



SHA: Contractors & Consultants Liquidation & Receivership Policy

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1.0 INTRODUCTION

- 1.1 This policy has been prepared to take account of the Regulatory Standards of Governance and Financial Management set out by the Scottish Housing Regulator (SHR), **Standard 3**: The RSL manages its resources to ensure its financial wellbeing and economic effectiveness.
- 1.2 This policy describes the approach that the Association will take:
- To mitigate the risk of a contractor or consultant going into liquidation.
 - If a contractor or consultant who is working for the Association goes into liquidation or has a receiver appointed.

2.0 CONTEXT

- 2.1 The Association's Risk Register sets out our approach to the management and assessment of risk and the need to remove risks or mitigate risks to an acceptable level.
- 2.2 We will seek to minimise our exposure to contractors and consultants' liquidation by having standard compliance checks at tender stage alongside financial checks.
- 2.3 As part of the compliance assessment contractors and consultants must be able to demonstrate that they have adequate financial resources to undertake a contract along with appropriate insurance being in place for the duration of their appointment.
- 2.4 The Association may consider the need for performance bonds on a project-by-project basis, depending on the nature and complexity of the project.
- 2.5 The Association recognises that companies should not be disadvantaged by their size due to onerous procurement requirements therefore we will assess insurance levels and the possibility of a performance bond on a project-by-project basis to ensure that they are proportionate to the size of the contract – not taking a one size fits all approach.
- 2.6 The Association will obtain Dun & Bradstreet reports which give an indication of the current financial state of a contractor prior to the award of a contract.
- 2.7 Where we commission a project containing sub-contracted design elements, we will ensure that appropriate collateral warranties are secured.
- 2.8 Where a contractor or consultant goes into administration, we will ensure that there are procedures in place to ensure that sites are made secure and any outstanding information is received.

2.9 This Policy should be read in conjunction with the associated Procedures for dealing with liquidations and receivership at Appendix 1.

3.0 LEGAL AND REGULATORY FRAMEWORK

3.1 The following legislation is relevant to dealing with incidences of insolvency, receivership or liquidation of a contractor which has been engaged by the Association:

- The Insolvency Act 1986;
- Companies Act 2006, and;
- The Corporate Governance and Insolvency Act 2020

3.2 As referenced at section 1.1 of this policy the following Standards of Governance and Financial Management which form part of the SHR's Regulatory Framework:

- Standard 3.3 - The RSL has a robust business planning and control framework and effective systems to monitor and accurately report delivery of its plans. Risks to the delivery of financial plans are identified and managed effectively. The RSL considers sufficiently the financial implications of risks to the delivery of plans

4.0 PURPOSE OF POLICY

4.1 This policy is intended to ensure that:

- The potential for financial loss to the Association where a contractor has gone into liquidation or receivership is minimised.
- Swift action is taken by the Association to secure the site(s) as soon as notification is received that a contractor has gone into liquidation or a receiver has been appointed.
- In the event of a contractor or consultant being unable to complete a contract because of liquidation or the appointment of a receiver, a strategy for securing completion will be adopted at an early date to minimise delay in completion.
- The standards of the project are not compromised.
- Wherever possible, continuity of employment for sub-contractors will be safeguarded, taking account of financial constraints.

5.0 RISK

- 5.1 Failure to have a policy and associated procedures on liquidations and receivership exposes the Association to the following risk:
- Financial loss – the cost of completing an unfinished contract exposes the Association to increased costs.
 - Programme risk – inability to spend projected annual Grant attributed to the project.
 - Significant delay with completion.

6.0 POLICY STATEMENT

- 6.1 Replacement contractors/consultants will be procured as per our Procurement Policy.
- 6.2 If the liquidation affects tenant services, tenants will be advised of any change in service providers immediately, and steps will be taken to ensure there is little or no disruption to those affected.
- 6.3 Any action taken will be reported to the next available Management Committee meeting and The Scottish Housing Regulator advised of the situation as per the Notifiable Events Guidelines.
- 6.4 This policy will be reviewed at least every 3 years.

Appendix 1

These Procedures should be read in conjunction with the **Contractors' and Consultants' Liquidation and Receivership Policy**.

1.0 IMPLEMENTING THIS PROCEDURE

- 1.1 The following actions are the responsibility of the Associations Director of Development & Regeneration and the Director of Property Services with support as required by the Chief Executive.
- 1.2 When the Association is notified that a contractor with whom it is currently working on site with has gone into liquidation or receivership, the relevant Director will immediately make arrangements to secure the site against vandalism and unauthorised entry and arrange adequate insurance.
- 1.3 Payment to the contractor will be suspended immediately.
- 1.4 If a consultant with whom the Association is currently working has a receiver appointed, we will suspend all payments immediately.
- 1.5 The Chief Executive, Chairperson and subsequently the Regulator will be notified as soon as possible.
- 1.6 In the event of a consultant who is acting as Principal Designer going into receivership or having a liquidator appointed, the Association will take steps to obtain the health and safety information as soon as practicable and to pass the file to a replacement Principal Designer immediately.
- 1.7 Similarly, the Association will take all reasonable steps to obtain the Construction Phase Plan from a principal contractor who has gone into liquidation or has had a receiver appointed.
- 1.8 The Association will identify its potential claim to the Liquidator at the earliest opportunity and discuss any proposals for the satisfactory completion of the contract.
- 1.9 In considering whether any proposals from the Liquidator are acceptable, the Association will have regard to the terms of the existing contract and any performance bond that has been arranged.
- 1.10 We will, always act in the Association's best interests.
- 1.11 We will seek to cooperate with the Liquidator and in considering whether a proposal meets the best interests of the Association. We will take account of the proposed timescale for completion, the availability of other suitable contractors or consultants and the potential for securing ongoing employment for the existing sub-contractors.

- 1.12 Where appropriate, we will seek legal advice on a proposed course of action.
- 1.13 In determining what payment is due to the Liquidator or Receiver for work completed, the Association will refer to the records maintained by the Contract Administrator/Quantity Surveyor employed on the project.
- 1.14 We will take account of any additional costs incurred by the Association (e.g. site security, insurance and administration) and deduct these from any sums due to the contractor.
- 1.15 Until the Association is satisfied of the financial position of the contract no monies will be passed to the Liquidator.
- 1.16 Where the Association decides that we should secure the completion of the contract independently of the Liquidator, we will procure a replacement contractor or consultant, taking account of the Association's Procurement Policy and the need to minimise disruption and maximise rental income and the aims of this procedure.
- 1.17 Where a contractor has gone into liquidation or appointed a receiver, the Association will seek advice from the lead consultant to determine the most appropriate procurement route and the most effective means to secure the project's completion, within a reasonable timescale and at an acceptable cost, and taking account of the stage the project has reached.
- 1.18 Where a consultant has gone into liquidation or appointed a receiver, the Association will seek to appoint a replacement as soon as practicable.
- 1.19 In recognition that swift action will be required to deal with the circumstances covered by this Policy, these circumstances will be treated as an emergency and authority for making decisions will be as per the Association's approval and delegated authority level – The Chairpersons approval will be sought where required.
- 1.20 In the circumstances of a Contractor going into liquidation during the Defects Liability Period, the Association will instruct alternative contractors to attend to all defects, record these works along with the associated costs and provide this information to the liquidator.



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