Compliance of multi-national insurance programs

Guide 2015

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1. Executive Summary

> "Regulatory requirements are a matter of fact in some territories and a matter of interpretation in others."

Multi-national insurance programs

The arrangement and purchase of fully compliant multi-national insurance programs to protect operations at both local and head office level remains difficult and complicated. There are a myriad of specific laws and regulations in different countries around the world, some of which are straightforward and others are distinctly opaque and unclear. This can lead to uncertainty, unpredictability and ambiguity.

Inadvertent breach of these laws or regulations is often only identified on disclosure of the insurance contract to regulators or during litigation. The breach might render the insurance contract illegal or unenforceable, thereby exposing the buyer to an unexpected "uninsured" loss exposure. This may result in the loss being unpaid, as well as the possibility of fiscal or penal sanctions.

Regulatory requirements are a matter of fact in some territories and a matter of interpretation in others. The advice available is sometimes not consistent, can be contradictory and/or unreliable. Insurance buyers need claims certainty following a claim or loss, whether this is through a master policy and/or a local policy. Insurance buyers need access to consistent information, so that an informed decision can be made about the need and/or requirement to buy local cover.

This guide has been produced with the following purposes:

- Identify the issues that need to be addressed and the associated responsibilities in ensuring compliance of multi-national insurance programs
- Outline the importance, difficulties and the consequences of non-compliance of multi-national insurance programs and the availability of relevant data
- Present a checklist of questions that the insurance buyer should ask of the insurer and/or insurance broker to gain assurance on compliance concerns and responsibilities
- Describe the range of information available on the Axco 'Insight Risk Manager' database developed specifically to provide information to insurance buyers

Structure of the guide

Part 1 of the guide considers the nature of multi-national insurance programs and the importance of the structure and risk management philosophy of the insured. Appendix A sets out a list of topics that need to be considered and it follows the structure of Part 2 of the guide. It describes the scope of the information available in the Axco 'Insight Risk Manager' database available as a membership benefit to Airmic members and considers the following:

- General country information
- Admitted and non-admitted insurances
- Insurance Contracts
- Premiums and premium payment
- Supervision and control
- Company registration and operating requirements

Part 3 describes the importance of roles and responsibilities. It also sets out the consequences of non-compliance, as well as a discussion of the practical operation of insurance market practices. Appendix B sets out a checklist of issues related to multi-national insurance programs that should be considered by insurance buyers. It considers issues that go beyond simple compliance by describing governance and administrative issues that insurance buyers will need to address, including:

- Pre-renewal information
- Placement structure
- Insurance contract
- Premium payment
- Claims notification / processing

Part 1: Structure of multi-national insurance programs

2. Introduction to compliance concerns

Almost every country in the world legislates to control the way in which insurance business is transacted. Some requirements may be imposed to assist the local insurance industry or to conserve currency as part of foreign exchange controls. Usually, insurance legislation is intended to protect the financial stability of insurers operating within that territory. The registration and licensing of an insurer usually requires compliance with the specified standards of solvency. For example, the anticipated requirements of Solvency II will provide uniform standards of solvency across all admitted insurers within the European Union.

Whilst multi-national companies based in the UK are increasingly looking to centralize their risk management programs, there are a considerable number of factors that make insurance buying for risks outside the UK different from buying insurance for risks based in the UK. Insurance is often considered to be one of the most globalized of industries, but it may not feel like that to a risk manager confronting the challenges of putting together a multi-national insurance program.

The specific laws in a country, the attitudes and economic conditions, as well as the political and natural environment, combine to make insurance purchase unique in each territory. With the partial exception of EU countries, every territory has its own differing rules for buyers, sellers and intermediaries of commercial insurance, many insisting that buyers use locally licensed (or admitted) insurers. As an example of complexity, the United States has state-based insurance regulation which means 50 different authorities to satisfy.

There is an ever-growing compliance expectation from regulators and tax authorities and from company boards, all of whom want efficacy from the insurance arrangements. Anyone who breaks the rules, no matter how hard they have tried to comply, faces a range of possible legal penalties (including fines and even imprisonment), as well as reputational damage, claims invalidated or claims payments treated as taxable income. The whole process, however, can be fraught with difficulties and it is quite possible to inadvertently put in place insurance arrangements that include unlicensed (non-admitted) insurers in territories where this may not be permitted. Putting together a cohesive multi-national package with consistent terms and limits that creates a robust compliant global program is no easy task.

