2021 Global Insurance Market Conditions for Project Policies

Design and Construction Professional Liability

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AON

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Introduction

The professional liability (PL) market (also referred to as 'professional indemnity/PI' in jurisdictions outside of North America) has been in a constant state of change over the last three years.

The global markets for both annual corporate policies and project specific insurance for architects/engineers (A&E) and contractors have continued to experience capacity deterioration alongside rate increases. And these restrictions come at a time when the demand for project specific policies from clients has increased.

In this issue of 'The Sentinel', we will take a closer look at the project specific market in various jurisdictions around the world. What we have found are consistent themes:

- Reduced capacity
- Increased pricing and rated
- A higher degree of scrutiny / underwriting being applied to project risks

As a result, firms may need to re-think how to approach managing professional liability risk on a project basis.

So when did this shift in carrier appetite begin, and have we seen the worst of it?

To understand where we are headed, we should review where we have been. Many analysts point to the 2019 Lloyd's review as the 'unofficial' catalyst to the worsening of this sector. It was at that time Lloyd's conducted a broad review of the portfolio of risks to identify underperforming classes of insurance.

Unfortunately, construction PL was branded among the worst. And the uncertainty created by the COVID pandemic have only enhanced Lloyd's skepticism of this class of risk. Lloyd's recently reiterated that they will not tolerate loss-creating syndicates, thus we are likely to continue to see the knock-on effects from their 2019 review. Enhanced underwriting discipline and a further reduction of capacity is likely.

Consistent with Lloyd's findings, one of Aon's market partners affirmed that their project specific PL book of business is running at a 1000% loss ratio; meaning for every $1 they received in premium, they have paid out $10.

This is obviously an unsustainable position, and as a result of this performance (which is not isolated to this one particular carrier), we continue to see reduction in capacity for single project business on a global basis. And while there have been some new entrants into the PL market, these are, at best, replacing a portion of the insurers who have either exited the space altogether or re-evaluated their risk appetite.

While some markets are still prepared to underwrite single project policies, the information requirements have become much more onerous.

Long past are the days where submission of an application and a contract are enough to obtain quotes. Carriers are demanding a detailed project submission, and in many instances, analysing the prospective insureds annual claims experience before they consider offering a project policy indication or quote.

We are also starting to see a trend where certain insurers will only write a project policy if design has been progressed to at least 50% before submission of a bid. The primary reason cited by insurers for this requirement is high claims frequency and quantum of claims arising from erroneous cost estimates, which ultimately materialize into professional liability claims.

Most recently we witnessed primary project PL policies quoted with rates online as high as 60% to 80% – which of course begs the question of whether such risk transfer is commercially reasonable, or how it could possibly get worse. Carriers argue the actions being implemented today are necessary to sustain the long-term viability of the construction project PL market.

Though the action may feel punitive, insurers believe the steps are necessary to stay committed to this space. That said, projects with certain characteristics are coming under even greater scrutiny; mega-projects (US$1B+), heavy civil infrastructure projects (particularly those with bridges and tunnels), and Guaranteed Maximum Price contracts, just to name a few.

The type of project delivery model utilized in the endeavor will also impact the breadth of available risk transfer. And there is no doubt Design-Build and P3 projects will continue to be heavily scrutinized.

Consequently, we have observed an increase in the use of 'Integrated Project Delivery' (IPD) and 'progressive Design-Build'. Although addressing the PL challenges is often not the primary reason for using these delivery models, most buyers believe these models should alleviate some of market's concern.

The underlying theory of the IPD model is that Owners, Contractors and Designers will jointly accept and manage risk with the specific intent of avoiding the contentious issues of fault, blame, and assessment of loss/costs. But the PL insurance policy is designed to respond to risk transfer after proving fault (negligence) on the part of the respective insured party. At present the PL market does not seemingly offer an adequate solution for IPD (or other collaborative) projects. Any coverage that is afforded is often in excess to a significant portion of the contingency or bonus pool created within the IPD agreement. If insurers are truly going to be able to offer a solution for these projects within the more traditional "working layers" of the risk, the insurers are going to want to be treated as an equal alliance partner in the project rather than a fund of first resort.

