

THE EXPERTS' VIEWS ON FACTORS INFLUENCING THE EFFECTIVE IMPLEMENTATION OF STATUTORY ADJUDICATION

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ABSTRACT

The fundamental drive behind the introduction of the statutory adjudication scheme is to improve cash flow within the construction industry and also to provide a swift and inexpensive means of resolving construction disputes. While cash flow is widely regarded as the lifeblood of the construction industry, unfair payment practices remain a lingering issue affecting the delivery chain. Most often, contractors and subcontractors at the lower rung of the contractual chain face financial difficulties from main contractors who delay or refuse payment in the knowledge that court and arbitration proceedings are often too expensive and a slow remedy for the smaller contractors in particular. These oppressive acts, in many instances, have led to insolvency of the lower-chain players and, as such, generated serious concerns within the construction industry. Consequently, statutory adjudication was introduced in several countries globally to offer swift relief to the financially squeezed and cash-starved (sub)contractors. Similar legislation is about to be promulgated in the South African (SA) construction industry. This paper details the experts' views on critical factors that can enhance the effective implementation of the statutory adjudication process in SA. Data were gathered through qualitative interviews with fifteen adjudication experts that have direct interaction with profound knowledge of the adjudication process in the United Kingdom (UK), Australia, Singapore and Malaysia. The findings reveal the influencing factors in the form of combinations of 'enablers' and 'drivers' upon which successful implementation of statutory adjudication and the realisation of the benefits it has to offer could be hinged.

Keywords: Dispute resolution, implementation, legislation, statutory adjudication, success factors

1. INTRODUCTION

The term 'adjudication' has long been in existence. It is an age-old concept which has been utilised in various fields and in many different ways. Its meaning depends primarily on the nature of its use within a particular context, field or area, without which it will be meaningless (Redmond, 2001). In the field of construction, there is a specialised and

non-specialised use of the concept of adjudication (Maiketso, 2008). The non-specialised use of the concept of adjudication is traditionally associated with the quasi-judicial role of the principal agent. However, in more recent times, a specialised use of the concept of adjudication appears as a form of alternative dispute resolution (ADR) available to the construction industry. Adjudication primarily involves a procedure and process in which an adjudicator assesses an issue (such as an issue on which a dispute occurs, a claim, a disagreement or an argument) and decides on who is right or wrong. Simmonds (2003) describes adjudication as a process in which a dispute between contracting parties is decided by a neutral third person (the adjudicator) after examining the arguments of the parties. The adjudicator's decision is usually binding, unless and until the dispute is finally determined by legal proceedings, arbitration or an agreement between the parties. According to Gaitskell (2011), adjudication is

...a typical time and cost-limited procedure which is aimed at delivering certainty on a particular point disputed by the parties, often concerning cash flow, and usually of temporary binding effect, leaving open the possibility of subsequent debate in a more deliberative and thorough manner at a later stage by either arbitration or litigation

Generally, there are two types of adjudication, i.e. contractual and statutory (Oon, 2003). Both types of adjudication are designed to address the same problem that an unpaid party (be it a main contractor, subcontractor, sub-subcontractor, supplier or consultant) experiences in securing periodic cash flow (Gaitskell, 2007). However, over the past two decades the consensual adjudication has proved to be ineffectual in resolving the construction dispute and cash flow problems. The ineffectualness of contractual adjudication is linked to the problem of power disparity between the contracting parties and inequality in bargaining power between the contractors and their subcontractors. In addition to this problem, certain challenges have also been recognised as hindrances to the pragmatic functionality of contractual adjudication in SA. These challenges are (a) contractual, (b) institutional and (c) legislative (Maiketso and Maritz, 2012). As a result, the statutory adjudication was mooted with the purpose of providing parties with the right to payment and also allowing a swift and cheaper dispute resolution process by a way of adjudication. Once promulgated it is expected to be an accelerated dispute resolution to resolve immediate cash flow problems.

