What happens when your contractor goes bust

Construction projects rarely run exactly to plan, but few events are as destabilising as the sudden insolvency of a contractor part way through a live scheme.

What may begin as a rumour on site or a delayed payment to subcontractors can very quickly crystallise into a formal administration, receivership or liquidation, bringing progress to an abrupt halt and leaving developers, funders and professional teams grappling with a situation that is legally complex, commercially sensitive and time-critical.

For developers and investors, contractor insolvency is not simply a construction problem. It is a project-wide crisis that cuts across funding arrangements, contractual risk allocation, programme delivery and asset value. Decisions taken in the first days and weeks following a contractor's collapse often determine whether a project can be stabilised and completed, or whether delays, disputes and cost overruns begin to compound beyond recovery.

At Newmanor Law, we regularly advise on projects affected by contractor insolvency, from mid-rise commercial developments to large, mixed-use schemes backed by institutional funding. While no two projects are identical, the pressure points that emerge are strikingly consistent. Understanding how those pressures interact and how to manage them in the right order is critical to preserving value and control.

A complex ecosystem under strain

Modern construction projects operate as finely balanced ecosystems. Funding is released in stages, design responsibility is often distributed across multiple parties, and programme assumptions underpin everything from interest cover ratios to forward sale milestones. When a contractor goes under, that balance is immediately disrupted.

Work may stop overnight. Subcontractors may walk off site. Materials paid for but not yet installed may become the subject of competing ownership claims. Site security, health and safety obligations and insurance cover all come into question immediately. Meanwhile, the developer is expected to make rapid decisions with incomplete information, often while administrators, receivers or liquidators are still assessing the contractor's position and assets.

In this early phase, there is often a strong temptation to act quickly: to terminate the building contract, to secure a replacement contractor, or to reassure lenders that progress will resume imminently. While speed matters, uncoordinated action can inadvertently weaken contractual protections, prejudice insurance claims or trigger lender concerns that are difficult to reverse.

The reality is that contractor insolvency is not a single event but multiple parallel processes. It unfolds across legal, commercial and practical dimensions simultaneously, and each decision taken in one area has consequences elsewhere.

What insolvency actually means for a live project

One of the first challenges developers face is understanding what the contractor's insolvency means in practical and legal terms. Administration, receivership, liquidation and company voluntary arrangements all carry different consequences, particularly when it comes to termination rights, ongoing obligations and the treatment of works already carried out.

- **Administration** allows administrators to trade the business for a period, potentially completing the works or facilitating a controlled handover. Administrators may seek to assign the contract, novate subcontracts or negotiate an exit that limits disruption. The moratorium on legal proceedings during administration can also affect the timing of termination and the enforcement of security.
- **Receivership** typically arises when the contractor's bank loses confidence in the contractor and appoints an administrative receiver to sell the contractor's assets in order to discharge outstanding loans. The contractor's obligations to carry out the works are suspended, and the employer must consider formal termination and plan for the continuation of the project.
- **Liquidation** typically means immediate cessation of work, with focus shifting to asset realisation and creditor recovery. The contractor's obligations are suspended, and the employer must terminate formally to crystallise rights and begin recovery planning.
- **Company Voluntary Arrangements** are less common in construction but may allow a contractor to continue trading under revised terms. These can create uncertainty around ongoing performance obligations and whether the employer is bound to continue the arrangement.

The distinction between these scenarios affects whether termination rights can be exercised, whether retention funds are accessible, and how materials on site are treated. It also influences the approach to administrators, receivers or liquidators, particularly where cooperation may facilitate better outcomes than adversarial engagement.

Developers must also consider their own contractual position with precision. Most standard form building contracts include insolvency as a termination trigger, but the right to terminate is rarely straightforward. Notice provisions must be complied with exactly. Under JCT contracts, for example, termination following insolvency requires specific notices within defined timescales. Under NEC contracts, the compensation event regime may apply differently depending on the nature of the insolvency event. Premature or incorrect termination can expose the employer to claims for wrongful termination or loss of profit, even where the contractor is insolvent.

There is also the question of what has actually been delivered. Partially completed works may not be properly certified. Design information may be incomplete or inadequately coordinated. Temporary works may be undocumented. These gaps become critical when a replacement contractor is appointed, as they affect pricing, risk appetite and programme assumptions.

The immediate knock-on effect: funding and lender confidence

While the legal mechanics of termination often dominate early discussions, funding pressures tend to escalate fastest. Lenders are acutely sensitive to contractor insolvency, particularly where drawdowns are linked to certified progress or fixed programme milestones.

Once works stop, quantity surveyor sign-off may be suspended. Drawdowns may be frozen pending clarity on cost to complete, revised procurement strategy and programme recovery. In some cases, lenders may require updated valuations, revised financial models or additional equity injections before releasing further funds.

For projects involving forward funding or forward sale arrangements, the impact can be even more pronounced. Completion dates embedded in development agreements may become unachievable, triggering longstop concerns or renegotiation of risk allocation between parties. Where pre-lets or agreements for lease are in place, tenant confidence may also be affected, with knock-on implications for valuation and exit strategy.

These pressures are rarely confined to the construction phase alone. Delays increase interest costs, extend exposure to market volatility and may affect covenant compliance. A contractor insolvency can therefore quickly evolve into a wider financial restructuring issue if not carefully managed.

The challenge for developers is to engage with funders early and with a clear narrative. That narrative should explain not only the factual position, but also the proposed strategy for stabilising the project. Lenders will want to understand whether the insolvency is expected to result in a modest delay and cost uplift, or whether it fundamentally alters the project's risk profile. Crucially, lenders will also be focused on control. They will want reassurance that contractual rights have been preserved, that insurance cover remains in place, and that there is a coherent plan for re-procurement. Where those elements are missing, funders may seek additional protections, revised conditions precedent or increased equity contributions before agreeing to release further funds.

Insurance, bonds and security: what still protects the project?

In the immediate aftermath of contractor insolvency, assumptions are often made about what protections remain in place. Developers typically look to performance bonds, parent company guarantees and project insurance as a safety net. In practice, this is one of the most misunderstood and risk-laden areas of a stalled project.

The effectiveness of these protections depends entirely on timing, wording and the steps taken following insolvency. A failure to engage with them properly and immediately can significantly weaken the developer's position. What follows is an examination of each type of protection, the pitfalls that commonly arise, and the practical steps required to preserve whatever security remains available.

