

Raising the roof: legal issues in off-site construction



Articles in the construction press often discuss the advantages and disadvantages of modular/off-site construction methods. But, the height of 101 George Street suggests, quite literally, that the sky's the limit where new construction methods are concerned. The new 44 storey, 135m residential tower will be delivered along with its 38 storey companion (together containing 546 apartments) by Tide Construction with sister company, Vision Modular in East Croydon.

This may be an extreme example but modular/off-site construction methods are not new and are commonly considered in construction contracts.

So what are the key issues where off-site manufacture is proposed?

- Who owns the goods prior to delivery?
- Who bears the risk for damage during storage or transit?
- How should quality control and monitoring be addressed?

The common law position

Unless the issue is addressed specifically, the common law position is that title or ownership will pass only on incorporation into the works making it too late for a buyer who has paid for goods constructed off-site.

The position under JCT standard forms

Several of the JCT standard forms deal with this by identifying the relevant items and providing that ownership passes when their value has been included in an interim payment. In order for the payment to be made, these



conditions must be met:

- a. the buyer is happy that the items satisfy the contract;
- b. evidence is provided that the contractor actually owns the items;
- c. the items are insured against loss or damage caused by specified perils until delivery;
- d. the items are clearly marked as belonging to the buyer and set aside from other materials; and
- e. a bond for the amount paid should also be considered for significant items such as a timber frame.

Practically, it is also a good idea to have a delivery schedule in place so items are delivered on a “just in time” basis, avoiding the need for extended storage on site. The buyer (or its agent) should inspect quality and progress during the process and the contract should include a clearly defined specification against which the quality of the finished products can be measured.

How could buyers benefit from legal advice in this area?

- to check whether provisions could be improved (even where JCT standard form contracts are being used) and to incorporate such provisions into bespoke contracts;
- to consider whether or not a bond is needed and if it is, the appropriate form. There is a wide variation in the quality of forms available and this will have a direct impact on the ability to succeed in a claim;
- to consider enforceability of underlying manufacturer warranties so that the buyer is aware of the extent of its legal remedies.

How we can help

From developers, investors and contractors to high net worth individuals, our construction lawyers provide a wealth of expertise and ensure construction contracts are well drafted and watertight. We can also assist with construction disputes. To find out more, please contact our [construction team](#).