

Nepal Council of Arbitration (NEPCA)
Rules of Adjudication and Dispute Board

1 Definition

The terms DRC (Dispute Resolution Committee, DAC (Dispute Adjudication Committee), DAB (Dispute Adjudication Board), DRB (Dispute Resolution Board), DB (Dispute Board) and similar dispute related mechanism shall carry the same meaning and may be used interchangeably.

2 Reference to Adjudicator / Dispute Board

- 2.1 If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion, guidance or valuation of the Employer/Engineer, and the Parties have not been able to resolve it amicably, either Party may issue a notice in writing for resolution of the dispute by Adjudication/Dispute Board or refer the dispute to the Adjudicator/ Dispute Board (DB), as provided in the conditions of contract, for its decision, with copies to the other Party and the Engineer. Such notice or reference shall state that it is given under this sub-rule.
- 2.2 If any dispute is referred to the Adjudicator/DB, the Adjudicator/DB shall proceed in accordance with these Rules, if the Parties to the dispute have referred to the NEPCA Rule of Adjudication/Dispute Board in the contract or in a separate agreement later.
- 2.3 If the Contract does not specify whether the dispute is to be resolved by a sole Adjudicator or sole member DB or a three-member DB, or if the amount in dispute is not clear, the appointing authority shall decide on the number of Adjudicator or the DB members.
- 2.4 The Adjudicator/DB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.
- 2.5 Except as otherwise agreed in writing by the Employer and the Contractor, the Adjudicator/DB shall have power to adopt an

inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Engineer, and to proceed in the absence of any party who the Adjudicator/DB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.

- 2.6 The Employer and the Contractor, by agreeing to these rules, empower the Adjudicator/DB, among other things, to:
- (a) establish the procedure to be applied in deciding a dispute,
 - (b) decide upon the DB's own jurisdiction, and as to the scope of any dispute referred to it,
 - (c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Rules,
 - (d) take the initiative in ascertaining the facts and matters required for a decision,
 - (e) make use of its own specialist/expert knowledge,
 - (f) decide upon the payment of financing charges in accordance with the Contract,
 - (g) decide upon any provisional relief such as interim or conservatory measures, and
 - (h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Engineer, relevant to the dispute.

3 Appointment of Adjudicator/Dispute Board Member/(s)

- 3.1 The Adjudicator or member of the Dispute Board shall be appointed as stipulated in the contract agreement between them.
- 3.2 In case the Adjudicator or DB is not named in the Contract or a separate agreement between the Parties, it shall be appointed i) by consensus by the Parties in case of sole adjudicator or sole-member DB, ii) by the Parties, each Party shall appoint one member and the third member who shall act as the Chairman shall be appointed by the two members appointed by the Parties, in case of a DB.
- 3.3 If the parties fail to agree upon the appointment of the Adjudicator or the DB or Chairman of DB, the appointing authority named in the

Contract or in a separate agreement between the Parties shall appoint the DB and or the Chairman of the DB upon request of either Party from the list of its members, who shall have academic qualification and experience relevant to the matters in dispute, within 21 days of such request.

3.4 Expiry of Adjudicator's/DB's Appointment

If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DB in place, whether by reason of the expiry of the DB's appointment or otherwise:

- (a) the requirement of *Obtaining Dispute Board's Decision [Amicable Settlement]* shall not apply, and
- (b) the dispute may be referred directly to arbitration

4 Notification of Adjudicator's/DB's Appointment to the Parties

NEPCA shall notify the Parties of the appointment of Adjudicator/Dispute Board Member along with the CVs of the Adjudicator/Dispute Board Member (s) within seven days of appointment of the Adjudicator/Dispute Board Members by it.

5 Obligations of the Adjudicator/ Dispute Board Members

5.1 The Adjudicator/Dispute Board Member thus appointed shall disclose the relevant matters which are likely to raise questions on conflict of interest with the Parties or the matter in the dispute within seven days of receiving the letter of appointment.

