

## CARILLION LIQUIDATION

### FAQ FOR BUILD UK AND CECA MEMBERS

#### 1. What has happened?

On 15 January 2018, **Carillion Plc** and five of its subsidiaries (see below) were placed into liquidation by an order of the court. At the same time, the Court appointed the Official Receiver (part of the Insolvency Service, an official body) to be the liquidator and PwC to be special managers.

This means that the Official Receiver is in charge of investigating the affairs of the companies, collecting in their assets and distributing them to the creditors in line with the priorities set down in legislation. PwC have been appointed to assist them in managing this process on a day to day basis.

Carillion companies in liquidation:

1. **Carillion plc**
2. **Carillion Construction Limited**
3. **Carillion Services Limited**
4. **Planned Maintenance Engineering Limited**
5. **Carillion Integrated Services Limited**
6. **Carillion Services 2006 Limited**

#### 2. What is a liquidation?

A liquidation is a process by which the business (if possible) and assets of an insolvent company are collected in and, where appropriate, sold. Where sufficient monies are available (after payment of costs) they are distributed to the creditors of the insolvent company in a specific order with secured (usually banks) and preferential (usually employees) creditors being paid first and anything left over being paid to the unsecured creditors (which will usually include trade creditors).

#### 3. Am I affected?

- a. Yes, if you are in a contract directly with one of the six Carillion companies that are in liquidation;
- b. Possibly. Even if you are in a contract with another non-Carillion company, if you are engaged on a project involving Carillion you still may be affected.

It is very important that you check your contract(s) and understand which company you have contracted with.

If the project is being run as a joint venture (JV) between Carillion and another non-Carillion company it is even more important that you understand who is the ultimate Tier 1 contractor(s) because this may affect both the continuance of the project and whether you may be paid for work done prior to the date of liquidation.

#### 4. Will I get paid?

- a. For work done before 15 January 2018 (the date of liquidation):
  - i. If you are in a contract with a Carillion company in liquidation, any amounts owing to you for that period will very likely be an unsecured claim in the liquidation and it is very unlikely you will be paid based on current press reports. In the highly unlikely event the liquidation generates enough funds to make a payment (a "dividend") to unsecured creditors, that payment will likely be only a small proportion of what is owed and will not be paid for a considerable time.
  - ii. If you are in a contract with a non-Carillion company on a Carillion project, legally you should still be paid. However, in practical terms if companies above you in the chain are not being paid this may affect their ability to pay you, although they remain liable to do so.
  - iii. If your contract with a Carillion company in liquidation is novated (see below) you may well be paid, dependent upon the terms of that novation.
  - iv. If you are providing an essential service/works which the liquidator needs immediately to keep a project going (and which he cannot easily obtain elsewhere) you may be in a position to negotiate payment of part or all of your arrears by the liquidator but this would be in exceptional circumstances.
  - v. If a party who has the benefit of a collateral warranty exercises its contractual right to step into your contract, then that may be on terms that arrears prior to 15 January 2018 (or part of them) are paid.
- b. For work done on or after 15 January 2018 (the date of liquidation):
  - vi. The liquidator (who will likely be acting through PwC) will be obliged to pay for works instructed by him or an agent instructed on his behalf after the date of liquidation. This is unlikely to include works carried out without proper authority to do so.
  - vii. From a practical point of view, it would be advisable to run two accounts: one for works done prior to 15 January 2018 and one for works done on or after that date, because when the liquidator asks for evidence of your claim you will be able to easily separate it out and provide it.

#### 5. Might I be paid by the ultimate employer or funder?

It is unlikely unless the employer or funder (as beneficiary of a collateral warranty) exercises its express step in rights.