Thus, the Construction Industry Development Board (CIDB) views adjudication as

... an accelerated and cost-effective form of dispute resolution that, unlike other means of resolving disputes involving a third-party intermediary, the outcome is a decision by the third party which is binding on the parties in disputes and is final until

reviewed by either arbitration or litigation (CIDB, 2005)

Going through these definitions it can be reasoned that the concept of adjudication as an ADR mechanism goes beyond mere making decisions or judging between two parties in dispute. The concept reflects certain characteristics which make it different from other existing ADR mechanisms. For instance, Dancaster (2008) explained that the concept of adjudication in construction is closely related to arbitration, but with two major differences between the two processes. First, adjudication is not a final process and second, adjudication is fast, cost effective and results in decisions with a temporary binding effect in order to ensure that construction activities are not disrupted. These two major differences are seen as an added advantage of using statutory adjudication in dispute resolution. In order to enjoy these advantages, this study focused on identifying the factors that could contribute to its effective implementation in the SA construction industry.

2. RATIONALE FOR ADJUDICATION

Several authors have observed the inevitability of disputes in the construction industry (Cheung, 1999). Reasons for these disputes are linked to complex construction processes and interactions between contracting parties. Since disputes are unavoidable, a wide range of mechanisms for resolving construction disputes have been developed and made available to contracting parties in managing disputes when they arise. These mechanisms include negotiation, mediation, conciliation, expert determination, med-arb, arbitration, litigation and adjudication (Owen, 2008; Chong and Rosli, 2009; Hattingh, 2014).

Among scholars, the preferred means of dispute resolution in the construction industry remains debatable. Harmon (2003) argues that arbitration is the preferred method of resolving disputes as against litigation because it exempts the rigours of court proceedings and it ensures confidentiality. Wong (2011) contends that arbitration is less preferred in view of the growing recognition of adjudication. The reduction in preference partly hinges on the fact that arbitration, as well as litigation, is considered time-consuming and expensive (Cheung and Yeung, 1998). Adjudication, on the other hand, is seen as being less of both. A significant advantage of adjudication over arbitration is that, unlike arbitral awards, the decisions of adjudicators are only temporarily binding and as such, the mechanism provides the safety valve of taking the dispute further for subsequent debate in a more deliberative and thorough manner at a later stage, by either arbitration or litigation, in cases where either of the parties is dissatisfied with the adjudicator's determination (Dancaster, 2008).

As opposed to mediation, the advantage of adjudication is that an adjudicator is empowered to make a decision based on the merits of the case. Mediation is advisory, and the mediator facilitates the process of dispute resolution between the parties. Although the

mediator controls the process of resolution, he or she does not impose any opinion on the merits of the case but leaves the disputants to control the outcome. As such, the process only has advantages of flexibility, privacy, confidentiality, and protection of the parties' legal rights when no agreement is reached (Maritz, 2009). As opposed to negotiation, one significant advantage of adjudication is that the process of adjudication involves a third party intervention. The third party is expected to be neutral, impartial and detached from the sentiments of the parties. One of the differences between adjudication and conciliation is the fact that, while the adjudicator investigates the disputes and delivers a determination, the conciliator only facilitates the process and serves as an intermediary between the parties.

The essence of adjudication in addressing different construction payment and dispute problems is well documented in literature. The UK introduced adjudication legislation first in the Part II of the Housing Grants, Construction and Regeneration (HGCR) Act, 1996. Fairly soon thereafter the state of New South Wales (NSW) in Australia enacted the Building and Construction Industry Security Act in 1999. These two jurisdictions are considered the leaders in the practice of legislative intervention (Munaa'im, 2012). Since the year 2000, several other countries or territories, including England and Wales, Scotland, Northern Ireland, NSW, Victoria, New Zealand, Queensland, Isle of Man, Western Australia, Northern Territory, Tasmania, Australian Capital Territory, South Australia, Singapore, Malaysia and Ireland have introduced legislation on payment and also provided for adjudication as a rapid dispute resolution method.