The use of a progressive Design-Build model, on the other hand, has proven to be a benefit in sourcing project PL coverage. The concept of an owner accepting a final bid only after the project design has progressed to a more substantive percentage (commonly 65% to 85%) is gaining significant traction with project PL markets. These carriers view the delivery model as a preferred manner of risk management and have responded in kind with preferred rates and capacity.

Regardless of the project, Aon continues to work with its clients across the globe to craft bespoke solutions. As a globally integrated team, new concepts are being constantly vetted in a number of different jurisdictions.

Whether it's the use of an alternative funding mechanism, access to global markets, or structuring the delivery methods of unique risks, we continue to explore innovative ways to address our client's needs for project specific coverage.

Asia

2021 Q3

Pricing/ Rates	↑	Pricing has stabilized for straight forward projects e.g., warehousing/factory space. This is a contrast to more complex projects like power/energy projects, large infrastructure development projects etc. where we continue to see rates moving upwards.
Limits/ Capacity	↓	Capacity remains a challenge as markets are mindful of their overall exposure and the long tail nature of this line of insurance. Capacity is still relatively conservative between USD5m-USD10m.
Deductibles/ Retentions	⇔	Retentions have increased over the last 18 months and we are seeing signs of a plateau. Clients request for low retentions may see no support from markets.
Coverage	↓	Extensions like; Pollution, Intellectual Property rights, Pure Economic Loss Extension, used to be provided without much struggle, but now require additional premiums or markets will decline providing them altogether. Policy Period Extensions continue to be sought with some insurers including new exclusions or declining such requests. Examples of new exclusions that are imposed during the extension period are Broad Communicable Diseases Exclusion or Delay Exclusions. Such clauses will need to be removed or watered-down.
Appetite	⇔	Appetite remains cautious with insurers keener on providing excess capacity. There are no new entrants providing capacity. Some markets narrowed down to projects located in Asia only and do not want to provide any capacity outside of this region.
Losses	⇔	We have not seen any increases in notifications.

Australasia

Pricing/ Rates	↑	Pricing continues to be under pressure due to the lack of capacity available in the market and ongoing claims trends. 15-20% rate online is common with some projects paying up to 50%.
Limits/ Capacity	⇔	One notable insurer has re-entered the Australian project specific market. The market capacity otherwise remains unchanged. Insurers are becoming more selective on the capacity they will deploy for certain contractors with AUD50m limits becoming a challenge to obtain, particularly for litigious contractors.
Deductibles/ Retentions	⇔	Deductibles remain fairly stable, with AUD1m the market minimum. We are seeing an increasing trend it the utilisation of contractor's annual corporate professional policies to enable premium relief from higher deductibles.
Coverage	⇔	No new developments, with cost estimates, cross liability, loss mitigation remaining under scrutiny by insurers.
Appetite	⇔	No material changes in appetite across the market. There continues to be limited appetite for renewable projects and foreign, offshore contractors.
Losses	↑	Insurer loss ratios remain well over 100% with claims being made on majority of projects. There is an increasing trend in notifications during the defects period as a means of recovery costs.