Performance bonds and parent company guarantees

Performance bonds are often subject to strict notice provisions and trigger events. Some bonds respond only to formal termination of the building contract, while others may require specific certification of default or loss. If termination is mishandled, or notices are delayed, the right to claim may be compromised. Bonds are also frequently capped at a percentage of contract value, meaning they rarely cover the full cost of delay, re-procurement and increased completion costs.

On-demand bonds offer more flexibility than conditional bonds, but even these require compliance with procedural requirements. Conditional bonds typically require proof of actual loss and may be subject to dispute over whether contractual preconditions have been satisfied. The distinction matters when speed of recovery is critical.

Parent company guarantees present their own challenges. While they can provide a route to recovery where the contractor entity alone is insolvent, the financial strength of the parent must be assessed realistically. In group structures where insolvency risk has migrated upwards, guarantees may offer limited or no comfort. Enforcing them can also be slow and contentious, particularly where the parent disputes liability or argues that contractual preconditions have not been met.

Project insurance: navigating coverage in crisis

Insurance raises similarly complex issues. Contractors' all-risk policies, latent defects insurance and professional indemnity cover may all be implicated, but none should be assumed to respond automatically. The employer may be able to claim directly against the contractor's insurers in certain circumstances, but this can be complicated and difficult.

- Contractors' all-risk policies may cease to provide cover once the contractor is no longer performing, particularly if the policy is held in the contractor's name alone. Where policies are joint names or include the employer as a co-insured, there may be greater scope to preserve cover, but this must be confirmed immediately with insurers and brokers. Policies may also contain notification requirements triggered by insolvency, and failure to notify within specified timescales can prejudice claims.
- Professional indemnity insurance for consultants becomes more important once the contractor's design responsibility disappears. However, coverage may be affected if consultants are asked to assume responsibilities beyond their original scope. Insurers are often wary of claims arising from projects affected by contractor insolvency, particularly where the causal chain is complex.
- Latent defects insurance, where in place, may provide some protection against defects in completed works, but coverage typically excludes losses arising from incomplete works or design failures that were known at the time of policy inception.

In all cases, early engagement with brokers and insurers is essential. This is not simply about making claims. It is about understanding what cover remains in place, what steps must be taken to preserve it, and what exposure the project carries going forward. In many cases, additional insurance may need to be arranged to cover the period of suspension or to protect replacement contractors taking on partially completed works.

Collateral warranties and third-party rights

Alongside bonds and insurance sit collateral warranties and third-party rights, which often take on heightened importance once a contractor fails. Funders, purchasers and tenants typically rely on warranties from contractors and consultants as part of their risk mitigation. When a contractor becomes insolvent, the value of the contractor's warranties can disappear, particularly if there is no possibility of a claim under an uncerlying insurance policy.

From a developer's perspective, it is important to understand which warranties are already in place, which remain outstanding, which retain value, and whether any step-in rights exist that could facilitate continuity of works. In some cases, funders may seek to exercise step-in rights directly, particularly where they are concerned about preserving the value of their security.

Equally important is the position of consultant warranties. Where design responsibility was taken by the contractor, consultants may revert to a more direct relationship with the employer once the contractor is no longer performing. This can create both opportunity and risk. Opportunity, because it may allow the developer to regain control of design information. Risk, because consultants may be reluctant to assume responsibilities that expose them to expanded liability.

The professional team: liability realignment and consultant risk

One of the most destabilising consequences of contractor insolvency is the sudden reconfiguration of the professional team's role within the project. In many commercial developments, particularly those procured on a design and build basis, the contractor acts as the central point of coordination. Design responsibility is typically novated from consultants to the contractor, and the employer's relationship with the professional team becomes deliberately arm's length. When that contractor fails, this structure collapses almost overnight.

The mechanics of novation unwinding

When design appointments are novated to a contractor, the original consultant-employer relationship is replaced by a consultant-contractor relationship. The consultant's duties, including design coordination, integration and buildability, are owed to the contractor. Upon contractor insolvency, those novated appointments do not automatically revert to the employer.

Depending on the form of novation used, consultants may have residual obligations to the employer, or they may not. Some novation agreements include provisions that allow appointments to revert in the event of contractor insolvency. Others do not, leaving consultants in a legal limbo where they have no clear client and no ongoing instruction.

This creates immediate practical problems. Consultants may be unwilling to provide advice, approve variations or certify works without clarity on who they are acting for, what scope applies and whether they will be paid. Developers may assume that consultants can simply continue where they left off, but professional indemnity considerations often make consultants extremely cautious.

The solution usually involves renegotiating appointments or entering into fresh appointments that reflect the changed circumstances. This takes time, and time is often in short supply. It also involves cost, as consultants may seek revised fee arrangements, expanded insurance cover or tighter limits of liability to reflect the increased risk of inheriting a project mid-stream.

Design responsibility and information gaps

One of the most significant consequences of contractor insolvency is the disruption to design responsibility and information flow.

In design and build procurement, contractors frequently assume responsibility for detailed design, coordination and buildability. When that contractor disappears, so too does the entity that was contractually responsible for pulling those strands together. What remains is often a fragmented design record, with varying levels of completeness and coordination.

Developers are then faced with difficult questions. Is the existing design information sufficient to allow a replacement contractor to price the remaining works with confidence? Are there unresolved design queries or outstanding approvals? Has design liability been fully novated, or do residual responsibilities sit with consultants whose appointments were amended mid-project?

Information gaps increase risk, and risk increases cost. Replacement contractors will price uncertainty conservatively, particularly where they are being asked to take on responsibility for work designed by others. This can lead to significant uplifts in tender prices, extended programmes and more onerous contractual terms.

There is also a regulatory dimension to consider. Where projects are subject to Building Safety Act requirements, particularly mixed-use schemes with residential elements, incomplete design information can delay gateway approvals and complicate handover. Even on purely commercial schemes, building control sign-off and compliance certification may be affected if records are incomplete or inconsistent.

A forensic review of the design position is therefore a critical precursor to re-procurement. This often involves appointing an independent technical adviser to audit what exists, identify gaps and advise on what must be resolved before works can safely restart. Without this exercise, developers risk restarting construction on unstable foundations, only to encounter further delays and disputes later in the project lifecycle.

The employer's agent: a role in flux

Where an employer's agent has been appointed, their role becomes both more important and more complicated following contractor insolvency. The employer's agent typically acts as the employer's representative, administering the contract, certifying payments and managing the contractor's performance.

Once the contractor is insolvent, the employer's agent's role shifts. They may be required to assess what works have been completed, advise on termination procedures and assist with re-procurement. However, their authority under the original building contract may no longer be clear, particularly if that contract has been terminated.

