

A Study on Payment Issues Faced by Construction Consultants in Sri Lankan Construction Industry

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Abstract

Payment delays endure in the construction industry and prolong to be a key concern to industry practitioners. There is a social adherence that the contractors are the only suffering party from payment defaults in construction projects. However, construction consultants are also experiencing adversely from payment delays. There are different disciplines of construction consultants, categorized according to their scope of work which determines their mode of payments. The Sri Lankan construction consultants face payment issues which have not given significant consideration in research. Henceforth, this study aims to investigate different types of payment issues experienced by construction consultants and ways of minimizing them in Sri Lankan construction industry.

To accomplish the aim, initially, an extensive literature synthesis was carried out to identify construction consultants' fee payment practices and their related issues and causes. Consequently, qualitative research approach was followed steering semi-structured interviews which were conducted among practised consultants and clients in the local industry. The gathered data was analysed systematically via computer based content analysis. The topical study manifests highly impacted causes of fee payment issues, their effects and the best solutions to mitigate payment problems of construction consultants. Accordingly, major seven ways of mitigating consultants' fee payment issues were identified and amongst, negotiation is the most reliable mode to be used. Lastly, the research is recommending best practices which can be followed by clients and consultants to mitigate the fee payment issues of consultants in Sri Lankan construction industry.

Keywords

Consultants, Fee Payments, Issues, Mitigation, Sri Lankan Construction Industry

1. Introduction

Consultants are professionals, appointed by the client to perform expert tasks of a construction project through bridging the knowledge gap (Zou *et al.*, 2007). According to Nikumbh and Pimplikar (2014), shortage of specialized staff who are experts in latest technologies of the construction industry, shortage of supervisors who can be associated with a single project and to complete the project within short period are identified as reasons for the need of consultancy for a construction project (Nikumbh and Pimplikar, 2014). Construction consultants can be varying according to their scope of work. A typical project consultant team consists of architects, engineers, surveyors, town planners, quantity surveyors, estate surveyors and project managers (Anyanwu, 2013).

Ip (2012) explicated that there is a separate Standard Form of Agreement between consultant and client which clearly describes the responsibilities of a consultant in a construction project. Further to him, consultant's role varies in design stage, bidding stage, construction stage and in post-completion stage according to the established Agreement. As a remuneration for the responsibilities performed by consultants, client is obliged to pay a fee which is known as 'a consultancy fee' (Ip, 2012).

Generally, payment of a consultant is determined by including costs such as salary costs, social charges, statutory charges, overhead, reimbursable costs and a reasonable profit margin. Furthermore, these professional fees are calculated according to the lump sum fee basis, percentages fee basis, time basis or combination of them (Institution of Engineers Sri Lanka [IESL], 2012). Additionally, determination of consulting fee is based on the stage of the project, project complexity and scope of the services provided to the client (Consulting Engineers of British Columbia [CEBC] & Association of Professional Engineers and Geoscientists of British Columbia [APEGBC], 2009). However, in general context, there are lot of issues related to consultancy payment that should be given extreme consideration. Bestowing to Rashid (2007), payment issues can be identified as late payments, non-payments and under payments. The main reasons for these issues can be either due to client failures or consultant failures. Mostly, consultant failures like providing incomplete designs, lack of project knowledge and client failures like improper financial arrangements are highly exaggerating consultant payment issues (Haseeb *et al.*, 2011).

Aforementioned payment defaults adversely affect the whole construction business process, since each and every party in a construction project is connected to each other (Din and Ismail, 2012). Effects of consultants' payment issues to the construction industry and causes of them are not highly discussed under the Sri Lankan context. Therefore, it is an essential prerequisite to find out the issues and causes of consultants' payment issues and respective mitigation measures in the local construction industry. Henceforth, the study aims to investigate the causes for payment issues and ways of mitigating those in the Sri Lankan construction industry.

