Construction Retention Deposit Scheme may become mandatory

This blog post looks at the proposed deposit scheme for retentions in the construction industry.

The Government consultation on the law and practices in the use of retentions in the construction industry closed on 19 January 2018. The consultation was set up to consider a number of key issues including loss of retention money due to contractor insolvency and late or non-payment of retentions, with the delays increasing further down the supply chain.

As well as considering alternatives such as project bank accounts, escrow accounts, retention/performance bonds, the consultation looked into a proposed statutory retention deposit scheme which would be similar to the tenancy deposit scheme that became compulsory for all residential assured shorthold tenancies created on or after 06 April 2007.

The retention deposit scheme would be mandatory for businesses holding retentions under construction contracts and would mean that retention money and any related interest would be held on trust by the relevant parties. If no provision was made in a contract to use the retention deposit scheme, then, as with the compulsory payment and adjudication provisions under the Construction Act, a term would be implied from the Scheme for Construction Contracts. Disputes concerning the operation, amount and timing of the release of retentions payments would be subject to existing dispute resolution procedures and contractual terms.

This proposed retention deposit scheme is also the subject of a Private Members’ Bill, the Construction (Retention Deposit Schemes) Bill, which had its first reading in the House of Commons and will go through to a second reading on 27 April 2018.

We await the results of the Government’s consultation and whether it will lead to legislation of this nature but there may well be growing support for this type of scheme in light of the collapse of Carillion and the losses that will ensue down the supply chain, which may have been avoided if retentions had been safeguarded by a retention deposit scheme.