



BWEA Health and Safety Seminar 2008

CDM 2007: Nine months on
the legal and commercial perspective

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CDM 2007 – Overview



- Reminder of the Regulations
- Contractual issues
 - Allocation of duties
 - Timing of appointments
 - Competency requirements
 - Provision of information
 - Management arrangements
- Conclusion



Contractual issues



- Non-delegable Duties –v- Contractual allocation of duties
- Criminal liability under CDM 2007 remains with the duty holder
- Warranties (guarantees) of ability to perform
- Indemnity from a failure to perform
- Possible to indemnify against criminal fines and the costs of defending a criminal prosecution



Timing of Appointments

Allocation of duties



- Only Client – the new **Client's Agent**"
- Residual Client duties
 - the provision of information,
 - co-operation
 - the health & safety file
- Appointing CDM co-ordinator
- Warranties as to competence –v- Checks on competence
- Indemnity from failure to discharge all Client duties?
- Reasonably obtainable information



Competency



- Recommended steps
 - Undertake competency assessments of all appointees
 - Warranties as to:
 - Competency of the company
 - Competency of the personnel on the project team (consider key man clauses)
 - Sufficiency of capacity, resources and time to carry out the project safely
 - The carrying out of competency assessments on sub-contractors



Provision of Information



- Client obliged to provide the “pre-construction information”
- Information ideally provided as part of tender/ procurement process
- Differing stance is common in practice, particularly in PFI/PPP
- Essential to have clarity in contract as to:
 - what the Client is to provide
 - who is responsible for commissioning and funding surveys to plug any gaps



Management Arrangements



- Clients must check the suitability of the construction phase plan and be satisfied that welfare facilities have been provided
- Clients should not actually design or manage the works
- Management arrangements
- Review meetings



Conclusion



- CDM 2007 impacts on:
 - The procurement process
 - The structuring of transactions
 - The management of projects
- Management Arrangements
 - Corporate Homicide and Corporate Manslaughter investigations
 - HSWA offences
- Contractual safety management





Pinsent Masons

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Questions

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