, case number, precise legal issue, holding, statutory provision and subsequent treatment. The ratio decidendi should be distinguished from case-specific observations.

Foreign decisions may illuminate comparative approaches to separability, enforcement or public policy, but they are not automatically binding in Nepal. A comparative citation should say why the reasoning may be persuasive and identify any difference in Nepalese statutory language.

14.5 Publication and revision protocol

A handbook is not static legislation. Statutory amendments, new decisions and institutional rule revisions may alter its statements. Each website edition should display the research cut-off date, edition number, revision history, author/editor and a link to the primary sources. Deadline-sensitive guidance should have a clear verification note. A substantive change should trigger a new edition, not silent replacement of passages that might already have been relied upon.

Final professional observation

The effectiveness of arbitration depends on the interaction of several distinct choices: a valid agreement, a workable tribunal-appointment mechanism, careful claim presentation, procedural fairness, a reasoned award, and a realistic route to enforcement. No one of these elements can substitute for the others. For Nepalese and international participants, the soundest strategy is to address these questions at contract formation and revisit them when the dispute first becomes apparent.

APPENDIX A — ARBITRATION AGREEMENT DRAFTING CHECKLIST

1. Identify all contracting parties accurately, including branch offices and project entities, and confirm signatory authority.

2. Define the disputes to be arbitrated in language consistent with the parties' intent and the scope permitted by law.

3. State whether arbitration is ad hoc or administered by a specifically named institution; identify the correct edition of applicable rules where appropriate.

4. State the juridical seat expressly; do not rely on the address of an institution or hearing venue.

5. Specify the number of arbitrators and a workable nomination/appointment fallback.

6. State the language of arbitration and consider requirements for translation of project records.

7. Address the substantive governing law and, if desired and legally effective, the law governing the arbitration agreement separately.

8. Examine pre-arbitration stages, time limits, notice rules, emergency or interim relief, joinder and consolidation.

9. Check compatibility of dispute clauses across EPC, subcontract, supply, financing and guarantee arrangements.

10. Confirm that the proposed disputes are arbitrable and that enforcement is realistic in relevant jurisdictions.

APPENDIX B — NOTICE OF ARBITRATION: CONTENT FRAMEWORK

An illustrative notice should contain: (i) identities and contact details of parties; (ii) reference to the contract and arbitration clause; (iii) statement of the legal basis for commencing proceedings; (iv) concise factual chronology; (v) identification of each claim; (vi) provisional relief and quantum; (vii) requested tribunal composition and appointment proposal; (viii) applicable procedural rules and seat; (ix) documentary schedule; and (x) proof of service. This is a framework, not a universal form. The mandatory contents and procedural consequences depend on the operative law and rules.

APPENDIX C — DOCUMENT PRESERVATION AND EVIDENCE INDEX

Organise project records into the following folders: contract and amendments; authorisations; notices and correspondence; meeting minutes; programmes and updates; site diaries; instructions and variations; invoices and certificates; payment records; technical reports; labour/equipment logs; photographs; insurance documents; regulatory records; witness materials; claim computations; procedural filings; and awards/orders. Keep a document register with date, author, source, language, description and relevance. Preserve originals where possible.

APPENDIX D — AWARD AND ENFORCEMENT CHECKLIST

Confirm that the award identifies the parties, tribunal, seat and arbitration agreement; resolves every submitted claim without exceeding jurisdiction; states reasons and operative orders; addresses interest, costs and currencies; contains required dates and signatures; and has been properly delivered. For enforcement, verify the applicable statutory timetable, authenticity of award copies, translations, challenges or stays, status of the debtor, location of assets, competent court, filing formalities and treaty reservations.

APPENDIX E — GLOSSARY

Arbitrability: Whether the subject matter may lawfully be resolved by arbitration.

Arbitration agreement: The parties' consent to refer defined disputes to arbitration.

Award: The tribunal's adjudicative determination of submitted issues.

Competence-competence: The tribunal's authority, subject to law, to rule on its own jurisdiction.

Enforcement: Legal steps to compel performance of an award.

Lex arbitri: The procedural arbitration law associated with the legal seat.

New York Convention: The 1958 treaty concerning recognition and enforcement of qualifying foreign arbitral awards.

Procedural order: A tribunal direction regulating the arbitration process.

Separability: The principle that an arbitration agreement may remain legally distinct from the underlying contract for certain purposes.

Seat: The juridical home of the arbitration, distinct from a physical hearing venue.

Set aside: A court order annulling an award on a ground allowed by the supervisory arbitration law.

Tribunal: The arbitrator or arbitrators appointed to decide the dispute.

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