

Contractual Risk, Insurance and Indemnities

INTRODUCTION

- In every organisation, 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 Contractual Risk, Insurance and Indemnities training course 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

PROGRAMME OBJECTIVES

- To provide a more in depth understanding of the elements of a contract
- To understand how to analyse complex contract documents, and the inter-relationship between clauses
- To understand how to develop effective indemnity regimes
- To understand the different types and forms of indemnities in different contracts
- To understand how to use indemnities to manage risks
- To understand the limitations of indemnity clauses
- To understand how to link indemnity and insurance arrangements
- To understand what types of insurance are available in a contracting context
- To understand how to develop insurance clauses
- To be aware of the latest thinking in dispute resolution techniques

WHO SHOULD ATTEND?

This intensive training course 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 training course

TRAINING METHODOLOGY

- The Contractual Risk, Insurance and Indemnities training course will combine conventional teaching with a high level of participation; including an interactive approach to involving participants in discussion of topics, exercises, and encouraging participants to bring their own experiences forward for discussion and debate.

PROGRAMME SUMMARY

- This training course starts by looking at how contracts are used to address and mitigate the impact of commercial and other risks, and to assist in the management of those risks that remain. It will explain how contracts are put together, and the additional issues that arise when contracting internationally.
- It will then look at insurance arrangements within a contractual context, and how these interface with the indemnity regimes commonly found in many international contracts. Finally, it will address how to use the contract to minimise disputes, and various methods of resolving any disputes that do arise, including some alternative methods that are not traditional in commercial contracting, but are becoming more popular, such as mediation.

PROGRAM OUTLINE

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

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

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?

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

- 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