

**MITIGATING DISPUTES IN PUBLIC-PRIVATE
PARTNERSHIPS: A STUDY ON INFRASTRUCTURE
PROJECTS IN SRI LANKA**

Gayathri Nagalingam

(159160G)

Degree of Master of Science in Construction Law and Dispute Resolution

Department of Building Economics

University of Moratuwa

Sri Lanka

May 2020

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Theses/Dissertation submitted in partial fulfillment of the requirements for the
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ABSTRACT

Government of Sri Lanka (GOSL) has history of applying Public Private Partnerships (PPP) in public infrastructure development projects. All the construction projects are prone to disputes, however, the projects procured via PPP is most subjected to disputes due to its nature and characteristics, where involve huge stakeholders with various interests, complex and long-term nature, prone to impacts from outside forces, often beyond the control of the collaboration parties, complex legal arrangements, easily subjected to misinterpretation. Disputes are the key factor, which avert the wealthy accomplishment of the project and subsequently end up in huge unexpected costs, contract revocation, and relationship and reputation devastation. It is difficult to entirely eliminate the disputes in PPP; however, the disputes could be mitigated by proposing the most suitable strategies for PPP projects.

Accordingly, this study aims on how to mitigate disputes in PPP infrastructure projects in Sri Lanka. Qualitative approach was adopted as the most appropriate research approach for this study and interviews were conducted using semi-structured interview guideline among the personnel who involved in Sri Lankan's PPP projects, thereby the total of twelve participants from public party, private party and others were interviewed. Documentary review also adopted as secondary data collected tool. Data were analysed by adopting cause and effect diagram and content analysis using pre-determined themes as per research objectives.

The eventual findings revealed that, the disputes in Sri Lankan PPP infrastructure projects often occurred related to political, legal, environmental, land and market & revenue; which are identified as most influential categories, in which the PPP projects are highly affected, and those cannot be eliminated in the future PPP projects as well. Meanwhile, disputes related to contract, design and specification, and construction are identified as medium influencing categories, in which the PPP projects are considerably affected and those factors can be eliminated by the time, based on the experiences and when the PPP projects get familiar to professional, thereby, those can be eliminated based on the mitigation strategies. In addition, human behavior and economic related dispute are considered as less influential factors, where human behavior related disputes can be mitigated though the education, training, and well communication system. Moreover, economic related disputes can be settled by allocating proper contingencies and adequate contractual provision in the contract and those already practiced by the project practitioners in Sri Lanka.

Finding further revealed that, inadequate knowledge on PPP, lacks in partnering, lack of transparency, poor quality of contract drafting, lack of legal, policy, administration and investment framework, changes in government and policy, poor public awareness, absence of procurement guideline and standard forms for PPP, poor centralized legal system, poor feasibility and risk management strategies, poor coordination, changes in technology are most significant root causes of disputes in PPP in Sri Lanka. Accordingly, public and private parties' close cooperation and effective relationship management, proper coordination, increase the quality of contract drafting, obtain experts' advice, appoint independent partner, proper feasibility study and risk analysis are found as most frequent dispute mitigation strategies. Moreover, develop the strong PPP framework, strong national policies, permanent entities to PPP, transparency procedure, conduct public awareness, develop proper guideline and standard form of contract for PPP, improve PPP unit, improve adequate knowledge on PPP, re-negotiation, strengthen state guarantee, and appoint steering committee are the most significant strategies which can suggest for the future PPP projects in Sri Lanka.

Key words: *Sri Lanka, Public-Private Partnerships, PPPs, Disputes, Causes of disputes, Mitigation strategies*

DEDICATION

I dedicate this research to my beloved family

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LIST OF ABBREVIATIONS

ADB	:	Asian Development Bank
ADR	:	Alternative Dispute Resolution
BOI	:	Board of Investment
BOO	:	Build-Own-Operate
BOT	:	Build-Own-Transfer
BOOT	:	Build-Own-Operate-Transfer
BOOST	:	Build-Own-Operate-Share-Transfer
BROT	:	Build-Rehabilitate-Operate-Transfer
BLO	:	Build-Lease-Own
BTO	:	Build-Transfer-Operate
CICT	:	Colombo International Container Terminal
CEB	:	Ceylon Electricity Board
CEA	:	Central Environmental Authority
CHEC	:	China Harbor Engineering Company
DBFO	:	Design-Build-Finance-Operate
DBFM	:	Design-Build-Finance-Maintain
GOSL	:	Government of Sri Lanka
IFC	:	International Finance Cooperation
MOF	:	Ministry of Finance
NHDA	:	National Housing Development authority
NPC	:	National Procurement Commission
NWS&DB	:	National Water Supply & Drainage Board
PPP	:	Public Private Partnership
RDA	:	Road Development Authority
ROT	:	Rehabilitate-Operate-Transfer
RLT	:	Rehabilitate-Lease or Rent-Transfer
SPV	:	Special Purpose Vehicle
SLPA	:	Sri Lanka Ports Authority
SBD	:	Standard Bidding Document
UDA	:	Urban Development Authority
USD	:	United State Dollar

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