

A CONCEPTUAL MODEL OF PARTNERING LEGAL ISSUES

FARAZIERA BINTI MOHD RASLIM

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*In the name of Allah, the Most Gracious and the Most Merciful.
All praise is due to The God, the Creator of the Universe.
Peace be upon Prophet Muhammad, the final Prophet.*

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ABSTRACT

It is pertinent to conduct a research on the legal issues of partnering in the construction industry. This is due to the lack of research in the area, as most of current research only covers issues within the application and development of partnering and the identification of critical success factors. This research attempts to identify legal issues pertaining to partnering implementation in the construction industry, and to highlight the relationship-based procurement success factor in the Malaysian construction project. Additionally, the research also identifies the salient elements which could arise in the context of each respective legal issue. In essence, the research has managed to identify six legal issues which are misrepresentation, fiduciary relationship, good faith, doctrine of estoppels, confidentiality and interpretation of contractual terms. In addition, this research highlights necessary success factors which consist of commitment, communication, trust, workshop and facilitator, competence, financial capability, experienced partners, and early implementation of partnering to accommodate and support partnering implementation within the Malaysian construction industry. The salient elements of each respective legal issue were identified through law cases analysis and supported by the analysis of standard form of partnering contract and previous agreement on partnering projects in Malaysia. Basically, there are three components from the findings namely identified legal issues, relationship-based procurement success factors, and salient elements of each identified legal issues. These findings were used as the basis to develop a conceptual model of partnering legal issues in construction industry which will able to assist the construction players who intend to implement partnering in their future project. It will help the partners to be aware and understand how legal issues arise in partnering projects. Finally, an 'expert opinion' validation process was carried out through an online survey to validate the practicality of the conceptual model. Majority of the experts agree with practicality of the conceptual model introduced in this research.

ABSTRAK

Penyelidikan tentang isu perundangan berkaitan konsep *partnering* dalam industri pembinaan perlu dijalankan kerana kurangnya penyelidikan dalam bidang ini, walaupun kebanyakan penyelidikan semasa menyentuh pelbagai isu yang berkaitan dengan aplikasi dan pembangunan *partnering* dan pengenalpastian faktor-faktor utama bagi kejayaan sesuatu projek. Penyelidikan ini bertujuan untuk mengenal pasti isu-isu perundangan berkaitan dengan pelaksanaan *partnering* dalam industri pembinaan, dan mengambilkira faktor-faktor kejayaan dalam sistem perolehan yang berasaskan perhubungan dalam projek pembinaan di Malaysia. Selain itu, penyelidikan ini turut mengenal pasti unsur-unsur penting yang mungkin timbul dalam setiap konteks isu undang-undang yang dikenalpasti. Pada asasnya, penyelidikan ini berjaya mengenal pasti enam isu perundangan yang relevan dengan konsep *partnering*, iaitu salah nyata, hubungan fidusiari, suci hati, doktrin estoppel, kerahsiaan, dan tafsiran istilah di dalam kontrak. Sebagai tambahan, penyelidikan ini mengambilkira faktor-faktor kejayaan yang diperlukan yang terdiri daripada komitmen, komunikasi, kepercayaan, bengkel dan fasilitator, kecekapan, kebolehan kewangan, rakan kongsi berpengalaman, dan pelaksanaan awal *partnering* untuk membantu dan menyokong pelaksanaan *partnering* dalam industri pembinaan di Malaysia. Selanjutnya, unsur-unsur penting bagi setiap isu berkenaan dikenalpasti melalui analisis kes undang-undang dan disokong oleh analisis borang kontrak standard bagi kontrak *partnering* dan perjanjian berdasarkan projek *partnering* yang lepas di Malaysia. Terdapat tiga komponen di dalam kajian ini iaitu isu perundangan yang berkaitan dengan *partnering*, faktor-faktor kejayaan dalam sistem perolehan yang berasaskan perhubungan, dan unsur-unsur penting bagi setiap isu perundangan yang telah dikenalpasti. Dapatan ini digunakan sebagai asas untuk membangunkan model konsep bagi isu-isu perundangan berkaitan *partnering* dalam industri pembinaan yang mana akan membantu pemain industri binaan yang berniat untuk melaksanakan konsep *partnering* di dalam projek mereka pada masa akan datang. Ia juga akan menjadi rujukan kepada pemain binaan di dalam mengenalpasti bagaimana isu perundangan boleh timbul di dalam projek *partnering*. Akhir sekali, proses pengesahan “pendapat pakar” dijalankan melalui kaji selidik dalam talian untuk mengesahkan kebolehpraktisan model konseptual berkenaan. Kebanyakan pakar tersebut bersetuju dengan dapatan yang diperoleh, dan mereka memberikan pendapat tentang kebolehpraktisan model konseptual yang diperkenalkan oleh penyelidikan ini.

