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The key considerations for companies arranging multinational insurance programmes

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Foreword & Contents

ASSESSING GLOBAL PROGRAMMES

Risk managers of multinational corporations considering introducing a global insurance programme need to tread carefully. Many of the countries around the world where they are likely to be expanding have introduced restrictive measures relating to outside insurance. And they may not be able to achieve the breadth of coverage and the limits that they require without a very careful approach to structuring programmes.

An essential first step is deciding what they may actually need, bearing in mind the culture and risk philosophy of their organisation. They should ascertain their risk appetite and look at where their business operates and what coverages it will require.

Clearly cost is an important factor, and it's one of the incentives for risk managers to take a global approach in order that their companies will benefit from economies of scale. But cost should not be the main criteria when choosing a global insurance partner. In the complex world of multinational insurance, service, expertise and having a network of owned or affiliated local insurers in relevant territories can make the difference between consistency that delivers the sought outcomes and a patchwork approach with associated problems.

This report, sponsored by global insurer ACE, is designed to help risk managers appraise the considerations, practical issues, benefits and potential problems associated with global programmes.

Sue Copeman is editor-in-chief of StrategicRISK

2 | **Programme risk management**
Get it together
Where do you start once you've decided a global programme is right for you?

4 | **Coverage**
Devil in local detail
A global master policy requires more than just a broad-brush approach

7| **Executive summary**
Global essentials
Keep on top with our summary of all the things you need to think about when setting up a global insurance programme

11| **Practicalities**
Covering your back
There are several ways to tackle problems arising when formulating multinational programmes. Read our top tips

12 | **Legal issues**
The master plan
Global policyholders cen be held accountable for compliance. Don't be caught in breach of local regulation

16 | **Claims and benchmarking**
Claims crunch
What should risk managers expect in terms of claims handling from their lead insurer on their global programme?

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Get it together

A global risk management programme can help multinational companies win on cost-effectiveness and consistency while building risk awareness

A GLOBAL POLICY CAN PROVIDE significant benefits for organisations with the appropriate risk management philosophy. How do you decide if a global programme is right for you – and what are you likely to gain from this approach?

"One of the best ways is to start from the vantage point of what the company's risk philosophy is around risk management," president of multinational client group, ACE Overseas General's multinational client group, Michael Furgueson, says. "It is very important to begin by thinking about how you buy insurance and what you are buying it for."

Considerations include the various locations of the company's operations and the cost of risk, continues Furgueson. "What kind of risk appetite does the company have for local retentions or deductibles? What is its approach to the use of risk financing tools like captives?" he asks.

Certainly, while some companies are keen exponents of the captive approach, the potential implications of the forthcoming insurance regulation, Solvency II, has given some European risk managers food for thought in terms of the types of risk they would place with a captive and associated governance and capital requirements.

KEY POINTS

01: Any programme must start with in-depth knowledge of all the territories' risk appetites

02: More awareness of global risks benefits the whole group

03: Premiums can be a tool to encourage best practice. Captives can help here

04: The bigger and more centralised the company, the more effective the programme

05: 'Wriggle room' to woo reluctant territories is essential

Why go global?

An effective global insurance programme can produce substantial benefits. Karen Gorman, a partner in the Jardine Lloyd Thompson global support team based in London, summarises these as:

- assisting with corporate governance;
- helping to control cost through economies of scale;
- maintaining greater control and consistency with communication;
- providing a broader scope of cover on a global basis;
- enabling inclusion of non-standard covers that may not be available in some countries; and
- enabling standardisation of insurance processes.

Willis International's global network practice leader, Claude Gallello, says that a group that has a fragmented insurance programme – in other words, allows its local businesses to make all the decisions – can be putting itself at a disadvantage compared to its competitors with global programmes.

"Dealing with different underwriters is likely to produce non-competitive pricing and a lack of uniform coverage," he explains. "There are some qualifications in certain countries but in general you are maximising your buying power when you have a global programme."

Gorman agrees, but suggests that it's a wise move to ensure the costs associated with the global programme are benchmarked against what it would cost to purchase insurance in the countries involved.

Gallello also highlights the fact that a company can generally obtain broader coverages through a global programme than it can achieve individually, country by country. "Some countries like Germany may have broader coverage than is generally available, such as in the area of environmental insurance. But, as a rule, the coverage you can acquire locally by buying your policies individually are not as broad as they are if you buy centrally," he says.

Consistency is another major benefit of the global approach. Corporate risks broker Miller's Matt Grimwade explains: "Companies that have a centralised approach to insurance will want to try to develop a system where there is as much consistency as possible between the different operations."

And he says that this is where rolling out best practice across the group can come in.

"If they have very good quality systems and processes in place around risk identification and management in certain territories and other territories are more lax, one of the big benefits of the global programme is that they can use best practice to bring the lower standard locations up to the higher level," he says.

Conversely, companies without a centralised insurance approach are likely to experience greater inconsistency about the quality of risk management across their various locations.

Related to this is the consideration of how a company can charge the cost of risk to its individual subsidiaries in a way that reflects its risk management focus. "Captives can play a big role in that, helping to highlight the cost of risk and the benefit of good risk management practices," Furgueson says.

Premium pressure

Grimwade explains that risk managers with a global programme can use their premium allocation model to instil best practice. "Companies generally apply a number of criteria when deciding premium allocation. These can include: historic loss history; the physical protections that are in place and how many historic risk management recommendations have been completed.

"All these criteria can be developed into a model to make the approach to premium

> *'While company A may want a clear, consistent, rigid and regimented global programme … company B may want more flexibility to leave some operations to buy locally'*
>
> **Matt Grimwade** Miller

allocation more sophisticated," he continues. Ideally, risk managers should make their premium allocation model as objective as possible, so that there is less basis for local entities to take issue with why they are being charged certain amounts.

But Grimwade also stresses that risk managers and chief financial officers may be looking for some flexibility. "They may want some wriggle room to allow them to charge their operations in some territories more or less than the model suggests – for example, a preferential premium because they want to convince them of the benefit of embracing the global approach."

Agreeing that a multinational approach helps in implementing a global loss control programme, Gallello also points out that claims can be handled more efficiently through a global programme.

