

Commercial Risk Europe

Going Global, Acting Local

The Changing Environment for
Global Insurance Programmes

2010

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While many nations remain challenged by the aftereffects of global recession – reduced consumer demand, slower-than-normal economic growth, unemployment, etc. – there are clear signs that global trade is surging back in the wake of its significant 2009 downturn. In a September 20, 2010 release, World Trade Organization economists projected world trade growth of 13.5 percent this year. This would mark the fastest year-on-year expansion of trade recorded since 1950, the first year the WTO began reporting this data set.

To be sure, the increase in global trade must be viewed within the context of 2009's record 12.5 percent decline. However, there is no denying that a more robust pace of global trade has returned, being further driven by the growing focus of many multinationals on dynamic, emerging markets.

But while the benefits of globalization are as numerous today as they were prior to the recession, so are the risks. Indeed, the global risk landscape may have been forever altered by recent, economic history. As governments consider ways to prevent future crises, new regulatory regimes may mean new compliance and governance uncertainties, including increased liability exposures for directors and officers. More stringent oversight and capital requirements imposed upon financial institutions may have unanticipated, downstream impacts on companies seeking to expand abroad. And, of course, the traditional property and casualty risks that have always been present in multinational ventures will continue to challenge those whose insurance programs are unprepared for a changing world.

As the contributors to our first Guide to Global Programs agreed, the best solution to a riskier world is a unified, centrally managed insurance program that responds in a coordinated way to the many risks a customer may face abroad. If anything, the need for serious consideration of such programs is more critical today than when the first Guide was published last year.

We hope you find this updated review of global programs to be valuable in guiding your own thinking about the benefits such a program can deliver to your organization.



Mario P. Vitale
Chief Executive Officer, Zurich Global Corporate
Member of the Group Management Board



Welcome



WELCOME TO *Commercial Risk Europe's* FIRST management report that investigates the hot topic of global programmes. As regular readers of CRE you will have seen that we have covered this topic in some depth since we launched in February.

This is because CRE is dedicated to providing European risk and insurance managers with the latest news and analysis that affects their daily working lives.

How companies with operations outside of their own territories organise their insurance coverage has become an increasingly intense topic of debate in recent times and is a big issue for European risk managers.

A poorly constructed and ill-advised international programme can lead to big unexpected costs as coverage fails to deliver and to potentially expensive and embarrassing compliance and tax problems.

For larger European companies with operations in many, and often emerging, nations this can prove to be a career killer for the risk and insurance manager.

In a world of increasing uncertainty, boards of directors look to their risk and insurance managers to provide them with an important comfort blanket.

Board members want to be assured that the risks that they take as an integral part of running a modern, international company are properly measured, managed and transferred in the most cost-effective way possible.

If the global programme that a risk manager carefully constructs to provide that comfort blanket fails to deliver when it is most needed, then that risk manager is in trouble as an individual and the standing of the profession as a whole is damaged.

This is therefore a very important subject for readers of CRE and it seems likely that it will become more important over time.

This is because the ongoing economic crisis which we are still trying to emerge from was sparked by the explosion of the global economy and finance system that evolved to fuel it.

It seems clear from current economic indicators and the strategy adopted by most of

the leading industrial nations that the way out of this mess is not to bunker down and retreat to a more nationally-oriented approach as feared at first but rather to globalise even further.

During the series of roundtable discussions held across Europe with leading risk and insurance managers as part of our annual Risk Frontiers survey project, it has become clear that one way in which European companies are seeking to pull themselves out of the recession is to look for further growth opportunities in regions less affected by the downturn, not least Asia and Latin America.

For this reason this topic will not go away and, if anything, will become even more complex and critical as the tentative recovery hopefully progresses.

This is why we decided to publish this in-depth report and ask leading experts in the field, risk managers, brokers, insurers, lawyers and others, what is the optimal strategy for risk and insurance managers in this fluid environment.

We do not pretend to have discovered a magic cure for all global programme ills.

But the research carried out by the author Tony Dowding, an expert journalist in this field for over 20 years and a regular contributor to CRE, will hopefully provide our readers with a very useful guide to the best options and spark further constructive discussion and debate about this important matter.

A big thank you must go to Zurich which was happy to enable us to carry out this project through its sponsorship and gave considerable help with the research. Zurich has invested a lot of time and effort in recent times to deliver a more certain world for its customers and its support of this project is an extension of that strategy.

I would also like to point out that, as with all CRE projects, the sponsor was happy to leave editorial control and decision about who Tony



interviewed with us as they understand that the readers would only value the content if it was truly independent. We thank Zurich for its sensible and mature approach to this and look forward to working with them on further projects in the future.

I would also like to thank the many experts from around the market who willingly gave up valuable time to help Tony with his research and hope that you all find that it was worthwhile and will be happy to continue working with us in the future.

As ever, please send any comments about this report or suggestions for further research that you feel would be useful for the European risk and insurance management community to me at the address below.

CRE is only a success because we talk to you, the readers, as much as possible and listen to what you want and need to read. Your input is invaluable.

Enjoy the read!

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Executive Summary

1.

■ Over the last decade or more, there has been a growing trend towards the concept of a centrally coordinated global insurance programme. The degree of local autonomy may vary but in general the aim is to achieve uniformity of cover throughout the international operations of a group. The basic drivers for global programmes are control, cost, coverage and compliance.