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LIST OF ABBREVIATIONS

AC	-	Appeal cases
ACSR	-	Australian Corporations and Securities Reports
AIR	-	All India Reporter
ALL	-	Australian Law Librarian
All ER	-	All England Reports
All ER (D)	-	All England Reports (Digest)
ALR	-	Australian Law Reports
BCLC	-	Butterworths Company Law Cases
BLR	-	Building Law Reports (UK)
Cal.	-	California Supreme Court
Cal.2d	-	California Reports (Second Series)
Cal. Rptr.	-	California Reporter
Ch	-	Chancery Law Reports
Ch. App	-	Law Reports Chancery Appeals
Ch Cas in Ch	-	Choyce's Cases in Chancery
Ch.D.	-	Chancery Division Law Reports
CLJ	-	Construction Law Journal
CLR	-	Commonwealth Law Reports
DLR	-	Dominion Law Reports
EG	-	Estates Gazette (UK)
EMLR	-	Entertainment and Media Law Reports
ER	-	English Reports
EWCA	-	England and Wales Court of Appeal
EWHC	-	England and Wales High Court
FCR	-	Federal Court Reports
FSR	-	Fleet Street Reports (UK)
H&C	-	Hurlstone and Coltman's Exchequer Reports

HL	-	House of Lords, English & Irish Appeals
HL Cas	-	Clarke's House of Lords Cases
IPR	-	Intellectual Property Reports
KB	-	King's Bench
Lloyd's Rep	-	Lloyd's Law Reports
LR	-	Law Reports
LT	-	The Law Times Reports
MLJ	-	Malaysian Law Journal
My. & Cr.	-	Mylne and Craig's Chancery Reports
NW	-	North Western Reporter (US)
NSWLR	-	New South Wales Law Reports
NSWSC	-	Supreme Court of New South Wales
NZLR	-	New Zealand Law Reports
QB	-	Queen's Bench
Qd R	-	Queensland Reports
RPC	-	Reports of Patent Cases
SCR	-	Supreme Court Reports
SCC	-	Supreme Court of Canada
SLR	-	Singapore Law Reports
SW 2d	-	South Western Reporter (Second Series) (US)
TLR	-	The Times Law Reports
UKHL	-	UK House of Lords
VR	-	Victorian Reports
WASC	-	Supreme Court of Western Australia
WLR	-	Weekly Law Reports

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CHAPTER 1

INTRODUCTION

1.1 Introduction

Increased collaboration between project members is claimed to be a suitable remedy for many of the industry's problem (Cheung *et al.*, 2003). Generally in construction projects, each member makes decisions based on their objectives without considering how it can affect other parties, which may lead to an adversarial relationship (Larson, 1997). Thus, this industry requires a new approach to improve the adversarial environment (Yong and Mustaffa, 2012). According to Thompson and Sanders (1999), one approach to deal with this scenario is through partnering, which has been proven to be successful in the UK, the USA, Australia, and Hong Kong (Liu and Fellows, 2001). While in Malaysia, the government is encouraging the construction members to adopt partnering in their projects. In 2005, the 10-year Construction Industry Master Plan (CIMP 2006 to 2015) has suggested partnering as a method to integrate the construction industry supply chain, get a better connection between client and construction customer and increase the performance of construction industry (Sundaraj, 2007).

