
The benefits of an Owner Controlled Insurance Programme (“OCIP”)

Engineering & construction contracts (including re-developments / conversions) can often comprise a multitude of specialist works by independent trade or sub-contractors. Pressure to deliver completion on time, to budget and in accordance with expected levels of quality is constant. Co-ordination of such project work requires excellent skills in management. But when things go wrong, could there be an ideal financial solution?



Whilst the traditional route of contractors insuring their jobs may work for smaller contracts, problems can arise where this method is used on larger more complex projects, especially higher value contracts.

The OCIP is available to provide comprehensive insurance protection to a number of key parties involved in a construction project. It is also a more efficient method to source suitable insurance capacity and access wider cover than would otherwise be provided if the contractor(s) insured.

Property developers working on higher value projects often source the capital to build through a mixture and variety of international finance markets, comprising both debt and equity. The investors usually employ external lawyers to ensure a robust contractual agreement is secured and backed by suitable insurance protection. The insurance protection on these higher value projects is also usually subject to audit via the due diligence process required by the investors. The OCIP basis of insurance coverage tends to be the expected level of suitable insurance on such projects, especially due to its unique ability to include ‘Delayed Start Up’ insurance coverage, which would be unavailable if the contractor(s) were procuring the insurance.

Below we set out some of the features and benefits of the OCIP and how it can be used to address the problems that can otherwise occur:

| Issue | When Contractor Insures | When Employer buys OCIP instead |
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| Administration | Each Contractor could be procuring its own insurance, each policy having independent and different terms, conditions, exceptions and exclusions. | <p>One policy is issued which delivers an integrated solution meeting the needs of all interested parties.</p> <p>This method also eliminates the employers handling costs that would otherwise apply if individual contractors had policies, which all need to be checked, not just at the outset, but at each of their different annual renewal dates too.</p> |
| Handling costs | <p>The Employer would likely have specified insurance requirements of the contract in the tender documents.</p> <p>Such documents would need to be checked by the employer to ensure all interests are properly noted.</p> <p>The employer would also need to check that the contractors policies are adequate at all times (including after each annual renewal for each separate contractor) to make sure that the policies were not cancelled during the period of the contract or not renewed. Checking of sum insured adequacy relative to the individual contractors' contract price to be made also. It would be important to get the contractors full policy to make sure there are no exclusions that are unacceptable to the employer.</p> | <p>The handling process is eliminated as the OCIP includes a pre-agreed broad form policy wording, for the entirety of the project period and including all interested parties as composite insureds on the same policy.</p> <p>Avoids unknown gaps.</p> <p>Avoids unknown overlaps.</p> |
| Liquidation of a contractor | If the contractor goes into liquidation their insurance may become void. | If an individual contractor goes into liquidation, the policy stays in force and cover would be seamlessly transferred (within the OCIP) when a replacement for that contractor is included. |
| Vitiating acts (where the acts of a contractor could invalidate an insurance policy) | If the contractor fails to exercise its legal duty to provide a fair presentation to the insurer, non-discloses or misrepresents material facts, breaches a policy condition or fails to pay the premium on time, its insurance policy could be invalidated in the event of a claim. | <p>The OCIP policy is extended to note that a vitiating act by one insured party (e.g. a contractor) will not prejudice the coverage under the OCIP for all other insured parties covered by the same OCIP policy.</p> <p>This basis is usually a mandatory requirement of Lenders.</p> |

