In the event of an emergency…..
Legal Tools for managing technology risk

Duncan Halliwell | Senior Associate

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Introduction

- Safe Technology has bred relaxed attitude

- Risk of new Technology

- Failed risk management can bury business case

Legal Tools

In order of effectiveness:

- Procurement Method

- Specification

- Performance Management

- Warranties and other beasts

1. Procurement Methods

- Specify what you want (Traditional)
  - Risk sits with Principal – Consultant
  - Usually capped

- Specify what you want but make the arrangement long term
  - Risk still mostly sits with Principal

Procurement Methods (cntd)

- Output Specification
  - Risk of design mostly transfers

- And if feeling very radical
  - Add procurement of finance to the mix
  - UK PPP model

2. Specification

- Engine room for getting what you want

- 'appropriate', 'reasonable', 'proven'.

- Can be too restrictive

  - Limit options for new technology

  - Not best value solution

- Future proofing

3. Performance Management

KPI's

- Who gathers the info? If anyone?
- How effective is the sanction?

~~Penalties~~ Abatements or discounts

Milestone Payments

Testing Regime

4. Warranties, terms and conditions

Breach during contract

- Nuclear option
- So what, no loss?
- Persistent breach provisions
- Milestone payments

Breach after contract

- Guarantee – or just the contract itself?
- Proving it
- Limitation (6 years? Or less?)

Warranties etc cntd

Caps and limits on liability

- 'Indirect and Consequential losses'
- 'Repair, renewal and restatement'

Options to fix first

- Cut both ways

Dispute Resolution Proceedings - Unappealing

Summary

- Tools are available

- The better ones need to be considered early

- The ones that are usually concentrated on most, are the least effective.

Any questions?

Contact:

Duncan Halliwell | Senior Associate

duncan.halliwell@kensingtonswan.com

+64 9 915 3364

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