■ The economic downturn has, in general, increased demand for global programmes, partly because of the need to reduce costs. Coordination and centralisation of the programme can achieve cost savings. Buyers are also able to take advantage of the current soft market.

■ Growth is coming from across the board, but there is a particular focus on middle market companies that increasingly see the value of a global insurance programme. There is also greater demand for coverage in emerging markets. There is a much broader spread of covers in programmes rather than the traditional property and casualty lines. Directors' and officers' liability insurance programmes are becoming more common, and are now increasingly done on an admitted basis to ensure compliance.

■ Compliance has been growing in importance for some time and is now firmly at the top of the agenda for global insurance programmes. This has been driven partly by the greater enforcement of rules and regulations around the globe, especially by tax authorities, as countries hit by the downturn seek to maximise revenues.

■ Tax audits are on the increase and breaches of non-admitted insurance regulations are no longer being tolerated in many countries. This increased regulatory and tax scrutiny is leading to an even greater focus on compliance. And this is being supported by corporate governance requirements.

■ The number of global insurers with the ability to service a multinational programme is still quite

small, half a dozen or so at best. But a number of new insurers are said to be looking at global programme business. Whilst they do not have the infrastructure and necessary investment required to be truly global players at the moment, they are nevertheless entering the global fronting market, and looking to expand from there.

■ Competition is therefore increasing, albeit slowly. And as a result, the big global insurers have been busy re-launching and re-branding their products, and ensuring that their programmes are compliant. At the same time, these players point out that the barriers to international programme business are rising because of the clampdown on non-admitted business. However, the result of this competition has been that fronting for a global programme, which used to be expensive, has reduced considerably.

■ The captive still plays a valuable role in global programmes, both as a focal point for all the group's retentions, and as a way to encourage risk management and loss prevention among international operations. But some believe that the role has diminished in recent times, largely because of the current low cost of fronting in the insurance market.

■ Communication is still the most important element of managing a global programme successfully. This is because the biggest hurdle is to sell it to local operations. There will often be conflict because of the different requirements

of the head office and of the local operations, relating to premium allocation, retentions, use of local insurers, and claims handling. Dialogue is vital if a programme is to work, but it is also important for the risk manager to have a strong central mandate from management. And up-to-date information is crucial to win the argument with local management.

■ For many years, the best solution for global programmes was a combination of admitted and non-admitted programmes, with Difference in Conditions and Difference in Limits [DIC/DIL] cover to plug any gaps. However, the focus on compliance has meant that any non-admitted covers, including DIC/DIL, are potentially under attack.

■ One alternative to the fully admitted route is financial interest coverage which basically covers the financial interests of the parent company. This was developed by Zurich but has been adopted in various guises by a number of other insurers. When using this concept properly, the risk being insured is not in the country of the subsidiary, but in the territory of the parent company. Consequently, its limitation is that the claim cannot be paid to the local operation.

■ An important driver for centralised global programmes is the ability to provide the risk manager with an overview of the group insurance programmes, as well as the ability to provide global claims information, analyse the global risks, and improve risk management throughout the group. A good risk management information system is, therefore, vital to a global insurance programme.

■ Modern global insurance programmes are becoming increasingly complex to arrange. There are growing concerns about the complexity of insurance regulations around the globe and the difficulties in arranging global programmes. Pressure is slowly being brought to bear on regulators to try and simplify regulations, and there is a clear need for dialogue between buyers, the insurance industry, and the International Association of Insurance Supervisors. There is some talk of trying to introduce international standards to help in the construction and management of global programmes, or at least to encourage some flexibility in regulations. However, it is very early days.

Coordination and centralisation of a global programme can achieve cost savings...



Introduction

2.

PUTTING TOGETHER A GLOBAL INSURANCE programme is not easy—it is fraught with difficulties, some of which are external, and some of which are internal, and the complexity of such programmes is growing all the time.

One might imagine that spreading the risk management message to all subsidiaries around the world would be the difficult part, and that the insurance purchasing would be the easy part. However, while the benefits of risk management, and loss prevention in particular, are often not as well understood outside the US and Europe, the putting together of a comprehensive global insurance programme is, in many ways, more daunting.

A global insurance programme has to coordinate all the insurance buying of the group worldwide, which may involve a large number of countries, each with their own regulatory, legislative and tax requirements. It is these requirements and restrictions that make the programme complicated to put together.

In the past, things were much simpler. Well, perhaps not much simpler, given that each territory had its own tariffs, compulsory insurances, and state insurers to be incorporated into the programmes. However, regulations in certain territories could often be overlooked or circumvented, and programmes could be, to a great extent, based on non-admitted coverage.

There was also the great hope that the insurance markets worldwide would begin to open up, liberalisation would kick in, and the life of the multinational risk manager would become just a little bit simpler. But while markets did open up, state insurers and reinsurers disappeared, and regional trade areas grew, notably the European Union. The reality is that the momentum has gone out of the drive for liberalisation.

Indeed, there has only been limited liberalisation of insurance markets in the last few years. As one global insurer points out, "If anything, there has been a tightening of regulations that has been more of a hindrance

than a help with regard to global programmes."

This tightening of regulations has meant a much greater focus on compliance. At the same time, companies want to be 'good citizens' and so corporate governance has also been a driver.

Multinational risk managers are, therefore, faced with a dilemma: Greater compliance but less central control, or greater control but with potential compliance issues.

