

**SUITABILITY OF AD-HOC AND INSTITUTIONAL
ARBITRATION FOR RESOLVING DISPUTES IN SRI
LANKAN CONSTRUCTION INDUSTRY**

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Master of Science in Construction Law and Dispute Resolution

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DECLARATION

Declaration and the Statement of the Supervisor

“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. I retain the right to use this content in whole or part in future works (such as articles or books).

Further, I acknowledge the intellectual contribution of my research supervisor Prof. (Mrs.) Y. G. Sandanayake for the successful completion of this research dissertation. 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 research supervisor”.

Signature:

Date:

[S. S. Edirisinghe]

The above candidate has carried out research for the Masters Dissertation under my supervision. I confirm that the declaration made above by the student is true and correct.

Signature of the supervisor:

Date:

[Prof. (Mrs.) Y. G. Sandanayake]

Suitability of Ad-Hoc and Institutional Arbitration for Resolving Disputes in Sri Lankan Construction Industry

Construction industry being vulnerable for disputes due to its comprehensive and complex nature, the resolution of disputes become a prominent factor. Disputes have the potential to arise in any stage of a construction project. Thus, a significant need for Alternative Dispute Resolution (ADR) methods has arisen where arbitration plays a vital role. There are two basic forms of arbitration namely ad-hoc and institutional, where both forms have advantages as well as shortcomings when practicing them. Even though there are many researches available regarding ad-hoc and institutional arbitration pertaining to global context, less evidences can be found for researches on the suitability of ad-hoc and institutional arbitration for the Sri Lankan construction industry. Therefore, this study aims to investigate the suitability of ad-hoc and institutional arbitration to resolve disputes in Sri Lankan construction industry.

The different types of arbitration, their significance in construction industry, and current practice, applicability and appropriateness of ad-hoc and institutional arbitration have been reviewed through literature survey. Subsequently, qualitative research approach was followed to achieve the aim of this research. Semi-structured interviews were conducted with 10 arbitrators practicing in Sri Lankan construction industry. The collected data were analysed using code-based content analysis with the aid of NVivo 11 software.

Further to the findings, institutional arbitration contains strengths like pre-tested rules and firm procedures with adequate administrative support as well as weaknesses like higher administrative fees. Ad-hoc arbitration comprising with party autonomy and flexible procedures as strengths and controlling time of the proceedings as the major weakness. Based on strengths and weaknesses of both forms, most international and upper-level local contractors are likely to go for institutional arbitration due to its reliable rules and procedures. Finally, strategies were proposed to enhance the effectiveness of ad-hoc and institutional arbitration for the progression of Sri Lankan construction industry. Since ad-hoc arbitration does not contain procedural rules and time limit to conduct arbitration, it has been suggested to amend the Arbitration Act by including a provision for procedural rules and specific time duration to provide the arbitral award. In terms of institutional arbitration, capacity development programs for arbitrators have been suggested as a strategy focusing to their development towards institutional arbitration. It can be concluded that among the two arbitration methods, institutional arbitration is the most suitable method under the prevailing legal system in Sri Lanka, where ad-hoc arbitration is the most feasible method to resolve disputes in Sri Lankan construction industry. Construction industry practitioners can use the findings of this study to effectively solve disputes in Sri Lankan construction industry.

Keywords: *Ad-hoc Arbitration, Alternative Dispute Resolution, Arbitration, Construction Industry, Disputes, Institutional Arbitration.*

DEDICATION

To my beloved late father

who always believed in me

&

My dearest mother, brothers and husband

for their endless love and support...

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ABBREVIATIONS

ADB	- Asian Development Bank
ADR	- Alternative Dispute Resolution
CIDA	- Construction Industry Development Authority
CPD	- Continuing Professional Development
DAB	- Dispute Adjudication Board
DRB	- Dispute Review Board
EOT	- Extension of Time
ICC	- International Chamber of Commerce
ICCSL	- International Chamber of Commerce Sri Lanka
ICLP	- Institute for the development of Commercial Law and Practice
JICA	- Japan International Cooperation Agency
MENA	- Middle East and North Africa
SLNAC	- Sri Lanka National Arbitration Centre
UNCITRAL	- United Nations Commission on International Trade Law
VoIP	- Voice over Internet Protocol