Canada

The pricing for project policies is reflective of a limited number of insurers being able to provide primary capacity. For large complex projects, the rate on indemnity can be as high as 50% in the first CAD10m layer, particularly where the Contractor is insured alongside the Consultants, with the ability to sue them for delays and cost over-runs. Smaller, low risk projects have remained relatively consistently priced over 2021 but up to 50% more than 2020.	↑	**Pricing/ Rates**
Policies covering Contractors alongside Consultants, with the ability for Contractors to sue for delays and cost over-runs are harder to place, and generally available only for larger infrastructure placements. Total limits available are up to CAD15m on these types of projects, depending on the associated risk exposures and participating teams. A policy covering only Architects & Engineers allows for more capacity, with limits up to CAD25m on the large complex placements, and up to CAD50m on less risky projects. It should be noted that for projects of any complexity, most markets are willing to provide limits excess of the CAD25m layer, leaving a gap that is difficult to fill in the lower layers. Some markets are also imposing sub-limits on Rectification coverage.	↔	**Limits/ Capacity**
Generally, retentions are increasing with insurers expecting insureds to take on a larger portion of the risk per claim, particularly on larger and more complex placements. On average, the retentions are between CAD100,000 and CAD250,000 per claim through the domestic market for these project types. More commonly, in the international market, retentions of around CAD1m are more common. Smaller, less complex projects are still seeing more reasonable deductibles in the range of CAD50,000 to CAD100,000.	↑	**Deductibles/ Retentions**
The availability of policies which cover the Contractor alongside the Consultants, with the insured vs insured / related party carve-back is extremely limited. Increasingly mitigation coverage is facing increased scrutiny as to limit, and triggers. Policy extensions are difficult to obtain, with some markets refusing to provide them altogether. Longer lead times are needed to secure coverage, with more detailed information being requested by most insurers.	↓	**Coverage**
Most insurers are restricting their appetites choosing to only insure low risk projects, which is making it difficult to obtain capacity of any significance on the more complex placements. More attention is being paid to the procurement methods; there is a very little interest in projects where contractors are bidding GMP projects at a low percentage of completed design, as these have traditionally resulted in large and frequent losses. More attention is paid to the experience of the teams in having worked together successfully and the contingency that is included in the bid price. There is very limited appetite in the marketplace for EPC/process engineering.	↔↓	**Appetite**
Losses are consistently being reported in this space, with the large complex projects leading the severity spectrum, particularly from preliminary design claims resulting in delays and cost over-runs. There is more adherence to the policy verbiage upon reporting of claims, making it very important for insureds to ensure they are following the policy requirements in detail.	↑	**Losses**

Europe

Italy

Pricing/ Rates	↑	Italian contractors, as opposed to many of their European peers, do not usually buy professional indemnity annual corporate practice policies. Pricing of project specific policies in Italy have increased substantially in the last 12 to 24 months.
Limits/ Capacity	⇔	Compared to other European countries, Italy is still able to access a reasonable amount of capacity. We assess that maximum capacity available – largely from local markets – is around EUR50m to EUR60m per project.
Deductibles/ Retentions	↑	Deductible/SIR levels have increased substantially in the last 12 to 24 months.
Coverage	↓	Wordings have been increasingly more limited.
Appetite	⇔	That local capacity is seen as the "game changer" compared to other locations. Large construction projects are already taken place under the Italian Recovery and Resilience Plan, one of the most ambitious plans in Europe. It remains to be seen how will this ambitious spend, on infrastructure in Italy, will impact the existing capacity.
Losses	↑	Increasing trend.

Netherlands

Pricing/ Rates	↑	Generally prices are up 30% to 50% for construction professional liability, but more on project specific policies.
Limits/ Capacity	↓	Insurer's appetite and authority to write project professional policies is at a low. It is even a struggle to find capacity for limits of EUR10m. It should be noted that the lack of capacity is also affecting annual corporate professional policies. Overall project specific capacity is estimated to be only 25% of the annual corporate professional policy capacity.
Deductibles/ Retentions	↑	Insureds are seeking higher deductible(s) to minimise the premium increase.
Coverage	↓	Insurers are including cyber exclusions – which may cause loss of coverage or create gaps for insureds.
Appetite	↓	More detailed underwriting is now required by insurers. Also, we need more time to obtain confirmation of insurers capacity they are prepared to commit to each project professional policy, due to the insurers internal referral procedures.
Losses	↑	Increasing trend.

