

Junk status - what it means for the construction industry

By [Chris Bennett](#)

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South Africa's downgraded status by international agencies is likely to have significant impact on the construction industry as the cost of credit rises, particularly in existing contracts. As a result, the already high risk of non-payment is set to escalate further.



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The first to feel the pain of more expensive credit will be the employers as lenders raise interest rates. This places pressure on employers to fund their projects and reduces their returns. The fact is that there are not many projects built from the employer's cash reserves, and this will mean that more expensive credit will be a widespread blow.

State construction projects are likely to be the first to be affected, ranging from municipal projects and reaching all state-owned enterprises' projects. Already, the controversial nuclear build has been placed in doubt on account of the affordability factor. However, other infrastructure projects are also being placed on hold, including those in crucial areas such as water infrastructure.

Effect on employers

Aside from delaying or blocking new builds, the effect on employers already engaged in projects is significant. They must keep funding them, cancel or suspend them, with the associated results of doing so.

At MDA Attorneys, we see many matters where employers are not able to pay their contractors either on time or at all. This places many contractors in difficult positions, as most contractors will be unable to finance a project beyond 30 days. Those contractors then also take out loans to keep funding the works in anticipation of payment.

Most at risk are the smaller to medium enterprises, which is particularly devastating for development.

Non-payment or very late payment of contractors is already a major problem, particularly in the public sector. MDA has experienced contractors simply being told by state entities that there is no money left to pay them. We anticipate seeing more of this as a result of our junk status.

More insolvency proceedings

Unfortunately, we also anticipate seeing more business rescue and insolvency proceedings in the construction sector. Making sure one has contracted with a party which can pay (as a contractor) or finish the job (as an employer); and that the contract has sufficient protections, has never been more critical.

Despite being out for comment for a number of years, regulations to ensure prompt payment and rapid dispute resolution have not yet been promulgated. The absence of the regulations, however, does not mean that contractors are without rights. So long as the contractors have complied with their contracts, they should be in a position to make and prosecute their claims.

Parties should not be afraid to exercise their rights and pursue the contractual dispute procedures, judgment for payment certificates, make demands under guarantees, or even terminating the contracts and proceeding to recover damages.

Importantly, payment of certificates or demands under guarantees, and which are not paid, can be recovered legally quite rapidly from a legal perspective. Once judgment is obtained, execution against assets may proceed to recover the debt.

ABOUT THE AUTHOR

Chris Bennett, an admitted attorney, is a director of MDA Attorneys. Bennett provides commercial and contract advice and has advised on numerous major infrastructure projects. Bennett also has extensive dispute resolution experience and deals with many adjudications and arbitrations. His clients include many major South African and international employers and contractors, a number of whom are listed companies both in South Africa and abroad.

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