In connection with this, Oval Insurance Broking's director global accounts, Chris Leage, says: "A global programme allows you central co-ordination from the country where it's been issued, which is usually the domicile of the client's head office. Generally, this means you have greater control of how claims are handled and you would be looking for a suitable loss adjusting firm to be nominated that can provide a global service."

However, perhaps one of the greatest benefits that a global programme offers is increased risk awareness. Gallello says: "Companies need to know what the risks are around the world, particularly when they are considering acquisitions in different territories. A global approach creates more awareness so that companies can ensure they have appropriate practices in place."

Flexibility

The global master policy that sits above locally arranged covers is usually very flexible, says Grimwade. "It reflects the fact that global companies have very different characteristics and will want their insurance programmes to operate in different ways.

"Some are very centralised and want to have their insurance programmes operate in the same way, with central control over coverage retention levels, risk management approaches and how premium is allocated across the territories. Other companies are far more regionalised or territorially decentralised.

"So while company A may want a clear, consistent, rigid and regimented global programme, with every territory included, company B may want more flexibility to leave some operations to buy locally or to buy insurance at lower levels. Master policies are designed to be flexible to meet multinationals' different needs," Grimwade explains.

Similarly, a global master policy can accommodate the needs of companies with their own captive insurers. The company may have the option of using its captive to underwrite risks directly in the territories where it is legally allowed, with the global master policy acting as reinsurance, or the global master policy can be the direct underwriting tool, reinsuring with the captive and then covering the balance of the risk that exceeds the captive's desired retention.

Generally, the bigger and more centralised the company, the more streamlined and consistent its global programme will be. And it will enjoy the maximum benefits from transparency of cover, consistency of approach and economies of scale. **SR**

GLOBAL PROGRAMMES ARE NOT FOR EVERYONE

Balanced against the cost and consistency benefits are some considerations that might erode the effectiveness of the global approach for some organisations.

Perhaps one of the greatest of these is the need for local management buy-in, which is not always easy to obtain. Gorman says that this is a common problem. She cites the example of a company that made an overseas acquisition whose risk appetite was very different from its new parent. "The parent's risk management policy was to insure property against catastrophic losses, so it was taking a huge deductible. But the acquisition was historically very risk-averse and had been buying property cover with a zero deductible. When it came into the global programme, it insisted on buying a deductible infill programme, effectively just pound-swapping with the insurer concerned. "

Local entities are also likely to have established relationships in their national markets while their local brokers may tell them that their existing arrangements are cheaper than those provided by the global programme. This is clearly where Grimwade's "wriggle room" in respect of premium allocation may help.

Risk managers considering global programmes should also be aware that there may be considerable administrative work involved. And Gallello doubts that a company without central control will be able to make a global programme work.

Devil in local detail

Risk managers must look beyond the broad-brush approach in crafting a global master policy. The first step is a sound grasp of local coverage in all the company's territories

GLOBAL PROGRAMMES ARE generally placed with a single insurer that has international capabilities. The risk manager and broker negotiate central terms and conditions with that underwriter, who provides a global master policy. Local cover is arranged in the various territories involved, usually with the insurer's international affiliates, to provide admitted local coverage worldwide.

Getting a structure that reflects the company's risk philosophy requires a responsive and capable underwriting partner and a close tripartite relationship between client, broker and insurer.

ACE Overseas General's multinational client group president, Michael Furgueson, explains. "It is increasingly being recognised that putting together a global programme requires three-way communication between client, broker and prospective insurers. In the past, a number of companies took a somewhat structured approach to tendering for their global programmes, with insurer selection seeming to be led by cost considerations. Now it is apparent to many companies that cost, while important, should not be the first consideration.

"Other more important factors centre around the insurer's capabilities, systems and the like used to manage the global programme. Risk managers should look for concrete proof of the insurer's ability to manage the complexities."

Matt Grimwade of corporate risks broker Miller agrees. "Getting to know underwriters is hugely important. If the lead insurer does not fully understand the company's characteristics, culture and requirements, it is very difficult to deal effectively with the issues." Important factors are the coverage that the master policy provides and the service that the risk manager is seeking from the lead insurer.

He warns: "A global insurance policy for a major multinational is not commoditised. If there is no meeting of minds on how the risk management approach and premium allocation work and how the whole structure of the relationship operates, in most cases the client is asking for trouble."

Fortunately, most multinational insurance buyers recognise this and realise that personalising and entrenching their relationship with the lead insurer are central to getting their specific needs met.

Work backwards

Furgueson also advocates a "bottom-up" approach. Rather than the client and their broker starting from the premise that the company needs a global programme – which happens quite often – he recommends that they begin by looking at specific factors relating to the company and how these might influence the effectiveness of a global programme.

Such factors include the company's risk management philosophy, the rules and regulations in the particular countries that the company operates in, and the nature of its operations.

"Building a programme that suits the character of the company and the places where it operates is a big challenge. While it hasn't yet been embraced by everyone, the marketplace is moving in that direction," Furgueson says.

Grimwade says that every global policy should be bespoke, identifying the requirements of each individual client. "They will have very different risk exposures and different coverage requirements that they need their policy to respond to, and setting up a global

KEY POINTS

01: An insurer's ability to cope with complexity is at least as crucial as cost

02: Study the character of the company and all the places where it operates before crafting a master policy

03: Insuring the parent company's loss of financial interest keeps the claim in the master policy's country

04: Strong networks and intelligence in all territories are essential

05: More regulation worldwide means liability claims including D&O need particularly acute awareness

WHAT RISK MANAGERS NEED TO KNOW

In the Marsh multinational report published in January, president of multinational client service Hank Allen said that the spectre of increased regulatory scrutiny continues to be the greatest source of concern for many companies, and the basis of a lot of the questions, including:

- How will increased local regulation and governance requirements affect our ability to do business?
- How will financial, regulatory, and tax trends affect the complexity of global insurance programmes and the need for more local policies?
- How will the increased use of local insurers impact financial security?
- How will risk managers be able to measure this security in less transparent markets?
- How should a risk manager manage these issues most effectively?
- What risk issues come to bear in a joint venture with local partners if a company cedes greater control to those local partners?

programme means understanding the exposures and the types of cover that the client needs.

"Then you need to look at the geographical footprint of the client, which territories it operates in, those where it does or does not require local policies, where regulations require cover to be placed in the local market, whether insurance needs to be retained locally and, if not, how much can go outside, and whether the client needs difference in conditions/difference in limits [DIC/DIL] cover."