Europe

Ireland

Whilst project specific policies are still available, the market is more limited than before, and carriers are very selective on the both the nature and size of the projects that they are willing to write. Premiums remain high and we anticipate this trend will continue to rise over the coming 12 to 18 months.	↑	Pricing/ Rates
In the absence of any new entrants into the professional risks market, capacity continues to be a challenge with most insurers now only willing to write EUR2.5m capacity per risk.	↔	Limits/ Capacity
Deductible levels also continue to increase with minimum levels now at EUR500,000 each and every claim. On larger scale projects a deductible of EUR1m is not unheard of. In addition, it is now common for the deductible to be applicable to defence costs, which in effect is a means of insurers reducing their own losses.	↑	Deductibles/ Retentions
Coverage levels are reduced, and a much more conservative approach to cover extensions is evident. Maximum policy period available only 10 years, which can be a challenge where contractual requirements are executed under seal.	↓	Coverage
The local market is very conservative, and their appetite has diminished over the past 12 months.	↓	Appetite
Whilst exact numbers are not available, anecdotally we hear of a small number of individual losses, but the costs associated with same are increasing due to construction industry inflation together with increasing legal costs.	↑	Losses

Spain

For simple and small projects – where lower limits are required i.e., EUR5m - EUR10m – an increase of 25% to 30% in the last 12 months. In larger and more complex projects with very high limits, an uncertain panorama because it depends a lot on the country and the complexity of the project. There is an important trend to renegotiate contracts and replace project specific policies with the use of annual corporate professional practice policies. In fact, a few contractors who did not use to have annual corporate professional practice policies have now started buying them.	↑	Pricing/ Rates
More restrictive – we assess a reduction of 30% to 50% capacity in 12 months. Outlook not promising, and this lack of capacity drives the pricing and the actual viability of the placement. Given that most project specific policies Spanish insureds carry are for their projects outside of Spain, the placement of the project policies depend on the capacities that can be provided not only from Spain, but also where the project is located. About 3 years ago, the situation was very different where the majority of projects were placed 100% in Spain.	↓	Limits/ Capacity
Deductible/SIR levels are rising significantly and aligning towards those found with risks placed in London.	↑	Deductibles/ Retentions
The main issue of project policies in Spain is that coverage is becoming more restrictive, and the trend is to use more standard policy forms as opposed to broker manuscript wording. Insured versus Insured carve-out is no longer available. Also, there is a focus on cover for consequential losses and the mitigation costs limit.	↓	Coverage
Very restrictive and continuing to decline, with several carriers having stopped underwriting project policies either due to a change in appetite or lack of resources. Insurers allow a few exceptions for some long-term clients, and projects that fits their underwriting criteria, but only very small capacities. There are other insurers that do not wish to lead or issue policies but are willing to follow an active lead insurer.	↓	Appetite
Increasing trend.	↑	Losses

Europe

2021 Q3

United Kingdom

Pricing/ Rates	↑	We have seen increased rates of 25% in 2021. There is no appetite for small multi-year or annually renewable project specific policies; however, there is still appetite for large >USD1bn infrastructure projects, with a high rate on the limit deployed, and high each and every deductible.
Limits/ Capacity	↔	Depending on the project and territory, there is circa. USD25m capacity available in the London market. Maximum period is 10 years including extended reporting period.
Deductibles/ Retentions	↑	For large infrastructure projects, retentions will start at a minimum of USD1m up to USD5m each and every claim. This level is required based on the large contract size (>USD1bn), the general loss ratio being incurred for project specific policies and there is a view in the market that most of the main Insured parties have large each and every retentions on their corporate programs, so it is reasonable to ask for a similar level on project specific.
Coverage	↓	The London market will only insure all parties to the contract rather than contractor or designer in isolation. No Insured versus Insured, or related entities cover, with a stronger focus on rectification/mitigation cover. We also expect to see resistance from markets in providing terms for projects where the design is not at least 50% complete at the time the construction is bid.
Appetite	↓	Over the last 5 years, several markets have moved out of the project policy space. For Insurer's that are still writing project specific policies, their appetite may be restricted by who the insured parties are. For example, some insurers will not offer capacity to some insured's due to negative experience on other lines of insurance, or previous projects. Conversely, some insurers will only write project specific policies if they have an existing corporate relationship at least one of the Insured parties on projects. Appetite is also dependent on territory. There are only two markets in London that will write at a primary level, all other markets aim to attach at USD25m as a minimum.
Losses	↑	Losses have increased substantially both by frequency and severity basis. There are several projects that have total limits reserved by insurers, some with limits up to USD100m. The nature of the losses varies, but most have been notified citing the Insured versus Insured cover.

