

# FIG WORKING WEEK 2019

22-26 April, Hanoi, Vietnam

Presented by the FIG Working Week 2019,  
April 22-26, 2019 in Hanoi, Vietnam

"Geospatial Information for a Smarter Life  
and Environmental Resilience"



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# Power Indicators in International Construction Law

## Dr Jim Mason, UWE Bristol

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## About the study

- Countries selected for desk-based practitioner commentary review (Practical Law Company)
- England and Wales, United Arab Emirates ("UAE"), France, Germany, United States of America ("USA), India, Australia & Brazil.
- Basic split between common law and civil law countries
- Backdrop of increased harmonisation through common contracts – FIDIC, NEC
- Vive la difference!

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## Key principles

- The two dominant universal forces at work with construction law are:
- freedom to contract
- and *pacta sunt servanda*.
- Put simply, the parties are largely free to agree the terms upon which they contract and are bound by that agreement once made
- Paper does not discuss contract amendments, philosophy or corruption

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## Key concept

- Who has the balance of power in a construction contract?
- Client Contractor



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## The indicators (1)

- Termination for Convenience
- Pay-when-paid clauses
- Unconditional Bond
- Ability to Subcontract
- Duty to Warn
- Time bar

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## The indicators (2)

- Statutory Payment Regimes
- Supplier's Lien
- Force Majeure/ Frustration
- Hardship payments
- Constructive Acceleration
- Fitness for Purpose

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## The outcomes

- UAE – client friendly
- UK – balanced
- France – contractor friendly
  
- Other countries range inbetween – work out where your country is!

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## Conclusions

- Worthwhile to think of these things in the round
- Starting point for a wider consideration
- Appreciation of difficulty of international jurisdictions
- Prepares us for the global connected community and a debate rather than the imposition of terms
  
- Thanks for listening

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