

MANAGING CONSTRUCTION DISPUTES

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ABSTRACT

Construction projects are increasingly complex, resulting in complex contract documents. Complex construction can likewise result in complex disputes. Disputes is inevitable in construction projects which predominantly arise from complexity and magnitude of works, multiple prime contracting parties, poorly prepared and/ or executed contract documents, inadequate planning, financial issues and communication problems. Any of these factors can overturn a project and lead to complicated litigation, arbitration, mediation, time overrun, increased costs and a relationship break down among members of different parties involved. The objectives of this study are to identify the root causes of construction disputes as well as their impact on client's organization. The methodology of study adopted was through questionnaire survey where the target respondents were clients, consultants and contractors. Based on the analyzed data, there are nine root causes of construction disputes caused by clients, five root causes caused by consultants and four root causes caused by contractors have been identified in the local construction industry. The impact of construction disputes in client's organization as found in the study are time consuming, cost effective, loss of reputation and sour relationship between stakeholders and also loss of profit and business validity. ADRs were observed as the best method of resolving disputes because they were identified as none time consuming and cost effective. From the findings it can be concluded that construction disputes are a cause of concern in every project and the solution to this problem is to avoid and cautiously manage them for smooth running of construction process, prevention is believed is better than cure.

ABSTRAK

Projek pembinaan masa kini didapati semakin rumit dan kompleks, di mana ini sedikit sebanyak turut menyebabkan dokumen kontrak juga menjadi semakin rumit dan kompleks. Projek pembinaan yang kompleks ini juga menghasilkan pertelingkahan yang kompleks. Pertelingkahan adalah sesuatu yang tidak dapat dielakkan kerana ia pada asasnya timbul disebabkan oleh keadaan kerja yang kompleks serta magnitud kerja-kerja tersebut, selain penglibatan ramai pihak di dalam sesebuah kontrak, kualiti yang kurang memuaskan dalam penyediaan dan penggunaan dokumen kontrak, perancangan yang tidak mencukupi, isu-isu kewangan serta masalah-masalah komunikasi. Salah satu daripada faktor-faktor tersebut sudah mencukupi untuk menggagalkan sesuatu projek serta menyebabkannya menghadapi proses-proses rumit yang melibatkan perundangan, timbangtara, dan mediasi, di samping menyebabkan kelewatan penyediaan projek, peningkatan kos keseluruhan projek serta menjejaskan hubungan di kalangan pihak-pihak yang terlibat dalam projek tersebut. Objektif bagi kajian ini adalah untuk mengenalpasti penyebab utama pertelingkahan di dalam projek pembinaan selain mengenalpasti impaknya terhadap organisasi klien. Metodologi yang digunakan di dalam kajian ini adalah melalui borang soal selidik di mana responden-respondennya terdiri daripada pihak klien, perunding projek serta kontraktor. Berdasarkan kepada data-data yang telah dianalisis, di dalam industri pembinaan tempatan, dikenalpasti terdapat sembilan penyebab utama pertelingkahan di dalam projek pembinaan berpunca daripada pihak klien, manakala lima lagi penyebab utamanya adalah berpunca daripada pihak perunding projek serta empat lagi penyebab utama pertelingkahan di dalam projek pembinaan adalah berpunca daripada pihak kontraktor. Impak pertelingkahan di dalam projek pembinaan bagi organisasi klien yang dikenalpasti melalui kajian ini adalah ianya memakan masa, menelan belanja, hilangnya reputasi dan mengakibatkan hubungan yang renggang di kalangan pihak-pihak yang terlibat, selain mengakibatkan kerugian serta melemahkan perniagaan yang dijalankan. ADR didapati merupakan kaedah yang terbaik untuk menyelesaikan pertelingkahan kerana ia didapati tidak memerlukan masa yang panjang serta kosnya yang efektif. Daripada hasil kajian, boleh disimpulkan bahawa

pertelingkahan dalam projek pembinaan adalah sesuatu yang dititikberatkan dalam perkara kajian dan penyelesaian bagi masalah ini adalah dengan mengelakkan pertelingkahan bermula serta langkah-langkah awal untuk menguruskannya agar projek pembinaan dapat dilaksanakan secara lancar, kerana adalah dipercayai bahawa mengelak adalah lebih baik daripada mengatasi.

