

# Sri Lanka as an arbitration hub: Challenges and opportunities

By Divya Thotawatte

DESPITE shortcomings and challenges, the efficient use of Sri Lanka's rich legal context, legislative reforms and educated professionals would place the country in an advantageous position in becoming an international arbitration hub, experts said recently.

The seminar titled 'Arbitration in Sri Lanka: Becoming an Arbitration Hub' was hosted by SAARC Arbitration Council (SARCO) in collaboration with Federation of Chambers of Commerce & Industry of Sri Lanka (FCCI) and Sri Lanka National Arbitration Centre (SLNAC). Speaking at the event, SARCO Director General Helal Chowdhury said that due to Sri Lanka's great legal history, strategic location, and non-conflicting position, it was a promising destination for international arbitration.

"In today's interconnected world, business investors and stakeholders seek certainty and experience in resolving disputes. Arbitration offers a dynamic avenue in achieving these objectives. It will also boost investments and contribute to the economic growth of Sri Lanka and broadly, South Asia as well," he explained, highlighting the significance of becoming an arbitration hub.

Often arbitration was also preferred over a judicial process, creating many opportunities for the country. SLNAC Governor, Ceylon National Chamber of Industries Member and Attorney-at-law Gamini Gunasekera explained that some of the key differences between a judicial process and an arbitration process was that the proceedings of arbitration were of a private nature which organisations preferred. Moreover, arbitration was generally more informed where parties could decide how the arbitration process should be carried out before beginning the process. It is also faster than the judicial process, he added.

Federation of Chambers of Commerce and Industry of Sri Lanka (FCCI) President Keerthi Gunawardana noted how arbitration has become stable in its position as an efficient dispute resolution mechanism in the constantly evolving world due to the power of dialogue and mutual respect that underpins the arbitration process. Arbitration could therefore attract opportunities but a suitable mechanism should be developed for it, he observed.

## Sri Lanka's positives

The experts at the seminar pointed out that Sri Lanka was in possession of many strengths that could be of advantage in its development.

Supreme Court of Sri Lanka former Supreme Court Judge and Republic of Fiji Judge Justice K. T. Chitrasiri outlined Sri Lanka's arbitration landscape. He said that the Arbitration Act No. 11 of Sri Lanka was passed in 1995, and currently in the country, three main arbitration centres can be found.

"Firstly, there is the SLNAC, a private non-profit limited-guarantee company incorporated in 1974 and recently they launched expedited rules.

"Then, the Institute for the Development of Commercial Law and Practice (ICLP) Arbitration Centre was established in 1996 and it was the



FCCI Secretary General Tilan M. Wijesooriya moderating the panel discussion. Others (from left): ICC International Court of Arbitration Sri Lankan Representative Dinal Philipps, Ceylon National Chamber of Industries Member and Attorney-at-law Gamini Gunasekera, Supreme Court of Sri Lanka former Supreme Court Judge and Republic of Fiji Judge Justice K. T. Chitrasiri and Colombo School of Construction Technology Dean and Department of Building Economics Emeritus Professor Chitra Weddikara also present



FCCI President Keerthi Gunawardana



SARCO Director General Md. Helal Chowdhury



Sri Lanka National Arbitration Chief Executive Seedantha Kulatilake



first centre in Sri Lanka which provided for institutional arbitration with its 1996 arbitration rules.

"Finally, there is the recently established International Alternative Dispute Resolution Centre (IADRC) which is run by the Ceylon Chamber of Commerce and ICLP Arbitration Centre. It is a private non-profit limited-guarantee company incorporated in 2018. It is the only Centre in the country which provides services for both mediation and arbitration."

Colombo School of Construction Technology Dean and Department of Building Economics Emeritus Professor Chitra Weddikara also stressed on the positives of Sri Lanka that is necessary in making Sri Lanka an international hub of arbitration. She said, "We have reasonably good legislative reforms which position Sri Lanka well to be an international arbitration hub. We have institutional support. We also have good training programs for arbitrators with an educated and skilled team of professionals. Maybe we have gaps and challenges to overcome, but we are in the right position to be a hub."

Sri Lanka's rich legal history that produces skilled and knowledgeable professionals could make Sri Lanka a destination where foreign parties would feel comfortable to come to resolve their commercial disputes through arbitration, said Sri Lanka National Arbitration Centre (SLNAC) Chief Executive Seedantha Kulatilake.

"The Supreme Court of Sri Lanka was established in 1801 and formal legal education started in the form of the establishment of the SL Law College in 1874. Therefore, Sri Lanka has a great legal system that is more than 200 years old and our formal legal education has been happening uninterrupted for 149 years. Such a well-established legal system will no doubt spawn many well-educated, knowledgeable and competent legal professionals."

He said that the competence and experience of the legal professionals was a major attraction which could be exploited making Sri Lanka an arbitration hub. Furthermore, services rendered by the arbitration centres in the country were up to

standard where they possess the key attributes of arbitration, expediency, cost-effectiveness and confidentiality.

