

Creating an effective multinational financial lines insurance program



By Chris Hewitt | Winter 2010



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Companies with an international footprint have traditionally purchased a single global financial lines policy in their home country to protect against risks such as Directors & Officers and Professional Indemnity wherever they arise. Over recent years, however, the shortcomings of this approach have become increasingly apparent.

More onerous legal, regulatory and tax regimes around the world have left a growing number of companies counting the cost of one-size-fits-all global policies that have failed to respond or provide adequate protection.

Internationally, the clear trend is toward greater transparency and local accountability. There is a growing emphasis on requiring locally purchased cover and the payment of premium taxes on insurance that provides cover in the local country.

Fines and penalties increasingly apply to any indemnification a company receives from a nonadmitted insurer in respect of locally arising claims. Tighter foreign exchange controls, meanwhile, make repatriating claims payments problematic.

Historically, the vast majority of Directors & Officers and Professional Indemnity suits faced by multinational companies arose in the U.S.—and to a lesser extent the U.K. and the EU. So, the fact that a financial lines insurance policy might not respond in certain other global locations was not so much of a concern.

But today, we are seeing steeply rising levels of legal action against directors and officers in many countries around the world. A U.S.-style litigation culture is seeping into other jurisdictions around the world, and class action status is already permitted or under consideration in a growing number of countries.

This, coupled with a rising tide of shareholder activism worldwide, presents an alarming prospect for directors and officers within businesses operating internationally and underlines the importance of having a global financial lines insurance program in place that is genuinely fit for purpose.

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In practice, this can often entail purchasing cover with locally admitted carriers on a country-by-country basis for certain territories. Structuring a locally appropriate financial lines program may seem a somewhat daunting undertaking. But the benefits are increasingly clear.

They include keeping on the right side of local legal and regulatory regimes and ensuring local taxes are identified and paid and that risk-appropriate premiums are allocated on a country-by-country basis. A properly structured program also provides the confidence and transparency single-policy cover lacks.

The key consideration—beyond simply ensuring that legally required cover is in place—is establishing where the company and its directors and officers face the greatest risk and how this can best be mitigated.

The main challenge is the sheer variety of legal, regulatory and tax requirements (and penalties for noncompliance) from country-to-country, and the fact that these are constantly evolving over time. Keeping track of the current state of play is a full-time job in itself.

For example, more than 20 countries now have specific legislation in place governing insurance premium tax. In virtually every case, different parties are accountable, and different rules and penalties apply—and then there are the vagaries of exchange rates to consider.

By way of illustration, let us take the fictional example of World Enterprises Corporation (WEC). WEC has operations in 25 countries around the world, including the U.S., U.K. and half a dozen EU nations. Other key locations for WEC are Brazil, Argentina and India—all countries that have witnessed a marked increase in the number of lawsuits brought against company directors in recent years.

Along with Russia, China, Germany, France and Japan, these five are also all among the countries that require local subsidiaries to hold local D&O cover in order to be legally entitled to compensation. In fact, there are now more than 70 countries in which nonadmitted cover is deemed unacceptable.

In structuring its global financial lines insurance program, World Enterprises and its brokers, therefore, need to map carefully where there is a need for specific local cover.

Having identified the countries where exposures arise—allocating premium by using any of the following elements, revenues, assets and market capitalisation—and assessing the potential litigious likelihood in any particular territory of its directors and officers being sued.

Then, from an indemnification perspective, WEC must examine where they are and are not allowed to indemnify locally, what are the regulatory and tax implications in that jurisdiction, and what specific procedural implications there are to consider.

The concept of “cash before cover” is also important in this context. In certain countries, the insurer must be paid before cover becomes effective. In others, policies not paid within 30, 45 or 60 days are deemed void.

In practice, the approach adopted by WEC represents a sophisticated hybrid of the global policy approach and a program designed around locally-issued policies for each country.

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By working with a global broker with established financial lines expertise, companies like WEC can intelligently allocate locally appropriate risk premiums and purchase a number of local policies that either complement or substitute for a master policy, with appropriate difference-in-conditions (DIC), difference-in-limits (DIL) and excess provisions in place for each territory.

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But, with the support of a broker with global reach and capabilities, with skilled program designers and claims technicians at every point in the chain and a detailed understanding of the evolving legal and regulatory environment worldwide, companies can still do business worldwide in the confident knowledge that they and their officers have effective protection in place.



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