

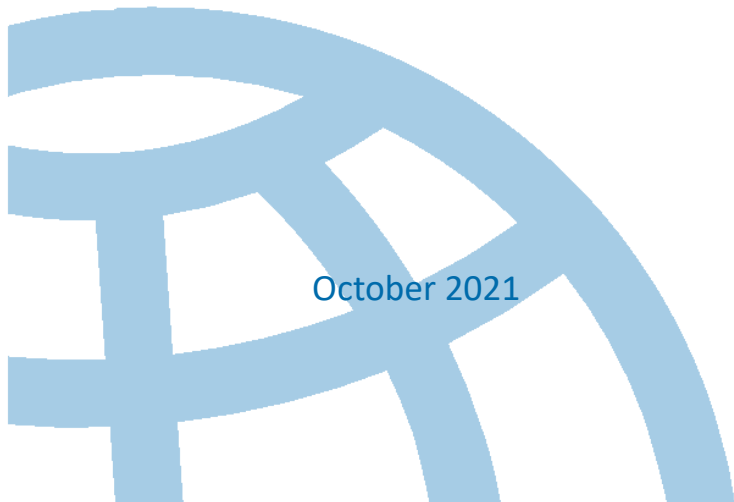


International Federation of Consulting Engineers
The Global Voice of Consulting Engineers

Professional Indemnity Insurance (PII) and Governance

FIDIC Briefing note

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Introduction

FIDIC's Risk, Liability and Quality Committee (RLQC) has been appointed by the FIDIC Board to support the consulting industry in navigating risk and liability. As part of this, the RLQC will be publishing a series of briefing notes on various issues and concerns facing consulting engineers.

One key issue facing consultants is the significant change in the professional indemnity insurance (PII) market; it is becoming increasingly challenging for consultants when taking out adequate PII cover. This briefing note provides a short guide to those preparing to renew, maintain or amend their PII cover.

What is Professional Indemnity Insurance?

Professional Indemnity Insurance provides indemnity to a firm in respect of third-party claims arising from professional negligence or breach of professional duty incurred by the firm. It is triggered where services are provided to a client and provides indemnity up to a specified limit of liability and subject to a self-insured retention. Professional Indemnity Insurance policies are provided by numerous insurers and their scope can vary greatly.

Policies are sold on an annual basis and then renewed as appropriate. PI insurance is a 'claims made' policy, which means that it is the policy in force at the time that a claim is notified that would come into effect – i.e. a claim brought in 2020 for work in 2015 will be settled under the 2020 policy. It is vital therefore, to continue to demonstrate that there is good corporate and contractual governance in place to ensure that PII cover is maintained throughout the liability period.

The current challenges in the PII market are down to a variety of reasons including limited capacity, increasing premiums, stricter coverage exclusions and greater scrutiny of what underwriters consider acceptable risks. It is becoming increasingly essential to provide additional information to that which is usually provided in proposal forms or applications; being able to differentiate yourselves and providing additional detail on how you manage the firm's risk can increase the appetite to underwrite your insurable risks.

Risk Management

This has always been a key component of procuring and maintaining PII cover for a consultant. There is increasing focus from underwriters in discovering the risk management practice of the firms that they are insuring based on the areas set out under this section. The questions set out under each are given as examples and are there to provide an indication of matters that could be considered, but underwriters may ask for additional information depending upon the individual risk or previous claims: -

Tender Process

- What are the conditions that the firm works to in terms of the bid/no-bid process?
- How does this fit in with the firm's strategy?
- Do you have sufficient resources and capacity to deliver the project if won?
- What is the firm's relationship like with clients/other parties?

- What processes do you have to check out your clients? “Know your client” can be one of the most important checks you do.
- What do you know of the firm’s competitors?

Contractual review

- What processes are there in place for reviewing the contracts, including variations/changes to contracts?
- What processes are in place to ensure that all contractual terms are covered by your insurance?
- What percentage of the firm’s work is undertaken on standard/bespoke terms?
- What is the experience of the firm’s risk management team in terms of contract review?
- What are the redlines or red flags in place to inform the contract review process?
- Are there provisions under which certain conditions are unacceptable?

Management during Project Lifecycle

- Does the firm have a project review process in place?
- Is there an audit process?
- Who is responsible for overseeing the project review process and how are issues managed and escalated?
- What processes do you have in place for checking that all appropriate notices are being served on time?

Supply-chain Management

- How often do you sub-contract or joint venture?
- How do you pick your sub-consultants or joint venture partners?
- What arrangements do you have for notifying your sub-consultants/joint venture partners of claims against them?
- What due diligence process do you have in place?
- Are all your sub-consultants contracted on a back to back basis?
- If not, how do you manage the gap in exposure?
- How do you maintain, record and monitor their PII information?

Summary of Recommendations

- Keep insurance requirements under review to ensure liability limits are appropriate not just for current and future work.
- Manage existing liability and PII requirements.
- Meet with your insurance brokers and all insurers on your programme of insurance. If the firm holds other insurances with them, it may be possible to leverage a better outcome.
- Build better relationships with existing insurers and help them understand the firm’s business and the challenges of the sector, instead of immediately moving to a new provider. It is important to develop the relationship with your insurer because when claims come in, they are often expensive and much more than a single year’s premium.

- Ensure you have the capability to detail and demonstrate firm-wide real risk exposure to potentially reduce costs and assist insurers to demonstrate how liabilities are being managed.
 - Review how liabilities are limited in contract and the period over which the liability is to be applied.
 - Review risk management procedures.
 - Ensure lessons have been learnt from previous claims to prevent reoccurrence.
 - Understand how your downstream supply chain buys PII to reduce the firm's exposure to risk.
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About FIDIC



FIDIC, the International Federation of Consulting Engineers, is the global representative body for national associations of consulting engineers and represents over one million engineering professionals and 40,000 firms in more than 100 countries worldwide.

Founded in 1913, FIDIC is charged with promoting and implementing the consulting engineering industry's strategic goals on behalf of its Member Associations and to disseminate information and resources of interest to its members. Today, FIDIC membership covers over 100 countries of the world.

FIDIC Member Associations operate in over 100 countries with a combined population in excess of 6.5bn people and a combined GDP in excess of \$30tn. The global industry including construction is estimated to be worth over \$22tn this means that FIDIC member associations across the various countries are an industry are worth over \$8.5tn.



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Endnotes