To ensure full compliance, the only answer is to allow all subsidiaries to buy insurance locally. Of course, this is not an option for many reasons—notably that some covers may not be available in the local market, or the limits may not be sufficient.

The reality is, however, that most companies want some sort of central control over the insurance programme, for reasons of cost, administration, and to ensure uniform cover worldwide.

In the past, the dilemma was partially solved through the use of non-admitted coverages where possible. But with the increasing focus on compliance, the focus is now on locally admitted coverage. And that means greater complexity, and in general, requires the use of a truly global insurance company.

If global programmes are generally time-consuming and complex, what are the benefits of putting together a global, centrally-controlled insurance programme?

One of the main reasons is to achieve

uniformity of cover worldwide and to ensure there are no gaps in cover. In many countries, for example, the level of indemnity for certain covers would not be considered suitable by a European or US risk manager.

At the same time, the scope of the cover, in terms of its breadth, may also not be satisfactory, as policy wordings vary in different countries. Cost is clearly an issue and a global insurance programme should benefit from bulk buying and simpler administration and, therefore, be cheaper. However, in some countries, the programme may prove to be more costly, but this should take into account the additional covers that are provided.

Another benefit is central control. This is important because it allows the group risk manager to not only control the insurance buying of subsidiaries, but also to use that control to encourage risk management and the use of loss control measures, through pooling of retentions and premium allocation. In addition, with insurer security a current concern, the security of multinational insurers is usually less in doubt than some local insurers.

However, a multinational insurance programme should not be undertaken lightly. There will inevitably be administrative costs and the programme will take considerable time and effort to be put together, especially in terms of regulatory compliance and tax issues, not to mention the inevitable conflicts between the head office and the local management.

This report looks at the current environment for global insurance programmes, both from the point of view of buyer demand and insurer supply. It then looks at the vexed issue of achieving, or trying to achieve, compliance.

It examines the latest tax and regulatory moves and how ignoring the issue of compliance and admitted coverage is no longer a realistic option.

The report examines the role of the captive, and also looks at the perennial problem of managing conflict between the head office and the local subsidiaries. And it provides advice on how to achieve the best fit solution for a global insurance programme. And finally, it looks at how some of the difficulties that surround global insurance programmes from a compliance point of view might be reduced through some form of global standard that would require a new dialogue between buyers, brokers, insurers and regulators.



Demand for Global Programmes

3.

“Overall, it is a tortuous, labour-intensive and time-consuming exercise but it is important and it has to be done.”

THE DEFINITION OF A MULTINATIONAL COMPANY has changed considerably over the last few decades. In theory, a multinational company is one that has operations of some sort in more than one country. In the past it may have been true that there was a clear distinction between the small number of companies that had operations abroad, and the vast majority of companies that were purely domestic, or that exported goods but had no assets in other countries.

But as time has gone on, different degrees of internationalisation have appeared. We now have companies with contact offices in foreign locations, small multinationals with limited operations abroad, multinationals with interdependent operations in different countries, and multinational conglomerates with subsidiaries in a large number of countries worldwide.

In terms of their insurance requirements, it would seem that a company has need of a global insurance programme of one sort or another if it has assets in more than one country. In this sense, a multinational company is one that has a subsidiary, or a trading entity, or a warehouse, or a factory, or even a representative office, in a different country to the parent.

Multinationals have grown up either as a result of expansion overseas through acquisition (or possibly merger) or through establishing new operations abroad.

At the end of the day, multinational

companies are often a collection of local companies in different territories, with a central head office. The extent to which the head office controls the local companies will vary enormously, with some adopting a rigid centralised system, and others having a decentralised system, with considerable local autonomy.

Centralisation or decentralisation is a major issue among large companies, and it clearly has a major impact on the global insurance programme.

The rise of the multinational company has had an important effect on the insurance industry, in terms of the insurance requirements of such companies. It has also been a challenge, since the centralisation of an insurance programme, and the internationalisation of a programme, has thrown up a whole host of complex problems that have had to be dealt with in one way or another, not always successfully.

On the one hand, it is clearly tempting for a company which acquires a foreign company, or establishes a foreign operation, to simply try and incorporate its insurance into the existing cover that the parent company has.

On the other hand, once local requirements and restrictions are taken into account, the temptation then must be simply to leave the foreign unit to purchase its own insurance, to avoid complications and foreign bureaucracy.

In time though, that one foreign subsidiary may have grown into nine or 10 subsidiaries in a variety of different countries. Again, the temptation may be for the head office to avoid complications by leaving the foreign subsidiaries to buy their own insurance locally.

But at the same time, the head office will often want to have some sort of control over the insurance cover being purchased, and will be looking for some sort of cost saving through bulk buying and economies of scale. The global programme is an attempt to deal with all of these issues.

And in general, as companies have become more international, the concept of a co-ordinated global insurance programme has grown and become more widely accepted.

The programme may, of course, involve allowing the local subsidiaries to purchase local cover. But increasingly it is all about achieving homogeneity—uniformity around all the operations of an organisation.

But companies are not looking for blanket

insurance protection. Insurance buying is now more targeted and selective. Risk managers are looking for a far more complex programme, encompassing deductibles, coinsurance, self-insured layers, and captive involvement.

All of which makes the purchase of insurance even more complicated to coordinate, since each overseas operation will have different requirements that relate to retentions, classes of insurance, indemnity limits and so on.