5.2 The Adjudicator/Member shall:

- (a) have no interest financial or otherwise in the Employer, the Contractor or Engineer, nor any financial interest in the Contract except for payment under the Dispute Board Agreement; not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except in such

circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Board Agreement;

- (b) have disclosed in writing to the Employer, the Contractor and the Other Members (if any), in course of appointment as the Adjudicator/Dispute Board Member, to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Engineer, and any previous involvement in the overall project of which the Contract forms part;
- (c) not, for the duration of the Dispute Board Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);
- (d) not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;
- (e) not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Engineer regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Board Agreement;
- (f) ensure his/her availability for all site visits and hearings as are necessary;
- (g) become conversant with the Contract and with the progress of the Works (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;
- (h) treat the details of the Contract and all the DB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any); and

- (i) be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

6 Consideration of the challenge/ Objection by the Party(ies)

Should any Party wish to challenge an Adjudicator/Dispute Board Member on the basis of an alleged lack of independence or otherwise, it may, within seven days of receiving notification of appointment of such Adjudicator/Dispute Board Member submit its challenge/objection to NEPCA in writing along with the relevant facts for review. NEPCA shall review the challenge/ objection of the Party(ies) and evaluate the ground of such challenge / objection. NEPCA shall notify the Parties of its decision on the challenge/ objection of the Party(ies) within 14 days of such receipt of receipt of such challenge/objection and the decision of NEPCA shall be final and binding to the Parties. If the challenge is found reasonable, NEPCA shall replace the Adjudicator/Dispute Board Member in accordance with article 2.

7 Confidentiality

Unless otherwise agreed by the Parties or otherwise required by applicable law, any information obtained by an Adjudicator/Dispute Board during the proceedings of the adjudication/Dispute Board, shall be used by the Adjudicator/Dispute Board only for the purposes of the settlement of dispute and shall be treated as confidential.

8 Preliminary Meeting

- 8.1 The adjudicator/DB shall, as soon as possible after it has been appointed but not later than 30 days after the appointment of sole Adjudicator or Presiding Member of the DB, or as reasonable extension thereof, hold a preliminary meeting with the parties in order to establish the procedures for the adjudication/DB. Subject to mandatory provisions of the contract the procedure shall be that which is agreed by the Parties or, failing such agreement, that as decided by the adjudicator/DB.
- 8.2 In establishing the procedure pursuant to the above provision, the adjudicator/DB shall take into consideration of the following:

- i) time period for submission of claims;
- ii) time period of submission of defense and counterclaim, if any;
- iii) requirements of submission of documents relating to the matter in dispute; and
- iv) any other matter which the Adjudicator/DB feels necessary.

9 Failure to Communicate the Statement of Claim or the Statement of Defense

- 9.1 If, within 15 days from the date of preliminary meeting or the period of time fixed by the adjudicator/Dispute Board, the claimant has failed to communicate his statement of claim without showing sufficient cause for such failure, the adjudicator/DB may issue an order for the termination of the adjudication proceeding.
- 9.2 If, within 15 days from the date of receipt of the claim or the period of time fixed by the adjudicator/DB, the respondent has failed to communicate his statement of defense without showing sufficient cause for such failure, the adjudicator/DB may order that the proceedings would continue.
- 9.3 If one of the parties, duly notified under these guidelines, fails to appear at an oral hearing, if any or abandons the proceedings, the adjudication /DB proceeding shall continue.
- 9.4 If one of the parties or both duly invited to produce his defense and the relevant documents and evidences, fails to do so within the established period of time, without showing sufficient cause for such failure, the adjudicator/DB may make his decision on the basis of the documents and evidences before him.

10 Documents to be Furnished to the Adjudicator/DB.

- 10.1 Both Parties shall promptly make available to the Adjudicator/DB all such additional information, further access to the Site, and appropriate facilities, as the Adjudicator/DB may require for the purposes of making a decision on such dispute.

- 10.2 The Employer and the Contractor shall furnish to the Adjudicator/DB one copy of all documents which the Adjudicator/DB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the Adjudicator/DB and the Employer or the Contractor shall be copied to the other Party. If the DB comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.
- 10.3 The time for submission of the statement of claim and statement of defense may be extended by not more than 15 days unless the parties and the Adjudicator/DB agree otherwise.

11 Site Visits

- 11.1 The Adjudicator/DB, in consultation with the Parties, may visit the site in order to be informed of the performance of the Contract and any disagreements. The parties shall jointly arrange such site visits for the Adjudicator/DB. The timing of and agenda for each Site visit shall be as agreed jointly by the Adjudicator/DB, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DB. The Adjudicator/DB shall prepare a written summary of such site visit including a list of those present.
- 11.2 In case of the appointment of Adjudicator/DB for the entire period of the contract, unless otherwise agreed by the Employer and the Contractor, the Adjudicator/DB shall visit the Site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the Adjudicator/DB, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below. The purpose of Site visits is to enable the Adjudicator/DB to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and, as far as reasonable, to endeavour to prevent potential problems or claims from becoming disputes.

