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> Contractor-arranged insurance can pose risks and unfavourable terms for principals

Professional & Financial Risks | Asia

Principal Controlled Professional Indemnity insurance

Professional Indemnity insurance for project principals

Providing project principals with control

Cost blowouts. Missed deadlines. Lost revenue. Negative press coverage.

Project principals expose themselves to a range of risks when embarking on a major construction project including the potential for a mistake by a contractor or consultant in the performance of their professional services causing major financial and reputational problems. Unfortunately, there are some things that are simply beyond the control of a principal.

In an attempt to protect themselves against this scenario, principals have traditionally made it a contractual requirement for contractors and consultants to carry Professional Indemnity (PI) insurance for the duration of the project and beyond.

Sometimes this requirement is satisfied with annual Professional Indemnity (PI) policies and at other times with multi-year Project PI policies. But relying on contractor arranged insurance also presents risks for principals. Often contractors negotiate cover which is not favourable to the principal (such as cover for loss mitigation and cross liability) and there may be no cover at all in the event that the contractor has breached its policy conditions or failed to meet its duty of disclosure. Then there is always the possibility of the limit being eroded or exhausted by claims brought by third parties other than the principal.

This is hardly an ideal outcome for principals who are directly or indirectly paying the premium for the policy that the contractor purchases. The good news is that Liberty has developed a new product which gives control back to the principal.

Principal controlled Professional Indemnity insurance

Liberty's Principal Controlled Professional Indemnity Insurance (PCPI) provides an innovative alternative to traditional contractor arranged PI insurance. Unlike traditional Project PI insurance which insures the contractor and consultants, PCPI actually insures the principal. Below is a summary of the cover provided by the policy, however, this is a summary only which does not describe key exclusions or qualifications. You should refer to the policy wording for the complete terms and conditions. A copy of the policy wording is available from your Liberty underwriter.

There are two parts to the policy. Part A covers first party loss and Part B covers third party liability.

Part A – Insured's loss

The principal is covered for its loss caused by an act, error or omission of a contractor or consultant in the performance of their professional services. The relevant contractors and consultants are listed by endorsement and the definition of professional services is tailored to match the services they are providing to the principal in respect of the project.



"Loss" is defined to be compensatory damages which the principal would be entitled to recover from the contractor or consultant if they were to institute civil proceedings in respect of the professional act, error or omission in question. Importantly, the principal's right to claim under the policy will not be prejudiced by contracts the principal has entered into which limit the liability of a contractor or consultant and thereby limit Liberty's rights of recovery.

Part B – Insured's liability

The principal is covered for its civil liability in respect of claims made by third-parties (other than the listed contractors and consultants working on the project) arising from the performance of professional services by the contractors or consultants. Cover is also provided for pre-approved defence costs the principal incurs in the investigation, settlement, defence or appeal of those claims. Liberty will pay for those defence costs as they are incurred and prior to final resolution of the claim.

Part A and B – Multiple causes of loss

Did you know that pursuant to the legal precedent known as the "Wayne Tank Principle", an insurer may deny indemnity for an entire claim if one of the proximate causes of the loss is specifically excluded under a policy? Under both Parts A and B of the policy, Liberty affirmatively states that it will not apply this legal principle. Rather, we will work with the principal in a fair manner to determine if any part of the loss is insured under the policy and pay that amount.

Claims management

Section 6 of the policy sets out the procedure for notifying and managing liability claims under Part B. This procedure is much the same as it is under all Liberty's PI policies. Because Part A provides first party cover, the procedure for notifying and managing claims is somewhat different:

Notification

As soon as the principal becomes aware of an act, error or omission of a contractor or consultant which might give rise to a loss, the principal must notify Liberty.

Mitigation

The principal is required to mitigate its loss by attempting to resolve the dispute with the contractor, including exercising all contractual rights it may have, falling short of instigating legal action.

Proof of loss

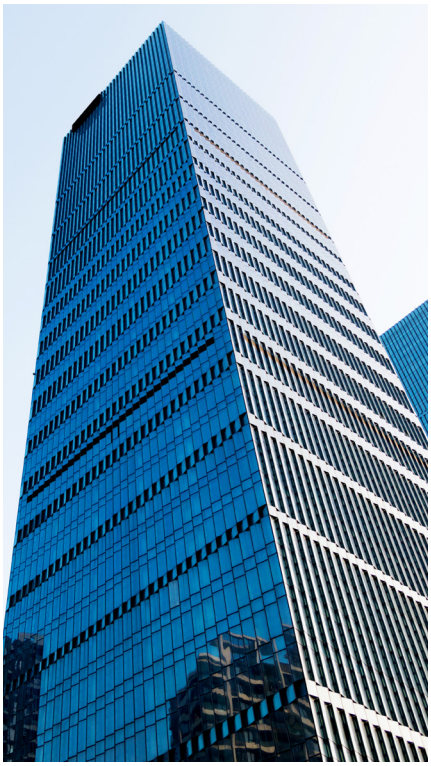
The principal and Liberty mutually agree on an expert to investigate and provide a report that identifies all causes that contributed to the principal's loss, the percentage of loss attributable to each cause, the best method to rectify the problem and the estimated cost of such rectification. The costs of obtaining this report are to be shared equally between the principal and Liberty.

Settlement

Liberty and the principal will take the expert's report into consideration when agreeing the amount payable under the policy.

Subrogation

Should we choose to pursue recovery action, the principal will be required to provide reasonable assistance.



Policy period

Cover can be provided for policy periods up to 15 years.

Limit of liability

- Limits up to $20,000,000 in the aggregate for policy periods up to 10 years
- Limits up to $10,000,000 in the aggregate for policy periods of 10 to 15 years

Business appetite

You will find Liberty's appetite with the PCPI policy to be much the same as it has always been for Project PI business, however, the nature of the contractual arrangements governing the project parties is likely to be more influential on pricing. If you need a refresher regarding Liberty's appetite click here.

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Global reach. Financial strength. Local authority.

Distinct, complex and constantly evolving – every business is as unique as their insurance needs. To confidently progress in the face of risk and uncertainty requires a level of security you can only achieve through working with specialists.

Liberty offers a breadth of world-class insurance and reinsurance services to brokers and insured clients. We bring value and solutions to business and government organisations across Asia – helping protect what they earn, build and own.

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