What the parent company requires more than anything is control. This means control over what subsidiaries do in terms of insurance protection and loss control. The control is seen in terms of premium allocation, retention levels, and claims management. To achieve this, the head office requires a coordinated approach to its insurance buying, and this is the purpose of modern multinational insurance programmes.

The basic drivers for global programmes are control, cost, coverage and compliance.

The risk manager seeks central control, cost benefits, and uniform coverage with no gaps, as well as compliance. Not too much to ask surely?

But the reality is that it is difficult to set up, and almost impossible to achieve. As Chris Maurice, Risk Financing Manager, BT, explained, “From a naïve buyers perspective, it should be easy to set up a global insurance programme. It is only when you come to actually do it, you find that ‘easy’ is the last thing it is.”

THE CURRENT PICTURE

Global insurance programmes do not exist in isolation and, as with all insurance, are subject to two important forces: the general economic situation, and the underwriting cycle. And currently, both of these are having a major impact on programmes, both from the point of view of the buyers and the carriers.

The economic downturn has had some impact on demand for global programmes, not least because of the need to reduce costs. As Susann Hübner, Corporate Risk Manager, EMEA, at German company SAP AG, explained, “Global solutions help reduce costs and provide harmonised coverage globally. So they have been important for a long time. Especially the cost aspect might be more important in this downturn, when costs are a key focus for many companies.”



David Martin, Head of Sales and Distribution, Zurich, says that customers in general are trying to cut costs because revenues are under pressure. "So our competitors aren't necessarily the insurance providers of international programmes only but our international product is also competing with stand-alone local insurance solutions.

"However, the growth we see in international programmes suggest that the benefits of an international programme are higher than the costs."

Mr Martin added that demand is increasing because of globalisation, economic growth in Asia and the growing risk management sophistication of customers.

Interestingly, it would seem that the economic downturn has actually helped to increase interest in global programmes.

Multinational companies, as are all companies, are trying to reduce costs, and are starting to look at their international operations. "And when they look at insurance," said Clive Hassett, Director, Major Risks & Affinity Operations, ACE European Group, "they see that it will be more effective if local subsidiaries desist from taking their own decisions, in terms of breadth of cover, size of deductible, types of products bought."

He added, "so both from a cost and a corporate governance efficiency point of view, we are seeing more global programmes and broader programmes

in terms of geographic region, and type of product. To counter that, there is the soft market effect, and with turnover and employees down, that will tend to produce slightly lower premiums."

However, as Philippe Gouraud, SVP, Head of Major Accounts & Multinational, Chartis Europe, pointed out, "The situation around demand is a real paradox. When economic times are tough the priority for clients is to save money so they want to pay lower premiums and so will reduce cover or increase deductibles. The paradox is that this is exactly when they should get more protection because if the unexpected occurs, they are less able to take the financial hit compared with incurring that sort of loss when everything else is booming!"

But, explained Mr Gouraud, "currently, they are being helped by the fact that the insurance cycle is rather soft and competitive markets means that they can probably get the cover that they need and keep their costs under control. But they are still not looking for extra covers to protect themselves against emerging risks from things like changing legislation."

Andrew Cornish, partner at brokerage Lockton, said the cost-savings are the biggest driver. "The rationale for global programmes is still, and even more so after the last 18 months, to save money and drive costs down, but not at the price of compliance. It is not solely a demand for global programmes, it is a demand for what is going to be the most price-efficient and create savings."

He said that this might, in fact, mean breaking up a global programme, where it was put in place more for a 'sleep-easy' position than a corporate centre, and going local, if that is going to be more price-efficient.

AREAS OF DEMAND

So where is growth coming from? Clearly, larger companies always seek to control costs and try to incorporate new operations, acquisitions and so on into their programmes, as well as add new covers. But much of the growth appears to come from middle market companies.

According to Gernot Klantschnig, Regional Operating Officer for Continental Europe, Asia and Latin America at XL Insurance, "The real growth in demand for global programmes is coming from middle market-sized companies. These firms are, for instance, outsourcing to Eastern

Europe or Asia as well as exporting abroad and are looking for multinational insurance coverage."

Karen Gorman, a partner within the Global Support Team at JLT, agreed. "Historically, smaller and medium-sized companies have tended to have insurances arranged in each country, but a lot have gone global in the last year or two, because of the economies of scale of using one central carrier, together with the ability to control cost," she said.

Yves de Mestier, Head of International Network, Axa Corporate Solutions, said that it sees more and more requests for coverage in emerging countries because clients want to include operations in emerging markets in their global programmes.

He said this is one of the key challenges of global programmes for the global insurer because these emerging markets may be working in a different way than the more developed markets—there are certain lines of business that are not well known or not available in certain emerging countries, there are certain products that are unknown, and there may be certain limits or guarantees which are not available.

"So the difficulty for customers and insurance companies is that they have to achieve a level of market intelligence which shows what the limits and capacities of the market are," he said. "Then the insurers have to adapt the needs of global customers to the realities of these emerging markets."

As for the types of covers that are included in global programmes, there is now a much greater spread of business.

Historically, property and casualty were the main lines, but companies increasingly seek to expand the range of covers.

Nick Murrell, Head of Property at JLT and one of the leaders of the Global Risk Solutions Property Team, said that clients now look at business interruption, contingent interruption, and non-damage business interruption, "because they realise that they need to protect their income flows and revenues. Also terrorism is coming into global programmes because many clients realise that it can be placed in Lloyd's at very competitive terms, where they are backing up the local pools."

