StrategicRISK

A GUIDE TO

Global Insurance Regulations

SPONSORED BY

by covering the world, ACE insures progress

Property & Casualty | Accident & Health

To manage multinational risk it takes dedicated expertise, a strong global network, financial security and cutting edge technology. Introducing ACE Global Programme Solutions — ACE GPS,[SM] a dynamic client focused solution for your international insurance needs. ACE GPS includes our new ACE Worldview[SM] web-based portal, so you and your broker can manage your programme in real time, right from your desktop. We'll take on the responsibility of your global risks so you can take on the responsibility of making things happen. We call this *insuring progress*. Visit us at acegroup.com/gps

insuring progress®

© 2011 ACE Group. Coverages underwritten by one or more of the ACE Group of Companies. Not all coverages available in all jurisdictions.
ACE, ACE Logo and insuring progress are registered trademarks of ACE Limited.

INTRODUCTION

THE WESTERN WORLD FOR SOME years has embraced the concepts of corporate governance and corporate responsibilities. With the globalisation of large companies, these concepts are spreading to less economically developed countries.

Regional cultural differences notwithstanding, there is a general movement in these countries towards adopting what are fast becoming international standards. An inevitable result is growth in regulation.

In some countries there is an understandable bias towards protectionism. They are striving to create a balance between attracting foreign investment and guarding national interests.

All of this creates a challenging scenario for companies seeking to implement global insurance programmes – and their insurers. Add to this the fact that even 'sophisticated' western countries continue to hone their laws in respect of corporate liabilities.

In this guide, we look at risk and regulation issues facing multinational corporations, particularly in relation to purchasing insurance cover on a worldwide basis. In addition, we specifically outline some of the issues connected with property, casualty, environmental and directors' and officers' liability (D&O) covers.

We have focused on D&O insurance because it is close to the hearts of the boards of many European companies, and is the area that perhaps reflects cultural differences more than any other.

Any review of regulation is a snapshot in time. Changes are ongoing – and companies need a broadly worded multinational programme today to ensure they meet the challenges of tomorrow.

Sue Copeman is editor-in-chief of StrategicRISK

CONTENTS

2 | **Perceptions of risk**
There is a shift in how multinationals and expanding regionals are looking at risk

4 | **The non-admitted question**
Are companies even asking the right questions?

9 | **Directors' and officers' liability**
With international venture comes the increasing importance of D&O insurance policies

14 | **Protecting property**
Location, location, location: property insurance in a global programme can bring its challenges

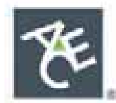
16 | **Casualty**
Workers' compensation – what's changed?

17 | **Environmental liability**
How multinationals are growing more environmentally conscious

Editor Nathan Skinner
Editor-in-chief Sue Copeman
Market analyst Andrew Leslie
Group production editor Áine Kelly
Deputy chief sub-editor Laura Sharp
Business development manager Donna Penfold tel: +44 (0)20 7618 3426
Production designer Nikki Easton
Group production manager Tricia McBride
Senior production controller Gareth Kime
Head of events Debbie Kidman
Events logistics manager Katherine Ball
Publisher William Sanders tel: +44 (0)20 7618 3452
Managing director Tim Whitehouse

To email anyone at Newsquest Specialist Media please use the following: firstname.surname@newsquestspecialistmedia.com

SPONSORED BY



Internationalisation of brokers is having a significant impact on risk management

With companies changing their approach to risk management policies, now is the time for the global insurance industry to react

THE WAYS DIFFERENT COMPANIES view risk – and their appetite for taking it – vary considerably. However, these are key factors in determining the structure of multinational insurance programmes. Regional cultural differences play a significant part, so it helps to know how different countries and areas view risk.

ACE Overseas General's president of the multinational client group, Michael Furgueson, says that differences in risk management approaches are often reflected in companies' views on risk financing, the use of captives and how much of their risks they are prepared to self insure through retentions or deductibles.

He cites the example of a Japanese company acquiring a business from a western group whose policy was to self insure. "Quite suddenly, this company was faced with buying a large amount of cover that had not been placed on the international market before in a relatively short space of time. This situation illustrates the fact that companies differ significantly in their philosophy around risk management and the need for insurance products that transfer risk."

A large number of countries have strengthened their corporate governance codes. The direct effect has been to draw attention to the increased duties and obligations for corporate directors and officers. However, says Furgueson, there has also been a significant impact on the growth of enterprise risk management, as these codes frequently have implications for companies' approach to and understanding of their risk.

For western companies, the focus has been on defining their risk appetite, understanding what measures they can take to mitigate their risks and perhaps transferring those elements or layers that they do not want to self-insure. This sophisticated approach is now developing in other regions, in some part due to the opening up of their domestic insurance markets.

Lifting of some national restrictions has given local companies new options. For example, in some regions companies that have historically self insured their own risks, rather than transferring them to a hitherto very limited market, are considering transfer to the now available wider market and variety of insurance products. There is even the possibility of forming captive insurers if national regulations allow this.

What does this change in local markets, major national companies' approaches and potentially a new

'We are starting to see some significant changes in the way both multinational and expanding regional companies are thinking about their risk management policies'

Michael Furgueson ACE Overseas General

attitude towards risk management mean for multinational companies and their global programmes? For a start, local subsidiaries, aware of the new domestic environment and competitors' approaches, may be more understanding and receptive to their parent's moves to implement global initiatives.

