

CONTENTS

PROTECT YOUR BUSINESS FROM THE FINANCIAL CRISIS

There are three collateral arrangements that can be used to help secure your business during the current financial crisis, B&ES has created some templates and guidance for members to help minimise any potential loss.

B&ES CAMPAIGNS FOR FAIRER VAT ON ENERGY SAVING

B&ES has continued to be involved with the VAT on Energy Saving Materials campaign, to help protect the commercial opportunities being introduced by the UK government.

THE CONSTRUCTION ACT AND YOU

A range of new features have been introduced by the Construction Contracts (Amendment) Act (Northern Ireland) 2011, read how the changes will affect you.

BIO: MEET BENJAMIN FUTERMAN

The Commercial & Legal team has a new Legal Adviser.

ROB DRISCOLL

Deputy Head of Department
020 7313 4918
rob.driscoll@b-es.org

CHARLOTTE BARKER

Solicitor
020 7313 4921
charlotte.barker@b-es.org

BENJAMIN FUTERMAN

Solicitor
020 7313 4922
benjamin.futerman@b-es.org

CHERYL RILEY

Departmental Secretary
020 7313 4919
cheryl.riley@b-es.org

WINTER 2012

3rd Edition

Protect your business from the financial crisis

B&ES has launched a range of guidance documents to help members through the maze of bonds and warranties available - to help protect your business through the current global financial crisis.

There are three collateral arrangements that can be used to secure the performance of the obligations undertaken by your business. This issue focuses on Performance Bonds and Parent Company Guarantees (PCGs). With the increased risk of insolvency for many businesses, parties to construction contracts need to adopt appropriate safeguards to minimise the loss resulting from the insolvency of their contract counterparties.

A **Performance Bond** is a document usually executed as a deed (under seal), whereby a surety (normally a bank or insurance company) guarantees your contractual obligations to its employer. The value of the bond is usually 10% of the contract sum. Under most forms of contract, if you fail to perform, the Beneficiary will have recourse to a retention fund in addition to his other contractual remedies, such as set-off. A Bond therefore gives the Beneficiary additional security for your performance.

A PCG is provided by your immediate parent or other holding company and operates as a guarantee to ensure your contract is properly performed and completed. If you are no longer willing to continue with the works, your parent will be obliged to meet all your obligations and complete the works to the standard in your contract.

A **Collateral Warranty** gives its Beneficiary a direct contractual link to you, so that should you be at fault in carrying out your works and the Beneficiary suffers loss as a direct result of that fault, the Beneficiary can sue you directly for breach of the terms of the warranty to recover its loss. A Collateral Warranty is therefore a form of security against the risk that any of the party(ies) within the contractual chain, i.e. between you and the Beneficiary becomes insolvent. The guidance introduces when a Collateral Warranty is required, who will require one and the steps you will need to take in order to assess the risks contained in typical clauses.

Templates are available for the following documents: Parent Company Guarantee; **Guarantor to Contractor, Guarantor to Employer, On Default Performance Bond** and a **Sub-Contractor Collateral Warranty**.

[READ MORE](#)

B&ES campaigns for fairer VAT on energy-saving

B&ES continues to be at the forefront of the VAT on Energy Saving Materials campaign, set up to protect the commercial opportunities being introduced by the UK government in order to stimulate the UK construction economy.

At present, energy-saving materials in the UK are generally subject to 5% VAT. However the European Commission has informed the UK Government that it has wrongly applied an exemption, thereby disallowing it from continuing to apply a lower rate of VAT to energy-saving materials. As reported in 1st edition of **C&L Focus**.



Stock photo 123RF

B&ES has lobbied George Osborne, the Chancellor of the Exchequer, to contest the decision given, that the increased rate will compromise the stimulation of economic growth and flagship governmental policies such as the Green Deal.

Working collaboratively with 14 other trade bodies and stakeholders, B&ES continues to take every opportunity to argue the reduced rate of VAT on energy-saving materials is legitimate. The UK Treasury has welcomed the support from the industry coalition, and is using industry intelligence to inform its arguments against the European Commission.



[READ MORE](#)

The Construction Act and YOU

Rob Driscoll explains why the new Act for Northern Ireland affects you and your businesses.

A range of new features have been introduced by the Construction Contracts (Amendment) Act (Northern Ireland) 2011 ('New Act'), which came into force on 14 November 2012. The amendments to the Construction Contracts (Northern Ireland) Order 1997 introduces changes that will affect B&ES members in Northern Ireland.

A New Scheme, governing payment and adjudication has been amended as part of the changes. Oral agreements are now covered under the New Act, with new payment terms available, where the parties now have the option to decide which party is to give the Payment Notice. Pay-when-certified mechanisms have also been outlawed. In addition to the Payee's ability to suspend any or all of his obligations under the contract, where payment is not made a Payee will be entitled to claim an extension of time for the completion of the work and a reasonable amount in respect of costs and expenses reasonably incurred for the period of suspension e.g. de-mobilisation and re-mobilisation costs. Clauses seeking to pre-allocate costs of adjudication will be ineffective save for a few exceptions. If the contract provides that if the payee becomes insolvent after the date on which the pay less notice is given then the payer need not pay any sum due.

Members are encouraged to take action now as any bespoke forms of contract entered into must be revised to reflect the New Act. If you have entered into a main contract before 14 November, but subsequently enter into sub-contracts after 14 November, different payment terms will apply. It is essential that personnel, in particular accounts staff, are aware of the New Act, especially the need to give the required notices within the prescribed periods.

[READ MORE](#)

For further information contact **Rob Driscoll** at rob.driscoll@b-es.org

"I'm looking forward to the challenge of using my varied experience in construction disputes in my new role within the team and look forward to bringing a fresh pair of eyes to familiar problems"

BIO: BENJAMIN FUTERMAN

Benjamin Futerman is the newest edition to the Commercial & Legal team. The department's new Legal Adviser qualified as a solicitor in 2012 in private practice.

Prior to this, he worked as a paralegal in mergers and acquisitions in a city firm. With industry experience which already spans contractual arrangements for large scale construction developments and projects as well as commercial property law, he has already clocked up significant knowledge with the sector before coming to the Association.



Having worked specifically on Landlord and Tenant issues and tackling international white collar crime, banking and debt recovery litigation he brings a new dimension to the growing department.

Speaking about his new role, he said: "I'm looking forward to the challenge of using my varied experience in construction disputes in my new role within the team, and looking forward to bringing a fresh pair of eyes to familiar problems."

[READ MORE](#)