

Connaught: Construction Insolvency

The recent administration of Connaught, the property and environmental services company, has brought construction-related insolvency to the national spotlight again and serves as a reminder to employers to take all appropriate steps to protect their interests in the event of contractor insolvency.

Firstly, the employer should where possible obtain appropriate security documentation (for example, parent company guarantees, performance bonds, advance payment bonds and latent defect insurance policies).

The employer should also ensure that the building contract contains suitable provisions to deal with the insolvency and its consequences. For example, drafting should be included to ensure that:

- There is no payment obligation on the employer following insolvency.
- There is no automatic termination upon insolvency.
- There are early insolvency 'triggers' (to give employer more time to consider his position).
- The main contract (and subcontracts) deal with passing of title to the employer in respect of on and off site materials.
- If the employer forgoes the right to hold a retention, a retention bond is provided on an on demand basis.
- Collateral warranties/third party rights from subcontractors are provided, containing "step-in rights".
- Bonds are provided prior to payment for off-site materials.

And in the event (or risk) of insolvency of a contractor, the employer should always take all steps to secure the site and plant/machinery. The employer should also be aware of the risks of paying directly to any subcontractors of the insolvent contractor.