INTRODUCTION

Large international construction projects often engage a range of technical expertise. Likewise, during the course of the life of a project, a wide range of legal questions will usually arise. The contributions to Part 2 of 2021 reflect this variety. We start by covering the procurement process, first, in the context of the infrastructure required for Olympic Games and secondly, in the world of design competitions. This is followed by a consideration of proportionate liability and the challenges which arise in providing certainty for parties sensibly seeking to assess their risk exposure at the outset of any project. The penultimate contribution takes the reader into the world of dispute resolution, in particular, adjudication where the claiming party is insolvent. We conclude by returning to the prevention principle, in this case by reference to the 2017 FIDIC suite of contracts.

Great sporting events give rise not only to significant challenges in the sports arena, but frequently also challenge those responsible for the procurement and construction of the extensive facilities required to host such large events. In "Olympic Games: Is Paris 2024 Less Well Organised and Equipped in Procurement than London 2021?" Gabriel Armanet carries out a comprehensive and considered review of the respective approaches to the organisation and procurement of both the relatively recent London 2012 Games and the future Paris 2024 Games. The author assesses the central building blocks, highlighting the differences between the decisions taken by the two cities in respect of organisation and governance, procurement routes, contract forms, delivery on time, the all important budget and finally, dispute resolution. Some aspects clearly involve a degree of choice, such as the London decision to use one unique public authority with a Delivery Partner versus the Parisian approach, which favours the use of existing local authorities, together with an OPC consultant, the conventions d'objectifs and certain rights of scrutiny and to take over the works. Others are perhaps more a reflection of the particular jurisdiction, such as the applicable contractual terms, the approach of collaboration and the available standard forms of contract.

The second article transports us into the arena of a different kind of competition, namely design competitions, and asks whether they comply with the relevant public procurement law. Nicola Ibbotson examines whether it is possible for the legal requirements of transparency and objectivity arising in the arena of public procurement to sit alongside the practical requirement of subjectivity in design competitions. The article grapples with this dilemma by reviewing five design competitions covering housing developments, an exhibition space, a renovation of a listed building and an urban realm design contest. In "Do design competitions comply with the law?" the author begins by assessing the complex definitions around

the evaluation of design competitions which impact the requirement for objectivity, before looking at the processes which bidders go through as part of the design competition, interpreting and responding to the brief against the applicable legal framework the tender process. The next stage is the assessment, and the article assesses the challenges faced by the tendering authorities in defining the award criteria, evaluating the submissions and ultimately in making the final award of the competition. Ibbotson shines her spotlight on the challenges arising and offers some practical solutions by reference to the case studies. The article concludes by looking into the future in a post-Brexit era and considering what impact this will have.

In "Proportionate Liability Revisited" Professor Doug Jones AO takes the reader through the history and principles lying behind the development of the concept of proportionate liability in Australia. In so doing the author reviews what has happened in respect of proportionate liability in Australia since 2006, legislatively and judicially, before reflecting on the approach to proportionate liability in other common law jurisdictions and from a civil law perspective. The complexities which are thrown up by multi-party disputes and the question of proportionate liability are demonstrated by a combustible cladding case study. Given that the current system of proportionate liability in Australia has not achieved the intended purpose of the reforms, namely that of containing the increase in insurance, the author asks the challenging question whether it is economically and legally sensible to maintain a regime of proportionate liability uncertain in its application, varying from state to state, and in concept inimical to the effective financing and delivery of construction projects across the board.

We return to the perennial topic of adjudication in "A Discussion as to the Application of Adjudication as a Method of Dispute Resolution and Cost Recovery for Parties Approaching or in Formal Insolvency". At the heart of Oliver Macrae's article is the recent UK Supreme Court decision in *Bresco Electrical Services (In Liquidation) v Michael J Lonsdale (Electrical) Ltd.* In essence the Supreme Court concluded that a company in insolvency is entitled to pursue a statutory adjudication, although liquidators should not get too excited, as enforcement of a favourable decision is likely to be difficult. The decision is of particular interest to practitioners as the Supreme Court disagreed with both the first instance judge and the Court of Appeal. The author identifies and discusses the circumstances which might enable enforcement of a judgment obtained in support of a successful adjudication decision by an insolvent company. While the author focuses on the decision in *Bresco*, he also reviews the approach taken in New South Wales, Australia and Malaysia to the inter interplay between the statutory regimes providing for insolvency and adjudication.

We conclude by returning to the perennial question of prevention and the allocation of the risk of employer delay, this time in the context of FIDIC contracts. In "The Prevention Principle and the Risk of Employer-Caused

Delay under the 2017 FIDIC Suite of Contracts" Ngo-Martins Okonmah surveys the approaches adopted under both the 1999 and 2017 FIDIC suite of contracts, highlighting where there are differences. In providing a detailed review of the consequences of seeking to strike a balance in relation to Employer-caused delay between the competing interests of the employer and contractor through the vehicle of the notice and claims management provisions, the author identifies the important question of the appropriate approach to interpreting the power of the power of the Engineer to overrule the time limits set out in sub-clause 20.2.5 of the 2017 FIDIC form, and offers a considered personal assessment, favouring the fair determination test, over the prejudice test.

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