

The importance of using a standard form of contract in construction projects; a case study of the Maldives

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Abstract

In the Maldives, the construction industry's revenue contributes towards 10 percent of the nation's Gross Domestic Product (GDP). Increase in the number of new resorts has indicated better economic prospects and a huge increase in construction projects. However, construction contracts in the Maldives are not regulated and have no standardized form of contract to rely on. Over the years this has led to a high multitude of contractual problems. This study highlights the importance of using a standard form of contracts and the contractual problems that arise in the construction industry due to the absence of standardized contracts. A survey was conducted to study the contractual related issues and to identify the most suitable contract which can be used in the Maldives. The respondents were employees of the construction industry both from the private and government sectors. Based on the findings, there is a strong indication that industry players want and need a standard form of contract to improve the industry's capabilities.

1.0 Introduction

The Maldives with its vast tourism sector is considered as one of the leading holiday destinations in the world. Any development in the tourism sector finances the rapid urbanization of the country. The construction industry in the Maldives has seen tremendous changes in the past five years. This has led to an unprecedented increase in the number of construction companies and construction projects. The absence of a proper standard form of contract to govern these projects, which includes a rapid increase in building projects, has led to different kinds of problems in the industry. Due to limited laws and regulations, it is difficult to solve a particular case when a contractual dispute arises. Without any proper mechanism to solve, adjudicate¹ or arbitrate, construction disputes are formally heard in the civil courts of the country.

Some of these cases have led to defective judgments and absurd results (Suood, 2012) due to difficulties in deciding whether a contract has been breached. A standard form of contract in construction projects can lead to familiarity to its content and use, leading to less disputes and reduction in misunderstanding (Broome & Hayes, 1997). Regulations and standards are required for the industry to ensure safety, quality and direction (Ali, 2008). Most of contractors in Maldives use the FIDIC (International Federation of Consulting

¹ Adjudication became compulsory for all UK based "construction contracts" in 1996 (Under the Housing Grants, Construction & Regeneration Act)

Engineers) document format as the basis to prepare construction contracts. Maldives does not yet have any arbitration act to be enforced in contract disputes. They refer to FIDIC solely as a means for arbitration to dissolve any disputes. A standard form of contract will be an important aspect in any legal challenge of contracts. Due to infancy of the democratic laws, new statutes and act will take considerable time to be amended. In the meantime, using a standard contract with a way to tackle the contractual disputes can be a very important step in the development of the construction industry in the Maldives.

2.0 Research Method

Both qualitative and quantitative methods were used to collect data for the research. Questionnaires were distributed to 50 individuals working in different departments of a construction project to obtain relevant data for the study. Questions in the survey were designed through careful consideration and this was done after thoroughly examining the information collected during interviews with managers and consultants involved in the construction industry in the Maldives. All data obtained were analyzed using the SPSS software. Data was processed using the descriptive and frequency analytical method and scrutinized by comparing the mean values.

3.0 Data Analysis and Findings

Demographic Profile

Participants were chosen from different categories of personnel involved in construction projects. The designations of respondents who completed the forms are shown in Table 1 and Figure 1. The total number of respondents were 40 with architects being the largest group at 8 persons (20%), followed by engineers, surveyors and site supervisors numbering 7(17.5%) each, project manager 6 (15%) and contractors 5 (12.5%).

Table 1: Number of respondents

Position	Nos.
Contractor	5
Project Manager	6
Engineer	7
Architect	8
Quantity Surveyor	7
Site Supervisor	7

