

CRITICAL ANALYSIS OF ALTERNATIVE DISPUTE RESOLUTION METHODS USED IN SRI LANKAN CONSTRUCTION INDUSTRY

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ABSTRACT

Construction disputes are of highly technical in nature and in fact intensive and multifaceted than other commercial disputes. The litigation method is the traditional way of dispute resolution and drawbacks of litigation have opened up the 'Alternative Dispute Resolution' (ADR) methods. The desirable features of ADR methods are fast, inexpensive, flexibility, confidentiality, minimum delay. This research attempts to address the issues and conflicting areas of ADR methods in the Sri Lankan construction industry. Attempts have been made to identify and analyse problematic areas which are highly influencing the ADR methods. The aim of this research is to evaluate ADR methods and suggest improvements to the ADR methods in the Sri Lankan construction industry.

This research is the result of surveys that were conducted to understand the experiences and usages of ADR methods. Two rounds of Delphi method surveys were conducted in order to identify problematic areas of ADR methods. Fifteen problematic areas and twelve potential improvements of ADR methods were identified during the Delphi survey round one. They were prioritised during Delphi method survey round two. Semi-structured interviews were used to get the extended view of the panel on top eight issues which were ranked in Delphi round two.

A pivotal conclusion of this research is that the stakeholders in the construction industry prefer "negotiation" method. Usages and awareness about negotiation were highly appreciated by the construction industry professionals. Professionals had a low level of satisfaction on the current practice of arbitration. Overall expectation of the construction industry by application of ADR methods is to provide best solutions within a minimal time and without damaging the reputation of involved parties. It was revealed that construction industry expects quick remedy than the less cost solution. It further revealed that the stair-step model of dispute resolution strategy is the best. The research further makes recommendations in order to make ADR methods more effective and efficient.

Keywords: ADR Methods; Disputes; Potential Improvements; Problematic Areas.

1. INTRODUCTION

In a Construction Project a number of professionals work together for the successful completion of the project. Different professionals have their own objectives which are to be satisfied through the project. This kind of involvement of professionals and stakeholders may create favourable grounds to create disputes (Walker, 1996). Conflicts would develop into disputes if they are not addressed well in initial stages (Brown and Marriott, 1999). Disputes may occur as a result of the actions or inactions of the Employer, the Contractor or the different consultants (Kheng, 2003). According to Astor and Chinkin (1992) litigation is considered as the standard and conventional dispute resolution method used in all over the world. However it is an expensive and time consuming method. Therefore, industry participants have moved toward Alternative Dispute Resolution (ADR) methods (Treacy, 1995).

Abeyaratne (2006) stated that Sri Lanka has been practicing ADR methods from the ancient era. In current context the methods and proceedings have to be changed to match modern business requirements as well as international usage. Negotiation, conciliation, mediation, adjudication, and arbitration are widely recognised and used ADR methods in Sri Lanka (De Zylva, 2006).

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Though the ADR methods have been evolved and practiced for considerable period of time, still there are gaps and limitations. Negotiation, being a non-binding ADR method is not always workable in bringing consensus at the end. This is because project may get differ from the anticipated manner and they may trigger the case to be handled with more formal methods such as mediation or conciliation (Essex, 1996). Mediation on the other hand only allow mediator to help and guide the parties to reach their own consensus solution. The parties can simply ignore the solution proposed by the mediator if they are not satisfied with it (Chau, 1992). Apart from that mediator has no power in imposing his solution on the matter (Harmon, 2006). Situation is almost same in the case of conciliation. These qualities of conciliation and mediation have made them difficult to distinguish from one another.

Institute for Construction Training and Development (ICTAD) has proposed “*ad-hoc*” Dispute Adjudication Board (DAB) as the method of dispute resolution in the Standard Bidding Document (SBD). In *ad-hoc* DAB, though the board is named at the initial stage they would not be called upon until a dispute has arisen. According to Bunni (2005), though it saves the time, benefits of the concept of dispute board are lost as parties do not invite adjudicator to visit the site and attend meetings. In addition, either full time or *ad-hoc* adjudication may lose their brightness as the decisions can be subject to a review or refer to arbitration or litigation (Chong and Zin, 2012).