11.3 Site visits shall be attended by the Employer, the Contractor and the Engineer or his authorized representative and shall be co-ordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services.

12 Hearing

Unless the Parties agree otherwise in writing, the adjudicator/DB may hold a hearing at which each party may make oral submission with regard to substantive issues.

13 Place

The Adjudication/DB shall be at NEPCA premises or at venue/place designated by NEPCA or chosen by the Adjudicator/DB in consultation with the Parties.

14 Language

Unless otherwise agreed by the Parties, the Language of Adjudication/DB shall be the Language of the Contract.

15 Equality of Treatment

Copy of any document submitted by one party to the Adjudicator/DB shall be sent, at the time of such submission, to the other Party. All communications passing between one party and the adjudicator/DB shall be copied to the other party at the same time.

16 Making of the Decision

When there are three members of the DB, the DB members shall make every effort to achieve unanimity. If this cannot be achieved, a decision is given by a majority decision. If there is no majority, the decision shall be made by the chairman. Any DB member who disagrees with the decision shall give reasons for such disagreement in a separate written report that shall not form part of the decision but shall be communicated to the Parties. Any failure of an adjudicator/DB to give such reasons shall not prevent the issuance or the effectiveness of the decision.

17 The Decision

17.1 The Adjudicator/DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the Adjudicator/DB shall make and give its decision in writing. If the DB comprises three persons:

- (a) it shall convene in private after a hearing, in order to have discussions and prepare its decision;
- (b) it shall endeavour to reach a unanimous decision: if this proves not possible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and
- (c) if a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision, unless:
 - (i) either the Employer or the Contractor does not agree that they do so, or
 - (ii) the absent Member is the chairman and he/she instructs the other Members not to make a decision.

17.2 The Adjudicator /DB shall give its decision:

- i) within 120 days after receiving reference to the Adjudicator/Dispute Board as stated in Article 2(1) of these Rules, or within 120 days from the date of appointment of the Adjudicator or the Chairman of the DB, whichever is later or within such other period as may be proposed by the Adjudicator/DB and agreed by both Parties, or
- ii) within 30 days from the declaration of the closure of the oral hearing, if any or the last date of submission of any documents by the Claimant or the Respondent related to issues as authorized by the Adjudicator/DB. However, the Parties may agree to extend the time limit taking into consideration of the nature and complexity of the Dispute and other relevant circumstances.
- iii) the DB's decision shall be reasoned and shall state that it is given under the Rules.

- 17.3 The decision shall be provisionally binding on both Parties, who shall promptly give effect to it, subject to the revision in an amicable settlement or an arbitral award, upon submission of a bank guarantee for the equivalent amount as a result of the decision by the Adjudicator/DB, for the period extendible till the decision of the amicable settlement or arbitral award. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.
- 17.4 If either Party is dissatisfied with the DB's decision, then either Party may, within 30 (thirty) days after receiving the decision, give a Notice of Dissatisfaction to the other Party indicating its dissatisfaction and intention to commence arbitration. If the Adjudicator/DB fails to give its decision within the period of 120 days after receiving reference to Adjudicator/DB as stated in Article 2(1) of these Rules, or 30 days after the closure of oral hearings, if any, or any extended time agreed between the Parties and Adjudicator/DB, then either Party may, within 30 days after this period has expired, give a Notice of Dissatisfaction to the other Party.
- 17.5 In either event, this Notice of Dissatisfaction shall state that it is given under Sub-rule 17.4 of these Rules (if these Rules are referred to in the Contract) or under any other provision of the Contract referring to such notice of dissatisfaction, and shall set out the matter in dispute and the reason(s) for dissatisfaction.
- 17.6 Neither Party shall be entitled to commence arbitration of a dispute unless a Notice of Dissatisfaction has been given as stated in Sub-rule 17.5 above.
- 17.7 If the Adjudicator/DB has given its decision as to a matter in dispute to both Parties, and no Notice of Dissatisfaction has been given by either Party within 30 days after it received the Adjudicator's/ DB's decision, then the decision shall become **final and binding** upon both Parties.
- 17.8 In the event that a Party fails to comply with a final and binding Adjudicator/DB decision, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration.

