MARSH JLT SPECIALTY

CONSTRUCTION PRODUCT INFORMATION

Owner Controlled Insurance Programmes (OCIPs)

Owners and developers often overlook the importance of taking a strategic approach to project insurance. We are often asked why companies would depart from the tried and tested approach of letting the contractor insure the project works – after all, the contractor carries the risk in the first instance, doesn't it?

This assumption is not correct, and while a contractor controlled insurance programme (CCIP) is often the path of least resistance, there is an alternative that can provide greater protection, control, and assurance. The advantages of an owner controlled insurance programme (OCIP) are numerous and can deliver real value to owners.

What is an OCIP? How Can it Benefit Your Company?

Globally, most standard contractual drafting makes the contractor(s) carrying out the project construction works responsible for insuring the construction and third-party liability risks:

- **Construction all risks (CAR)** insures material damage to the project contract works.
- **Third-party liability (TPL)** insurance covers legal liability to third parties arising from the project, primarily arising from injury or damage.

There are significant commercial benefits to you (or the project principal) in arranging these insurances yourself, which require minimal amendments to the standard construction contract form.

These amendments should not change any of the contractual elements regarding risk allocation. They concern only who procures the CAR and TPL insurance on behalf of all project parties as part of an OCIP.

It is important to note that the amendments should be made to the tendered construction contracts as early as possible if you are to obtain the full commercial benefits of such an approach – ideally prior to tendering the construction contracts. Marsh JLT Specialty is experienced at working with all major standard contracts and bespoke forms, and assisting with the required contractual amendments.

The OCIP approach is an alternative procurement approach that can provide greater protection, control, and security. In its simplest form, an OCIP is an arrangement whereby you take control and purchase the CAR and TPL insurances in the form of a bespoke, all-party cover for the project. The benefits can be summarised as:

COST	COVERS
CONTROL	CLAIMS

Taking an OCIP approach enables the owner to:

- Arrange delay in start-up (DSU) insurance to provide an indemnity for lost revenue arising from a delay caused by insurable damage. DSU insurance is only available to the party arranging the CAR insurance.
- Obtain finance for the project on a non-recourse basis; it is unlikely that lenders' insurance requirements (including DSU) can otherwise be met.

If DSU or non-recourse finance are required for any project, these factors would usually necessitate an OCIP approach, even before consideration of the commercial benefits outlined below.

Benefits of an OCIP

Cost

As the owner, you are in control of the insurance costs, rather than the contractor arranging the cover and charging you for it. The owner will always pay the insurance costs, whether directly on an OCIP basis or indirectly through the contract price. If you pay indirectly through the contract price, there is rarely transparency of the CAR and TPL insurance cost being charged to you.

Where contractors arrange the insurance, they may add an element of profit or administration cost to the insurance line item. Where multiple contractors are involved, there are likely to be overlaps in insurance coverage in some places and hence wasted premium costs transferred to you.

Based on previous comparisons where we have had transparency on costs, we estimate that you could save a minimum of 20% on the insurance costs by taking an OCIP approach, but we have evidence of contractors charging the owner more than 200% of the original transacted insurance costs through the contract. An OCIP provides full transparency of cost to the owner and puts you in charge of procurement. Where you have numerous contracts or projects, the cost savings are multiplied.

Cover

You choose the insurance cover to be designed for your project. Contractors will select a level of cover to reflect their risk appetite and may arrange a reduced level of cover to cut costs and increase profit. Uninsured losses can threaten a project, especially if the contractor experiences financial difficulty.

Regardless of the insurance procurement approach, some contractual risks will fall to you as the owner, and you are dependent on the project cover arranged to insure your liabilities. The contractors are primarily concerned with their retained risks. Without contractual provision for your risks, and a robust audit and approval process, you could end up with a significant and unnecessary uninsured loss.

In terms of the design of the project insurance cover, critically it should protect the interests of the whole project rather than each individual contract. Where you have multiple contractors, they will only insure their own works, and solutions will need to be found to insure any partially completed construction works when they are handed over to you or another contractor. An OCIP is designed to meet your development requirements (not that of the contractor alone) and insure the project to the standard required, from start to finish.

Control

You are in control of both the cover and the panel of insurers providing the project insurance. The identity, reputation, and financial standing of these insurers should be important to you on any insurance placement. As owner, you are also named as the principal on the insurance policy, with control of the policy. There should be no concerns regarding continuation of insurance cover, should any issues arise and a contractor needs to be replaced due to non-performance, insolvency, or any other form of contract frustration.

Claims

Having a single insurance programme to cover all damage or legal liability events promotes a smoother claims handling process, minimising the potential for dispute and offering a clear route to recovery.

You are in control of the claims monies and, in the event of a major incident, this could be key in settling any contractual disputes. From a third-party liability perspective, you may be concerned that any losses are settled quickly in order to reduce any negative project PR. This can be factored into the programme design and will not be reliant on a contractor who may be reticent to affect their policy claims history.

