

PROJECT MANAGEMENT



Contract Risk Insurance and Indemnities

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Contract Risk Insurance and Indemnities

Introduction:

In every organization care is taken to manage risks, by seeking to eliminate those that can be removed, and reducing and managing the remainder. Part of this process involves developing robust contracts which apportion risk equitably and include a structure of indemnities with contractors, supported by a comprehensive insurance regime. In addition, it is important that contract personnel understand contractual risks and what insurance can (and cannot) do to remove the financial consequences of such risk; remembering always that insurance only mitigates the effect of risk, it does not make the risk itself go away.

This program is designed to:

- Provide an understanding of contract structures, and how and why contracts are drafted in particular ways
- Provide an understanding of some of the main clauses in different types of agreements
- Help participants to understand the meaning of insurance arrangements, and the terminology used
- Ensure participants appreciate the effect of insurance, and its limitations in the management of risk

Explain how to use contract provisions to reduce the risk of disputes, and where disputes do arise, some of the methods by which disputes are resolved in international contracting

Who Should Attend?

This intensive 5-day program is suitable for all personnel involved with contracting, whatever their background:

- Engineering
- Projects
- Construction
- Tenders
- Contracts
- Legal
- Insurance
- Risk Management
- Buying
- Purchasing
- Those new to the function, preparing for a major project, or experienced managers looking for a refresher will also benefit from this program

Program Objectives:

- A more in depth understanding of the elements of a contract
- How to analyze complex contract documents, and understand the inter-relationship between clauses
- How to develop effective indemnity regimes
- Appropriate type and form of indemnities in different contracts
- How to use indemnities to manage risks
- The limitations of indemnity clauses
- How to link indemnity and insurance arrangements
- What types of insurance are available in a contracting context
- How to develop insurance clauses
- The latest thinking in dispute resolution techniques

Program Outline:

DAY 1 - Commercial Risk and mitigation through the contract

- The need for contracts
- Identifying risk
- Risk mitigation or impact mitigation?
- Title
- Incoterms
- Intellectual property
- Types and nature of contracts
- Definition of terminology i.e. Conditions of contract & terms of contract etc.
- Different legal systems – how to look for common practices but understand the differences

DAY 2 - How and why contracts are drafted

- Why we use contracts
- Formation of a Contract
- Oral or written?
- The key elements of a contract
- Terms and Conditions of contract
- Liquidated damages/penalties
- Limits of liability
- Suspension and termination
- Acceptance and Certificates
- Guarantee/Warranty/Maintenance
- Agency issues
- The basic structure of a contract
- Incorporating documents by reference
- Standard Forms
- Incorporating tender documents
- Letters of Intent or Award
- Letters of Comfort or Awareness
- Side Letters
- Bank bonds and Guarantees
- Parent Company Guarantees

DAY 3 - Insurance

- The purpose of insurance
- What insurance covers, and what it does not
- Limits on cover
- Duty to disclose information
- Meaning of “All Risks”
- Relationship with risk management
- Types of insurance used in contract clauses
- Workmen’s compensation/employers’ liability
- Third party/liability insurance
- Property damage
- Professional indemnity/errors and omissions
- Construction All Risks
- Motor and aviation
- Marine insurance
- Hull and machinery
- Protection and indemnity (“P&I Clubs”)
- Other relevant insurances
- Pollution
- Goods in transit
- Business interruption
- Unfair calling cover (bonds and guarantees)
- Export credit insurance
- Insurance for projects
- Who arranges?
- For whose benefit?
- Extension to subcontractors (National Oilwellcase)
- Terms – involving contractors

DAY 4 - Indemnities

- Meaning of indemnities
- Making indemnities work – irrespective of negligence or breach of duty (the Piper Alpha litigation)
- Link with insurance
- Cross indemnities
- Personnel
- Property
- Catastrophe risks
- Value of covenant

- Issues with indemnities under Civil Law system
- Third parties
- Liability in negligence – relationship with contract conditions
- Claims handling
- Managing claims under project policies
- Making timely claims
- Information
- Involving insurers
- Resolving disputes
- Self-insurance

DAY 5 - Resolving Dispute

- Negotiation
- Staged Dispute Resolution clauses
- Litigation
- Arbitration
- Enforcement of Judgments and Awards
- New best practices in dispute resolution
- Mediation
- Conciliation
- Early Neutral Evaluation
- Expert determination

Pendulum Arbitration