The employer's agent may also face liability questions if the contractor's insolvency was foreseeable and no warning was given to the employer. While employer's agents are not guarantors of contractor solvency, they do owe duties of care and skill in monitoring performance and financial health. If red flags were missed or not escalated, this can create tensions at precisely the moment when trust and collaboration are most needed.

Clear re-appointment or clarification of scope is therefore essential. The employer's agent's role in the recovery phase may need to be expanded to include liaison with administrators, coordination of site audits and management of the re-procurement process. Alternatively, a separate project manager or turnaround adviser may be brought in to lead recovery, with the employer's agent continuing in a more limited certification role.

Consultant risk and informal role creep

The danger for developers lies in informal role creep. In the pressure to stabilise a project, consultants may be asked to give advice, approve solutions or oversee works in ways that were never contemplated in their original appointments. Without careful documentation, this can blur responsibility and create exposure that only becomes apparent years later, particularly if defects emerge or claims are pursued.

From a legal perspective, it is essential to revisit consultant appointments explicitly following insolvency. Scope, responsibility, reliance and limits of liability should be reviewed and, where necessary, redefined. This is not an administrative exercise. It is a fundamental part of re-establishing control over the project's risk profile.

Just as importantly, developers must recognise that consultants are not neutral actors in this process. They are managing their own exposure, insurance constraints and reputational risk. Clear, structured engagement rather than assumption is the only way to rebuild a functioning professional team capable of supporting recovery.

Subcontractors, supply chains and the reality on site

When a main contractor becomes insolvent, the immediate legal focus is often on the building contract. On site, however, the most pressing issues tend to sit one tier below, with subcontractors and suppliers who may suddenly find themselves unpaid, unsecured and unwilling to continue.

The subcontractor dilemma: no privity, significant exposure

In many projects, subcontractors are carrying significant exposure by the time a contractor fails. Interim payments may be outstanding, retention funds withheld and materials supplied but not yet paid for. Once insolvency is announced, those parties will move quickly to protect their own positions, sometimes in ways that create real practical difficulties for the developer.

It is common to see subcontractors suspend works, remove labour or seek to exercise rights over unfixed materials. In some cases, plant or equipment may be removed from site altogether. While these actions are often driven by commercial necessity on the subcontractor's part, they can destabilise the project further if not managed carefully.

From a legal standpoint, developers rarely have direct contractual relationships with subcontractors under a traditional design and build structure. That lack of privity limits the developer's ability to compel performance or negotiate directly, at least initially. Informal arrangements made in the heat of the moment can also be problematic, particularly where they cut across existing contractual frameworks or insurance arrangements.

The practical challenge is therefore one of control without contractual leverage. Developers must stabilise the site, preserve relationships where possible, and avoid taking steps that inadvertently assume liabilities or undermine future procurement options.

One approach is to negotiate direct agreements with key subcontractors, effectively novating their appointments to the employer for the purposes of completing their packages. This requires careful structuring to avoid assuming historic liabilities or warranties for work already completed. Payment terms must also be clear, particularly where the employer is being asked to pay twice for the same work.

Another approach is to allow a replacement main contractor to negotiate directly with subcontractors as part of their re-procurement package. This can be more efficient but may result in higher costs if subcontractors see an opportunity to renegotiate terms in a pressured environment.

Ownership of materials and goods on site

Few issues generate as much confusion, or dispute, as the ownership of materials following contractor insolvency. Materials may be stored on site, off site, or in transit. Some may have been paid for by the employer through interim valuations, while others remain unpaid.

The legal position depends on a combination of contract terms, payment status and the application of retention of title clauses in supply contracts. Materials that appear to belong to the project but have not yet been incorporated into the works may, in fact, remain the property of suppliers or the insolvent contractor's estate. Conversely, materials paid for but not yet delivered may be difficult to recover.

Under most standard form contracts, materials and goods on site become the property of the employer once paid for through interim valuations, provided they are adequately identified and properly stored. However, this presumption can be displaced by retention of title clauses in supplier contracts, which may reserve ownership until full payment is made to the supplier.

Where materials are held off site, ownership is even more uncertain. Off-site materials clauses in building contracts typically vest ownership in the employer subject to strict conditions, including listing, insurance and segregation requirements. If those conditions have not been met, or if suppliers have valid retention of title claims, recovery becomes contested.

From a practical perspective, these disputes can delay re-commencement of works and complicate re-procurement. Replacement contractors will want clarity on what materials are available, what condition they are in and who bears the risk if they are incorporated into the works.

Early legal review is essential to establish what can safely be used, what must be protected, and what may need to be replaced. In some cases, developers may choose to negotiate pragmatic solutions with suppliers to avoid delay, but these decisions should be taken with a clear understanding of their wider implications.

Retentions, set-off and competing claims

Retention funds are another area where theory and reality often diverge. Retentions held under the building contract may be regarded by the insolvent contractor, its administrators and its creditors as part of the contractor's assets, even where the employer considers them a security mechanism.

The legal position on retentions has been clarified somewhat by retention deposit schemes and case law, but practical disputes remain common. The ability to set off retention against completion costs, defects or delay claims depends on careful compliance with contractual procedures and insolvency rules. Under the Insolvency Act 1986, set-off rights can be preserved, but only if they arise before insolvency and are properly documented. Once administration or liquidation is formally commenced, the ability to exercise set-off may be restricted, and actions taken without advice can be challenged.

Similar issues arise in relation to contra-charges and other set-off rights. If the employer incurs costs in making good defects or completing outstanding works, can those costs be set off against sums otherwise due to the contractor or its estate?
These issues reinforce the importance of early, coordinated legal input. Retentions and set-off rights are often one of the few meaningful financial levers available to a developer following contractor insolvency. Preserving them can materially affect the viability of the project going forward.

Temporary works, part-completed works and latent risk

Beyond design information, contractor insolvency often leaves a legacy of physical risk on site. Temporary works may be in place without adequate documentation. Part-completed elements may not meet specification or may not have been properly inspected. Materials may have been installed out of sequence or without full quality assurance.

Temporary works are particularly problematic. These include scaffolding, props, formwork and other structures necessary to support construction but not part of the permanent works. When a contractor leaves site, temporary works may be left in place without proper records, drawings or certification. This creates immediate health and safety concerns and complicates the handover to a replacement contractor, who must understand what is supporting what before works can safely resume.

