

A&L Goodbody

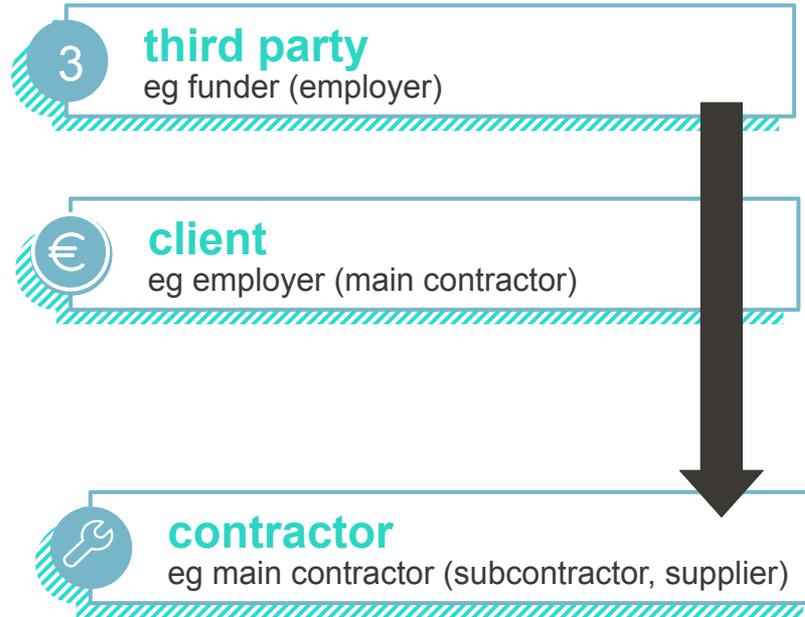
Insolvency

Using real-life examples, what can you do to protect yourself when you are contracting with a party facing insolvency?

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who?



what do we mean by insolvency?

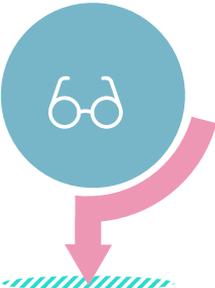


can't pay, won't pay

winding up
receivership
examinership
execution
scheme of arrangement

suspend business
(or threaten to)

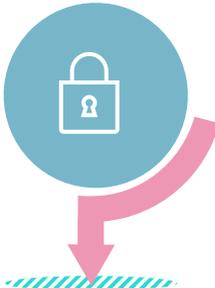
protecting yourself starts at the beginning



01
diligence

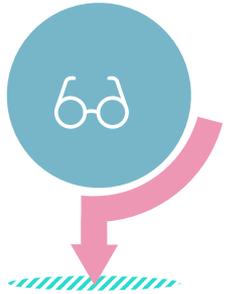


02
contract terms



03
security

protecting yourself starts at the beginning



01 diligence

- pre-contract
 - warranties
- ongoing

protecting yourself starts at the beginning

for the contractor

- credit terms
 - when do you get paid
- retention
- retention of title
- suspension
- termination
 - step-in



02 contract terms

for the client

- payment profile
- retention
- pay when paid - insolvency
- set-off
- title to goods and materials
- documentation
- termination
- step-in

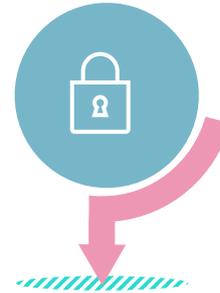
protecting yourself starts at the beginning

performance security from the contractor

- bond
 - performance bond
 - retention bond
 - advance payment bond
- parent company guarantee

payment security from the client

- letter of credit
- third party guarantee
- project bank account
- retention in trust



03
security

client

slow pay, no pay

contractor

- work slows down
- asking for faster payment
- subcontractors asking for payment
- staff turnover
- materials or plant disappearing from site

if this happens

check what the contract says and third party agreements



check for / get documentation

security (bond), insurance, certification etc

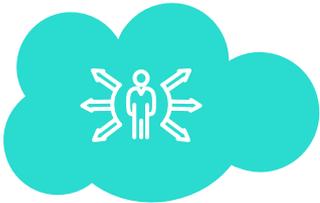


if you are the client, establish what you need to

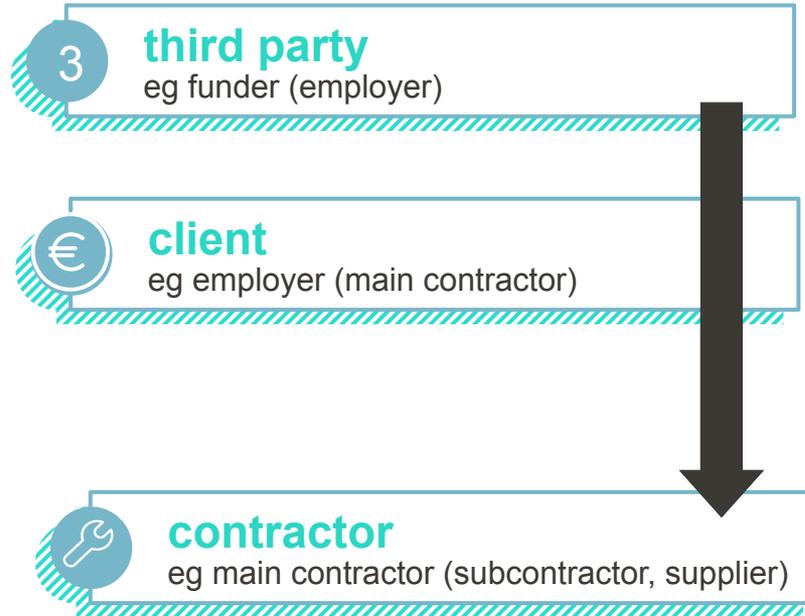
- keep up insurance
- take possession
- secure the site
- make it safe
- complete the job



get in touch with any examiner



contractor's options on client insolvency





terminate

carefully

step-in to lower tier?

enforce security (bond)

usually no more pay



work with the insolvent contractor

change payment terms?

direct payment to
subcontractors?

usually waive claims

1

2

3

4

examiner has 100 days to file a scheme

scheme can be crammed down

engage with the process?

preserve set-off, bond, insurance, guarantees,
and contract dispute mechanisms



Questions?