As a whole, all the ADR methods are now facing problems (issues) *viz* not having time frame in resolving disputes and not having universal standards. Furthermore with the increased magnitude of the construction projects professionals no longer rely on a single ADR method, instead they prefer multi-tire ADR approaches.

2. LITERATURE SYNTHESIS

2.1. DISPUTES IN CONSTRUCTION INDUSTRY

Disputes in construction industry are inevitable, it is impossible for construction projects to be proceeded without a single dispute to be handled (Merrill, 2007). According to Morgan (2008), dispute can be recognised as any argumentative issues that the contracted parties disagree upon and that need to be settled within or outside the contract. According to Kheng (2003), subject matters of construction disputes are highly technical in nature and involve issues of law which are highly specialised and require as modes of proof documents. A construction industry dispute is thus one which is technically complex, tedious in the appreciation of the facts and the amount spend on the dispute can also be quite extensive. Construction disputes may cost significant measures in terms of money, personnel, time, and opportunity costs, if not resolved timely.

2.2. DISPUTES RESOLUTION REGIME

According to Kerzner (2006), in project management it is required to select a confronting, compromising, smoothing, forcing or avoiding conflict resolution methods in order to deal with potential conflicts. Dispute resolution takes further step by attempt to deal with unsettled conflict through binding approaches (Jannadia, Asaaaf, Bubshait, and Naji, 2000). Litigation and arbitration can be identified as binding approaches whiles negotiation, mediation and conciliation are considered as non-binding approaches. Not all disputes are resolved by court proceedings or in other formal or informal approaches based on ADR methods.

2.3. LITIGATION AS A TRADITIONAL DISPUTES RESOLUTION METHOD

As Ashworth and Hogg (2002) stated that litigation is a procedure used for dispute resolution with the intervention of state appointed judges Even though litigation comprises some significant demerits, it is still considered as the standard and conventional dispute resolution method used in all over the world (Astor and Chinkin, 1992).

In Sri Lankan context the courts of law and their jurisdictions are governed by the Constitution and Judicature Act No. 02 of 1978. For Commercial disputes subjected more than five million rupees, some jurisdictions are vested in Commercial High Courts which established by Provincial High Court Act No.

10 of 1996. All the other contractual matters in the construction industry are vested in District courts. The civil appellate jurisdiction are vested on Civil Appellate High Court, Court of Appeal and Supreme Court of Sri Lanka. Harmon (2003) states that litigation is a win-lose method of dispute resolution and there is a great potential that the dispute will not be resolved to the satisfaction of the parties involved.

2.4. MOVE TOWARDS ADR METHODS

Due to the fact that litigation requires enormous cost the United States construction industry began to seek alternative ways of dealing with construction disputes. According to Ashworth and Hogg (2002), Alternative Dispute Resolution methods are originated in the USA and was adopted in UK in the 1980s.

Alternative Dispute Resolution (ADR) methods are well-organised formal structured processes, which most of the time assisted by an external neutral third party. Construction professionals are becoming increasingly involved in mediation, arbitration expert determination and adjudication because of the fact that ADR methods provide increased scope for the involvement of non-lawyers. According to De Zylva (2006) negotiation, adjudication and arbitration are recognised and widely used ADR methods in the construction industry in Sri Lanka.

3. ADR METHODS AND THEIR PROCEEDINGS

3.1. NEGOTIATION

Negotiation is the most basic technique which is used for dispute resolution or problem solving. In the process of negotiation, the parties involved work out an agreement by direct communication. This is considered as a non-binding technique as the parties are not liable to execute the agreement. The process may be bilateral (between two parties) or it could be multilateral (many parties). Each party may utilise any form of external expertise it considers necessary and this is often described as “supported negotiating”.

