Partnering for Dispute Resolution and Mitigation – A Reality or Myth?

Chan, D.W.M.
Department of Building and Real Estate, The Hong Kong Polytechnic University, Hung Hom, Kowloon, Hong Kong, China
(email: bsdchan@inet.polyu.edu.hk)
Chan, A.P.C.
Department of Building and Real Estate, The Hong Kong Polytechnic University, Hung Hom, Kowloon, Hong Kong, China
(email: bsachan@inet.polyu.edu.hk)
Lam, P.T.I.
Department of Building and Real Estate, The Hong Kong Polytechnic University, Hung Hom, Kowloon, Hong Kong, China
(email: bsplam@inet.polyu.edu.hk)
Lam, E.W.M.
Department of Building and Real Estate, The Hong Kong Polytechnic University, Hung Hom, Kowloon, Hong Kong, China
(email: bselam@inet.polyu.edu.hk)
Chan, E.Y.K.
Department of Building and Real Estate, The Hong Kong Polytechnic University, Hung Hom, Kowloon, Hong Kong, China
(email: eggiechan@hotmail.com)

* Corresponding author (Daniel W M Chan)

Abstract

Partnering is a process of establishing good working relationships based on mutual trust and dedication to common goals between project team members for the purpose of achieving specific business objectives. It is a proactive approach to conflict and dispute resolution that provides a way for project partners to anticipate potential problems with mutually satisfactory solutions. However, traditional dispute resolution techniques such as mediation, arbitration and litigation, which can be both expensive and time-consuming, tend to be confrontational and fail to reach a win-win situation, hence ultimately posing a threat for the industry in the long term. Unlike many western countries,

partnering was not adopted within the Hong Kong construction industry until 1994 for a public hospital project, yet has proved to be no less an effective procurement means in improving the traditional adversarial working culture and reducing intractable construction disputes and conflicts over the past 16 years. This paper presents a timely and in-depth review of the implementation and effectiveness of project partnering in reducing disputes within the Hong Kong construction industry through planned structured interviews, case studies and an empirical questionnaire survey, and seeks further improvements to the application of partnering and dispute resolution. The research study will identify the causes of construction disputes and analyze their importance; examine whether and how partnering can minimize the occurrence of construction disputes; evaluate the satisfaction level of various project team members on dispute resolution via partnering; and conclude by suggesting recommendations for avoiding and mitigating construction disputes and claims using the partnering approach.

Keywords: project partnering, construction disputes, construction conflicts, Hong Kong

1. Introduction

The Hong Kong construction industry is characterized by fragmentation and traditional adversarial working relationship. This contributes to mistrust, lack of open communication, and ultimately, conflicts and disputes (Appel 1993). The Report of the Construction Industry Review Committee published by the Hong Kong Special Administrative Region in January 2001 encouraged a wider application of a partnering arrangement so that all project participants will work as a team to achieve shared project objectives rather than in competition with each other (Construction Industry Review Committee 2001). Since the resolution of disputes can be both expensive and time-consuming, a proactive approach to resolving claims and disputes should be adopted by employers, consultants and contractors. Partnering has been demonstrated to be an effective procurement means in improving the adversarial culture and reducing construction disputes and conflicts within the industry worldwide (Construction Industry Institute 1991; Construction Industry Institute 1996; Gransberg et al 1999; Chan et al 2003a). Project partnering has been adopted within the Hong Kong construction industry for more than 16 years since 1994 and brought many perceived benefits to all project participants. Thus there is a strong need for an in-depth research with focus on examining the effectiveness of partnering in dispute resolution and mitigation in local construction.

Partnering is not a new concept in western countries but it was not introduced in Hong Kong until 1994 for a public hospital project (Chan et al 2003a). Partnering is a simple process of establishing good working relationships between contracting parties. More directly, partnering is the building of "trust" among the interested parties of a contract. This helps avoid problems with the project that, in recent times, more often than not leading to litigation (Moore et al 1992).

Disputes can be resolved by traditional means such as mediation, arbitration and litigation; however, those techniques are operated by legal processes under an adversarial atmosphere (Construction Industry Review Committee 2001). Consequently, a rational, non-adversarial and cost-effective approach to resolving construction disputes is desired (Pinnell 1999). Partnering is a proactive approach to resolving disputes far more effectively than adversarial approaches (Construction Industry Institute 1991; Pinnell 1999). Partnering opens a process to have parties engaged in open communication with mutual trust and respect, and to share risks and liabilities responsibly for the attainment of common goals (Fisher 2004). During the partnering process, problems can be identified and resolved at proper level, thus partnering is also regarded as a dispute prevention procurement method.