KEY CONSIDERATIONS FOR GLOBAL PROGRAMMES

- corporate risk appetite;
- regional cultural differences;
- corporate governance trends;
- risk transfer and risk financing options; and
- viability of captives.

Regional trends

- The massive growth spurt in South America has meant that companies there have expanded beyond their borders, with a corresponding change in the way they think about risk management and their appetite for retaining risk.
- In some Asia-based companies, the trend has been to let their local subsidiary managements buy their own insurance programmes, with no corporate oversight of insurance terms, conditions or cost. The parent companies do not view insurance as part of a holistic approach to risk management; it is simply a transaction that forms part of the cost of doing business.
- The appetite for risk financing using captives is greatest in the USA, largely arising out of the crisis there in the 1980s when insurance was not available for certain lines and companies had to consider how best to cost effectively manage their own risks.
- Companies in other western regions are actively involved in risk management but probably do not use captives as much as North American businesses. This trend away from self-insurance strategies tends to increase the further east one goes.

"If there's available insurance capacity at reasonable rates in local markets, it's clearly a disincentive for companies to finance their own risks," says Furgueson. "We are starting to see some significant changes taking place in the way that both multinational and expanding regional companies are thinking about their risk management policies. They are taking on board the changing compliance and global regulatory landscapes, and particularly the reputational, tax and operational risks that can result from how their insurance programmes are constructed and purchased. Even in countries where risk management concepts and practices are underdeveloped, companies are starting to think about and discuss these risks."

Globalisation of trade and the spread of ideas and practices around the world are happening more quickly than ever before. Brokers as advisers to the larger companies – wherever they may be – are advocating a more systematic approach to management of risk for their customers.

Furgueson adds: "The internationalisation of brokers and the influence they have on providing risk management services to their clients and proposing solutions, whether involving risk transfer or otherwise, are having a significant impact. The global insurance industry has the opportunity to react positively to this." **SR**

Is asking if non-admitted is permitted the correct question?

With the possibility of local rules and regulations shifting, the answer is often not as straightforward as the question

A COMMON QUESTION FROM RISK managers setting up global insurance programmes is whether non-admitted insurance is allowed in particular territories or whether local cover has to be provided by an admitted insurer. But the answer is usually not as straightforward as a simple yes or no.

"We have learnt over the last two-and-a-half to three years that you have to ask more and better questions," says ACE's multinational client group's general counsel, Suresh Krishnan. "The focus of asking whether non-admitted is permitted is generally from the perspective of the seller of the insurance and whether they are licensed or not in the territory concerned. But it doesn't capture all the other ancillary issues that a country may have with regulating insurance or the taxation of insurance premiums," he explains.

ACE Overseas General's multinational client group president, Michael Furgueson, adds: "The Federation of European Risk Management Associations [Ferma] and the UK risk management association Airmic are both seeking straightforward answers to what in theory seems like a fairly straightforward question. But brokers and insurance companies in many cases do not necessarily agree on what the answer is to very specific questions in a particular country, reflecting the fact that legislation, regulation or business practice may not be absolutely clear.

"Often there isn't a clear-cut answer to some questions, or local rules or regulations may be shifting. In some cases there is still ambiguity – and risk managers do not want that ambiguity. It then becomes a matter of using informed judgment, taking account of the risk appetite of the organisation concerned. To put this in perspective, it is not unusual for two well-qualified law firms to take very different views of the strength of relative legal positions, even in countries with very well-developed law and regulation. We are all using best judgment on certain issues in countries where the law, rules and regulations have not contemplated international insurance transactions."

According to Krishnan, one of the best ways to assess the regulatory issues that a multinational business may face in a particular country is not just to ask whether non-admitted insurance is permitted but rather also to ask what conditions may apply if a resident of that country insures their domestic risk with an insurer that is not licensed locally. "You will generally find there are a number of requirements that apply, not just to the insurer providing the cover but also to those buying it – and possibly the insurance broker that is facilitating the purchase. Regulations may also cover other areas; for example, how premium must be calculated, collected and remitted," he continues.

"Even restrictive countries like Brazil and Mexico have provisions in their laws that allow local people to buy non-admitted insurance to insure local risk,

but they have to satisfy certain conditions – and there are some conditions that must be satisfied by the seller."

With the recent increase in awareness about the regulation and taxation of multinational insurance programmes, it has been a relatively sharp learning curve for insurers, brokers and risk managers alike. Krishnan describes it as "a business of details". "But before you get into the detail of whether a risk can be exported from a specific country, treatment of premium tax or even what the fire brigade charges may be for dealing with an incident, you have to understand the general concept of what it takes to buy unlicensed insurance and how that works," he says.

While most questions about admitted/non-admitted insurance focus on those developing countries that are known to be restrictive, Krishnan says it applies also to more sophisticated markets. "For example, if you asked whether Canada allows non-admitted insurance, the answer would be similar to the USA – it depends on the province or state and on the course of conduct of the insured, broker or the insurer – so saying that non-admitted is permitted in these countries is correct but incomplete."