2. Contractual Provisions on Consultants' Payments

Construction consultant is an intermediary professional who conveys the client requirements to the contractor and the person who advise the client about the construction work (Tang *et al.*, 2009). Figure 1 shows the general classification of construction consultants in a construction project.

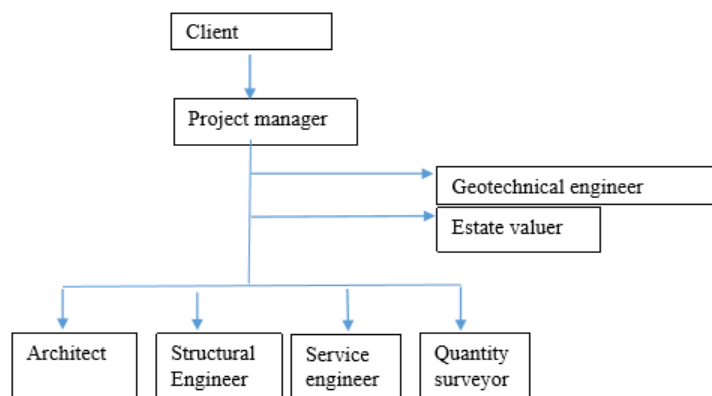


Figure 1: Consultants in a Construction Project

Source: (Adapted from Anyanwu, 2013, p.31)

To protect the rights of the consultant's payments, there are contractual provisions in FIDIC "white book", Client/ Consultant Model Services Agreement (Fédération Internationale Des Ingénieurs-Conseils [FIDIC], 1998). Table 1 illustrates the clauses in FIDIC white book which are related to construction consultants' payments.

Table 1: Clauses Related to the Construction Consultants' Payments

Clause	Description
Clause 30 – Payment to the Consultant	The Client shall pay the Consultant for Normal Services in accordance with the Conditions and with the details stated in Appendix C, and shall pay for Additional Service at rates and prices which are given in or based on those in Appendix C so far as they are applicable.
Clause 31- Time for payment	If the Consultant does not receive payment within the time stated in the Particular Conditions he shall be paid agreed compensation at the rate defined in the Particular Conditions compounded monthly on the sum overdue and in its currency reckoned from the due date for payment of the invoice
Clause 32- Currency of payment	The currency applicable to the Agreement is that stated in Particular Conditions.
Clause 34- Disputed invoices	If any item or part of an item in an invoice submitted by the Consultant is contested by the Client, the Client shall give prompt notice with reasons and shall not delay payment on the remainder of the invoice

Source: (Adopted from FIDIC, 1998)

3. Consultants' Payment Models in Construction Industry

According to the classification of IESL (2012), following are the different methods of deciding consultants' fee in Sri Lankan construction industry.

- Lump sum fee - More suitable when the scope and duration of the service clearly defined and unlikely to change. This includes salary costs, social charges and statutory charges, overhead, profit, any direct cost and any other negotiated costs.
- Percentage fee – Fee is calculated by multiplying cost related to separate work areas with their relevant percentage fees. Then, the total fee is derived by adding up those fees.
- Time based fee - This is mostly appropriate for large construction projects. It may be hourly rate, daily rate or monthly rate.
- Charge the market rate – Discover other consultants charge for their services, and charge a similar amount of fee is another way of determining the fee

4. Research Methodology

The qualitative research approach was selected for this study to conduct an exploratory in-depth analysis by gathering adequate information regarding construction consultants' payment issues. Semi-structured interviews were conducted to acquire comprehensive opinions about the consultants' fee issues in Sri Lankan construction sector. The interviews were carried among reputed consultants and clients in Sri Lanka and gathered data were systematically analyzed by computer based content analysis. Table 2 explicates the respondent profile of the study.

