

EVALUATING THE EFFECTIVENESS OF MEDIATION AND ARBITRATION PROCESSES IN RESOLVING DISPUTES IN THE MALAYSIAN CONSTRUCTION INDUSTRY

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ABSTRACT

Construction is considered a significant industrial sector. It has a very large and diverse scope of work, ranging from residential building, skyscrapers, dams, tunnels, bridges, rapid transit systems, and highways etc. An expansion in the scale of construction can lead to the participation of many parties, the execution of various phases by separate teams with their own desires and approaches in achieving them. Due to the complex and fragmented nature of construction, conflicts and disputes are an inevitable part that if they cannot be solved within the appropriate time, they may cause non-compensable damages such as delays for each project. Traditional and common dispute resolution methods are utilized to reach settlements between parties. Traditional dispute resolution sometimes cannot be effective due to adversarial procedures where one party will win and the other one will lose during the execution of the project. The effect of this may be that the losing party loses their passion for continuing the project efficiently which may create a critical situation and obstructs improvement of the project. This paper intends to investigate the effectiveness of arbitration method and mediation process as an alternative one in resolving common disputes that occur in the Malaysian construction industry and the extent of their impact on three important factors; cost, time and the overall outcome for construction projects. It concluded that the mediation process is an amicable, most effective and rational way for achieving settlement negotiated between the parties, and which is the only true way to achieve a win-win result whilst maintaining the relationship between the parties for future dealings.

KEYWORDS: Arbitration, Construction Dispute, Dispute Resolution Method, Mediation