

Commercial insurance

The particularities of project insurance under German insurance law

1. INTRODUCTION

The project insurance is a tailored insurance product to secure risks in complex project structures. The project insurance offers numerous advantages compared to the conclusion of several independent insurance contracts.

The following article deals with the particularities and advantages of the project insurance under German insurance law and is particularly relevant for the construction and plant engineering industry.

2. SYSTEMATIC OF THE PROJECT INSURANCE

The project insurance contract is not regulated by German law. Project insurance is an individual insurance contract tailored to the specific risks of a project, which bundles all project risks in a single policy.

Which individual insurance modules are bundled in the respective project insurance depends on the individual risks of the project. In case of larger construction projects, transport insurance, liability

insurance (operating and environmental liability), erection insurance (including extended maintenance period) and erection business interruption insurance are regularly bundled in one project insurance.

2.1 Insurer consortium

These relatively large risks are usually not borne by one insurer alone. Very often, several insurers assume the risks from a project insurance contract as joint insurer consortium. Insurers, as consortium partners, are usually not jointly and severally liable, but according to their share as defined in the insurance contract.

The leading insurer of the consortium acts on behalf of the individual insurers. The other insurers involved almost always follow the decisions of the leading insurer.

2.2 Insurance for own and foreign interests

The project insurance contract covers the interests of all companies and persons involved in the project. Thus, in a project insurance for the construc-

tion of an industrial plant not only the client (project company) is insured, but, for example, also the following further project participants are insured as well: general contractor, supplier, subcontractor, planner, project manager, financing bank, etc.

The policyholder of the project insurance contract is often the project company (so-called buyer's policy). Therefore, the project insurance is a combined own insurance (for the policyholder) and third-party insurance according to secs. 43 et seq. Insurance Contract Act (VVG) (for all other project participants). Thus, for example, the project company that wants to set up an offshore wind park concludes a project insurance contract that, among others, insures own and third party liability risks, external transport risks of the suppliers, own and third party damage risks as well as the risk of own property damage caused by delayed putting into operation.

2.3 Right to claim of policyholder with fiduciary relation

In the project insurance contract, the policyholder is always entitled to claim towards the (leading) insurer, no matter whose interest is affected in the respective insured event. If, for example, a pecuniary loss has occurred due to the wrong planning of an architect, the project company as policyholder will negotiate with the (leading) insurer about the claim from the extended planning liability insurance bundled in the project insurance in favor of the architect.

The policyholder is obliged to receive and forward in trust any insurance benefits to the respective co-insured. The policyholder is only entitled to withhold or set off the insurer's benefits, which are intended for a co-insured in the internal relation-

ship between the policyholder in rare exceptional cases (cf., i.a., sec. 46 VVG).

3. NECESSITY TO CONCLUDE PROJECT INSURANCE

The project insurance is no mandatory insurance. The project company may though be obliged to conclude a project insurance pursuant to contractual agreements. The project company may for example be obliged according to an agreement in an Engineering-Procurement-Construction-Contract („EPC-Contract“) or a financing contract to conclude a comprehensive project insurance contract with defined sums insured and deductibles for the project. In EPC-Contracts there is often an agreement that the customer of the works performance has to conclude, among others, an “erection insurance contract according to standard LEG3(2009)“.

4. ADVANTAGES OF PROJECT INSURANCE

The conclusion of a consistent project insurance offers numerous advantages compared to insuring individual risks in several separate insurance contracts with different insurers.

4.1 Low risk of cover gaps

The conclusion of a consistent project insurance may help to avoid cover gaps.

Before concluding the insurance, the project needs to be thoroughly analyzed.

The risks of the project need to be assessed. Once these risks have been determined, the project company as policyholder may insure all own and foreign risks and interests sufficiently. Since the project company as policyholder leads the negotia-

tions about the insurance of risks, the project company may transfer the own responsibility to insurers without any cover gaps. If the project company and brokers work thoroughly, cover gaps may not occur if risks are insurable at appropriate economic terms.