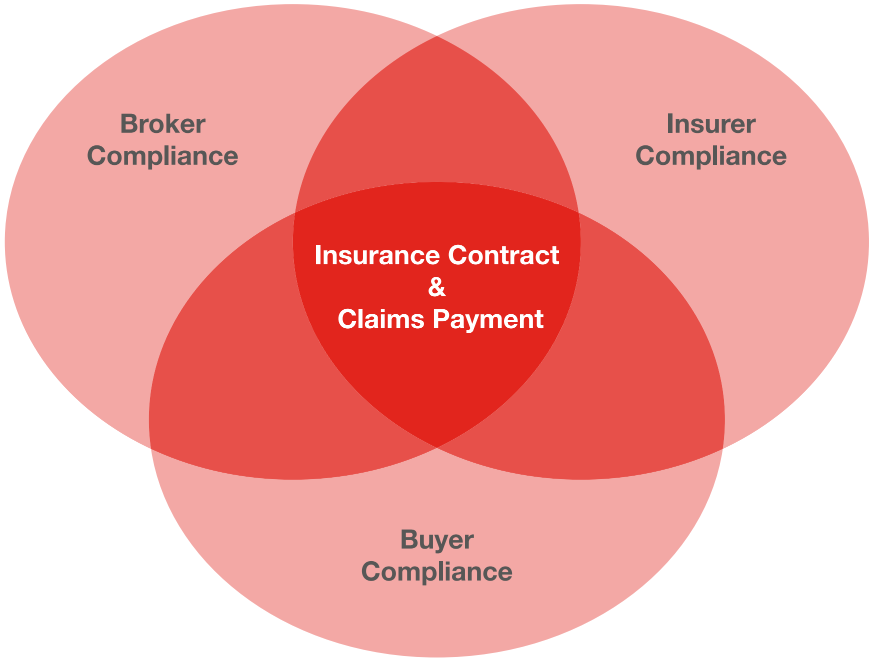
Variable compliance requirements

The rules and regulations relevant to the purchase of insurance vary considerably from country to country. Also, within one country or territory the rules related to the purchase of insurance may vary considerably from class to class. In the extreme, it is possible that certain classes of insurance may be mandatory in one territory, but illegal in others. For compulsory classes of insurance, such as motor third party and Employers' Liability in the UK, most countries stipulate that insurance can only be purchased from a licensed insurer. In many ways, knowledge of the classes of insurance that are compulsory in a territory is the starting point for the insurance buyer / risk manager.

An acceptable arrangement may be based on the provision of local insurance policies where the law requires, with a master policy providing cover elsewhere. In addition, difference in conditions and/or difference in limits (DIC/DIL) provisions can be put in place on a global basis, often as part of the first excess layer above the locally purchased primary layer.

There are many facets to insurance compliance and these place different responsibilities on all parties involved in the transaction. The figure below illustrates that compliance concerns and obligations of insurers, insurance brokers and the insured are not the same. The insurance buyer will have responsibilities that go beyond the specific compliance concerns of insurers and brokers. Full compliance can only be achieved when all parties fulfil their specific responsibilities.

Figure 1:
Overlapping compliance responsibilities



Source of compliance data

There has been a tendency for insurers and brokers to offer compliance as a competitive advantage. However, Airmic does not believe that the provision of a compliant insurance program should be seen as a competitive advantage. Risk managers will have an expectation that the insurance programs they purchase are fully compliant, but this can only be the case when there is dialogue between risk managers, insurers and brokers to identify and resolve compliance concerns.

In order to achieve compliance, detailed information, across all relevant territories, is required in relation to the following:

- Source and scope of regulations
- Compulsory insurance and insurers
- Mandatory or restricted insurance terms
- Requirements related to premiums and payment
- Calculation and payment of taxes
- Practical operation and market practice

Airmic has long held the view that there is a need for a single source of compliance information for risk managers that provides data for all territories that is reliable and current, capable of interrogation and can provide a forum for resolution of uncertainty. Airmic launched an initiative to achieve this aim and Axco developed the 'Insight Risk Manager' database in response to this initiative. The Axco database provides information on the areas where there is uncertainty and provides information on compliance requirements. Further information on the scope of information provided in the Axco 'Insight Risk Manager' database is provided in Appendix A.

In addition to compliance issues related to the purchase of multi-national insurance programs, there are also governance and administrative issues that need to be addressed by the insurance buyer. These include tax considerations and the procedures to be followed in relation to the vitally important issue of reporting and handling of claims. Many of these concerns are identified in Appendix B by way of a checklist of questions for insurance buyers to consider.

3. Corporate structure and risk management philosophy

The objectives of the insurance programs purchased by the insurance buyer must be aligned with the objectives of their employer. Each insurance program should be specifically orientated to protect the company from the operational and financial impact of unbearable risk or unacceptable variations in cash flow. The factors to consider when establishing the insurance structure include:

- the degree of insurance responsibility and control to be exercised by the corporate headquarters as compared to local overseas subsidiaries
- any desire (or not) to integrate overseas insurance arrangements into a coordinated plan with established risk management standards
- effective program design administration and governance arrangements to support a global approach, including global claims handling arrangements

Securing the central mandate is vital as there can be significant resistance from subsidiary companies to a coordinated central approach. It is imperative to get a strong central mandate from management to support the global insurance program and manage the dynamics between centralized head office and local management.

The rationale for implementing a global or multi-national insurance program must be clearly articulated and will involve careful evaluation of the business structure and tax situation. Developing the rationale will involve legal and technical advice, as well as professional insurance advice to obtain the required cover. The overview of company risks and exposures needs to consider cultures and attitudes, political differences and time zones, differences in legal systems, scope, size and geographic spread of operations, as well as contractual requirements.

Multi-national insurance brokers have considerable international representation and experience. Involvement of an appropriate insurance broker will ensure that the multi-national insurance program is a custom-made product that ensures that local (overseas) coverages are aligned with a comprehensive insurance package. The broker will need to be familiar with multi-national insurance standards and be able to work with appropriate multi-national insurers to design an insurance program to cover the specific requirements of the buyer.