Part-completed works also require careful assessment. What appears to be complete may not have been tested, inspected or signed off. Concealed works may not meet specification. Waterproofing, fire-stopping or structural elements may be deficient. These issues are not merely technical. They affect insurance coverage, health and safety obligations and the willingness of replacement contractors to engage. In some cases, works may need to be opened up, tested or even removed before progress can safely resume, adding further cost and delay.

Responsibility for assessing and mitigating these risks must be clearly allocated. Consultants may need to be reappointed or given expanded scopes to undertake forensic inspections. Independent surveys or audits may be required to satisfy funders and insurers. Building control may need to be re-engaged to validate compliance. These steps take time, but skipping them can be far more costly in the long run.

Stabilising the site and preserving value

Before any meaningful progress can be made towards re-procurement, the site itself must be stabilised. This includes securing the works, ensuring ongoing compliance with health and safety obligations, and preventing deterioration or damage to partially completed elements.

Responsibility for these measures typically falls back to the developer once the contractor is no longer performing. This includes:

- **Physical security:** fencing, CCTV, security patrols to prevent theft, vandalism or unauthorised access
- **Weather protection:** temporary roofing, boarding, wrapping to prevent water ingress or weather damage
- **Utilities:** maintaining or isolating services as appropriate
- **Health and safety compliance:** ensuring the site remains safe and that CDM regulations are complied with
- **Insurance:** confirming that cover remains in place for the suspended works

The Construction (Design and Management) Regulations 2015 place ongoing duties on the client (developer) throughout the project, including during periods of suspension. The Principal Designer and Principal Contractor roles must be maintained or reassigned. Health and safety files must be kept current. Site safety must be actively managed, not simply assumed.

Insurance arrangements must be checked to ensure continued cover, particularly where site conditions change or works are suspended for an extended period. Insurers may impose additional requirements, reduce cover or increase premiums once a project is in distress. Early notification to insurers is critical to avoid inadvertent breaches of policy terms.

There is also a reputational dimension to consider. Visible inactivity, particularly on high-profile schemes, can affect market perception, tenant confidence and stakeholder relationships. While these factors may not feature explicitly in contracts, they can have a real impact on value and exit strategy.

Funding strategy: cost to complete, valuation and drawdown mechanics

One of the most immediate technical consequences of contractor insolvency is the disruption of the cost reporting framework. Interim valuations may no longer be reliable, particularly where works have been partially completed, inadequately documented or not formally certified. Retentions may be trapped within the insolvent estate. Variations may be disputed or undocumented. From a lender's perspective, this creates uncertainty around cost to complete. Independent monitoring surveyors are often asked to revisit assumptions, reassess remaining works and re-baseline the project. This process can be time-consuming, particularly where design responsibility was heavily concentrated in the original contractor and information gaps emerge following their departure.

The cost to complete reassessment

A robust cost to complete assessment following contractor insolvency must account for:

- **Remaining construction works:** priced at current market rates, not historic tender rates
- **Abortive works:** elements that must be removed, corrected or replaced
- **Design completion:** fees for consultants to complete or validate design information
- **Temporary works:** costs of making safe, modifying or removing temporary structures
- **Professional fees:** expanded roles for consultants, employer's agent, project managers
- **Delay costs:** extended preliminaries, finance costs, holding costs
- **Re-procurement costs:** tendering, contractor mobilisation, performance bonds
- **Risk contingency:** reflecting the uncertainty inherent in partially completed works

Revised cost to complete figures may expose funding shortfalls that were not apparent before the insolvency. Even relatively modest uplifts can have a disproportionate impact on loan-to-cost or loan-to-value ratios, triggering the need for additional equity or revised funding structures.

Where market conditions have shifted during the delay, valuation assumptions may also come under scrutiny. A project that was viable at inception may no longer stack up if construction costs have risen, end values have fallen, or letting markets have weakened. Funders will want independent confirmation that the completed scheme will still deliver sufficient value to support the loan, and this may require updated valuations or revised appraisals.

Drawdown mechanics and conditions precedent

Even where cost to complete can be reconciled and funding remains theoretically available, drawdown mechanics may need to be renegotiated. Lenders will want greater oversight and control, particularly in the early stages of recovery. This may take the form of:

- More frequent reporting requirements
- Revised conditions precedent for each drawdown
- Independent verification of works before each release of funds
- Caps on individual drawdown amounts
- Requirements for developer co-funding (pound-for-pound matching)
- Step-in rights that allow the lender to take control if recovery falters

These changes are not punitive. They reflect the increased risk that the lender is being asked to carry. However, they do add complexity, cost and potential friction to the recovery process. Developers who resist reasonable lender protections may find that funding dries up altogether.

Forward funding, forward sales and third-party pressure

The funding picture becomes more complex still where projects are subject to forward funding or forward sale arrangements. In these structures, contractor insolvency does not only concern the developer and its lender, but also a third-party investor with its own risk parameters and return expectations.

Forward funders will typically expect to be consulted on material changes to procurement strategy, programme and cost. Insolvency may trigger consent requirements or review mechanisms within development agreements. Longstop dates, completion milestones and step-in rights all come into focus, particularly if delays begin to erode anticipated returns.

In some cases, forward funders may be willing to accommodate delay where there is confidence in the revised delivery strategy. In others, they may seek to renegotiate commercial terms or, in extreme scenarios, exercise contractual rights to exit or restructure the arrangement.

These dynamics can place developers in a difficult position, balancing lender requirements, investor expectations and the practical realities of restarting construction. Early legal input is critical to ensure that rights are preserved and that communications do not inadvertently concede points that later undermine negotiating leverage.
Tax and payment complications

Contractor insolvency can also create unexpected tax complications that affect cash flow and funding. Under the Construction Industry Scheme (CIS), payments to contractors are subject to deductions unless the contractor holds gross payment status. Once a contractor becomes insolvent, gross payment status is typically revoked, and any payments to administrators or in respect of pre-insolvency invoices may require CIS deductions.

VAT treatment also becomes more complex. If the contractor has gone into liquidation, VAT may not be recoverable on invoices issued pre-liquidation, particularly if the contractor has not accounted for VAT to HMRC. This can create a mismatch between what the employer has paid and what can be recovered as input tax. Where administrators continue to trade, VAT may still be recoverable, but careful records must be kept to distinguish pre- and post-insolvency supplies.

These issues may seem peripheral to the main recovery effort, but they can create unexpected cash flow pressures and funding complications if not addressed early.

Re-procurement: resetting the construction strategy

Only once the immediate site issues have been addressed, funding has been realigned, and the professional team structure has been clarified does re-procurement become a viable focus. At this stage, developers must decide whether to replicate the original procurement model or adopt a different approach that better reflects the changed risk profile.