Furgueson comments: "Historically, the insurance industry has had a very broad-brush and general approach to the application of the cover provided by the master policy. "Essentially, this has been that if the client does not get its claim paid for any reason by the local policy and it has a limit for the coverage concerned in the master policy, the master policy insurer will pay that. But where they are paying it, to whom they pay it, and who is insured under the contract have been less well defined."

Financial interest cover

The potential problems arising where the master policy purports to cover local claims in some territories are discussed in more detail in the section dealing with legal issues in this report (see pages 12-15). Furgueson believes that many of the problems can be overcome by using a relatively new approach.

He explains: "This new approach to providing DIC/DIL protection gives essentially the same cover for the client as they have traditionally purchased, but does so in a way that is much more explicit and clear with respect to claims handling, as well as being reasonable and defensible from the compliance point of view – although of course no approach can be guaranteed non-challengeable.

"If a claim cannot be settled in the local market for some reason and non-admitted insurance is not permitted, the client gets payment for DIC/DIL as a claim under the master policy to the parent company, representing the parent's loss of financial interest in its subsidiary. Insuring the parent's loss of financial interest means that the claim occurs in the country where the master policy is issued."

Willis International's global network practice leader, Claude Gallello, comments. "We have always taken it for granted that the master policy would provide DIC/DIL coverage, and in a sense this approach brings clarity to the master policy. This cover needs to be carefully tailored, customer by customer, to the extent that the client feels satisfied that it will receive full reimbursement of any loss occurring overseas.

"So far only a limited number of insurers have introduced financial interest clauses, but they will craft the wording specifically for the customer's needs."

The key issue for clients appears to revolve around what is the financial interest and how this is expressed. For instance, Gallello cites the example of a real estate company that may have a 1% interest in a property overseas but has the responsibility for providing all the insurance coverage.

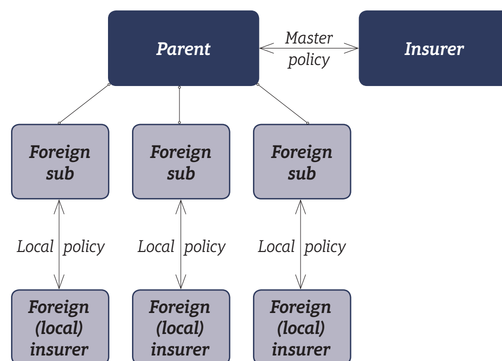
The parent company also has to decide how it will move the money paid under the master policy back to the country where the loss actually occurred, bearing in mind potential tax issues.

Furgueson echoes this comment and refers to a recently issued ACE white paper on how transfer pricing concepts can be incorporated into the structure of a company's global insurance programme. »

> *'Historically, insurers offered one policy covering everyone around the globe. That was not a problem in a benign regulatory environment but the market is now having to revisit this approach'*
>
> **Michael Furgueson** ACE

MASTER POLICY How it could look

An example of a master policy issued by an insurer to a multinational parent corporation in a larger multinational insurance programme



Source: White paper 'Structuring Multinational Insurance Programmes: Addressing the Taxation and Transfer Pricing Challenge', ACE and KPMG

'If there is no meeting of minds on how the risk management approach and premium allocation work, in most cases the client is asking for trouble'

Matt Grimwade Miller

"The issues are complex and risk managers will need to work hand in hand with their finance and treasury groups to achieve optimal structures," Furgueson notes.

Know what you're buying

Another important consideration when setting up a global programme is for the parent company to understand the coverage that it is buying locally. When a significant event occurs such as an infectious disease or other catastrophe, risk managers are likely to be asked whether this is covered and what limits are in place. The parent company's board in these circumstances may need to ascertain whether it has a duty of disclosure to its investors.

Furgueson says that ACE has introduced measures to ensure that this information is at the fingertips of risk managers. "Transparency is very important. All our customers have access online to a web-enabled technology platform, allowing them to see the local policies they have bought. They may be in the local language of the countries in which they were issued but it's a significant step forward. Previously, most brokers and customers were not able to assemble a global library of the contracts they purchase."

He adds that risk managers can also see data about when policies were issued, what premiums have been paid and the causes of any delays in issue of policies or movement of premiums to a company's captive.

The type of local cover available can vary considerably. Grimwade says that in a number of countries' insurers' approaches can differ as to whether they offer basic local policy cover, a good local standard of cover, or a broad standard designed to marry with the global master programme.

Oval Insurance Broking director of global accounts Chris Leage says that generally the aim is to get cover issued to a good local standard. "Getting as good a cover as we can locally rather than one that just covers the minimum will reduce the likelihood of having to call upon the global policy's DIC/DIL cover," he explains.

Furgueson stresses the benefit of the master policy insurer having a comprehensive international network, with underwriters based in the local territories so that they can fully explain what is or is not covered in the local policies. "They have designed the policies themselves so they have some control and can ensure consistency around cover," he says.

Further, their understanding of the local environment, market prices and claims considerations contributes to the quality of the global programme overall.

... And how much to buy

Risk managers setting up global programmes are likely to have a fairly clear idea of the amount of cover that the parent company requires to be provided by the master policy. However, deciding how much cover they require locally can be more difficult.

It's generally easier with property insurance where they are likely to take a values at risk approach. However, selecting limits for liabilities, particular for cover such as directors' and officers' liability (D&O), will mean looking at aspects such as the local environment – how likely is it that these types of claims arise? – the scope of the company's options, and its own philosophy regarding what it wants to have in place globally.

Furgueson says that D&O is a particularly topical issue because local directors and officers tend to be very conscious of governance requirements and what cover the company carries on their behalf. "Historically, insurers offered one policy covering everyone around the globe. That was not a problem in a benign regulatory environment but the market is now having to revisit this approach," he explains.

Having an insurer with the ability to issue local policies for these types of cover is important for the peace of mind of local directors. It is also a particular concern for companies in highly regulated industries such as financial services and for companies whose business includes local government contracts and who cannot afford to be seen to be in breach of regulations.

Very few large companies now operate in only one territory, says Leage, so interest in global programmes is increasing. The challenge for all concerned is to understand the different requirements and regulations that exist in local markets, stresses Furgueson.

