All for one and one for all

PIF Cambridge

Michael Earp Aon Risk Solutions

5th July 2011

To be single .... Or not to be single?

PRINCIPALS & OWNERS REQUIREMENTS

- All Principals/Owners aim to complete each project development on time, within budget and to an agreed standard
- They endeavour to offset obligations on the professional team and contractors by contract conditions
- Insurance procurement is an important part of the construction process

To be single ……. Or not to be single?

OPTIONS FOR PROCUREMENT OF INSURANCES

- Contracts contain Insurance Clauses with options
- Typically they leave the insurances for the professional team and/or contractors to arrange
- Employer can arrange separate Owner Coordinated Insurance Programme (OCIP), which is often referred to as Project Insurance, but DOES NOT include Professional Liability/Indemnity

To be single ……. Or not to be single?

DISADVANTAGES IF PROFESSIONAL TEAM AND/OR CONTRACTOR PROCURES INSURANCES

- Not uncommon for insurances to become fragmented
- Risk of gaps, duplication of cover & insurance costs
- The owner loses control of all insurance issues
- Insurances cease following insolvency of professional team and/or contractors

To be single ……. Or not to be single?

OWNER COORDINATED INSURANCE PROGRAMME

- **Now nearly all major construction projects are being protected by OCIP's**
- **Funders are taking a greater interest in the cost and scope of insurance cover in order to protect their investments**
- **The benefits of an OCIP also apply to small and medium sized projects**
- **Important that OCIP considered at early stage prior to going out to tender for maximum benefit**

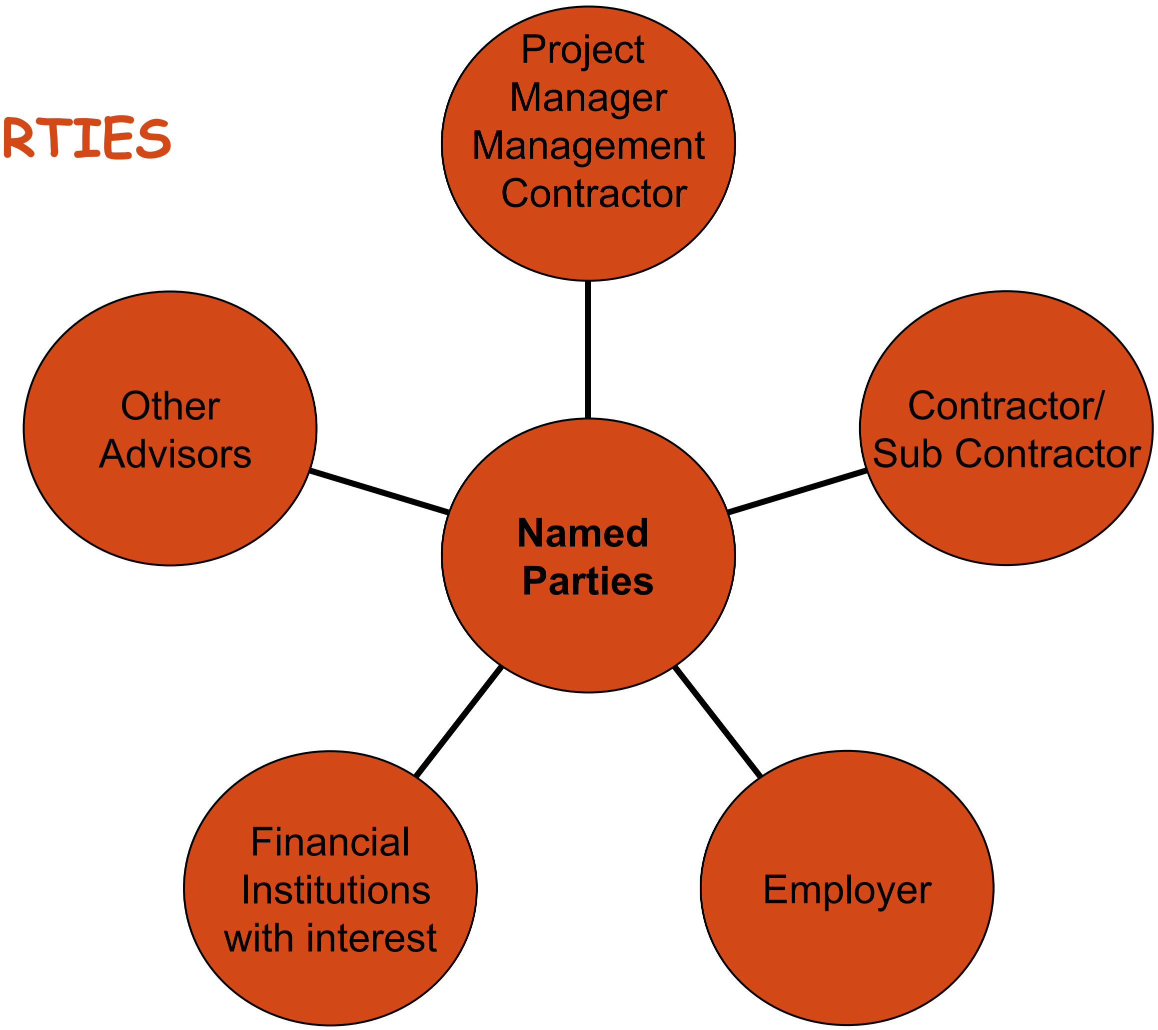
To be single ……. Or not to be single?