In order to improve the overall performance of the construction industry, construction disputes should be minimized or even avoided. This research will provide the project participants with an in-depth vision of whether and how disputes can be prevented and resolved via partnering, and with an effective approach to reducing construction disputes so as to improve cost-effectiveness, working relationships among contracting parties as well as overall project performance.

2. Definitions of partnering

It is difficult to provide a single definition towards partnering (Bresnen and Marshall 2000; Cheung et al 2003; Chan et al 2004). Various definitions are sought from published literature and they are defined according to different visions of authors. Indeed, partnering is a process of establishing a moral contract or charter among the project team members, which will bind each party to act in the best interest of the project and the project team members.

Both the Construction Industry Institute (1991) based in the United States and the Construction Industry Board (1997) in the United Kingdom conducted some well-known researches into partnering. They had developed their own definitions of partnering below.

The Construction Industry Institute (1991) defined partnering as:

"A long-term commitment between two or more organizations for the purposes of achieving specific business objectives by maximizing the effectiveness of each participant's resources. This requires changing traditional relationships to a shared culture without regard to organizational boundaries. The relationship is based on mutual trust, dedication to common goals, and an understanding of each other's individual expectations and values."

The Construction Industry Board (1997) defined partnering as:

"A structured management approach to facilitate team working across contractual boundaries… it should not be confused with other good project management practice, or with long-standing relationships, negotiated contracts, or preferred supplier arrangements, all of which lack the structure and objective measures that must support a partnering relationship."

3. Partnering development in Hong Kong

The earliest formal partnering arrangements recorded within the Hong Kong construction industry were exclusively applied to hospital projects in 1994 (Skues 1996). The two pioneering proponents were the Hospital Authority and Hsin Chong Construction Co Ltd, a Hong Kong-based leading contractor. The two design-and-build hospitals being managed by the Hospital Authority have embarked on partnering. The first project, the North District Hospital located in Sheung Shui, introduced partnering through the initiative of the employer (Skues 1996). The initial partnering workshop was conducted after tender out but before contract award. The second project, the Tseung Kwan O Hospital, set out a partnering provision in the contract and therefore the partnering workshop was launched by the contractor "Hip Hing-Laing Joint Venture". Leighton Contractors (Asia) Ltd, a prominent Australian-based contractor, successfully adopted partnering for the contracts of the Haven of Hope Hospital in 1995 and the United Christian Hospital in 1997 respectively (Skues 1996).

In recent years, the application of partnering principles is not limited to hospital projects. The mass transportation service providers, Kowloon-Canton Railway Corporation (KCRC) and Mass Transit

Railway Corporation Ltd (MTRCL) which have merged together as the MTRCL since December 2007, have introduced partnering for their development projects such as the West Rail and Tseung Kwan O Railway Extension respectively (Bayliss 2002). Moreover, a focus on reducing construction disputes via partnering has been placed in the public sector. Apart from the infrastructure developments, the Hong Kong Housing Authority (HKHA) and the Hong Kong Housing Society (HKHS) are also actively nurturing a partnering culture in the public and quasi-public sector residential developments (Chan et al 2006). The major private property developers implementing partnering concepts include Hongkong Land Ltd, Swire Properties Ltd, Yieldway International Ltd, Glorious Sun Properties Ltd, Gammon Skanska Ltd (currently Gammon Construction Ltd), and Tradeport Hong Kong Ltd (Chan et al 2006).

4. Partnering application in reducing disputes

Under the partnering arrangement, the problems of disputes, claims or litigations are greatly mitigated through open communication and improved working relationship (Cook and Hancher 1990; Construction Industry Institute 1991; Abudayyeh 1994; Construction Industry Institute 1996). Whilst Gransberg et al (1999) advocated that dispute and claim cost on partnering projects was relatively low, similar conclusion can be found in the research of Li et al (2000) and Ruff et al (1996). In fact, the Army Corps of Engineers of the United States and the oil industry of the United Kingdom have applied partnering on large and small contracts since 1980s, and Bayliss (2002) reported that not a single dispute had escalated to litigation in these partnering projects. This is in stark contrast to the number of disputes received on non-partnered contracts of similar scale (Schultzel 1996; Bloom 1997). Ranco and Ranco (1996) put forward a table exploring the partnering impacts on construction projects which explains how partnering reduces the exposure to litigation (Table 1).