Consequently, the establishment of Complex Projects Management Unit (CPMU) in Public Work Department (PWD) in June 2006 is PWD's initiative to reposition itself as a centre of excellence in the delivery of infrastructure development projects in Malaysia. One of the approaches recognised by CPMU is the implementation of partnering in projects as a management approach to develop working relationship among project key stakeholders (Abdul Rashid, 2002).

Partnering is the establishment of mutual objectives between the construction players with an effort to achieve an approved dispute resolution procedure as well as encouraging continuous improvement during the construction project (Latham, 1994). By applying partnering in a project, members learn to respect other member's role and identify the risk associated with their responsibilities (Kubal, 1999).

Until today, there has been a wealth of publications and journals on construction partnering and related issues. Research topics have a tendency to prioritise on these topics: partnering conceptual models (Anvuur and Mohan M. Kumaraswamy, 2007), reviews of partnering development and application (Eriksson and Nilsson, 2008), potential benefits of and barriers to implementation (Eriksson, Nilsson and Atkin, 2008), organisational structure and framework of the partnering process (Cheng and Li, 2004), usage of partnering across the entire construction supply chain (Mason, 2007), evaluation of applicability of partnering (Lu and Yan, 2007), and measuring partnering performance (Yeung *et al.*, 2007).

Section 1.3 (Review of past researches) has listed out in detail the topics and their researchers. Nonetheless an extensive literature review undertaken, reveals that there is a lack of research carried out comprehensively to look into the partnering legal issues that arise while implementing partnering in the construction industry. Therefore, this research is an attempt to present an in-depth investigation to identify and analyse the legal issues of partnering in the construction industry. Initial review of the law reports as discussed in Chapter 2 (Legal Issues on Partnering in Construction Industry) identified the six legal issues of partnering comprises of misrepresentation, fiduciary relationship, good faith, doctrine of estoppel, confidentiality and interpretation of contract terms.

Consequently, in Chapter 3 (Relationship-based Procurement Success Factor), there is a discussion of required success factors for relationship-based procurement (RBP). These success factors were included in the conceptual model. It will be explained in Chapter 3.

The identified legal issues are analysed in Chapter 5 (Analysis and Findings) through legal analysis to identify the salient elements that could arise in the context

of each respective legal issues identified. Besides, discussion on the analysis made on partnering contract and previous partnering agreement to support the identification of salient elements for each legal issue is also made in this chapter. As a result, these identified legal issues were adopted to develop a conceptual model of partnering legal issues, which is the aim of this research.

1.2 Problem Statement

According to Pradhan and Pathmavathy (2002), although many construction projects in the UK, the USA, Hong Kong and Australia reported outstanding outcomes from partnering (Bresnen and Marshall, 2000), there are certain legitimate concerns as to the effect of partnering implication on the rights and obligations of the parties as well as on the risk allocation between the parties of partnering. There is a tendency for parties interested in partnering to misuse the concept for their own advantages, ignoring the complete guidelines set out by the partnering proponents and only select the elements they preferred, adjusting to their needs (Bresnen and Marshall, 2000).

Partnering has its own flaws. By its nature, the parties must agree to cooperate in a partnering relationship which includes trust and good faith (Zhyzhneuski, 2011). Partnering cannot be used to amend the terms of the contract nor does it affect the legal duties of the parties (Samaraweera, 2012). The parties cannot use partnering to amend legal positions, or use partnering agreements against each other in a court of law (UK Essays, 2011). If there is no conflict until the project completes then it is a relief, but once the conflict occurs it will be a mess. This is because construction projects have many uncertainties and include a number of different parties; clients, consultants, main contractors, subcontractors and suppliers with different interest and even sometimes with interests opposite to one another (Bayliss *et al.*, 2004), this scenario can lead to conflict or an adversarial relationship (Black *et al.*, 2000). According to Gardiner and Simmons, conflict may start to arise from project briefing until the completion of the project (Gardiner and Simmons, 1995).