Range of responsibilities

The insurance broker must be capable of providing factual information and professional judgment, as well as having access to continuing feedback from companies in relevant overseas territories. The broker must be aware of and understand the impact of changes in insurance codes of relevant countries. The broker needs to be able to alert the insured to the potential or actual insurance requirements in different parts of the world and provide the buyer with valid alternatives and recommendations.

The broker can provide professional advice, but it is for the risk manager to ensure compliance with regulatory requirements. In summary, the risk manager will need to consider at least the following when planning a multi-national insurance program:

- What are the corporate insurance strategy, rationale, objectives and mandate for a global insurance program, including decisions on risk retention
- What is the corporate management structure and does the risk management strategy align with corporate structure and objectives
- What support is needed from other head office functions, such as tax, treasury, compliance, legal, governance, strategy and finance
- What are the governance arrangements for the multi-national program, including sources of assurance that the insurance program(s) is compliant

4. Factors to consider in relation to compliance

The key factor to consider in relation to compliance is the level of local placements that is desired and/or acceptable in the multi-national insurance program. Additionally, there are considerations related to loss control, deductibles and the possible involvement of a captive insurance company. In summary, the risk manager needs to evaluate the advantages and disadvantages of a multi-national program.

When looking at compliance of multi-national programs, the use of a captive insurance company requires special evaluation. Large corporations should investigate the overall role of their captive and compliance issues related to the captive insurance company should receive specific and detailed consideration. The use of deductibles and layered covers are also important and the same detailed approach needs to be adopted to ensure that compliance concerns receive necessary attention.

The objectives of the insurance buyer / risk manager when designing and implementing a multi-national insurance program must be in line with those of the company. Strategically, the risk manager will be looking for a worldwide insurance package that will satisfy the legal requirements of the territories in which the company operates, but will be able to give the company cost-effective protection against unbearable risk whenever failures may occur.

The multi-national insurance buyer is obliged to recognise the legal requirements of each country in which the company operates. Local management of overseas subsidiaries will often suggest to the company risk manager that the insurance requirements are best understood and administered locally. Full compliance with local laws and customs is more likely to be achieved with local placement. The greatest local tax benefits are likely to be achieved when locally-based policies are in place. Also, currency problems are minimized and the reputation of the company for good corporate governance in the host country is enhanced.

The company risk manager will understand these options, but also have the responsibility to protect the company (or group) balance sheet and multi-national or global insurance policies are the means to achieve this objective.

Options and restrictions

It is also worth noting that the inclusion of deductibles in certain territories for certain classes of insurance may be illegal. There may also be difficulties when allocating the premium associated with centrally purchased insurance programs to the operating companies. Also, transfer pricing may be a difficulty, as well as the possibility that local tax authorities will not accept the premium allocation and will seek to impose insurance premium tax on a higher proportion of the allocated premium.

The risk manager / insurance buyer will need to balance the advantages and disadvantages of alternative approaches. The basic options open to the risk manger are based on:

a) Locally purchased admitted policies
b) Head office purchased non-admitted policies
c) Combination of local admitted and global non-admitted policies

a) Locally purchased admitted policies

The benefits of locally purchased admitted policies include: compliance with local laws, policy written according to local regulations and in the local language, access to local pools (e.g. nuclear and terrorism), premiums are more likely to be tax deductible, claims can be reported and handled without tax implications and/or currency restrictions. However, purchase of local policies may incur higher costs, be inconsistent in coverage, be subject to different legal interpretation and potentially leave uninsured gaps.

b) Head office purchased non-admitted policies

Buying global non-admitted policies may result in lower premium costs as the result of increased leverage, provide consistent cover worldwide, be subject to legislation only in the legal system of the parent company, be written in the language of the parent and have claims paid centrally. Unfortunately, relying solely on non-admitted policies is likely to be prohibited in many territories, may attract a higher insurance premium tax rate in those territories where it is legal, make claims investigations more difficult and may potentially attract taxes on claims payments. Also, it may be difficult for head office to collect accurate risk exposure information for insurers and this could result in non-disclosure of material facts / information to insurers.

c) Combination of local admitted and global non-admitted policies

The combination of local admitted and global non-admitted policies may take the form of purchasing the widest available coverage in the local admitted market with the global or first excess policy providing the “Differences in Limits / Differences in Conditions” (DIC/DIL) coverage deemed necessary by the parent company. Alternatively, locally admitted insurance may be purchased for the compulsory classes only, supported by a more extensive non-admitted DIC/DIL policy. Risk retentions can be funded using a captive insurance company or other deductible funding mechanisms. The global policy is compliant in the country of purchase, premium savings can be realized by minimizing duplicate coverage and consolidated purchasing, policy cover is broader and consistent, premiums are tax neutral as insurance premium taxes will be paid, but premiums will be tax deductible and most claims can be paid locally.

Part 2: Placement of multi-national insurance programs

5. General country information

Governments seek to control the purchase of insurance due to its quasi fiduciary nature and the importance to the overall public interest. The key objectives are protection of policyholders' interests, maintaining solvency, ensuring confidence in the insurance sector, maintaining insurance market stability, ensuring availability of insurance and retaining premiums within the territory, thus allowing local markets to develop to a stage where they can compete with multi-national carriers.