Procurement options and risk reallocation

The choice of procurement route following contractor insolvency is rarely straightforward. Each option carries different implications for cost certainty, programme control and liability exposure.

- **Like-for-like replacement (typically, design and build):** This involves appointing a new main contractor on substantially the same terms as the original contract. It offers continuity and familiarity but requires that design information is sufficiently complete and coordinated to allow confident pricing. Replacement contractors will scrutinise what has been completed and will price conservatively for taking on responsibility for others' work. They may also resist taking on design liability for elements already designed or partially built.
- **Construction management or management contracting:** This involves breaking the remaining works into packages and appointing trade contractors directly, with a construction manager coordinating delivery. It offers greater flexibility and transparency but transfers programme and coordination risk to the employer. It can work well where design information is incomplete or contested, as packages can be let progressively as design is resolved. However, it requires the employer to carry greater project management resource and accept less cost certainty.
- **Two-stage tendering or negotiated contract:** This involves appointing a contractor early on a pre-construction services agreement, with the contractor helping to validate design, de-risk the programme and provide cost input before committing to a lump sum. It can build confidence and reduce abortive tendering costs, but it requires trust and may not deliver the most competitive pricing.
- **Phased or sectional completion:** Where projects are suffering severe delay, it may make sense to replan around phased handover, completing and letting buildings in sequence rather than all at once. This can help generate income earlier and reduce holding costs, but it requires careful planning around access, services and shared facilities.

The choice between these options should be informed by the state of the design, the availability of funding, the developer's appetite for risk, and the views of the lender and any forward funder or purchaser. It is rarely a purely technical decision. It is a commercial and strategic one that shapes the remainder of the project.

What replacement contractors will scrutinise

Replacement contractors will inevitably scrutinise the project's history closely. Insolvency raises red flags, and pricing will reflect perceived risk. Developers should expect:

- Requests for extensive due diligence: including full design review, site inspections, structural surveys, M&E validation, and audits of what has been completed
- Higher risk premiums: reflected in preliminaries, contingencies and profit margins
- Tighter contractual terms: including caps on liability, exclusions for pre-existing defects, and limitations on design responsibility
- Performance security requirements: contractors may require parent company guarantees or advance payment bonds to protect against further disruption
- Payment terms: contractors may seek more frequent or front-loaded payments to reduce exposure

Developers can mitigate some of these concerns by investing in the forensic review work before going to tender. The more clarity and certainty that can be provided upfront, the more competitive and confident pricing is likely to be. Attempting to pass uncertainty downstream to contractors rarely results in good value. It simply gets priced back in, often at inflated rates.

Managing the re-procurement process

Managing the re-procurement process requires realism and discipline. Over-optimistic assumptions about pricing, the replacement contractor's appetite for risk, or programme recovery can undermine credibility with funders and lead to repeated resets that further delay completion.

The process typically involves:

1. Design and site validation: establishing what is complete, what remains, and what must be corrected
2. Procurement strategy agreement: securing lender, funder and consultant alignment on approach
3. Tender documentation: preparing specifications, drawings, schedules and contract documents
4. Contractor selection: running a competitive process or negotiated tender
5. Due diligence period: allowing tenderers time to inspect, review and price
6. Tender evaluation: assessing not just price but capacity, track record and risk approach
7. Contract finalisation: negotiating terms, performance bonds and programme commitments
8. Mobilisation: facilitating site handover, information transfer and commencement

Each stage must be managed carefully. Rushing any step to save time often results in problems surfacing later, when they are more expensive and disruptive to resolve.

How a project continues in practice: rebuilding control after insolvency

While much of the discussion around contractor insolvency focuses on what can go wrong, developers are ultimately faced with a more pragmatic question: if the project is to continue, how does that actually happen in real terms?

Successful recovery is rarely about a single decisive action. It is about rebuilding control incrementally across multiple fronts, in a sequence that funders, consultants and replacement contractors can trust.

The primacy of information

The first step is rarely physical construction. It is informational. Developers must establish a reliable understanding of what has been completed, what remains, and where risk truly sits. This often requires forensic review of design information, site conditions, certifications and outstanding issues. Independent surveys, audits and re-validation exercises are common, not because they are ideal, but because trust in existing records has been undermined.

This information gathering serves multiple purposes. It informs cost to complete assessments. It satisfies lender due diligence requirements. It provides the foundation for re-procurement. It identifies latent risks before they crystallise into further delay or cost. And it provides a defensible baseline from which progress can be measured going forward.

The risk of skipping this phase is that assumptions prove wrong. Contractors price for risks that do not exist, or fail to price for risks that do. Design gaps emerge mid-construction. Defects are discovered too late. Lenders lose confidence and withdraw support. Recovery stalls.

Stakeholder realignment

In parallel, developers must realign stakeholders around a common understanding of the project's status and a realistic plan for moving forward. This is as much about communication and expectation management as it is about contracts and deliverables. Funders need confidence that the project is once again governable. This means demonstrating that risks are understood, that professional advice is in place, and that there is a credible path to completion. It may also mean accepting revised terms, additional oversight or increased equity requirements.

Consultants need clarity on their role and exposure. This means revisiting appointments, defining scope, and ensuring that expanded responsibilities are properly documented and insured. It also means rebuilding trust, particularly where consultants may have been marginalised during the contractor's tenure.

Insurers need reassurance that risks are understood and managed. This means notifying claims promptly, cooperating with investigations, and ensuring that cover is maintained or supplemented as required.

Replacement contractors need enough certainty to price works without embedding excessive contingency. This means providing clean, coordinated information, being transparent about what is known and unknown, and structuring contracts that allocate risk fairly rather than punitively.

None of this happens quickly, and none of it happens automatically. It requires active project leadership, often from a combination of the developer's own team, legal advisers, and specialist project managers or turnaround advisers brought in to manage recovery.

Phased progress and staged commitment

Once this framework is in place, re-procurement becomes viable. Even then, progress is often phased. Early works may focus on making the site safe, resolving latent issues or completing discrete packages before full-scale construction resumes. This staged approach allows confidence to be rebuilt and limits the exposure associated with committing to a single, all-encompassing solution too early.

