

CONSTRUCTION ENGINEERING MASTERS DISSERTATION ABSTRACT

The Future of Alternative Dispute Resolution in the Construction Industry: Case Studies in Hong Kong

The long-term nature and complexity of construction projects involving risks and uncertainties often lead to disputes. Poor choice of resolution method by disputants may inhibit settlement and increase costs. Frequently, sub-contractors at lower tiers of the contractual chain face financial difficulties in disputes with main contractors who may delay or withhold payments while the developers suffer delays in project completion. Litigation is generally perceived as a costly and slow remedy for such disputes. A suitable alternative dispute resolution ("ADR") method may provide an efficient and effective solution to the problem. A proposed selection mechanism for identifying appropriate ADR procedure(s) may achieve the reduction or disposal of disputes, reducing disruption to project progress, maintaining cooperation between parties and avoiding litigation. In order to do this, it is important to identify the factors affecting the selection of an ADR method and the evaluation of an appropriate selection strategy. The purpose of this dissertation is to identify the factors to be taken into account in selecting an appropriate ADR method by reference to specific case studies from Hong Kong. A qualitative survey was undertaken to identify the factors influencing the appropriate choice of ADR when handling disputed claims. Three real cases of construction projects in Hong Kong were also used as indicators for investigation. Secondly, the relative significance of the reported factors was evaluated within various contractual tiers for project disputes. It was found that the most significant factors affecting the choice of ADR methods when handling disputed claims are the nature and amount of the dispute and the parties' relationship. Based on the evaluation, recommendations were made on an appropriate strategy for the choice of ADR methods, and a selection framework was devised. Another questionnaire was undertaken, using a case scenario based on a real construction project in which parties had used arbitration to resolve disputed claims, to canvass views from other respondents on the proposed framework. The results indicated that by using the framework in resolving contractual claims, the adoption of statutory adjudication could be beneficial to the local construction industry. The other ADR methods remain compatible under the subsisting legislation, including mediation, a commonly adopted local ADR technique governed by the relevant ordinance, utilizing a non-adjudicative approach. It was suggested that disputants could also adopt either a facilitative or evaluative approach in construction mediation by taking into consideration, at an early stage, the respective parties' interests, needs and the characteristics of the dispute. If mediation was not used or was unsuccessful, statutory adjudication would come into operation to produce a temporarily binding decision, i.e. binding until the dispute is determined by other means. With that, a designed strategy for the selection of ADR methods might be suggested for the domestic construction industry, in which current and/or impending legislation on mediation and adjudication are in place. By using mediation or adjudication, the disputants may have their interests and needs communicated and considered and could be advised within the mediation and/or adjudication proceedings as to the merits of their cases before going to arbitration.

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