Each country has a regulator that is charged with overseeing and supervising the insurance market. The task of co-coordinating the work of national regulators rests with the International Association of Insurance Supervisors (IAIS). This body represents over 100 territories and is charged with promoting co-operation amongst national insurance supervisors, setting multi-national standards for insurance regulation and co-coordinating work with other financial services regulators.

Whilst the fundamental law regulating insurance is generally set out in one or two acts, this is often supplemented by subsidiary legislation or by another act regulating insurance activities in each territory. In addition, legislation can be found in civil codes, commercial codes, insurance contract law and laws regulating the social security system, bank regulations or the constitution. These controls dictate the way in which insurance and reinsurance is transacted and the supervision extends beyond standards of solvency to local retained risk and the use of local language and locally approved wordings.

Argentina: Regulator action against non-admitted insurer

Argentina prohibits non-admitted insurance and the following is an example of enforcement of regulatory requirements.

- **Circumstances:** an insured had bought life insurance policies from a US insurer and an Isle of Man insurer – neither licensed in Argentina.
- **Outcome:** Regulators fined the insured eight times the amount of the premium and the broker 15 times the amount of the premium for placing business with an insurer not licensed to conduct insurance business In Argentina.

Risk managers need to have an awareness of the identity and approach of local regulators. Awareness of insurance legislation and the differing legal controls and market practices that apply to transacting insurance business in the various relevant countries is also required. The fundamental question when commencing the process of arranging a multi-national program remains "can insurance be bought freely both inside and outside the country". The answer to this, however, is not always a straightforward "yes" or "no".

India: Regulator action against non-admitted insurer

Indian tax authority required payment of tax on an insurance payment made by non-admitted insurer (from global master policy).

- **Circumstances:** $20 million claim paid to German parent company from the global master policy to compensate for damage to a warehouse in India.
- **Outcome:** Indian tax authority required the Indian subsidiary to pay tax on the $20 million insurance payment.

There may be a state monopoly, whereby all insurances have to be purchased from a state controlled insurer or insurers. Where non-admitted is permitted, the insured may still have to purchase compulsory insurance from a licensed carrier. There may be restrictions in place that require that local insurers must be approached first and offered the chance to underwrite the risk. In some cases, a number of declinatures are required before non-admitted carriers may be approached. Some regulators will allow global programs to operate with their permission, but this has to be obtained in advance.

Although it is usually possible to employ brokers on an advisory basis, in some countries intermediaries are not officially recognised and it is not always possible to have broker or consultant representation. Multi-agencies are not always acceptable and an agent may only work for one insurance company for a particular class of risk. Brokers, where permitted, are free to act with all insurers that are willing to deal with brokers. The broker may be required to be licensed and unlicensed brokers may not be permitted in some territories. An example of regulation related to insurance intermediaries is that the use of a local broker is mandatory in Brazil.

Nigeria: Insurance supervisor restricts re-insurance cession

Restrictions are imposed in Nigeria on reinsurance to overseas reinsurers. Local supervisory authority strongly pushes local companies to retain the maximum portion of risks and premium, and require that local capacity must be used before external cessions.

6. Admitted and non-admitted insurances

When an insurance company is licensed to undertake insurance business within a specific territory, the insurance is referred to as admitted insurance. If the insurer provides cover for assets or liabilities in a territory, but is not licensed in that territory, the insurance is referred to as non-admitted.

Various classes of cover may be mandatory in certain countries, for example, motor third party, Employers' Liability, workers' compensation and professional indemnity. In markets that are restricted or have a state monopoly, the buyer will normally deal directly with the insurers, although consultants may be retained. However, this may cause difficulties if the purchaser is located in a different country.

There are two extremes to the insurance market spectrum and many shades of grey in between. These range from the completely unrestricted market where non-compulsory insurance can be bought freely inside and outside the country, such as the UK and Netherlands, to a full state monopoly where insurers are state controlled and insurance is only available from government insurance agencies.

There are a few territories where the provision of some or all insurance is provided by a state insurer, such as in Cuba, Iran and North Korea. In these cases, the compulsory classes of insurance must be placed with a state carrier. It is not always possible to reinsure the local premium out of territory. Some regulations require that the local carrier retains all or part of the risk, although it may be acceptable to use co-insurance or quota share mechanisms.

Multi-national insurance programs usually involve some degree of reinsurance back to the centre or to a captive insurance company. There may be restrictions on external reinsurance, whereby it can only be placed after local market capacity has been exhausted or where local cover is not available. Even if reinsurance is permissible, it may be necessary to hold technical reserves locally. In some cases, a state reinsurer must be used and the premium must remain within the territory.

Many multi-nationals wish to use their captive insurance company as part of the risk financing strategy. However, regulatory requirements may include restrictions on reinsurance outside of the territory and this may preclude captives from accepting the risk. The Axco 'Insight Risk Manager' database provides further specific information on restrictions of this type.

In territories where non-admitted insurance is prohibited, exemptions may still exist when a particular type of cover is not available locally or local capacity to underwrite the risk is limited. Permission from the regulator within the territory is normally required. Where prohibition of non-admitted insurance is in place, there are normally penalties imposed on the insured and these may be severe in some instances. Sometimes, a territory will allow non-admitted insurance, but impose a higher rate of insurance premium tax.

7. Insurance Contracts

Regulating and supervising the contractual relationship between the policyholder and the insurance company is an important element of policyholder protection. In many territories, the policy conditions of an insurance contract have to comply with the general contract, commercial or common law as well as insurance contract law.