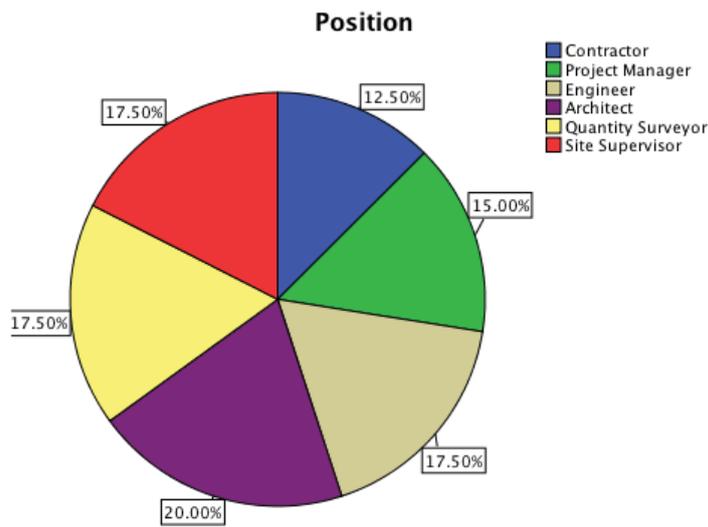


Figure 1: Position of respondents

Contracts Used by the Respondents

Respondents were asked to state the type of contracts they use at their work place and whether it was FIDIC, JCT, ICE or any international contract or a company’s own contract. As shown in Figure 2, 70% (28 respondents) replied by stating that they used the FIDIC international contract type for their company whereas only 12 out of the 40 respondents said that they used their own company’s own contracts. It was also noted that no other international contract was used.

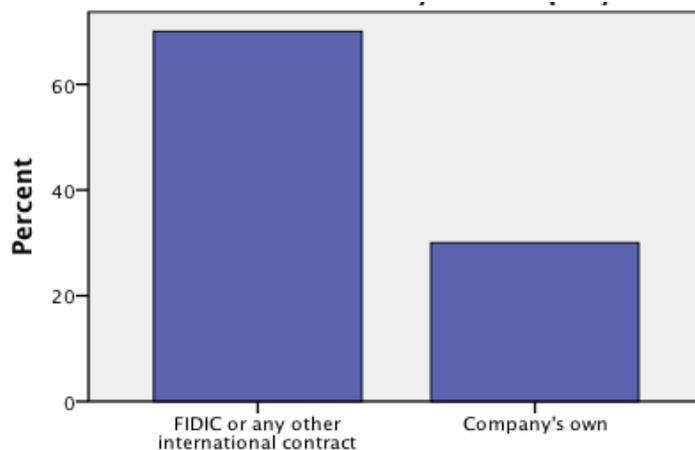


Figure 2: Contracts used by the respondents

Problems Occurring in Projects Due to Contracts

Respondents were asked to state the frequency of problems arising due to contracts and whether it occurred for every project or one in every 20 projects or one in every 10 or 5 projects. The results are shown in Figure 3 whereby 22 respondents (55%) faced contractual issues once in every 5 projects whereas 14 respondents (35%) encountered problems once

in every 10 projects and two respondents encountered problems in every project while two other respondents faced problems once in every 20 projects.

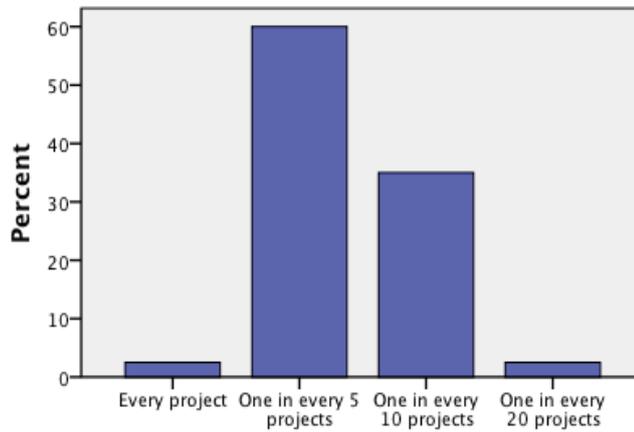


Figure 3: Problems occurring in projects due to contracts

Level of Compliancy to Contract Clauses

Respondents were asked to indicate when their companies usually abided the contract clauses, whether it was only for some projects or for all of the projects. As shown in Figure 4, a total of 32 respondents or 80% or said that they complied with the contract clauses for some projects only. Whereas only 8 respondents or 20% said that they complied with the contract clauses for all projects undertaken. Usually companies will have to follow all the contract clauses if it is a ready-made contract specifically amended for a certain project. The clauses which they do not use is either ignored or omitted and moreover it was found that respondents who use their own company contracts are the ones who follow all the contract clauses.