"Canada does not just regulate insurance business federally by imposing a tax on premiums sent to unlicensed insurers insuring Canadian risks. Its 10 provinces and territories also regulate insurance independent of one another. Each has its own code that must be followed and risk managers whose companies have assets or exposures in Canada must examine these in detail. For example, if the location of risk is in Alberta, one has to consider the conditions applying for the insured to buy insurance for that risk outside Canada.

"Can any broker handle the procurement or does it have to be what in Alberta is called a 'special broker' – one that is charged with certain duties where it intends to place local business with an insurer outside the country? Is there no locally admitted company in >

Canada's 10 provinces regulate insurance independent of one another

'Often there isn't a clear cut answer to some questions, or local rules or regulations may be shifting. In some cases there is still ambiguity – and risk managers do not want that ambiguity'

Michael Furgueson ACE Overseas General

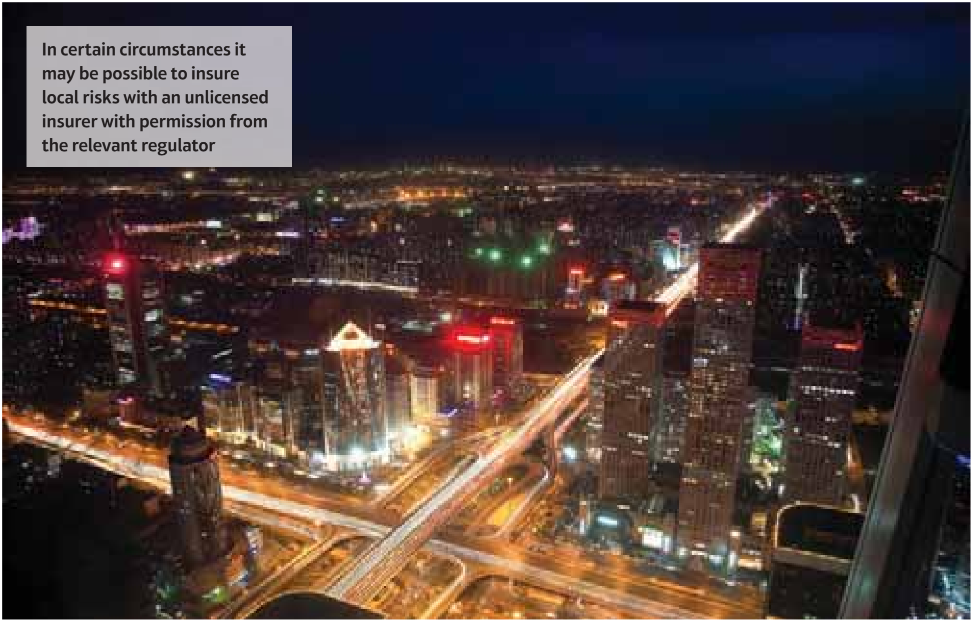
RISK MANAGER'S TOOL KIT

WITH SUFFICIENT KNOWLEDGE AND EXPERIENCE TO NAVIGATE THE REGULATORY minefield of multinational insurance, a 'toolkit' of the relevant questions to ask when structuring and implementing a multinational policy programme will result in a more effective and legally sound programme – one that is consistent with the participants' needs and expectations.

The following is a general list of questions that should be asked in connection with any multinational policy programme:

1. Do the countries in which the risk is located allow a non-admitted insurer to underwrite that risk? If the answer is yes, then what are the conditions under which a non-admitted insurer may conduct the business of insurance in that country? In addition, if the country permits risk to be insured by a non-admitted insurer, who is responsible for any applicable premium taxes and other parafiscal charges?
2. The information resulting from that analysis will provide the route to explore whether:
   (a) obligations are placed on a broker (local or international broker); and
   (b) premium allocated to the risk in such country is subject to an insurance premium tax and other parafiscal charges. If there are such taxes or charges, whether they are to be calculated, collected, and remitted to the applicable local authorities by the insured, the insurer, or the broker needs to be determined.
3. Next, questions concerning the place of payment of premium and issuance of the master difference in conditions (DIC) or difference in limits (DIL) policy should be analyzed. Should certain subsidiaries be included as named insureds under the policy, or should the parent or the purchaser of the policy be the only named insured under the master DIC/DIL policy? Consequently, where should premiums be calculated and paid? Ultimately, how may claims be adjusted and paid? In countries that strictly prohibit non-admitted insurance, should claims under the master policy relating to a loss in that country be handled by employees of the non-admitted insurer issuing the master DIC/DIL policy? Is it more prudent to use a third party administrator, retained by the insured, to work on behalf of the non-admitted insurer to adjust such a claim?
4. Finally, where may claims be paid? Many countries define the conduct of insurance to include the payment of claims, while others are either unclear on the issue or silent. If a claim is paid to the parent under the master policy, will the claim amount attract any taxes if the parent pays such amount to the covered subsidiary or affiliate? If taxes are applicable, further questions about the capital and tax structure and whether transfer pricing arrangements are required of the insured organisation may need to be thoroughly examined to clearly understand any potential tax liability of the insured, its subsidiaries, and joint ventures, and how that potential tax liability affects the insurer and the claim amount.

Source: *ACE Progress Report: Beyond "Non-Admitted": A Closer Look at Trends Affecting Today's Multinational Insurance Programmes*, by Suresh Krishnan, general counsel for ACE's multinational client group



In certain circumstances it may be possible to insure local risks with an unlicensed insurer with permission from the relevant regulator

Alberta willing to write the risk based on terms and conditions needed or is there insufficient capacity? Those sorts of questions can apply even in one of the most sophisticated markets," says Krishnan. And if insurers, brokers and clients want to be compliant, these are the questions they will have to answer.