3.2. MEDIATION

Mediation is a process, in which the parties are assisted with one or more third parties in their efforts to settle a dispute. These parties are neutral, impartial and not bias to any of the parties involved and shows the paths that the disputed can be settled (Ashworth and Hogg, 2002). The mediation takes place in a private, informal setting with a non-confrontational atmosphere. In Mediation a dispute is settled only if all of the parties agree to the settlement. Mediation focuses on interests, which means it is concerned more with the needs, desires and concerns of the parties than with their specific legal rights. However, the legal rights of the parties can serve as a reference point for the mediation process.

3.3. CONCILIATION

Conciliation is bit similar to mediation except for the fact that it involves a more separated examination of the situation and the official presentation of recommendations. However, in both mediation and conciliation the parties can either accept or reject the recommended solutions. The flexibility of proceeding with the recommendations, bind or not with the proposed terms of settlement, makes conciliation distinguish from adjudication.

3.4. ADJUDICATION

Adjudication may be defined as a process where a neutral third party gives a decision which is binding on the parties in dispute unless or until revised in arbitration or litigation (Gould, 2003). In adjudication when a dispute occurred a person who is having no connection with either side who are involved in dispute, decides the terms of settlement. This decision may be temporary binding. This is a mandatory pre-step before the final process may be commenced. In Sri Lanka adjudication procedure relating the construction matters is governed accordance with the ICTAD -Standard Bidding Documents (SBD) on conditions of contract. Adjudication is intended to be quicker and more cost effective than litigation or arbitration. It is

normally used to ensure payment (although most types of disputes can be adjudicated). The adjudicator must generally decide the dispute in less than 42 days.

3.5. ARBITRATION

Arbitration is a process in which a neutral and independent third party or parties appointed by parties involved hear/s evidence and arguments from the parties involved in a dispute and settles the dispute by making a binding decision. The decision given is called an award. Arbitration is a more formal dispute resolution process than mediation. While mediators have no decision-making powers and assist parties in negotiating a mutually acceptable settlement of the issues in dispute, arbitrators are adjudicators who make decisions based on the legal rights of the parties. In this sense, arbitration is more like litigation, although it is less formal than litigation (Patterson and Seabolt, 2001). Arbitration grew up as a method to resolve disputes where those within the industry would agree privately to appoint a respected member of the industry to resolve their disputes.

4. SIGNIFICANT PROBLEMATIC AREAS IN THE ADR REGIME

4.1. ISSUES IN MEDIATION AND CONCILIATION

- Mediators and Conciliators have no powers of enforcement or of making binding recommendations.

Taylor and Carn (2007) stated that “Unfortunately, since mediation is non-binding, it may fail to produce a resolution and parties may have to look to binding resolutions such as arbitration and litigation”. According to Cheung (1999) that the parties are not satisfied with the solutions proposed by the mediator they can simply ignore them.

- Distinguishing between Conciliation and Mediation is somewhat difficult.

With regard to conciliation and mediation methods, one problem has been the difficulty in distinguishing between two. There lies a thin lining between conciliation and mediation in relation to the application of ADR methods. Conciliation proceeds with the appointment of the neutral third party by the parties to the dispute. This may enable the parties to identify the disputed issues and they may develop options and draw alternative solutions to reach the agreement. Therefore at present there seems to be a certain confusion as to the interpretation and one of ADR methods. According to ideas of National Alternative Dispute Resolution Advisory Council (1997), mediation and conciliation processes are having a number of common elements. A Sir Michael Latham also expresses dissatisfaction with the current conciliation and mediation methods available for resolving disputes in the UK construction industry.

4.2. ISSUES IN ADJUDICATION

Following facts can be identified as issues in adjudication;

- If the decision is not satisfactory, parties have to use litigation and arbitration methods. Accordingly adjudication becomes another waste of time.
- Decision depends on the adjudicator – There is no standard of procedure so the process and the decision could differ according to the adjudicator.
- Time period of the process is limited – Time may be too short for adjudicator to make the correct decision.

