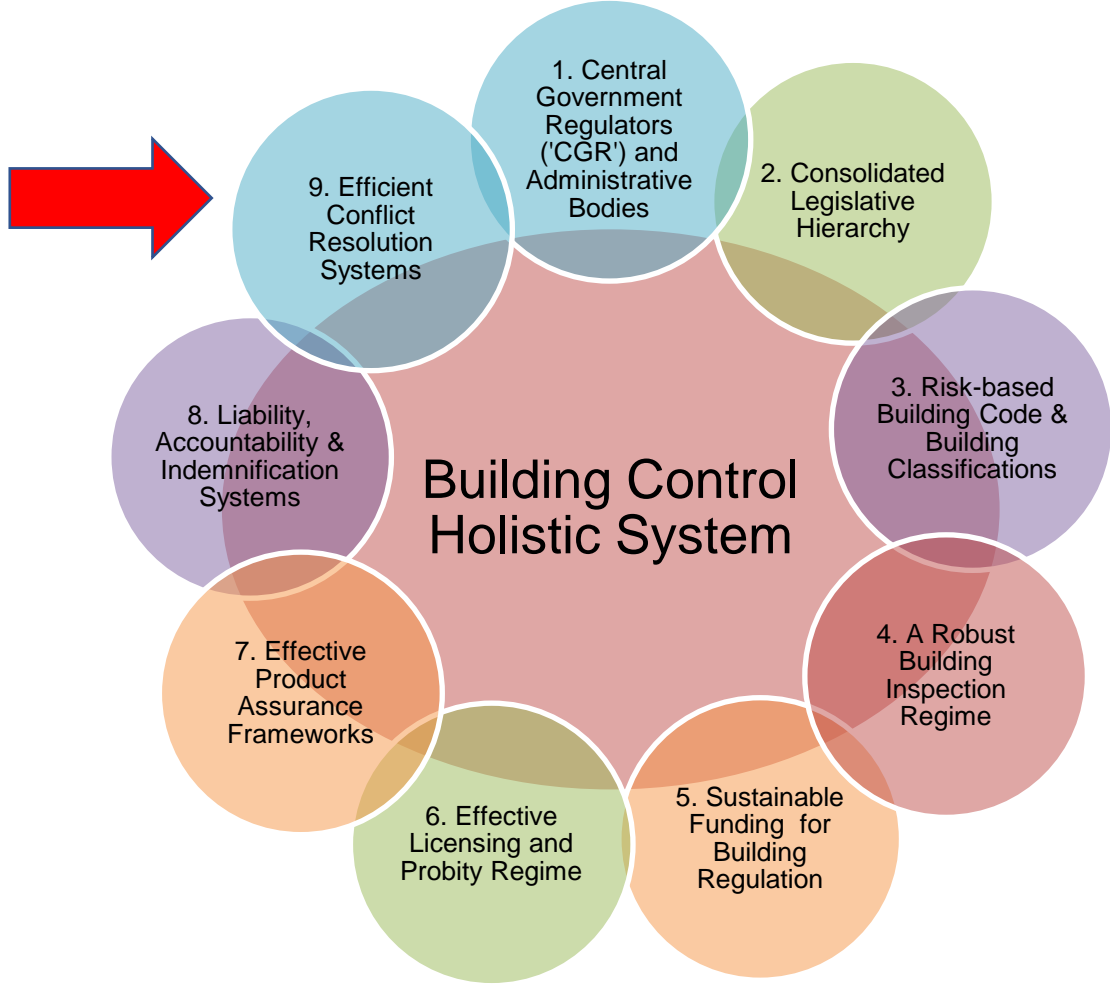


Why Better Access to Justice in the Construction
Dispute Resolution Sector is an Economic Imperative
for Emerging Economies – an Economists' Perspective

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A holistic building control System is key to ensure safety standards that protect the public while making the permitting process efficient, transparent and affordable



Litigation is likely more costly than mediation or other ADR methods and mediation and arbitration also tend to be most costly than negotiation

- Costs for mediation (\$1.2 million)/arbitration (\$1.17 million)/ negotiation (\$330,000).
- The median dispute amount was smallest for negotiation (\$250,000) and largest for arbitration (\$1.8 million)
- Smaller disputes had higher transactional costs (39% of claim value) compared to bigger disputes (17% of claim value).
- Transactional costs represented 2% of the total contract value for projects with disputes.
- Total transactional costs for construction dispute resolution in the US at \$4-12 billion per year. If 5% of disputes go to litigation (an estimate cited), litigation's share of that could be \$200 million - \$600 million.
- \$5 billion spent annually on construction litigation. Adjusted for inflation since 1998, that equates to around \$11 billion today.

updates

Quantification of Costs for Dispute Resolution Procedures in the Construction Industry

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Abstract: The extent to which disputes affect the construction industry has been well-documented. There are a plethora of anecdotal stories, and even some data that explain how unresolved conflict can impact project cost, schedule, and quality. In response, many systems and procedures have been developed to address disputes and their resolution within the construction industry. However, no data exist that quantitatively compare these various alternatives and the real costs of resolving a dispute using methods other than litigation. This paper presents a framework for identifying and capturing the transactional costs incurred to resolve disputes throughout the full spectrum of resolution options. Transactional cost data from 46 recently completed construction projects, totaling over \$2 billion of total installed costs, confirm that these sums can account for a large portion of the settlement/award amount, the original claim amount, and even the total contract value when using some dispute resolution methods. Furthermore, using dispute trend and cost data, a comprehensive dispute management system based upon the concepts of risk management is proposed, highlighting the overriding objective of promoting dispute avoidance/resolution in the most cost-efficient manner possible.