Krishan adds that, as a general rule of thumb, regulation of non-admitted insurance focuses on brokers and/or clients in addition to the unlicensed insurer. However, in global terms, the growing awareness of requirements placed on brokers and their customers more often than not drives the broker to recommend local placement rather than trying to arrange a global programme that covers all risks with one insurance policy on a non-admitted basis.

For example, he cites Brazil, China, India and Mexico where in certain circumstances it may be possible to insure local risks with an unlicensed insurer with permission from the relevant regulator. "It centres on the level of detail that the insurer, broker and client have to focus on to make sure that they comply with the conditions that allow risk to be exported. Everyone needs to be aware of the rules, ask the right questions and assume that one or all parties may be regulated."

'Even restrictive countries like Brazil and Mexico have provisions in their laws that allow local people to buy non-admitted insurance to insure local risk, but they have to satisfy certain conditions'

Suresh Krishnan ACE Group

Furgueson stresses the need for multinational companies to consider >

'Countries like Brazil and Argentina are adopting policies that restrict their (re)insurance industries. We are encouraging our clients to ask themselves if this is of concern to their business interests'

Michael Furgueson ACE Group

their enterprise risk management strategy in terms of how they want to buy insurance if they have subsidiaries and affiliates throughout the world. Insurance solutions need to reflect corporate objectives," he says.

The white paper *Structuring Multinational Insurance Programmes: Addressing the Taxation and Transfer Pricing Challenge*, issued by ACE and KPMG, stresses that multinational enterprises purchasing global insurance coverage have particularly complex requirements. It expands: "They wish to have consistent limits as well as types of coverage and risk transfer terms for their worldwide exposures. They want to control the type and scope of coverage purchased at the local level. They try to obtain the most favourable risk transfer terms and pricing available from a consolidated purchase of insurance coverage.

"They also want service from their insurer including consolidated loss information with respect to each of their subsidiaries, affiliates, and joint ventures; for example, their 'affiliated entities'. As many multinational companies consolidate risk management functions in the parent office, the parent often takes the lead in negotiating and arranging insurance policies that provide consistent worldwide coverage and consistent limits to its worldwide interests."

Krishnan summarises: "Some issues have to be addressed by clients and brokers, and not necessarily by insurers. Increasingly, we're seeing that risk managers need a team approach to focus on how to build a robust global insurance programme. Risk management and insurance buying does not just involve the risk management department. For example, for global insurance programmes it also involves treasury, legal and compliance, and tax teams. You have to bring the experts to the table who will ask the right questions, as well as using local expertise to make sure domestic regulations are addressed."

And Furgueson has a wider message for risk managers. "Countries like Brazil and Argentina are adopting policies that restrict their (re)insurance industries. We are encouraging our clients to ask themselves if this is of concern to their business interests – and if so to take it into account in their own trade negotiations and discussions, and advocating few restrictions on international (re)insurance, rather than just looking to insurers, brokers or reinsurers to represent this position. Multinational insurance buyers may even a stronger voice than the insurance industry.

"The world generally has opened to trade. But we're still seeing in certain countries rules that attempt to restrict trade, including financial services such as insurance. Any influence that multinational companies can bring to bear to ensure that insurance markets are open and can provide the capacity and expertise required for certain lines of insurance has to be advantageous to all parties." **SR**

With a growing international operation comes the purchase of D&O insurance policies

As multinationals expand their focus to other regions and developing countries, the importance of D&O cover is ever-increasing

IN TODAY'S BUSINESS AND regulatory environment, the need for directors and officers to protect their personal assets is becoming increasingly apparent. This has been appreciated in the western world for some years with the growing purchase of directors' and officers' liability (D&O) insurance. As multinational companies expand into other regions and developing countries introduce their own corporate governance regimes, D&O insurance has become an intrinsic part of multinational insurance programmes.

The trend towards including D&O cover in multinational operations is demonstrated by the findings of the latest Towers Watson D&O liability survey. Published in February 2011, the survey states that not only are more companies across a wide range of industries increasing their D&O liability limits, but in addition "among those companies with international operations, a growing number are also purchasing a D&O policy in a foreign jurisdiction".

Of the 496 companies surveyed, 53% said their companies have international operations. Of this figure, 25% purchased a local D&O policy in a foreign jurisdiction, a marked increase over 2008, where only 2% of respondents with international operations purchased a local policy in a foreign jurisdiction. Additionally, as a general rule, the larger the company, the more likely it was to purchase local D&O coverage. As such, 68% of companies with $10bn (€6.9bn) or more in assets said they bought local policies, while 23% of companies with less than $250m in assets did so.

"Clearly, multinational organisations have a better understanding that the risk environment has clearly changed, and they are seeing that navigating local laws and regulations are complex, depending on the region," says Towers Watson senior consultant Michael F Turk.

"However, as a result of the time spent becoming more familiar with local issues as it relates to their own distinct situation in a particular country, companies are making more informed decisions as to how to best protect their directors and officers."

According to law firm Holman Fenwick Willan, since the financial crisis, corporate governance has been on the increase across the world. Since governance codes generally impose duties and liabilities on directors, one feature of this has been the concurrent rise in D&O liability insurance, says the firm.