The NSW legislators introduced statutory adjudication for the sake of fairness between parties and to overcome payment-delay-tactics designed by main contractors for their financial solvency at the expense of subcontractors (Uher and Brand, 2007). Thus, the statutory intervention in NSW was primarily enacted to protect parties (the contractors, subcontractors, sub-subcontractors, among others) down the contractual chain with a statutory right to recover their legitimate payment and be protected from the risk of non-payment that may arise from the paymaster's insolvency (Munaa'im, 2012).

Literature suggests that the adjudication regime in other jurisdictions has closely followed either the UK Act or the NSW Act with some level of modification. The Building and Construction Industry Security of Payment Act (BCIPA) 2004 of Singapore was purposely enacted to improve cash flow by helping to speed up payment in the building and construction industry. In order to achieve this purpose, some cultural factors were considered and incorporated during the policy formulation stage of BCIPA. In the context of the Malaysian Construction Industry Payment and Adjudication Act (CIPA) legislation has a comparatively modest scope contrasted to the UK and Singaporean statutes. It is worthy of note that despite the different policies that underpinned the enactment of security of payment legislation in different jurisdictions, there are uniform testimonies of adjudication success and the impact it has had on the construction industry

and other dispute resolution mechanisms. The studies of Kennedy (2006), Uher and Brand (2007), Gaitskell (2007), Kennedy et al. (2010), Dancaster (2008), and Munaaim (2010) are testaments to this claim.

As a result of its numerous benefits, in recent times there has been a growing interest in adjudication. The CIDB's new draft regulations¹ have their focus in providing security of payment and swift resolution of construction disputes in SA (CIDB, 2005). Adjudication has been welcomed and widely adopted both in the UK and in other countries. According to Gaitskell (2007), adjudication offers parties the possibility of controlling and reducing the particular hazards associated with the final determination procedures, namely cost, time and uncertainty of outcome. The advent of adjudication has led to a decrease in the usage of other forms of dispute resolution mechanisms in the construction industry (Gaitskell, 2007).

2.1 Critical factors for effective implementation strategies

Previous studies have revealed that, whether a policy is new or reformed, its effectiveness in achieving the desired goals relies on the process of implementation. As such, the existence of any policy will have little effect unless a realistic implementation plan is developed and executed. Findings from past studies suggest that the successful implementation and sustainability of statutory adjudication in construction requires that an enabling platform should be in place. Munaaim (2010) identified seven essential key elements that can contribute to the effective statutory adjudication practice. According to him, for any adjudication scheme to be effective, it should be capable of: (i) helping the right parties; (ii) resolving the right dispute; (iii) being accessed by both parties in contract; (iv) being impartial; (v) being speedy; (vi) being cost effective; and (vii) ensuring the availability of quality adjudicators. In addition to these key elements, many of the earlier studies also established the fact that enforcement of an adjudicator's decision is critical to the successful implementation of statutory adjudication. According to Gaitskell (2007), an effective system of statutory adjudication that will actually achieve the objective of protecting subcontractors' periodic payment cash flow requires not only payment and adjudication provisions but also a court system which is ready, willing and able to enforce adjudication decisions. In this vein, Maritz (2009) noted that adjudication without the statutory force is not likely to be effective. Maritz further stressed that enforcement of the adjudicator's decision is critical to the success of adjudication and until SA introduces an act similar to acts such as the HGCR Act 1996

¹The Construction Industry Development Board (cidb) **Construction Industry Development Amendment Regulations, 2015** (*Prompt Payment Regulations and Adjudication Standard*) appeared on Friday 29 May 2015 in the Government Gazette Notice 482 of 2015 and were open for public comment for 60 days until 29 July 2015. The draft regulations are available and can be accessed from http://www.cesa.co.za/sites/default/files/38822_gen482.pdf

(UK), the Construction Contracts Act 2002 (NZ) or Building and Construction Industry Security of Payment Act 2004 (Singapore), adjudication will remain largely ineffective and, therefore, underutilised in the SA context.