In this research different views were taken from construction consultants who were in different disciplines in the construction industry. Hence, consultants for the interview were selected from the consultancy firms, engineering firms and architect firms to get the different opinions. Furthermore, the interviewed clients were involved in construction sector and had sound knowledge on consultants' payment issues. All the selected interviewees represented the managerial levels of their firms, because deciding fee is considered to be an important strategic decision for an organization. Apparently, all the respondents except one had more than 10 years of experience in the industry and most of them had working experience in both private sector and public sector in local and foreign projects. Henceforth, the data gathered for this research study from those respondents were more reliable to derive final conclusions.

Table 2: Respondents Profile

Code on Interviewee	Designation	Years of Personal Experience	Type of Industry Group	Nature of Work	Number of Employees in the Company
C-01	Director	47	Consultant	Cost Consultancy	28
C-02	Managing Director	42	Consultant	Cost Consultancy	28
C-03	Director	24	Consultant	Cost Consultancy	12
C-04	General Manager	19	Consultant	Cost Consultancy	15
C-05	Senior Quantity Surevyor	08	Consultant	Cost Consultancy	22
C-06	Director	22	Consultant	Architectural	15
C-07	Architect	12	Consultant	Architectural	14
C-08	General Manager	14	Consultant	Architectural	24
C-09	Managing Director	12	Consultant	Engineering	18
C-10	General Manager	15	Consultant	Engineering	24
CL-01	General Manager	16	Client		35
CL-02	Chief Contracts and Commercial Manager	19	Client		60
CL-03	Project Manager	11	Client		15

5. Research Findings

5.1 Types of Consultants' Payment Issues

Mainly, there are three types of consultants' fee issues prevail in Sri Lankan construction industry. These issues are delays in paying consultant's fee, underpayments and non-payments. According to the findings, 80% of the interviewees conveyed that the most common issue in the industry is delays in payment. The clients' poor financial arrangements cause delays in paying fee and this adversely affects the newly established small consultancy firms. Moreover, underpayment situations are also common in local context, but not that much frequent as delay payments. Clients' unawareness about the scope of services provided by the consultants is the main cause for underpayments. Furthermore, when a new consultant enters to the industry, experienced clients provide them jobs with lesser fee and do not give a reasonable value for the work. Non-payments are also prevailing in the local industry but with minimum occurrences. Basically, clients are reluctant to pay when consultants' performances are unsatisfied and when the project is unexpectedly stopped due to any political, social or economical unrest.

It is interesting to highlight that, when comparing the possibility of occurring payment issues in local construction projects, all the respondents expounded that payment issues are extremely taken place in public projects than in private projects due to long lasting approval procedures.

5.2 Causes and Effects of Consultants' Payment Issues

The consultants' payment issues can be transpired due to client related causes, consultant related causes and external causes. Figure 2 clearly exhibits the consequences of consultants' payment issues which exaggerate from these different causes.

