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Bristol Insurance Seminar

Wednesday 7th October 2015

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**Building Information Modelling:
Benefits, Risks & Insurance Implications**

Nic Pegg, Associate



Programme

- + What is BIM and why is it significant?
- + Different levels
- + Potential benefits
- + Risks
- + Insurance implications
- + Conclusions



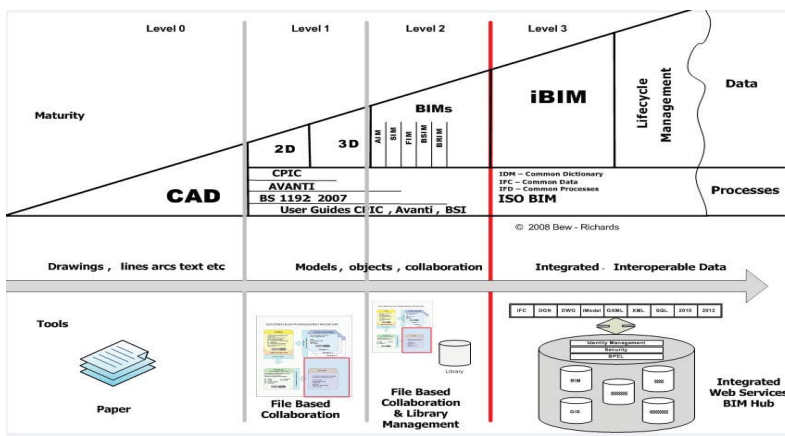
What is BIM?

“
The digital representation of physical and functional characteristics of a facility creating a shared knowledge resource for information about it, forming a reliable basis for decisions during its life cycle from earliest conception to demolition. [CPIC]
”

What is BIM? Cont'd

- + Digital Representation
- + Shared knowledge resource
- + Reliable basis for decisions
- + Full life cycle

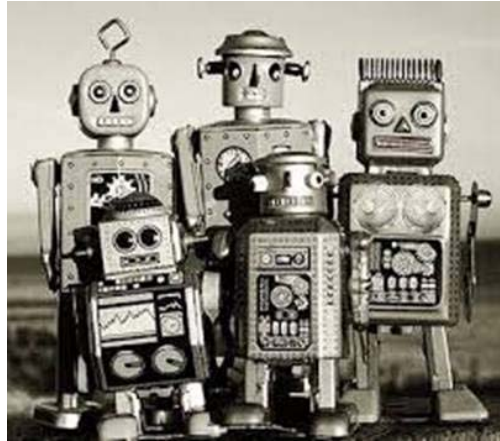
BIM Levels



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Level 2



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Level 3



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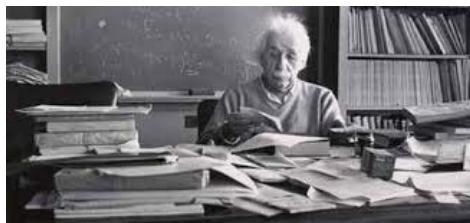
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Implementation

- + Ambitious government targets for use of Level 2 BIM by 2016 in respect of government contracts
- + Aiming for 50% improvement in delivery times and 33% saving on 'whole life' cost of project

Implementation cont'd

- + BIM Protocol
- + Best Practice Guide
- + Outline scope of services for role of Information Manager



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Benefits

- + Zero defects?
- + 'Clash free' construction?
- + Greater certainty?
- + Cost?
- + Ongoing building management

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Risks

- + Design liability
- + Cyber risks
 - PI exclusions?
 - Corruption of data
- + IP rights – harder to safeguard

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Design Liability

- + Blurred line of responsibility?
- + Importance of contracts
- + Execution Plan
- + Information Manager
- + Level 2 / Level 3 distinction



Insurance Implications

- + Altering risk profiles?
- + Level 2:
- + Level 3: new landscape
- + Best Practice Guide for PI Insurance
- + Importance of full disclosure

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Integrated Single Project Insurance

- + Owner control
- + Protects collective interest: joint names
- + Wide cover
- + No subrogation
- + 'Cradle to grave'

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Advantages

- + Minimises gaps/eliminates duplication
- + Direct settlement of claims
- + No apportionment
- + One loss adjuster
- + Overall: reduced scope for dispute
- + Argument for increased use in UK

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Conclusions

- + Common consensus re Level 2: not a game changer
- + Level 3 likely to have more impact
- + Industry approach = wait and see
- + Await first claims
- + Rise of integrated project insurance?

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Tax Avoidance

David McArdle, Associate

Historical distinction between tax avoidance and tax evasion

Tax Avoidance/Mitigation

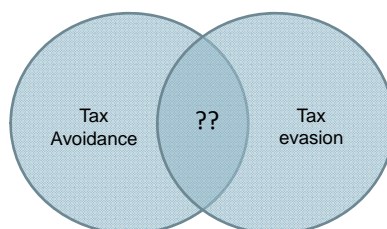
- + Operating within tax legislation to reduce tax liability
- + Government uses tax relief to encourage economic stimulus or development in potential growth areas: i.e. entrepreneurs' relief

Tax Evasion

- + Tax evasion is where there is a deliberate attempt not to pay the tax due. It is illegal. While the vast majority of UK taxpayers declare all their income and pay the tax they owe, a small number choose to break the rules.

