

**WRITTEN QUESTION TO THE MINISTER FOR TREASURY AND RESOURCES
BY DEPUTY G.P. SOUTHERN OF ST. HELIER
ANSWER TO BE TABLED ON MONDAY 12th SEPTEMBER 2011**

Question

Following the statements made by the Minister and the Minister for Housing about the administration of Charles Le Quesne Ltd, will the Minister -

- a) inform members under what regulations and in what circumstances a company can continue to undertake work for the States whilst it is in administration?
- b) state the value of the bonds deposited by the company as part of the Clos Gosset/Grainville School contracts and what the status of these bonds is under administration?
- c) state what information the Minister has concerning the sums owed to sub-contractors in the month preceding the appointment of administrators?
- d) inform members whether he is aware if those sub-contractors attached to the States contracts in the run up to administration were fully paid whereas other sub-contractors were not, and if so, what conclusions he draws from this?

Answer

The States has no role in the protection of sub-contractors or other parties in the event of a company going into administration. Detailed answers to the Deputy's question are as follows:

- a) The contract conditions applicable to Grainville School Phase 4 and Clos Gosset Refurbishment were, JCT Standard Form of Building Contract 1980 Edition Local Authorities with Quantities incorporating local amendments and JCT IFC 84 incorporating local amendments, respectively. Both contracts deal with the bankruptcy of the Main Contractor in broadly similar terms. The relevant clauses are 27.3.3. (JCT 80 Contract) and 7.2 (IFC 84 Contract). Both clauses state that in the event of bankruptcy or a winding up.

“The employment of the Contractor under this Contract shall be forthwith automatically determined but the said employment may be reinstated if the Employer and the Contractor shall so agree;”

On 27th July 2011 the Royal Court ordered that:

“Charles Le Quesne (1956) Limited (“The Company”) shall be placed with immediate effect into Just and Equitable Winding-Up under Chapter 3 of Part 21 of the Companies (Jersey) Law 1991;”

This order granted specific powers to the appointed Joint Liquidators including under Item 2 (iv) and (v).

- iv) “to exercise any of the powers of the Company as may be required for its beneficial winding up, having regard to the creditors including (without limitation) carrying on its existing business, transferring its business to another company and/or individual, making payments, assigning rights and interests, charging assets and incoming liabilities in the ordinary course of its business;
- v) to carry on the existing business of the Company in order to enable an orderly winding up of the Company;”

The option to reinstate the employment of Charles Le Quesne (1956) Limited (In Liquidation) was therefore legally and contractually viable. The advice received and the recommendation made was that the reinstatement of the Contractor’s employment under the same terms and conditions offered the best arrangement for the States of Jersey, in terms of these two contracts, and for the creditors as any profit arising out of completing both contracts would be made available through the Joint Liquidators for the benefit of the creditors.

- b) Both Contracts were in excess of £1million and as a consequence there was a requirement for each to have a contract guarantee bond in a sum not exceeding 10% of the Contract value. The bond amount for Grainville School Phase 4 was £327,267.47. The bond amount for Clos Gosset Refurbishment was £393,584.00.

As it was the employment of the Contractor which was automatically determined and not the contract itself the bond would remain in place. Written confirmation of this fact has been received from Charles Le Quesne (1956) Limited (In Liquidation). The act of going into liquidation does not automatically trigger a claim on the bond. A claim can only be made when the actual loss is known.

- c) Under the terms of the Contract there is no responsibility for domestic sub-contractors. There is however a responsibility for Nominated Sub-Contractors under the terms of the JCT 80 Contract. As part of the contract administration the Architect issues a notification advising each of the Nominated Sub-Contractors the amount due to them which has been paid to the Main Contractor. In the month prior to 27th July 2011 there had been no written notification of any failure to pay appropriate amounts to Nominated Sub-Contractors. The position with domestic sub-contractors is not known.

The position under the terms of the IFC 84 contract is different in that there are no nominations. As a consequence sub contractors, although named, are domestic to the Main Contractor. In these circumstances the amount paid to sub contractors would not be known.

- d) In the run up to 27th July 2011, as explained in Item c) from a contractual perspective the position regarding payments to domestic sub contractors would not be known. With Nominated Sub-Contractors the Main Contractor has a duty to make payment in accordance with the Conditions of Nominated Sub-Contract. There was no indication that such payments were not made.

In the period between 27th July 2011 and the signing of the Agreement to reinstate the Contractors employment on the two contracts on 26th August 2011 assurances were given that all sub-contractors on the two contracts had been fully paid in order that work could continue without a break.

The only conclusion to be drawn is that the contract conditions upon which the parties agreed have been applied in a fair and equitable manner. The terms under which domestic sub-contractors operate with the Main Contractor is a matter for these two parties and are not known to the Employer.