3. RESEARCH METHODOLOGY

This study adopted a qualitative research approach in both the collection and analysis of data. This type of approach is recommended in situations where research objectives require qualitative answers from professionals who have profound knowledge of the phenomenon under consideration (Kruger, 1988). Thus, the data for the study were collected through Skype™ interviews with the professionals who have direct interaction with the adjudication implementation. Fifteen professionals with intensive involvement in the adjudication implementation from the UK, Australia, Singapore and Malaysia participated in this research. An acceptable sample size for interviews of this nature is from five to 25 individuals (Morse, 1994; Creswell, 1998; Leedy and Ormrod, 2005). The UK and NSW adjudication experts were selected because both the UK and the Australian state of NSW were considered the leaders in the practice of legislation intervention (Munaaim, 2012), having being the first and second jurisdictions respectively to introduce statutory adjudication. The adjudication professionals in Singapore were also contacted because their adjudication regime is an adapted version of the NSW Act in order to suit their own industry structure. Adjudication experts from Malaysia were selected on the basis of the fact that it was the latest country (as at 2015) that brought into force legislation providing for the mandatory adjudication of construction payment disputes. Moreover, the Malaysian Act is considered a hybrid of multiple adjudication systems and cannot be grouped into either of the other two leading models (i.e. the UK and NSW) (Eversheds, 2014). Malaysia is also the only country that named an independent institution called the Kuala Lumpur Regional Centre for Arbitration (KLRCA) as an implementing authority in charge of adjudication administration in their legislation. Thus, specific contributions from the experts working in that institution were regarded as what was needed to meet the objectives of this study. Therefore, the fifteen participants were selected through a purposive/judgmental sampling technique. Their selection was based on their specific involvements and experiences central to the phenomenon being studied. Most of these participants (53%) have more than 20 years of experience while 47 per cent have between 10-19 years of experience. These participants have engaged in adjudication as legal advisers, legal representatives, adjudicators, trainers and construction lawyers. In addition, some of the participants have also written books and journal articles on adjudication and payment legislation in their countries and internationally.

Data were collected through interviews via Skype™ in accordance with the Patton's general qualitative interview guide approach (Patton, 1990). The interview guide was developed to enable uniformity in the manner in which questions are asked throughout

the interview exercise and also to facilitate consistency in the trajectory of the interviews. The interview guide comprised eleven open-ended questions, excluding demographic questions. These eleven questions were grouped under three sections. The first section, named “Institutional roles on effective statutory adjudication implementation”, contains three questions which seek to investigate the indispensable roles that the legal institutions, professional institutions, government institutions and the adjudicator nominating authorities perform in the realisation of effective statutory adjudication implementation. The second section, tagged “Implementation challenges to effective statutory adjudication implementation”, contains two questions which were designed to gather information on the barriers to effective statutory adjudication implementation and the possible ways of avoiding them in SA. The last section, which was named “Institutional supports required for the effective statutory adjudication implementation”, comprises six questions. The six questions elicited responses on areas covering the specific features in the Payment and Adjudication Act that can enhance effective statutory adjudication practice, the required institutional framework that can enhance effective practice and the implementation structure needed to be in place which can enhance compliance by the industry stakeholders. The eleven questions asked were to probe the individual’s viewpoint regarding the subject matter and the structure of the questions allowed reciprocal two-way communication arrangement with the interviewees, thereby allowing room for exploratory and clarification purposes (Thomas, 2004). Interviews lasted an average of 38 minutes and were audio-recorded with the kind permission of the interviewees. The recordings were transcribed and were sent back to the interviewees for validation, thus confirming their correctness. The data were analysed systematically starting with the formulation of codes, to the development of categories and the creation of themes and sub-themes (Boyatzis, 1998). A total of 412 codes, 41 subcategories, 11 categories and four themes were generated in the study. This paper presents one of the themes tagged “The enablers of an effective statutory adjudication implementation” as depicted in Figure 1.