"It's a challenge that has not necessarily been embraced by everyone in the marketplace so far but the marketplace is moving in that direction. There is much greater recognition of legal and compliance issues and particularly tax issues," he explains.

"Most fiscal authorities are searching for revenue. National insurance industries tend to have a great deal of rules and regulations but in many cases it is only recently that these have been vigorously enforced." **SR**

Global essentials

Here we summarise the key points of this report, the benefits of global risk programmes and the most important things to consider when setting them up

THIS SUMMARY OFFERS A QUICK GUIDE for risk managers and also acts as a tool for keeping board members informed about issues to consider related to global insurance programmes

KEY POINTS

Effective global programmes can increase risk awareness, boost best practice and encourage consistency

A single insurer with in-depth knowledge of all the territories involved is the most likely partner

Legal and compliance issues, including tax laws, vary between local markets and need to be fully understood

A bespoke programme that starts with local conditions is most likely to deliver

Global programmes require a lot of administration and are not for everyone

01

RISK MANAGEMENT CONSIDERATIONS

- Considerations before deciding upon a global programme include:
  - the company's risk philosophy and appetite;
  - the locations of its international operations; and
  - the type of covers required.
- Global programmes can provide the following benefits:
  - assisting with corporate governance and rolling out best practice;
  - increasing risk awareness;
  - helping to control cost through economies of scale;
  - maintaining greater control and consistency;
  - providing a broader scope of cover on a global basis;
  - enabling inclusion of non-standard covers that may not be available in some countries where the company operates; and
  - enabling standardisation of insurance processes.
- Global programmes generally produce the best results in organisations that have a centralised approach to insurance and risk management.
- The global master policy needs to be flexible and to accommodate the needs of companies with their own captive insurers.
- Getting local management buy-in may be difficult because of reluctance to take large deductibles, existing local relationships with brokers and insurers, and possibly cost.
- Risk managers considering global programmes should also be aware that there may be considerable administrative work involved.

02

ARRANGING COVER

- Global programmes are generally placed with a single insurer that has international capabilities. The risk manager and broker negotiate central terms and conditions with the underwriter that provides a global master policy. Local covers in the various territories involved are arranged, usually with the insurer's international affiliates, to provide admitted local coverage worldwide.
- A close tripartite relationship between client, broker and insurer is essential to ensure that the programme's structure and coverage meets the company's needs and reflects its risk philosophy. When requirements dictate, global policies should be bespoke.
- Cost is clearly important but should not be the main criteria when selecting a lead insurer. Important factors are the coverage that the master policy provides and the quality of the service that is being offered.
- It may not be essential to cover small local operations in low-risk territories.
- The master policy can provide difference in conditions/ difference in limits (DIC/DIL) cover to pay losses not compensated by local policies.
- This cover can be expressed as compensation for the parent's loss of financial interest in its subsidiary to avoid any breach of local restrictive regulations on insurance and prohibition of non-admitted insurers.
- So far only a limited number of insurers have introduced financial interest clauses, and they craft wordings specifically for the customer's needs.
- Risk managers must understand the coverage that is bought locally so that they can provide information to the board on whether, and for how much, losses from major events are covered.
- The type of local cover available from local policies can vary considerably and may be basic local policy cover, a good local standard of cover, or a broad standard designed to marry with the global master programme.
- The master policy insurer should have a comprehensive international network with underwriters based in the local territories who can fully explain what is covered, and who understand the local environment, market prices and claims considerations.

Having an insurer with the ability to issue local policies for these types of cover is important for the peace of mind of local directors. It is also a particular concern for companies in highly regulated industries such as financial services, and for companies whose business includes local government contracts and who cannot afford to be seen to be in breach of regulations.

Very few large companies now operate in only one territory, says Leage, so interest in global programmes is increasing. Furgueson stressed that the challenge for all concerned is to understand the different requirements and regulations that exist in local markets.

"It's a challenge that has not necessarily been embraced by everyone in the marketplace so far but the marketplace is moving in that direction. There is much greater recognition of legal and compliance issues and particularly tax issues," he explains.

"Most fiscal authorities are searching for revenue. National insurance industries tend to have a great deal of rules and regulations but in many cases it is only recently that these have been vigorously enforced. And that is causing some significant issues, particularly for clients," he concludes.

03

COMPLIANCE AND THE LAW

- Legal and compliance issues associated with global insurance programmes are a consideration for clients and their brokers as well as insurers, with local regulators and other authorities adopting a stricter approach.
- Non-compliance in certain territories can result in fines, penalties, back taxes and other measures, as well as unwelcome publicity and potential reputational damage.
- The key legal issues centre around use of prohibited non-admitted insurers and payment of insurance premium tax (IPT).
- There is some ambiguity about how insurance payments provided by the top-up DIC/DIL cover in global master policies are treated.
- A consistent and documented approach to premium allocation is essential if a company is to defend itself against charges of non-payment of insurance premium tax locally.
- Having all local cover underwritten by admitted insurers ensures compliance but may mean that the parent company loses some control over claims as these will be dealt with locally.
- If a loss is covered in the master policy but not in the local cover, the risk manager has a dilemma regarding how that loss will be paid back into country where the loss has occurred. A capital injection from the parent company may be regarded as taxable income. Further, there may be a legal issue if the money is seen to relate to an insurance payment when no premium – and therefore premium tax – has been paid in that particular country in respect of this insurance.
- Payment for a loss outside the country where it occurs can also present currency exchange issues. The value of the original payment received may have increased or decreased in terms of the local country's currency because of exchange rate volatility.
- Some countries do not allow indemnification of directors by the company, so attempting to indemnify a director via a prohibited insurance policy may be difficult.
- Regulators may be alerted if a corporation is buying what could be perceived as an unrealistically low amount of cover for its local operations and paying a matching amount of insurance premium tax.
- The likelihood of being caught breaking the law has grown as regulators are increasingly exchanging more information.
- Insuring the parent's financial interest in its subsidiary can avoid breaking local regulations but care has to be taken to ensure that compensation to the parent reflects the loss suffered locally. The issue remains that the money and the loss are in different places. There are potential tax issues when the parent company attempts to pass the money on to its subsidiary that has suffered the loss.
- Each country has its own rules, and may have varying requirements for different types of cover. The BRIC countries – Brazil, Russia, India and China – all have fairly strict legislation on how and where local operations can be insured. Latin American countries and some African countries tend to be highly restricted or do not allow non-admitted cover. There may also be regulations that limit the amount of reinsurance that can be covered externally.
- Achieving a global programme that is totally compliant worldwide is not impossible but it may require compromises that could erode the value of the programme. A risk manager whose company wants to derive the greatest benefit from global coverage may need to measure its risk appetite in terms of possible local regulatory challenges.