4.3. ISSUES IN ARBITRATION PRACTICE

Latham (1994 cited King 1998) has reported that arbitration which has been a favoured method of resolving such disputes, is under attack in the UK because of its’ perceived complexity, slowness, and expense along with the process. However, out of all above ADR methods, arbitration is the commonly practicing ADR method in Sri Lankan construction industry. Sri Lanka Arbitration Act No 11 of 1995 stated that arbitration principles and UNCITRAL Model Law. Researchers have shown some drawbacks in the Sri Lankan arbitration process like delaying the process, high professionals fees of the arbitrators, higher involvement

of lawyers, less concentration on technical issues, unawareness of the procedure, different solutions given by different arbitrators, inability to conduct multi party disputes using arbitration and its limited jurisdictions, same procedure apply for all disputes and less satisfaction with a process. Accordingly, arbitration, along with its' disadvantages, is the most exercised ADR method in Sri Lanka and it has made the stakeholders of the Sri Lankan construction industry dissatisfied and their reluctance to proceed beyond bargaining and enter in to ADR regime. Jurists reveal that arbitration practice in Sri Lanka also declines because of its drawbacks and disadvantages over arbitration and as a result of its' rigid procedure it makes difficult to handle multiparty disputes.

Enforcement of New York Convention is another problem relating to arbitration. Some countries in the Middle East have entered into construction contracts with Sri Lankan contractors are not parties to the New York convention and all have to follow with other regional arrangements such as the *Amman convention* which requests all arbitral proceedings to be conducted in the Arabic language.

According to jurists following can be identified as other issues in arbitration;

- Although usually thought to be speedier when there are multiple arbitrators in the panel, juggling their schedules for hearing dates in long cases can lead to delays.
- Arbitrators are generally unable to order interlocutory measures against a party, making it easier for a party to take steps to avoid enforcement and award.
- It is also a problem that Multi-party arbitration is not practised here in Sri Lanka.

4.4. ISSUES IN GENERAL IN ADR REGIME

According to Brown, Cervenak and Fairman (1997) ADR methods are considered to be having advantages over traditional modes of dispute resolution, they may not effective in serving some goals related to rule of law initiatives. Even they are counterproductive in following aspects,

- Define, refine, establish and promote a legal framework.
- Redress pervasive injustice, discrimination or civil rights problems.
- Resolve disputes between parties who possess greatly different levels of power or authority.
- Resolve cases that require public sanction.
- Resolve disputes involving disputants or interested parties who refuse to participate or in the ADR processes.

Not having universally or internationally accepted proceedings for some areas in ADR methods and it can be identified as a major issue;

- No universal standards for the Convention on services process
- No universal standards for the Convention on taking evidence.

ADR methods are expected to be saving time than litigation however there is no pre-set time framework for settling disputes in ADR practice. That can be identified as a major drawback of some of the ADR methods.

Following aspects can be identified as some of the other issues regarding ADR practice;

- At present there seems to be certain confusion as to interpretation and use of ADR methods.
- Procedural differences between Common Law and Civil Law systems.
Eg. Foreign sovereign Immunity Clauses

5. RESEARCH METHODOLOGY

As the research tends to identify the current practice of ADR methods and potentials of improving the ADR methods in Sri Lankan construction industry, qualitative and quantitative mix-approach was selected. Two Delphi rounds including to questionnaire rounds and semi-structured interviews were conducted for collection of data. The questionnaires were distributed among professionals of various contracting and consulting organisations and dispute resolution practitioners in Sri Lanka. The data gathered in round one were intended to identify the potential issues, problematic and conflicting areas in ADR regime and

potential solutions to ADR methods. In the second round of the questionnaire, the intention was to prioritise the issues and solutions based on the scale of identification by the respondents. In the semi-structured interviews the most significant issues and solutions were further analysed with the help of industry experts.

Statistical data analysis had to be used in this research study to analyse the collected data. In Delphi round one the identification of issues and solutions were done by considering the percentage identifications. Data analysis for the Delhi round two was done using Mean Weighted Average and Relative Importance Index. The interviews were analysed using Content Analysis method. N Vivo – 7 was used as a supporting tool in performing content analysis.