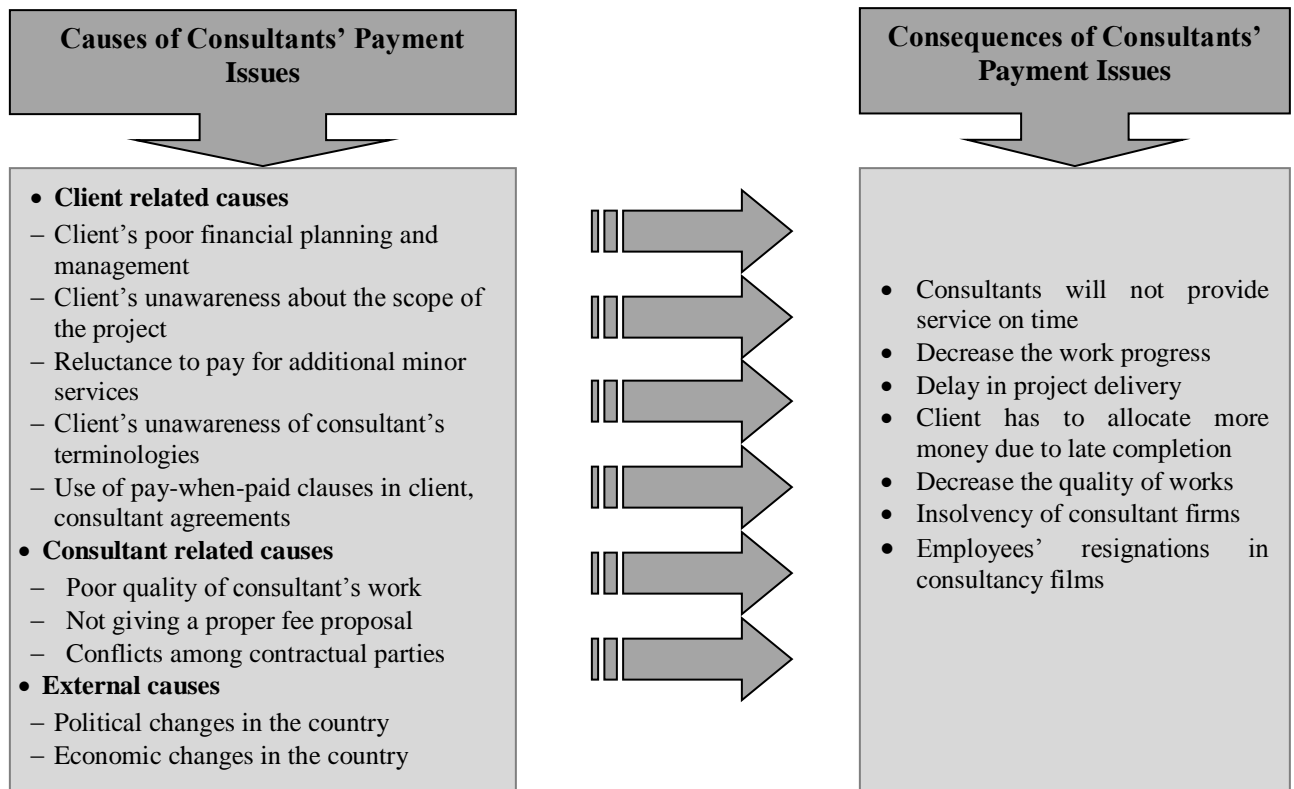


Figure 2: Causes and Consequences of Consultants' Payment Issues

5.2.1 Client related causes

The most influential client related cause is his poor financial planning and management. Generally, lack of government funds, delays in government payment approvals and inaccurate estimates of client's budget are the factors which catalyze the client's poor financial planning and management. Additionally, client's unawareness on consultants' terminologies and scope of the project also encourage the consultants' payment issues. Furthermore, in some situations, client is reluctant to pay the consultant for some minor works which are additional to the original contract. Moreover, there are pay-when-paid clauses included in client, consultant agreements which are unfavorable to the consultant parties.

5.2.2 Consultant related causes

Poor quality work of consultant is the most controversial consultant related cause which affects the payment issues. Generally, client will pay less or withhold the payments, when he is not satisfied with the

work done by the consultant in poor quality. Furthermore, existence of improper agreement between client and consultant highly persuades the consultants' payment issues. According to the respondents, submission of an inaccurate fee proposal by the consultant when accepting a job and not confirming the fee before starting the work also cause the payment issues of consultants. Here, the fault is extremely with the consultants as they have not followed a proper procedure when agreeing a fee for a particular work. In addition, conflicts among contractual parties adversely impact the delays in payments or underpayments.

5.2.3 External causes

When there is a political change in the country, some projects especially the government funded projects are subjected to the termination. In such situations, all the payments of contractual parties will be ceased and subsequently, the consultants will directly be victims of this jeopardy. Moreover, economic recession in the country directly impacts the construction industry and its stakeholders. This will immensely affects the consultants of the industry since they have to face more difficulties to survive in the industry due to issues in payments.

