

**LEGALLY PRIVILEGED FOISA EXEMPT
DISPUTE RESOLUTION PROCEDURE CASE 3: HILTON CAR PARK
COMMENTS BY McGRIGORS IN RELATION TO TIE's CASE**

CONTEXT

- 1 Reference is made to the Inventory of Documents and to the documents referred to therein.
- 2 The Dispute which Tie intend to refer to the Internal Dispute Resolution Procedure is narrated in paragraph 2.1 of the Position Paper.

ANALYSIS

- 3 At the heart of the Dispute (as set out in paragraph 2.1 of the Position Paper) there are 2 questions:

(FIRSTLY) Are Infraco obliged to carry out the Car Park Works?

(SECONDLY) Is any obligation on the part of Infraco to carry out the Car Park Works contingent upon an instruction?
- 4 Clause 18.17B of the Infraco Contract imposes on Infraco the requirement that it complies with its obligations in relation to Schedule Part 13 Section A. Section 12 of Section A of Schedule Part 13 deals with the Car Park Works. In particular, Clause 12.11 states:

"The Infraco shall procure that the Car Park Works are completed as quickly as reasonably possible and in any event prior to the commencement of the Infraco Works in the vicinity of the Site".
- 5 Clause 12.11 above appears to be the only expression of the obligation on the part of Infraco in respect of the actual carrying out of the Car Park Works. The main purpose of Clause 12.11 could be said to relate to timing. Nevertheless considering Section 12 holistically and the opening words of Clause 12.11 which refer to Infraco procuring the completion of the Car Park Works it appears to be clear that Infraco are obliged to carry out the Car Park Works and furthermore this is not contingent upon an instruction.

CONCLUSION

- 6 It is submitted that the 2 questions posed should be answered in the affirmative and consequently that the Dispute (as formulated) should be decided in favour of tie.
- 7 However, we would apprehend that Infraco will seek payment for carrying out the Car Park Works even if the answer is in the affirmative. The question of payment entitlement will require a consideration of other matters including Contract Price, Construction Works Price, the Employer's Requirements (Schedule Part 2) and the Infraco Proposals (Schedule Part 31). Thus far Infraco's position appears to be that the Car Park Works are Accommodation Works and payment would therefore be due on that basis. A successful outcome of the Dispute for Tie would mean that Infraco would require to consider a different basis for payment involving a consideration of the issues referred to above.

McGrigors LLP

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