

**CITY OF LONDON LAW SOCIETY – CONSTRUCTION LAW COMMITTEE**  
**Minutes of meeting held on Wednesday 21<sup>th</sup> November 2018 at Bryan Cave**  
**Leighton Paisner LLP, Adelaide House, London Bridge, London EC4R 9HA**

**In attendance:**

John Hughes-D'Aeth (Chair)  
Matthew Jones (Vice-Chair)  
Julia Court  
Paul Cowan  
Fiona Edmond  
Marc Hanson  
Francis Ho  
Alistair McGrigor  
David Metzger  
Victoria Peckett  
Martin Potter  
Tm Reid  
Andrew Thornton  
Eleanor Milne (Secretary)

**Apologies for absence**

Apologies had been received from Kevin Hart (CLLS), Stephanie Canham, Richard Ceeney, Angus Dawson, Nicholas Downing, Drew Norman, James Pratt and Gillian Thomas.

**Construction Industry Helpline Presentation by Bill Hill, Chief Executive of the Lighthouse Construction Industry Charity**

The Chair thanked Bill for his thought provoking and interesting presentation regarding the need for mental health support and awareness amongst construction industry professionals. The Chair agreed to circulate the presentation slides after the meeting. [**Post Meeting Note:** Slides have been circulated to members.]

**Minutes of last meeting**

The Minutes of the meeting held on 12<sup>th</sup> September 2018 were approved and will be posted on the CLLS website.

**Membership of the Committee**

It was agreed that invitations to join the Committee would be extended to Alex Cunliffe (Laing O'Rourke) and Paul Starkey (Costain) as industry successors to Martin Potter. [**Post Meeting Note:** Both Alex and Paul have accepted the invitation.]

**Update on current activities**

**Tenant's works and insurance:** Victoria Peckett confirmed that her draft note had been issued to the Land Law Committee for consideration and she would provide an update once feedback had been received from the Land Law Committee.

**Retentions:** It was noted that the second reading of the Aldous Bill had been postponed yet again and that the Construction Minister (Richard Harrington) was considering the shape of a possible retention deposit scheme. The deadline for further comments on Francis Ho's draft paper for BEIS outlining the drawbacks of a retention deposit scheme was set as the end of November. [**Post Meeting Note:** The submission was sent to BEIS on 3<sup>rd</sup> December.]

**Performance bonds:** The Committee discussed the potential use of the US model in major infrastructure projects, where the full value of the construction contract was bonded and the surety would look to step in on default. It was agreed that a key difficulty with this would be the unknown identity of the entity stepping in.

**Security assignments in lending transactions:** Marc Hanson confirmed that a draft paper would be circulated shortly to the relevant sub-group for review.

**Due diligence reporting:** Matthew Jones reported that a draft framework had been prepared and was currently being reviewed by the relevant sub-group. Once this feedback had been collated, the framework would be circulated to the Committee for review.

## **Other business**

**Insurance market update:** Andrew Thornton reported that the construction professional indemnity insurance market was moving fast and that there had been some large increases in premia, ranging from a minimum of 20% to some instances of 200% and 400% increases for waste to energy projects. This could potentially lead to the testing of provisions in contracts requiring insurance to be procured only where available on 'commercially reasonable terms'.

**Reverse charge to VAT:** HMRC's draft guidance is expected to be published at the end of November. It was noted that a number of CLLS member firms had commented on the draft Regulations, but apparently to little avail.

**Brexit:** The Chair reported that, at the CLLS Committee Chairs meeting in September, it was noted that both the CLLS and the Law Society were having difficulty gaining any traction with the Government in order to assist with the task of transposing EU legislation into UK law post-Brexit. Generally the Government was working on this internally and only looking for external support on a case by case basis.

**London International Disputes Week (7<sup>th</sup> to 10<sup>th</sup> May 2019):** The Committee agreed to circulate information regarding this event to potentially interested parties within their firms.

**Foundation Level Training Programme:** The Chair reported that this event is currently scheduled for autumn 2019 and that the previous programme would be circulated to the Committee for review in order to consider content, potential presenters and possible venues. Any member who would like to participate in the programme should contact the Chair. It was also noted that Rob Horne remained willing to participate if required, despite having resigned from the Committee.

**Potential future work:** The Chair reported that Practical Law were keen to publish the Escrow Agreement on their website as a CLLS branded product. This route should also be considered for updated versions of the Novation Agreement and Letter of Intent.

**Communications within CLLS member firms:** The Chair reported that improving recognition of the CLLS within member firms had also been raised as an issue at the CLLS Committee Chairs meeting. This item will be included on the agenda for the next meeting of the Committee.

**Development Management Agreement:** The Chair reported that the template DMA had been discussed with the Chair of the Land Law Committee. They would be happy to receive the Committee's early feedback on key issues.

## **Date of next meeting**

The next meeting will be held on a date tbc in February/March 2019.