In many territories, regulators and supervisory authorities directly influence the characteristics of insurance products. In some cases, all products require regulatory approval and in others systematic notification, notification on request or other control measures. The impact on the risk manager may range from an inability to implement a bespoke wording in a particular territory, having to accept mandatory wordings or exclusion to a time delay while an endorsement is approved. For example, the regulator in China must approve manuscript wordings.

Policy conditions are mandatory in a considerable number of territories, either in part or in whole. Insurance policies may have to be written in the local language or on the local form only and authorities may not allow the use of the English or US form, either domestically or from abroad or allow the issue of policies in any language. For example, insurance policies in Brazil can be issued only in Portuguese. Mandatory terms and conditions may include such features as claims made or claims occurring, automatic run-off and restrictions on insured v insured cover etc. It is important to understand whether there are formal binding cover requirements, where the policy documentation signed and by whom.

There are sometimes limitations through local practice with regard to the different insurers sharing the same risks by way of co-insurance. It is important to be certain that the countries to be covered can be insured on a basis that is compatible with an overall view whilst recognizing a need to take account of differences in local conditions. Full integration of local and overseas exposures is not without its shortcomings and challenges, global programs are time-consuming to put together, require lengthy documentation to ensure arrangements are accurately reflected and may not necessarily generate the cost savings anticipated when combining a number of programs.

Some policies may be non-cancellable and others may contain a clause requiring a specific notice period or that notice is given at a certain time before renewal. It is also important to note the restrictions concerning replacement of insurers or brokers. Claims payments under any part of the global program erode the limits of the master policy and have a direct impact on the cover remaining under all local policies and the master policy. If the limits are exhausted with a loss or losses anywhere, then cover is exhausted under the entire program, despite the fact that, on face value, limits are still available under the terms of the other local policies.

It is also possible that, regardless of the intent of both parties, as expressed in the master policy, the local policy must be given independent effect and its limits cannot be eroded by other payments. In the US, this argument may be based on regulatory or public policy or on the rights of third parties (claimants), who may be deemed to have acted in reliance on the coverage apparently provided by the local policy.

Care must be taken to make sure that any changes to the policy terms and conditions are accurately (and consistently) addressed in both master and local policies. Careful underwriting is essential to ensure that the intent of the parties is clear, so that the master and local policies and both policies read as a whole. Risk manager should ensure that explicit clauses are inserted in both the master and the local policies establishing the interaction between the two policies, particularly regarding limits and trigger of coverage issues.

8. Premiums and Premium Payment

The pricing of an insurance contract can be influenced by controlling the structure and financial elements of the premium tariffs, by fixing the premium rates or setting a certain margin binding the insurance companies. Premium rates and the structure of premium tariffs are regulated by supervisory law in more than 45% of territories and additional voluntary agreements also exist. The reasons for the control of rates and terms may vary from consumer price protection to the maintenance of a stable insurance market but will have an impact on the overall premium an insurer can charge. Will impact any premium allocation and may affect the terms of a long term agreement.

There are several areas on which to focus when addressing premium payments. In some territories the principle of “cash before cover” applies, meaning that the policy cannot be effective before the premium has been received by the underwriter. Sufficient time needs to be allowed, therefore, between invoice issue and premium due date to ensure that these terms can be complied with as accounts departments often work to a 90 day payment schedule.

Premiums paid within a territory to a local insurer may well be deductible against corporation tax in that territory. If the premium is paid out of territory (legally or otherwise), there may be doubt about whether these premiums will still allowable as a valid deduction. Also, it may be necessary at some stage during the construction of the program to pay premiums from one territory to another. It is necessary to know whether exchange control permission is required for the export of premiums, for the payment of claims or the remittance of commission to a local broker.

Revenue charges by way of stamp duty, premium taxes or other parafiscal levies can represent significant additional charge over and above the premium costs. The nature of such charges varies and can range from a simple stamp duty to a substantial percentage of insurance premium tax. The tax liability rules differ between countries and may be contradictory, ambiguous or conflicting. Responsibility to account for and pay insurance premium tax to the tax authorities lies with different parties in different countries.

When polices are written across more than one territory, insurance premium tax and other parafiscal levies may be due in each country. This was underlined by the Kvaerner ruling which mandated that within the EU, premium tax must be paid in the country where the risk was located. Therefore, whilst a non-admitted insurance may be legal, the premium tax needs to be apportioned and paid in each territory where the policy is intended to operate. Whilst this case relates solely to EU risks, it is prudent to assume that the same standard could be held to apply worldwide, if such an issue were to be litigated.

Increased scrutiny by tax authorities to verify and confirm adequate premium is allocated to local policies and to local risks insured under the master policy and that appropriate taxes have been paid is taking place. Belgium, Canada and France are reported to be pursuing insurance premium tax audits. Canadian audits have focused on adequacy of allocated premiums and whether the correct amount of tax has been paid.

The principles of transfer pricing require that a corporate parent be adequately compensated by its subsidiaries for the service it renders. Under the OECD Transfer Pricing Guidelines a controlled transaction (a transaction between or among affiliated entities with a common corporate structure) has to meet certain guidelines. These stipulate that the results of the transaction are consistent with the results that would have been realised if unaffiliated entities had engaged in the same transaction.