Karl Hennessy, Managing Director, Aon Global, said that new covers are being brought in, often through the broadening of the base master programmes which are property and

Interestingly, it would seem that the economic downturn has actually helped to increase interest in global programmes...

casualty. "So building in covers such as errors and omissions, IPR risks and the like to the casualty programme, or adding non-damage business interruption to the property programme."

He also pointed to employee benefits, but said that there are problems with employee benefits because the laws in different territories about what you can and cannot do differ enormously.

DIRECTORS' AND OFFICERS'

Mr Hennessy explained that D&O is a critical cover because there is clearly a trend for more and more scrutiny of the actions of directors and officers, and instances where they are held accountable for the actions of their companies.

He believes that very few people understand the implications of buying a global D&O policy. "There are very different laws and regulations that relate to the reimbursement, or the protection, of directors in different territories. We place global D&O programmes now which are a combination of globally non-admitted policies and admitted policies to reflect the laws and regulations in different territories. We worked with a law firm, and it took an awful lot of work to create the database to fully understand what those local ramifications were."

D&O is an interesting case—the growth is not driven by the need to cut costs, or the soft market, but by compliance. And this has seen a shift in how D&O is placed in global programmes.

Zurich's David Martin said that financial lines including D&O, professional indemnity and crime, are the lines in which Zurich has seen the most growth in the last couple of years.

"D&O policies were often on a non-admitted basis in the past," he said. "Now, the idea that the director might not have any protection under the D&O policy because the local jurisdiction ruled that it was illegal, is something that is frightening customers enormously. The reason for the rise in international programmes is not that they did not have it before—they had the right limits but on a non-admitted basis and people are not prepared to continue with that anymore."

ACE's Clive Hassett said that they are certainly seeing more D&O programmes than in the past, "and I think it comes down to corporate governance, and the propensity of foreign jurisdictions to be more aggressive in their pursuit of what might be perceived as any wrongdoing by company directors."

Overall, demand for global programmes appears to be high. A wider range of companies than ever before are adopting the global programme approach, and the economic downturn does not appear to have dampened the interest, indeed, it may actually be fuelling growth.

There is clearly a desire to control costs, and that includes overall insurance spend. But the soft market is allowing companies to think more creatively rather than just buying less cover. And this means more and more covers being brought into global programmes.



"We cannot bypass compliance issues."

COMPLIANCE HAS ALWAYS BEEN A BIG ISSUE for global insurance programmes. Every territory around the world has its own regulations, its own compulsory insurances, and its own tax requirements and levels.

Many countries have restrictions on non-admitted policies, others have reinsurance restrictions and exchange controls. Add in different legal systems, the occasional state monopoly and national pools, and one can begin to see why global programmes are so complex.

The main issue is often to do with admitted and non-admitted policies. When one talks about admitted insurance being a requirement in a territory, it may not simply be that non-admitted insurance is forbidden. It may be that certain compulsory insurances must be placed with an admitted insurer, such as workers' compensation or third party motor. Or there may be a compulsory cession of certain perils to a national insurance body for particularly difficult areas of insurance business, such as pollution, nuclear, or terrorism.

In many countries, non-admitted policies may be allowed but the country will still wish to discourage their use, and as a result, may impose discriminatory taxes on non-admitted premiums.

The problem for multinational programmes is that most countries have some sort of regulatory restrictions which are designed to protect the local market.

The aim is to help local insurers, keep premiums within the country, and to protect consumers by only allowing insurance with insurers that are regulated by the country.

In any multinational programme, it is regulatory and tax requirements that will tend to shape the programme. These requirements are numerous and complex, given the number of countries worldwide and the variety of regulatory and tax systems.

Legal, Regulation and Tax

The main aim of the programme, to provide uniform cover worldwide, is made harder by the need to comply with regulatory requirements in each country.

The structure of the programme is therefore vital, not simply because of the need for the most efficient programme in terms of cover and taxation, but also through the need to comply with local laws.

As Martin Strnad, Head of Legal at Zurich Global Corporate, pointed out, "Legal and regulatory compliance plays a huge role in the insurance business—after all the product is all about a legal promise and document."

But the last few years have witnessed a fundamental change in the area of compliance. The growing focus on compliance is not the result of swathes of new rules and regulations. Instead, it is about those regulations being much more strictly enforced.

Perhaps the best way to describe this change is to say that whereas previously, the issue of non-admitted was a grey area, now it is very definitely black and white.

In the past, many regulations were able to be side-stepped, or simply ignored. In many cases, it was not that companies were deliberately flouting laws. There wasn't the enforcement, and so companies were able to adopt non-admitted programmes in many territories without penalty. But not any more.

Aon's Karl Hennessy explained that there is a growing urgency for the market to come up with more robust universal solutions from a compliance perspective, particularly around tax.

"There isn't a country on the planet that is not under some kind of fiscal pressure," he said. "Every government department that can raise revenue is being told to get on and raise it, and insurance has been overlooked in the past, perhaps, and now they are being much more rigorous about it. Some multinationals have not paid as much attention to this as they should have done, and are now a bit of a soft target for collecting taxes retrospectively and imposing fines."

He added, "In the last 18 months there have been a number of incidents involving certain territories where some multinationals have suddenly found themselves at the wrong end of a rather nasty fine, and for risk managers, it is a bit of an embarrassment if it happens, because

from the CEO's perspective, if it comes up, there could be corporate governance ramifications and it could raise all sorts of other questions. So there is a lot more rigour around programmes."