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Chapter 1

INTRODUCTION

1.1 Introduction to the Problem

Construction relationships in the construction industry all over the world have become more increasingly strained as years goes on and on. Working relationships, communications, and contractual commitments are often not carried in good faith. This has led to most developed countries to search for better alternatives on how to manage disputes in the construction industry. Though it has been seen that disputes in the industry is like an un-incurable disease, means are done to fight the problem.

In the United Kingdom, for example the standard form of contract that is internationally used to new engineering contracts has been subject to change; whereas, in the United States of America the Disputes Review Boards (DRB's) which comprises of three board members to manage disputes in construction sites was introduced. All this exercises undertaken have proved to be successful.

Developing countries are still facing this problem and the research on this topic will be on what to do either to improve or avoid and manage disputes in our local construction industry. Alternative dispute resolution is therefore essential for the industry in order to improve its performance.

1.2 Problem Statement

The construction industry has become very complicated such that political and economic trends are increasing the economic pressure resulting in disputes. Complex construction has brought about complex disputes in the industry. There are so many different types of sources that may lead to disputes and this eventually becomes a burden to the industry in terms of production

Great concern has been expressed in the recent years regarding the dramatic conflicts and disputes in the construction industry in the whole world and this has resulted in extensive high costs and time consuming. This is a result of the systems of resolving disputes in the industry. An alternative resolution has been seen as a necessity in the industry.

The alternative resolution of disputes should therefore address the causes of disputes within a limited space of time so that the production capacity is not affected in anyways. We have seen stakeholders blaming each other because of problems they come across during the construction process, because of poorly done designs, claims, poor administration and delays and these have been overlooked. There are questions rose on what is it that is actually causing disputes in the industry? And why disputes have become a nature of event in the industry?

Disputes and conflicts have gained frequent rise during construction of projects and this needs an involvement of a neutral body to resolve disputes as early as possible.

1.3 Aim and Objectives

The aim of this study is to identify the best dispute resolution amongst the ones in current use, and objectives of the study will be summarized as follows:

- i To identify the root causes of construction disputes
- ii To identify the impact of disputes in the industry
- iii To identify dispute resolution methods.

1.4 Scope of Research

This research has been carried out with a careful study on data collected mainly on case studies and questionnaire survey exercise. The research was focused on the private and government projects which are faced with the problem of construction disputes.

1.5 Project Methodology

The methodology of the project consists of two phases as shown below (Refer to Figure 1.1):

i) Phase one

Gather information from journals, internet and book .Literature review on causes of construction disputes, the impact in Client's Organization and methods of dispute recovery.

ii) Phase two

The second phase of the study was conducting a survey and discussions with relevant stakeholders, data collection from relevant stakeholders, data analysis and discussions, conclusions and recommendations. The flow chart below illustrates the steps of the study (research methodology):