Phasing can take various forms:

- **Enabling works:** securing the site, completing temporary works, resolving immediate safety issues
- **Package-by-package letting:** appointing specialists for discrete elements (groundworks, structure, envelope) before committing to fit-out
- **Design completion phase:** allowing time for consultants to validate and complete design before construction restarts
- **Pilot phase:** completing a small section or single building to prove the revised strategy before scaling up

The key is to avoid the temptation to "get back on site at all costs". Projects that rush this phase often find that unresolved design gaps, unclear responsibility or misaligned funding assumptions resurface later with greater force.

Characteristics of successful recovery

Projects that do succeed in recovering from contractor insolvency tend to share common characteristics:

- **Disciplined decision-making:** prioritising clarity over speed, and accepting that recovery takes time
- **Integrated advice:** aligning legal, commercial and technical input rather than treating them as separate workstreams
- **Realistic expectations:** accepting that recovery will involve compromise, revised terms and a recalibrated risk profile
- **Strong project leadership:** whether from the developer's team or external advisers, someone must drive the process forward
- **Lender alignment:** maintaining open, transparent communication with funders and accepting reasonable oversight
- **Consultant engagement:** investing in the professional team and ensuring they have the resource and authority to deliver

Continuation, where it is possible, is therefore less about momentum and more about control and attention to detail. Rebuilding that control is painstaking, but it is the difference between a project that merely restarts and one that ultimately reaches completion on defensible terms.

When continuation is no longer commercially viable

Not every project affected by contractor insolvency can, or should, be rescued. While there is often a strong emotional and commercial instinct to push on, there comes a point in some schemes where the cumulative impact of delay, increased cost and risk fundamentally alters the viability of the development.

This moment rarely arrives suddenly. More often, it emerges gradually as revised cost to complete figures harden, lender positions tighten and market conditions shift. What initially appears to be a temporary disruption becomes a structural problem, particularly where margins were already tight or where funding assumptions were finely balanced.

Recognising this point is difficult, particularly for developers who have invested significant time, capital and reputation in a scheme. However, failing to reassess viability honestly can lead to further value erosion and increased exposure.

Indicators that continuation may not be viable

Key indicators often include:

- **Unbridgeable funding gap:** where revised cost to complete exceeds available funding and additional equity or debt cannot be secured on acceptable terms
- **Lender unwillingness:** where funders are no longer prepared to support re-procurement, even with additional security or equity
- **Market deterioration:** where end values have fallen to the point where the completed scheme would not support the debt
- **Irrecoverable delay:** where programme slippage has triggered longstop dates, caused pre-lets to fall away, or undermined forward sale arrangements
- **Compounding risk:** where each attempt to restart encounters further problems, suggesting fundamental issues with design, site conditions or project structure

In these circumstances, the rational course may be to halt expenditure, stabilise the position and consider alternative strategies. This is not failure. It is commercial realism.

Mothballing: preserving optionality

Where market conditions are expected to improve, or where funding constraints are temporary, mothballing may be a viable option. This involves suspending works in a controlled manner, making the site safe and stable, and preserving the option to restart when conditions improve. Mothballing requires careful planning:

- **Site safety and security:** structures must be made weathertight and secure, temporary works modified or removed, and ongoing maintenance arrangements put in place
- **Insurance:** cover must be adjusted to reflect the suspended state, and insurers may impose additional requirements or increase premiums
- **Statutory compliance:** health and safety obligations continue, and CDM duties must be maintained or reassigned
- **Holding costs:** ongoing costs including security, insurance, business rates and finance charges must be funded
- **Professional team retention:** key consultants may need to be retained to monitor the site and maintain continuity of knowledge

The challenge with mothballing is that it rarely offers a clean exit. Costs continue to accrue, value may deteriorate, and the longer a project sits idle, the harder it becomes to restart. Market conditions may improve, but they may also worsen. Mothballing is therefore often a staging post rather than a long-term strategy.

Disposal: transferring risk and capturing residual value

Where continuation is no longer viable and mothballing does not make commercial sense, disposal of the part-completed project may be the best option. This involves selling the site and works to a third party who has the appetite, resource and funding to complete. Disposal of a part-completed project introduces its own complexities:

- **Valuation:** establishing what a buyer would pay for a partially completed, problem-affected scheme is challenging. Market comparables are rare. Buyers will discount heavily for risk, uncertainty and the cost of resolving legacy issues. The valuation gap between the developer's loan exposure and what the market will pay can be significant.
- **Due diligence:** prospective purchasers will scrutinise the project's history closely. They will want to understand what went wrong, what works have been completed, what liabilities remain, and what claims may still be outstanding. Disclosure obligations are critical. Failure to disclose known issues can give rise to misrepresentation claims long after the transaction has completed.
- **Risk transfer:** not all risks can be transferred. Latent defects in completed works, unresolved design responsibility, outstanding claims against insolvent contractors or consultants, and statutory compliance issues may remain with the seller or require specific indemnities. Buyers will want comprehensive warranties and will resist taking on risks they cannot quantify.
- **Lender approval:** where the project is funded, the lender's consent will be required. Lenders may be willing to accept a disposal at a loss if it allows them to crystallise their position and exit, but they may also resist if they believe further value can be recovered through completion. Where the disposal proceeds do not cover the outstanding loan, the lender may require the developer to make up the shortfall or may pursue enforcement against other security.
- **Contractual obligations:** existing contracts with consultants, subcontractors, suppliers and administrators may need to be novated, assigned or terminated. This requires careful coordination to avoid triggering claims or leaving the seller exposed to ongoing obligations.

Disposal is rarely a quick or clean process. It can take many months to find a buyer, agree terms and complete. During that time, costs continue to accrue and the site must be managed. However, for projects that cannot realistically continue, disposal at least offers a route to closure and allows the developer to limit further exposure.

Orderly wind-down: containment over completion

Where neither continuation nor disposal is viable, an orderly wind-down becomes the focus. The objective shifts from completion to containment: preserving residual value while limiting future exposure. This involves:

- **Site stabilisation:** making the works safe and weathertight to prevent deterioration
- **Contract termination:** formally terminating remaining contracts and settling or defending claims
- **Insurance claims:** pursuing any recoveries available under performance bonds, insurance policies or guarantees
- **Statutory compliance:** ensuring ongoing compliance with health and safety, planning and environmental obligations
- **Stakeholder communication:** managing lender, investor and creditor expectations and negotiating exits or settlements

Wind-down requires just as much strategic planning as recovery. The objective is to minimise losses, preserve relationships where possible, and avoid creating long-tail liabilities that resurface years later.

Claims, recovery and long-tail exposure

Contractor insolvency often gives rise to a web of actual and potential claims. Some may be actively pursued. Others may sit in the background, emerging years later when defects, delays or funding losses crystallise.

