



**NHMF  
Conference 2010**

# **My contractor is insolvent – Help!**

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# My contractor is insolvent

- Avoiding and spotting contractor insolvency
- Mitigating the effects on works/services provision
- Options post insolvency

# Avoiding insolvency

- During procurement
  - pre-qualification
  - under-pricing
  - bond?
- During contract period
  - ongoing monitoring
  - have a plan
- Positive action?
  - can you pay the contractor more?



# Spotting insolvency before it happens

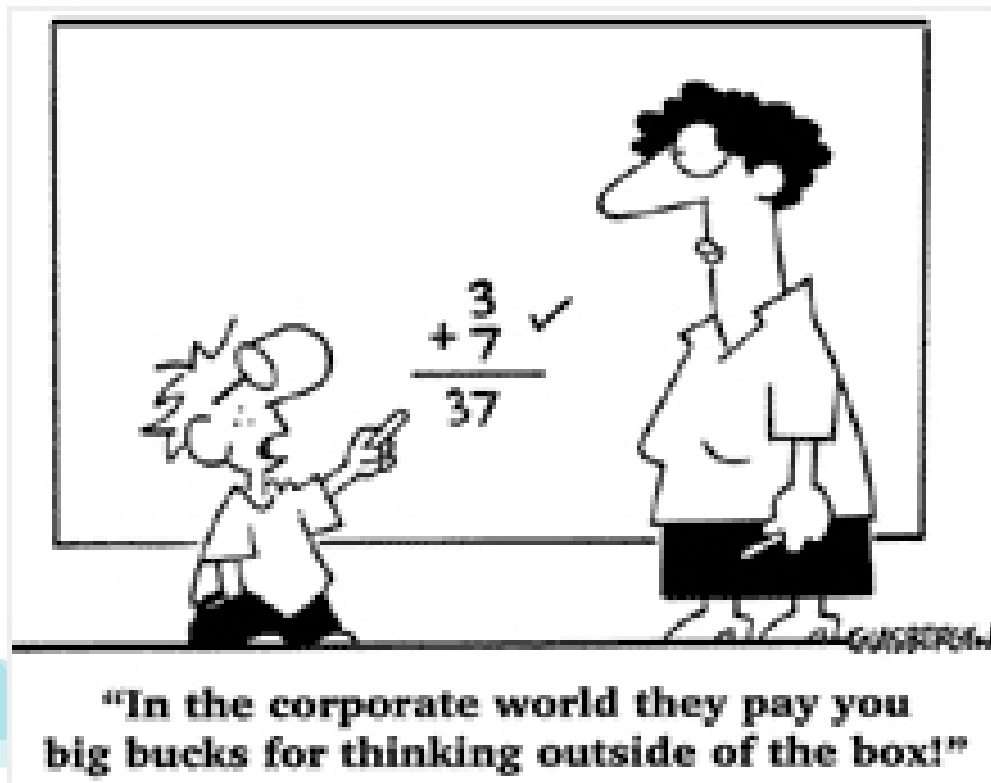
## ■ What is it?

- unable to pay debts as they fall due
- liabilities greater than assets

## ■ Spotting it

- supply chain?
- service provision/works issues?
- credit control?

# Or put another way



# Effects of insolvency 1

- Cease or continue trading?
  - company voluntary arrangement
  - administration
  - liquidation/bankruptcy

# Scenario 1

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# Effects of insolvency 2

- Look at the contract - automatic termination or should you terminate?
  - standard of works/services
  - what are the other options?
  - don't unduly delay your decision – possible waiver of breach



# Effects of insolvency 3

## ■ Bond

- is insolvency a trigger event?  
NB the standard ABI wording

## ■ Parent company guarantee

- option or right for parent to continue the contract?

## ■ Payments under contract

- Construction Act withholding notices and your losses

# Practical issues

- No works or services?
  - gas servicing or responsive repairs
  - capital works
- Information/IT provision
- Call centre/depot leases of other premises?
- Workforce
- Stores/materials
- Insurance

# Scenario 2

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# Discussion point

- What practical and legal issues have you experienced as a result of insolvency?

# Options

- Novation to a purchaser of the insolvent contract/contractor
- Provide the works/services yourself
- Re-procure the works/services

# Novation

- What is it?
- How has the insolvent company been acquired?
- Hints and tips
  - insurance
  - fees and expenses
  - EU procurement

# Provide the works/services yourself

- Resources issues
- TUPE
- Vans and call centre
- Insurance, etc.
- No contract to procure for EU procurement

# Re-procurement

## ■ Procurement issues

- EU procurement
- s20 leaseholders consultation?

## ■ Timing



# EU procurement

- Second best tenderer?
- Emergency provisions/breach of rules?
- Re-procurement via OJEU
  - issues specific to works or services
  - small lots?
  - accelerated procedures?

# s20 Consultation

- s20 leaseholder consultation for
  - re-procurement
  - novation?
  - providing the works/services in house

# Discussion point 2

- What are your experiences of mitigating the effect of an insolvent contractor?

# Any questions?

■ Thanks for listening

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