PROCEDURE IN NEGOTIATION AMOUNTS IN CONSTRUCTION PROJECT DISPUTES

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UNIVERSITI TEKNOLOGI MALAYSIA
PROCEDURE IN NEGOTIATION AMOUNTS IN CONSTRUCTION PROJECT DISPUTES

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A project report submitted in partial fulfillment of the requirement for the award of the degree of Master of Science (Construction Management)

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DEDICATION

This Report Project is lovingly dedicated to:

My respective family who have been my constant source of inspiration. They have given me the drive and discipline to tackle any task with enthusiasm and determination. Without their love and support this project would not have been made possible. Lot of love for Pn. Mariaton Binti Som and commemorate the passing of my late father named Sa’adon Bin Salim. May his soul in Allah s.w.t merciful.

My Siblings
Salwa Sa’adon, Kamalli Sa’adon and Hairuambri Sa’adon
And to all my in-laws siblings
“It stretches, from the fog into sunshine, hopelessness into faith, between despair and joy”

My Close Companions
Siti Suhaibah Mohd Ghazali and Sarina Sarman
“Friendship is the bridge, between lonely and loved, between a glance and a gaze. It crosses the chasm from hell to heaven, from Allah to man”

To All My Lovely Friends
Thanks for everything....
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In the name of Allah, the Most Gracious, the Most Merciful. Alhamdulillah, all the praises and Thanks to Allah and may upon Prophet Muhammad S.A.W, the messenger of Allah. With Allah blessing and generosity, i have successfully completed this report project. I owe great many thanks to a great may people who helped and supported me during write this report project.

Firstly, I would like to express my deepest gratitude to my supervisor, Assoc. Prof. Aziruddin Ressang, for their generous advice, kind assistance and patiently guidance. Thanks you for all your time and valuable experiences that have shared with me regarding this study.

Secondly, I want to appreciate all the respondents from the contractor organizations, who generously spent their precious time to participate in the questionnaire survey of this study. I also want to thank my entire friends who directly or indirectly assisted me in this project study.

Last but not least, sincere gratitude and appreciation is forwarded to my family for care, moral support and understanding during two years of studying in Universiti Teknologi Malaysia.

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Faculty of Civil Engineering
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Construction disputes can often be resolved using several techniques including the purpose of negotiation, mediation, dispute resolution boards, arbitration, and litigation. Negotiation is considered the most preferred technique due to the following facts; first it prevents litigation amongst project parties, and second it keeps a harmonious relationship between project participants. Further, negotiation saves the time, expenses and efforts that are associated with other resolutions techniques. The purpose of this paper is to provide a tool that is geared towards assisting construction contractors during negotiation process. Therefore, research methodology for the modules capture the main characteristics of the negotiation process including; the expected claim duration in the case of litigation, certainty of litigation, and contractor’s intention to make litigation. The objective of this paper also described the associated factors affecting of these modules and their negotiation approaches in dispute resolution which have been determined based on interviews with claims’ experts and questionnaire surveys. Analytical hierarchy process and utility theory are used to determine weights and utility values of attributes, respectively. Decision an analysis is used to estimate the equivalent monetary value of litigation. Hence, the findings from a case study are presented to illustrate the practical use of the proposed procedure in negotiation and its ability to determine the minimum acceptable claim amount. Consequently, research limitations are the knowledge of the negotiation was retrieved from the Johor Bahru construction industry. However, the utilized methodology can be applied to capture local contraction practices, law and politics in other construction industries. Thus, the value from this research presents a negotiation that is developed to assist contractors in calculating the lower threshold of a claim value, which can be considered, during construction disputes process with owners.
ABSTRAK