The tightening up of regulations and their enforcement is part of a wider global move towards greater protectionism, and there are no signs that this will disappear shortly.

A recent report commissioned by the International Chamber of Commerce's (ICC) Research Foundation and researched and written by the Peterson Institute for International Economics in Washington, D.C., found that, despite repeated commitments by G-20 countries to avoid the adoption of such measures, protectionist policies are being implemented at an alarming rate.

The report, *G-20 Protection in the Wake of the Great Recession*, found that all G-20 countries have implemented protectionist trade measures over the last two years.

"By September 2009, the G-20 were responsible for 172 such measures being implemented, with hundreds more 'in the pipeline'. If only half the upcoming measures were to actually take effect, the world could see a global cycle of protectionist retaliation not seen since the Great Depression," said the report.

GREATER ENFORCEMENT

National self-interest is to the fore, and this means that companies cannot afford to take a chance with their global programmes. SAP's corporate risk manager, Susann Hübner, agrees that there is a greater focus on compliance issues now.

"There is a huge focus on compliance," she said. "Local tax authorities are looking for the possibility of generating revenue and more and more they are seeing international companies and their insurance premium tax as an income source that needs to be checked more closely."

The Swiss regulator (FINMA), for example, has just issued a new position paper in late October on 'legal and reputational risks in cross-border financial services'. FINMA announced it will 'increasingly focus in the future on examining how supervised institutions mitigate the risk in their cross-border operations.' FINMA thereby not only hints at compliance with regulatory and tax law but also with solvency, anti-money laundering and other regulatory and legal requirements.

Praveen Sharma, Global Practice Leader, Insurance Regulatory and Tax Consulting, Marsh, said that, while tax legislation has not changed in terms of premium taxes, because of the economic pressures governments are facing around the world, the tax legislation that has been in place has never been enforced as vigorously as it is now.

He said that tax authorities around the world have been auditing multinational companies and enquiring about three things:

1. Do you participate in a global insurance programme?
2. Do you have a just and reasonable premium allocation methodology, allocating the premium to the risk located in this territory?
3. Have you paid my premium tax?

"These are the three fundamental, basic questions that authorities generally ask," said Mr Sharma. "And as a result, a lot of companies have been caught out and have found that they didn't know about the taxes that they should have paid, or have found that the reinsurer has collected the taxes but hasn't forwarded it on to the tax authorities. So the tax authorities have been collecting a lot of taxes on global programmes."

There are many examples of how the regulatory and tax situation is becoming stricter. The Argentinian regulator recently fined a local insured and a broker around 25 times premium for breaching its non-admitted insurance regulations. And the Mexican regulator announced last year that if anyone breaches its insurance regulations, then they could be sent to jail for a number of years.

Tax rates on insurance premiums have increased in many countries, and certain countries in Eastern Europe that never had premium taxes are now introducing them.

The major authorities are increasing the number of audits and collecting huge amounts of unpaid taxes, said Mr Sharma. Companies are being caught out not because of deliberate fraud, or attempts to get around regulations, but simply because they had never had a problem with it before, or were not fully aware of it.

Even more worrying, in some countries, such as Canada, tax audits are going back a number of years to assess unpaid taxes. And audit teams are being beefed up around the world to ensure that all required taxes are

paid. In the US, for example, teams on Federal excise tax audits are being reinforced.

There is also much greater cooperation between insurance regulators. They continue to enter into 'memoranda of understanding,' which formally establish cooperation and information exchange with their international counterparts, to facilitate cross-border enforcement of local insurance laws.

"These agreements provide regulators with unprecedented access to insurer information through the cooperation of local regulators," said Suresh Krishnan, General Counsel for ACE Group's Multinational Client Group.

"Because a foreign regulator may ask the insurer's domiciliary regulator to conduct an investigation on its behalf, multinational insurance purchasers, producers, and insurers must now acknowledge that the inability of a foreign regulator to adequately investigate transactions—and to uncover pertinent information regarding transactions involving non-admitted insurers—may no longer be an obstacle to the vigorous extraterritorial enforcement of foreign insurance laws."

He added, "because of this increased regulatory and tax scrutiny, the design and implementation of a master policy directly naming as insureds people, properties, or risks located in those countries that do not allow non-admitted insurance, may not be a reasonable and prudent approach to insuring risks there."

He explained, "Thus, this structure, which is, and has been, the standard insurance practice for at least two decades, may not withstand regulatory challenges in many countries, such as Argentina, India, China, Mexico—and if issued outside the European Union—Italy, France, Spain and several other European Union member countries. As a result, participants in a multinational programme need to be sensitive to the local insurance laws when they are designing and implementing cross-border insurance transactions."

But it isn't just increased enforcement of regulations that is driving compliance. There is also a big desire from larger companies to be compliant from a corporate governance standpoint. Companies, and this includes insurance companies, increasingly want to be seen as good corporate citizens.

"It is not simply that the authorities are



pushing compliance, it is also that the companies themselves are much more concerned when it comes to the compliance of the non-admitted coverages and so forth," said Philippe Jouvelot, Chief Underwriting Officer, Axa Corporate Solutions.

"Risk managers of global companies are all very aware of the issue of compliance. And there is an understanding from the top management that there are risks associated with non-compliant programmes that need to be solved. CFOs and auditors are looking much more closely at insurance and this is highlighting the necessity of compliance."

