



(Founded in 1980,
Incorporated by Act No.
42 of 2003)
June 2024

A Member Association of
the International Federation
of Consulting Engineers
Issue 39

KEEP IN TOUCH WITH THE ASSOCIATION OF CONSULTING ENGINEERS, SRI LANKA

A Word from the Editor

Consulting Engineers Need to be Well-Versed in Government Financial Regulations

In recent years, the construction industry in Sri Lanka has experienced a significant rise in disputes, particularly in relation to adjudication and arbitration. This trend has been aggravated by the ongoing economic crisis, which has placed considerable financial pressure on all parties involved in construction projects. As organizations navigate budgetary constraints and strive to recover losses, the tendency to pursue even the most minor claims has grown that may have been previously overlooked during more stable times.

A large proportion of these disputes arises from payment issues with contractors working on state sector projects, mostly due to procedural inconsistencies. Often, the processes implemented by the employers or their representatives diverge from those outlined in the contract agreements. This problem is compounded by the fact that some government departments frequently adopt their own procedures, despite being expected to operate under a unified framework dictated by financial regulations (FR) and circulars.

This inconsistency creates an environment ripe for disputes. When these matters escalate to adjudication, rulings will be often in favor of the contractors. While these decisions may be justified from a contractual perspective, they can result in substantial financial losses for the government, amounting to millions of rupees.

To avoid such disputes, it is crucial that consulting engineers or firms acting as 'the Engineer' or 'the Consultant' on these projects take on a more proactive and comprehensive role. Their responsibilities should extend beyond traditional practices and include a thorough understanding of government financial regulations and the relevant circulars issued by authorities, such as the treasury and the central bank.

Consultants must continuously invest in education and training to remain proficient in these areas. By doing so, they can mitigate the risk of disputes stemming from administrative discrepancies. This enhanced responsibility not only benefits contractors but also safeguards

government funds, ensuring accountability and upholding the integrity of the construction process.

Editor :

Eng. Srimal Munasinghe

E-mail: acesl.editor@gmail.com

Whatsapp: +94 77 7566160

Council for the Year 2023/2024

Sub Committee Activities

- (1) Continuous Professional Development (CPD) Committee** had organized and successfully concluded its third, fourth and fifth consulting engineers' forums of the current session on the topics "**The Role of the Engineer in Construction Contracts**" (by Brig. Dr. Ananda Ranasinghe), "**Dispute Resolution in Construction Contracts - The Adjudication Process**" (by Dr. S.B. Wijekoon) and "**Claims Management and Evaluation: A Comprehensive Approach**" (by Eng. Wijitha Fernando) which were held on dates 29th May, 22nd July and 29th August of 2024 and gathered by large number of participants at the 'Wimalasurendra Auditorium' of Institution of Engineers, Sri Lanka.

Articles created on these lectures can be read in inside pages.
- (2) Admission Committee:** Applications to obtaining ACESL membership are being received continuously and Admission committee is efficiently in the process of evaluation of application.
- (3) By-Law Revision Committee:** The draft revision to some ACESL rules proposed by By-Law committee is expected to forward to the approval process at ACESL AGM 2024.

ACESL Representation to Outside Organizations/Association etc.

ACESL council has emphasized the continuation of the representations of ACESL in following outside organizations by active involvement in their activities for the betterment of the engineering industry.

- CIDA Board : ACESL representation in CIDA Board is continued.
- CIDA Advisory Committee : ACESL representation in CIDA Advisory committee is continued.
- CIDA Credential Committee : Development of criterion for 'Registration of Local consultancy Firms' is in progress
- CIDA Publication Committee : ACESL representation in CIDA Publication committee is continued.
- CCI Committee : ACESL representation in CCI committee is continued.

and cutting-edge computer programs. Precision is paramount, with steel calculations honed to the nearest decimal point.