5.1. DESIGN OF SURVEY QUESTIONNAIRE

Delphi round 1 is designed for identification of different ADR methods used in the Sri Lankan construction industry, their problematic areas of ADR methods, critical attributes pertaining to the ADR methods and potential improvements to the ADR regime in Sri Lanka. In the first round of the questionnaire survey, a list of eight ADR methods, eleven important critical attributes of ADR methods, thirteen advantages, ten disadvantages, seventeen issues/problematic areas of ADR methods and fourteen potential solutions to the ADR methods were provided as identified from literature review and with the use of preliminary interviews. The experts and the other professionals of industry were specially asked to identify the problematic areas/issues of ADR methods and potential solutions to ADR methods that has been prevailed in the construction industry.

In the round two questionnaire the respondents were asked to indicate the levels of critical attributes, advantages, disadvantages, issues and solutions on ADR methods. The level of status on ADR methods, critical attributes, advantages, disadvantages and issues on ADR methods are categorised to a scale of 1-5 denoting 1=Very Low, 2=Low, 3=Medium, 4=High, 5=Very High. It is used Lickert scale for Delphi round 2.

6. RESEARCH FINDINGS AND DATA ANALYSIS

6.1. FINDINGS OF THE RESEARCH

Table 1 shows the percentage of awareness on the given ADR methods in the Sri Lankan construction industry.

Table 1: Percentage Awareness on ADR Methods

ADR Method	Percentage Awareness
Negotiation	100.00%
Adjudication	96.88%
Arbitration	90.63%
Mediation	62.50%
Conciliation	34.38
Expert determination	15.63%
Med-Arb	3.12%
Mini trial	3.12%

The issues and problematic areas in ADR methods which were identified through literature survey were presented to the respondents. Almost all the proposed solutions received more than 35% identification as potential solutions of improving ADR regime in Sri Lankan construction industry. Therefore they all were selected to be presented in second round.

Table 2 summarises the response received and results identifications of the issues are given in front of them. The table presents MWR and RII values and the ranking of the issues according to the value that they received. If MWR value is more than 2.50 then it is considered that industry identifies given point as an

issue that have to be addressed. The identified potential solutions, which are ranked 1 to 10, were selected in forming the structure and questions of the semi-structured Interview Guideline.

Table 2: Rank of the Issues

	Potential Issues	RII	MWR	Rank
1	At present, Arbitration is a complex and adversarial process.	93.33	4.67	1
2	No time framework for the settlement of disputes through ADR methods.	77.50	3.88	2
3	Dispute avoidance (partnering) is not used by parties to the contracts.	75.83	3.79	3
4	Mediators and Conciliators have no powers of enforcement of making a binding recommendations	75.00	3.75	4
5	Mediation method has unique characteristics, however, mediation is rarely practiced and not that much popular with compared to the other ADR methods.	72.50	3.63	5
6	Low level of satisfaction of ADR methods, proceedings and their outcomes	70.83	3.54	6
7	Low popularity of ADR methods	64.17	3.21	7
8	Awareness of ADR methods and their related legislation/ standard conditions of contract is low.	64.17	3.21	7
9	Distinguishing between Conciliation and Mediation methods are difficult.	59.17	2.96	8
10	Involvement of experts for ADR methods are low.	59.17	2.96	8
11	Mini-trials are most appropriate for factual disputes. However, mini-trials are not popular.	56.67	2.83	9
12	ADR methods have become expensive	51.67	2.58	10
13	Involvement of legal professionals and retired judges in ADR regime.	48.33	2.42	11
14	Multi - party arbitration is not practice in the construction industry.	45.00	2.25	12
15	ADR methods are not universal applications in resolving any kind of construction disputes	36.67	1.83	13
16	Not having a universally or internationally accepted proceedings for following aspects of ADR;	34.17	1.71	14
17	Enforcement of New York convention - Sri Lankan contractors work with Middle-East countries, where regional arrangements (eg. Amman Convention) are practiced instead of New York convention.	15.83	0.79	15

The potential solutions which were identified in Delphi round 01 are also ranked using RII method. Here also likert scale of 5 levels was used. The purpose of this ranking is to prioritise the actions that have to be taken in order to make ADR regime more effective and efficient.

