The PIB Construction team focus on the potential exposure to uninsured material risks of projects at various stages of construction, when the main contractor becomes insolvent.

This briefing note covers some of the risks that developers and investors should consider. It follows an [article written] by our TradeRisk Solutions team in the immediate aftermath of the Carillion event.

Those parties with an investment interest in a construction project should always be concerned when financial warnings are made in respect of their main contractor.

Ideally the earliest signs of any problems should be highlighted by monitoring surveyors, so that developers and investors have an opportunity to start thinking about contingent arrangements, including insurance.

It appears that Carillion's insurance was often arranged under a 'Project Specific Insurance' policy, for each development they were involved with.

Whilst the insurers will need to be notified of such an event, especially when works stop, in most circumstances the insurance will remain and simply be amended once a replacement contractor is appointed.

When project specific insurance hasn't been arranged due to the main contractor being made responsible for arranging insurance under their annual policies, the contractual parties involved are often left exposed.

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Those risks that the developer and investors need to consider include:

Contractors annual insurances - Prior to administrators being appointed (or even potentially after), it is extremely unlikely that a contractor's annual insurances will continue. This will leave the investors and other parties with a vacant or partially completed site, with the greatest risk being third party liability (damage to third party property and bodily injury or death). Whilst the developer will no doubt have property owner's liability for the site, their insurers will exclude any liability arising from the actual works without prior agreement, which should be obtained urgently.

Materials onsite - All materials onsite, including those already forming part of the structure and any materials in transit, will also be uninsured. The developer will need to approach insurers urgently for appropriate insurance cover. Depending on the contractual agreement, the manufacturer may retain the responsibility of insuring the materials in transit, but of course cover will cease once delivered to site or any off-site storage arrangement.

Potential hazards - Naturally due to the potential hazards, increased risks associated with partially completed projects and vacant sites, insurers may have limited appetite to provide cover. Cover perils are also likely to be reduced, with potentially higher excesses applied and robust security measures required. These may range from security gates to 24-hour manned security. Site risk management, such as health and safety will also be an ongoing concern.

Modular construction units - The developer will also need to be clear on any modular construction units which may be included as part of the project. Apart from insurance responsibilities post manufacturing and whilst in transit, it is advisable that all units are clearly marked referring to the destination site and ideally amended to the developer, rather than the contractor. Delays can be encountered when the modular manufacturer is only recognised with the contractor.

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Latent defects/housing warranties insurance - When the contractor arranges latent defects/housing warranties insurance, these will be under the control of the contractor and based on the contractor's experience and financial rating. But the cover option will fall away following their insolvency during the construction phase. A new latent defects/housing warranty option will need to be obtained from insurers based upon the replacement contractor. Whilst an additional expense will be incurred with regards to the new latent defects/housing warranty policy, it is advisable to arrange this with the original insurer. They will have the benefit of the technical surveys to date and pre-inception project information. However, if the developer originally arranged the latent defects/housing warranties insurance then following insolvency of the contractor the insurers simply need to be informed of the new contractor and details of any changes to scope of works and new construction period.

PIB strongly recommend that the developers and investors control insurance solutions for protection against the key assets, legal liabilities and financial exposures associated with project development at the earliest possible opportunity.

Get in touch

For further information and guidance please contact your usual PIB contact or the following:

Mike Carolan
(Head of Construction)
M: 07715 823 757
E: mike.carolan@pib-insurance.com

Gavin Oram
(Sales Director Property & Construction)
M: 07946 223 290
E: gavin.oram@pib-insurance.com

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