Adnan *et al.* (2012) has listed the aspects that lead to conflict in partnering specifically on the Malaysian construction industry, which are relationship problems, distrust, failure of sharing risk, culture barriers, uneven activity, communication problems, lack of continuous improvement, inefficient problem solving, inadequate training, dishonourable relationship. Based on Adnan *et al.* (2012) research, it is clear that dealing with such number of potential conflict without any legal concerns or having only the basic partnering charter amongst partners can be a real challenge. For this reason, partners need to adjust the framework of rights and obligations of each partner involved in partnering project to avoid conflicts from arising.

According to Chan *et al.* (2003), fewer possible conflicts and ensuing disputes are the significant successes of partnering. However, it does not continuously work in that manner. The survey done by Adnan *et al.* (2010) demonstrated that 100% of the respondents have practical experience in partnering and nearly half of the respondents were involved in partnering for three to six years. Even though the respondents commented that partnering contributed good economic result, 75% of the respondents highlighted that there were a lot of disputes. The results of this survey confirmed that preparation to avoid the potential conflicts is vital for construction players involved in partnering. Uncertainties along with conflicts can place a partnering in threat of disputes.

In such cases, preparation and awareness of legal issues in partnering can serve as an additional assurance for partners and will help them to manage uncertainties, conflicts and disputes well. For this reason, this research attempts to address the legal issues pertaining to partnering in construction comprehensively since the research in this field is not common.

1.3 Review of Past Research

As with all researches, once the area of research is decided, the information needs to be examined carefully to seek for gaps in the research where the researcher can make his/her mark by pointing out that research is incomplete in any given area. Filling the gap area makes the researcher's work publishable, and it will fill the

missing elements in the existing research literature. In this section, the review of past research is presented in Table 1.1. It is based on Hong *et al.* (2012) study where they summarise the research trend of partnering in construction industry using desktop search method from a number of primary construction-related journals.

Table 1.1: The categories of primary research in partnering as in Hong *et al.* (2012)

Categories	Researcher
1) Development of conceptual model of partnering	<ol style="list-style-type: none"> 1. Crowley L.G, Karim M.A. (1995). Conceptual Models of Partnering. 2. Cheng E.W.L., Li H. (2001) Development of a Conceptual Model of Construction Partnering. 3. Anvuur A.M, Kumaraswamy M.M. (2007) Conceptual Model of Partnering and Alliancing.
2) Examining the use of partnering across the entire construction supply chain.	<ol style="list-style-type: none"> 1. Palaneeswaran E., Kumaraswamy M., Rahman M., Ng T. (2003) Curing Congenital Construction Industry Disorders through Relationally Integrated Supply Chains. 2. Packham G., Thomas B., and Miller C. (2003) Partnering in the House Building Sector: A Subcontractor's View 3. Beach R., Webster M., and Campbell K.M. (2005) An Evaluation of Partnership Development in the Construction Industry 4. Mason J. (2007). The Views and Experiences of Specialist Contractors on Partnering in the UK.
3) Organisational structure and framework of the partnering process	<ol style="list-style-type: none"> 1. Crane T.G., Felder J.P., Thompson P.J., Thompson M.G., and Sanders R.S. (1999) Partnering measures. 2. Cheng E.W.L, Li H. (2004) Development of a Practical Model of Partnering For Construction Projects.
4) Review of partnering development and application	<ol style="list-style-type: none"> 1. Wood G.D., Robert C.T.E. (2005) Main Contractor Experiences Of Partnering Relationships on UK Construction Projects. 2. Chan A.P.C, Chan D.W.M., Fan L.C.N., Lam P.T.I., Yeung J.F.Y. (2008). Achieving Partnering Success through an Incentive Agreement: Lessons Learned from an Underground Railway Extension Project in Hong Kong. 3. Eriksson P.E., Nilsson T. (2008). Partnering the Construction of a Swedish Pharmaceutical Plant: Case Study.
5) Evaluation of applicability of partnering	<ol style="list-style-type: none"> 1. Koraltan S.B, Dikbas A. (2002) An Assessment of the Applicability of Partnering In the Turkish Construction Sector. 2. Phua F. T. T. (2006). When Is Construction Partnering Likely To Happen? An Empirical Examination of the Role of Institutional Norms. 3. Lu S., Yan H. (2007) A Model for Evaluating the Applicability of Partnering in Construction.
6) Measuring partnering performance	<ol style="list-style-type: none"> 1. Crane T.G., Felder J.P., Thompson P.J., Thompson M.G., and Sanders R.S. (1999) Partnering measures. 2. Yeung J.F.Y, Chan A.P.C, Chan D.W.M and Li L.K (2007) Development of a Partnering Performance Index (PPI) For Construction Projects in Hong Kong: A Delphi Study.
7) Identifying critical success factors of partnering, benefits of partnering and barriers to partnering	<ol style="list-style-type: none"> 1. Chan A.P.C., Chan D.W.M., Chiang Y.H., Tang B.S., and Chan E.H.W. (2004) Exploring Critical Success Factors for Partnering in Construction Projects. 2. Chan A.P.C., Chan D.W.M., and Ho K.S.K. (2003) An Empirical Study of the Benefits of Construction Partnering in Hong Kong 3. Bresnen M., Marshall N. (2000) Partnering In Construction: A Critical Review of Issues, Problems and Dilemmas. 4. Chan A.P.C., Chan D.W.M., and Ho K.S.K. (2003) An Empirical Study of the Benefits of Construction Partnering in Hong Kong 5. Eriksson P.E., Nilsson T. and Atkin B. (2008). Client Perceptions of Barriers to Partnering.