Table 1: How partnering reduces the exposure to litigation (Ranco and Ranco 1996)

Typical project without partnering	*Typical project with partnering*
No easy opportunity is provided to resolve conflicts quickly. Small conflicts snowball.	*Partnering workshops provide forum, structure and skills to resolve conflicts promptly.*
People who must work together have limited vehicles to get to know each other so they can build up mutual trust.	*Partnering workshops enable project participants to connect at a deeper level. If conflicts arise, it is easier to pick up the phone and discuss the issues.*
There are limited means for project team members to resolve their own conflicts.	*Partnering models the individuals taking responsibility for resolving their own conflicts.*
Everyday tone of communications evolves at random, takes on a life of its own.	*Partnering workshops provide a vehicle to manage the appropriate tone of communication.*

Partnering is a proactive approach to preventing and reducing disputes, claims and even litigation. It provides a way to develop a control and resolution mechanism for dealing with problems (Cowan et al 1992; Woodrich 1993; Pena-Mora and Harpoth 2001). The partners anticipate potential problems and

devise an action plan addressing how those problems are jointly identified and resolved. The partnering agreement allows each party the opportunity of learning and using the other's problem resolution methods (Cook and Hancher 1990; Bates 1994; Hellard 1996; Stephenson 1996; Conley and Gregory 1999). Sanders and Moore (1992) concluded that partnering helped eliminate many personal conflicts. Partnering ensures problem identification and resolution at the lowest possible level of authority on-site before leading to claims and litigation by means of "issue resolution mechanism" (Chan et al 2004). Reactions to conflict such as coercion and confrontation are counter-productive and fail to reach a win-win situation (Lazar 2000). In fact, the conflicting parties look for a mutually satisfactory solution and this can be achieved by joint problem solving to seek alternatives for the problematic issues.

5. Research methodology

5.1 Overall research approach

Four research tools, i.e. literature review, in-depth interview, case study and questionnaire survey will be used in collecting appropriate and sufficient information and data of projects using partnering approach based in Hong Kong. Figure 1 demonstrates the overall research framework with reference to the concept of Walker (1997)'s model.

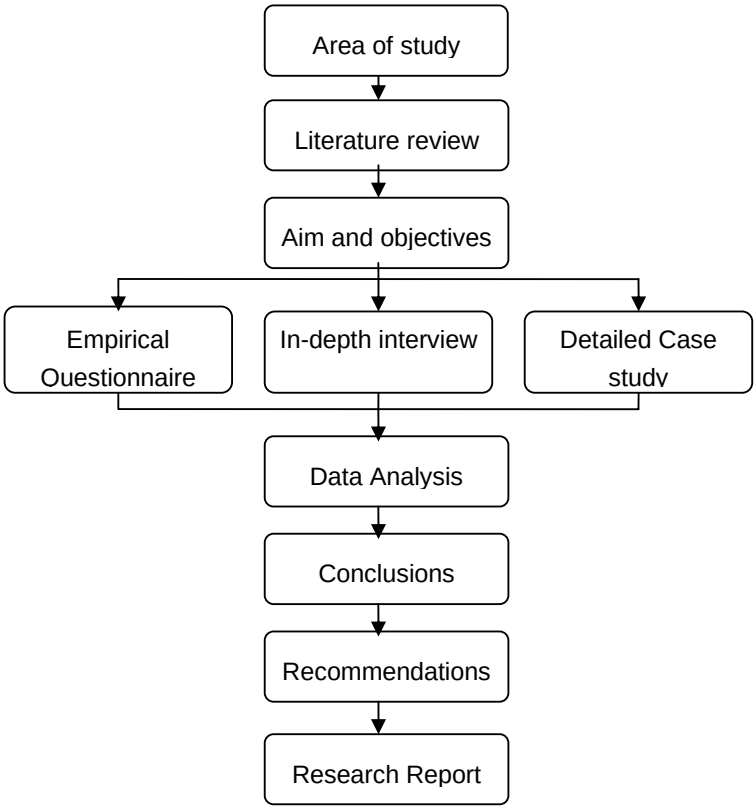

Figure 2: Overall research framework for the research study

5.2 Literature Review

An extensive review of related literature from textbooks, professional journals, conference proceedings, academic journals, research monographs, previous dissertations, workshop seminars, magazines, newsletters and internet materials will be launched to capture background knowledge about the causes of construction disputes, together with partnering practices and implementation processes across different countries, e.g. United Kingdom, United States, Australia and Hong Kong. Past and current implementation practices, whether locally or overseas, on partnering approach will be documented. The review exercise aims to develop an overall research framework and to prepare an appropriate template for the structured interview, questionnaire survey and case study. It is crucial to understand and investigate the development and application of partnering approach in the Hong Kong construction industry, especially in the area of dispute resolution.

