

## ACHIEVING PAYMENT SECURITY IN THE CONSTRUCTION INDUSTRY

### Some Statistics on Payment

- 450,000 jobs lost in EU per year because of insolvencies resulting from late payment.<sup>1</sup>
- 86% of UK firms in sectors other than construction are paid on time.<sup>2</sup>
- 57% of sub-contractors experience payment delays or abuse on the majority of UK **government** construction projects.<sup>3</sup>
- Since the Construction Act payment periods in UK construction increased from 76 to 88 days.<sup>4</sup>

<sup>1</sup> European Commission

<sup>2</sup> Credit Management Research Centre

<sup>3</sup> SEC Group (October 05)

<sup>4</sup> Experian

### Commentary

- "Unfair payment practices... undermine the principle of integrated teamworking and the ability and motivation of specialist suppliers to invest in innovation and capacity"  
*(Improving Public Services through better construction, NAO Report, 15 March 2005)*
- "Regardless of the payment or contractual arrangements in place, it is important that suppliers receive fair treatment."  
*(Paul Boateng, 2004 when setting up the Fair Payment Task Force)*
- It is imperative that payment problems in UK construction are addressed to ensure dispute-free Olympic projects.

### Review of the Construction Act

- In his March 04 Budget Statement the Chancellor announced a review of the Construction Act (which took effect on 1 May 1998) in the wake of complaints about payment delays.
- In March 05 the DTI and the Welsh Assembly Government published a consultation paper on proposals to amend the payment and adjudication provisions in the Act.
- A further consultation on specific amendments is likely to take place in the new year.

### Commentary

- "The [Construction Bill] requires that payment should be **defined** in terms of **amount** and date."  
*(Lord Lucas, 26 Feb 1996 in HL debate)*
- The DTI's consultation paper did not address the key issue - the payee needs **certainty** of the amount he is to be paid on the payment date.
- At present there isn't the means (in the Act) of resolving the deadlock over payment where the payer disagrees with the payee on **what** should be paid.
- Inevitably this provides a convenient excuse for **delaying** payment of **any** monies

I support changes to the Construction Act (as outlined in SEC Group's Autumn/Winter 2005 Parliamentary Newsletter) to achieve certainty of payment in the construction industry.

NAME of MP/MSP/AM\* .....

CONSTITUENCY .....

**Please forward to: John Nelson, Executive Secretary, SEC Group, 34 Palace Court, London W2 4JG**

\*Delete whichever is inappropriate.

## The DTI's Response

- The DTI's view in the consultation paper was that the present **adjudication** provisions in the Act are appropriate for dealing with payment problems.
- Adjudication was introduced by the Construction Act as a cost-effective and speedy means for dealing with disputes on a **stop-gap** basis.

## Commentary

- Dispute resolution procedures should not play a part in the process of defining what should be paid. In any event adjudication has become costly.
  - The solution is simple. The Act should be amended:
    - the payee to have a right to apply for payment;
    - the amount applied for to become a **statutory debt**.
- unless**
- the payer has issued a response with an alternative amount **and** has given detailed justification for the difference.
- In which case**
- the amount in the response is the statutory debt and the balance to be negotiated or referred to adjudication.
- [A similar approach has already been adopted in New Zealand]*

## Insolvency of the Payer

- In the last 3/4 years many large firms have gone into insolvency - eg Ballast UK, Melville Dundas, Spectrum and Benson Group.
- Melville Dundas, for instance, left £36m owing to 20 sub-contractors and suppliers in Scotland. Some of these have ceased trading with the consequent loss of jobs.
- There is consensus in the industry that supply chains need protection from payer insolvencies; clients should have the right to pay sub-contractors directly in the event of main contractor insolvency.
- The DTI decided **not** to act on this because it undermines insolvency legislation.

## Commentary

- "...the [Construction] Bill makes no provision for the establishment of Trust Funds to guarantee payments as recommended by the Latham Report."  
*(Nick Raynsford, 2 Nov 1996 when Shadow Construction Minister)*
- Much is given on trust in the construction industry. Many contractors invest in off site activities such as design and manufacture but payment does not flow until after the start of work on site.
- Legislation in Europe, North America and Australia protects firms in supply chains from upstream insolvencies.
- Improving payment rights is academic unless the payer can pay. The Construction Act should
  - give clients the right of direct payment to subcontractors where the prime contractor is in **administration**
  - require construction procurers to give **independent** evidence that they can pay for the work
  - require a payer demanding security for performance (eg a performance bond) to issue a payment bond.

The SEC Group is an umbrella representative body in the construction industry. Its membership consists of the industry's six premier trade associations: Association of Plumbing and Heating Contractors (APHC), British Constructional Steelwork Association (BCSA), Electrical Contractors' Association (ECA), Heating and Ventilating Contractors' Association (HVCA), Lift and Escalator Industry Association (LEIA) and SELECT (Electrical Contractors' Association of Scotland). Together these bodies represent a sector comprising 60,000 firms and a

workforce of more than 300,000.



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