"SLNAC makes every effort to satisfy these features in arbitration and to assist the parties who have decided on arbitration to resolve their commercial disputes. In terms of expediency, SLNAC tries to achieve it by quick submission of proceedings and quick dispatch of documents for the parties and arbitrators to obtain closer dates. With regard to cost-effectiveness, the services offered by SLNAC are a mere fraction of what the parties would have to incur if they choose other well-known arbitration centres in South East Asia or Europe. Lastly, I can assure that SLNAC is in a position in which we could guarantee total confidentiality."

However, there was also a responsibility with the parties to cooperate and contribute to the arbitration process to conclude matters within the shortest possible time, Kulatilake added. Gunasekera added that the enforcement of awards was also important

and it was easily done through the Arbitration Act of Sri Lanka.

"If we are going to be an international hub here, we should have the provision for enforcement. In Sri Lanka, we are under the signatory of the New York convention and under it, we do have that provision which is another positive for Sri Lanka."

## Overcoming challenges

In spite of the efforts by the local arbitration centres to adhere to the standards of arbitration, shortcomings still exist. Justice Chitrasiri said, "Poorly written dispute resolution clauses may result in delays commencing the arbitration process and the parties may have to resort to courts' assistance for interpretation of that particular clause. Sometimes there is a lack of efficiency and effective case management in arbitration."

Chitrasiri noted that the lack of skilled staff or trade staff in local centres for administration and effective case management, lack of suitable hearing venues, arbitration conducted in the evening, litigation practices incorporated into arbitration, etc. are additional shortcomings found within the arbitration system in Sri Lanka.

Furthermore, the preference for ad hoc arbitration in Sri Lanka is also detrimental to all parties. Even though ad hoc arbitration provides flexibility in shaping the arbitration process, it depends on the corporation between parties and their lawyers for its full effectiveness. The proceedings could therefore be easily disrupted or delayed, he explained.

ICC International Court of Arbitration Sri Lankan Representative Dinal Philipps also agreed that a commitment for arbitration by legal professionals was necessary while parties must choose doing arbitration with an institution.

"I think that our judges and lawyers have not yet bought into this system. Arbitration as a hobby must stop because it does not work. The initial problem starts at the drafting stage. If you go to institutionalised arbitration, then its strict rules must be followed which really doesn't happen in ad hoc arbitration."

"Arbitration is preferred as opposed to courts because commercially, time is money. Arbitration is an easier process for parties as it acts as a one-stop shop that allows them to solve their problems with ease. "In terms of arbitration clauses, you must insist on an institution and the seat of arbitration should be Colombo. If you have it in a country like Singapore or the UK, the costs are huge whereas in Sri Lanka, the process is easier and the costs are perhaps the lowest in the world, including the hotel costs. It could be done efficiently and fast," he advised parties seeking arbitration in the

## Moving forward

SLNAC Chairman and Arbitrator Hiran de Alwis highlighted that implementation was a necessary goal of moving forward. There is a lack of implementation which causes inefficiency in the legal and political spheres of the country.

"If we are going international, it is essential that all stakeholders work together for the benefit of all professionals and the country as well. Ten years ago, we created a 10-year road map for making Sri Lanka an arbitration hub. Ten years later, we are still climbing that mountain. The problems with implementation are clear. It is an effective implementation of the law that is being debated," de Alwis said.

He added that the overall efficiency of the arbitration process should still be improved and that backing by the state would be greatly beneficial for the development of Sri Lanka as an arbitration hub internationally.

Marketing was also fundamental for this goal, said Nithya Partners Senior Partner Chanaka De Silva. It is important to consider the product that we are marketing, its structure and where the marketing should be done, he explained, advising that Sri Lanka should look into the contexts of different regions and markets its arbitration to areas with more disputes.

De Silva also emphasised the importance of taking advantage of the positive features of Sri Lanka.

"We had arbitration before the 1995 Arbitration Act, it was nothing new for us. We had provisions in our system before we fitted into the New York convention in the 1995 Act. Now we have substantial experience in dealing with arbitration. We have to think if we have made full use of the Act that we have. Often, we discuss its shortcomings, but have we taken advantage of what we already have?"

"We need to understand how the courts in the country need to interact with the arbitration system. Most of the courts have understood the role of arbitration and are playing a supportive role, but the support must go further. Courts must be supportive and efficient with dealing with arbitration like enforcement of awards."

The panellists also pointed out a need for developed infrastructure that was essential for Sri Lanka's journey to becoming an arbitration hub. Attorney at Law Mursheed Maharoof explained that often foreign parties could be reluctant to visit Sri Lanka for its arbitration services due to its lack of proper infrastructure.

De Silva added, "We need to have proper infrastructure. We need to have proper arbitration centres, proper setups that support the arbitration centres and infrastructure required to administer the arbitration must be improved."

Another opportunity to consider in moving forward is sports arbitration. Ministry of Sports former Legal Consultant Panduka Keerthinanda highlighting its significance said, "The turnover of sports tourism worldwide is \$ 7.6 billion and in Asia, we are going over \$ 500 million in turnover. Having a sports arbitration centre in Sri Lanka would also bring many opportunities."

Piv by Lasantha Kumara