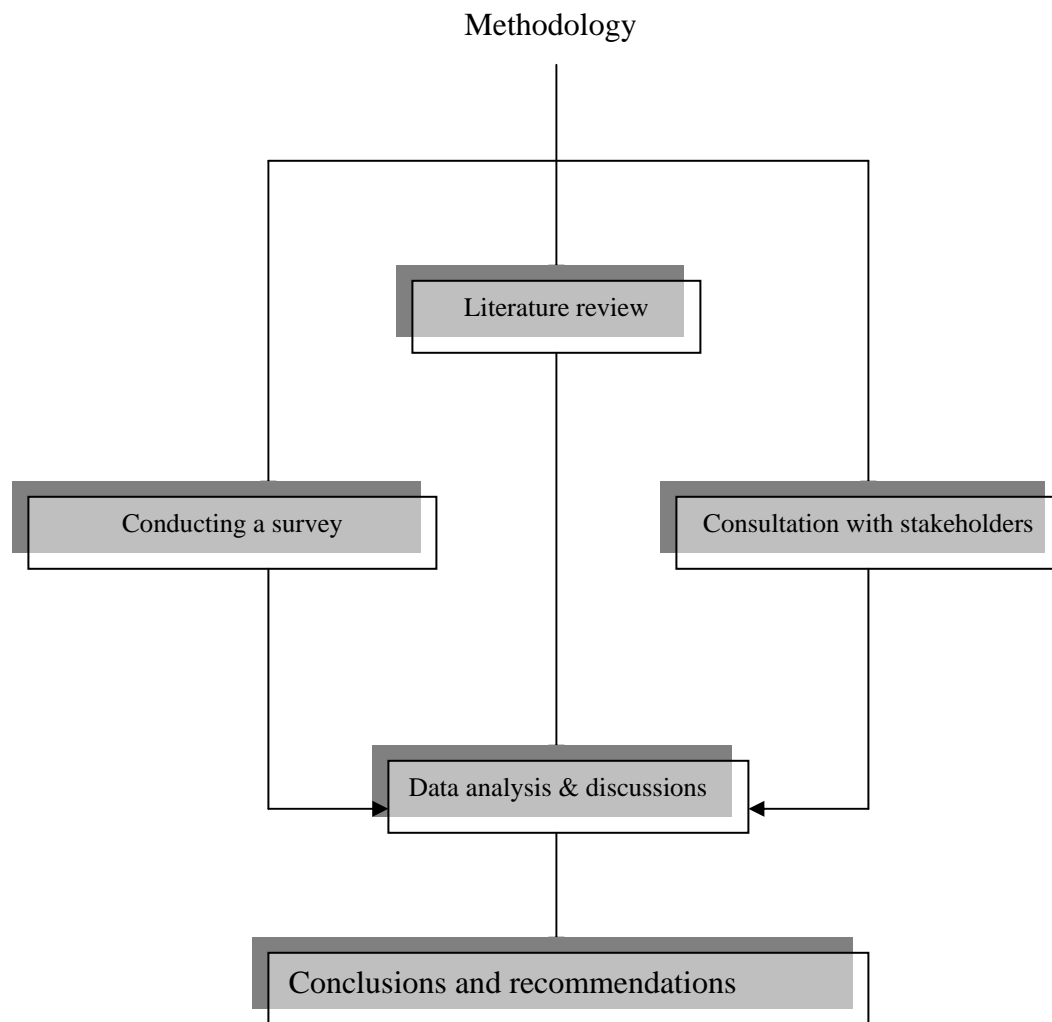


Figure.1.1: Research Methodology

1.6 Significance of Findings

This study has identified the root causes of construction dispute caused by the client, designers and contractors. It also covers the impact of construction disputes in a client's organization and methods of disputes recovery. These factors had been seen as the major factors in affecting production in the industry, thus it is a necessity to manage them or rather to avoid them for the better part of the performance of the industry.

1.7 Summary

This chapter covered the introduction to the problem of disputes in the construction industry that has prompted to this study. Moreover it states the aim and objectives, scope, methodology used and the significance of the findings. This project is based on managing construction disputes that has been seen to be affecting the industry's performance. The results to be obtained from the study will help in improving the production of the industry by means of implementing the decisions obtained from the results of the study.

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QUESTIONNAIRE SURVEY

Research Title: MANAGING CONSTRUCTION DISPUTES

This research aims to manage or rather avoid construction disputes in construction sites. The purpose of the survey is to collect information on construction disputes at large by using the approach shown below from relevant stakeholders with vast experience in the industry.

Causes of Construction Disputes in Construction Industry

Questionnaire survey

Section I: Company and Respondent Profile

Please fill in the blank space or tick in the box where appropriate.