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| Claims scenario | <p>In the event of a claim where there is contention who is liable (e.g. two contractors both disputing fault), each of their respective insurers may deny liability and allege the other is liable. This protracted dispute could cause unnecessary delays.</p> <p>Also where there is a large number of policies involved, there could be events which overlap and or where gaps in cover materialise between the inconsistent insurances of the individual contractors. Again this can lead to other problems in the event of a claim.</p> | <p>In the event of a claim, there is only one policy to turn, as all of the contractors are covered on the same policy.</p> <p>Avoids unknown gaps.</p> <p>Avoids unknown overlaps.</p> |
| Claims payments | <p>Usually to the contractor (insured party) only.</p> <p>If the contractor goes into liquidation after receiving the claims monies, but before it has completed the reinstatement works, the employer would lose out and not be able to access the claims funds.</p> | <p>Normally paid to the Principal Insured (Employer) or, if it is a requirement of a Lenders Agreement, a Loss Payee Clause may apply. It is common for Lenders to require higher value claims are paid to it as a condition of the funding agreement, thus OCIP ensures contractual compliance.</p> |
| Insured parties | <p>Typically only the Contractor can claim off its own policy. Sometimes there will be a blanket indemnity to principal provision, but this will be subject to the terms and conditions of the contractor procured policy wording, which they employer has little control/involvement with.</p> <p>If a Sub-Contractor has employed a Sub-Sub Contractor, who caused a claim, this situation can become more complicated if that party had not properly insured back to back with the Main Contract.</p> | <p>Intentionally much wider, typically covering Employer, Main Contractor, All Tiers of Sub/Trade Contractor (whether known or not at policy inception), lenders, guarantors etc. Arranged bespoke to the project and the lending / facility agreements.</p> <p>Expensive sub-actions on Contract Works / Property Damage type claims are avoided, since subrogation is automatically waived between the Insured parties.</p> |
| Price / competitiveness | <p>Insurers base their premiums, amongst other things, on the prior claims experience of the Contractor on all of its past and current contracts worked on in the preceding 5 year period.</p> | <p>Since the OCIP is only focused on the single project, the underwriting of it is much more focused.</p> <p>Also 'buying in bulk' via one policy appeals to insurers who are more flexible in their competitive pricing.</p> <p>The experience of the contractors remains relevant, but insurers tend to price the OCIP at a very competitive level, whilst also being able to give wider cover also.</p> <p>On an OCIP, the Employer has the 'control of the cost' of the insurance.</p> |

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| Breadth of cover | <p>Off the shelf CAR policies, purchased by contractors, often have pretty average cover.</p> <p>Example – Contractor policy usually has DE3 defects exclusion / coverage. Meaning damage to the works caused by a defect in design/workmanship/material is excluded, but the consequences of the defects (in respect of non-defective parts) are covered (therefore excluding that part which is defective and damaged).</p> | <p>OCIP wordings are typically full of broad extensions and give significantly more coverage.</p> <p>Example – OCIP policy usually has DE5 defects exclusion / coverage. Meaning damage to the works caused by a defect in design/workmanship/material is covered, in addition to the consequences of the defects. Subject to a DE5 deductible and cover not applying to betterment improvements.</p> <p>This is just one example of a coverage enhancement – it is not uncommon for the actual number of enhancements to be in the 'dozens', compared with the contractor procured basis of cover.</p> |
| Design of cover | <p>The contractor policy would be annually renewable and automatically insures all contractors that contractor works on in the year, provided they do not exceed a maximum contract value. The coverage arranged is pretty generic / average.</p> | <p>OCIP policies are project specific, with coverage tailored to the unique requirements of the actual project.</p> <p>Ultimately it is the Employer that procures the OCIP (sometimes with input from the external investors), so the specific cover is designed to be relevant for the project.</p> |
| Limit insured | <p>Annual contractors policies are set up to insure all contracts the contractor works on subject to a contract limit (sum insured). If a contract value exceeds this limit, it needs to be properly declared otherwise it is not insured.</p> <p>Sometimes the Max Contract Value Sum Insured can be insufficient. For example if the cost of reinstating the works involves additional reinstatement costs that exceed the original contract value/building costs.</p> | <p>A number of extensions are usually added to the OCIP policy to guard against such situations.</p> |
| Period of cover | <p>Usually the contractor cover is annually renewable. So claims in one year could mean that the renewal premiums increase for the subsequent year.</p> | <p>OCIP policies are non-renewable and non-cancellable, so premiums quoted at the outset are locked in for the duration of the agreed multi-year construction and maintenance/rectification periods.</p> |
| Delayed Start Up | <p>Not available when the Contractor procures the insurance, as the Contractor has no 'insurable interest'.</p> | <p>Available as a core section to the OCIP. Valuable protection for the Employer (and sometimes the Lenders) in relation to the financial consequences of a delay to the PC date, caused by specified peril(s).</p> <p>The contractor is usually given an extension of time and immunity to pay liquidated damages) when a specified peril happens.</p> |

OCIP COVER

The OCIP policy is usually split into 3 core sections and generally provides the following covers:

| Section | Main Cover Description | Insured Parties Covered |
|----------------|---|---|
| 1 | <p>Contract Works – All Risks cover for physical loss or damage to:</p> <ul style="list-style-type: none"> - Permanent Works - Temporary Works - Free Issue Materials - Existing Structures - Plus various OCIP extensions | <p>Employer Main Contractor All Sub-Contractors / Trade Contractors Lenders / Funders / Financiers / Guarantors</p> |
| 2 | <p>Delayed Start Up – Coverage for:</p> <ul style="list-style-type: none"> - Advanced loss of gross profit; &/or - Advanced loss of gross revenue; &/or - Advanced loss of gross rent; &/or - Loss of bank interest; &/or - Debt servicing costs; &/or - Increased cost of working expenses - Plus various OCIP extensions <p>Relating to a delay to the Practical Completion date, attributable to physical loss or damage caused by specified perils insured under Section 1</p> | <p>Employer only (sometimes also Lenders)</p> |
| 3 | <p>Public Liability – Includes:</p> <ul style="list-style-type: none"> - Injury to persons - Loss of or damage to or destruction of material property - Nuisance, trespass, obstruction or interference with any right of way, light, air, water or easement - Libel, slander or defamation of character - Plus various OCIP extensions - Extension available for JCT6.5.1 (Non-Negligence) | <p>Employer Main Contractor All Sub-Contractors / Trade Contractors Lenders / Funders / Financiers / Guarantors</p> |