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<td>ADR</td>
<td>Alternative Dispute Resolution</td>
</tr>
<tr>
<td>AI</td>
<td>Average Index</td>
</tr>
<tr>
<td>CIDB</td>
<td>Construction Industry Development Board</td>
</tr>
<tr>
<td>DMs</td>
<td>Decision Makers</td>
</tr>
<tr>
<td>DRA</td>
<td>Dispute Resolution Advisor</td>
</tr>
<tr>
<td>DRB</td>
<td>Dispute Resolution Board</td>
</tr>
<tr>
<td>FIDIC</td>
<td>International Federation of Consulting Engineers</td>
</tr>
<tr>
<td>GMCR</td>
<td>Graph Model for Conflict Resolution</td>
</tr>
<tr>
<td>ICE</td>
<td>Institution of Civil Engineers</td>
</tr>
<tr>
<td>IEM</td>
<td>Institution of Engineers Malaysia</td>
</tr>
<tr>
<td>ISM</td>
<td>Institution of Surveyors Malaysia</td>
</tr>
<tr>
<td>JKR</td>
<td>Jabatan Kerja Raya</td>
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<tr>
<td>PAM</td>
<td>Pertubuhan Akitek Malaysia</td>
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<tr>
<td>RII</td>
<td>Relative Importance Index</td>
</tr>
<tr>
<td>SO</td>
<td>Superintending Officer</td>
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<td>SPSS</td>
<td>Statistical Package for Social Science</td>
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CHAPTER 1

INTRODUCTION

1.1 Introduction

Construction contracts in Malaysia now become more complex’s and modern not only about building but also become more efisien, fungsional and have more technology. Every construction project is bound to have conflicts. Conflicts would exist when incompatibility of interest happened. Construction contracts are drafted to regulate the risks as well as conflicts in a project. Disputes would occur due to miscommunication, ignorance, and poor understanding on the contractual obligations and expectations laid in the contracts. At the same time, the number of disputes has also increased putting an ever increasing stress on the existing methods of disputes resolution. When disputes arise, the parties involved will traditionally go to the courts or arbitration for resolve. These traditional methods however have the inherent disadvantages of high cost and time consuming.

In Malaysia, negotiation had been introduced as one of the alternative dispute resolution method despite mediation, arbitration and litigation. Negotiation allows the parties involved in dispute to negotiate to find the solution on a win-win situation and if this fails then the parties are free to proceed with the traditional methods, i.e. mediation, litigation and arbitration. Due to lack of knowledge and awareness among those parties that involved in the construction industry, negotiation has not been widely accepted or practiced among the practitioners in the field.
This study was carried out to investigate on the level of awareness on the existence of negotiation among the parties involved in construction industry constraint in Johor Bahru area. The study used a quantitative research design, whereby 60 sets of questionnaires had been distributed and only 35 sets of respondents had participated in the study. Data was collected using a self-administered questionnaire distributed to the participants.

The results indicated that negotiation at the moment slowly received acceptance among those involved in construction as they have quite little knowledge on the subject matter despite their awareness on its existence. Like many other changes, it will take many more years before negotiation can be accepted and practiced by many. Meanwhile, a lot more needed to be done to create awareness and impart knowledge on those involved in construction disputes about negotiation.

1.2 Research Background

In the construction industry, the Alternative Dispute Resolution methods have been acknowledged as a more suitable and efficacious mode of resolution of disputes rather than litigation. However, many people often refer the Alternative Dispute Resolution as the alternatives to both arbitration and litigation, probably because of arbitration’s failure to achieve some of the objectives, particularly with regard to time and cost. One of the new alternative mechanisms in the disputes resolutions is the negotiation. Although the prevalent alternative dispute resolution mechanism continues to be arbitration, mediation as yet another alternative to litigation as a mechanism for dispute resolution is slowly gaining popularity in this jurisdiction.

The stage is negotiation, which is a very popular informal method in dispute resolution. This stage is to communicate the grievance and negotiate for a settlement.
This negotiation technique is a preferred choice of the disputants, with most disputes being resolved through this process (Cheung et al., 2000). It is the least expensive, and it can preserve the working relationship of the parties involved. In negotiation, the parties have absolute freedom with respect to the form, process and type of agreement. In order to make it successful, the negotiation demands cooperative effort from the disputants (Cheung, 1999; Edwin and Henry, 2005).