In a recent presentation, 'Going Global: De-Risking Your International Growth', William Gallagher Associates and Nair & Co highlighted some countries and the civil and criminal penalties that directors and officers could face. These included: >

D&O IN THE MIDDLE EAST

HISTORICALLY, D&O INSURANCE HAS not been widely purchased in the Middle East, with private companies considering themselves not to be at risk. However, there has recently been a sharp increase in the number of corporate governance-related regulatory and criminal investigations in the region, partly owing to the economic climate.

Directors and senior management are finding that they are being called to account for personal actions, which has caused them to focus on personal exposures. The increased awareness that no director or officer is beyond risk, or exempt from litigation or investigation, explains why D&O policies are also on the increase.

The Kingdom of Saudi Arabia

Saudi Arabia introduced the Corporate Governance Regulation (CGR) 2006 for listed companies, which was intended to strengthen the supervisory functions across the financial sector, following recognition that regulations needed tightening. The implementation is still in the relatively early stages, but CGR 2006 is generally considered to reflect recognised international practice. There are several recommendations being made to aid better enforcement, including proposals to make compliance with some or all of the regulations mandatory.

The uptake of D&O insurance has been fairly inconsistent across Saudi Arabia, with some considering the risk of being sued in Saudi so minimal that taking up cover is not worthwhile, while others have reacted more positively.

UAE

In the wake of the financial crisis, a trend in boosting corporate governance is evidenced in the UAE by Ministerial Resolution No (518) of 2009 and 84 of 2010, recently issued by the Ministry of Economy, enhancing governance rules and corporate discipline standards (the Securities and Commodities Authority (SCA) Code). The SCA has responsibility for ensuring compliance. The new laws apply to all companies that have securities listed on a securities market and to their board members.

The purchase of D&O products in the UAE has seen a rise, but not necessarily to the same levels as had been anticipated, particularly in the private sector. This could be down to the fact that many private companies are family owned. Therefore, the perception of the risk of claims against the directors or officers of those companies is relatively low. Attitudes are expected to change as awareness of potential exposures for directors and officers increases, and boosting corporate governance is likely to have a direct effect.

Perhaps the biggest distinguishing factor from other jurisdictions worldwide (including the UK, Qatar, Saudi Arabia and Dubai) is that the regulations do not form part of a wider financial services regulatory body. There can be, therefore, a lack of synergy between the different regulations that are being issued, given that more than one governmental body is involved in regulating the financial sector in the UAE.

Dubai

Law No 9 of 2004 has been amended (Law No 7) for the first time, unveiling greater corporate governance in the Dubai International Finance Centre (DIFC), with the introduction of a new Higher Board, comprising representatives from the DIFC Authority, the Dubai Financial Services Authority and the DIFC courts. The shift represents the focus on compliance, with the highest level of governance, and on transparency. The new law also clarifies the application of Dubai laws to DIFC businesses.

While rumours have been rife that there may be a compulsory introduction of D&O insurance in light of the influx of claims against directors and officers, it is widely considered that this will not materialise in the DIFC because it would undermine the concept of a free market. The focus instead is on increasing awareness.

Qatar

The Qatar Financial Markets Authority enacted a new corporate governance code for public and listed companies in 2009. This reflected the aim of implementing corporate governance principles in place in the developed world for the management of public companies, thereby applying international standards. The uptake of D&O products has been slow so far.

Source: Holman Fenwick Willan LLP

'Multinational organisations have a better understanding that the risk environment has clearly changed, and they are seeing that navigating local laws and regulations are complex, depending on the region'

Michael F Turk Towers Watson

- China, where infringement of intellectual property is one of 22 categories of institutional crimes where a director of a foreign investment company can be sentenced to prison for at least six months, the severest penalty being execution.
- Australia, where it is a criminal offence to fail to discharge responsibilities relating to tax law.
- Canada, where environmental offences can lead to imprisonment for up to five years and heavy fines on the company.

European risk managers need to be aware that, even in the EU, there are considerable variations in the regulations relating to directors' liability, for example, relating to companies' ability to indemnify their directors. The German Act on the Appropriateness of Management Board Compensation (VorstAG), which came into force in August 2009, introduced a compulsory deductible for directors and officers. And Romania broke new ground as the first EU member to make D&O insurance compulsory for all corporations.

D&O in the BRIC countries

Many European corporations are focusing their expansion on the BRIC countries: Brazil, Russia, India and China. Directors and officers of

>

'As the economic situation improves, it is reasonable to expect that directors may again require protection against risks related to public offerings of securities'

Leonid Zubarev CMS Russia

companies/joint ventures in these countries are subject to local laws as regards their potential liabilities, with possible requirements for local cover.

Brazil

Brazil requires admitted insurance purchase; therefore foreign companies must buy locally issued D&O cover for Brazilian subsidiaries' directors and officers if they want effective D&O protection.

According to law firm Edwards Angell Palmer & Dodge, while D&O insurance has existed in Brazil for some time, it has historically represented a very small part of the local market. However, with the nation's steadily growing economy, greater foreign investment and the global credit crisis, things may be changing.

For example, according to Susep, the Brazilian insurance regulator, premiums paid for D&O liability insurance grew by 61.7% between January 2007 and September 2008. By comparison, the overall Brazilian insurance market grew only 5.2% over the same period.