The table 3 presents MWR and RII values and the ranking of the potential solutions according to the RII value that they received. If MWR value is more than 2.50, then it is considered that industry identifies given point as a potential solution.

Table 3: Potential Solutions Ranked according to the RII Values

Potential Solutions to Overcome the Existing Issues		RII	MWR	Rank
1.	Introduce dispute avoidance (eg. partnering) strategies for parties to the construction contracts.	83.33	4.17	1
2	Introduce dispute management mechanism to construction projects.	79.17	3.96	2
3.	Conducting awareness programmes on ADR methods	74.17	3.71	3
4.	Speed up the proceedings of ADR methods.	74.17	3.71	3
5.	Change the attitude of construction professionals concerning ADR regime.	73.33	3.67	4
6	Introduce time framework to the ADR methods for settlement of disputes.	72.37	3.67	5
7.	Increase technically qualified construction professionals as arbitrators, adjudicators and mediators for settlement of construction disputes.	70.50	3.63	6
8	Legalise the adjudication method through a legislation and give a statutory status to it.	65.00	3.25	7
9.	Introduce mini-trials for resolving factual disputes.	56.67	2.83	8
10	Establishment of an institute for practicing, developing and regulating ADR methods	56.67	2.83	8
11	Introduce recommended plain dispute resolution Clause /Agreement without any ambiguities for construction disputes	51.67	2.58	9
12	Appointment of a Lawyer, Architect and an Engineer to the ADR tribunal/ panel may be very appropriate.	50.83	2.54	10
13	Introduce rules and guidelines for ADR methods used in the construction industry in Sri Lanka	50.00	2.50	11
14	Introduce laws/rules for non-involvement of legal professionals in ADR practice.	43.33	2.17	12

The identified potential solutions, which ranked 1 - 14, were selected in forming the structure and questions of the Semi-structured Interview Guideline.

7. FINDINGS IN SEMI-STRUCTURED INTERVIEWS

Professionals prefer ADR methods over litigation due to their inbuilt advantages which can't be catered in formal litigation proceedings. Negotiation can be considered as the most preferred ADR method. Basically the following aspects have contributed to negotiation for being so;

- Process is not adversarial, it may preserve the business relationship among parties
- Process is economical as there is less involvement in third party and different settings for hearing the case
- Things such as time schedule, venue can be decided by the parties
- Stakeholders think that being the parties involved to the dispute resolution they themselves are the best people to find out a win-win solution

Arbitration can be considered as a well-established ADR method which is governed by Arbitration Act, No.11 of 1995. However it seems that the industry professionals are not satisfied with the arbitral proceedings due to following reasons:

- Long time (delay) and high cost incurred through the process
- Process is being adversarial
- Business relationship between parties are damaged

Industry professionals are having moderate view on adjudication, they highlighted that it would be better if the local standard conditions of contract included the provisions for fulltime Dispute Adjudication Board. In addition they said it will be better if the adjudication given legal assent through a legislation.

Mediation is having number of advantages over other formal ADR methods such as Adjudication and Arbitration. But following issues have make mediation to be not popular in the construction industry;

- Becoming a mediator is very difficult as it require lot of capabilities such as interpersonal skills, communicational skills and vast experience on top of all ability to deal with mental and psychological aspects of parties involved.
- There is no incentive in standard forms to refer dispute to mediation.
- There is no legal assent in construction mediation.

8. CONCLUSIONS

It seems that the ADR regime in Sri Lanka is confined to methods such as Negotiation, Mediation, Adjudication and Arbitration. However, ADR methods in the construction industry of Sri Lanka are not properly developed. The resolution and management of disputes or conflicts in the Sri Lankan construction industry may have three typed of approaches. Those approaches are,

- Preventive
- Amicable
- Judgmental resolution system

Amicable settlement through negotiation is more expedient and much cheaper. As a matter of fact it is true that there are inherent characteristics in arbitration. At present arbitration is costly and require longer duration for the award. Most of the time Arbitration Act has not failed and it has worked fairly well, but the problem is with the environment which it practices. Therefore using simple modification, more benefits can be obtained. Mediation and adjudication methods are suitable for settlement of disputes in the construction industry. It is difficult to establish Mediation as it is, at once. It is better to implement mediatory effect as an incremental change rather than mediation itself. Then gradually step by step mediation may get popular. In addition it will be a good idea to have a little direction in local standard conditions of contract, towards the mediation in dispute resolution clauses. ICTAD and FIDIC standard documents give efficient steps throughout the way from amicable solutions and finally arbitration.