OCIP ADDRESSES KEY MATERIAL DAMAGE, LIABILITY & (CERTAIN) FINANCIAL RISKS

- All Risks - Contract Works
- Existing Property/Facades
- Increased Costs of Construction Incomplete/un-built Works
- Public Liability
- Advance Loss of Revenue/Delay In Start Up

To be single ……. Or not to be single?

OCIP INSURED PARTIES



To be single .... Or not to be single?

OCIP ADVANCED LOSS OF REVENUE/DELAY IN START UP

- Provides cover for Advance Loss of Rent, Profit, Interest etc arising out of damage to the Works (under the policy) which causes delay to Practical Completion
- Such cover only provided in conjunction with same insurers covering the contract works
- Does NOT replace contractors Liquidated Damages (LAD)
- The Employer will not receive LAD's for delay, where an extension in time is given following loss by Specified Peril

To be single ……. Or not to be single?

OCIP BENEFITS

- Address key material damage, liability and financial risks
- Provides control, certainty, flexibility and ultimately peace of mind to contractual parties
- Competitive premium rates
- Meet Financiers requirements
- Uninterrupted cover provided following contractor insolvency
- Smooth transfer to operational insurance programme

To be single ……. Or not to be single?

DESIGN (PROFESSIONAL) PROBLEMS (1)

- The OCIP may:
  - cover “design” provided there is “damage”
  - include or exclude the faulty part (depends on wording)
  - include professional team as Named Assureds
  - apply during Construction and Maintenance
  - waive rights of subrogation against consultants

- Third Party Liability may:
  - include professional services
  - covers liability for bodily injury and third party property damage

To be single ……. Or not to be single?

DESIGN (PROFESSIONAL) PROBLEMS (2)

INCIDENT	INSURANCE POLICY
Damage to works due to defective design prior handover	Contract Works
Damage to works due to defective design post handover	Professional Indemnity
Defective design without damage	Professional Indemnity
Damage/injury to third parties not due to professional error	Third Party Liability

To be single ……. Or not to be single?

ALTERNATIVE PROFESSIONAL INDEMNITY SOLUTIONS

- Fixed Period Single Project PI Policy
- Annual Single Project PI Policy
- Owner's Protective PI Policy
- Reliance On Professionals' Own PI Policy

To be single ……. Or not to be single?

ALTERNATIVE PROFESSIONAL INDEMNITY SOLUTIONS

- Fixed Period Single Project PI Policy
- Annual Single Project PI Policy
- Owner's Protective PI Policy
- Reliance On Professionals' Own PI Policy

Fixed Period Single Project Pi Policy

A long period policy effected for the length of the contract plus a 'run-off' period covering the consultants and contractors purchased by the Employer and/or Principal on behalf of all parties

PROS

- Cover and price will be fixed
- Principal can control cost
- All parties can be insured in case a 'professional' can't renew its PI policy
- Principal's cover for third party claims
- 'Dovetailing' possible with the OCIP
- No annual renewal process

CONS

- What if liability extends beyond policy?
- Insurers insolvency
- Who pays policy deductible?
- Duplication of costs
- Maximum period 15 years
- Expensive
- Cover limited
- Aggregate limit period

Fixed Period Single Project PI Policy

REASONS FOR USE

- Where the Principal favours control over cost
- No need to "point the finger at the guilty party" - albeit legal liability has to be established against one or more of the 'professionals'
- Where a 'professional' does not carry its own PI insurance
- Joint Ventures where the Joint Venture requires separate insurance protection

