



Further obligations for property investors, developers and business tenants

The existing Construction (Design and Management) Regulations 1994, deemed by the Government to be too complicated, have been replaced with the like named 2007 Regulations which are still more complicated. This alert focuses on the duties of the 'client' – the person who, in practical terms, is procuring the works.

It is important to understand that 'Construction' covered by the CDM Regulations includes fitting out, renovation, redecoration and repairs, as well as demolition/dismantling.

The following matters should be particularly noted:

- it will no longer be possible (for the purpose of avoiding liability) for the client to transfer its CDM obligations to a professional agent, although if there is more than one client, one or more of them can with written consent of the others assume sole responsibility for some but not all of the duties imposed on clients
- even on small projects which, under the CDM Regulations are not 'notifiable', the client will have duties which will include:
 - taking reasonable steps to ensure the competency of the contractor, any design professional and any 'CDM Co-ordinator' (the project manager)
 - co-operation with other persons involved in the project
 - that arrangements that are made for managing the project are suitable to ensure that the work carried out, as far as reasonably practicable, without risk to health and safety and that specified welfare facilities are available in respect of any person carrying out the work
 - the provision to the contractor and designer of specified pre-construction information for the health and safety purposes and to assist the recipient in performing its own duties and allocating sufficient resources to do so
- as before 'notifiable' projects are those which are likely to involve more than 30 days or 500 person days. For these projects, the CDM Regulations impose upon the client additional obligations which include mandatory obligations:
 - to appoint a CDM Co-ordinator as well as a Principal Contractor suitable to comply with the health and safety obligations imposed on them respectively
 - to ensure that the works phase of the project does not start until the Principal Contractor has prepared a works phase plan satisfying obligations imposed by the Regulations on the contractor and that the specified welfare facilities will be available
 - to ensure that the CDM Co-ordinator is given sufficient information for the preparation of a health and safety file, that such file is kept available for inspection and is revised as often as is appropriate

- civil liability on the part of the client will arise for breach of limited aspects of the client's duties under the CDM Regulations, for example in the case of death or personal injury where the client has failed to take reasonable steps to ensure the availability of the specified welfare facilities or (in a Notifiable Project) failure to ensure that works do not start until the Works Phase plan has been prepared and that the specified welfare facilities will be available. Otherwise civil liability will not arise upon the Client in the case where the duty applies for the protection of a person who is not an employee of the client

Summary

Clients will of course continue to instruct a project manager to manage more complex projects. While in law, the client's liability cannot be offloaded, suitably prepared project management agreements can provide an indemnity to the Client in some areas where the project manager can be expected to undertake checking.

Contact

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