



creative

Distressed Parties

Assessing the risk and protection
from Insolvency

ledingham|chalmers^{LLP}
SOLICITORS

ABERDEEN • EDINBURGH • INVERNESS • STIRLING



creative

Why the worry?

- Statistics show an increasing number of insolvencies, UK wide
- Construction industry insolvencies among the highest in any industry
- Carillion!
- Sustained pressures on payment regime

ledingham|chalmers^{LLP}
SOLICITORS

ABERDEEN • EDINBURGH • INVERNESS • STIRLING

A horizontal banner with a blue sky and white clouds. The word "creative" is written in a white, lowercase, sans-serif font across the center of the banner.

creative

What to consider, and when?

- Pre-contract, assessment of potential contracting party, diligence
- Contract negotiation itself, key terms to maximise protection from insolvency
- During performance of the contract
- Dealing with an insolvent contractor

ledingham|chalmers^{LLP}
SOLICITORS

ABERDEEN • EDINBURGH • INVERNESS • STIRLING

The word "creative" is written in a white, lowercase, sans-serif font, centered horizontally. It is overlaid on a blue background that features a horizontal band of white, fluffy clouds. The clouds are more prominent on the right side of the image.

creative

Pre-contract, assessment of potential contracting party, diligence

- Identify the entity you propose to contract with
- Analyse the business, some key considerations
- Where Companies House can provide some assistance
- Other practical tools to assist pre-contract

ledingham|chalmers^{LLP}
SOLICITORS

ABERDEEN • EDINBURGH • INVERNESS • STIRLING

The word "creative" is written in a white, lowercase, sans-serif font, centered over a blue background with white, fluffy clouds.

creative

Contract negotiation itself, key terms to maximise protection from insolvency

- Ensure the contract is in place before commencement
- Be mindful of which regime will apply to the contract
- Battle of the forms, having the last shot counts
- Potential power of retention of title clauses
- Favourable rights of set off
- Termination clauses which work for you

ledingham|chalmers^{LLP}
SOLICITORS

ABERDEEN • EDINBURGH • INVERNESS • STIRLING



creative

During performance of the contract - maintaining vigilance

- Signs of distress are often there
- Notable changes in performance of the contract
- Delays in payment and requests for extended credit terms
- Removal of key personnel, equipment and stock

ledingham|chalmers^{LLP}
SOLICITORS

ABERDEEN • EDINBURGH • INVERNESS • STIRLING



creative

During performance of the contract - early intervention

- Every situation needs to be considered
- Early intervention generally brings problems to a head
- Communication is key, a firm grip on credit control is essential
- Formal steps - what does the contract require? Notice to suspend, termination notice, statutory demand for payment, actions for payment/adjudication
- Reduce exposure as early as possible, third party guarantee/performance bond available?

ledingham|chalmers^{LLP}
SOLICITORS

ABERDEEN • EDINBURGH • INVERNESS • STIRLING



creative

On an insolvency event occurring

- Know your rights, consider the contractual documents
- Take early advice
- Exercise caution when dealing with Liquidators/Administrators
- Protect and enforce ROTs immediately
- Be commercial and realistic on likely outcome

ledingham|chalmers^{LLP}
SOLICITORS

ABERDEEN • EDINBURGH • INVERNESS • STIRLING



creative

Overview

- Know your contractor
- Paperwork, paperwork, paperwork!
- Maintaining vigilance
- Tight credit/performance controls
- Communication and early intervention

ledingham|chalmers^{LLP}
SOLICITORS

ABERDEEN • EDINBURGH • INVERNESS • STIRLING

widespread



ledingham | chalmers^{LLP}
SOLICITORS

ABERDEEN • EDINBURGH • INVERNESS • STIRLING