A comprehensive literature review of the published journal papers shows that there are six categories of primary research in partnering comprising of development of conceptual model of partnering, organisational structure and framework of the partnering process, measuring partnering performance, identifying critical success factors of partnering, benefits of partnering and barriers to partnering, evaluation of applicability of partnering, review of partnering development and application, and investigating on the implementation of partnering in construction industry.

Table 1.1 shows that there are a number of valuable studies with partnering as the theme. However, the research that investigates the legal aspect of partnering is not common. Thus, this research has identified legal issues in partnering that need to be addressed when considering adopting partnering as the procurement route. Based on the categories of research in partnering discussed earlier on, it is confirmed that this research will fill in the existing gap related to the legal issues in partnering research.

1.4 Research Aim

The overall aim of this study is to develop a conceptual model of partnering legal issues which will serve as a reference point in the implementation of partnering in the Malaysian construction industry.

1.5 Research Objectives

The following objectives were established to achieve the aim as mentioned above:

1. To identify the legal issues pertaining to partnering implementation in the construction industry.
2. To highlight the relationship-based procurement success factor in Malaysian construction projects.

3. To identify the salient elements that can address the respective legal issue identified.
4. To develop a conceptual model of partnering legal issues in construction industry based on the identified elements of each legal issue and the relationship-based procurement success factors.
5. To validate the model.

1.6 Contribution to Knowledge

This research identifies the legal issues which need to be addressed if partnering is implemented in construction projects. The findings of this research would contribute to knowledge in the form of a step towards greater understanding of how legal issues may arise in partnering project in Malaysia. The study will be useful in comparing legal issues in different types of partnering project and it will contribute to an understanding of legal issues in those circumstances.

The conceptual model developed will be able to assist the construction players who intend to implement partnering in their future project. It will help the partners to be aware and understand how legal issues arise in partnering projects. This research will act as a guidance to avoid partnering legal issues from emerging. Furthermore, the partners will also be exposed to the success factors of relationship based procurement that are required in order to ensure the success of a partnering project.