OECD guidelines list several methods for determining the appropriate arm's-length transfer price and it is necessary to determine the transfer pricing method that is appropriate for the specific transaction. Consulting with competent accounting, tax and financial specialists is essential to ensure compliance. Documentation setting out which risks are covered under the local policy and which are covered under the master policy will demonstrate the approach that was taken. Evidence of the arm's length nature of the transaction may well be looked upon favourably during a tax audit.

Brazil: Premium and premium payment

Premium must be collected locally and must be collected in Brazilian Reals, although there are certain exceptions. Failure to comply may result in:

- the insurer being fined an amount equivalent to the insured amount;
- 2-10 years imprisonment for having committed a crime against the economy; and
- the policy would be considered null and void.

9. Supervision and control

The consequences of non-compliance are as varied as the rules that govern the insurance programs and may include:

- Fines, penalties, non-deductible premiums
- Claims payments treated as income
- Criminal sanctions on insurer, broker and insured
- Extradition arrangements
- Inability to compete / tender for new business
- Accreditation or licensing difficulties
- Inability to demonstrate insurance cover to regulator, customer, supplier etc.
- Avoidance of claims or circumstances pre-binding
- Potential reputational damage

The responsibility for compliance may rest with the insurer, the broker or the insured, or a combination of all three. The risk manager should bear in mind that not all regulators are consistent in their application of local rules. The risk manager cannot assume that their own employer will never be held responsible, or complicit with any breach.

Claims on a multi-national policy should be handled with as much care as placing the policy itself. Processes and procedures should be agreed as to the extent to which claims are handled locally or centrally. Most policies contain specific reporting requirements detailing at what point, under what format and to whom a claim should be reported. The reporting requirements may also provide detailed information about the loss and the cause of the loss to comply with the policy condition. These reporting requirements need to be understood and communicated to ensure the terms are not breached.

Care must be taken with administering claims arising under global programs to minimise coverage disputes. Instructions and procedures for handling global claims in applicable claims handling manuals must be carefully drafted. Designated, experienced, trained claims handlers should oversee these claims to ensure that all the claims are appropriately apportioned to the correct policy and payments are made through the correct channels.

Claims under local policies that attach to a master should be automatically flagged and the master policy must be immediately identified and the terms of both policies evaluated. Open and appropriate communication between claims and underwriting personnel and the principal insured and its broker or consultants is essential.

Payment of claims needs to be agreed and established at the outset. Local policies will mean that payments are made locally but for excess layers (where such cover is not available locally), there may need to be a degree of flexibility built in to the location of payment. The limitation to claims payment for non-admitted insurance will closely follow the rules and regulations applied for premiums. It should be established whether non-admitted claims payments are permitted, whether exchange controls apply to the inward payment of claims moneys and whether tax may be incurred by the importer for claims settlements from abroad.

Finally, there may also be restrictions of the use on non-resident adjusters. 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 a master policy, it may be uncertain whether the claim will attract any taxes if the parent pays the amounts to the subsidiary. If any taxes are applicable, further regulator investigation about the capital and tax structure of the insured may follow to determine any possible tax liability.

Part 3: Compliance of multi-national insurance programs

10. Roles and responsibilities

Several insurers have access to databases that provide information on actions necessary to ensure compliance of multi-national insurance programs. These databases contain information on relevant topics, including:

- What insurances are illegal to purchase in specific territories
- Whether non-admitted policies are allowed in that territory
- The rate of insurance premium tax on admitted and non-admitted policies
- Restrictions on use of reinsurance to outside the country
- Minimum limits of indemnity required on certain insurances

Roles and responsibilities related to the design, implementation and management of the multi-national insurance policy are critically important. Responsibilities will need to be allocated to the insurance broker, both at head office and local level. Responsibilities will also need to be allocated for collection of exposure information and other aspects of the disclosure processes. Also, the responsibilities of the insurer, at local level and global level, need to be established, together with the roles and responsibilities of the fronting insurer.

The responsibilities of local management are also important, together with the responsibilities of the risk manager and other head office functions. The responsibilities of the managers of any captive insurance company that may be involved also need to be established. The 'Insight Risk Manager' database recently launched by Axco provides compliance information specifically for the risk manager / insurance buyer.

The multi-national insurance company must be able to arrange cover that provides complete uniformity and avoids any gaps, overlap or duplication. If cover is not available in the local territory, because of local market practices or protective legislation, the insurer must have capacity by way of the provision of DIC/DIL policies to ensure uniformity. Given these difficulties, it is obvious that the role and responsibilities of the lead insurer on the global policy need to be clearly understood.

The local insurer must be able to provide a local service capable of issuing policies on a timely basis and in the language of the territory, when required. Also, if any claims arise, local subsidiaries must receive proper and prompt attention, both in terms of insurance service and claims settlement. Again, these responsibilities need to be clearly stated and accepted by all parties.

