

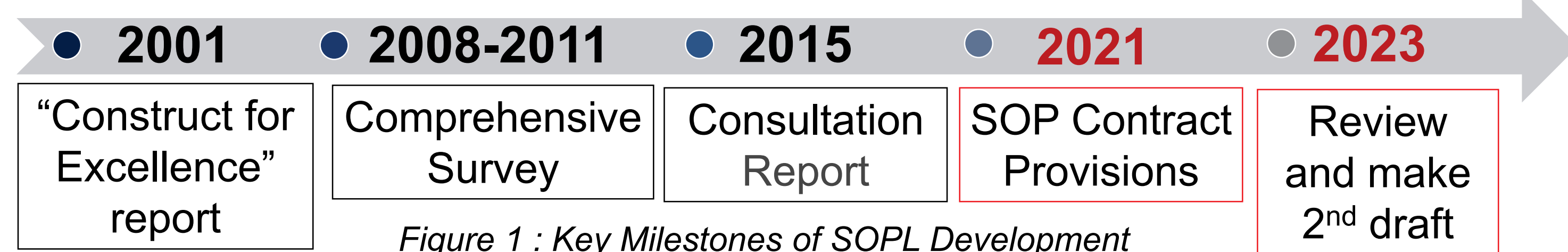
A Study of the Enactment of Security of Payment Legislation in Hong Kong's Construction Industry

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Introduction

Outstanding payment problems are progressively posing a threat to Hong Kong's construction industry. To **improve the cash flow** from lower tiers, the powerful and enforceable legislative measures – Security of Payment Legislation (SOPL) should be enacted. However, the bill has been **pending for 10 years** due to some controversial issues and barriers.



Aims

- To improve **cash-flow** problem from lower tiers
- To provide a **rapid and low-cost** dispute resolution method

Prohibition of pay-when-paid clause

Suspension of non-payment

Statutory Adjudication

Figure 2: Summary of SOPL

Objectives

- 1) To study the **payment practice** and **development of SOPL**
- 2) To explore the views from employers, consultants, contractors and lawyers on the **controversial issues** toward this bill
- 3) To analyze the **barriers** influencing the enactment of SOPL
- 4) To compare the **practices and challenges of four well-established selected jurisdictions** under the SOPL with HK
- 5) To **advise the amendments and recommendations** on effective SOPL in HK

Research Methodologies

	Stage 1: Comparative Analysis	Stage 2: Expert Interview
Aim	To adopt the merits from other legislative model	To explore HK's construction practices and get the consensus of the amendment of new SOPL
Method	Level of similarities between HK and the four jurisdictions	<ul style="list-style-type: none"> • 2-Stage Policy Delphi Method • Conducted 5 interviews with law or construction experts

Data Collection and Analysis

A. Payment Regime	UK	NZ	NSW	SG
A1 Type of Payment Mechanism	☑			
A2 Timeframe of Payment Regime	☑			
A3 Fail to Serve Payment Response			☑	☑
B. Adjudication Regime	UK	NZ	NSW	SG
B1 Ambit	☑		☑	
B2 Timeframe of adjudication	☑			
B3 Appointment of Adjudicator			☑	☑
B4 Duties and Power of Adjudicators	☑	☑	☑	
B5 Enforcement Mechanism				☑
B6 Challenge of Adjudicator's Decisions	☑	☑	☑	☑