1.7 Scope of the Study

The research is confined to the following scope and limitations:

1. The legal cases referred to in this study is not only limited to partnering and construction cases but also other cases that are relevant to partnering legal issues, for example legal cases related to insurance. This is due to the fact that partnering cases are limited. There are only four cases

relevant to partnering found at the time when the analysis of this research was conducted which is as of January 2013. The cases are as follows:

- *Thiess Contractors Pty Ltd v Placer (Granny Smith) Pty Ltd* [1999] WASC 1046
- *Birse Construction Ltd v St David Ltd* [1999] BLR 194
- *P Ward v Civil and Civic* [1999] NSWSC 727
- *Alstom Signalling Ltd v Jarvis Facilities Ltd* [2004] EWHC 1285

2. Public Work Department (PWD) has established Complex Project Management Division (PROKOM), the key objective of which is to strengthen the project institutional capabilities of PWD and the improvement in overall readiness to implement projects, and one of the approaches is partnering. So far, there are only three pilot projects that have adopted partnering in their agreement. Consequently, this research reviewed the standard form of contract which is PWD 203A (1983), PWD 203A (2007), and PWD 203A (2010) that has been used in these three projects:

- Clinical Block Medical Faculty, University Technology MARA Selayang Campus, Selangor.
- Malaysian Police Training Centre, Langkawi, Kedah.
- Additional Block for National Defence University of Malaysia, Selangor.

Furthermore, parties that involved in the previous PWD partnering pilot project will also be the sample for this research to validate the developed conceptual model.

3. Three standard forms for partnering contract were selected as reference to conduct this research, they are the Project Partnering Contract 2000 (PPC2000), New Engineering Contract (NEC3): X12 Partnering Option, and Joint Contracts Tribunal - Constructing Excellence Contract (JCT/CE). PPC2000 was amended in 2008, (JCT/CE) was revised on

2009 and the NEC3:X12 Partnering Option have respectively been published in 2005. In addition to that, these standard forms are from the United Kingdom and relevant to the Malaysian construction industry since most of Malaysia's standard form of contracts were established closely modelled and based on the UK standard form of contracts. For example, many of the clauses in the earlier *Persatuan Arkitek Malaysia* (PAM) standard form of building contract have their origin in the corresponding United Kingdom forms, some being identical (Rajoo, 2010).

4. Partnering process involves many stages and elements, for example interest in partnering and construction execution (Abudayyeh, 1994). However, this research only focuses on partnering workshop for the analysis. Partnering workshop was chosen for the reason that it is conducted in most of the partnering process. In addition to that, the other elements of partnering such as mutual objective, problem resolution, and continuous improvements are embedded in partnering workshop (Chan *et al.*, 2006).

1.8 Overview of Research Methodology

In order to achieve the objectives, the research flow diagram as shown in Figure 1.1 illustrates the main steps in research methodology for this study. In essence, the research methodology consists of literature review, legal research, model development and questionnaire survey for model validation.

1.8.1 Literature Review

An extensive literature review was done and compiled in Chapter 2 and Chapter 3 of the research. On one hand, Chapter 2 is divided into two parts, Part A and Part B. Part A highlights the partnering approach in construction projects worldwide and part B focuses on the legal issues of partnering. On the other hand,

Chapter 3 focuses on the relationship-based procurement (RBP) success factors in Malaysia. Limited legal cases which dwell on partnering legal issues are also highlighted in this chapter.

Table 1.2: Relationship between research objectives and study components

Research objectives	Research methodology	Source/participant	Chapter
<i>Objective 1:</i> To identify the legal issues pertaining to partnering implementation in the construction.	Literature review	<ul style="list-style-type: none"> • Acts • Law cases • Reference books • Refereed journal • Conference proceedings and seminars • Government document and circulars • Information from the Internet 	2
<i>Objective 2:</i> To highlight the success factors of relationship-based procurement in Malaysian construction industry.	Literature review	<ul style="list-style-type: none"> • Refereed journals • Reference books • Conference proceedings and seminars • Previous PhD theses • Government document and circulars • Information from the Internet 	3
<i>Objective 3:</i> To identify the salient elements arisen in the context of each respective legal issue identified.	Legal research	<ul style="list-style-type: none"> • Law cases • Partnering contract • Previous partnering agreement 	5
<i>Objective 4:</i> To develop a conceptual model of partnering legal issues in construction industry.	Model development	<ul style="list-style-type: none"> • Identified legal issues (Objective 1) • Success factors of relationship-based procurement (Objective 2) • Salient elements of each legal issue. (Objective 3) 	6
<i>Objective 5:</i> To validate the developed model through an expert opinion approach.	Questionnaire Survey	<ul style="list-style-type: none"> • Practitioners involved in previous partnering's pilot project • Academics that published paper on partnering • Construction law expert 	7

The literature, which may also be considered as secondary data, were obtained from several reading materials such as books, acts, journals, law cases, proceeding papers, conference papers, contract documents, thesis, and on-line reading materials so as to have a better understanding of the subject matter and methodology that need to be carried out for the study. The outcome of the literature review has opened an avenue for the generation of ideas on the partnering concept in

construction industry, the legal issues that are related to partnering in construction industry and the relationship-based procurement success factors in Malaysia.