Claims against insolvent contractors: limited value

Claims against insolvent contractors are frequently of little or no practical value, particularly where recoveries are diluted through the insolvency process. Unsecured creditors in liquidation typically recover pennies in the pound, if anything. Administration may offer better prospects if assets are preserved or a sale is achieved, but even then, recoveries are uncertain and can take years to materialise.

That said, it is still important to lodge claims in the insolvency process. This preserves rights, ensures the developer's position is recognised, and allows participation in any distributions. It also creates a formal record of loss that may be relevant to other claims or insurance recoveries.

Claims against guarantors and sureties

Attention therefore often turns to other parties: guarantors, sureties, insurers and consultants.

- **Parent company guarantees:** where these exist and the parent remains solvent, they offer a more realistic route to recovery. However, enforcement can be contentious. Guarantors may dispute whether conditions precedent have been satisfied, whether notices were properly served, or whether the loss claimed falls within the guarantee's scope. Litigation may be necessary, and even then, recovery may be partial.
- **Performance bonds:** as discussed earlier, these are subject to strict notice and procedural requirements. Claims must be made promptly and in accordance with the bond terms. Even then, bonds are capped and rarely cover the full extent of loss. However, they can provide a valuable contribution to re-procurement costs and should be pursued where available.

Claims against consultants: navigating professional indemnity

Professional indemnity claims may arise where design errors, coordination failures or certification issues are uncovered during re-procurement or completion. These claims require careful handling.

Consultants are often highly defensive in insolvency scenarios, particularly where their original scope of responsibility has been altered through novation or informal arrangements. They will point to limitations in their appointments, exclusions in their terms, and the role of the contractor in design coordination.

To succeed in a professional indemnity claim, developers must demonstrate:

- **Breach of duty:** that the consultant failed to exercise reasonable skill and care
- **Causation:** that the breach caused the loss claimed
- **Quantum:** that the loss can be quantified and evidenced
- **Mitigation:** that reasonable steps were taken to mitigate loss

This is rarely straightforward. Design responsibility in modern construction projects is fragmented. Consultants design, contractors coordinate, subcontractors detail and build. When something goes wrong, establishing where responsibility lies requires forensic investigation and expert evidence.

Consultants will also argue that losses arose not from their design errors but from the contractor's insolvency, which they could not have foreseen or prevented. They will point to the employer's decision to appoint the contractor, the contractor's performance, and events beyond the consultant's control.

These defences are not always successful, but they make professional indemnity claims complex, expensive and uncertain. Early legal and technical advice is critical to assess prospects and strategy.

Insurance recoveries: aggregation, notification and coverage disputes

Insurance recoveries can be complex. Notification obligations, aggregation issues and coverage disputes are common, particularly where loss arises from a combination of insolvency, delay and defective work.

- **Notification:** most insurance policies require prompt notification of circumstances that may give rise to a claim. Failure to notify within specified timescales can prejudice recovery. Notification should be made as soon as the triggering event, such as contractor insolvency, occurs, even if the full extent of loss is not yet clear.
- **Aggregation:** insurers may argue that multiple losses arise from a single event (the contractor's insolvency) and therefore should be treated as a single claim subject to a single policy limit. Developers will want to argue that losses are separate and distinct, arising from different causes or at different times. The outcome can significantly affect recovery.
- **Coverage disputes:** insurers may dispute whether losses fall within the scope of cover. Latent defects policies, for example, typically exclude losses arising from incomplete works. Contractors' all-risk policies may exclude losses once the contractor has ceased performing. Professional indemnity policies may exclude losses arising from design coordination failures if coordination was outside the insured's scope.

Early advice is critical to preserve rights and avoid procedural missteps that undermine recovery. Specialist insurance lawyers and brokers should be engaged to navigate these issues and to manage insurer negotiations.

Long-tail exposure: latent defects and future claims

Beyond immediate claims, there is the question of long-tail exposure. Projects affected by insolvency often carry residual risk long after completion or disposal.

- **Latent defects:** defects in completed works may not become apparent until years after practical completion. Where contractor insolvency has disrupted quality control, supervision or certification, the risk of latent defects is heightened. These can give rise to claims from purchasers, tenants, or subsequent owners, with liability potentially falling back on the developer if the contractor and consultants are no longer viable defendants.
- **Incomplete records:** where design information, as-built records or compliance certification is incomplete, future owners may encounter problems when seeking to alter, extend or refinance the building. This can give rise to claims for breach of warranty, misrepresentation or diminution in value.
- **Unclear design responsibility:** where design liability remains unclear or contested, future defects may be difficult to pursue, leaving the developer or subsequent owner bearing the cost of remediation.

For developers and investors, understanding and managing this long-tail risk is essential, not only to protect against future claims but also to maintain credibility with funders and counterparties in subsequent projects. Disclosure, warranties and insurance all play a role in managing this exposure, but none eliminate it entirely.

Lessons learned: reducing future exposure

While contractor insolvency is never welcome, it often exposes structural weaknesses in procurement strategy, risk allocation and project governance. Developers who emerge successfully from these situations tend to be those who are willing to reflect honestly on what went wrong and why.

Common structural weaknesses

- **Over-reliance on single contractors:** design and build procurement concentrates risk in a single entity. When that entity fails, the entire project is vulnerable. Greater use of direct appointments, package procurement or construction management can distribute risk more evenly.
- **Insufficient financial due diligence:** developers often assume that contractors who win competitive tenders are financially robust. This is not always the case, particularly where contractors are bidding aggressively to win work in difficult markets. Pre-contract financial vetting, including credit checks, analysis of recent accounts, and monitoring of payment patterns to subcontractors, can provide early warning signs.
- **Contractual frameworks that assume continuity:** many building contracts are drafted on the assumption that the contractor will perform continuously to completion. Provisions for suspension, termination and handover are often cursory. More detailed drafting around insolvency scenarios, information handover, and protection of materials and records can ease recovery.
- **Funding arrangements without flexibility:** funding structures that depend on certified progress by a single contractor, or that lack contingency for delay and cost overrun, can collapse under the strain of insolvency. Greater headroom, more flexible drawdown mechanisms, and less reliance on tightly fixed milestones can provide breathing space when problems arise.
- **Weak information governance:** where design responsibility is novated to the contractor and the employer loses sight of design development, recovery becomes much harder. Maintaining oversight of design, requiring regular information handover, and ensuring that records are kept centrally can mitigate this risk.