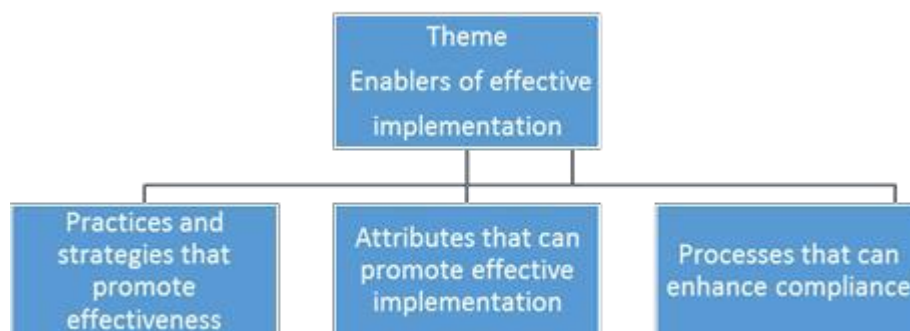


Figure 1: The enablers of an effective statutory adjudication implementation

4. FINDINGS AND DISCUSSION

Although there are three sub-categories under the theme tagged “Enablers of an effective statutory adjudication implementation” as shown in Figure 1, this paper focuses mainly on the second sub-category named ‘Attributes that can promote effective statutory adjudication implementation’. The interview results revealed that the factors that can enhance the effective adoption of the statutory adjudication exist in the form of combinations of ‘enablers’ and ‘drivers’. A closer evaluation of the analysis revealed that some of the identified factors encourage successful implementation and reinforce effectiveness, while the availability of some other factors basically help to prevent or overcome potential barriers. The factors that encourage or reinforce the effective implementation were grouped under ‘Drivers of an effective implementation’, whilst those factors which can help in overcoming the potential barriers are grouped under ‘Enablers of an effective statutory implementation’. On the one hand, twelve factors were revealed to be very important and act as drivers in statutory adjudication implementation (see section 4.1). On the other hand, the study revealed that the enablers of a successful statutory adjudication hinged on six factors as listed in section 4.2.

4.1 *Drivers of an effective statutory adjudication*

The drivers as revealed in this study are the factors that can enhance the effective adoption of the statutory adjudication mechanism. Their presence is capable of reinforcing effective implementation by producing a basis for a dispute resolution mechanism that would be well received by construction participants. These drivers include the following:

(i) Reasonable time frames and procedural clarity: The interviewees unanimously revealed that for adjudication to be embraced by the industry stakeholders, it must be speedy and devoid of any unnecessary procedural complexities;

(ii) Reasonable cost: Cost-effectiveness was revealed to be one of the preferable features for selecting a dispute resolution process. For an adjudication regime to be successful, the cost of adjudication and adjudicators fees should be kept reasonable to encourage both the disputing parties and the adjudicator. According to one of the interviewees:

The fact is that, if you are looking from the position that the purpose of adjudication is to provide a speedy and cheap proceeding, by setting the adjudicators’ fees too high, it defeats the purpose of promoting it as a cheap and speedy resolution. On the other hand, if you are keeping it [sic] too low, then, all those adjudicators who are experienced would not be willing to accept an adjudication appointment

By implication, the way in which the adjudication cost and the adjudicators' fees are managed determines a great deal on its acceptability and effectiveness;

(iii) Quality of the adjudicators: Availability of experienced and qualified adjudicators to help in kick-starting the process is deemed vital for effective implementation. In support of this view, interviewee 7 noted:

Having well trained adjudicators means that there are likely to be fewer problems that have arisen with adjudicators who know little about the regime and whose adjudication decisions are likely to be challenged by parties in courts

A good decision made within a minimum time frame will encourage more usage and increase users' confidence in the system. Thus, some of the interviewees suggested that young adjudicators should be mentored to help develop them. Accurate matching of disputes with suitably qualified adjudicators was mentioned as one of the factors that can enhance the production of a quality decision and thereby increase the level of acceptability of such a decision.