It has become an issue that there is no governing body to regulate ADR methods in Sri Lanka. ADR practice can be considered as a secondary profession which plays a supportive role in the construction industry. There are some institutes which have taken initiative to bring ADR practice in to a professional level. . But it would be better if the institute is formed and established through a legislation which is devoted to construction related ADR methods.

Further this research presents evidence supporting the view of the stair-step model of ADR methods which was identified in the literature review. It has confirmed the practitioners' acceptance of the stair-step model of dispute resolution and it was understood that negotiation was best suitable method and arbitration as the least suitable ADR method. However, even though negotiation achieves the highest index values in the survey results identified the unavailability of enforceability and binding of the outcome in negotiation as well as in mediation.

9. RECOMMENDATIONS

In the light of the interviews and the results of the questionnaire survey which were analysed and the followings are recommended to enhance the standard of ADR regime in the Sri Lankan construction industry.

- Require immediate review of existing standard conditions of contracts practiced in the construction industry. With out implementing international standard conditions alone, it is required to assess the suitability of those conditions to the Sri Lankan construction industry.

- Implement proper mediation centres for small and medium level construction stakeholders.
- Maintain qualified panel of adjudicators and arbitrators by a regulating body of the construction industry.
- Adjudication requires statutory recognition. Hence, there is a requirement of new statute which control and recognise adjudication as an ADR method in Sri Lanka.
- Most of the time ADR proceedings are conducted on an *Ad hoc* basis. Separate individual professional organisations provide their professional services in dispute resolution. Therefore it is necessary to implement new institution to conduct construction related ADR methods.
- Most of the construction professionals who are involved in dispute resolution criticise the lawyers' involvement for the settlement of disputes. It is required to select suitable professionals for ADR methods who have both legal and construction related competence. Construction industry professionals need to handle more applications of laws than construction problems usually call for solution by a combined and balanced use of technical knowledge, management skills and legal principles.
- There are many publications related to construction law and ADR methods in developed countries. However in the Sri Lankan context there are limited publications related to the ADR regime. Therefore, relevant institutes should conduct research oriented conferences in ADR methods and encourage professionals and their institutes to publish research articles and other publications related to ADR methods.
- Educational institutes have to experiment and take initiative to introduce ADR methods and make the industry aware of the advantages of such methods. Then there will be an incentive to industry people to adopt them into their practice. In addition they can organise CPD events which may allow experts to share their knowledge with others.
- Introduce speedy arbitration in order to minimise the time spent on the process.
- Establishment of Dispute Review Board (DRB) from concerned professional institutions and government organisations.
- In the construction industry in Sri Lanka, there does not appear to be much concern given as to how the fundamentals of engineering, architecture and law must be used in the process of managing disputes. It is vital to adopt those principals.
- Introduce prevention methods which are essential for the avoidance of disputes in the construction industry.
- Sri Lankan construction industry shall give attention to avoid or reduce the incidence of disputes. There are few recommendations to avoid disputes as;
 1. Ensure that client, consultant and contractor have adequate and correct appreciation of their respective professional and ethical obligations.
 2. To be propose compressive and clear contract agreements.
 3. To be ready all parties for amicable resolutions.

Public and privately owned infrastructure development projects are increasing throughout the country. ADR methods need to be developed in the processing of areas of construction law, project management and contract administration. Partnering is a process which aims to create a good preventive approach. It can lay the foundation for better and more productive working relationships on the project, by establishing of trust and frankness in communications the parties get to know about common goals and foster a problem solving attitude. At the end of the day ADR methods have to cater the expectation of the industry by providing impartial and decisive solutions in minimum time span and cost without damaging reputation of the parties.

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