

Managing property assets – important construction law considerations

In circumstances where you

- currently own or lease premises, which you are intending to alter, extend, refurbish, decorate or maintain; or
- are looking to purchase or lease premises which are up to 12 years old, or which are in the process of being constructed or are to be built in the future; or
- wish to fit out premises you own or are leasing (including under a Licence for Alterations); or
- are intending to undertake a development, be it a single building or large scale

it is strongly advisable that you ensure your position is properly protected from a construction law perspective. It is vital that the right building contracts and professional appointments are in place. Not only does this create certainty, but it minimises the potential for argument (thus saving significant expenditure you would incur dealing with disputes).

Documents

The types of document on which specialist construction law advice would be applicable include:

- development agreements/agreements for lease (relevant sections);
- building contracts (main contracts and sub-contracts);
- professional appointments (architect, structural engineer, services engineer, project manager and the like);
- collateral warranties; and

- performance bonds, parent company guarantees and other relevant ancillary documentation

Our Construction & Engineering team can advise on, draft, negotiate and finalise all relevant construction documents to ensure you are properly protected.

The 'Construction Act'

The 'Construction Act' (Part II of the *Housing Grants, Construction and Regeneration Act 1996*, as amended by the *Local Democracy, Economic Development and Construction Act 2009*) ('the Act') will apply to a greater or lesser extent to any building project with which you are involved:

- it applies (by way of example) to new build, extensions, refurbishments, fit out, decoration and maintenance works;
- it applies to building contracts (of any tier) and professional appointments (of any tier)
- the cost of the works is irrelevant – there is no upper or lower limit;
- you cannot contract out of the Act.

The Act is of importance specifically in relation to payment provisions and the use of Adjudication as a method of dispute resolution. Failure to appreciate these provisions and how they work could seriously prejudice your position and give a commercial advantage to those you have employed (be it contractor or consultant).

- **Payment:** by way of example there are complex payment notice provisions, which have serious consequences if not complied with – you need to know how these work or employ appropriate consultants to manage the process

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- **Adjudication:** is a very quick process for resolving disputes; proceedings can be commenced at any time; awards will be given within 28/42 days (which can lead to ‘rough justice’); if on the receiving end (the most likely scenario) you will have just 7, possibly 14, days to respond fully; awards can be enforced immediately and are “temporarily binding” (i.e. unless or until agreement is reached or set aside by the Courts or through arbitration).

Our Construction & Engineering team can guide you through the ramifications of the Act and explain how best to deal with it.

Funding

When outside funding is required, the funding organisation will almost always have among their requirements under the finance agreement a need for their investment to be protected through the construction documentation. This will include:

- The right to be able to see and have prior approval of the forms of building contracts, sub-contracts and professional appointments
- To be provided with collateral warranties in their favour from all the relevant consultants, the building contractor and any sub-consultants or sub-contractors who have a design responsibility
- To require you to procure an appropriate performance bond and/or parent company guarantee from the building contractor

- monitoring surveyor and monitoring solicitor
- To provide certified copies of the building contract, professional appointments and relevant sub-contracts or sub-appointments.

Our Construction & Engineering team is experienced in negotiating or preparing documents that will meet these requirements.

Contact/further information

Please contact:



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For further information about our team, please see:

www.ts-p.co.uk/our-services/construction-and-engineering