Pushing the boundaries

- + Grey area which can be exploited



The new definition

- + Tax avoidance is bending the rules of the tax system to gain a tax advantage that Parliament never intended. It often involves contrived, artificial transactions that serve little or no purpose other than to produce a tax advantage.
- + It involves operating within the letter – but not the spirit – of the law.
- + Tax evasion is when people or businesses deliberately do not pay the taxes that they owe and it is illegal.
- + Morally repugnant – George Osborne

An example

Film Finance Schemes:

- + Intended to benefit British film industry by encouraging investment
- + Investor contributes £260,000. Film finance company contributes £740,000 on a non-recourse basis. Investor is entitled to tax relief on full £1M.
- + Immediate refund from HMRC of £400,000 on the basis that £1M had been invested into the film (assuming they are higher rate taxpayers – most are).

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The crack down

- + General Anti Abuse Rule (GAAR) (2013):
- + “double reasonableness” test:

“A tax arrangement is abusive if entering into or carrying out the arrangements cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions, having regard to all the circumstances”.

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The new approach

- + Disclosure of Tax Avoidance Schemes (DOTAS) (2004): ‘Kiss of death’ for tax avoidance schemes.
- + Accelerated Payment Notices.
- + Follower Notices.
- + HMRC received a further £77 million in funding aimed at reducing evasion and avoidance – Chancellor’s 2012 Autumn Statement.

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The Numbers

- + Claims industry estimates that there will be 30,000 claims for misselling of tax avoidance schemes with a total value of £30bn.
- + HMRC expects to issue a further 64,000 APNs.
- + 10,000 APNs issued in 2014/2015 collecting £568m.
- + £1bn collected under APNs since their introduction.

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The new forums

- + FOS Jurisdiction: R (on the application of Chancery (UK) LLP v FOS [2015] – Tax Avoidance Scheme was a Collective Investment Scheme falling within jurisdiction of FOS. Max £150,000 compensation.
- + FSCS will now accept claims – Max £50,000 compensation.
- + 150 claims registered with FSCS before they accepted jurisdiction.

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The new risk?

- + The schemes were promoted by SPV companies.
- + Accountants, tax lawyers and financial advisers who gave advice or who referred clients to promoters potentially exposed.
- + Exposed to civil and disciplinary actions
- + More large loss events for insurers.
- + Implications for PII.

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Key Defences

- + Limitation – Primary limitation period is 6 years. A significant number of the more aggressive tax avoidance schemes were entered into before 2004 (Implementation of DOTAS)
- + Ex Turpi Causa
- + Reliance / causation
- + Adequate warnings given

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Friday Afternoon Frauds and Other Claim Trends

Joe Eizenberg, Partner

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Accidents Happen....



+ An overview of current claims trends and some predictions on what might happen over the next 12 months...

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Solicitors – Friday Afternoon Frauds

- + Unsolicited communication from bank reporting “suspicious activity”
- + Request for private and confidential banking details
- + Often request that money be paid to alternate bank accounts
- + Unprompted communication from client requesting payment to “new” bank account



Client Account Fraud – case study

- + Contacted by bank out of the blue
- + Bank say that are having difficulties processing legitimate payment
- + Advised that there was “suspicious activity”
- + Solicitor advised to transfer money to alternate accounts
- + Asked for the secure banking codes and transaction authorisation codes several times



Change of Bank Details – case study

- + Sale of substantial property
- + Just before completion the solicitor receives an email from 'client' changing bank details
- + The solicitor replies to the email asking the client to confirm
- + Transfer proceeds of sale (£1M) to new bank's details
- + Two weeks later client asks where their money is!



General

- + *Vial-Hall v Google Inc*
- + Victims of DPA breaches given permission to seek compensation from Data Holder
- + Rise in claims against professionals who inadvertently leak confidential information



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Valuers and Construction Professionals

Valuers

- + Resurgence of defects claims following years of claims against valuers?

Construction Professionals

- + CDM Regulations increase claims against 'designers' following accident on site



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Valuers and Construction Professionals

- + There seems to be an increase in requests for standstill agreements arising from causes of action that accrued in 2008/2009.
- + Claims from renewables projects – new technology often not understood
- + D&C contractors becoming more aware of possible cover under their PI policy eg for schemes to mitigate loss

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Financial Advisors & Accountants

Financial Advisors

- + Pension deregulation following Government Reforms
- + Learnt the lessons from past mis-selling scandals?

Accountants

- + Tax avoidance clampdown by HMRC
- + Probate? Not yet



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Questions?

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10 Year Party..



+ Join us on 21st January 2016 at Glassboat, Welsh Back, Bristol BS1 4SB



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