

Construction Risks Newsletter - August 2019

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DAC Beachcroft's Construction Risks Newsletter features topical issues in construction.

Welcome to the August version of DACB's construction risks newsletter. Adjudication case law still dominates the Construction Court's work, with a number of new pieces of law. In this edition we review the cases concerning the excluded items pursuant to the Construction Act. Another issue that the industry faces is the VAT reverse charge, our tax team provide some guidance.

ALL CHANGE! The VAT domestic reverse charge is about to arrive.

STOP PRESS. HMRC has announced that the introduction of the VAT reverse charge will be delayed by 12 months in response to a concerted campaign by a coalition of construction associations.

The VAT reverse charge is scheduled to be introduced 1 October 2019, it will present a significant change to the way VAT is dealt with in the construction industry and those who it will affect are advised to take steps now to ensure their accounting functions are ready for the new rules...[READ MORE](#)

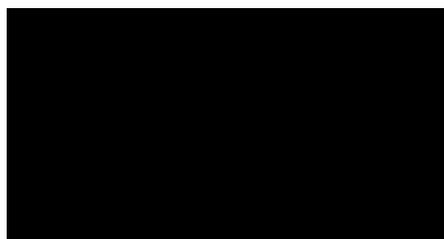


The High Court considers an adjudicator's Decision and a failure to correctly interpret a contract

In *Willow Corp S.A.R.L. and MTD Contractors Limited* [2019] EWHC 1591 (TCC), an adjudicator incorrectly decides an issue which is easy to identify, important, and severable from the rest of his decision, the losing party may use a Part 8 claim for declaratory relief as a way of resisting enforcement proceedings...[READ MORE](#)

The Court of Appeal provides guidance on the proper interpretation of clauses exempting liability for loss or force majeure clauses

Classic Maritime Inc v Limbungan Makmur SDN BHD [2019] EWCA Civ 1102, 2019 WL 02617095. *Classic Maritime* issued a claim against a charterer (*Limbungan*) for its failure to supply five shipments of iron ore pellets from Brazil to Malaysia...[READ MORE](#)



Identifying the 'primary activity'

Trading names and Adjudication

on-site - *Engie Fabricom UK Ltd v MW High Tech Projects UK Ltd* [2019] EWHC 1876 (TCC)

In *Engie Fabricom UK Ltd v MW High Tech Projects UK Ltd*, the Court refused to enforce an adjudicator's decision because it found that the Defendant had reasonable prospects of showing that the primary activity of the site in question was power generation, and consequently that the parties' sub-contract fell within the section 105(2) exclusions in the Housing Grants Construction and Regeneration Act 1996 ("the Act")...[READ MORE](#)



referrals - can a jurisdictional challenge succeed?

In *MG Scaffolding (Oxford) Ltd v Palmloch Ltd* [2019] EWHC 1787 (TCC), the Defendant argued that the Notice of Adjudication incorrectly named the responding party and so was invalid - therefore, the Adjudicator lacked jurisdiction to make a decision...[READ MORE](#)



A warning to residential occupiers - when can the exemption against adjudication be thwarted?

The recent decision of the Technology and Construction Court (TCC) in *ICCT Ltd v Pinto* [2019] EWHC 2134 (TCC) demonstrates circumstances in which residential occupiers may find themselves bound by an adjudication decision, even where they haven't agreed to it...[READ MORE](#)



Claim Deadlines for Collateral Warranties

The case of *Swansea Stadium Management Co Ltd v City & County of Swansea Interserve Construction Limited* [2018] EWHC 2192 (TCC) serves to remind the beneficiaries of collateral warranties to be alert to deadlines for issuing claims under these securities...[READ MORE](#)

Occupational Stress in the Construction Sector

In 2018, 82,000 cases of ill-health were reported in the construction sector. 25% of those cases related to mental ill-health including stress, anxiety and depression...[READ MORE](#)

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