1. Respondent Name : _____

2. Company Name : _____

3. Type of Job/ Position: _____

4. Experience:

<input type="checkbox"/>	Less than 5 years
<input type="checkbox"/>	5 years to 10 years
<input type="checkbox"/>	10 years and above

5. Type of Organization.

<input type="checkbox"/>	Client
<input type="checkbox"/>	Consultant
<input type="checkbox"/>	Contractor

Causes of Construction Disputes in the Construction Industry

Section II

Please indicate your opinion for the following causes of construction disputes

Indicator,	1;	Very rare
	2;	Rare
	3;	Average
	4;	Often
	5;	Very often

A. Causes of construction Disputes by client

1) Failure to respond in timely manner.	1	2	3	4	5
2) Inadequate tracing mechanisms for RFIs.	1	2	3	4	5
3) Reluctant to check for constructability, Clarity and completeness.	1	2	3	4	5
4) Discrepancies or ambiguities in contract documents.	1	2	3	4	5
5) Poor communication among members of the team.	1	2	3	4	5
6) Failure to appoint an overall project manager.	1	2	3	4	5
7) Lowest price mentality in engagement of contractors And designers	1	2	3	4	5
8) The absence of team spirit among members of the team.	1	2	3	4	5
9) Deficient management, supervision and coordination efforts on the part of the project.	1	2	3	4	5

Causes of Construction Disputes in the Construction Industry

B. Causes of construction disputes by consultants

- | | |
|--|-----------|
| 1) Failure to understand its responsibilities under the design team contract. | 1 2 3 4 5 |
| 2) Over-design and underestimating the costs involved. | 1 2 3 4 5 |
| 3) Late information issued and cumbersome approaches to RFIs. | 1 2 3 4 5 |
| 4) Inadequate in open and factual communication. | 1 2 3 4 5 |
| 5) Design and specification oversights and errors or omissions Resulting from uncoordinated civil, structural, architectural, mechanical and electrical designs. | 1 2 3 4 5 |
| 6) Incompleteness of drawings and specifications. | 1 2 3 4 5 |

C. Causes of construction disputes by contractor

- | | |
|--|-----------|
| 1) Inadequate contractor management, supervision and coordination. | 1 2 3 4 5 |
| 2) Lack of understanding and agreement in contract procurement system. | 1 2 3 4 5 |
| 3) failure to understand and incorrectly bid or estimating the works. | 1 2 3 4 5 |
| 4) Reluctance to seek clarification. | 1 2 3 4 5 |
| 5) Failure to plan and execute the changes of works. | 1 2 3 4 5 |
| 6) Inadequate CPM scheduling and update requirements. | 1 2 3 4 5 |
| 7) Delay due to suspension of works. | 1 2 3 4 5 |

Causes of Construction Disputes in the Construction Industry

Section III

The Impact of Construction Disputes in Clients Organization

- | | |
|--|------------------------|
| • Additional expense in managerial and administration | 1 2 3 4 5 |
| • Possibility of litigation cases | 1 2 3 4 5 |
| • Loss of company reputation | 1 2 3 4 5 |
| • Loss of profitability and perhaps business viability | 1 2 3 4 5 |
| • Time delays and costs overruns | 1 2 3 4 5 |
| • Extended and / or more complex award process | 1 2 3 4 5 |
| • Loss of professional reputation | 1 2 3 4 5 |
| • Diminution of respect between parties and deterioration of
relationship and break down in cooperation | 1 2 3 4 5
1 2 3 4 5 |
| • High tender prices | 1 2 3 4 5 |
| • Rework and relocation costs for men, equipment and materials | 1 2 3 4 5 |

Causes of Construction Disputes in the Construction Industry

Section IV.

The Most Preferred Method for Resolving Construction Disputes

Please circle the most preferred answer.

- 1) From your own opinion, which is the best solution to resolve disputes?
 - a) ADR (Negotiation, Conciliation, Mediation, etc.)
 - b) Arbitration
 - c) Litigation
- 2) Is the method effective? Yes or Not
- 3) If not please state your reasons, what are the factors affecting the method not to be effective?
