

Notes from the International Risk Management
Construction Risk Conference pre-conference day:

Contractual Risk Transfer in the construction insurance sector and the significance for Israel

the 45th Construction Risk Conference brings together thousands of people from around the world: insurance professionals, risk managers, engineers, legal professionals, contractors, and developers

By Itzick Simon

Once again, I will be taking part in the 45th Construction Risk Conference, organised by the International Risk Management Institute.

This is a major international conference that brings together thousands of people from around the world: insurance professionals, risk managers, engineers, legal professionals, contractors, and developers.

Every year, the conference takes place in a different state in America, and this year, it is being held in Indianapolis, Indiana.

Even though the conference focuses largely on the American market, it offers a broader perspective, presents innovative approaches to risk management, and inspires practical ideas that I will seek to implement in Israel to improve the local market and my valued clients.

The pre-conference day focused on a topic which is the cornerstone of

risk management in construction projects around the world: Contractual Risk Transfer.

A pre-conference day of this type enables the American license holders to specialise in a specific topic and take an exam to validate their construction insurance license (!). The content presented was in-depth, practical, and tailored to a professional audience comprising insurance agents and consultants, brokers, insurance company personnel, legal professionals, contractors, and developers.

On a personal note

The pre-conference day was another opportunity for me to meet Bill McIntyre, the founder of the IRMI, ACIG Insurance Company and associated companies, who organized the conference. Bill is a genuine friend of Israel, who we had the honour of hosting as the keynote speaker at the Annual Conference

on Insurance, Safety and Risk Management in the Construction Industry we arranged back in 2022.

Bill invited us to a personal meeting, during which we discussed developments in construction insurance and risk management in Israel, as well as events in Israel during this challenging period.

Aside from the professional content, the empathy, genuine interest and warmth he displays to Israel stood out, not merely as a diplomatic gesture, but from a deep personal conviction. Through my participation in numerous conferences and meetings over the years, a genuine professional and personal friendship has developed between us that I value very much.

Contracts as a basis for the division of responsibility and risk

A contract is not merely a legal document – it is a framework that defines the division of responsibilities in a project. In a complex industry with an abundance of players such as developers, engineers, contractors, subcontractors and suppliers and numerous complexities, the contract is the central tool that establishes the scope of responsibility of each party and their expectations in the event of a loss.

In the U.S.A., the law limits the scope of certain types of indemnity clauses. In Israel, on the other hand, these limitations are almost non-existent, meaning that extensive liabilities under a contract will stand even when the insurance policy does not fully cover them. Here, the contract needs to be tailored meticulously to the

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Itzick Simon at the conference

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Liability insurance as a supplementary tool to a contract
The contract defines the division of risks, whilst the insurance policy enables it to be financed and implemented in practice. In the U.S.A., a Commercial General Liability policy is the central pillar of Third Party Liability insurance. However, many contracts are, in fact, much "wider" than the insurance policy.

In Israel, this gap is very pronounced: in many cases, contractors assume liabilities that are far beyond what the insurance policy covers. The role of the insurance agent and consultant is to ensure that the contract and the policy are "back-to-back" as far as possible, and to warn the client of any contractual requirements that are uninsurable.

Including additional insureds – a central tool in the U.S.A. and a different model in Israel

In the U.S.A., it is standard practice for each subcontractor to add the developer or the main contractor as an additional insured under their policy. This is a central tool for implementing risk transfer.

In Israel, the situation is different: A Contractors All Risks policy arranged by the developer or the main contractor covers, by default, everyone involved in the project. This model creates a "project umbrella" from an insurance perspective, minimizes disputes and streamlines the process of handling claims.

Nonetheless, when subcontractors and others hold their own Third Party Liability policies, in addition to the Contractors All Risks policy, it is essential to ensure that their supplementary cover is compatible with the contractual requirements. Such a policy is not the project's main policy, and in many cases, it fails to meet the conditions required by the project contract. Specific wording amendments will avoid gaps between expectations and the actual cover.

Certificate of insurance – An important document that should be read with a professional eye

A certificate of insurance is an important document, even though its limitations should be understood: It is not an insurance policy. It provides a summary of the main aspects of the cover, but does not include a complete list of exclusions or details of significant policy conditions. In the construction industry, where a single clause can significantly affect a claim, it is essential to review the certificate carefully.

The "standard" certificate of insurance – A significant change in Israel

In Israel, there is now a standard format for certificates of insurance based on a set of standardized codes, which significantly minimizes the possibility of conflicting interpretation. In the past, it was possible to tailor the certificate to the insurance appendix in the contract, even if the policy did not fully match. The standard certificate of insurance now only cites actual excerpts of the policy.

Hence, any gap between the contractual requirements in the wording of the insurance appendix, the certificate of insurance and the policy itself could create a gap in the expectations of the parties on the question of what is covered and what is not, and this exacerbates the importance of ensuring that the three documents are in harmony to avoid disputes and mishaps at a later stage of the project.

Four main observations of the Israeli market

1.The scope of liability clauses in Israeli construction project contracts is sometimes broader than the cover under the insurance policy

Standard contract wordings contain broad liability and indemnity covenants, which some of the standard policies in Israel do not back up. In some instances, a gap may arise between a contractual undertaking and the insurance

cover.

2.Gaps between contracts and policies are the main reasons why problems arise

The lack of correlation between documents leads to claims, misunderstandings and unpleasant surprises when a claim arises.

3.The Contractors All Risks policy in Israel is a beneficial model

The Israeli policy is an umbrella that covers all parties involved in the project under a single policy, streamlines risk management and minimizes friction. When individual Third Party Liability policies are relied on, it is essential to ensure they adequately address contractual requirements.

4.Contractual risk management is a job in itself

It demands synergy between the legal world, the insurance world and practical implementation. Without this, clauses that appear sound on paper can turn out to be useless or unenforceable in real-time.

To conclude

The IRMI pre-conference day, which was dedicated entirely to the subject of contractual risk transfer, emphasizes the extent to which it is a fundamental element of managing construction projects.

The Israeli market has significant advantages, particularly with respect to the Contractors All Risks model, even though there is a need to continue fine-tuning the alignment between contractual requirements and insurance cover.

A careful review of liability and insurance clauses and certificates of insurance, an in-depth understanding of the insurance policies, and keeping abreast of developments are fundamental prerequisites for professional risk management in the construction industry.

Later in the week, I will endeavour to report on the official opening events of the conference and details of the lectures and workshops, to broaden our knowledge and benefit the Israeli market.

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