2021 Q3

Middle East

There has been a dramatic slowdown in terms of the number of projects commencing in the region, we have still seen a steady flow of clients seeking quotes for tender purposes, which we expect will gather pace as we emerge from the effects of the pandemic. Pricing has remained relatively flat compared with H2 2020 and this is encouraging in the context of what has been a hardening market cycle.	↔	**Pricing/ Rates**
Capacity has decreased slightly with a few markets declining to quote primary lead terms, instead opting to offer to review other markets' lead terms with a view to following. This is likely driven by the number of indications requested in respect of tenders rather than anything sinister. Where markets have provided indications or terms, they have offered smaller lines than H2 2020. We have seen a more cautious attitude towards capacity deployment.	↓	**Limits/ Capacity**
Underwriters are continuing to seek to align deductibles in the Middle East with other more litigious geographies. Traditionally, deductibles have been low, driven by the relatively low litigation rates in the territory, however with the decrease in availability of capacity those underwriters offering to write project policies are seeking higher deductibles.	↑	**Deductibles/ Retentions**
The breadth of coverage offered has remained static during 2021. Due to the low demand for project specific policies, we have had limited opportunities to push insurers to offer more favourable terms and conditions.	↔	**Coverage**
In a similar way to what we have witnessed in respect of a decrease in capacity, insurers' appetites have become more restricted. However, our view is that this is due to the low level of opportunities with short projected conversion times (i.e., insurers have declined purely because the submission relates to projects at tender stage). Oil & gas, processing and offshore remain very challenging risks to place.	↓	**Appetite**
There have not been any high-profile losses in the region during 2021. Feedback from insurers is that numbers of notifications has remained static.	↔	**Losses**

United States of America

Contractors

Pricing/ Rates	⇔↑	Through 2021 we have seen consistency in rating and pricing. Given that rating and pricing are primarily based on the contract values, the fact that there has been an increase in the number of mega-projects (i.e., over USD1bn), the premium in relation to the policy limit can be quite high may seem disproportionate to the limit outlay. For projects with contract values less than USD1bn, we are still finding pricing and rating is "reasonable" (which is a relative term, but project specific policies continue to be procured by contractors).
Limits/ Capacity	⇔↓	In the Contractors Protective Professional Indemnity (CPPI) market the ability to procure limits more than USD25m is not too difficult, although this will depend upon the procurement methodology. If insuring a Design-Build contractor alone then limits above USD25m are commonly available; however, policies which seek to "wrap-in" both the Design-Build contractor and the design sub-contractors, then it is a challenge to obtain limits higher than USD25m. Overall, the market capacity for CPPI project policies has reduced by more than 25% since 2019.
Deductibles/ Retentions	↑	The market continues to push higher retentions and the size of the project may dictate the retentions on project policies (i.e., larger project commonly demands higher retentions). Different insurers have different thresholds, but generally the minimum retention will be USD250k, with some are saying that USD500k is the starting point. *(Please refer to A&E section on Deductibles / Retentions for additional comments)*.
Coverage	⇔	Currently we only have one market partner that has taken aggressive steps to limit cover – specifically for large civil infrastructure projects – where rectification cover is either not offered or is it sub-limited to a lower amount.
Appetite	↓	While there does not appear to be any specific restrictions in project classes, the following project types are being subject to heighted scrutiny and review: 1. Heavy civil infrastructure, in particular those projects with bridges and tunnelling. 2. For sale residential. 3. EPC and/or projects involving process engineering. As mentioned in the Introduction, certain insurers will not consider certain project clauses and types unless the design is developed to at least 50%, and particularly if it is a Guaranteed Maximum Price (GMP) procurement.
Losses	⇔	To date, the loss experience under many CPPI project policies has been reasonably favourable which is why pricing and rating for these project policies has remained relatively consistent. However, as more project CPPI "wrap-up" policies continue to be procured, the problems that have plagued the A&E project markets could bleed into the CPPI space.