5.3 In-depth interview

In-depth face-to-face interviews with senior industrial practitioners with abundant hands-on experience in partnering projects will be conducted to identify the prevailing practices, application and future development of partnering in the construction sector. Potential interviewees include the key project team members of related government departments, private property developers, mass transportation service providers, project consultants and main contractors. The purpose of face-to-face interviews was to acquire the first-hand information and opinions on the causes of construction disputes, reasons for minimizing the occurrence of construction disputes via partnering, satisfaction level on dispute resolution, together with recommendations for improvement to dispute mitigation from interviewees with sound experience in implementing partnering approach. Their opinions, feedback and comments are vital for the contribution to the contents of the empirical survey questionnaire as well as the development of the conclusions and recommendations. Interview dialogues will be fully documented, analyzed and compared using content analysis in order to seek similarities and differences of the various partnering attributes under study for cross-comparison.

5.4 Case study

Data on the relevant real-life case study projects will be collected through face-to-face interviews and retrieval from collaborating firms. In-depth investigation on some case study projects is not only used to enhance the real understanding of the partnering practices and implementation, but also it is vital to the validate the research findings. All the cases will be analyzed on both an individual basis and collectively in order to draw valid, representative conclusions.

5.5 Questionnaire survey

An empirical research survey questionnaire will solicit the perceptions of the key project stakeholders on applying partnering approach in terms of the causes leading to construction disputes, reasons why partnering can minimize the occurrence of construction disputes, degree of satisfaction on dispute resolution, accompanied by recommendations for improving the current state of dispute mitigation via partnering. Key participants in those partnering projects will be the targets of the survey. Self-administered questionnaires will be distributed to target respondents and they include Project Managers, Architects, Engineers, Quantity Surveyors and other related professionals in the organizations of related government departments, private property developers, mass transportation service providers, project consultants and main contractors with abundant hands-on experience in participating in partnering projects. In addition, the data collected will also be used to compare the opinions between client organizations, project consultants and main contractors in applying partnering approach.

Results of the questionnaire survey will be analyzed to investigate the participants' views and opinions on partnering by using different statistical techniques. First, the mean score will be used to analyze the data collected from the questionnaire survey. The mean score of each partnering attribute

under study will be calculated and used to determine the relative ranking by comparing each individual mean score. Then the relative rankings will be used to cross-compare the relative significance or importance of those partnering attributes between the groups of respondents, i.e. client vs consultant vs contractor. The mean score of each item will be computed by the following formula (Chan et al 2003a):

$$\text{Mean Score} = \frac{\sum(f \times s)}{N} \quad \text{where} \quad (1 \leq \text{Mean Score} \leq 5)$$

where f = Frequency of response to each rating (1-5); s = Score given by respondents and ranging from 1 to 5; N = Total number of responses

After computing the mean score, the Kendall's Coefficient of Concordance (W) Test will be applied to check whether the respondents were consistent with others in ranking the attributes under study based on mean values within a particular survey group. A high or significant value of W represents that different respondents respond in a consistent manner, and vice versa (Chan et al 2003a).

Third, the Spearman's Rank Correlation Coefficient (r_s) will also be used to measure the level of agreement on their rankings of the attributes under study between any two survey groups. The range of r_s is between –1 and +1. A value of +1 indicates that a perfect positive linear correlation between the two parties, –1 implies perfect negative linear correlation and there is no linear association if the value is equal to 0 (Chan and Kumaraswamy 1996).

All the quantitative data collected from the empirical survey will be inputted and handled using the Statistical Package for Social Sciences (SPSS) to facilitate further analysis of the survey responses.

5.6 Validation of research findings

Triangulation from multiple sources will be employed to reinforce the credibility of the findings obtained from the research data and subsequent analyses. Results derived from the questionnaire survey and case studies will be cross-referenced to the published literature as well as with each other. Appropriate workshop discussions with prominent industrial practitioners who have acquired extensive hands-on experience in undertaking partnering projects will be organized to generate relevant information and to supplement and/or confirm the outcomes of the analyses, and a set of proposed recommendations for improving the prevailing partnering practices in relation to dispute resolution. A meeting will be scheduled via discussions and moderations to validate the research findings and explanations with practitioners involved in the research study.

