

RICS Practice Alert

UK Regulated Firms – Insolvency and 'Phoenix' firms

Issued by email – 15 January 2024

RICS is issuing this Practice Alert to all RICS Members and Regulated Firms in the UK. Its purpose is to remind regulated Members of their professional and regulatory obligations relating to compliance with all statutory and RICS regulatory requirements. It also explains how RICS will engage with RICS Members who are directors or Responsible Principals of Regulated Firms that are wound-up or liquidated.

Why we are issuing this alert

RICS has seen an increase in cases where directors or Responsible Principals of liquidated RICS Regulated Firms have applied to register a new corporate entity that was set up before, or shortly after, the liquidation of the previous firm. This practice is referred to as 'phoenixing' and it can be detrimental to consumers, creditors and employees, where appropriate steps have not been taken in areas such as securing client money, making payment of Alternative Dispute Resolution (ADR) Awards and ensuring Professional Indemnity Insurance (PII) run-off cover is in place.

The Chair of the RICS Standards and Regulation Board, Nigel Clarke says:

'While small in number, so-called 'Phoenixing' can undermine public and consumer confidence in the high professional and ethical standards expected of RICS Members and Regulated Firms – and undermine the reputation of the vast majority of high performing Regulated Firms.'

The RICS Rules of Conduct expect RICS members and firms to manage their professional finances responsibly and not to take unfair advantage of others. Unfortunately, firms can become insolvent for a range of legitimate reasons and being forced to place a firm into liquidation or administration is not necessarily misconduct.

However, in order to maintain and strengthen public confidence in the profession, it is important that directors of liquidated firms are able to demonstrate to RICS that they have complied with legislative and statutory requirements and are not seeking to unfairly avoid liabilities while continuing to trade through new firms.

RICS Regulation will be engaging with the UK Insolvency Service and implementing additional measures to provide confidence that RICS Members in positions of trust as directors or Responsible Principals can demonstrate full compliance when de-registering existing firms and before registering new firms to be regulated by RICS.

Information requirements from RICS Member directors or Responsible Principals of an RICS Regulated Firm

If you are a director or Responsible Principal of an RICS Regulated Firm that is intending to be (or has recently been) wound-up or subject to liquidation you must notify RICS (complaints@rics.org) providing details of:

- a. the liquidator/insolvency practitioner/official receiver, including their contact details
- b. proof of the current Professional Indemnity Insurance policy, as well as details of the 'run-off' cover
- c. details of any ADR Awards against the firm in the preceding 12 months and proof that the Awards have been paid
- d. details of any pending ADR matters
- e. the Firm's Client Money accounts and steps taken to secure the funds in accordance with the [RICS Client Money Protection Scheme Rules](#), [RICS' Client money handling, 1st edition](#) or arrangements made to repay the client funds to clients
- f. steps you have taken in relation to the retention of any confidential files and documents, including confidential client files
- g. steps you have taken to inform clients/customers of the intended winding up/liquidation
- h. steps you have taken to inform creditors of the intended winding up/liquidation
- i. steps you have taken with your employees regarding the intended winding up/liquidation
- j. all RICS members working for or employed by the RICS Regulated Firm (in any capacity)
- k. any other firms or entities under which you are undertaking surveying services.

If you have been a director or Responsible Principal of an RICS Regulated Firm that has been wound-up or liquidated in the last 24 months and have not advised RICS Regulation, you are required to do so without delay. Please email the details to complaints@rics.org.

Further steps RICS may take following notification of deregistration and/or closure of firm

RICS will consider the information provided above. Where necessary we may seek confirmation from the liquidator/insolvency practitioner/official receiver about the conduct of the directors. In particular, RICS may check that:

- a. evidence or information of alleged fraudulent behaviour by the company or any of its directors
- b. the company submitted all tax returns and paid all tax and any other money due
- c. the company and the directors did not continue to trade to the risk, or potential disadvantage of creditors, clients, or consumers at a time when the company was insolvent
- d. there has not been any conduct that removed, or attempted removal of assets or funds that should have been available to pay creditors
- e. the director/s ensured that the company was run with appropriate due diligence, and exercised reasonable care, skill and diligence having regard to UK law and RICS professional standards
- f. the company kept and can produce appropriate accounting records
- g. the company prepared and filed all accounts and returns at Companies House
- h. the company and the director/s co-operate fully with any official receiver or insolvency practitioner appointed to the company
- i. all client money was kept in accordance with [RICS' Client money handling](#) and RICS' Client Money Protection Scheme Rules, including repayment of funds to all clients
- j. the directors are/were not subject to director's disqualification for any reason.

RICS may make further inquiries to insurers and third parties to verify information provided by the firm and its directors/principals prior to deregistering the firm.

As part of its process of registering new firms, RICS also asks whether any of the directors or principals have been the director or principal of any company that was placed into liquidation or administration and may seek more information about that previous company where necessary.

How we deal with concerns

RICS will consider the information provided by the RICS Member or Firm and may make requests for further information.

RICS may investigate any RICS Member acting as director or Responsible Principal where they have failed to comply fully with all statutory and regulatory requirements as required under [RICS' Rules of Conduct \(rics.org\)](#).

Where evidence or information is available which suggests that RICS Members use family members, friends, other RICS Members or proxies to 'front' new companies where the RICS Member is effectively acting in a position of trust, RICS will also consider further investigation and potential further disciplinary action.

Please also note that candidates cannot be substituted as a director or Responsible Principal to meet RICS' requirements as a 'Principal' under the RICS' Rules for the Registration of Firms ([Staying compliant \(rics.org\)](https://www.rics.org/staying-compliant)).

RICS guidance relating to deregistering and closing a firm may be found on the RICS website, via the following links:

- [Staying compliant \(rics.org\)](https://www.rics.org/staying-compliant)
- [Advice for those considering closing down their practice \(UK version\) \(rics.org\)](https://www.rics.org/advice-for-those-considering-closing-down-their-practice-uk-version)

Good Practice Reminder: RICS Members have a professional duty to promptly disclose the details of any Regulated Member that you reasonably believe may have breached RICS Rules or professional standards. The duty to speak up is an important part of the profession's 'moral compass'. Think of it as protecting the reputation of your profession by helping RICS to uphold the public interest. Please email concerns to complaints@rics.org.