04

CLAIMS MANAGEMENT

- It is important that someone from the lead insurer's claims team participates in discussions with the broker and client when a global programme is being put together so that they can advise on what is deliverable in the various territories involved.
- Claims will not progress in exactly the same way around the world because of differing national cultures, rules and practices.
- Where the insurer providing the master policy has its own network of owned/affiliated companies around the globe, claims problems are reduced. The client benefits from alignment of approach and consistency in claims handling in a way that reflects corporate needs.
- The lead insurer and its network should be competent at handling high-frequency, lower-value claims as well as larger, more complex ones.
- Where claims are not payable into a particular territory and the policy has been arranged on a financial interest basis with the parent, the insurer should assist the risk manager in appointing a loss adjuster in the country involved.
- Consistency and accuracy of claims data provided by the insurer are essential.
- If and when claims arise, the risk manager should have a point of contact to check progress.

Covering your back

Multinational programmes needn't be time-consuming and complicated, as long as you make sure you ask the right questions

PRUDENTIAL GROUP INSURANCE risk manager Helen Hayden describes dealing with a multinational programme as her 'day job'; she also heads up the UK risk management association Airmic working party on global programmes. "There is no one perfect solution to what are perceived as the potential problems arising from global programmes, but there are solutions, in the plural," she says. "Different companies need different approaches."

KEY POINTS

01: Insurers around the world have different policy provisions based on their local territory

02: Local policy requirement information is available in the public domain but can be tricky to find

03: Risk managers shouldn't necessarily rely on the advice of brokers

04: Some local markets are at a much lower maturity than many risk managers are used to

Hayden suggests that risk managers should be prepared to have different levels of expectation and needs in respect of compliance. "For example, as a company operating in a highly regulated sector, Prudential has a very strict need to be compliant. Other businesses, for perfectly legitimate reasons, may not be over-concerned with this issue."

The Airmic working party has two main aims. "First, we want to achieve a greater degree of understanding of the issues and the questions that risk managers should be asking their providers," Hayden says.

Second is a practical approach to providing some of the detailed information that risk managers need to know to administer their programmes efficiently – and legally – and to ensure they meet claims reporting and management criteria.

Collaborate and listen

Insurers in various countries throughout the world include different provisions in their policies. Much of this information is in the public domain but at present it can only be accessed in a myriad of different places. "Risk managers need to collaborate to share the basic underlying information that tells them what they need to do in different jurisdictions," she proposes. Establishment of an insurance professional database that is accessible for members would be helpful.

Hayden gives some examples of the kinds of questions that risk managers need to be answered at the inception of local cover:

- Should a proposal form be completed and signed by the local entity or can this be done by central corporate risk management?
- What does the policy cover?
- Can your company legally indemnify its directors and officers in respect of their liability? This is a standard exclusion of some local D&O policies, and risk managers need to know if they can – and should – try to get the local cover extended to match the master policy.
- Is it cash before cover – in other words, does the company have to pay premium upfront before it is insured?
- Does the cover have to be physically delivered or can it be transmitted electronically?
- Is the local insurer admitted or non-admitted?
- To whom should insurance premium tax be paid?

Moving on to the next stage, where a claim, or circumstances that could give rise to a claim, have to be notified, the questions continue. To whom should the claim be notified – the local broker or the local insurer – and what's the time frame for such notification?

Hayden warns that some local markets are at a much lower level of maturity than those that most European risk managers are used to and can have quite onerous conditions relating to claims reporting.

Goes with the territory

"We are buying a promise to pay in the event of a defined peril occurring. We want certainty that that claim can be paid to the entity affected. Ensuring that we've put that policy in place correctly and that claims are managed and adjusted properly increases the likelihood that claims will be paid," Hayden explains.

"It's important that risk managers are aware that regulatory requirements differ from territory to territory," she continues. "Just relying on the master policy is not necessarily going to work, so it's important to understand what you have to do in a particular territory to ensure that the policy can perform if required to do so."

The working party plans to produce a guide for Airmic members in time for the risk management association's June conference. This guide will cover the points that risk managers should be considering when putting in place a global programme and the questions they should be asking. **SR**

TOP TIPS

- Allow plenty of time. Don't think that arranging a global programme can be done in the last six weeks of renewal. You have to start early.
- Communicate with your brokers, your insurers and your local companies, and consider talking to your internal tax and compliance people.
- Do not necessarily accept that what your broker and insurer tell you. Do your own thorough research.

The master plan

Comprehensive master policies can provide cover for countries worldwide, but do they take into account local regulations?

THE LEGAL AND COMPLIANCE issues associated with global insurance programmes used to be considered primarily an issue for insurance companies. But, as local regulators and other authorities adopt a stricter approach, the global policyholder and their broker have increasingly become a target. Non-compliance in certain territories can result in fines, penalties, back taxes and other measures, as well as unwelcome publicity and potential reputational damage.

It's a risk that most multinational organisations will not knowingly take but many, if not most, are in fact breaching regulations somewhere around the world, according to Willis International's global network practice leader, Claude Gallello. The key issues centre around use of prohibited non-admitted insurers and payment of insurance premium tax.

> 'Insurers used to be happy to write a policy with a worldwide insurance clause and cross bridges when they came to them. Now they are concerned about regulatory consequences'
>
> **James Roberts** Barlow Lyde & Gilbert

KEY POINTS

01: Some countries now prohibit the use of non-admitted insurers, causing problems for global policies

02: Regulators increasingly insist on transparency and compliance and have gone for 'trophy prosecutions'

03: A fully admitted global programme does involve losing level of control on claims

04: Risk managers can face a dilemma if a loss is covered by a master policy but not in the local cover

04: Emerging markets, such as the BRIC countries, also have strict leglislation on how local operations are insured

Clyde & Co partner Nigel Brook explains that coverage of local risks is acceptable when issued by local carriers who are admitted in the territory or where non-admitted cover is allowed. But some countries stipulate that local risks can only be covered by locally admitted carriers and this is where cover from a non-admitted insurer can be an issue.

