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INTEGRATED PROJECT INSURANCE

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Introduction

Bertrand Russell stated that the only thing that could redeem mankind was cooperation. Admittedly, integrated project insurance does not aspire to such lofty claims, but it does seek to go some way towards redeeming the blame culture of the construction industry.

Much has been written about collaboration and partnering as a way of overcoming this "*blame culture*". However, it has also been frequently suggested that these methods lack contractual teeth when relationships break down. One need only look at the case of ***Birse Construction Limited v St David Limited [1999] EWHC 253 (TCC)*** to see how the most eloquent partnering clause (in that case, a charter promoting "*trust, integrity, honesty and openness*") can falter under the cool gaze of objective legal analysis (the court held that the terms were unenforceable for uncertainty). But even so, many contracts are still cast in this mould, and clients have sought an insurance regime to help facilitate the partnering ethos.

Integrated project insurance

In response to this, some years ago the Strategic Forum for Construction proposed '*integrated project insurance*'; a joint names policy which would respond to losses, rather than liabilities. A similar product is already in use in Belgium, covering all building works and technical installations on a project (although it does not extend to purely financial loss).

More recently the UK government has taken up the baton. In July 2014 it published *The Integrated Project Insurance (IPI) Model – Project Procurement and Delivery Guidance*. In its mission to reduce public sector construction costs, it is trialling three new procurement models, one of which is '*integrated project insurance*', beginning with a project to build new premises for the Royal Marines in Devon. A form of IPI has already been used in some form on a number of individual projects and Integrated Project Initiatives Limited (the delivery organisation for the IPI model), working with the Cabinet Office and the University of Reading, is halfway through a four year programme to test and report on the impact of the Government's IPI model.

IPI is designed to cover the entire construction delivery team (client, consultants, contractor, supply chains). It replaces the individual policies taken out by each member of the team by combining individual coverage under one single policy responding to all project losses. Its unique selling point is that it responds to *loss*, rather than *liability* and is different to normal project insurance because it covers purely financial loss (e.g. loss caused by delay) without having to identify the party responsible for causing that delay. Crucially, rights of subrogation are waived, so insurers cannot afterwards pursue individual members of the team to recover their pay-out under the policy.

It is intended to remove the blame culture in the industry and underpin an integrated and collaborative method of working. By aligning the financial interests of all members of the project team, IPI aims to prevent parties from acting defensively and in their own self-interests at the expense of the project. Supporters suggest it is the missing piece of the puzzle which will finally allow the project team to enter into a fully collaborative working relationship, thus increasing efficiency and generating greater profits on the project.

The main supporters so far have been insurance brokers and the Government. Griffiths & Armour estimate that for every £1 paid by insurers to an insured party, £5 is paid in legal and expert fees. However, critics of IPI are more cynical and question whether it will ever take off in a serious way, for reasons which are discussed below.

How it works

The client holds a competition to appoint members of the project team. Tenders will be assessed on a number of criteria, including competence, proven track record, maturity of behaviour (including evidence of collaborative working in the past) and cost. The chosen team will then work up the design and construction method for the project.

A single insurance policy is taken out by the client to cover the risks associated with delivery, consolidating all policies held by the client and supply-chain members. Insurers appoint a technical assessor and cost assessor to help manage their risk. With the assistance of these assessors, the insurers and the client will set the project brief, assess the technical aspects of the design and its "buildability", and establish a cost plan. The assessors monitor the works throughout the project to ensure they accord with the strategic brief and cost plan (which includes critically evaluating and questioning decisions taken by the project team and helping resolve any issues that arise). In return for this level of involvement, insurers will structure the premium based on a reduced level of risk (because their exposure is mitigated by the presence of the assessors).

Setting the standard for construction contracts

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How the money works

By way of example, assume a project with a cost plan of £10 million; if the project comes in under-budget, the team shares the profit up to a level (say, £0.5 million). If greater savings are made, the profit can be shared with the client and, possibly, insurers.

If, on the other hand, the project goes over budget, then the 'pain' is shared between the project team and the client up to a pre-agreed level (say, £1m). The level of 'pain' will be roughly equivalent to each member's "*normal*" excess. Any losses above the pre-agreed level will be insured up to a cap and any losses above the cap will fall to the client.

There will be some exclusions, such as fraud, war or terrorism, nuclear or foreseeable contamination, and losses relating to any change to the project brief without the agreement of the assessors (which allows insurers to have some control over the project in return for assuming the top slice of commercial risk).

What are the benefits of IPI?

The potential benefits of integrated project insurance include:

- removing the need for the project team to adopt a defensive approach in their work;
- avoiding the potentially unfair results which can occur from joint and several liability;
- avoiding the need for collateral warranties (which will reduce the transactional costs);
- avoiding issues arising from a project team member's insolvency; and
- enhancing the quality of the finished product (by way of the technical audit).

It is claimed that the cost of the overrun cover will be about 2.5% of the project sum, but that this will be matched by the savings of having just one project policy. The Government has even gone so far as to estimate that IPI could generate savings of between 25-40% as follows:

- 15-20% savings by removing the adversarial culture within the project team; and
- 10-20% savings through integration and early involvement of the supply chain.

At first glance, this appears ambitious and it remains to be seen whether optimistic estimates can be translated into actual savings. Supporters of IPI point to the success of the Heathrow Terminal 5 project as an early indication that IPI can and does work.

Concerns

Unsurprisingly, a number of concerns have been voiced about IPI. Will it stifle innovation? Will the technical and cost assessors be covered by the policy? How will the cap work? Is it realistic to expect the project team to continue to work collaboratively even after a project has gone seriously wrong and the members of the integrated team have incurred their maximum liability? As with the potential advantages, it is too early to point to any concrete evidence supporting these concerns. However, these are certainly issues which must be borne in mind by insurers, clients, contractors (and, indeed, lawyers) if and when they find themselves faced with a project operating under an IPI policy. Only time will tell whether or which of these concerns materialise into real issues.

Is the UK construction industry ready for IPI?

The impact that IPI will have on the construction industry is also unpredictable from this vantage point. However, it is clear that it would involve a significant cultural shift within the industry. Parties are accustomed to operating under the blame culture (and elements of the legal industry have thrived on it). At it operates at the moment, it is likely that the construction industry will be reluctant to embrace the risks of experimenting with, not just a new insurance product, but a whole new method of working. However, the previous adoption of collaborative working in the late 1990s was client-led, not supply-chain driven. With continued successes in trial projects, Government support, and the advent of other initiatives to promote collaborative working (such as BIM level 3), IPI may soon get just the push that is needed. The construction industry may then be able to redeem itself through cooperation.