United States of America

Architects & Engineers

The ongoing litigation in the market continues to drive rates and pricing upwards. Generally, it seems the entry costs for an A&E project policy is USD500k. More than once we have seen the premium for a tower of USD50m being more than 60% rate on indemnity (i.e., USD600k per USD1m in cover), and in another instance, saw a primary layer quoted at 80% rate on the limit deployed.	↑	Pricing/ Rates
Since 2019, the reduction in capacity is over 30%, with most insurers wanting to participate on an excess basis only. In the primary space, there are essentially less than 6 insurers now prepared to offer project specific policies. Insurers are becoming far more selective and while some insurers will offer USD10m on a primary layer, this could potentially drop to USD5m next year. We are finding it difficult to obtain USD50m capacity on large projects.	↓	Limits/ Capacity
Often USD500k each claim is the minimum retention required by insurers on project policies, and this can be financially difficult for some A&Es, given the fee they will be earning on a particular project. To offset the large retention the A&Es are looking to their corporate policies for the amount within the project policy retention, and for any amount above the project policy, in the event the project policy limit has been exhausted. However, the corporate A&E insurers are not willingly amending the "Other Insurance Clause", to deal with matters within the project policy retention.	↔↑	Deductibles/ Retentions
The main change we are seeing in relation to A&E project policies is that certain insurers are pushing-back on granting Indemnified Parties Endorsement to certain entities. The Indemnified Parties Endorsement was – largely – developed to satisfy owners requirements to be added as an Additional Insured to project polices. Because of the Insured versus Insured exclusion being an Additional Insured on a project policy restricts the parties' ability to bring a claim. Certain insurers now see the Indemnified Parties Endorsement as a way to circumvent privity issues, and so they are either not agreeing to its addition to the policy or charging a significant additional premium for its inclusion.	↔	Coverage
The nature of the project is an integral factor in insurers decision to offer terms, as well as the project procurement method, and the owners/D-B contractors contract terms. Certain clauses in the owners/D-B contractors' contracts have caused insurer nervousness, which has resulted in no project policy quote being offered, unless the contractual terms are amended.	↓	Appetite
A&E project specific policies continue to be a target, with no sign of the frequency of losses abating. There are at least two large projects where many dozens of claims have been made against the project policy. Often these claims are a way to potentially to recover losses associated with delays, and cost estimates being exceeded.	↔↑	Losses

Latin America

2021 Q3

Pricing/ Rates	↑	Professional Liability insurance in LatAm has always been considered expensive. Its procurement is usually driven when required (under contract) by lenders as a project specific policy instead of annual corporate professional policy. Pricing and rates tendency follows international market standards.
Limits/ Capacity	⇔	Market limits and capacity depends on the type of project and professional services being performed. Generally, the local market has flexible acceptance for limits ranging from USD3m to USD 6m; however, the capacity tends to reduce depending on the risk complexity.
Deductibles/ Retentions	⇔	There was a low impact on deductibles so far in 2021 for project policies, but always depending on the complexity of the risk.
Coverage	⇔	Coverages are global standards, but obviously can change depending on the types of the projects.
Appetite	⇔	Considering it is getting towards the end of the year, insurers are more keen to meet their annual budget. Thus, insurers may have a greater appetite for project policies, although there is unlikely to be any appetite for the most traumatic risks (in insurers opinion), namely: Offshore, Dams and Power Plants (including Nuclear Power, Hydroelectric Power, Coal-Fired Power, Diesel-Fired Power, Geothermal Power, Gas-Fired Power, Solar and Wind Power).
Losses	⇔↑	Claims incurred by the local insurers are occasional, that is, insurance companies have not suffered high losses in project policies, although we are aware of some major claims from Dam projects being incurred by insurers in London

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