11. Compliance and assurance

The insurance buyer needs to ensure that the multi-national program is fully compliant. Often, the insurance buyer will seek assurance from the insurance broker that compliance has been achieved. As well as seeking assurance from the insurance broker, the insured should also seek independent advice, such as the compliance information available in the Axco 'Insight Risk Manager' database. There are three levels of compliance that are important when considering compliance of multi-national insurance programs:

- The compliance arrangements for the insurance company. Often, the databases held by insurance companies refer to the restrictions on the placement of specific types of insurance in certain territories. The insurer may overcome these restrictions by inserting exclusions in an insurance policy. However, from the insurance buyer point of view, the important issue is full coverage, so if an insurance company cannot provide local cover, the insured needs to be advised. This will enable the buyer to obtain local coverage to fill the resulting gaps.
- As well as compliance for the insurance company, there is also a requirement on the part of the insurance buyer to ensure that the specific program that has been purchased is fully compliant. This will also relate to the exclusions introduced by the insurer to fulfil their own compliance requirements. It is important that all uncertainties in the insurance program have been removed and adequate local purchase has been obtained. Difficulties will arise in relation to restrictions on coverage, tax difficulties, both in terms of claims being paid and in terms of payment of local taxes by fiscal representatives.
- The ultimate test of any insurance program is that claims are paid. Therefore, the ultimate compliance requirement of a multi-national insurance program is not that the insurance company is compliant, or that the insured has achieved compliance. The ultimate test of the insurance policy is that no difficulties are encountered when claims are made and settled. As described in this guide, these difficulties can arise because of the incorrect or illegal purchasing of insurance, failure to comply with tax laws or regulatory requirements.

12. Action plan and checklist

Appendix A provides an overview of the information available from the 'Insight Risk Manager' database and Appendix B provides a detailed checklist of the questions that need to be asked of a multi-national insurance program. Most companies are seeking to reduce their overall head office costs, so freedom may be granted to local operations to decide whether they wish to purchase local insurance policies. This freedom is likely to extend to the (possibly mandatory in some territories) primary layer only and/or include financing of the deductible on the master policy.

It is worth mentioning that allocation of premium associated with the global insurance programs can cause difficulty with local management. Premium from excess layers and DIC/DIL covers will need to be recharged to subsidiaries. As an aside, the risk manager will also need to enter discussions with subsidiaries that have obtained a quote from the local insurance market that is a lower cost than that obtained by head office from the London market. Compliance considerations will be part of these discussions, together with a consideration of head office insurance requirements to protect the company (or group) balance sheet.

The risk manager buying a multi-national insurance program must be aware of the possibility that a subsidiary that is protected exclusively by the local insurance market may only have purchased a restricted level of cover. Therefore, the risk manager will need to audit locally purchased insurance policies to ensure that they are sufficient to protect the subsidiary and the group or parent. However, there is also the possibility that buying local insurances will lead to duplication or gaps in covers.

In many territories, local management may object to central interference in the way the local subsidiary operates. For example, local management may object to high deductibles being imposed by head office and will wish to purchase local policies to infill the high deductible levels. Also, staff benefits may vary between territories and local management may demand higher benefits than those purchased by head office.

Umbrella policies are often part of global insurance programs and this arrangement is especially common within the US. Umbrella policies are normally associated with liability insurances, including workers' compensation, general liability and auto exposures. They are excess covers that embrace several classes of business. There will generally be a DIC/DIL component to the umbrella coverage. However, umbrella policies are likely to be non-admitted policies.

Risk managers should evaluate the questions set out in Appendix B. In summary, risk managers should obtain assurance that appropriate actions have been taken to ensure compliance of multi-national insurance programs. Also, when evaluating the completeness of the insurance programs, account should be taken of the following:

- Established objectives for risk management
- Risk management framework to consolidate program
- Senior management support for the global program
- Corporate philosophy, local culture and scope of operations
- Sufficient resource available to manage the program
- Corporate insurance purchased against insurance purchased locally
- Identification of gaps / overlaps, including compulsory coverage
- Importance of insurance arrangements understood by everyone
- Formulate timeline to work through process and implement the program
- Open and honest communications with subsidiaries
- Brokers and insurers have necessary worldwide capabilities

Appendix A: Insight Risk Manager – scope of information provided

The Axco 'Insight Risk Manager' database provides the answers to the key compliance questions asked by insurance buyers. The tool provides information on an "as is" basis and routine content update ensures that anticipated and/or proposed regulatory changes are referenced.

Although the tool does not interpret the law it provides a consistent format of information, enabling insurance buyers to have enhanced conversations with their broker and insurer. The tool covers 30 key buyer concerns, across the following six areas;

General country information

- Information on the regulator and/or supervisor responsible for the supervision and administration of insurance business within the territory, including contact details.

Admitted and non-admitted insurances

- A breakdown of the legal provisions for use of admitted and non-admitted insurances within the territory, including recognition in a court of law, fines and penalties and possibility of waivers.

Insurance Contracts

- An overview of contract, commercial and common law affecting insurance policies within the territory, including details on policy wordings, policy currency and renewal and cancellation requirements.

Premium and premium payment

- Information on the territory requirements affecting the pricing of an insurance contract, including premium currency, payment terms and any restrictions on whether premium must be collected or retained locally.

Supervision and control

- Information focusing on the requirements affecting claims processes and procedures, including notification, handling and indemnification.

Company registration and operating requirements

- Details on requirements for insurers and reinsurers operating within the territory, such as reserve requirements.

