

Modular Matters 2024: Mitigating Financial Risks in Modular Construction



Mishcon de Reya

Will Chung 20 March 2024

It's business. But it's personal.

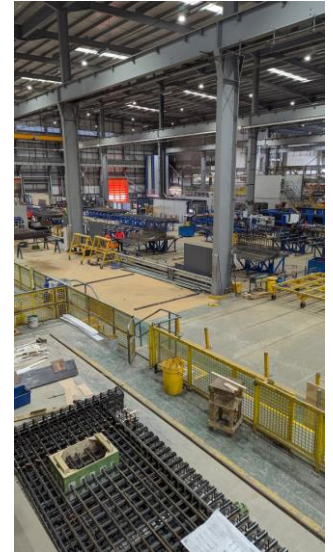
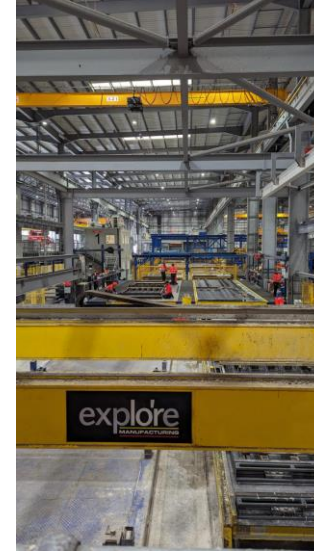
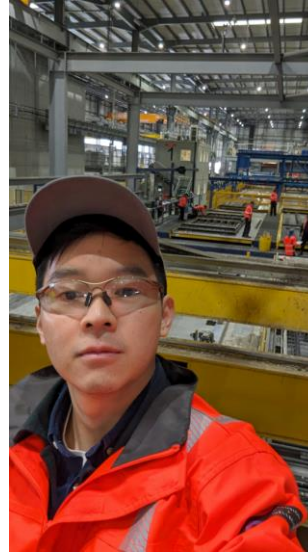
Welcome.

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This presentation is intended only as a general statement of the law and no action should be taken in reliance on it without specific legal advice.

Overview

1. Introduction
2. Modular Construction: A Snapshot
3. Doomsday Scenario: Understanding Funders' Concerns
4. Mitigating the Risks Contractually
5. Making MMC Great Again?



Modular Construction: A Snapshot

Recent negative headlines

- High profile casualties (Caledonian Modular, Urban Splash, Ilke Homes)
- L&G ceasing production of its modular housing factory
- Gov approach to MMC “*in disarray*” - House of Lord’s Built Environment Committee

Remains a popular option

Build-to-Rent

- 495-BTR flats being built using volumetric approach at The Mall, Walthamstow
- £105.2m financing recently secured for 462-BTR flats at The Castle, North Acton

Life Sciences

- UK’s first CAR t-cell manufacturing facility PC’d in just 17 months using pre-assembled module and flexi-pod strategy



Doomsday Scenario: Understanding Funders' Concerns

Attitude of Funders

- Institutional investors (e.g. pension funds, insurance companies) inherently risk averse
- Despite undoubted benefits, MMC more risky than traditional construction
- Significant initial capital expenditure before funder's security improves
- Unlikely to share a mutual risk-sharing approach

Doomsday Scenario

- Insolvency of the MC
- Majority of the project fabricated off-site
- Modular items stuck in factory prior to assembly on-site
- Funder's step-in rights may be of limited benefit
- Unrealised project, stranded asset, no revenue stream



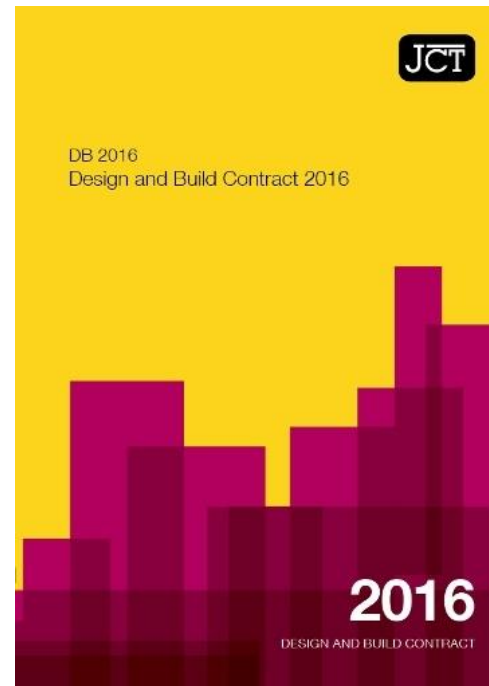
Mitigating the Risks Contractually

Standard forms of contract need tailoring

- Enhanced contractual provisions will be required
- Not a “One-Size-Fits-All” approach

Payment security

- Usual security arrangements may not be applicable
- MC’s limited capacity to deliver advance payment and/or off-site materials bonds
- Expect greater scrutiny from the funder over payment of construction costs:
 - Pre-conditions to payment under valuation procedure
 - Monthly cashflow with not-to-exceed figures
 - Enhanced retention regime with agreed milestones to be satisfied prior to release



Mitigating the Risks Contractually (cont'd)

Inspection of off-site factory

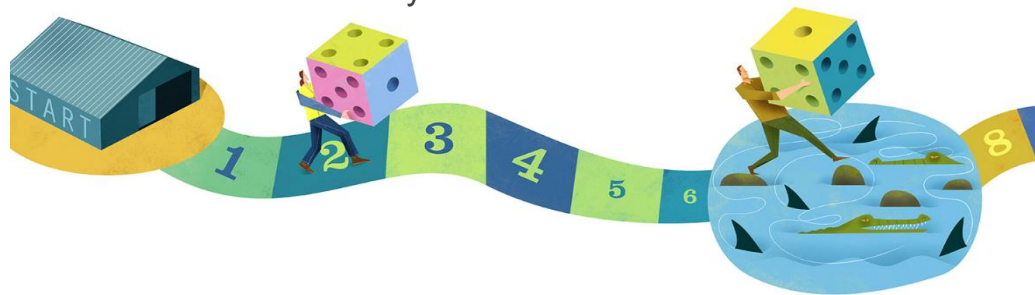
- Periodic inspection by the EA
- Detection of defects prior to transport and delivery of fully fabricated modular items
- Compliance with testing and commissioning requirements

Other considerations

- Ensuring modular items stored off-site are clearly marked and reclaimable in insolvency scenario
- Risk of insuring loss and damage to modular items in factory and during loading and transportation to the site
- Copyright: IPR in stock design retained by the MC but developer requires licence to use modular items
- Early engagement in the design process/pre-construction period to ensure repeatability of modular items?

Making MMC Great Again?

- Still has a role to play in construction industry's need to “Modernise or Die”
- Rising material costs, struggling supply chains, labour shortages
- Net zero drive and decarbonisation
- More Gov direction but proposed standardisation a helpful start and could offer reassurance?
- Less focus on the Doomsday Scenario
- De-risking funders' concerns will help persuade them of MMC's bankability



Key Contact



William Chung
Managing Associate
Real Estate Construction
T: 44 20 3321 7369
william.chung@mishcon.com

<https://www.linkedin.com/in/william-chung-47b33558/>

Thank you.

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