In project management, you prioritize efficiency, striving to minimize the need for variations and extensions, which can disrupt timelines and budgets. Yet, beyond the engineering realm, a profound understanding of contracts is equally crucial. Misinterpretation can lead to costly repercussions, potentially amounting to millions of dollars. Hence, for practicing engineers, mastering contract interpretation is an indispensable skill."

Events Organized by ACESL

Engineers Forums organized by ACESL

Forum No. 3 of the year 2024

Topic: The Role of the Engineer in Construction Contracts

Delivered by Brig. Dr. Ananda Ranasinghe

BSc, MTech, MEng, LLM (Colombo), LLM (Walse), PhD, CEng, FStructE (UK), FICE (UK), FIE (SL), FSSE, FCI Arb, Attorney at Law

Arbitrator and Adjudicator

Date : 29 May 2024

Venue : Wimalasurendra Auditorium of IESL

Lecture was opened for all interested individuals



Brig. Dr. Ananda Ranasinghe delivering the lecture

The Role of the Engineer in Construction Contracts

In construction contracts, the engineer plays a pivotal role, serving both as the employer's representative and as an impartial expert with quasi-legal authority. The Construction Industry Development Authority (CIDA) in Sri Lanka, through its Condition of Contract, outlines the engineer's powers and obligations, which include issuing decisions, certificates, and orders while adhering to contract stipulations.

General Responsibilities

An engineer's role is broad, yet they are not a signatory to the contract. They are tasked with managing various aspects of the project, such as certifying additional costs, issuing instructions, and providing necessary drawings. Their responsibilities include reviewing the contractor's program and making decisions related to work suspension, time extensions, and project completion. Additionally, the engineer may handle variation orders and the valuation of completed work, issuing certificates like the Certificate of Completion and the Defects Notification Certificate.

Authority and Delegation under FIDIC Red Book

The FIDIC Red Book's Clause 3 defines the engineer's authority. The employer appoints the engineer, who is authorized to act on their behalf, provided they have the required qualifications and experience. While the engineer has substantial authority, including issuing instructions, they cannot alter contract terms or absolve the parties from



Welcome speech by Eng. KLS Sahabandu, the President, ACESL

Abstract on the Lecture in lecturer's own words

"As consulting engineers, you shoulder numerous responsibilities, with structural design, contract administration, and project management ranking among our primary functions. As a structural engineer, your aim is to optimize structures by leveraging diverse materials

their contractual obligations. They may delegate certain duties to representatives but retain oversight over critical decisions, such as variations or disputes.

Neutrality and Dispute Resolution

A key responsibility is maintaining neutrality, especially when determining disputes or claims. The engineer engages with both parties to reach agreements and, if necessary, makes fair determinations. These decisions are binding unless corrected or challenged within a specified period.

Case Law and Precedents

Several legal cases illustrate the engineer's role in construction contracts:

1. **Canterbury Pipe Lines Ltd v Christchurch Drainage Board:** This case highlights the engineer's responsibility to act diligently. The engineer misread the contract, failed to certify progress payments, and was held liable for the resulting project termination.
2. **Hedley Byrne & Co Ltd v Heller & Partners Ltd:** This case established that professionals, including engineers, could be held liable for negligent advice causing economic loss if a fiduciary relationship existed between the parties.
3. **Muirhead v Industrial Tank Specialist Ltd:** The court held an engineer liable for economic loss due to negligent design, emphasizing the importance of avoiding design flaws that could result in physical damage.
4. **Sutcliffe v Thackrah:** This case addressed the liability of an architect, a role analogous to an engineer in certifying work. The architect was successfully sued for certifying more money than was due, demonstrating that engineers, too, must exercise due care when certifying work.

In conclusion, the engineer's role in construction contracts extends beyond technical oversight to include legal, managerial, and administrative duties. Their decisions influence project outcomes and liabilities, making their role indispensable in ensuring contractual compliance and project success.