(iv) Accessibility: Another important factor revealed in the study is the accessibility in terms of the right of both parties to initiate adjudication. The interviewees believe that this kind of accessibility would encourage better participation;

(v) Enforceability: Assurance of enforceability of the adjudicators' decisions will encourage more usage. The provision of built-in mechanisms in enforcing the adjudicators' decisions was suggested as a good driver to effective implementation;

(vi) Regulations and government support: Regulations and government support promote confidence of the users in the mechanism in relation to the conduct of the parties and enforceability of the adjudicators' decisions;

(vii) Impartiality and substantive justice in the adjudication scheme: The perception of a fair process is often acknowledged to be as important as the reality of impartiality. The data analysis revealed that this factor would lead to more willingness by parties to accept decisions when the parties believe that the dispute resolution process has been fair. This will encourage better usage by the parties. In line with these findings, interviewee 10 noted:

It is important that the body administering the adjudication is seen to be independent and neutral, this is significant because, it means that there is no interference by any national body". In addition to this, participant 5 explained that "...all these organisations not only to act independently but must also be

seen to act independently and impartiality [sic]. This will instil confidence in the user

(viii) Clear understanding of the legislation provision by the intended beneficiaries: Provision of training to various industry stakeholders to ensure they are knowledgeable about the conduct and the policy objectives of the legislation will help to clarify misconceptions and promote maximum usage;

(ix) Procedural clarity and good comprehensibility of the legislation: The procedure must be clear, simple and easily comprehensible to the users. Complex and unnecessary procedures can constitute a hindrance to acceptability of adjudication;

(x) Adequate resources: Adequate resources in terms of human resources, facilities, and a variety of adjudicators from different professional backgrounds are essential factors for effective implementation;

(xi) Vibrant nominating authority: The swift nomination of adjudicators by the adjudication nominating authority when disputes arise will help to accelerate the whole process of adjudication and then encourage industry players to use it; and

(xii) Professionalism: This involves the professionals helping the parties to resolve their dispute efficiently with fewer procedural problems. They (adjudicators) must be fully qualified and experienced. They must be neutral, impartial, fair and independent in performing their duties.

4.2 The enablers of an effective statutory adjudication implementation

The enablers are those factors or elements that can help in overcoming the potential barriers to effective implementation. As revealed from the study, the enablers include: (i) institutional support; (ii) good management; (iii) good practices; (iv) good coordination; (v) procedural justice; and (vi) fairness in the appointment of adjudicators. These enablers were summed up in the submission from interviewee 3 who explained:

For a statutory adjudication scheme to be successful, an institution is required that can create and conduct a wide range of road-shows, talks and conferences to acquaint the industry and its stakeholders with the impending legislation and to train a sizable number of adjudicators who can take on the task of adjudication.

This interviewee further stressed:

It is important that the adjudication process result in the conclusion that the processes and procedures are fair. Win or lose, prevail or fail, a party should never be able to viably claim - or have the internal belief - that the processes and

procedures were unfair or not done right. The parties should have the feeling that the adjudication was done right, that the process was fair, and that the adjudicator reached a just result. If these views prevail, confidence in the statutory scheme should grow within the construction industry and among industry stakeholders. As a result, more and more people will feel comfortable taking their dispute to adjudication and voluntary compliance with adjudication decisions should follow

5. DISCUSSION

Statutory adjudication has been noted to be one of the most important innovations introduced in construction law in the 20th century (Ndekugri and Russell, 2006; Munaaim and Capper, 2013). The primary reason behind its introduction, as aforementioned, is to improve cash flow within the construction industry (South African Construction News, 2015). Literature suggests that statutory adjudication is found to be most conducive to the overall purposes of justice (Supramaniam, 2007). As such, there has been a growing interest in the adjudication process. For an adjudication regime to be effective, due consideration should be given to the factors that can support its successful adoption. This study identified factors that are needed for effective implementation in the combinations of drivers and enablers of an effective implementation. The data analysis revealed that both the drivers and enablers are vital elements to effective implementation.

