

CoreNet Global UK - Construction Contract Fundamentals Workshop

Thursday 8 June 2017, Trowers & Hamblins, Bunhill Row, London EC1

Moderator: Alison Rankin, CoreNet Global UK, Learning & Development Community
Host: Ian Reid, partner, Trowers & Hamblins
Speakers: Beth McManus, associate, Trowers & Hamblins
Stephanie Geesink, solicitor, Trowers & Hamblins
Steve Nichol, partner, Trowers & Hamblins
Matthew Friedlander, solicitor, Trowers & Hamblins

This morning-long workshop, introduced by CoreNet's UK Chapter leader of learning, **Alison Rankin**, was arranged to explain the basics of what non-lawyers and CREs really need to know about the different types of construction contracts that are available, the advantages and risks associated with them, how to work out which will be the most effective, how to avoid the pitfalls, and what to do in the event of a dispute.

Trowers & Hamblins claim an impressively broad real estate practice and our host for the morning was partner **Ian Reid**, supported by partner **Steve Nichol**, associate **Beth McManus**, and solicitors **Stephanie Geesink** and **Matthew Friedlander** all from Trowers' Dispute Resolution and Litigation department. Together they gave us a rapid but comprehensive trip through the construction contract minefield.



Session One dealt with contracts. Of the 10 bodies who publish contracts, all roughly the same, the Joint Contracts Tribunal (JCT) has larger reach being composed of seven member bodies. And the JCT has published over 400 contracts so far. These can be broken down into four basic categories of procurement: Traditional; Design & Build; Management; and Alternative (ie anything else). Traditional is sequential - so could take longer as one stage must be completed before the next is begun. Design & Build combines construction with design, potentially compressing the timescale but also potentially compromising design quality. Management Procurement breaks down into two types:

Management Contracting where a series of separate contracts are entered into between the management contractor and individual sub-contractors; and Construction Management where the construction manager manages the sub-contractors who have each entered a contract directly with the client. Alternative procurement models are evolving. Having asked us how many standard form contracts there are, and how long or short they might be, Ian then produced a one-page summary of a standard JCT contract and ran us through the Agreement, the Conditions, and the Schedules.

After a short break we returned to the charge to deal with insurance, the role of the employer's agent and dealing with interim payments and withholding payment. The huge importance of adequate insurance being set up at the start of any contract, who should be responsible for it, and the fact that 'All Risks' insurance doesn't cover all risks were all pointed out. The employer's agent, or third party Contract Administrator, needs to act fairly and impartially though possibly in-house, ensuring that the project is delivered on time and on budget. On which we moved on to the question of payments and what is an adequate payment mechanism. This covered payment due dates, Payment Notices and Pay Less Notices, and when these latter should be issued.



Finally after a further short break in the proceedings, we covered contractors' claims for more money and more time. Here we looked at claims for Breach of Contract and Claims under the Contract and which can be dealt with by the Contract Administrator. We skimmed through Notice requirements regarding rights to payment - does a lack of a written notice disentitle the contractor to claim his rights under the contract? - and what would make either a good claim or a bad claim before finally considering contractors' claims for more time. This included a run-down of the basic legal principles relating to time, what to do if there is no extension of time provision for delay caused by the employer, and why extension of time clauses are necessary and how to deal with them. Lastly we looked at analysing the delay and appropriating responsibility for the delay.

And at this point, and perhaps appropriately, we ran out of time. It was a fascinating and illuminating gallop through the essentials and potential traps in drawing up construction contracts. Essentially the message was 'don't try and do it all yourself but ask the experts' - for which Alison thanked the team most profusely.

Alison Sutherland

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