(Q&A session)

Forum No. 4 of the year 2024

Topic: Dispute Resolution in Construction Contracts - The Adjudication Process

Delivered by Dr. S.B. Wijekoon

BSc.(Eng), CEng., HFIE(SL), MICE(London), FIPM(SL), M.Eng.(Construction Management), MBA(Technology Management), Diploma In Commercial Arbitration, D.Tech. (Construction Management)

Arbitrator and Adjudicator

Date : 22 July 2024

Venue : Wimalasurendra Auditorium of IESL

Lecture was opened for all interested individuals

Abstract on the Lecture

“In Contracts the Engineer who is appointed by the Employer was expected in the first instance to resolve any disputes that may arise in an impartial manner. However, the Engineer as an employee of the Employer is often confronted with the situation as that he cannot always give an impartial decision as there is a conflict of interest. Having studied this situation, the industry has identified the need to allocate certain functions of the Engineer to another technical professional in order he shall undertake to resolve disputes in an impartial manner, who is termed as ‘Adjudicator’ which was subsequently changed as Dispute Adjudication Board (DAB) or Dispute Board (DB).”



Dr. S.B Wijekoon delivering the lecture

Eng. (Dr.) S.B. Wijekoon's lecture opened with a discussion on the necessity of the adjudication process in construction contracts, despite the presence of the 'Engineer'- an individual or a firm employed by the Employer - who is typically tasked with resolving disputes that arise during the contract's execution. However, in certain situations, the Engineer's involvement may not be sufficient, thus leading to the need for an adjudication process. If adjudication fails to resolve the issue, the next step is arbitration, a formal procedure closely aligned with court practices.

The individual or panel involved in adjudication, referred to as a Dispute Adjudication Board (DAB) or simply a Dispute Board (DB), could consist of a single adjudicator or a panel of three. These members are often engineers or individuals possessing strong technical and contractual expertise. Their services are compensated by both parties in the dispute, on a 50-50 basis.

In countries like the UK, adjudication has legal standing, meaning its decisions are binding and enforceable by law. In contrast, in Sri Lanka, adjudication remains a contractual obligation, lacking formal legal enforceability unless both parties agree.

Dr. Wijekoon continued the lecture by elaborating on several key points, including:

- Disputes not Suitable for Adjudication: Some disputes may be too complex or unsuitable for the adjudication process.
- Remedy for Unsuitable Disputes: In cases where unsuitable disputes are referred to adjudication, alternative remedies must be considered.
- Adjudication Process: An outline of the procedural steps involved in adjudication, from initiation to decision making.
- Selection and Appointment of the Adjudicator (DAB/DB): The criteria for selecting an adjudicator and the importance of appointing someone with appropriate expertise.
- Notice of Adjudication: Formal notification sent to the parties involved, signifying the commencement of the adjudication process.
- Referral of the Dispute to Adjudication: How disputes are submitted for review by the adjudicator.
- Conduct of the Adjudication: How the adjudicator manages the dispute and the responsibilities of the involved parties.
- Expert Advice: The adjudicator may seek technical or legal advice from experts to inform their decision.
- The Adjudicator's Decision: The adjudicator's decision is critical and must be well-reasoned.
- Time for Decision: The timeframe within which the adjudicator is expected to reach and deliver their decision.
- Reaching the Decision: The methodical process followed by the adjudicator to arrive at a fair and balanced resolution.
- Purpose of the Decision: The aim is to provide an immediate and provisional resolution to the dispute.
- Immediate Compliance: Both parties are expected to comply immediately with the adjudicator's decision, even though it is provisional and may later be reviewed through arbitration or litigation.
- Jurisdiction: The scope of the adjudicator's authority, including typical jurisdictional issues that may arise.
- Jurisdiction in Adjudication Clauses: Specific jurisdictional powers are often outlined within adjudication clauses in the contract.