"There is some ambiguity about how insurance payments provided by the top-up DIC/DIL [difference in conditions/difference in limits] cover in global master policies are treated. Will the regulators informally allow these as long as the insured company has bought a reasonable amount of local cover?" Brook asks. While a country's legal rules do not normally draw that distinction, it is not unheard of for regulators to take this approach. But he points out that some regulators in the more strictly controlled countries are now taking a hard line and going for "trophy prosecutions".

Barlow Lyde & Gilbert partner James Roberts stresses that the first challenge that risk managers face is that each country has its own particular rules. "That means that they may need a broker that has a presence in all the different countries where they operate and is ahead of the curve to come up with solutions," he says.

Problems are compounded by the fact that within each country, there may be different rules for different classes of business. "A country may have certain requirements in terms of local licensing and other provisions for, say, property but not for liability, or there may be particular mandatory clauses and different sets of rules that mean things are done differently.

KVAERNER CASE DEFINES LOCATION OF LIABILITY

The location of risk and hence of liability for insurance premium tax (IPT) was initially established by the second Non-Life Insurance Directive (1988), an EU-wide set of guidance for property, vehicle, travel and holiday insurance. Precise interpretation and enforcement was patchy in practice until the 2001 *Kvaerner* case.

Kvaerner, a Norwegian engineering and construction service group, took out a global professional indemnity insurance policy for its group companies. This covered a Dutch subsidiary of John Brown Plc which was owned by Kvaerner. The policy was taken out in the UK, and Kvaerner believed it should only pay UK IPT on all the coverage, but the Dutch tax authorities raised an IPT assessment on the Dutch element of the policy.

The case was eventually referred to the European Court of Justice (ECJ), which ruled that IPT was due where the risk was located and so Dutch IPT was due on the company's Netherlands subsidiary's element of the policy. The ECJ ruling stated that it was not relevant who paid the insurance, or where, and charged the insured (Kvaerner), and not the insurer. If there were any lingering doubts on the IPT liability to foreign tax authorities on risks covered in their territories by cross-border insurance, then the *Kvaerner* case resolved them.

Source: Fiscal Reps insurance premium tax legal cases

'There is some ambiguity about how insurance payments provided by the top-up DIC/DIL cover in global master policies are treated'

Nigel Brook Clyde & Co

That multiplies the sort of issues that risk managers are looking at," he says.

While DIC/DIL cover in the master policy helps in situations where it is not possible to buy free-standing policies for the coverage required in all the different countries involved, Roberts points out that this umbrella cover is unlikely to be compliant with all local regulations.

"Basically, you are just relocating part of the problem," he says. This normally arises more in relation to the liability classes of cover than to property. "You tend to find that property insurance is often insured by way of a local policy with a local limit because that is where the asset is," Roberts explains.

He says that regulators are tightening up, which means that both insurers and their clients have to approach global programmes in a completely different way. "In the past, insurers were happy to write a policy with a worldwide insurance clause and cross bridges when they came to them. But now a number of insurers are concerned about the regulatory consequences if there is any breach of the different local laws."

Allocation and IPT

A consistent approach to premium allocation is essential if a company is to defend itself against charges of non-payment of insurance premium tax, says ACE Overseas General multinational client group president Michael Furgueson. "Allocation of premiums should reflect allocation of risk and the insured's exposure. It's important to have a documented and consistent approach around the world in case of a challenge by fiscal authorities."

Drawbacks of fully admitted

JLT partner Karen Gorman admits that the easiest way to get around any issues is to have a fully admitted global programme in which local policies are issued and any claims are dealt with under local policies. But there are drawbacks. "Unless you co-ordinate the programme properly, you lose some of the control on claims because these have to be dealt with locally," she says. This can be an issue for some multinationals, which do not pursue the full admitted route as a result.

Gallello says that it's becoming a little more difficult to arrange a true global programme, negotiating the master policy and then implementing local policies. "The world has changed in the last five or six years. While risk managers want to be compliant, they also usually want losses paid in the countries where they occur."

He explains that this may not be possible where you can not match the cover included in the master policy with that which can be provided in some local territories. "If a loss is covered in the master policy but not in the local cover, the risk manager has a dilemma regarding how that loss will be paid back into the country where the loss has occurred." A capital injection from the parent company may be regarded as taxable income.

Furthermore, there may also be a legal issue if the money is seen to relate to an insurance payment when no premium – and therefore premium tax – has been paid in that particular country in respect of this insurance.

Payment for a loss outside of the country where it occurs can also present currency exchange issues. The value of the original payment received may have increased or decreased in terms of the local country's currency because of exchange rate volatility.

Issues relating to reimbursement of losses take on a somewhat more personal aspect where directors' liability is concerned. Some countries do not allow indemnification of directors by the company, so attempting to indemnify a »

THE LAW IN ARGENTINA

The Argentine authorities recently fined an individual insured eight times premium and an insurance intermediary 15 times premium for illegally transacting life insurance business with a non-authorised foreign life insurer.

Argentine law provides that property and persons in Argentina must be insured through a policy issued in Argentina by an insurance company authorised to carry out insurance business in the country. If these requirements are not met, the authorities may impose a fine up to 25 times the premium upon each of the insured and the insurance intermediary and a fine of up to $100,000 (€7,100) against the insurance company. Furthermore, the insurance policy will be considered null and void and unenforceable under Argentine law and directors and other responsible persons may also be held jointly liable for any damages due to the nullity.

'If a loss is covered in the master policy but not in the local cover, the risk manager has a dilemma over how that loss will be paid back into the country where the loss has occurred'

Claude Gallello Willis International

director via a prohibited insurance policy may be fraught with difficulties. Gallello says that his firm is trying to encourage more admitted D&O policies in the relevant territories.

Much of the prohibition of non-admitted insurance is driven by countries' fiscal authorities keen to ensure that they receive premium tax. Regulators may be alerted if a corporation is buying what they perceive as an unrealistically low amount of cover for its local operations and paying a matching amount of IPT.

Willis is seeking agreement from some regulators whereby clients pay some tax on the excess cover they arrange outside the local market to the local fiscal authorities, on the basis that they will not then pursue the clients and insurers concerned in respect of top-up claims payments received from the master policy.