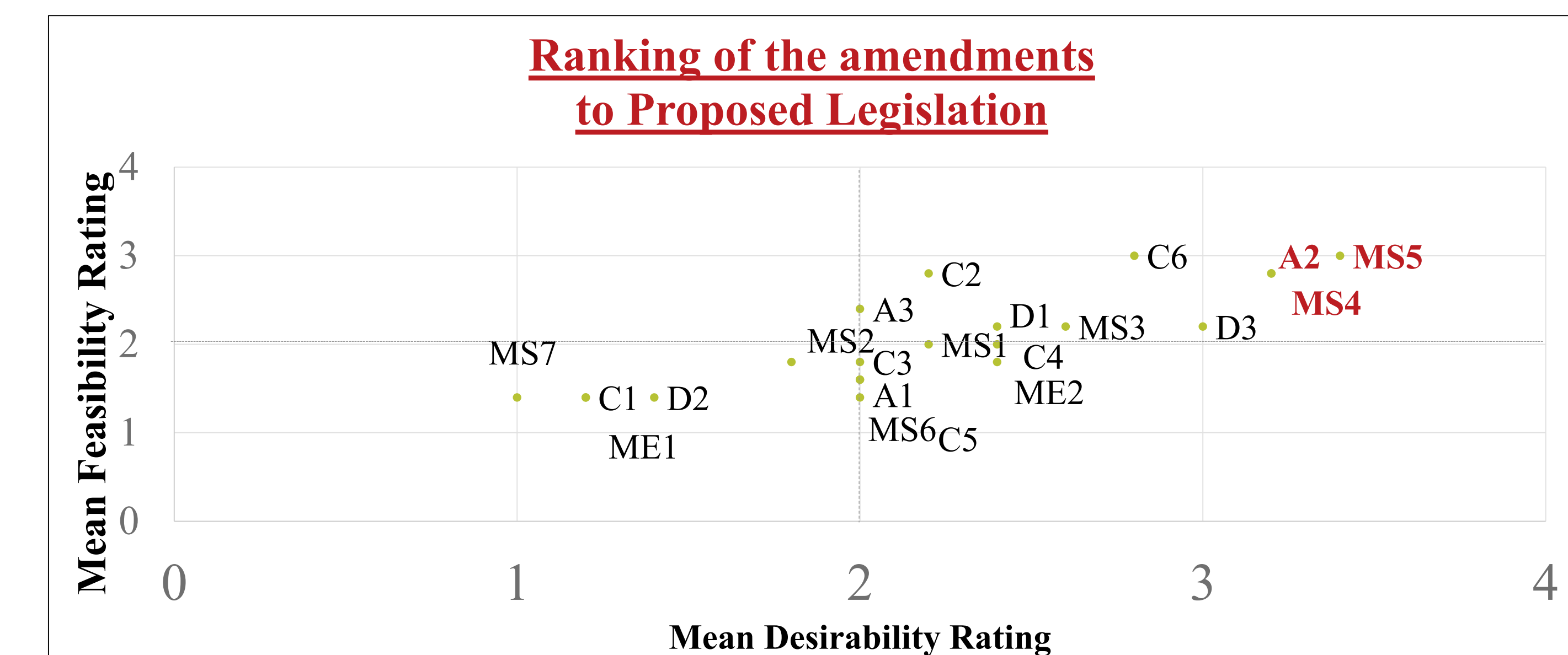
Findings and Discussion

5 Key Barriers Influencing The Enactment of HK's SOPL

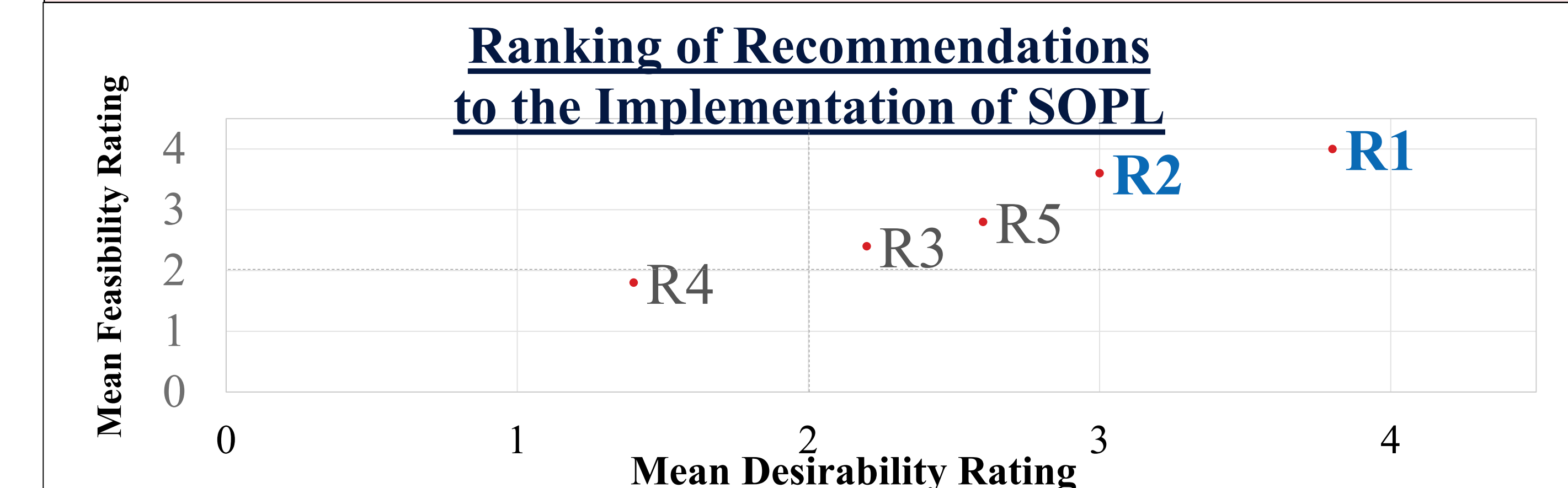
Ranking	Key Barriers	Impactful	
		Mean	sd
1	Difficulties in compromising parties interests and rights (B3)	3.40	0.80
2	Significant Cultural Change to Hong Kong's Construction Industry (B1)	3.20	0.75
3	Inadequate resources for the operation (i.e.: insufficient judicial resources) (B4)	3.20	0.75
4	Conservative Mindset of Construction Stakeholders (ie: lack of willingness to make changes) (B2)	3.00	0.00
5	Low priority of the enactment of SOPL (B6)	2.40	0.49
6	Potential unlawful behaviors (ie: Abuse of Process, Intimidation, Retribution) (B5)	2.20	0.75

Issues of the Proposed SOPL		
Ranking	Aspects	Disagreement
1	Default Payment Period	58%
2	Parties free to agree an adjudicator only after dispute or right to adjudicate has arisen	57%
3	Response to claiming party's submission within 20 days	51%
4	HKIAC as default ANBs	48%
5	Limit to new buildings contract within the main contract value in excess of HK\$5 million	31%

Recommendation



- Shorten the max payment period for final payment to 90 days (MS5)
- Addition of prescribed qualifications of adjudicators (A2)
- Deletion of HKIAC as default ANBs (MS4)



- Propagation and Education (R1)
- Increase of Manpower (R2)

Conclusion

This study examined the philosophy of HK's SOPL, which lies between UK and NSW's approaches. The effects of SOP Contract Provisions can be further studied in order to ameliorate the seriousness of payment delays and embrace the benefits of rapid adjudication.