Appendix B: Checklist of policy governance questions

Pre-renewal information

- Which statutory, regulatory, national authority or central institution has responsibility for the supervision and administration of insurance business transacted in the territory?
- Is there advice or information in the public domain that explains, summarises or recites the legal, fiscal, regulatory and other features of insurance business transacted in the territory?
- Where does the burden lie to ensure compliance with the national requirements, the insured, the insurer, the intermediary / broker (if involved)?
- Is it possible to vary national requirements or obtain dispensation from relevant authorities? If so, what criteria or conditions prescribed locally, i.e. declinature from domestic carriers?
- Is there a statutory requirement or industry accepted norm (based on commercial custom and practice) for presenting the substance and form of renewal data?
- Which classes of insurance are compulsory within the territory and what are the mandatory limits, retentions and terms and conditions?
- Are there any prohibitions on the policyholder contracting direct with an insurance company or is the use of a local intermediary either mandatory, or accepted best practice?

Placement structure

- Is there a state insurance carrier? If so, is it mandatory for the state insurance carrier to retain part of the risk? Are there any limitations on outward reinsurance cessions?
- Is it mandatory for a local insurance carrier (other than a state insurance carrier) to retain part of the risk to its own account? If so, what is the mandatory level of retained risk?
- If not mandatory, is it established commercial custom or practice for local carriers to retain risk? If so, what is the usual level of retained risk?
- Is there a state reinsurance carrier? If so, is it mandatory for all risks to be ceded to this entity? Is there a minimum level of retained risk by the state reinsurance carrier?
- Are there any statutory prohibitions or specific requirements for ceding risk to overseas reinsurance carriers and does the law stipulate a minimum security rating for such carriers?
- If there is a mandatory requirement to cede the risk to local reinsurance carriers? Is there a mandatory level of retained reinsurance cession?
- Are there any regulatory prohibitions on ceding risk to captive insurance companies? Are there statutory requirements related to security rating or disclosure of financial information?

Insurance contract

- Are there mandatory policy forms that have to be issued for each class of insurance business or mandatory general terms and conditions, or established commercial rules / guidelines?
- If no mandatory policy form, do bespoke policy wordings have to be approved by, and filed with, the regulator before they can be issued by the local insurance carrier?
- Is it possible to limit the applicability of all or some of said general terms and conditions by contract? Are there specific provisions that cannot be varied?
- Are the governing law and territory / arbitration proceedings applicable to a local policy prescribed by law (for both direct and outward reinsurance)?
- Are there any restrictions, statutory or otherwise, on the legal territory in which claims can be brought, i.e. are there any limitations on the geographical scope of the local policy?
- Are there any rules on the language in which the contract documenting the local policy must be written? What is the position on outward overseas reinsurance / retrocession contracts?
- Are there prescribed rules relating to the currency to be specified in a local policy as the currency in which premium and / or claims must be paid?
- Are there any specific provisions, exclusions or conditions that must feature in the local policy, e.g. the basis of coverage, or customised protections such as an extended reporting period?
- Are there any statutory limitations on insurers accepting “known matters” or is this dependent on commercial considerations?
- Which parties, if any, are required by law, or by custom and practice, to sign the documentation? Are there requirements related to when the documents must be signed?
- What are the standard cancellation provisions? Does the local insurer have the unilateral right to cancel the local insurance policy and on what basis?
- Are there any tacit renewal provisions, i.e. the local policy will automatically renew unless specified, in writing, to the contrary?
- What legally constitutes formal binding of cover in [territory], i.e. written / verbal representation from insurer, or payment of premium, issuance of signed policy?
- Are there any other aspects or elements of insurance law and regulation where failure to comply may render the insurance contract void ab initio or unenforceable?

Premium payment

- Are there any applicable tariffs (minimum rates) for specific classes of insurance business? Are there statutory or commercially established premium payment warranties?
- Are there are limitations on the point in time when an insurer can assume a risk, i.e. not before the receipt of the premium or a guarantee of premium?
- Is there a commercially established norm, for determining local fees (admin and capital charges), broker commissions, and other associated costs?
- What are the applicable taxes (including withholding tax), duties, levies, or other parafiscal charges in the territory?
- Who is responsible for accounting for taxes, duties, or other parafiscal charges; the assured, the intermediary, designated fiscal representatives, the insurer, or a combination?
- Are there any exchange control restrictions that may preclude, or delay, payment of premium (direct or reinsurance) to an overseas insurer?
- The extent to which the direct payment of premium to the ultimate carrier, is permissible? Are there prescribed rules relating to the currency in which the premium must be paid?
- Is there a premium reserve requirement? If so, what percentage has to be retained? At what point can the reserve be released? Are there any pre-conditions or stipulations for release?

Claims notification / processing

- Are there any established provisions, statutory or otherwise, governing the notification of claims or circumstances under the local policy (timing and form)?
- In relation to third party covers, are there any prohibitions on the ultimate carrier paying settlement proceeds direct to the claimant, plaintiff or third parties?
- In relation to policies of indemnity, is it standard market practice for insurer consent to be provided prior to settlement?
- Are there requirements of local law that require the local insurance carrier to pay third parties direct and/or permit the insurance carrier to be a party in the litigation proceedings?
- Are there any specificities regarding establishing claim reserves, or the timing of said reserves? Are there prescribed rules relating to the currency in which claims must be paid?
- The extent to which, if at all, the direct payment of claims (direct indemnity provisions / Cut Through provisions) is permissible?

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