

**ESTABLISHMENT OF THE MOST COMMON GROUND
ON WHICH LOCAL ARBITRAL AWARDS BECOME
UNENFORCEABLE IN SRI LANKA**

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Declaration

I declare that this is my own work and this dissertation does not incorporate without acknowledgement any material previously submitted for a Degree or Diploma in any other University or institute of higher learning and to the best of my knowledge and belief it does not contain any material previously published or written by another person except where the acknowledgement is made in the text.

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The above candidate has carried out research for the Masters Dissertation under my supervision.

.....
Signature of the supervisor

.....
Date

Dedication..

.....to whom, who devoted to uphold the arbitration
practice in Sri Lanka

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Abstract

The parties select more adversarial arbitration process over other alternative dispute resolution methods mainly due to the enforceability of the arbitral award. If the arbitral award becomes unenforceable due to any reason, the selection of arbitral process is useless. In this scenario, in the absence of a comprehensive research in the arena, this research was conducted to investigate the status of enforcement of arbitral awards in Sri Lanka, specially to find out the most common ground on which local arbitral awards become unenforceable in Sri Lanka and to explore the reasons to occur the unenforceability under that most common ground with the expectation that this improved knowledge would assist to minimize the unenforceability of local arbitral awards.

The research was conducted under the quantitative paradigm. A cross-sectional, retrospective and non-experimental study design was adopted. The arbitration cases registered at the High Court during 2009-2012 for the setting aside or for the enforcement of the awards and where the arbitral process conducted under the purview of Arbitration Act 1995 and the courts completed their proceedings were selected for the sample.

The data collection process was a two tiered process. In the first tier a cross sectional survey was carried out at the High Court-Colombo to find out arbitral awards become unenforceable due to setting aside or refusal to enforce by the High Court. If the judgment of the High Court was appealed to the Supreme Court the judgment of the Supreme Court was also considered. Through the first tier of data collection, it was found that non adherence to the enforcement procedure is the most common ground on which local arbitral awards become unenforceable in Sri Lanka.

During the second tier of data collection, semi structured interviews were conducted with parties who failed to enforce the arbitral award due to non adherence to enforcement procedure. Through the interviews it was found that performance defects of the legal counsel or of the officer in charge of the case are the main reasons for the unenforceability of arbitral awards under the most common ground.

This is an avoidable circumstances with due diligence. The award creditors should be more vigilant of their right to enforce the award which obtained through a hard and expensive process. Therefore it is recommended to establish proper monitoring and reporting systems within the organizations involving with arbitral process to minimize arbitral awards becoming unenforceable.

Key Words: arbitration, setting aside, enforcement, unenforceability

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LIST OF ABBREVIATIONS

| Abbreviation | Description |
|---------------------|--|
| ADR | Alternative Dispute Resolution |
| HC | High Court |
| LK | Sri Lanka |
| S. | Section |
| SC | Supreme Court |
| UNCITRAL | United Nations Commission on International Trade Law |
| US | United States |

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