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Introduction

The construction industry has been a paradoxical leader in both dispute occurrences and dispute resolution systems for many years (Groton 2005; Keil 1999; Michel 1998). While this may or may not be an enviable position, the industry has managed to develop and adopt many unique ways to address the potential risks of disputes (Harmon 2003; Mix 1997; Peña-Mora et al. 2003; Rubin et al. 1999; Zack 1997). Additionally, many of these concepts and systems, including partnering, realistic risk allocation, dispute review boards, and stepped negotiations, have been successfully applied in other industries (Stipanowich 1995; Treacy 1995). However, the justification for implementing these procedures has been based primarily upon contractual requirements, governmental regulation, court order, limited previous experience, or basic reactionary instinct and not on measured cost savings.

Despite being an industry keenly focused on quantitative results, parties involved in the purchase or construction of capital projects frequently fail to analyze the actual costs associated with

dispute occurrences through both their frequency and severity (Adrian 1988). While many industry publications and experts have deplored the trend towards increased litigation in the industry ("Turning" 1994; "Measurement" 1997; Michel 1998; "Lightening" 1999; Mays 2003), little quantitative data have been collected and analyzed to prove such notions. In addition, the few studies that have focused on quantifying the severity of dispute occurrences (Diekmann and Nelson 1985; Kumaraswamy 1997, 1998) have examined total cost/time impacts rather than focusing on transactional cost implications. This paper attempts to address this missing information, focusing on negotiation, mediation, and arbitration as the dispute resolution method.

The first section of this paper discusses a proposed framework for comprehensive dispute management. The system, based upon concepts developed within the field of risk management, will focus on dispute identification, assessment, and control. Particular attention will be given to frequent causes of disputes/claims and the typical progression of dispute resolution procedures.

The second section of the paper addresses the least explored component of the proposed system—dispute assessment. Dispute assessment attempts to compute the impact of disputes by quantifying construction dispute frequency and severity. Literature, accompanied by recent studies at the Center for Construction Industry Studies (CCIS), will identify the current conflict environment within a narrow sector of the construction industry in an attempt to understand possible industry-wide trends of dispute occurrences. Additionally, the severity of dispute occurrences will be examined through the quantification of transactional dispute resolution costs. Data collected from 46 recently completed construction projects, accounting for over \$2 billion of total installed costs, will be presented. These data highlight the scope of the hard dollar cost impact of disputes occurrences while separate case study analyses reveal other nonquantifiable aspects of dispute resolution impacts throughout the industry.

Finally, recommendations are given to practitioners who are

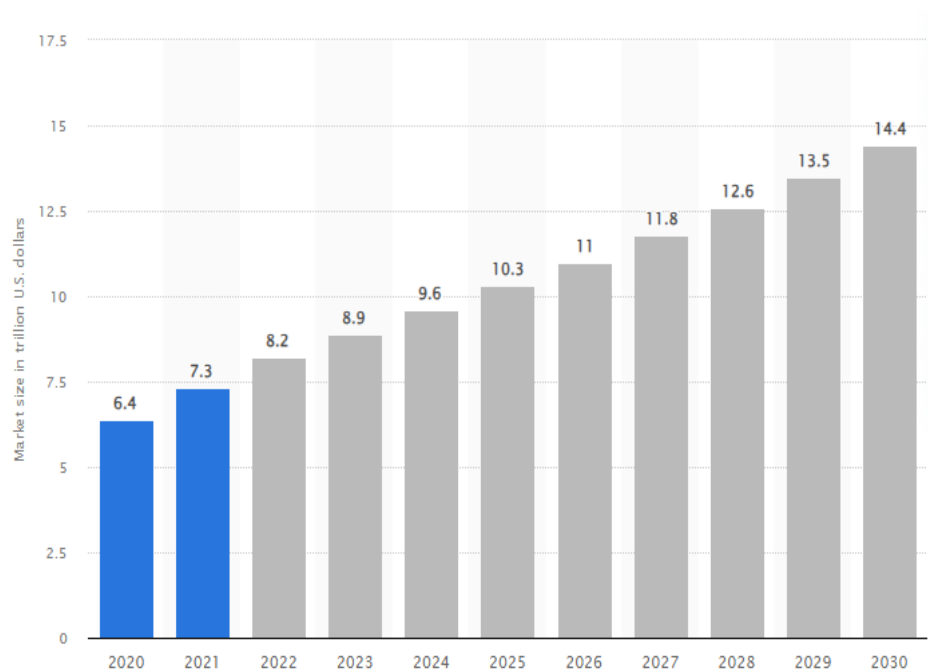
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Note. Discussion open until December 1, 2006. Separate discussions must be submitted for individual papers. To extend the closing date by one month, a written request must be filed with the ASCE Managing Editor. The manuscript for this paper was submitted for review and possible publication on October 20, 2005; approved on February 22, 2006. This paper is part of the *Journal of Professional Issues in Engineering Education and Practice*, Vol. 132, No. 3, July 1, 2006. ©ASCE, ISSN 1052-3928/2006/3-264-271/\$25.00.

