

A revisit on the current practice of dispute resolution and ADR in Malaysia construction industry

Abstract

The current dispute resolution procedures available in the Malaysian construction industry are mainly litigation and arbitration. In addition, the alternative dispute resolutions (ADR), namely mediation and adjudication, have also been introduced as the other methods for resolving disputes. The objective of this study is to examine the current practice of dispute resolution and ADR available in the Malaysian construction industry. The aim of this paper is two-fold: to report the current practice of dispute resolution and ADR, and identify the attributes of successful implementation of both mechanisms based on the perceptions of the Malaysian construction industry players. From the jurisprudence point of view, this study looks into the law as it is, in relation to the current practice of dispute resolution and ADR, by showing how those findings can be used to explain why improvement is needed to promote a successful and well received dispute resolution and ADR, and what lessons can be learnt, towards the formulation of a more viable methods for the Malaysian construction industry. NVivo software has been used to manage and organise the complete interview transcripts and facilitate the data analysis process for this study. Literature review reveals a continuous development of dispute resolution and ADR in the Malaysian construction industry, while, globally the industry has not only embraced ADR but also spearheaded the development of innovative forms of dispute avoidance mechanism. The findings of interviews show that locally, apart from litigation, the common types of ADR are arbitration, mediation and ad hoc mechanism. The findings also lead to the discovery of the following attributes: faster, less procedural, cost effective and enforceable; regulation and government's support; professionalism and ethic; training; and facility, that may promote a successful implementation of dispute resolution and ADR in Malaysia.