18 Correction of Decision

- 18.1 On its own initiative, the Adjudicator/DB may correct a clerical, computational or typographical error contained in a decision, provided such correction is submitted to the Parties within 30 days of the date of such decision. Either party may apply to the Adjudicator or DB for the correction of an error of the kind referred to above of a decision. Such application must be made to the Adjudicator/DB within 15 days of the receipt of the decision by such Party. Any correction of the Adjudicator or Dispute Board shall be issued within 15 days after receipt of such request. However, the Parties may agree to extend the time limit for the issuance of any correction.
- 18.2 Should the Adjudicator / Dispute Board issue a correction of the decision, all time limits associated with the decision shall recommence to start from the receipt by the Parties of the correction of the determination.

19 Compensation of the Adjudicator/ DB and NEPCA

- 19.1 The Administration Fee of NEPCA and the Fees of Adjudicator/DB shall be based on monthly and hourly fees or fees based on claim amount as per NEPCA Schedule of Adjudication Fees given in Annex 1, Annex 2, Annex 3 and Annex 4 depending upon whether the Adjudicator/DB is appointed on Standing basis or Ad Hoc basis and whether the Contract is ICB or NCB.
- 19.2 In case of appointment of Adjudicator or DB on standing basis, the payment shall be based on monthly invoice of the Adjudicator/DB and NEPCA to the Contractor who shall pay full amount to the Adjudicator/DB and NEPCA. The Employer shall reimburse, to the Contractor, fifty percent of such amount paid by the Contractor.
- 19.3 In case of appointment of Adjudicator or DB on Ad Hoc (case by case) basis, the payment shall be based on full payment to be deposited in NEPCA account, in advance, within 15 days after the preliminary meeting, for the amount of administration and adjudication/DB fees estimated in the preliminary meeting. The final amount of fees shall, however, be established depending upon

the final amount of Claim and Counterclaim. Each Party shall bear fifty percent of the total fees.

19.4 Each party shall be responsible for paying one-half of the costs of arbitration including adjudicator/DB fees, administration fees, travel expenses, expert fees and other associated costs.

20 Exclusion of Liability

Neither the Adjudicator/DB nor NEPCA and its employees shall be liable to any person or any Parties for any act or omission in connection with the Adjudication/DB proceeding.

21 NEPCA Seal

NEPCA seal shall be stamped in the Decision of the Adjudicator/DB administered by NEPCA.

Annex. Schedule of Fees

Annex 1
Fees for NEPCA Administration Of Adjudication/DB
Case by Case (Adhoc) Basis

SN	Claim Amount	Administration Fee for Adjudication	
	NRs., Million	Fee Structure for NCB & ICB Contracts	Upper Limit, NRs.
1	1	minimum 40,000	40,000
2	1-2.5	40,000+ 2.5 % for 15Lacs=77,500	77,500
3	2.5-5	775,00+2.2% for 25lacs= 132,000	132,500
4	5-10	132500+1% for 50 lacs= 182,500	182,500
5	10-20	182,500+0.6%for1 crore= 242,500	242,500
6	20-50	242500+ 0.3% for 3 crore = 332,500	332,500
7	50-100	3325,00+0.15% for 5 crore=407,500	407,500
8	100-200	407,500+0.1% for 10 crore= 5075,00	507,500
9	200-500	507,500+0.05%for 30 crore=657,500	657,500
10	>500	657,500+0.025% over 500 million	0.025%

Note on Fee Distribution:

Annex 2

Adjudicator/DB Fees, NCB Contracts on AdHoc (case by case) Basis

S N	Claim Amount	Sole Adjudicator Fee		3 - Member Dispute Board Fee		
		NRs.,million	Fee Structure for NCB Contracts	Upper Limit, NRs.	Fee Structure for NCB Contracts	Upper Limit, NRs.
1	1		minimum 50,000	50000	minimum 125,000	125,000
2	1-2.5		50,000+ 2.5 % for 15Lacs=87,500	87,500	125,000+ 4 % for 15Lacs=185,000	185,000
3	2.5-5		875,00+2.2% for 25lacs= 142,500	142,500	185,000+3.5% for 25lacs= 272,500	272,500
4	5-10		142500+1.2% for 50 lacs= 202,500	202,500	272,500+2.7% for 50 lacs= 407,,500	407,500
5	10-20		202,500+0.7%for1 crore= 272,500	272,500	407,500+2%for1 crore= 607,500	607,500
6	20-50		272,500+ 0.5% for 3 crore = 422,000	422,500	607500+1.3 % for 3 crore = 997,500	997,500
7	50-100		422,500+0.25% for 5 crore=547,500	547,500	997500+0.4% for 5 crore=1197,500	1,197,500
8	100-200		547,500+0.1% for 10 crore= 647,500	647,500	1197,500+0.2% for 10 crore=1397,500	1,397,500
9	200-500		647,500+0.05%for 30 crore=797,500	797,500	1397,500+0.1%for 30 crore=1697,500	1,697,500
10	>500		797,500+0.027% over 500 million	+0.027%	1697,500+0.05% over 500 million	0.05%

Note on Fee Distribution:

Chairman = 36 %, Adjudicators/DB = 32 % each

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Chairman = 36 %, Adjudicators/DB = 32 % each

Annex 3.

Adjudicator/DB Fees, ICB Contracts on AdHoc (case by case) Basis

SN	Claim Amount	Sole Adjudicator Fee		3 - Member Dispute Board Fee		
		NRs.,million	ICB	Upper Limit, NRs.	ICB	Upper Limit, NRs.
1	1		minimum 200,000	200,000	minimum 300,000	300,000
2	1-2.5		200,000+ 6 % for 15Lacs=290,000	290,000	300,000+ 13 % for 15Lacs=495,000	495,000
3	2.5-5		290,000+3% for 25lacs= 365,000	365,000	495,000+8.5% for 25lacs= 707,500	707,500
4	5-10		365000+2.85% for 50 lacs= 507,500	507,500	707,500+5.5% for 50 lacs= 982,,500	982,500
5	10-20		507,500+2%for1 crore= 707,500	707,500	982,500+4.7%for1 crore=1452,500	1,452,500
6	20-50		707,500+ 0.80% for 3 crore = 947,500	947,500	1452500+1.7 % for 3 crore =1962,500	1,962,500
7	50-100		947,500+0.5% for 5 crore=1197,500	1,197,500	1962500+1% for 5 crore=2462,500	2,462,500
8	100-200		1197,500+0.35% for 10 crore=1547,500	1,547,500	2462,500+0.8% for 10 crore=3262,500	3,262,500
9	200-500		1547,500+0.15%for 30 crore=1997,500	1,997,500	3262,500+0.3%for 30 crore=4162,500	4,162,500
10	>500		1997,500+0.06% over 500 million	0.06%	4162,000+0.15% over 500 million	0.15%

Note on Fee Distribution:

Chairman = 36 %, Adjudicators/DB = 32 % each

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Annex 4
Fees for Adjudication /DB and NEPCA Administration- Standing Basis

Item	Contract Value Million NRs.	For Each Member of DB				NEPCA Admin Fee NRs./Month
		Retention Fee		Working Fee		
		NCB	ICB	NCB	ICB	
		NRs./Month	NRs./Month	NRs./Working Hour	NRs./Working Hour	
1	<100	25,000	50,000	2,500	4,000	20,000
2	100-250	30,000	60,000	2,500	4,000	30,000
3	251-500	35,000	70,000	3,500	7,000	35,000
4	501-750	45,000	90,000	4,500	7,000	40,000
5	751-1,000	60,000	100,000	5,000	8,000	45,000
6	1,001-3,000	75,000	150,000	6,500	8,000	50,000
7	3,001-5,000	90,000	175,000	7,000	9,000	55,000
8	5,000 - 10,000	100,000	200,000	8,000	10,000	60,000
9	>10,000	125,000	250,000	10,000	12,000	65,000

- Notes:**
- 1. The Retention Fee and Working Fee of the Sole Member or Adjudicator shall be One and half (1.5) times of the above Fees.**
 - 2. Working hours shall not exceed 8 hours a day**
 - 3. The Chairman shall get extra 10 % of the above retention fee only.**
 - 4. On contracts involving expatriates. domestic member shall get an equivalent amount paid to the expatriate**

The Adjudicator/DB member and NEPCA administration fees do not include the following:
Site visit, travel and arbitrator's Out of Pocket expenses, Usage cost of facilities and support services for and in connection with any hearing (e.g. hearing rooms and equipment, transcription and interpretation services, NEPCA's Out of Pocket Expenses, VAT etc).