**Financing UK construction – Earthquakes and tidal waves**

A small earthquake hit the British construction industry on New Year’s Eve. Nobody seems to have noticed but a tidal wave is about to hit the UK construction sector in 2019 (and beyond) as a result of this major event. What am I referring to?

The Business Contract Terms (Assignment of Receivables) Regulations 2018 (“the Regulations”) came into force at midnight on 31 December 2018 applying to contracts entered into after this date.

Why is this so important? There are two reasons.

Firstly, the UK clearing banks are once again looking at construction companies and attempting to reduce their exposure to this sector. Apart from general nervousness about the sector, EU and Bank of England demands on liquidity tests has severely reduced the clearing banks’ appetite for funding companies operating in the construction sector.

Secondly, and for years, small and medium-sized enterprises operating in the construction sector have been denied access to factoring and confidential invoice discounting. The various standard forms of contracts and bespoke versions of these used throughout the industry routinely prohibit a Contractor or Sub-Contractor from assigning the monies due to it under the contract to a third party. Not surprisingly this has discouraged a large number of alternative funders even considering offering funding to construction companies.

As a consequence of these two factors, small and medium-sized enterprises (SMEs) have been struggling to secure funding lines. The government has finally recognised this as a serious issue and a draft statute that has been sitting on the books for years was suddenly introduced into law on New Year’s Eve.

The UK government defines a small company as one which on or after 01/01/16 has a turnover of not more that £10.2m, a balance sheet of not more that £5.1m and no more than 50 employees.

A medium-sized company is defined as one which on or after 01/01/16 has a turnover of less that £36m, a balance sheet of no more that £18m and no more than 250 employees.

The Regulations provide that contractual terms prohibiting or imposing a condition or other restriction on the assignment of a receivable will have no effect.  As such, a term in a contract stating that a contractor cannot assign, or needs the Contractor's consent to do so, will have no effect to the extent that it applies to receivables. Importantly, a receivable would include monies to the Sub-Contractor under the Sub-Contract.

Whilst the Regulations will apply to the majority of SME business-to-business contracts, there are exceptions. In particular, the Regulations will not apply if the supplier is a "large enterprise" or a "special purpose vehicle" (both as defined in the Regulations).  There is also a list of types of contracts which are not caught by the Regulations, including contracts concerning an interest in land, and contracts for prescribed financial services.

It won’t be a free-for-all in terms of Asset Based Lenders (“ABL”) rushing to fund construction contract receivables but there is no doubt in my mind that this important piece of legislation, which has quietly crept on to the statute books, will generate significant interest in the ABL sector in terms of funding lines being offered to SMEs. This can only be a good thing for the construction industry.

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