However, increased project complexity and shortening of the project life cycle have made contact administrating difficult. Negotiation is not always workable and bringing consensus in the end. It is because projects will be diverging from what has been anticipated and triggered to other more formal method of dispute resolution.

1.3 Problem Statement

Conflicts and disputes are co-related. The philosophy of conflicts and disputes need to be clarified before understanding and classifying the attributes of dispute resolutions techniques. In Malaysia as in many other jurisdictions a party to a construction contract who is in dispute with the other party can have that dispute resolved by a court of law through litigation unless it is has entered into an agreement with the other party to have such dispute resolved by an alternative method of dispute resolution (Battersby, 2002). The reasons for seeking alternative methods of dispute resolution can be many and varied but normally include (Battersby, 2002): privacy; time savings; cost savings; technical expertise in decision making; finality; and preservation of business relationships.

Traditionally, these objectives have been sought in the construction industry through arbitration. Amongst other things, to determine solution for the disputes through litigation, it is often (Caller, 2002): an intimidating experience for the
parties; expensive especially in respect of legal costs and fees; time consuming with lengthy meetings between the parties and lawyers and in preparing evidence and discussing strategies; long-winded and protracted as correspondence flows back and forth between the parties and their lawyers and in waiting for court hearings; damaging to business interests. Court hearings result in private business being aired in public, jeopardizing public confidence in one’s business affairs; harmful to relationships since the win/lose adversarial aspect of litigation tends to further alienate the parties making it difficult to maintain business relations after the dispute has been brought to a judicial conclusion.

Therefore, this study is an attempt to investigate the level of acceptance of negotiation in practice. The surrounding issues about the negotiation by which create barriers towards the implementation of negotiation.

1.4 Research Objective

The study aims to address the need to review existing contract administration and dispute resolution practices for construction industry and to suggest a framework to estimate negotiation amount in construction dispute. To achieve the above aim the following objectives have been identified:

i. To study factor affecting the disputed parties from applying negotiation.

ii. To identify negotiation approaches in dispute resolution and contract administration.

iii. To propose procedure for estimating negotiation amounts.
1.5 Research Scope

The scope of data collection in this study is limited and will focus on the following areas and to the subject matters;

i. Investigation on awareness, knowledge and competencies amongst the consultants, contractors, developers and employers confined in Johor Bahru area and the data had been obtained from CIDB, ISM, PAM and etc.

ii. Determine the problems and to achieve the solutions as barriers of negotiation is not yet popular as one of the main process in seeking resolutions between the disputing parties.

1.6 Significance of the Research

Disputes and claims often arise as a result of the increasing complexity of construction processes. Disputes arise due to several reasons including: design errors; changes; multiple prime contracting parties; complexity and magnitude of the work; different site conditions; inadequate planning; defective specifications; financial issues; communication problems; and force majeure. Complicated litigation or arbitration could arise because of any one of the previous factors, affecting the costs, and the parties’ communication and relationship (Hoogenboom and Dale, 2005). Also, the progress and duration of construction projects are affected by such disputes and claims. Disputes may cause owners to lose their investment revenue because of the associated delays. They also have negative impacts on contractors since projects’ delays are associated with an increase in materials and labour costs. In addition, disputes decrease the ratings of contractors in financial prequalification evaluations.
1.7 Research Methodology

The study methodology is a guideline for the research to be completed in a systematic way to achieve the study objectives. In this study, the research process generally consisted of 4 stages carried on the followings;

i. The study approach used for this study was quantitative research. The primary data was collected by using the questionnaires survey via mail and internet, pilot survey, unstructured interview and field observations. The secondary data was collected from books, journals, research papers, magazines and etc.