6. Conclusion

Although reduction in disputes is recognized as one of the perceived benefits of partnering, there is few or no published literature which has focused on this area. This research study will launch an in-

depth investigation of implementing partnering projects within the Hong Kong construction industry with particular attention to dispute prevention and resolution. It will provide a critical analysis of the current application, causes of construction disputes, reasons for minimizing the occurrence of construction disputes via partnering, satisfaction level on dispute resolution, together with improvement measures for successful resolution of disputes and claims using the partnering approach. Moreover, the research results are expected to lay foundation for a positive environment on future development of issue resolution mechanism through the partnering dance. This would encourage more local industrial practitioners to implement the partnering approach for achieving effective prevention and efficient resolution of construction disputes and claims in the near future.

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References

Abudayyeh O (1994) “Partnering: A Team Building Approach to Quality Construction Management.” Journal of Management in Engineering, ASCE, 10(6): 26-29.

Appel M (1993) “Partnering: New Dimensions in Dispute Prevention and Resolution.” The Arbitration Journal, 48(2): 47-51.

Bates G (1994) “Partnering in Small Packages.” Journal of Management in Engineering, ASCE, 10(6): 22-23.

Bayliss R (2002) “Partnering on MTR Corporation Ltd’s Tseung Kwan O Extension.” The Hong Kong Institution of Engineers Transactions, 9(1): 1-6.

Bayliss G, Cheung S O, Suen H C H and Wong S P (2004) “Effective Partnering Tools in Construction: A Case Study on MTRC TKE Contract 604 in Hong Kong.” International Journal of Project Management, 22(3): 253-263.

Bloom M J (1997) Partnering – A Better Way for Doing Business, The MITRE Corporation Badford, Massachusetts.

Bresnen M and Marshall N (2000) “Partnering in Construction: A Critical Review of Issues, Problems and Dilemmas.” Construction Management and Economics, 18(2): 229-237.

Brookes S (2008) “A Critical Evaluation of the Success of Project Partnering.” Construction Law Journal, 24(4): 314-325.

Chan A P C, Chan D W M, Ho K S K, Chiang Y H, Chan E H W and Tang B S (2002) An Analysis of Project Partnering in Hong Kong, Research Monograph, Department of Building and Real Estate, The Hong Kong Polytechnic University, 96 pages, ISBN 962-367-363-9, October 2002.

Chan A P C, Chan D W M and Ho K S K (2003a) "An Empirical Study of the Benefits of Construction Partnering in Hong Kong." Construction Management and Economics, 21(5): 523-533.

Chan A P C, Chan D W M and Ho K S K (2003b) "Partnering in Construction: Critical Study of Problems for Implementation." Journal of Management in Engineering, ASCE, 19(3): 126-135.

Chan A P C, Chan D W M, Lam P T I, Fan L C N and Yeung J F Y (2004) A Comparative Study of Project Partnering Practices in Hong Kong, Full Report, Construction Industry Institute – Hong Kong, Research Report No. 2, 137 pages, ISBN 988-98153-3-8, April 2004.

Chan A P C, Chan D W M, Fan L C N, Lam P T I and Yeung J F Y (2006) "A Comparative Study of Construction Partnering Practices between Private and Infrastructure Sectors in Hong Kong", Proceedings of the Joint 2006 International Symposium of CIB W065/W055/W086 on Construction in the XXI Century: Local and Global Challenges, 18-20 October 2006, Rome, Italy (CD-Rom Proceedings).

Chan D W M and Kumaraswamy M (1996) "An Evaluation of Construction Time Performance in the Building Industry." Building and Environment, 31(6): 569-578.

Cheung S O, Ng T S T, Wong S P and Suen H C H (2005) "Behavioural Aspects in Construction Partnering." International Journal of Project Management, 21(5): 333-343.

Cowan C, Gray C and Larson E (1992) "Project Partnering." Project Management Journal, 22(4): 5-12.

Construction Industry Board (1997) Partnering in the Team: A Report by Working Group 12 of the Construction Industry Board, Thomas Telford Publications, London.

Construction Industry Institute (1991) In Search of Partnering Excellence, Special Publication No. 17-1, Partnering Task Force, Austin, Texas.

Construction Industry Institute (1996) Partnering: Models for Success, Partnering Task Force, Australia.