The aforementioned sections clearly explain the causes which encourage consultants' payment issues in Sri Lankan construction industry. The effect of these payment issues will vary as the way it impacts on consultants, construction industry and other contractual parties which should be given more consideration.

5.3 Ways of Mitigating Consultants' Payment Issues

The best method to mitigate payment issues of consultants in the industry is the negotiation. All the research participants responded that this is the initial step which can be taken by consultant party or client party to resolve the payment issues. Similarly, taking an advance before commencing the works is a good strategy to mitigate payment issues which can occur in the future. Furthermore, obtaining a bank guarantee for payments will also minimize the risk of getting payments. Moreover, impacts of the late and non-payments can be solved through proper financial management of client. The current study also indicates that proper financial arrangement of client and estimating a precise budget before commencement will avoid difficulties of paying to the consultants in future. Further, not using pay-when-paid clauses in client-consultant agreement is a good precaution to avoid future payment defaults in advance. Preparing ad-hoc documents for additional services, using fee modifications, preparing proper client-consultant agreement at the beginning and conducting awareness programs for clients who do not aware the consultants' terminologies are the precautions which were expressed by the respondents in the current study. Convince the client about delay, outsourcing in house consultants and suspension of works are also can be considered as best strategies to tackle the consultants' payment issues.

FIDIC White book, Client/Consultant Model Service Agreement (1998) recommended a compensation for delayed payments of consultants. However, research participants complained that interest or compensation for delayed payments is not used in the Sri Lankan construction industry to tackle consultants' payment defaults. Thus, adhering to such well established form of contract is also a good practice to mitigate payments defaults of consultants.

Additionally, statutory adjudication or a similar dispute resolution mechanism can be used to handle payment issues of consultants. However, research participants, both clients and consultants explained that they are not interested to go for arbitration or litigation for resolving payment disputes since those are expensive and time consuming methods which will also damage their reputation.

6. Conclusions and Recommendations

There are multiple disciplines of consultants in the construction industry. Amongst, quantity surveyors, architects and engineers were selected for this research study as they are the major consultant groups in the industry. From the literature findings, it could identify that mainly time based fee; fixed fee and percentage fee are used in construction sector as payment models for consultants.

Moreover, the analysis of the findings expounded that delay of fee payment is a common phenomena in the industry when compared to the underpayments and non-payments. According to the views of research participants, payments are delayed mostly in government sector projects. There are client related causes, consultant related causes and external causes which highly affect the payment issues of consultants in local industry. These payment issues generate hostile effects like delays in the assigned tasks, decrease the progress and eventually total delay in the project. The final conclusions of the study manifest that consultants' payment issues adversely have an effect on the consultants, construction industry as well as other contractual parties.

However, there are many ways of mitigating payment defaults of consultants. The negotiation between parties is the key method used to minimize the impact of any payment issue. However, local practitioners were not keen on using arbitration or litigation to solve consultants' payment issues, since they are time consuming, expensive and damaging the reputation of organizations. Additionally, proper financial arrangement of client, taking advance before commencing the works and getting bank guarantee for payments are also reliable strategies to alleviate the payment issues of local consultants. Therefore, it is recommended for all industry practitioners to practice all these mitigation measures to eradicate the adverse impacts of consultancy payment issues.

7. Further Research Directions

This research was limited to the consultants who involved in traditional contracts. There is a difference of scope of services provided by the consultants in traditional contracts and design and build contracts. In design-build contracts, some consultants' paymaster is the contractor. Therefore, it is suggested to study the payment issues faced by construction consultants in design and build contracts as a further research.

From the current study, it was identified that there are client, consultant and external factors which raise the issues on consultancy fees in construction projects. Therefore, it is essential pre- requisite to study separately on how these factors encourage in ascending these issues in deeply and investigate the consequences and mitigation measures for each under separate researches.

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