JLT's Karen Gorman said risk managers are much more aware that they need to comply with all the regulations: "There are a few scare stories floating around that makes them want to spend the money on locally-issued policies rather than what they did before which was everything with one insurer and completely non-admitted. Some of this is driven by corporate responsibility

It isn't just increased enforcement of regulations that is driving compliance.

and some is driven by the insurance market protecting their licences around the world."

She added that technology has been part of the enforcement, because 15-20 years ago the technology was not available to track what premiums were being paid, where, and for what risks. Now it is easier for tax authorities to find out this information.

Axa's Yves de Mestier pointed out that there is now more heavy investment overseas, and this must be well covered with local coverage and local needs. "In the recent past we had too many examples of global programmes where the local coverage was under-estimated or under-covered," he said.

"Now we have to calculate local coverage and adequacy with the local situation of the customer, in terms of sums insured, premium, and the kind of coverage. We cannot bypass compliance issues," added Mr de Mestier.

Chartis' Philippe Gouraud said that the level of compliance awareness has been rising steadily for the last several years, rather than recently spiking up.

"People know that they need to be compliant and that this is a complex area where many things are not black and white but open to interpretation." But, he added, "it is important to think about what compliance really looks like from the buyers' perspective. For them the critical issue is about getting claims paid where and when they expect it to be paid."

Marsh's Mr Sharma said it is all about trying to understand client needs and expectations. "What are the risks, where are the risks located, what are the rules and regulations? Then we can see what is allowed and what is not allowed in those countries, and see who are the insurers that can participate. And then we have to look at what the clients' needs are. Does he need a local policy, does he want the claim to be paid locally? That is why companies buy insurance, to ensure the claim is paid. In some cases, the client will want the claim to be paid in the local territory, and depending on what the local regulations say about that, the programme can be structured accordingly. Or if the client wants the claim to be paid centrally, in the US, the programme will be structured slightly differently."

And this is the other driver for compliance. The insured wants the claim to be paid where, at the end of the day, for the claim to be paid where it is required, a programme has to be compliant.



The Insurance Market

5.

“The margins generally speaking are pretty good, and it is a good business to be in.”

ONE OF THE MOST IMPORTANT MATTERS IN any global insurance programme is the choice of insurer. It is vital for the insurer to have a worldwide network of offices that are capable of servicing the programme, rather than simply contact offices. And the global insurer must have a strong element of control over its network to ensure that the uniformity of cover in the programme is achievable and that there are no gaps or misunderstandings.

At the same time, the local office must have the flexibility and authority to respond to local changes and legal requirements. In other words, central control with local service.

There are many insurers that claim to have a global network and the ability to service a multinational programme. But the reality is that there are still only about half a dozen or so insurers capable of putting together a programme and servicing it adequately.

Brokers may put together a panel or consortium of insurers to provide the necessary coverage for the programme. Many other insurers, that may not have an owned network, will rely on partnerships or correspondent insurers to provide worldwide servicing.

But in terms of being able to issue paper around the world, the two main players are Zurich and Chartis, followed by Allianz, ACE and XL, as well as AXA and RSA.

NEW KIDS ON THE BLOCK

For a long time, risk managers have complained about lack of choice, and more importantly, the

impact that this has on pricing. But there are signs that the situation may be changing as brokers say that a number of new insurers are said to be looking at global programme business.

Guy Malyon, Head of Risk Transfer UK at Aon Global, said that there are more insurers now trying to write global programmes.

He pointed out that insurers such as ACI and RSA are coming back to where they once were and writing some big programmes, while on the property side, the likes of Glacier [now part of Torus] and Aviva are entering the market as part of the following market.

He believes that the growing interest from insurers in global insurance programme business is driven by the fact that 'insurers' return on investment is at the lowest ever, and with competition and capacity coming in, I think insurers cannot grow in their standard areas, and so they are looking for new areas to grow.'

Nick Murrell, Head of Property at JLT and one of the leaders of the Global Risk Solutions Property Team, said: "We are seeing more carriers entering the global fronting market. Existing insurers are looking to expand their books because of falling income elsewhere. There are probably three new carriers looking at how they can join the global fronting arena, and who they can partner with around the globe to either offer solely-owned offices or partnership offices."

Mr Murrell said that Aviva is looking to move into the market again, as well as a lot of Lloyd's syndicates. "They obviously can't front at the moment and run those programmes. But Lloyd's is licensed around the world, so it may only be a matter of time before some of the big syndicates start employing global underwriters to put such programmes together," he explained.

This interest is partly because, as Tim Higgins, Executive Vice President, International, Lockton, explained, "Global programmes, particularly casualty, are still a very profitable line of business for markets, so there is still intense pressure on price, and insurers are having to be more creative than ever to try and differentiate themselves. The margins generally speaking are pretty good, and it is a good business to be in."

But he also said this trend is caused by the need for insurers and brokers to follow their clients. "Insurers know that if they don't follow their clients when they start going overseas, they will lose them

if they don't try and do something," he said.

There is also the issue of overcrowded national markets. "The mid-market, national level, is a fiercely competitive marketplace," said Aon's Karl Hennessy. "So, as an insurer, if you want to have the ability to transact with larger clients and potentially have the opportunity to cross-sell other products, you have got to have some capability to issue policies outside of the EU. They may not need, or want, to create a network across the whole globe because a global network may only be servicing the global programmes out of their home territories and not picking up business in the local markets."