Construction is a major industry in most emerging economies, contributing significantly to GDP

Size of the global construction market from 2020 to 2021, with forecasts from 2022 to 2030 (in trillion U.S. dollars)



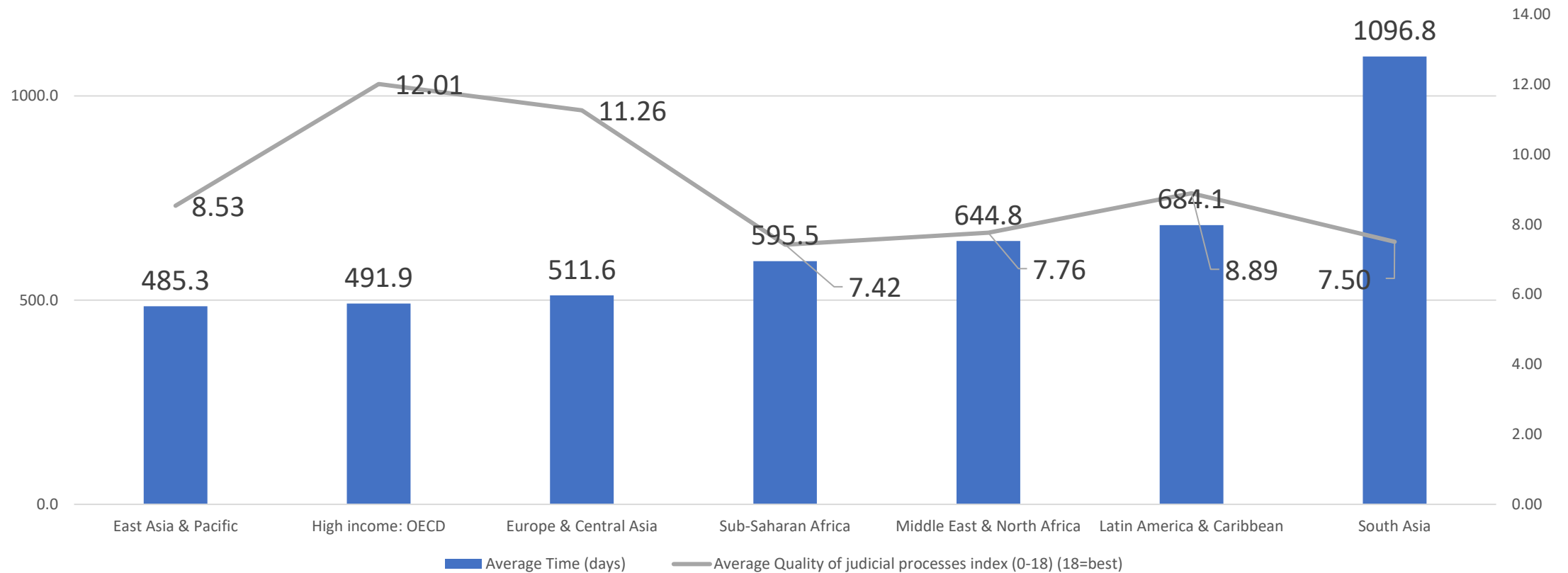
Source: Statista 2023

8% of
global
econ.

- Construction is a major GDP contributor in emerging economies . (6.3% - World Bank, 2020, 15% in China – ECB, 2018).
- Lengthy disputes derail projects, causing economic ripples.
- Unresolved disputes create uncertainty, reducing investment.
- Multi-party disputes magnify costs when institutions are weak.
- Effective dispute resolution enables essential infrastructure and real estate growth

Regional disparities in judicial systems disadvantage emerging economies

Average time to solve a commercial dispute and quality of judicial processes by region (2020)



Source: World Bank, 2020

Action to be considered by policy makers in emerging economies moving forward

- Expand and improve commercial courts' construction law expertise through judge training.
- Promote alternative dispute resolution methods like mediation and arbitration.
- Establish specialized construction dispute resolution forums with industry experts.
- Make legal access more affordable via reduced fees and aid programs.
- Use technology to streamline dispute processes and access to information.
- Expand construction mediation and arbitration education.
- Increase public legal education on dispute resolution options.
- Adapt international best practices locally.