Russia

CMS Russia partner and head of commercial practice and insurance and funds industry group Leonid Zubarev says that the Russian D&O market is currently limited to Russian companies that have already placed their shares or other securities on capital markets outside Russia, or are planning to do so in the near future. "There have also been a few examples of big Russian companies, such as Sberbank, buying D&O insurance policies for their directors to cover mostly domestic risks."

He adds: "However, as the economic situation improves, it is reasonable to expect that directors may again require protection against risks related to public offerings of securities. They may also face new risks. For example, the concept of an opt-in class action has been introduced. A shareholder or a bondholder may file a claim against a company and/or its directors, and suggest to other shareholders or bondholders that they join the proceedings as plaintiffs. Matters of fact established by a court decision on such a claim will create a precedent for other courts considering claims against the same defendant on the same grounds, and cannot be challenged."

The government has introduced a draft law to the State Duma changing the regulation of the duties of directors and officers and their liability, significantly increasing their exposure. This draft law shifts the burden of proof onto the directors, requiring them to demonstrate that there has been no evidence of unreasonable or bad faith behaviour on their part.

However, it also introduces the possibility for companies to have indemnification agreements and to indemnify their directors against any legal costs, including defence costs in civil, administrative or criminal procedures.

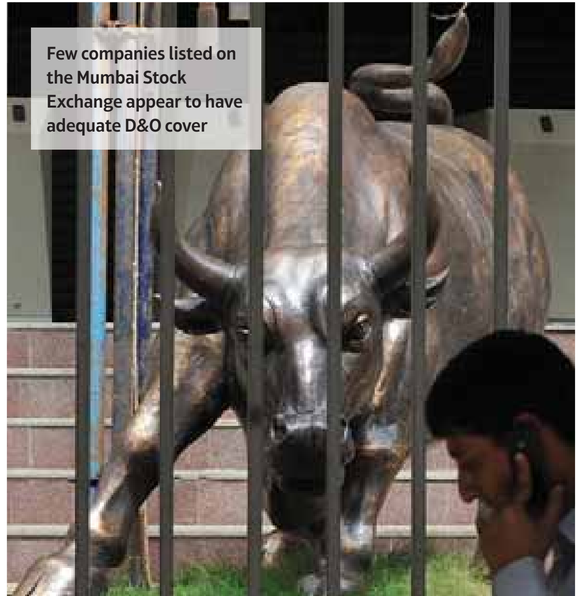
In essence, Russian corporate and insurance legislation is being developed to bring it closer to international standards.

India

Nandi Resources Generation Technology's director Rupanjana De says that the Companies Act 1956 imposes liability on company secretaries and directors. "The act specifies several provisions that, if contravened, can lead to their liability, expose them to heavy penalties or even land them in jail," she says. Other enactments also make directors liable for contraventions of laws, such as those relating to the environment, tax, labour, antitrust and securities.

De says there are many common law duties relating to directors. While not codified by statutes, these are considered binding, particularly as India is a country largely governed by common law. Such duties include: taking care and exercising due diligence; not acting negligently; avoiding conflicts of interest; acting in good faith, and making proper disclosures.

While comparatively few companies listed on the Mumbai Stock Exchange appear to have adequate D&O cover, there are suggestions that the Securities and Exchange Board of India may make such insurance compulsory for listed companies.



Few companies listed on the Mumbai Stock Exchange appear to have adequate D&O cover

'The [1956 Companies Act] specifies several provisions that, if contravened, can lead to directors' liability, expose them to heavy penalties or even land them in jail'

Rupanjana De Nandi Resources Generation Technology

China

Law firm Lehman, Lee & Xu says that, in 2006, the People's Republic of China company law placed duties of loyalty and due diligence towards a company on its senior executives. "Directors and officers can be held jointly or severally liable for actions such as false or misleading records, disclosure omissions or others causing loss to the company, and shareholders are allowed to bring derivative claims or direct claims against executives and the company."

Subject to approval from shareholders, listed companies can buy insurance for their directors but this cannot cover liabilities resulting from breach of the laws, regulations or the companies' articles of association.

According to Grandall Legal Group partner Dr Zhan Hao, D&O insurance in China has not gained the popularity experienced in developed countries. He attributes this to provisions and rules under Chinese law, stipulating that D&O liability is generally in respect of third parties rather than the company itself. "The directors and officers only bear liabilities to the company owing to their wrongful acts." **SR**

Keeping pace with local regulation is an essential part of global property protection

From environmental to political implications, purchasing property insurance around the world can often be a minefield

INSURING PROPERTY WITHIN A global insurance programme can pose some particular challenges because of the number of locations involved and the different exposures presented in the various countries.

ACE executive vice-president, international property, Derek Talbott says: "We start with the basics of the risk from an underwriting perspective, which means looking at the construction and occupancy of the property, and any protections that it may have. But after that we need to identify any specific local exposures.

"For example, is the area prone to earthquakes, windstorms or floods? What is the actual and potential political climate, and is there the likelihood of strikes, riots, or civil commotion? Do we need to provide any degree of terrorism or political risk cover? It's only after making this assessment that we can arrive at a realistic price that is hopefully attractive for both us and the client."

