

**SUITABILITY OF EXPERT DETERMINATION AS AN
ADR METHOD FOR SRI LANKAN BUILDING
PROJECTS WITH A FOREIGN PARTY
INVOLVEMENT**

Herath Mudiyanseelage Malsha Malathi Bandara

189531 A

Master of Science in Construction Law and Dispute Resolution

Department of Building Economics

University of Moratuwa

Sri Lanka

June 2024

**SUITABILITY OF EXPERT DETERMINATION AS AN
ADR METHOD FOR SRI LANKAN BUILDING
PROJECTS WITH A FOREIGN PARTY
INVOLVEMENT**

Herath Mudiyanseelage Malsha Malathi Bandara

189531 A

Thesis/ Dissertation submitted in partial fulfilment of the requirements for the degree
of Master of Science in Construction Law and Dispute Resolution

Department of Building Economics

University of Moratuwa

Sri Lanka

June 2024

DECLARATION

“I declare that this is my own work and this thesis/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. Also, I hereby grant to the University of Moratuwa the non-exclusive right to reproduce and distribute my thesis/dissertation, in whole or in part in print, electronic or other medium. I retain the right to use this content in whole or part in future works (such as articles or books).

Signature:

Date: 12/06/2024

The supervisor/s should certify the thesis/dissertation with the following declaration.
The above candidate has carried out research for the Masters/MPhil/PhD thesis/
Dissertation under my supervision.

Name of the supervisor: Dr. Kapila Devapriya

Signature of the supervisor:

Date:

ABSTRACT

SUITABILITY OF EXPERT DETERMINATION AS AN ADR METHOD FOR SRI LANKAN BUILDING PROJECTS WITH A FOREIGN PARTY INVOLVEMENT

This research investigates the suitability of expert determination as an Alternative Dispute Resolution (ADR) method for resolving disputes in Sri Lankan building projects involving foreign parties. The study is motivated by the industry's challenges, including high competition, complex relationships, and evolving legal applications. While Alternative Dispute Resolution (ADR) methods are recognized for their efficiency, the application of expert determination is low in Sri Lanka, particularly in projects governed by FIDIC conditions. The aim is to identify industry problems and barriers to using expert determination and proposing strategies for advanced resolution in disputes.

The methodology follows interpretivism as the research philosophy, employing a deductive reasoning approach. The research strategy involves a survey method with a qualitative approach, using content analysis for data analysis. Ethical considerations are integral to the study, ensuring participant rights, privacy, and data integrity.

Expert interviews reveal a growing recognition of expert determination's potential effectiveness in resolving various disputes. However, challenges related to statutory and contractual gaps, awareness, and enforceability persist. The analysis of the current state indicates a mixed landscape with limited but growing adoption in the Sri Lankan construction industry. Experts recognize the potential of expert determination in projects with foreign party involvement but note challenges in adoption.

The study contributes significantly to understanding dispute resolution in Sri Lanka's construction industry, emphasizing the role of ADR methods, with a specific focus on expert determination. Recommendations include explicit contractual clauses, educational initiatives to address awareness concerns, legislative backing, specialized expert selection, and collaboration with international ADR standards. These recommendations aim to enhance the application and credibility of expert determination in Sri Lankan construction projects involving foreign parties.

Keywords: Expert Determination, Alternative Dispute Resolution (ADR), Construction Industry, Sri Lankan Building Projects, Foreign Party Involvement

DEDICATION

TO

MY LOVING

PARENTS

ACKNOWLEDGMENTS

I would like to express my sincere gratitude to all those who have contributed to the successful completion of my Master of Science at the University of Moratuwa.

First and foremost, I extend my deepest appreciation to my supervisor, Dr. Kapila Devapriya, for their unwavering guidance, invaluable insights, and continuous support throughout the research process. Their expertise and encouragement have been instrumental in shaping the direction and quality of this dissertation.

I am indebted to the faculty members of the Department of Building Economics for their academic mentorship and for creating a stimulating learning environment. Special thanks to all the staff of the department for their constructive feedback and scholarly input.

I extend my heartfelt thanks to my family for their unending support, understanding, and encouragement during the challenging phases of this academic journey. Their belief in my abilities has been a constant source of motivation.

I would like to acknowledge the assistance and cooperation of my classmates and friends who provided valuable discussions, feedback, and camaraderie. Your collective enthusiasm has enhanced the overall learning experience.

I am grateful to the University of Moratuwa for providing the necessary resources and facilities that have facilitated my research endeavours.

Lastly, I express my appreciation to all those who, directly or indirectly, contributed to the successful completion of this dissertation. Your support has been integral to this academic achievement.

