

## **DUTY OF CONFIDENTIALITY IN INTERNATIONAL COMMERCIAL ARBITRATION: A LESSON FOR SRI LANKA**

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Arbitration refers to an extrajudicial dispute resolution mechanism where the parties to a contract agree to forward their dispute to a private justice system. One of the reasons why the parties in global business context prefer international commercial arbitration over other methods of dispute resolution is confidentiality. The simple meaning that can be attributed to the concept of confidentiality is that a party or an arbitrator has an obligation to keep all the information, documents and evidence submitted in the process of arbitration in private and not to disclose this information without the consent of the relevant party. Though the Institute for the Development of Commercial Law and Practice (ICLP), recognizes the duty of confidentiality, regrettably, this is a mere institutional rule. Since the Arbitration Act No.11 of 1995 of Sri Lanka had failed to address the need of confidentiality, it is essential to study whether Sri Lanka needs to identify confidentiality as a statutory duty of every arbitration agreement, in the process of becoming a hub for international commercial arbitration. A comparative study was conducted based on a collection of literature resources on foreign jurisdictions such as Australia, United States, Sweden and England in order to understand the significance of the principle of confidentiality. The English common law has continuously identified an implied obligation on the parties to not to use the documents or information obtained during arbitration process for any collateral purpose. By a Judgment of the High Court of Australia in 1995, it was held that an implied duty of confidentiality is not accepted in Australia. Due to this common-law rule, the commercial community has made an assumption that Australia is a less arbitration friendly seat. But identifying the significance of confidentiality, Australian International Arbitration Act was recently amended and the reforms brought the Australian Law in line with the international standards identified by the UNICITRAL model law. Both United States and Swedish Courts have held that duty of confidentiality should be included as an express duty under the agreement and in absence; an obligation should not be imposed on parties. The foremost outcome of this study indicates that the application of the principle of confidentiality in different jurisdictions has created a lack of uniformity. Further it is an accepted notion that complete confidentiality cannot be formulated, but a certain degree of confidentiality is vital for the purpose of protecting sensitive information of commercial community brought forward in International Commercial Arbitration. In the process of developing Sri Lanka as a hub for International Commercial Arbitration, a precise and stable background for the duty of confidentiality is a timely requirement. In summary, it can be stated that the prospective development of Sri Lanka as a seat of arbitration can be supported with the recognition of the concept of confidentiality as an implied duty in every arbitration agreement.

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