If the project company though allows that no uniform project insurance is concluded for all participants to the project, there is the risk of cover gaps. In this case, all companies involved in the project would have to insure themselves. This might cause a high default risk for the project company due to cover gaps. The project company may have the conclusion of individual insurances be confirmed by the participating companies. The examination of these numerous insurance policies is though often very time-consuming for the project. Beyond that, a certificate for insurance is not as significant as the insurance policy and the insurance terms available to the policyholder in the project insurance.

From the point of view of the project company, project insurance is therefore generally preferable when it is necessary to avoid coverage gaps and thus default risks in the event of a claim.

4.2 Cost neutrality for the policyholder

The policyholder may usually draft the project insurance cost neutral for himself. The project company may split the project insurance premium in the contracts with the companies involved in the project. The general contractor for example obliges himself in the general contractor contract with the project company to reduce the contract price for the general contractor work in the amount of a participation in the insurance premium for the project insurance contract.

4.3 No project delay

Due to project insurance contracts, unlike several separately concluded insurance contracts with different insurers, project delays after damage are less likely to occur as claims settlement is made simpler:

4.3.1 Claims settlement with insurer

On the one hand, the claims settlement will be performed by the leading insurer from one source. If, for example, damage occurs during the construction of a coal fired power plant, the policyholder negotiates the claims settlement only with one insurer, namely the leading insurer of the insurer consortium. The discussion with only one insurer will usually cause less controversial issues compared to several insurers discussing independently existing insurance contracts.

If, for example, a damage to a pipe occurs at the construction site, the policyholder of a project insurance that covers both transport and construction risks will usually not have to discuss the insurer's principle obligation to perform. The damage occurred either during transport or on the construction site and was thus insured by one and the same project insurer consortium in project insurance. The deductibles in the transport insurance or construction insurance modules of project insurance may be different.

However, in the above example, if separate transport and assembly insurance contracts existed with different insurers, claims settlement would be made more difficult and the project would be delayed. Eventually, insurers would mutually negate their obligation to perform. The resulting discussions with insurers might lead to project delays.

4.3.2 Commissioning of the expert(s) by the insurer

On the other hand, claims settlement in project insurance is often easier because project insurers only hire one or a few experts to assess damage. One or only a few experts, who are commissioned by an insurer consortium, often come faster and consistently to their results.

If, on the other hand, the risks inherent in the project are insured by several insurance contracts with several insurers, these insurers will, in the worst case scenario, commission their own experts to investigate any possible damage. These experts commissioned by different clients then work at different speeds and often come to different results.

4.3.3 No clarification of internal responsibilities necessary

Project insurances can also contribute to fewer delays because all companies involved in the project are insured under one insurance contract and are therefore more inclined to cooperate in the event of a claim. If, for example, a damage to property is caused by a faulty assembly process on an industrial plant, the question of accountability among the project participants is of secondary importance. Since the interests of all persons involved in the assembly are insured, a material damage is sufficient so that a claim exists against the project insurer. Since internal responsibility is very often irrelevant to the occurrence of the insured event, there is no mutual accusation of guilt among the project participants. This also helps to smooth claims settlement and prevents project delays.

The advantages of project insurance in comparison with the conclusion of individual insurance contracts are significant.

5. CONCLUSION

The conclusion of a project insurance is often unavoidable for project companies due to contractual agreements. Independent of the question of the contractual obligation, the conclusion of a project insurance is often very useful. The risks of a project can be comprehensively insured in the project insurance without coverage gaps and from one source - assuming that the policy holding company carries out a conscientious risk assessment and contract drafting.

Project insurance simplifies claims settlement in many cases and can thus avoid project delays. Since, in addition, the costs of the project insurance can be transferred to the individual companies involved, project insurance is very often preferable from the project company's point of view.

Please do not hesitate to contact our Head of Property Insurance in case of any further questions:

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