Future-proofing projects

Future-proofing does not mean eliminating risk entirely. Construction will always involve uncertainty. However, it does mean structuring projects in a way that preserves optionality, protects information flow and aligns incentives across the project team.
This includes:

- **Robust contractor selection:** prioritising financial stability and track record over lowest price
- **Procurement models that distribute risk:** considering alternatives to single-contractor design and build
- **Contract terms that anticipate disruption:** detailed provisions for insolvency, termination and handover
- **Funding structures with contingency:** ensuring headroom for delay, cost overrun and re-procurement
- **Information management:** maintaining central records and oversight of design development
- **Early warning systems:** monitoring contractor performance, payment patterns and financial health
- **Professional team continuity:** avoiding over-reliance on novated appointments

Legal advisers play a critical role in this process, not simply by drafting contracts, but by stress-testing them against real-world scenarios. Insolvency should not be treated as a remote contingency. It should be a live consideration embedded into procurement, funding and governance decisions from the outset.

A strategic response to inevitable risk

Contractor insolvency is an uncomfortable reality of the construction industry, particularly in volatile economic conditions. While it cannot always be prevented, its impact can be managed.

Projects that survive contractor insolvency do so not through optimism or speed alone, but through clarity, coordination and control. Those that fail often do so because decisions are taken in isolation, without full appreciation of their wider consequences.
The key lessons are these:

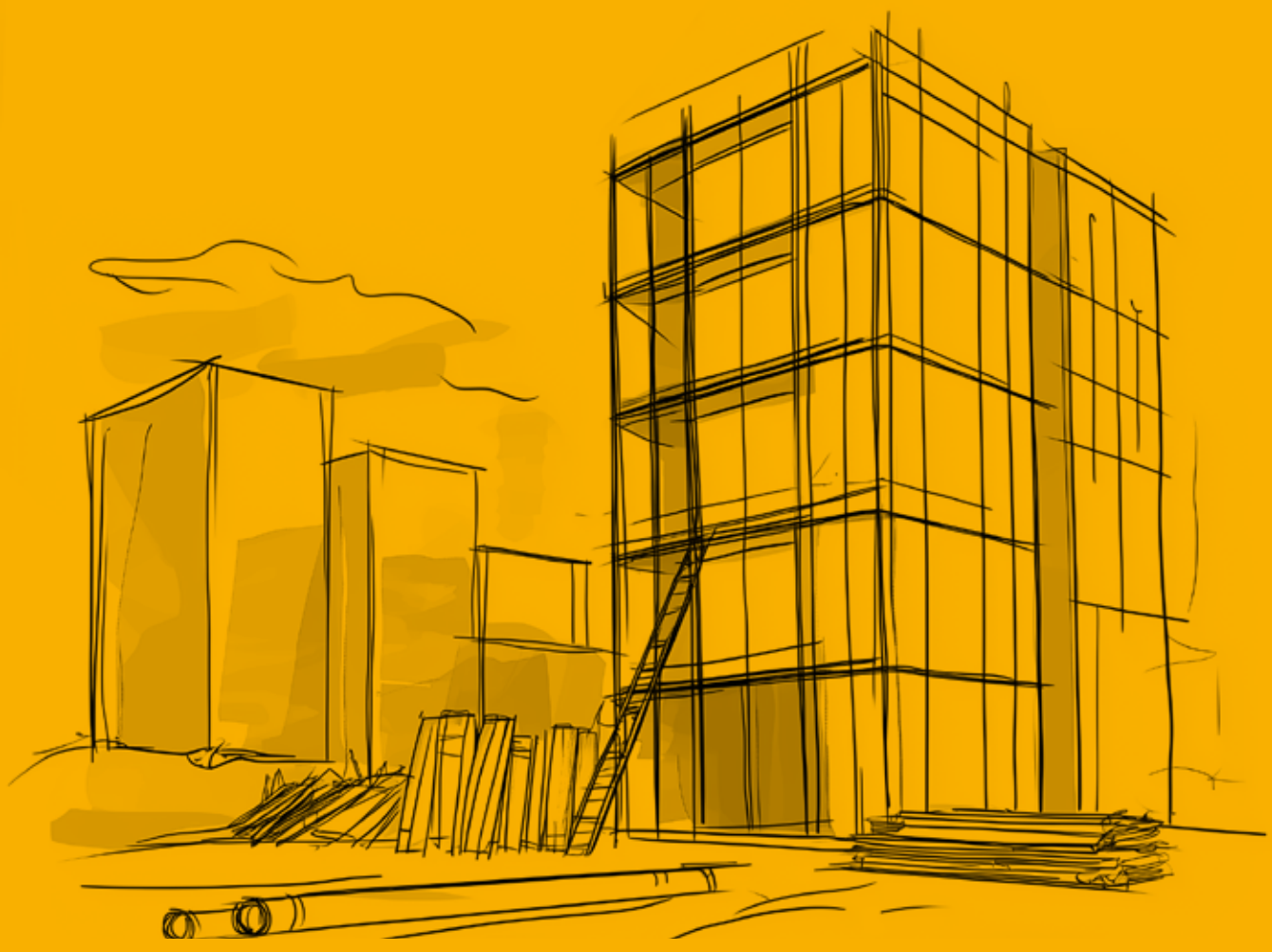
- **Act early but act carefully:** speed matters, but uncoordinated action can worsen the position
- **Preserve optionality:** decisions taken too early can close down routes that might otherwise have been available
- **Align stakeholders:** lenders, consultants and replacement contractors must be brought into a common understanding
- **Invest in information:** forensic review of what has been completed and what remains is essential
- **Sequence decisions properly:** funding, professional team structure and re-procurement must be addressed in the right order
- **Accept commercial reality:** not every project can or should be rescued

At Newmanor Law, we advise developers, investors and funders at every stage of this process, from early warning signs through to recovery, restructuring or exit. Our focus is on preserving value, managing risk and enabling informed decision-making in complex and pressured environments.

Handled correctly, even the most challenging situations can be navigated with commercial discipline and legal clarity. The key is recognising that contractor insolvency is not simply a construction issue, but a defining moment in the life of a project – one that demands experience, insight and a truly integrated approach across legal, commercial and technical workstreams.

For developers facing contractor insolvency, the question is not whether the situation is difficult. It always is. The question is whether the response will be strategic, coordinated and realistic enough to preserve value and control, or whether hasty, isolated decisions will compound the damage and limit recovery options.

That distinction often determines whether a project survives.



www.newmanor.com +44 (0)20 7464 4080 enquiries@newmanor.com

Newmanor—Law