An inherent part of this process is skilled appraisal by risk engineers. While this clearly helps the insurer to understand exactly what the likely exposures are, it also has benefits for the multinational client, says Talbott.

"Our network of engineers around the globe doesn't just give us the benefit of their advice. They also help our clients, evaluating their buildings and plants, and suggesting how companies may be able to improve the overall risk quality. They will also look at the business interruption side of things, helping companies to decide how they might cope following a loss. For example, if a particular manufacturing facility is lost, is there the possibility of making up the shortfall in product elsewhere?"

Once the underwriting criteria have been satisfied, the business and strategic issues – a key consideration for multinational clients – come into play. These can embrace a whole range of aspects, many of which relate to the regulatory requirements of the different territories involved.

For example, there may be considerations relating to local policy issuance and local claims handling. If the multinational company has a captive that will be taking a premium retention, it is important to understand how this will work from a regulatory point of view. What are the administrative requirements in a particular territory and who will be responsible for carrying these out?

'Recent turmoil in North Africa highlighted the possibility of potential gaps in cover between what's provided by standard property policy terms and what may fall into the realms of political violence, or even war'

Derek Talbott ACE Group

Countries have their own, often very different, laws and regulations relating to insurance, and it can be a minefield if the global programme does not take account of all of these. But keeping pace with the changes may be a real challenge.

Talbott explains: "There are really only a handful of insurers who have an effective global network that can truly service multinational clients' property insurance needs. Even that handful may be challenged when it comes to keeping up to date with all the different national regulations and any impending changes.

"We rely on our people on the ground in the individual countries and we have a system that tracks any changes in real time. It's important to be able to provide this information to clients. Usually, we work on this with the companies' brokers – although even the largest multinational brokers find it challenging to keep track of all the different regulations."

There are a multitude of laws around the world that can affect the way property insurance is bought, structured and priced. In some countries, cover – or certain elements of it – may be compulsory. Or there may be a tariff system, dictating coverage terms, conditions, premium rates and deductibles. Companies operating in high hazard zones may face specific requirements relating to their insurance protection.

In addition, says Talbott, work and safety related regulations that have an obvious direct impact on liability considerations may also have an indirect impact on the exposure of property, because they can affect the characteristics of buildings and plant with an effect on potential exposure.

He also points to the impact of political events on the way that multinationals need to arrange their global programmes. "Recent turmoil in North Africa and the Middle East, along with political unrest in countries like Thailand, have highlighted the possibility of potential gaps in cover between what's provided by standard property policy terms and what may fall into the realms of political violence, terrorism or even war. Where companies have these kinds of exposures and potential gaps, it's important for insurers to provide a product that represents the optimum solution."

Insurance at the time that companies buy it is essentially an intangible product. They are buying a promise – to compensate them against a loss quickly and fairly where they can provide the necessary authenticating information. With this in mind, Talbott finally stresses the need for good claims handling. "As an insurer, it's crucial that we have a global network of claims adjusters as well as our own claims people on the ground to help facilitate adjustment and payment of claims." **SR**

POLITICAL RISK AND THE MIDDLE EAST

Understandably, there has been a sharp rise in requests for political risk insurance as a result of the recent unrest in the Middle East. Due to this demand, insurers are increasingly providing strikes, riots and civil commotions (SRCC) cover, albeit at significantly higher rates.

There are currently test cases before local courts, particularly in Egypt, on the construction of different SRCC terms and whether the recent events fall within or are excluded under relevant policies. Although there is English authority on the various legal issues that arise from such disputes, such notions will usually be foreign to the judicial systems in this region and are unlikely to be dealt with under local laws.

Source: Holman Fenwick Willan LLP

Employer's liability or workers' compensation

What is workers' compensation, and how does it differ from the UK's mandatory employer's liability insurance?

EMPLOYER'S LIABILITY INSURANCE is mandatory in the UK and optional in Ireland. However, most other countries have state-operated workers' compensation schemes. According to the *Marsh Multinational Market Report 2011*, foreign voluntary workers' compensation and employer's liability insurance are typically written as part of comprehensive international casualty programmes.

In some countries with workers' compensation schemes, there may be residual employer's liability. For example, broker H W Wood says that, although in France workers' compensation insurance is state-supplied as part of the social security package financed by employers' payroll contributions, in certain circumstances, injured employees are entitled to sue their employer for an additional indemnity. This comes under the doctrine of 'faute inexcusable'.

"A judgment of the Supreme Constitutional Court in June 2010 is likely to substantially increase the quantum of faute inexcusable claims," says the broker.

Public and products liability

The EU Product Liability Directive lays down common rules governing liability for defective products in the member states. It imposes strict liability on the producer of a defective product for damage caused by the defect. However, like many directives, there is scope for variations in interpretation and implementation in different countries. **SR**

WORKERS' COMPENSATION CHANGES

- Portugal: Recent changes in Portuguese legislation have increased the indemnity limits for workers' compensation insurance and local insurers are therefore being forced to adjust premiums accordingly.
- Denmark: Due to a recent High Court ruling there may be a change in the way premiums are calculated.

Source: Marsh

EU COLLECTIVE REDRESS

In February, the European Commission launched a public consultation – 'Towards a Coherent European Approach to Collective Redress' – on whether new, EU-wide forms of collective redress should be introduced.