Rather than increasing the administrative burden, an OCIP allows the cover arranged by you to be bespoke and efficient. It does not require checks to be carried out on each contractor's coverage, often on an annually renewable basis.

What Does an OCIP Look Like?

There are three core classes of insurance that form an OCIP:

Construction All Risks

This policy covers physical loss or damage to the contract works. If there is insured damage (e.g. a fire), this policy will indemnify the insured for the cost of reinstatement of the damaged works. The standard insured parties are the owner/developer, lenders, the main contractor, and sub-contractors. Any party with an insurable interest can be added as co-insured, if required.

Third-Party Liability

This policy provides indemnity for legally liability following third-party property damage or third-party bodily injury arising from the works. The standard insured parties are the owner or developer, lenders, the main contractor, and subcontractors. However, if requested, any party with potential liabilities arising from the project could be added as co-insured. The limit to be purchased is a commercial consideration for the project but you should select this with due consideration for the overall project exposures.

Delay In Start-Up

Many clients are concerned about the revenue they will lose if the project fails to complete on time. Delay in start up insurance indemnifies the owner and lenders (if applicable) for financial loss following a delay in project completion, arising from an event which is covered under the CAR policy. This insurance can only be purchased as an extension to the CAR policy and generally only where the owner has taken an OCIP approach. The sum insured can be selected to suit the project needs but will typically be gross revenue (less any variable costs), gross profit, fixed costs, additional financing or interest charges, and increased cost of working (e.g. alternative accommodation).

As noted previously, lenders will typically mandate this coverage so DSU insurance is essential and usually non-negotiable where non-recourse project finance is to be employed.

THE FEATURES AND BENEFITS OF AN OCIP

COMMERCIAL	FINANCIAL	CLAIMS
The owner can tailor the policy to cover all appropriate parties, as opposed to several potentially disjointed arrangements.	Owner retains control of insurer selection; important for long term projects.	All parties enjoy joint insured status; no subrogation issues.
Adaptable to changes in the project, such as increased values and extensions of the period.	Streamlines project administration; no need to check and re-check contractors' insurances.	Helps to eliminate claims between contracting parties; promotes a "no blame" culture.
Non-cancellable policy for the duration of the project.	Known and fixed insurance cost at the outset.	Owner has direct access to insurers for claims matters.
Helps to eliminate unknown exposures arising from inadequate insurance provided by contractors.	Owners achieve benefits of bulk purchase of insurance in terms of premium costs, coverage, and reduced administration costs.	Helps to eliminate legal and contractual disputes between parties.
No uninsured contracts or coverage loopholes.	Owner can ensure that lenders' requirements are satisfied; OCIP is a lender's preferred approach.	Claims monies are paid direct to the owner.
Can protect owner's liabilities where contractors' are limited.	Certainty that premium is paid and that insurances are current.	
Streamlined interface between construction and handed-over works.	Avoids duplication of insurances and can save premium for the project.	
Owner retains control of insurance market security.	Eliminates overhead and profit loadings by contractor.	
Facilitates purchase of cover for existing structures and delay in completion coverage.	Not affected by insolvency of a project partner or removal of contractor from the project.	
Facilitates a uniform and disciplined approach to risk management.		
Allows efficient management of phased handovers.		

Other Insurances

An OCIP approach also allows the owner to take a proactive view on the risks and the availability of mitigation solutions, including insurance. Other insurance products that you might consider will vary depending on the location and the nature of the project. They might include:

- Latent/inherent defects insurance.
- Environmental impairment liability.
- Marine cargo/transit insurance.
- Terrorism.
- Professional indemnity insurance (single project or owner's protective).
- Political risks.

We would be happy to discuss these classes in detail on request.

Marsh JLT Specialty Has the Experience to Deliver Real Benefits

For more than 30 years, colleagues in Marsh JLT Specialty have worked in partnership with clients. Our specialist teams are at the forefront of providing innovative solutions for developments in the UK and globally.

We work with both developers and major project owners on some of the largest and most complex infrastructure and building projects, including public, commercial, and public private partnership developments.

US$2.5 billion of construction premium placed by our global construction team, annually.

We have placed OCIPs for over 125,000MW of new power projects.

Broker to the largest infrastructure project in Europe.

On average we review and provide advice on over 2,000 contracts each year.

For more information and any queries concerning the content of this document, please contact:

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ABOUT MARSH

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Marsh JLT Specialty is our specialist division, committed to delivering consulting, placement, account management and claims solutions to clients who require specialist advice and support. Our local specialists work seamlessly with global experts, considering problems from every angle and challenging the status quo with entrepreneurial ideas and solutions. The service offering is enhanced with insight-driven advice supported by tailored data, analytic and consultancy capabilities to support clients in making important decisions about complex risks.

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