

Specialist lawyers serving the construction, engineering and energy sectors

Welcome to Systech Solicitors' E-newsletter. In this issue we provide updates on the key contracts, legislation, disputes and cases affecting the construction, engineering and energy sectors.



## Legal News

We focus on disputes in the second quarter of 2011:

In *Dispute*..... we have included a round-up of recent key decisions made in litigation, adjudication proceedings and the courts which you need to be aware of, the cases address:

- Warnings about “all reasonable endeavours” clauses
- Settlement of a claim might not mean that your liability is capped
- An adjudicator’s decision will be enforced where he answers the correct questions but does so wrongly
- How to deal with objections to an adjudication, and
- Minor, technical breaches of the adjudication procedures shall not impact the process

..... [read more](#)

## Other News

For quite some time the courts have reminded solicitors and barristers about the need to avoid litigation and keep down litigation costs.

The Government has now taken the opportunity, against the backdrop of austerity measures taking place in all government departments, to update its Alternative Dispute Resolution Pledge of March 2001: the Dispute Resolution Commitment.

The Commitment stresses that the “Government’s objective is to ensure that relationships between the client and supplier are non-adversarial”. It highlights the need for ADR clauses in government contracts and that the Government is committed to “proactive... management of potential disputes and... working to prevent disputes arising or escalating”. The document is heavily drafted with dispute avoidance and ADR in mind, and only commits a page-and-a-half (out of 19) to litigation and arbitration.

## Government Construction Strategy

The Coalition Government has published its Construction Strategy that outlines measures that will reduce public sector construction expenditure by 20% by the end of this parliament. This might well send a shiver down the spines of all in the industry, but as the construction industry represents 7% of GDP it is a major part of the UK economy and the Government is seemingly keen to ensure it remains buoyant. To that end, from this autumn the Government will publish on a quarterly basis a rolling two-year programme of infrastructure and construction projects where public funding has been agreed.

The thrust of the Government’s approach is that it wants more efficiency, less wastage, greater collaboration and more price certainty. It wants greater integration between designers and constructors; early engagement with supply chains; effective price benchmarking – not just for projects in one particular department, but for comparable projects across departments (e.g. halls of residence for students and single living military accommodation) - and to look at Government procurement as part of a broader asset life cycle, rather than a stand-alone process.

In summary, the Government is not necessarily looking for the best price it can possibly obtain for goods and services, but the suppliers and constructors that can provide the best value for money. Though how this will be realised is still a bit vague, the Government has outlined an action plan for the next two years to bring its ideas to life.

## The Bribery Act

The Bribery Act 2011 is now in force and companies should ensure that they have appropriate policies and procedures in place to deal with the provisions of the Act. Should you require any assistance or would like an objective review of the procedures you have already put in place, then Systech Solicitors would be more than happy to assist.

## Local Democracy Education and Construction Act 2009

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On 27th June, Statutory Instrument 2011/1582 was made and as expected, 1st October 2011 has been named as the date that the construction section of the Local Democracy Education and Construction Act 2009 comes into force.

The provisions relating to Scotland come into force on 1st November 2011. A separate commencement order will be required for construction contracts which relate to the carrying out of construction operations in Wales.

Secondary legislation is required to amend the Scheme for Construction Contracts (England and Wales) Regulations 1998 (SI 1998/649) and the equivalent Scottish regulations.

The Act will apply to construction contracts entered into on or after 1st October in England and 1st November in Scotland.

The Act introduces a number of changes, in particular in the form of provisions relating to the mechanism of payment. Briefly, the Act introduces provisions relating to:-

- The giving of a payment notice by the payer and the payee
- The giving of "pay less" notices
- The ineffectiveness of pay-when-paid clauses
- The repeal of the requirement that contracts be in writing

It is vital that you are familiar with the changes in order that your contract arrangements are effective. The provisions of the Scheme will be implied into non-compliant contracts.

## JCT 2011 Edition

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Now that the date has been confirmed when the provisions of the Construction Act 2009 are due to come into force, it seems likely that the JCT 2011 edition is not far away. JCT has already published tracked changes of its contracts but the contracts themselves, amended to comply with the provisions of the Construction Act 2009, are not yet available.

To coincide with this newly revised suite of contracts, the JCT is also bringing out an updated version of the Construction Industry Model Arbitration Rules (CIMAR).

## Telephone Hotline

Our telephone helpline is available to clients and provides you with a direct link to our legal team for an immediate view on any contractual / legal issue. This service is free and will give you access to advice from our team of experienced solicitors.

Call **Kelly Hall** on **+44 (0) 207 234 3520**



## Legal Updates

We circulate regular Legal E-alerts which highlight topical issues, developments and cases. If you have any comments or ideas of topics you would like us to cover please email:-

[kelly.hall@systech-solicitors.com](mailto:kelly.hall@systech-solicitors.com)

## Training

Our sessions in September will be the third in a series of four events covering typical problems and issues which arise during the life of a project.

For more details please email [geoff.ansell@systech-int.com](mailto:geoff.ansell@systech-int.com) or visit the [events](#) page on our website.

## Contact Us

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## About Systech Solicitors

Systech Solicitors is a niche law firm specialising in the provision of legal services to its global clients across the construction, engineering and energy sectors. Our services include procurement techniques and strategies, the drafting of contracts, contract and legal advice during the life of a project and the management and resolution of disputes.

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