ii. The population of the study had been drawn among the parties involved in construction industry in Johor Bahru area such as employers, contractors and professional advisors whereby the list had been obtained from CIDB, ISM, PAM and etc. approximately 60 respondents.

iii. The study method used for the sampling technique was quota sampling by identifying the population of the peoples involved in construction industry and the data had been obtained from CIDB, ISM, PAM and etc.

iv. The collected data had been analyzed using selected descriptive statistic techniques. This includes mean, frequency and average index method.

v. The last stage of the study process. It mainly involved writing up and recommendations for future research.
Figure 1.1: Methodology of Study
1.8 Arrangement of the report

The study report consists of five chapters where the content of each chapter are summarized as follows:

i. Chapter 1 is the introduction of the study includes the problem statements, the aim and objectives of the study, the scope of work and the methodology of study.

ii. Chapter 2 is on literature review which focused on the definition of estimating negotiation amounts, concept of negotiation in construction project disputes, impact of negotiation approaches in disputes resolution, assessment of parties involved in construction from applying negotiation and procedure for estimating negotiation amounts.

iii. Chapter 3 describes about the method of study and data analysis.

iv. Chapter 4 discusses the results and data analysis of the study.

v. Chapter 5 includes the conclusion of the study and some recommendations for the future study.

1.9 Case Study

UEM Land Berhad is the Master Developer of 24,000 acres land in Nusajaya, the heart of Iskandar Malaysia, Johor, Nusajaya Residences has currently 5 on-going developments which comprise of Ledang Heights, East Ledang, Horizon Hills, Nusa Idaman and Nusa Bayu. Nusajaya Residences will combine the best of urban living and natures to create a balance and harmonious lifestyle. Each development has its own concept, target groups, range of products and point of differentiation that is clear and distinct.
**East Ledang** International Resort Homes with the land area of 365 acres is one of the jewels of UEM Land Berhad. It is located strategically near the Second Link, Malaysia’s second international gateway to Singapore (15 minutes journey) and only 5 minutes from Kota Iskandar.

Upon completion of the Development, East Ledang will comprise approximately 2,544 residential and commercial units. It is designed around the theme ‘East meets West’ combining tropical gardens, including a two acres forest and state-of-the-art facilities, fixtures and fittings. East Ledang is based on a secured, gated and guarded concept and the development will be complemented with 31 gardens spaces, lakes and wetlands, clubhouse and low density residential units.

The Development consists of mixed high development with components of Link Duplexes, Twin Villas, Villas, Apartments, Town Houses and Commercials. Different concept may be proposed for different precinct to give reflect neighbourhood’s identity. The overall Development of East Ledang is expected to complete in 2015. Currently products are priced from RM250,654.00 to RM3,821,888.00 and a total of 1,157 units in 13 phases have been launched, since 23 February 2008. The housing project for the main buildings of Phase 2C & 2D show houses consist with 8 units (4 pairs) of Semi-detached which are divided as follows:-

<table>
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<tr>
<th>Item</th>
<th>No. of Unit</th>
<th>Semi-Detached Type</th>
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<tr>
<td>1</td>
<td>38</td>
<td>Type C &amp; C1 – 2,648 sqft</td>
</tr>
<tr>
<td>2</td>
<td>1</td>
<td>Type C2 – 2,702 sqft</td>
</tr>
<tr>
<td>3</td>
<td>38</td>
<td>Type D &amp; D1 – 2,551 sqft</td>
</tr>
<tr>
<td>4</td>
<td>1</td>
<td>Type D2 – 2,616 sqft</td>
</tr>
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The semi-detached houses are to be developed as high end residential product located in East Ledang, Nusajaya. Due to high demand from the potential local and foreign purchasers, the management required UEML to develop a wide range of high end products for East Ledang. Therefore, Phase 2C & 2D townhouses including external infrastructural and landscaping works need to be urgently available to the current market.

The area is located within East Ledang inside the residential park named Melody Park. The park is an immediate neighbour to The Ledang Urban Retreat.
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