Gichoya (2005) approached the critical factors for effective implementation in the field of information technology from two perspectives. According to him, it is important to clarify the “opposite” effect of critical factors for success, especially while discussing factors for success or failure. While the presence of a factor encourages success, its absence will consequentially promote failure. In effect, the factors for success, which are termed the drivers, would encourage successful implementation, while the enablers are those factors or elements that would help to overcome potential barriers that are capable of undermining the effectiveness of the process. For instance, the success drivers revealed in this study are viewed as unavoidable factors that should be present for any adjudication regime to be successful. A prominent adjudicator referring to the importance of procedural fairness as a critical driver of an effective adjudication regime noted:

It is important that the adjudication process result in the conclusion that the processes and procedures are fair..As a result, more and more people will feel comfortable taking their dispute to adjudication and voluntary compliance with adjudication decisions should follow

The submission of this interviewee is in line with the statement made in *Balfour Beatty Construction Ltd v the Mayor and Burgesses of the London Borough of Lambeth* [2002] BLR 288. In this case, the following was commented:

It is now clear that the construction industry regards adjudication not simply as a staging post towards the final resolution of the dispute in arbitration or litigation but as having in itself a considerable weight and impact that in practice goes beyond the legal requirement that the decision for the time being has to be observed. Lack of impartiality or fairness in adjudication must be considered in that light. It has become all the more necessary that, within the rough nature of the process, decisions are still made in a basically fair manner so that the system itself continues to enjoy the confidence it has apparently earned

It is then clear from the above statement that fairness, impartiality and other drivers of effective implementation as previously mentioned are capable of building confidence in people, enhancing voluntary compliance with adjudication decisions and thereby guaranteeing effective statutory adjudication implementation.

The other success factors are termed enablers (see section 4.2). Enablers are the factors that must be available for the continual effective functioning of the adjudication system and that would also help to prevent barriers to continuous usage. Gary et al. (2012), referring to the work of Rabin and Schrag (1999), advise that the initial reactions of key stakeholders around new measures provide very good indicators of their future performance. The implication of this statement is that once the initial standards of the adjudication process are accepted by the industry stakeholders, its future is hopefully guaranteed. Thus, good coordination of the adjudication processes and good practices such as the establishment of adjudication standards to ensure that the quality of the adjudicators are not compromised through mentoring and monitoring are very important.

Coggins et al. (2010) have revealed that the mere perception of justice in an adjudication process has gone a long way in promoting its effectiveness. Some of the outcomes of the drivers and enablers factors include (i) a mutual satisfaction of the parties with the adjudication determination; (ii) willingness of the disputing parties to settle; (iii) feeling of trust; (iv) cooperation; and (v) commitment towards the outcome (Coggins, 2011).

Thus, both the drivers and enablers could be established as essential elements needed for a successful statutory adjudication implementation owing to the fact that its presence could easily enhance greater acceptability of adjudication determination and encourage more usage.

6. CONCLUSION AND RECOMMENDATION

This paper has explored several factors that could promote the effective implementation of statutory adjudication. The identified factors were grouped into two, namely (i) drivers of an effective implementation and (ii) enablers of an effective implementation. The drivers refer to the factors that encourage or reinforce effective operation while those factors which can assist in overcoming the potential barriers in the

implementation process are referred to as enablers of an effective implementation. The findings revealed that the presence of these success factors would enhance maximum participation from the industry stakeholders. Thus, attributes such as speed, reasonable adjudication cost, good practices, good management, and procedural fairness and justice would go a long way in reinforcing the effectiveness of statutory adjudication practice. Hopefully, once the identified factors have been adequately considered by the implementers, the effectiveness of the mechanism would not only be about providing immediate relief and remedies to the wronged parties, but would go a long way in preventing protracted and expensive litigation. In addition, once this scheme is embraced by the industry players, cash flow would improve, frustration and bitterness over unfair treatment borne at the hands of the stronger party would be reduced, expensive and time-consuming litigation proceedings would no longer be a compelling option, resources would be saved, unnecessary expenses caused by delay would be avoided, more projects would be completed on time and the benefits of the process would be jointly shared by all project participants within the contractual chain.

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