Construction Industry Review Committee (2001) Construct for Excellence. Report of the Construction Industry Review Committee, Hong Kong SAR, 207 pages.

Conley M and Gregory R (1999) "Partnering on Small construction Projects." Journal of Construction Engineering and Management, ASCE, 121(5): 320-324.

Cook E and Hancher D (1990) “Partnering: Contracting for the Future.” Journal of Management in Engineering, ASCE, 6(4): 431-447.

Fisher R (2004) “Partnering Construction Contracts: A Conflict Avoidance Process.” AACE International Transactions (January 1): CD171-CD179.

Franco L (2008) “Facilitating Collaboration with Problem Structuring Methods: A Case Study of an Inter-organisational Construction Partnership.” Group Decision and Negotiation, 17: 267-286.

Gransberg D, Dillon W, Reynolds L and Boyd J (1999) “Quantitative Analysis of Partnered Project Performance.” Journal of Construction Engineering and Management, ASCE, 125(3): 161-166.

Hellard R (1996) “The Partnering Philosophy – A Procurement Strategy for Satisfaction through a Team Work Solution to Project Quality.” Journal of Construction Procurement, 2(1): 41-55.

Lazar F (2000) “Project Partnering: Improving the Likelihood of Win/win Outcomes.” Journal of Management in Engineering, ASCE, 16(2): 71-83.

Li H, Cheng E W L and Love P (2000) “Partnering Research in Construction.” Engineering, Construction and Architectural Management, 7(1): 76-92.

Moore C, Mosley D and Slagle M (1992) “Partnering Guidelines for Win-win Project Management.” Project Management Journal, 22(4): 18-21.

Nystrom J (2008) “A Quasi-experimental Evaluation of Partnering.” Construction Management and Economics, 26(5): 531-541.

Pena-Mora F and Harpoth N (2001) “Effective Partnering in Innovative Procured Multicultural Project.” Journal of Management in Engineering, ASCE, 17(1): 2-13.

Pena-Mora F, Sosa C and McCone D (2003) Introduction to Construction Dispute Resolution, Upper Saddle River, New Jersey: Prentice-Hall.

Phua F T T and Rowlinson S (2004a) “How Important is Cooperation to Construction Project Success? A Grounded Empirical Quantification.” Engineering, Construction and Architectural Management, 11(1): 45-54.

Phua F T T and Rowlinson S (2004b) “Operationalizing Culture in Construction Management Research: A Social Identity Perspective in the Hong Kong Context.” Construction Management and Economics, 22(9): 913-925.

Pinnell S (1999) “Partnering and the Management of Construction Disputes.” Dispute Resolution Journal, 54(1): 16-22.

Ronco W and Ronco J (1996) Partnering Manual for Design and Construction, New York: McGraw-Hill.

Ruff C, Dzombak D and Hendrickson C (1996) “Owner-contractor Relationships on Contaminated Site Remediation Projects.” Journal of Construction Engineering and Management, ASCE, 122(3): 348-353.

Sanders S and Moore M (1992) “Perceptions on Partnering in the Public Sector.” Project Management Journal, 22(4): 13-19.

Schultzel H (1996) Successful Partnering: Fundamentals for Project Owners and Contractors, New York: Wiley.

Skues D (1996) Partnering and its Relevance to Hong Kong, Report by Crow Maunsell Management Consultants Ltd, Hong Kong, 6 pages.

Stephenson R (1996) Project Partnering for the Design and Construction Industry, New York: Wiley.

Walker D (1997) “Choosing an Appropriate Research Methodology.” Construction Management and Economics, 15(2): 149-159.

Wong P S P and Cheung S O (2004) “Trust in Construction Partnering: Views from Parties of the Partnering Dance.” International Journal of Project Management, 22(6): 437-446.

Woodrich A (1993) “Partnering: Providing Effective Project Control.” Journal of Management in Engineering, ASCE, 9(2): 136-141.

Zhang P H (2007) Can Partnering Effectively Reduce Construction Disputes in Hong Kong? BSc(Hons) Dissertation in Building Engineering and Management, Department of Building and Real Estate, The Hong Kong Polytechnic University, April, 78 pages.

Zhang Yu (2008) “Partnering: A Good Approach to Dispute Resolution in Construction Management”, Proceedings of the International Conference of Multi-National Construction Projects: Securing High Performance through Cultural Awareness and Dispute Avoidance, 21-23 November 2008, Shanghai, China.