Thank you all for being a part of my academic journey.

TABLE OF CONTENTS

Declaration	i
Abstract	ii
Dedication	iii
Acknowledgments	iv
Table of Contents	v
List of Figures	ix
List of Tables.....	x
List of Abbreviations.....	xi
CHAPTER ONE	1
1.0 INTRODUCTION	1
1.1 Background	1
1.2 Problem Statement	2
1.3 Aim & Objectives	2
1.4 Methodology	3
1.5 Scope and Limitation	3
1.6 Dissertation Breakdown	4
1.7 Chapter Summary.....	4
CHAPTER TWO	5
2.0 LITERATURE REVIEW.....	5
2.1 Introduction	5
2.2 Disputes in Construction Industry.....	7
2.3 Resolution of Disputes in Construction Projects	11
2.3.1 Litigation as a traditional mode of dispute resolution.....	11
2.3.2 Alternative dispute resolution (ADR) methods.....	14

2.4	Introduction to Expert Determination as an ADR method for Building Projects where foreign party involved	19
2.5	Drivers and Barriers to Using Expert Determination.....	21
2.5.1	Drivers.....	21
2.5.2	Barriers.....	21
2.6	Suggestion for Better Practice of Expert Determination.....	22
2.7	Expert Determination in Sri Lankan construction projects.....	24
2.8	Summary	26
CHAPTER THREE.....		27
3.0	METHODOLOGY.....	27
3.1	Chapter introduction.....	27
3.2	Research Philosophy	27
3.3	Research approach	28
3.4	Research Strategy and Methodological Choice	29
3.5	Data collection	31
3.6	Data analysis	32
3.7	Research ethics.....	33
3.8	Chapter Summary.....	34
CHAPTER FOUR.....		35
4.0	DATA ANALYSIS AND FINDINGS	35
4.1	Chapter introduction.....	35
4.2	Findings and analysis of Expert interviews	35
4.3	Objectives of Expert Interviews.....	36
4.4	Details of the Experts	37
4.5	Possibility of applying expert determination to dispute resolution.....	38

4.6	The current state of application of expert determination in the construction industry.....	39
4.7	The Possibility of Applying Expert Determination for Building Projects with A Foreign Party Involvement.....	41
4.8	Drivers And Barriers to Using Expert Determination for Building Projects with A Foreign Party Involvement.....	43
4.8.1	Drivers of Using Expert Determination for Building Projects with A Foreign Party Involvement.....	43
4.8.2	Barriers to Using Expert Determination for Building Projects with A Foreign Party Involvement.....	51
4.9	Strategies To Overcome Barriers in Applying Expert Determination for Advanced Resolution In Disputes Of Sri Lankan Building Projects Where A Foreign Party Is Involved.....	56
4.10	Availability Of Special Procedures in Promoting Expert Determination	62
4.11	Suggestions for Promoting Expert Determination as an Advanced Dispute Resolution Method for Building Projects Where Foreign Party Involved in Sri Lanka	64
4.12	Chapter Summary.....	66
CHAPTER FIVE.....		67
5.0	CONCLUSIONS AND RECOMMENDATIONS	67
5.1	Introduction to the Chapter	67
5.2	Conclusion	67
5.3	Contribution to Knowledge.....	71
5.4	Recommendations	71
5.5	Limitations	73
5.6	Further Research Directions.....	73

5.7 Chapter Summary.....	74
REFERENCES.....	75
Appendix.....	87

LIST OF FIGURES

Figure 1.1: Proposed Chapter Breakdown of the Dissertation.....	4
---	---

LIST OF TABLES

Table 2.1: Comparison of ADR methods.....	25
Table 4.1: Profile of the Interviewees	37
Table 4.2: Outcome of interviewees on the possibility of applying expert determination to dispute resolution.....	38
Table 4.3: Interviewees opinion on the current state of application of expert determination in the construction industry.....	40
Table 4.4: Interviewees' Response on the Possibility of Applying Expert Determination for Building Projects with A Foreign Party Involvement	41
Table 4.5: Interviewee's opinion on the drivers of expert determination for building projects with foreign party involvement	43
Table 4.6: Interviewees' overview of barriers	51
Table 4.7: Suggested strategies of the interviewees.....	56
Table 4.8: Availability of Special Procedures in Promoting Expert Determination ..	62
Table 4.9: Suggestions for Promoting Expert Determination as an Advanced Dispute Resolution Method for Building Projects where Foreign Party Involved in Sri Lanka	64

LIST OF ABBREVIATIONS

ADR Alternative Dispute Resolution

GDP Gross Domestic Product