Through literature review, six legal issues of partnering have been identified. The issues comprise of misrepresentation, fiduciary relationship, good faith, doctrine of estoppel, confidentiality and interpretation of contractual term. These legal issues will be analysed in legal research to identify the salient elements of each issue. In addition to that, eight success factors are highlighted which are financial credibility, competence, commitment, communication, trust, experienced partners, early implementation of the process and workshop and facilitator. These factors will be adopted as one of the components in the conceptual model's development.

1.8.2 Legal Research

Legal research comprises of data collection through selected legal case study and standard form of partnering contracts. As previously mentioned, there are six legal issues of partnering identified in literature review, which is analysed further in legal research through law cases study and standard form of partnering contract. This is to identify the salient elements arisen in the context of each respective legal issue. The identified elements are discussed in detail in Chapter 5 (Analysis and Findings). The sources covered the previous partnering agreement, partnering contract, Construction Law Journal, and Malayan Law Journal.

1.8.3 Model Development

The results obtained from literature review and legal researches will be used to develop the conceptual model in partnering legal issues. The developed model as explained in Chapter 6 (Model Development) is based on the three main components namely the identified legal issues, the identified salient elements of each respective legal issue and relationship-based procurement (RBP) success factor. The model is developed to assist in the implementation of partnering in Malaysian construction industry through the legal point of view.

1.8.4 Questionnaire Survey

The model developed is validated. The purpose and format of the validation process are explained in Chapter 7 (Model Validation). It is validated through online questionnaire survey distributed to partnering practitioners, experts in construction law, and academicians in Malaysia.

1.9 Thesis Structure

This thesis was prepared and designed as follows:

Chapter 1: Introduction: This chapter is an introduction to the research topic. It was prepared to present the fundamentals of the research, such as the need for the research, aim, objectives, research questions, benefits, limitations and structure of the research.

Chapter 2: Literature Review 1: This chapter is divided into two parts namely Part A and Part B. Part A presents the exploration of critical reviews of the existing literature in the area of partnering in construction industry. It will discuss the definition, process, history of partnering, and partnering standard form of contract. The partnering standard form of contract is discussed in this chapter to show that in existing partnering contract, the identified legal issues have been highlighted. Meanwhile, Part B focuses on legal issue of partnering. It identifies the legal issues that could arise while implementing partnering in construction industry. It reviews the law cases and highlights particular acts that relates to the identified legal issues

Chapter 3: Literature Review 2: This chapter emphasises on the relationship-based procurement success factors in Malaysia. These highlighted factors are important in this research to support the conceptual model for this research.

Chapter 4: Research Methodology: This chapter discusses the background of the research philosophy standing and the selection of an appropriate research method. The justification for each method is established. The use of the legal research is highlighted in this chapter.

Chapter 5: Findings and Analysis: This chapter is the backbone and addresses the main issue of this research. In this chapter, the six identified legal issues are analysed to get the salient elements of each issue respectively. In addition, it reviews the existing standard form of partnering contract and agreement from previous partnering project.

Chapter 6: Model Development: This chapter explains how the proposed conceptual model of partnering legal issues was developed.

Chapter 7: Model Validation: Upon testing the model, validation exercises on the selected respondents were carried out. This chapter describes the method of the model's validation process through an expert's opinion and the results of the validation.

Chapter 8: Conclusion and Recommendations: This chapter summarises the main findings of this research in respect of each of the objectives established. It also presents the limitation of the study and the future research for the improvement of the developed model.

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