

**EFFECTIVENESS OF ARBITRATION IN
CONSTRUCTION CONTRACTS IN SRI LANKA**

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Degree of Master of Science in Construction Law and Dispute
Resolution

Department of Building Economics

University of Moratuwa
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February 2024

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Dissertation submitted in partial fulfilment of the requirements for the
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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.

Name of the supervisor: Prof. Udayangani Kulathunga

Signature of the supervisor:

Date:

ABSTRACT

Effectiveness of arbitration in construction contracts in Sri Lanka

In construction contracts, arbitration is frequently chosen as the ultimate Alternative Dispute Resolution (ADR) procedure. This choice is based on several factors, including the commonly arising technical nature of disputes, as well as the requirements of the contracting parties for a private, timely and cost-effective procedure, all while ensuring the legal binding nature of the decision. However, in its application in to construction disputes arbitration procedure was recognised to be short on its effective delivery than anticipated. To enhance the performance of the arbitration procedure, it is imperative to identify and address the root causes of drawbacks experienced by the participants.

Existing literature concerning drawbacks of the arbitration procedure experienced in construction disputes were extensively reviewed to enhance the quality of the research outcome. To address the research problem, a quantitative research approach was employed, which involved conducting a questionnaire survey among professionals who had direct involvement with the arbitration procedure. With use of this questionnaire, it became possible to recognise the overall level of user satisfaction, identify the most significant drawbacks experienced by the parties, determine the root causes of these drawbacks and gather recommendations for improvement of the construction arbitration procedure in Sri Lanka.

The findings of the research study revealed that a majority of the respondents have expressed satisfaction with the overall arbitration procedure, even in light of the drawbacks experienced. Notably, the drawbacks in international arbitration included high procedural expenses and legal fees, while domestic arbitration was found to be dissatisfying on procedural delays and administrative difficulties. Based on the survey, nine root causes were identified with significant influence on drawbacks. Recommendation for improvements provided by participants include conduct of pre-hearing meetings, introduction of project specific arbitration clauses, involvement of construction industry experts as arbitrators and legal consultants, and developments of local arbitration institutions.

Key words: ADR in construction, Drawbacks of arbitration, Root causes, Cost, Duration

DEDICATION

TO MY BELOVED WIFE...

ACKNOWLEDGEMENT

It is my utmost duty to acknowledge the numerous individuals and organizations who provided invaluable cooperation, contributing to the success of this dissertation. This research study would not have been possible without the assistance and dedication of those professionals.

First and foremost, I would like to express my heartfelt gratitude to Prof. Udayangani Kulathunga, my dissertation supervisor for her keen interest, continuous encouragement, invaluable guidance and precious support in making this research study a reality.

I extend my deepest appreciation to my employer and all my colleagues for the support and opportunities they generously offered to me during the course of this research. I am also thankful to the construction industry professionals who contributed to this study by actively participating in the data collection process despite their busy work schedules. Without their valuable insights, assistance and commitment, this study would not have been possible.

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LIST OF ABBREVIATIONS

ADR: Alternative Dispute Resolution

BOO: Build-Own-Operate

BOT: Build-Operate-Transfer

GDP: Gross Domestic Product

ICC: International Chamber of Commerce

LKR: Sri Lankan Rupee

MDB: Multilateral Development Banks

PPP: Public-Private Partnership

UK: United Kingdom

UNCITRAL: United Nations Commission on International Trade Law

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Appendix A – Sample Questionnaire