

Contractors' and Consultants' Liquidation and Receivership Policy (and Procedures for Major Capital Projects)

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SHR: Standards of Governance and Financial Management	1.3, 2.2, 3.1, 4.3	

Scottish Social Housing Charter Relevant Standard Outcomes

STANDARD
Section: Housing quality and maintenance 4. Quality of housing Social Landlords manage their business so that:- • <i>tenants' homes, as a minimum, when they are allocated; are always clean, tidy and in a good state of repair; meet the Scottish Housing Quality Standards (SHQS), and any other building quality standard in place throughout the tenancy; and also meet the relevant Energy Efficiency and Zero Emission Heat Standard.</i>
Section: Getting good value from rents and service charges 13. Value for money Social landlords manage all aspects of their businesses so that:- • <i>tenants, owners and other customers receive services that provide continually improving value for the rent and other charges they pay.</i>

Scottish Housing Regulator – Relevant Standards of Governance and Financial Management and Guidance

STANDARD	
1	The governing body leads and directs the RSL to achieve good outcomes for its tenants and other service users. Relevant Standard 1.3
2	The RSL is open about and accountable for what it does. It understands and takes account of the needs and priorities of its tenants, service users and stakeholders. And its primary focus is the sustainable achievement of these priorities. Relevant standard 2.2
3	The RSL manages its resources to ensure its financial well-being, while maintaining rents at a level that tenants can afford to pay. Relevant standard 3.1
4	The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose. Relevant standard 4.3

CONTRACTORS AND CONSULTANTS LIQUIDATION AND RECEIVERSHIP POLICY (AND PROCEDURES FOR MAJOR CAPITAL PROJECTS)

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CONTRACTORS AND CONSULTANTS LIQUIDATION AND RECEIVERSHIP POLICY (AND PROCEDURES FOR MAJOR CAPITAL PROJECTS)

1. INTRODUCTION

1.1 This policy takes account of guidance issued by The Scottish Government:

<http://www.gov.scot/Topics/Government/Finance/spfm/bankruptcy>

1.2 This policy describes the approach that the Association will take:

- To mitigate the risk of a contractor or consultant going into liquidation
- In the event that a contractor or consultant who is working for the Association goes into liquidation or has a receiver appointed

2. CONTEXT

2.1 The Association's **Development Risk Policy** and **Risk Register** sets out our approach to the management and assessment of risk and the need to remove risks or mitigate risks to an acceptable level. We will seek to minimise our exposure to contractors and consultants' liquidation by having standard compliance checks at tender stage alongside financial checks.

2.2 As part of the compliance assessment contractors and consultants must be able to demonstrate that they have adequate financial resources to undertake the contract along with appropriate insurance being in place for the duration of their appointment.

2.3 The insurances of our contractors and consultants will be checked to ensure they are still current. This will be done prior to the start of works with routine checks to assure the policies remain in place.

2.4 We may consider the need for performance bonds on a scheme by scheme basis, depending on the nature and complexity of the project and where the price variation between the highest and lowest tenders is $\geq 20\%$. The latest procurement guidelines require that companies should not be disadvantaged by their size due to onerous requirements therefore we need to assess insurance levels and the possibility of a performance bond on a scheme by scheme basis to ensure that they are proportionate to the size of the contract – not taking a one size fits all approach.

2.5 The Association will obtain Dun and Bradstreet reports which give an indication of the current financial state of a contractor prior to the award of a contract.

2.6 Where we commission a project containing sub-contracted design elements, we will ensure that appropriate collateral warranties are secured.

- 2.7 We will ensure that all contractual agreements for the provision of architectural services provide for the Association to continue to use the design in the event of the contract being determined.
- 2.8 Where a contractor or consultant goes into administration there are **Procedures** in place to ensure that sites are made secure and outstanding information is received.

This Policy should be read in conjunction with the associated **Procedures** for dealing with liquidations and receivership in **Appendix 1**.

3. PURPOSE OF POLICY

- 3.1 This policy is intended to ensure that:
- The potential for financial loss to the Association where a contractor has gone into liquidation or receivership is minimised
 - Swift action is taken by the Association to secure the site(s) as soon as notification is received that a contractor has gone into liquidation, or a receiver has been appointed
 - In the event of a contractor or consultant being unable to complete a contract because of liquidation or the appointment of a receiver, a strategy for securing completion will be adopted at an early date to minimise delay in completion
 - The standards of the project are not compromised
 - Wherever possible, continuity of employment for sub-contractors will be safeguarded, taking account of financial constraints

4. RISK

- 4.1 Failure to have a policy and associated procedures on liquidations and receivership exposes the Association to the following risk:
- Financial loss – the cost of completing an unfinished contract exposes the Association to increased costs.
 - Programme risk – inability to spend projected annual Grant attributed to the project
 - Significant delay with completion – leading to problems for our customers particularly with regard to LIFT purchases and special needs clients for whom projects are allocated early in the construction phase.

5. EQUALITY IMPACT ASSESSMENT

- 5.1 An Equality impact assessment has been carried out in preparation of the Development Consultation Policy. No impact or barriers were identified; therefore, activity will proceed.

