

€ TRAINING

Managing Contractual Risks and Preparing
Legal Structures for Dispute Resolution



Managing Contractual Risks and Preparing Legal Structures for Dispute Resolution

Introduction:

In every organization, care is taken to manage risks, by seeking to eliminate those that can be removed, and reducing and managing the remainder. Part of this process involves developing robust contracts that apportion risk equitably and include a structure of indemnities with contractors, supported by a comprehensive insurance regime. In addition, it is important that contract personnel understand contractual risks and what insurance can and cannot do to remove the financial consequences of such risk; remembering always that insurance only mitigates the effect of risk, it does not make the risk itself go away.

Course Objectives:

At the end of this course the participants will be able to:

- Understand the elements of a contract
- Analyze complex contract documents, and understand the inter-relationship between clauses
- Develop effective indemnity regimes
- Appropriate type and form of indemnities in different contracts
- Use indemnities to manage risks
- Know the limitations of indemnity clauses
- link indemnity and insurance arrangements
- Know what types of insurance are available in a contracting context
- Develop insurance clauses
- Know the latest thinking in dispute resolution techniques

Targeted Audience:

This course is suitable for professionals within all industries who are involved in contract management and resolving disputes including but not limited to, project managers, contract managers, procurement managers, supply chain managers, contractors, architects, developers, and engineers.

Course Outlines:

Unit 1: Commercial Risk and Mitigation Through the Contract:

- The need for contracts
- Identifying risk
- Risk mitigation or impact mitigation?
- Title
- Incoterms
- Intellectual property
- Types and nature of contracts
- Definition of terminology i.e. Conditions of contract & terms of contract etc
- Different legal systems - how to look for common practices but understand the differences

Unit 2: How and why Contracts are Drafted:

- Why we use contracts
- Formation of a Contract
- Oral or written?
- The key elements of a contract
 - Terms and Conditions of contract
 - Liquidated damages/penalties
 - Limits of liability
 - Suspension and termination
 - Acceptance and Certificates
 - Guarantee/Warranty/Maintenance
- Agency issues
- The basic structure of a contract
- Incorporating documents by reference
- Standard Forms
- Incorporating tender documents
- Letters of Intent or Award
- Letters of Comfort or Awareness
- Side Letters
- Bank bonds and Guarantees
- Parent Company Guarantees

Unit 3: Insurance:

- The purpose of insurance
- What insurance covers, and what it does not
 - Limits on cover
 - Duty to disclose information
 - Meaning of "All Risks"
- Relationship with risk management
- Types of insurance used in contract clauses
- Workmen's compensation/employers' liability
- Third-party/liability insurance
- Property damage
- Professional indemnity/errors and omissions
- Construction All Risks
- Motor and aviation
- Marine insurance
- Hull and machinery
- Protection and indemnity "P&I Clubs"
- Pollution
- Goods in transit
- Business interruption
- Unfair calling cover bonds and guarantees
- Export credit insurance
- Who arranges?
- For whose benefit?
- Extension to subcontractors National Oilwell case
- Terms - involving contractors
- Other relevant insurances
- Insurance for projects

Unit 4: Indemnities:

- Meaning of indemnities
- Making indemnities work - irrespective of negligence or breach of duty the Piper Alpha litigation
- Link with insurance
- Cross indemnities
- Personnel
- Property
- Catastrophe risks
 - Value of covenant
 - Issues with indemnities under the Civil Law system
- Third parties
- Liability in negligence - relationship with contract conditions
- Claims handling
- Managing claims under project policies
- Making timely claims
- Information
- Involving insurers
- Resolving disputes
- Self-insurance

Unit 5: Resolving Disputes:

- Negotiation
- Staged Dispute Resolution clauses
- Litigation
- Arbitration
- Enforcement of Judgments and Awards
- New best practices in dispute resolution
 - Mediation
 - Conciliation
 - Early Neutral Evaluation
 - Expert determination
 - Pendulum Arbitration