Annual Single Project PI Policy

An annual policy covering the consultants and contractors purchased on behalf of all parties by the Employer and/or Principal

PROS

- Principal controls insurance
- Principal can control cost
- All parties can be insured
- Principal's cover for third party claims
- 'Dovetailing' possible with the OCIP
- An annual limit of indemnity
- Wider market capacity should ease premium pressure

CONS

- What if liability extends beyond policy?
- Indeterminate cost at the outset
- Who pays policy deductible?
- Annual policy may not be able to be placed in future years
- Duplication of costs

Owner's Protective PI Policy

An "umbrella" policy purchased by the Employer and/or Principal for its own benefit sitting above the consultants' and contractors' own various policy limits

PROS

- Partial culpability for own mistakes
- Principal can purchase cover in excess of policies
- Will cover certain DIC risks and if consultants unable to renew policies OPPI will "drop down"
- Cover can be bought for 'hot-spots'
- A cost effective option

CONS

- Insurers will not be prepared to drop down below a minimum level
- Uncertainty of long-term cost

Owner's Protective PI Policy

REASONS FOR USE

- Where the Principal wishes to exert a certain degree of control with a cost effective solution
- Where the Principal wish to procure cover for a potential large loss over and above the usual limits effected by consultants and/or contractors
- Where the Principal requires protection for their contingent risks, excess liability and difference-in-conditions (DIC) cover should the consultants or contractors policies fail to respond to a claim

Reliance On Professionals' Own PI Policy

THE DEFAULT POSITION

PROS

- Consultants will purchase limits appropriate to their risks
- Principal unlikely to need own cover
- Usually most cost effective option

CONS

- Cover purchased annually and no guarantee of cover
- No transparency of cost
- There will be little control over breadth and quality of cover purchased

Reliance On Professionals' Own PI Policy

REASONS FOR USE

- Sophisticated PI market
- Where the Principal are satisfied that consultants' and contractors' PI cover is sufficient and satisfactory for the risks within the project
- Where the Principal believes that the consultants and contractors will have no difficulty in procuring PI insurance in future years
- Where Principal will not be indemnified under a PI policy for third party claims
- Where Principal does not need to cover any 'in-house' design or project management work undertaken by the Principal

Taxation, Law And Local Regulations

THE MUDDY WATERS OF GLOBAL INSURANCE

- Projects outside UK/USA must contend with insurance issues
- Of the world's 245 sovereign nations, 131 maintain membership in the International Association of Insurance Supervisors and many maintain their own insurance regulations and requirements
- Whilst firms from UK or USA are likely to have worldwide cover but global coverage wording often lulls firms into overlooking the implications of the diverse range of local and country-specific insurance requirements
- The failure to comply with these requirements may have significant consequences for a firm

Taxation, Law And Local Regulations

ADMITTED, NON-ADMITTED AND COMPULSORY INSURANCES (1)

- An admitted policy is issued by an insurance company licensed in the country in which a project is located
- Local admitted policies have a number of benefits:
  - they comply with local insurance regulations
  - they enable premium tax and claim payments to be made locally
  - they facilitate allocation of premium for tax purposes
  - they deliver local certificates of insurance
- Local admitted policies will also generally track with local legal standards

Taxation, Law And Local Regulations

ADMITTED, NON-ADMITTED AND COMPULSORY INSURANCES (2)

- A non-admitted policy is one issued by an insurer in a jurisdiction in which it is not licensed, or is issued in a jurisdiction other than the country in which the risk is domiciled
- The reliance on non-admitted paper in a jurisdiction that requires admitted paper can present a number of issues, including
  - possible penalties and fines for the failure to comply with local laws through the purchase of illegal non-admitted insurance
  - potential tax liability for repatriating claims payments
  - potential tax liabilities for failure to pay tax on premium allocated for local activities
  - inability to issue valid certificates of insurance
- An insurance policy that does not comply with local regulations may be declared void

Taxation, Law And Local Regulations

TAX

- **A ruling by the European Court of Justice sets a clear precedent for the local/in-country liability of international firms for the payment of insurance premium tax liabilities within the EU**

Taxation, Law And Local Regulations

LICENSED BROKER

- Certain jurisdictions around the world require that insurance – admitted or non-admitted, compulsory or otherwise – be placed by an insurance broker licensed in that jurisdiction