There may also be issues relating to embargoed territories, says Grimwade. Although sanctions may impose barriers to doing business with such territories, some big multinational companies, for example in the security and protection industries, will have personnel in these countries by dint of the services or products they provide so they will have risk exposures there.

"They need to ensure that either their global policy could respond to these exposures or have some form of best local cover in place. Otherwise they have to accept they have limited or no insurance protection," Grimwade warns.

The likelihood of being caught out breaching the law has increased. Regulators want transparency and compliance, and are increasingly exchanging more information. "Memoranda of understanding are springing up between insurance supervisors," Brook says. "They operate country to country and country to state in the USA, so regulators are sharing information about what is going on in their particular territories."

In addition, some countries operate forms of exchange control so regulators will know if a large payment is made into the country by a non-admitted insurer.

Brook refers to the solution adopted by some insurers to offer cover to the parent

DEVELOPMENTS IN BRAZIL

Ferma recently welcomed as a "good first step" the response of the Brazilian government to complaints and concerns from corporate insurance buyers and national and international reinsurance markets about restrictive executive orders rolling back liberalisation of the market.

In response to the issues raised from the insurance community, the Brazilian government published Resolution 232 to rescind the complete prohibition of intra-company concessions effected from 31 March 2011 through Resolution 224. Instead, insurers will be allowed to transfer up to 20% of each reinsurance treaty to companies based abroad that are linked with or belong to the same financial conglomerate.

Insurance buyers represented by Ferma believe this concession is useful but not enough, given the 2007 decision of the Brazilian Parliament to end the more than 70-year monopoly of the Instituto de Resseguros do Brasil (IRB) and open the market to competition.

Resolution 225, which also came into effect on 31 March 2011, mandates placement of 40% of reinsurance business with local reinsurers who can change terms and conditions without penalty, instead of simply giving them the right of first refusal.

Ferma shares the view of others in the insurance and reinsurance community that Resolution 224 – even in its amended form – and Resolution 225 could prejudice development in Brazil because of:

- an increase of costs and reduction of capacity of the insurance and reinsurance market;
- concentration of major risks within the country instead of spread into the international reinsurance market;
- reduction of the development of the market in respect of job creation and fiscal benefits;
- prejudice to foreign insurers and reinsurers that have already invested in Brazil; and
- potential lack of coverage or capacity for important risks, such as the FIFA World Cup 2014 and the Olympic Games 2016.

Ferma's statement comes with support from the large number of its members whose companies have invested in Brazil and the national and regional risk management associations, the Asociación Brasilera de Gerencia de Riesgos (ABGR) and the Asociación Latinoamericana de Administradores de Riesgos y Seguros (ALARYS).

Ferma president Peter den Dekker states: "We are still open to dialogue with government entities in Brazil, in order to give as many explanations and clarifications as may be necessary to reach a consensus that is reasonable for all the involved parties."

> *'Insurance in India is pretty cheap but it is tariff based, so cover tends to be very basic. Wordings cannot be changed and are not as wide as those available in more sophisticated markets'*
>
> **Karen Gorman** JLT

company in respect of their shareholding in their subsidiary – financial interest coverage. "If a subsidiary suffers a loss of its assets then it diminishes the value of the parent's shareholding," he explains.

Although there would seem to be a problem, in that the loss suffered by the subsidiary may not automatically translate into a readily measurable drop in the value of the shareholding, Brook says that this can be overcome by having a valued policy.

"This puts a value on the loss to the shareholding and insurers will pay up to that amount and not what the value happens to be worth on the day of the loss, recognising that values can fluctuate. This cannot be pushed too far, however," he warns. Brook believes that this approach can provide a solution for multinational companies that does not breach local regulations.

There is still the issue that the money and the subsidiary's loss are in different places. This can create tax issues in groups that do not have consolidated accounts but, as Brook says, this is better for the group than receiving no payment at all.

Roberts agrees that the financial interest approach should ensure compliance under local law, depending on how the coverage is drafted. But he too envisages potential tax issues where the parent company attempts to pass the money on to the subsidiary that has suffered the loss.

It is also a solution that does not work for everyone. Roberts says: "We have been involved in a number of arrangements for large professional services firms that are structured as separate partnerships in different countries. They are all part of the same network but it is very difficult to demonstrate a common interest."

Brook stresses that there is no single perfect solution. Even with financial interest cover, because insurers are covering the parent's interest rather than the subsidiary itself, they have to rely upon the parent to arrange loss adjustment and mitigation.

Roberts concurs. "You will never be able to come up with a perfect solution to these issues. The master policy attempts to address issues but you cannot always be sure that it is 100% compliant with your particular local policy arrangements or it might provide cover in a country that does not really recognise that particular class of business. For example, professional indemnity cover may not be available or the wordings used may be ambiguous."

Difficult territories

Gorman points out that even in Europe there can be some significant variations in the approach to different types of insurance cover. For example, the Napoleonic Code requires landlords', tenants' and neighbours' liability to be insured under a property policy. In some countries, fire insurance is compulsory. And some countries prohibit indemnification of directors' liability by companies.

In Europe, however, Freedom of Services legislation allows insurers established within Europe to provide cover across borders for most types of insurance.

Problems tend to be greatest in terms of restrictive rules and prohibited non-nationally licensed insurers in – unfortunately for European multinationals – those fast-developing countries that offer the biggest opportunities for growth. The BRIC countries – Brazil, Russia, China and India – all have fairly strict legislation as to how and where local operations can be insured. Indeed, Latin American countries generally and some African countries tend to be highly restricted or do not allow non-admitted cover.

The problem is often compounded because there may also be regulations that limit the amount of reinsurance that can be covered externally. For example, Roberts says that India not only requires nationally based operations to be insured with a locally admitted insurer but also requires some local reinsurance to be placed with a local reinsurer.

"That causes problems if you are trying to structure a global programme and tie limits together. You won't be able to retain excess cover back to the master policy and that affects premium allocation and so forth," he says.

Gorman says that usually in practice all of the local risk is retained in India unless it is classed as a 'mega risk', in which case the parent company may have more flexibility. For this reason, many companies do not include their operations in India within their global programmes.

She also points to another problem in India. "Insurance in India is pretty cheap but it is tariff based, so cover tends to be very basic. Wordings cannot be changed and are not as wide as those available in more sophisticated markets."