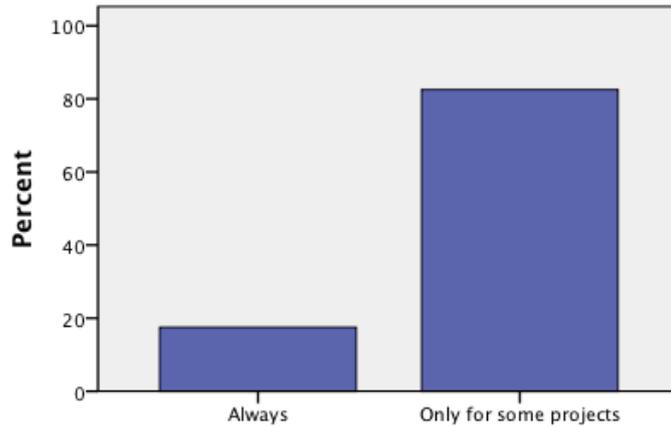


Figure 4: Level of compliancy to contract clauses

The Importance of Having a Standard Form of Contract

After careful examination of the results, it can be concluded that all the 40 respondents either strongly agreed or agreed on the need for a standard contract form in construction projects in the Maldives. The mean scores of the results are tabulated in Table 2 while Table 3 shows the problems of not having a standard form of contract.

Table 2: The importance of having standard form of contract

	Mean Score
If the government permits, establishing a standard form of contract can benefit the construction industry in the Maldives	5.00
Regulations and standards are required for the industry to ensure safety, quality and direction	5.00
The Maldivian construction industry requires a standard form of contract	4.85
Contracts are very important in construction projects in the Maldives	4.65
Person or a contract administrator should be assigned specifically for contractual issues	4.30
Limited laws and regulations makes it difficult to solve disputes in projects	4.17

Table 3: Main Problems of Not Having Standard Form of Contracts

Reason	Frequency	Percentage
Unresolved disputes	23	57.5
Incompetent technical people hired	14	35.0
Problems with company or authority	3	7.5
Total	40	100

4.0 Conclusion and Recommendation

Conclusion

This study was conducted to investigate and understand how construction contracts were used in the Maldives and to examine which type of contract can be used as the standard construction contract. Based on the survey results, the following conclusions can be made:

- The level of understanding about the FIDIC international contract is high among industry partners.
- All contracts used currently are not standardized and cannot be relied upon and this is one of the main problems in the construction industry of the Maldives.
- There is a strong indication that industry players want and need a standard form to improve the industry attributes.
- A standard form of contract will lead to a regular approach in applying for extension of time or to control the variation order formalities and other problems relating to contract.

Recommendation

The benefits of using standardized contract forms are in its ability to lead and to resolve problems by identifying and rectifying the issues by constantly improving the clauses of the contract. The construction industry will finally be able to resolve issues without going to civil courts once the contract has been standardized and formally enforced.

Therefore choosing a proper form of contract that can cater for the uniqueness of the Maldivian building industry will ultimately help all parties involved. Based on the findings from the survey conducted and the literature review, the following recommendations can be made.

- The FIDIC international contract should be adopted as the base contract since it has been predominantly used in the Maldives and accepted as the ‘international contract’. Using the FIDIC as a base will counter all the problems associated with the contracts currently used. It will also be much easier for industry experts to review and adopt the FIDIC contracts as it is already widely used in the Maldives.
- Discussions are required among members of the industry to formulate a standard contract form which can greatly assist in the development of the industry.
- More importantly, the construction industry requires the full commitment of the government and all other parties involved.

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