Statutory adjudication – the need for a legislation framework

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Abstract:

Statutory adjudication is now commonly used to resolve construction disputes in over a dozen jurisdictions. Although there are similar themes in the various Acts, many concepts and details differ. Two main adjudication models are the UK model, which provides for adjudication of all disputes, and the New South Wales (NSW) model focused on progress payment disputes. New Zealand (NZ) followed the UK model while Singapore followed the NSW model – each with modifications. The Malaysian Act came into effect in April 2014 after a ten-year initiative. Although the objectives were nearly identical to the NZ model, the Act restricts adjudication to payment disputes and, bucking worldwide trend, limited to only contracts in writing. Incongruently, the Act has the longest adjudication duration and elaborate provisions on document discovery, hearings, and use of experts.

Using a combination of legal document analysis of primary legislation, law reports, industry reports, and responses to questionnaires, research was done to compare core differences in the various Acts with a focus on the NZ and Malaysian Acts and establish the rationale for the preferred Malaysian adjudication model. An adjudication legislation framework is proposed. The framework determines industry needs and preferences before an appropriate adjudication model is recommended. Among the key components identified and incorporated in the framework include the name of the Act and objectives, legislative drafting style, types of contracts governed, who may be an adjudicator, how they are appointed, types of disputes that may be adjudicated, adjudication durations, and how costs are controlled.

The findings suggest the key reason for the incongruence within the Malaysian Act stems from compromises made on concepts during the development of the Act. The framework can help prevent such and other anomalies in new legislation and in existing ones when being reviewed. It can also help when considering expanding adjudication beyond the construction industry – possibly through an ‘Adjudication Act’.

Keywords:
Adjudication Act, adjudication legislation framework, adjudication models, comparative adjudication, statutory adjudication