

Supply chain insolvency and delays in construction



The pandemic may be over but the after effects of Covid, combined with the unstable economic and political climate, continues to cast a long shadow over the construction industry. In this two part panel discussion, two of our construction specialists, Nitej Davda and Iain Benson, discuss the risks of supply chain insolvency and delay on construction projects highlighting some traps for the unwary and offering some practical advice on how to manage and mitigate such risks.

Supply chain insolvency

The panel first discussed the factual test for insolvency and why it is a serious risk for construction projects before moving on to look at what can be done at the planning stage of a project to address the potential risk of supply chain insolvency. The discussion revolved around:

- the initial due diligence process
- the different kinds of performance security that can be put in place including performance bonds and parent company guarantees;
- the use of project bank accounts;
- the inclusion of step in rights in collateral warranties; and
- negotiating, agreeing and incorporating a carefully considered schedule of amendments into the contract being used to procure the works.

This first part of the discussion concluded with a review of what legal and practical steps to take if a main contractor does encounter financial difficulty or in the worst case becomes insolvent.



Delay

In the second part of the panel discussion the panel discussed what delay actually means in a construction context before going on to examine how to deal with extensions of time. The panel also discussed the importance of delay analysis, the role that the critical path has to play in that process and some general commentary on concurrent delay.

The panel concluded the discussion with a focus on the importance of timely action and accurate records in making the impact of delay both easier to determine and for parties to agree upon.

This was the second in the Cripps LLP series of construction panel discussions. The next one will be held in the Autumn and we welcome suggestions for topics of interest.

How we can help

From developers, investors and contractors to high net worth individuals, our construction lawyers offer clients a wealth of expertise, ensuring construction contracts are well drafted and watertight, and disputes skillfully handled.

If you're looking for expert advice, [please get in touch](#).



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