6. REVIEW

- 6.1 This document will be reviewed by the Board or Sub-Committee set up for that purpose in accordance with the requirements of the Association's Register of Policies and Procedures.
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SCHEDULE OF REVISIONS		
DATE	REVISION No.	DETAILS
03/10/2024	2.1	Policy tracking - Version 2, Approval now from the Board, to be reviewed by the DM. Revision 2.1.
03/10/2024	2.1	Regulatory standards reformatted and summarised
03/10/2024	2.1	3.4 The DM is now responsible not the DOI.
03/10/2024	2.1	3.12 DM/O will ensure the H&S file, the DM/O will ensure the file is available. Not the DOI.
03/10/2024	2.1	3.13 New section, training to be provided on C .
03/10/2024	2.1	4 New section, Equality Impact Assessment added.
03/10/2024	2.1	Appendix 1, web link added to CDM 2015.

1. These Procedures should be read in conjunction with the **Contractors Liquidation and Receivership Policy**.

2. IMPLEMENTING THIS PROCEDURE

- 2.1 The following actions are the responsibility of the Development Officer / Property Services Officer with support as required by their line Manager.
- 2.2 When the Association is notified that a contractor with whom it is currently working on site has gone into liquidation or receivership, the Development Officer / Property Services Officer will immediately secure the site against vandalism and unauthorised entry and arrange adequate insurance. Payment to the contractor will be suspended immediately. If a Consultant with whom the Association is currently working has a receiver appointed, we will suspend all payments immediately. The Chief Executive, Chairperson and subsequently the Regulator will be notified as soon as possible.
- 2.3 In the event of a consultant who is acting as CDM Advisor going into receivership or having a liquidator appointed, the Association will take steps to obtain the health and safety information as soon as practicable and to pass the file to a replacement CDM Advisor immediately, in accordance with the **CDM Policy**. Similarly, the Association will take all reasonable steps to obtain the Construction Phase Plan from a principal contractor who has gone into liquidation or has had a receiver appointed.
- 2.4 The Association will identify its potential claim to the Liquidator at the earliest opportunity and discuss any proposals for the satisfactory completion of the contract. In considering whether any proposals from the Liquidator are acceptable, the Association will have regard to the terms of the existing contract, the provisions of the proposed novation agreement, any performance bond that has been arranged and the objectives of the Policy.
- 2.5 We will, at all times, act in the Association's best interests. We will seek to co-operate with the Liquidator and in considering whether a proposal meets the best interests of the Association we will take account of the proposed timescale for completion, the availability of other suitable contractors or consultants and the potential for securing ongoing employment for the existing sub-contractors. Where appropriate, we will seek legal advice on a proposed course of action.
- 2.6 In determining what payment is due to the Liquidator or Receiver for work completed, the Association will refer to the records maintained by the Clerk of Works. We will take account of any additional costs incurred by the Association (e.g. site security, insurance and administration) and deduct these from any sums due to the contractor. Until the Association is satisfied of the financial position of the contract no monies will be passed to the Liquidator.

- 2.7 Where we decide that we should secure the completion of the contract independently of the Liquidator, we will procure a replacement contractor or consultant, taking account of the Association's **Procurement Policy** and the need to minimise disruption and maximise rental income and the aims of this procedure.
- 2.8 Where a contractor has gone into liquidation or appointed a receiver, the Association will seek advice from the lead consultant to determine the most appropriate procurement route and the most effective means to secure the scheme's completion, within a reasonable timescale and at an acceptable cost, and taking account of the stage the scheme has reached.
- 2.9 Where sub-contractors are on site, the Association will discuss with the Receiver the possibility of completing the project through a management contract and making payment to them directly.
- 2.10 Where a consultant has gone into liquidation or appointed a receiver, the Association will seek to appoint a replacement as soon as practicable.
- 2.11 In recognition that swift action will be required to deal with the circumstances covered by this Policy, these circumstances will be treated as an emergency and authority for making decisions will be as per the Association's approval and delegated authority level – Chairpersons approval sought where required.
- 2.12 The Association will seek to minimise any additional costs to the scheme. Where additional costs are incurred, we will either deduct them from any sums due to the contractor or seek to recover them from the liquidator and our funders. In making a claim to the liquidator, the Association will take account of the loss of indemnity involved resulting from the contractor's liquidation.
- 2.13 The Association will ensure that The Regulator is kept fully informed of all progress. Where this Policy is being implemented in respect either of a CDM Advisor or a Principal Contractor, the Association will keep the Health and Safety Executive informed.
- 2.14 We will keep the local press informed of the actions being taken to ensure completion of the scheme, in order to minimise the adverse impact on the Association's reputation.
- 2.15 Where a contractor goes into liquidation or receivership during the defect's liability period (i.e. after practical completion but before the Certificate of Making Good Defects has been issued), the Association will take responsibility for dealing with all emergency and non-emergency defects and will withhold the costs of making good the defects and associated costs from any retention monies.

3. PURPOSE

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5. REVIEW

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