

**CHALLENGES FACED BY CONTRACTORS ON
CONSTRUCTION ARBITRATION PRACTICE IN
SRI LANKA**

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(179167D)

Degree of Master of Science in Construction Law and Dispute
Resolution

Department of Building Economics

University of Moratuwa

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Dissertation Submitted in partial fulfilment of the requirements for the degree of
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DECLARATION

I declare that this is my own work, and this thesis does not incorporate without acknowledgment 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 acknowledgment is made in the text.

Further, I acknowledge the intellectual contribution of my research supervisor Ch. QS Prof. (Mrs.) Anuradha Waidyasekara for the successful completion of this research thesis. I affirm that I will not make any publication from this research without the name of my research supervisor as contributing author unless otherwise, I have obtained written consent from my supervisor.

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ABSTRACT

The construction industry has been accompanied by developments in disputes over the decades. Litigation is the conventional method used in determining such disputes of the construction industry. However, it has been developed various types of dispute resolution mechanisms substitute to litigation such as negotiation, mediation, conciliation, adjudication, and arbitration. Among them, arbitration is recognized as a prominent dispute resolution method by numerous experts. However, still parties to the disputes, especially the contractors, face many problems in arbitration process in Sri Lankan context. Hence, this research was aimed to investigate the challenges faced by the contractors while practising arbitration in Sri Lanka.

In order to achieve the aim of this study, four contracting organizations were selected as the case studies while the interviews with their construction professionals were conducted to collect data. The collected data were further validated and extended by the interviews with construction arbitration experts. Finally, collected data were analysed using manual content analysis technique.

According to the results of the study, arbitration can be recognised as a foremost dispute resolution method in Sri Lanka. However, there are various challenges faced by the contractors in practicing the arbitration as under five main categories as general, project-specific, procedural, contractual and technical. To overcome these challenges, it has suggested to maintain proper documentation, limit the documentation required, appoint a talented arbitrator, make a procedure to check the information providing, build-up trust on arbitration award, introduce timeline for the arbitration, introduce information sharing system with tracking, legal powers to be a final decision, publish the final award, Arbitration Act to be updated, introduce guideline(s) to be followed, encourage early settlement of disputes through hybrid resolutions, mandate arbitrators to have separate Continuous Professional Development points, form a skill development centre, keep stakeholders informed about arbitration process and enhance actions of virtual hearings.

Keywords: *Arbitration; Challenges; Disputes; Strategies.*

DEDICATION

This dissertation is dedicated to my beloved family for their unconditional love that motivates me to set higher targets.....!

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LIST OF ABBREVIATIONS

ADR	-	Alternative Dispute Resolution
CIDA	-	Construction Industry Development Authority
COC	-	Conditions of Contracts
CPD	-	Continuous Professional Development
DRL	-	Dispute Resolution Ladder
ICLP	-	Institute for Development of Commercial Law and Practice
ICSSL	-	International Chamber of Commerce Sri Lanka
RICS	-	Royal Institution of Chartered Surveyors
SLNAC	-	Sri Lanka National Arbitration Centre
UNCITRAL	-	United Nations Commission on International Trade Law

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