

Ignoring the arbitration clause in contracts is bad business, says SLNAC

By Dilshan Samaraweera

The Sri Lanka National Arbitration Centre (SLNAC), says local businesses and government enterprises get trapped into unfavourable arbitration because of poor negotiating skills with contracts.

Not negotiating the arbitration clause carefully is seen as particularly dangerous in international contracts and can result in unnecessarily expensive foreign arbitration.

"Parties should look at the dispute resolution clause carefully before signing a contract, especially an international contract. If an arbitration award is made in any other country, it is still legally binding. So you need to invest in professional help with contracts. This investment can save a lot of money and trouble later," the Hon. CEO of SLNAC, Hiran de Alwis, told the Sunday Times FT in an interview.

The SLNAC says many businesses opt for arbitration instead of the courts, to resolve disputes faster. However, the arbitration clause in a contract, particularly with relation to international trade, can be unfavourable to local parties. For instance, an arbitration clause that sets the arbitration venue in a country far from Sri Lanka would entail large costs. Therefore, local

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parties entering into international contracts are advised to put Sri Lanka down as the arbitration venue, but failing that, to specify a country close to home. "A majority of international contracts will opt for arbitration because neither party would want to go to a court in either country. But local companies

must try to make sure the arbitration venue is in Sri Lanka or in a country close by. Otherwise they will have to spend large amounts of money on travelling and on hiring people with the required expertise from the foreign country," said Mr de Alwis.

Local parties need to negotiate the arbitration clause in the contract in their favour. "At the time of negotiating the contract the Sri Lankan party can negotiate for the arbitration venue, which country law to apply and how to appoint an arbitrator," said Mr de Alwis. The Centre says it already gets about 20 arbitration sittings per week on local business disputes, mostly based on contract violations, from the financial and construction sectors. The local body has also handled a few national-foreign disputes. But the SLNAC says that Sri Lanka can be promoted as a regional arbitration centre to resolve commercial disputes in the South Asian region.

"There is potential to develop Sri Lanka as a neutral venue for regional arbitration. In Sri Lanka, we have a good legal framework, a good professional base, English language usage, and a now, a peaceful business and economic climate. Our Centre can also provide the required support services and expertise in arbitration mechanisms," said Mr de Alwis.

The SLNAC which is a private body incorporated under the Company's Act, resolves commercial disputes by acting as a facilitator, registrar and coordinator, and provides accommodation, secretarial serv-