In conclusion, Dr. Wijekoon's lecture provided an insightful analysis of adjudication as a critical mechanism for resolving disputes in construction contracts. The process is designed to be swift and less formal than arbitration, making it a preferred initial step for conflict

resolution. However, its limitations, particularly in jurisdictions like Sri Lanka where it lacks legal standing, were also highlighted.

Forum No. 5 of the year 2024

Topic: Claims Management and Evaluation: A Comprehensive Approach

Delivered by Eng. Wijitha Fernando

BSc Eng., M.Sc (Building Sc), Diploma in Arbitration, MA StrEng, MSLGS, Member Society of Construction Law, UK; Assoc. Member Chartered Institute of Arbitrators
Arbitrator and Adjudicator

Date : 29 August 2024

Venue : Wimalasurendra Auditorium of IESL

Lecture was opened for all interested individuals

Abstract on the Lecture in lecturer's own words

“When implementing Construction Projects, the Owner of the project needs to engage a Consultant to act as the Engineer to the Contract and a Contractor to Construct the Works.

As Consulting Engineers, you may be required to act as an Engineer's Assistants, who are responsible for Management and Control the Cost, Time and Quality of Construction Projects, requiring you to strive to keep the Cost and Time within the Contract Price and the Time for Completion, respectively.

However, it is inevitable to avoid certain events which may lead to delays and additional costs which will make the Contractor entitle for increase in Contract Price and extension of the Time for Completion, if the Contractor is not responsible for such delays and additional costs.

A Claim is a demand or request for such increase in Contract Price and/or extension of the Time for Completion, under the provisions in the Contract or Law governing the Contract.

Therefore, as Consulting Engineers, who are required to act as the Engineer's Assistants, it is essential to equip with skills required to manage and evaluate claims successfully.”



Eng. Wijitha Fernando delivering the lecture

Definition and Types of Claims

A claim is a legitimate demand or request for additional money and/or time, which should be based on an entitlement under the contract or law governing the contract. There are various types of claims that can arise, such as property claims, liability claims, life insurance claims, and health insurance claims.

Management of Claims

Effective claims management involves several key strategies:

- **Customer-centric approaches:** Focusing on the needs and expectations of policyholders to improve service quality and reduce claims.
- **Operations coordination:** Ensuring seamless collaboration between various departments within the insurance company.
- **Provider contracting and service network management:** Establishing partnerships with healthcare providers and maintaining a network of approved service providers.
- **Leveraging technology:** Utilizing electronic data, telemedicine, and other technological solutions to streamline claims processing and improve efficiency.

Evaluation of Claims

Evaluating claims is a crucial step in the claims management process, ensuring that valid claims are paid promptly and accurately. Key aspects of claims evaluation include:

- **Eligibility checks:** Verifying that the policyholder is eligible for coverage and that the claimed event is covered under the policy.
- **Medical assessment:** Conducting a thorough medical assessment to determine the extent of injuries or damages and the appropriate course of treatment.
- **Follow-up and communication:** Regularly following up with claimants and keeping them informed about the status of their claims.
- **Timely resolution:** Aiming to complete the medical assessment and claims processing within a reasonable timeframe, typically an average of 12 weeks.

Key Performance Indicators (KPIs) in Claims Management

Measuring the effectiveness of claims management is essential for continuous improvement. Some key performance indicators include:

- Claim duration
- Claims in litigation

- Fraud detection rate
- Cost per claim
- Components of claim cost

By monitoring these KPIs, insurance companies can identify areas for improvement, enhance customer satisfaction, and optimize their claims management processes.

In conclusion, claims management is a complex and multifaceted aspect of the insurance industry, requiring a combination of customer-centric approaches, operational efficiency, and technological innovation. By effectively managing and evaluating claims, insurance companies can maintain profitability, enhance customer satisfaction, and build a strong reputation in the market.

Published by:

The Association of Consulting Engineers, Sri Lanka
C/o Central Engineering Consultancy Bureau 415,
Buddhaloka Mawatha,
Colombo 7