



Tips by which contractors can legally protect themselves against the insolvency of a developer

By Geoffrey E. Odongo



In the construction industry contracts are structured so that there is a delay between work being performed and payment being received. This results in the making of payments upon the work reaching different stages in arrears. In instances where payment is constantly remitted late for work done the delay in recovering sums worked for by the contractor can result in cash flow challenges for the contractor.

However prudent contractors **can adjust their operations in the following manner to protect themselves:**

I Obtaining credit or reference checks to ascertain developers financial status during contract negotiation which offers a pointer on whether future performance of obligations will be met under the contract.

II Including 'pay when paid' clauses in contracts entered into with sub-contractors so that in the event of insolvency by a developer you do not have to pay if your own payment is withheld.

III Including retention of title clauses which assist the unpaid party to get back materials or goods belonging to them where the full payment due is not made.

IV Incorporating termination or suspension clauses. This entails including a clause that permits the suspension of performance or termination of the contract in the event the other party becomes insolvent in order to protect oneself.

V Maintaining records that demonstrate the losses arising from insolvency for instance records of materials and equipment on the site that are with-held upon insolvency.

VI Initiating adjudication before the other party becomes insolvent can help to secure payment prior to insolvency instead of ending up in the queue of unsecured creditors.

At AIP Advocates, we have lawyers who will guide you on legal matters arising from construction contracts while ensuring your interests are protected.

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