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CIOB TIME AND COST MANAGEMENT CONTRACT 2015

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BIM Contract International Conference 2017

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About the Speaker

Francis Ho FCIOB is a partner at Penningtons Manches LLP. He advises on construction and engineering projects and has significant experience advising on PPPs, alliancing and partnering contracts, hospitals, urban regeneration, universities, skyscrapers, shopping centres, upscale hotels and leisure facilities, renewables and other power projects and infrastructure using a wide variety of procurement strategies internationally. In addition, he has substantial expertise in sustainable development and sits on the Construction Industry Council's Green Construction Panel and on the City of London Law Society's Construction Law Committee. Francis is a seasoned public speaker and a columnist for *Building* magazine, the leading construction publication in the UK.

He co-authored the Chartered Institute of Building's Time and Cost Management Contract 2015 and its predecessor, the Complex Projects Contract 2013.



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- CIOB Time and Cost Management Contract 2015
 - TCM2015
 - Second edition of the CIOB Complex Projects Contract 2013 (CPC2013)
 - Suite comprising:
 - Construction contract
 - Consultancy Appointment
 - Subcontract
 - User Notes
 - Services for Time Manager and Contract Administrator



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- What's changed?
 - Name emphasises what contract does differently
 - Project Time Manager is now Time Manager
 - Valuer is now Cost Manager
 - Termination for insolvency now immediate
 - Courts are now alternative to arbitration



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■ Background

- CIOB "Guide to Good Practice in the Management of Time in Complex Projects" (2010)
- Designed for "complex" projects only
- What is a complex project?
 - Incomplete design
 - More than 5 storeys
 - Below ground accommodation
 - Multiple sections and possessions
 - Civil engineering elements
 - Multiple contractors and sub-contractors



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■ Background

- Examples:
 - Airports
 - O&G
 - Skyscrapers
 - Power stations/other process plant
- Simple projects can be managed intuitively
- Benefits of TCM2015 only apparent on difficult projects



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- Key features
 - Regularly updated contractual programme with quality controls
 - Time Manager acts fairly and reasonably, advises independently on time management procedures and compliance
 - Working Programme is dynamic management tool with 3 different levels of detail
 - Includes provisions for UK BIM Level 2
 - Early warning
 - Mutual trust, fairness and good faith



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- What does the contract do differently?
 - Single contract
 - Turnkey or design and construct
 - Traditional
 - Possibly construction management
 - Contractor's Pricing Document
 - Cost reimbursable
 - Lump sum
 - For use internationally
 - Provisions for local law
 - Default provisions compliant with UK's Housing Grants, Construction and Regeneration Act 1996 (as amended)



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- What does the contract do differently?
 - Performance security
 - Bonds
 - Parent company guarantees
 - Collateral warranties/direct agreements
 - Electronic communications
 - Risk register
 - Professional skill and care in design
 - Either party may assign contractual rights
 - Special Conditions
 - Provision for bespoke testing and commissioning provisions



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- What is unique to the contract?
 - Time management procedures, detailed progress records, role of Time Manager
 - Common Data Environment and UK BIM Level 2 with suggested Levels of Development
 - Deleterious and hazardous materials
 - Key terms of "Concurrency", "Free Float" and "Total Float" defined
 - If Employer provides information on site conditions, Contractor may rely on it
 - Termination for convenience
 - Employer has to provide evidence if reasonably required of means to pay
 - Expert determination
 - Anti-corruption



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■ International usage

- Adjudication applies where mandatory under governing law
- Compliant with England's Scheme for Construction Contracts
- Arbitration is final dispute resolution procedure
 - Better worldwide enforceability
 - Provisions for joinder and consolidation of claims
 - Decisions public
- Can be used with English law as governing law or another
- References to local legislation or trade union recommended minimum wages, visas and work permits
- Minimum standards of site safety and welfare
- Provisions for paying in different currencies



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■ Consultancy Appointment

- Design and Execution Plan
- Perform services to co-ordinate with works and integrated programme
- Early warning
- If Consultant fails to meet programme, Employer may employ others
- Liquidated damages for late completion of services
- Bankable intellectual property clause
- Collateral warranties (direct agreements)
- Professional skill, care and diligence
- Cap on liability
- Suspension for non-payment



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- Consultancy Appointment
 - Consultant may rely on site information provided by Employer
 - Employer must keep Consultant's prices confidential
 - Novation based on City of London Law Society Novation Agreement
 - Services schedules for Time Manager and Contract Administrator



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