#### 6. What should I do now?

- a. PwC has said that the Carillion companies are continuing to trade and so you should assume that the works under your contract are continuing unless you are told otherwise. See the PwC page dealing with this here: <https://www.pwc.co.uk/services/business-recovery/administrations/carillion/suppliers.html>  
As set out above, you will be paid for any work done after the date of liquidation that is instructed by the liquidator/PwC.
- b. We suggest you gather together a file of the contractual documentation under which you are engaged, together with details of outstanding invoices/certificates/valuations and any supporting documentation so that you have it to hand when requested.
- c. Where you are engaged under a construction contract (for the purposes of the Construction Act), if you don't want to continue working and have not been paid in accordance with the contract terms, you have a statutory right to suspend your works on 7 days' notice. You should consider the terms of your contract carefully and, if appropriate, take further advice before you take this step.
- d. If you are considering terminating your engagement under your contract you should check the termination provisions and comply with those.
- e. It is possible that control of and responsibility for certain projects will be transferred to a new Tier 1 contractor in the short term. This may not involve any change for you if

you are contracting below Tier 2 but, if you are in a contract with Carillion the new contractor may want to novate your contract (see below) on agreed terms.

## **7. What do I do if I attend site and am not allowed access?**

It is likely that PwC will have secured all sites and will deny access to all parties where work has been suspended. You should contact PwC through their website (<https://www.pwc.co.uk/carillion>) in order to get further information on the nature of the suspension. Unauthorised access will constitute a trespass.

## **8. I have materials, equipment or tools on site and I am not allowed access to collect them; what do I do?**

- a. Materials delivered to site and not yet incorporated in the works will only be recoverable if subject to a valid retention of title provision in your contract. You should carefully check your contract terms (and seek advice if necessary) to see when the legal ownership to those materials passes to those who have engaged you, and then up the chain. It may be that such legal ownership passed when the materials were delivered to site or included in a valuation even if you have not been paid.
- b. Equipment/tools if owned, hired or leased by you may be claimed back and PwC should be notified as soon as possible, with evidence of your ownership, copies of hire or lease agreements, and you should clearly identify the location of the asset with a full description and photographs if you have them.

## **9. How do I register my claim?**

- a. If you are an unsecured creditor of one or more of the Carillion companies in liquidation (i.e. you have a claim for arrears arising before 15 January 2018) in due course you will be asked to register your claim with PwC. You should check their website at regular intervals for information: <https://www.pwc.co.uk/carillion>. You can also look at the Insolvency Service guidance on making a claim <https://www.gov.uk/government/publications/claim-money-back-from-a-bankrupt-person-or-company-in-compulsory-liquidation-guidance-for-creditors>.
- b. In the event you urgently need to claim materials (subject to a retention of title claim), equipment or tools on a site to which you do not have access, it is suggested that you email PwC at the following email address: [sharedservices.carillion@uk.pwc.com](mailto:sharedservices.carillion@uk.pwc.com)
- c. It would be advisable to provide all relevant information and documentation at the time you make your claim in order for PwC to easily determine the position.

## **10. What is a novation?**

A novation is a written legal agreement whereby a new contracting party takes the place of the original. This is usually on terms that the new contracting party takes over the contract as if it were there from the outset. This means that it would take over all rights and liabilities under the contract including payment, both of arrears and going forward. Any novation which provides for part or all of your pre-liquidation arrears to be paid will likely represent an improvement on your position, depending upon the other terms of that novation.

## **11. What do I do if my business is now in financial difficulties?**

- a. Speak first to your accountant who should be able to give you a clearer picture of the impact of the Carillion liquidations on your business and recommend any steps to be taken.
- b. If appropriate, have a discussion with your other major clients to see if they can assist with cash flow by, for example, making early payment on valuations.

- c. If you are concerned about your ability to pay tax, HMRC will provide practical advice and guidance through its Business Payment Support Service:  
<https://www.gov.uk/government/news/practical-support-for-businesses-affected-by-carillion-liquidation>.
- d. If necessary, seek advice from a licensed insolvency practitioner  
<https://www.r3.org.uk/get-advice/find-a-practitioner>.
- e. In the event you are considering reducing your workforce, you should take professional advice and/or call the free ACAS helpline <http://www.acas.org.uk>.

*NB: The guidance in this bulletin is of a general nature and professional advice should be sought in relation to specific circumstances and issues. Neither the authors of the bulletin nor Build UK or CECA accept any liability for the matters contained in the guidance. The liquidations are at a very early stage and detailed information is not yet available; this bulletin is based on information available as at 17.01.18.*