The paper's premise is that where a breach of European law harms a large group of citizens or businesses, individual lawsuits are often not an effective means to obtain compensation for the harm caused or to enjoin or deter future unlawful conduct. Individuals are often reluctant to initiate private lawsuits. The Commission proposes that when a breach of EU law harms a multitude of citizens or businesses, it ought to be possible for their claims for redress to be bundled into a single collective procedure or for such a claim to be brought by a representative body acting in the public interest. This could allow justice to be achieved at a reduced cost.

Source: Hogan Lovells

Environmental liability regulation on a global rise

As the laws stack up, multinational companies are becoming more conscious of their environmental risks

THE EU ENVIRONMENTAL LIABILITY Directive entered into force in 2004 with a requirement for member states to implement appropriate legislation by 30 April 2007. The directive endorsed the 'polluter pays' principle, and imposed liability for damage to valuable elements of biodiversity – protected species and natural habitats.

The relatively new European environmental liability laws have been a key driver in promoting awareness among multinational companies of their environmental obligations, says ACE International's senior vice-president of environmental risk, Karl Russek. However, in addition he points out that there is a general increase in environmental regulation globally.

Multinationals have become conscious of their environmental risks and, in many instances, are looking to transfer these to the insurance market. Environmental impairment liability cover (EIL) is no longer an exceptional purchase but has become a standard part of many companies' global programmes.

In the USA, this has been the case for some time, with US environmental laws such as the Clean Air Act, the Clean Water Act, rules on transporting and storing hazardous waste, and the Superfund law on cleaning up toxic waste sites. However, the insurance policy wordings geared to covering US risks did not transpose comfortably when related to other jurisdictions.

Russek says that ACE takes two approaches to writing global EIL cover. "The first is a traditional master policy with underlying covers written in local markets, which is specific for environmental risk and can operate on a standalone basis. The second option is to include EIL as a section within the master public liability policy, with the difference in conditions clause picking up any compensation for environmental risk that might not be insured by the local liability policies," he explains.

The second option is simpler and can be cost effective, as it removes the need for a number of individual underlying local EIL policies. It also reflects the view of many companies that EIL should be treated as a catastrophe risk. **SR**

DEFENDING ACTIONS UNDER THE EU ENVIRONMENTAL LIABILITY DIRECTIVE

EU-wide defences

Companies will not be liable if the environmental damage is caused by:

- extraordinary events such as a major storm;
- a third party, providing appropriate safety measures were in place; and
- compliance with an order from a public authority.

Defences allowed by some member states

- The 'permit defence' – applicable where businesses can demonstrate that the damage was caused by activities specifically permitted by authorities, provided that the business was not otherwise at fault or negligent.
- The 'state of the art defence' – applicable where the activities concerned were considered unlikely to cause environmental damage according to the scientific and technical knowledge available at the time.

Worldwide, ACE insures progress

drivers, fine art, jewelry, rare coins, antiques, medical, personal accident, group accident, supplemental health, banks, financial institutions, asset managers, investment banks, affinity groups, telemarketing, associations, clubs, societies, cruise lines, tour operators, sponsorships, partnerships, war risks, political risk, recovery, public, private, high-tech, e-business, progress, global, innovation, growth, flexibility, seamlessness, consistency, integration, accessibility, property, liability, public liability, excess casualty, directors, officers, leisure industry, airlines, travel agents, hotels, resorts, restaurants, bistros, cargo, containers, harbors, cranes, accident and health, life insurance, reinsurance, marine, charter vessels, commercial hull, mega yachts pleasure boats, whole life, term life, group life, disability, construction, skyscrapers, museums, public parks, offices, hospitals, agriculture, excess liability, medical malpractice, political risk, homeowners, automotive, fleet, 18-wheelers, vans, hybrids, motorcycles, scooters, school buses, estate, surety, products, damage, theft, landlords, lessees, retail, shopping malls, product liability, identity theft, data theft, data recovery, power stations, gas stations, refineries, drill islands, pipelines, natural gas, hydrogen, tankers, carbon waste, pollution, storage tanks, football clubs, cricket clubs, country clubs, discoveries, breakthroughs, surgery, laboratories, indemnity, inventions, copyright, trademark, local customs, asia, africa, europe, north america, central america, south america, down under, onshore, offshore, aerospace, aviation, contractors, subcontractors, developers, workers comp, schools, colleges, universities, student travel, hospitality, travel assistance, inventory, digital assets, security, failures, risk assessment, mergers, acquisitions, spin-offs, occupational accident, employer liability, entrepreneurs, employees, local, national, pilots, crews, business travel, foreign travel, vacations, emergencies, mobile phones, trucking, healthcare, staffing, energy, green, environment, sustainability, renewable energy, carbon-capture, greenhouse gases, emissions, science, technology, imports, exports, inland, coastal, warehouses, real estate, mansions, cottages, beach houses, architects, engineers, consultants, land surveyors, pollution clean-up, pollution liability,

Property & Casualty | Accident & Health | Life

ACE takes on the responsibility of your risks so you can take on the responsibility of making things happen. We call this *insuring progress*. To find out how our people, financial strength, worldwide capabilities and flexible approach can work to insure your progress, visit acegroup.com/eu today.

insuring progress®

©2011 The ACE Group of insurance and reinsurance companies. ACE, ACE Logo, and insuring progress are registered trademarks of ACE Limited.