Achieving a global programme that is totally compliant worldwide is not an impossibility but it may require some compromises that could erode the value of the programme. A risk manager whose company wants to derive the greatest benefit from global coverage may need to measure its risk appetite in terms of possible local regulatory challenges. **SR**

Claims crunch

Variations in culture, currency rules and data protection mean that progress of claims might vary around the world, but risk managers should still expect consistent service

CLAIMS PAYMENT IS THE intrinsic reason organisations buy insurance, but the complexities associated with global programmes can produce particular challenges. In theory, having consistent cover throughout the world should simplify matters. In practice, as discussed elsewhere in this report, total consistency is hard to achieve so risk managers need to consider how they can obtain the best outcome in respect of claims.

"It is very important that, when a global programme is being put together, someone from the insurer's claims operation takes part in the dialogue with the broker and client. Claims experts know what is deliverable – and what is not – in the different territories involved and can provide a realistic picture for the client," ACE Overseas General's global director of claims, Roger Day, says.

He adds, "In my experience, the biggest problems are not centred around major technical issues. They usually involve the basics. For example, companies may not understand exactly what is required, to whom they are supposed to report and at what level, so the simple issues can become a problem."

Where the insurer providing the master policy has its own network of affiliated companies around the globe, any problems are vastly reduced. The multinational insurance buying company benefits from the alignment of approach that the insurer can bring, so that local insurers' handling of claims is consistent and reflects clients' and its own needs. "It's basically a matter of ensuring that we're all going in the same direction," Day says.

But he warns that, even if you have consistency in the way claims are handled, it's a mistake to assume that all claims will progress in exactly the same way and at the same pace around the world. "There will be consistency of service but risk managers should not assume that claims in all territories progress in the same way; business cultures are varied."

So what should risk managers expect in the way of claims handling from their lead insurer on their global programme? They should be looking for an organisation that can deal with the highly technical types of claims but equally they would be well advised to check that the insurer is competent in handling high-frequency, lower-value claims.

'It is very important that, when a global programme is being put together, someone from the insurer's claims operation takes part in the dialogue with the broker and client'

Roger Day ACE Overseas General

KEY POINTS

01: The insurer's claims expert should be involving in putting together the global programme

02: Problems usually involve companies' understanding of basics such as required reporting

03: It's important that the insurer can deal with high-frequency, lower-value claims as well as larger, more complex ones

04: Payments to local entities through DIC/DIL cover must be in the appropriate currency and legally payable into the territory concerned

05: Variations in data privacy rules may affect insurers' ability to provide all information risk managers need

AN EXAMPLE OF ALLOCATION OF CLAIM PAYMENTS

After receiving casualty insurance claim payments from its master policy insurer, Company C chooses to pay its affiliated entity a different amount than the amount it received under the master policy.

Assume a casualty loss in the country where the foreign subsidiary is located exceeds a certain amount, and Company C decides to closes down operations in that country.

Company C, provided that an 'arm's length' pricing and terms were established in relation to its course of conduct, may choose to pay its foreign affiliate less than the amount it claimed, even though the foreign affiliate's losses are equal to or greater than the amount Company C claimed under its master policy.[1]

Any amounts paid by Company C to its subsidiary should be consistent with the rights and obligations created by the transfer pricing policies and documentation.

[1] With respect to a payment from the majority shareholder of a joint venture of the amount received by the majority shareholder under the master policy, such payment may be governed by the terms of the joint venture agreement.

Source: White paper *Structuring Multinational Insurance Programs: Addressing the Taxation and Transfer Pricing Challenge*, ACE and KPMG

After all, these are the claims that are most common.

The risk manager also needs to be sure that, where the master policy is paying a claim to a local entity through the difference in conditions/difference in limits (DIC/DIL) cover, the claim will be paid in the appropriate currency and, even more important, that the claim is legally payable into the country concerned.

Where claims are not payable into a particular territory and the master policy has been arranged on a financial interest basis with the parent organisation, the insurer should also be able to assist the risk manager in appointing an appropriate loss adjuster in the country involved.

Expectations must be clear

The complexity of claims handling in a global programme, coupled with the need to provide a bespoke service to clients who may have a wide range of needs, means that insurers have to gear up internally to ensure that they provide a good service for clients.

Day says that his own organisation prepares a specific claims bulletin so that everyone throughout the insurer's network understands what is required for a particular client. Service expectations have to be expressed clearly, bearing in mind that some of the employees in local affiliated companies will not be reading it in their native language.

Similar clarity is needed when it comes to local offices inputting data into the insurer's central system. Consistency of data is important both for the lead insurer and the client, and once again language differences must be taken into account.

Risk managers may also require their insurer to provide information from around the world but data privacy can be an issue. It is not always possible to transmit data from a country to an organisation outside that territory.

'We are appointing named individuals as claims relationship managers who are not only technically qualified but have the right communication skills'

Roger Day ACE Overseas General

Day says that some countries, such as Korea and Malaysia, have very strict rules on the information that can be sent out of the country, particularly in respect of individuals.

But risk managers should be able to expect information on the types of claims that are emerging in particular countries, and clearly this is valuable for them in terms of selecting the coverage and limits they require in particular territories.

Information can also be vital if a catastrophe occurs in a particular region. From a claims point of view, it's important for the insurer to get the right person with the right knowledge on the spot as soon as possible.

And having someone on the ground also helps the insurer to provide the information that both insurers and clients require. "Working with the client locally in these situations is very important," Day says.

Contact is crucial

If and when a claim does arise in a particular territory, the risk manager also needs a point of contact to check progress.

Day explains: "It's important that risk managers know who they can go to if they have any questions. Almost inevitably with policy administration or claims, there will be bumps in the road, and the litmus test is how quickly your insurer responds and achieves a resolution.

"We have made it a priority to have dedicated individuals to look after clients in a particular country or region. We are currently appointing named individuals as claims relationship managers, who have responsibility for looking after clients from the claims point of view and who are not only technically qualified but also have the right communication skills.

"We've established this in Europe and are now developing it in other parts of the world as well so that people know who they can go to if they have an issue. Customers are paying for claims service and it is a very important feature for global programmes."

Day concludes: "We are not here to create litigation and legal precedents. We work towards resolution of claims for our clients wherever they operate around the globe." **SR**

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