OTHER INSURANCES

The following separate policies would also be relevant for consideration by the Employer:

- Environmental Impairment Liability / Site Pollution / Contractors Pollution
- Inherent / Structural / Latent Defects
- Legal Indemnity (Rights of Light, Restrictive Covenant, Defective Title etc.)
- Developers Cost Overrun / Sub-Contractor Default, LAD's & Performance Bonds etc.
- Project Cargo / DSU (for international imports shipped to the contract site)
- Professional Liabilities – PI / D&O / Fiduciary Liability etc.
- Political Risks / War & Terrorism

SERVICES FROM W DENIS

As experts in the provision of insurance services to Property Developers / Employers / Contractors / Funders etc., W Denis project manage the insurance broking services to include:

- *Consultancy to evaluate relevant exposures – contractual or otherwise.*
- *Contract due diligence (including duty of care agreements, collateral warranties etc.)*
- *Other general advice around indemnity clauses and liability agreements, JCT, NEC etc. The contract conditions will also usually dictate who the arranger of insurance is, who is responsible for the premium payment, joint names or composite insured provisions, cover requirements, insured values, procedures for giving evidence of insurance, claims payments as well as period of cover.*
- *Drafting of bespoke insurance policy wordings to meet specific requirements.*
- *Creation of 'project insurance' marketing submission, for presentation to quoting insurers*
- *Full broking exercise – according to the nature of the project to be insured, this could be to insurers in the UK regional market, the London insurance market, Lloyd's of London or even international markets. W Denis does not limit itself to a small panel of insurers, unlike others.*
- *W Denis is a fully accredited Lloyd's Broker, with 'full' access to all syndicates in Lloyd's of London. Lloyd's franchise agreement means that it is licensed to write (re)insurance in over 200 countries worldwide. For EU domiciled business, W Denis can access Lloyd's Brussels; the new post-Brexit entity created by Lloyd's to ensure continuity of service in the EU.*
- *W Denis is also a member of Euribron, an international group of independent insurance brokers working collaboratively to provide local insurance services to business domiciled worldwide (Excluding countries prohibited by international sanctions).*
- *Compliance with Lender requirements. W Denis brokers are familiar with the 'broker letter' obligations that usually accompany major funding agreements for construction and real estate projects. This includes the specific insurance requirements that are expected to be complied with by the underwriters involved, which means off the shelf policies are insufficient and bespoke arrangements need to be crafted to ensure compliance.*
- *Claims support, advice and management. W Denis in house claims dept. will guide you through the process, helping with the collation of information, liaising with other parties, but ultimately working with you to seek a settlement from the insurer in accordance with your requirements.*

EXAMPLES OF OCIP INSURED PROJECTS

W Denis has a mixture of experience providing OCIP solutions on a range of different types of projects:

- £80m – Manchester PRS
- £155m – Birmingham PRS
- £150m – London Office
- £250m – Leeds Residential
- NZ\$75m – Pacific Islands – PV Power
- US\$150m – Guatemala - Dam & Plant
- £500m – London Residential
- €335m – Portugal Motorways/Bridges
- £60m – Channel Islands Office
- £250m – London Office
- £138m – London Mixed Use
- £1bn + London Multi Year Housing
- £66m – London Conversion
- £127m – London Housing Assoc.

CONCLUSION

By retaining control and responsibility for arranging the project insurances, the Employer can choose the best market/insurer(s) based on coverage requirements as well as the cost. Since OCIP can be a multi-year non-renewable policy, the cost of it is known in full upfront, avoiding the uncertainty that an annually renewable policy would otherwise create. OCIP procurement delivers:

- Confidence in the quality of the policy cover
- Confidence in the compliance with lender obligations
- Confidence in the financial security of the insurers involved
- Confidence that the premiums are known upfront and cannot change
- Confidence that the insurance procurement is under your control (with support from your expert broker)

CONTACT

W Denis Group was established in 1963, but today has grown into one of the largest independent insurance brokers in the UK.

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