Interestingly, the competition for a slice of global business from insurers that are not necessarily major global players is having a positive impact, from a risk manager's point of view, on fronting costs.

Fronting for a global programme used to be expensive, but the price has come right down, and it is largely because insurers are prepared to front for a lower fee, in order to, hopefully, win the lead line or become involved in other classes of insurance too.

"We've got carriers that are looking at connecting with the client on more lines of business," said JLT's Nick Murrell. "So they won't want to admit it, but they will cross-subsidise the different classes within the fronting so that they have a more dominant role and build a relationship with the client. It is almost like a loss-leader. They are thinking about the long-term, and once you build up that relationship and provide a very good service, it takes time and effort for risk managers to take apart their global fronting structure."

THE GLOBAL PLAYERS

Is all of this a threat to the big global players? Not at the moment, it seems.

Not least because risk managers want security and peace of mind, especially when they talk to their financial directors or chief financial officers. The economic downturn has sparked a flight to good security, so that, in the event of a claim, insurance managers can be absolutely sure that it will be paid properly and efficiently.

But down the line, there could definitely be more competition for global business. "A few of these newer fronting insurers are asking brokers, 'what do we need to do to take over the lead on programmes?'" said Mr Murrell.

"They are looking particularly at trying to lead on European global to start with, and a few are starting to dip their toes into that arena. And it won't be long before they start more partnerships and start to offer more of a truly global alternative. Some of the big players might be a little concerned that they could lose their position of strength with these new offerings coming on, but not for a few years," he explained.

Indeed Mr Murrell said that, as a result of this potential competition, the big global players are definitely 'upping their game'.

Not surprisingly, these big global players are keen to stress that global programmes business is not easy to get into. And they have a point. Large international networks take time and money to build up, and that is what is required now with the greater focus on admitted programmes.

"Barriers to international programme business are getting higher," said Zurich's David Martin. "Insurers have always needed an international network to do global programme business credibly, but in the last three or four years there has been a substantial rise in everyone's interest in compliance. Whereas previously insurers offered global programmes on a non-admitted basis, that is pretty much 'verboden' now. Insurers now need a solid network of their own companies

or partner companies that can issue paper, collect premium and pay taxes in a way that wasn't deemed necessary a few years ago."

Mr Martin said that some insurers, like Zurich, have invested heavily in systems to administer these programmes correctly, and so it is becoming harder and harder for new entrants to participate in this business unless they also invest heavily in systems specifically for international programmes.

"Only four or five insurers can really provide an international programme, and it is hard to see that number growing in the short term," he said.

Chartis' Philippe Gouraud agrees as he said: "The interesting thing about the supply side of the equation is that global programmes differ significantly from other direct business in that there are substantial barriers to entry. This is not simply a question of capital and expertise but in order to really deliver for your clients you need the network and infrastructure and that is not something that you can create overnight. So while there have been some companies on the fringes looking to increase their presence in this sector, broadly the capacity is stable and is, in fact, concentrated amongst a very few experienced players."

Mr Gouraud added that the increased regulatory scrutiny makes these barriers to entry even higher—as the authorities look very carefully at the risks and solvency margins of the business that is written in their jurisdiction.

The arrival of Solvency II in a few years time is putting pressure on insurers to understand how they allocate capital between different businesses. Some insurers may not have as much capital as the regulators want, which means either increasing capital in the business, or writing less business.

Solvency II, Europe's planned new insurance capital adequacy regime, is likely to mean that some insurers will move away from very capital-intensive lines of business, such as international programmes, towards more predictable types of insurance that require less capital. The result of this would be that the price of the predictable lines will probably fall, and the price of the more volatile business will rise.

EU FREEDOM OF SERVICES

There is one region where the barriers to entry are much, much lower, and that is the European Union.

If there is one piece of legislation that

Risk managers want security and peace of mind, especially when they talk to their financial directors or chief financial officers...

has done more to simplify global programmes [at least for European companies] it is the Third Non-Life Insurance Directive, which established freedom of services (FoS) throughout the EU/EEA insurance market.

Clearly, for a multinational company with operations in various European countries, this simplifies the programme, because an insurer in an EU country can issue policies on an admitted basis throughout the EU.

For the risk manager, this means greater choice of insurer and a reduction in the need for fronting.

The European Union should be the perfect example of how regulation can be simplified and harmonised between territories, and in many senses this is true. But there are still many differences between the various countries that need to be considered.

The challenges include the need to understand the various risk exposures across the EEA, as well as ensuring compliance with local mandatory requirements.

These include compulsory cover conditions, mandatory pooling arrangements, local legal requirements, and other general good and conduct of business requirements.

So, while there are clear benefits that arise from the Single European Market Non-Life Insurance Directives, there are still complex issues to be considered, pointed out Justin Kelly, Head of Zurich Global Corporate's FoS Centre of Excellence.

Mr Kelly explained that essential to a successful FoS proposition is a comprehensive approach to compliance with local legal requirements, for example:

- a] maintaining membership and FoS access to local mandatory pools;
- b] calculation of pool tariffs and premium flow management;
- c] drafting fully compliant wordings on occasion to include endorsements in local language with non-binding translations into the programme language;
- d] adhering to claims handling procedures.

Failure to comply with such requirements can lead to policies being declared void by local authorities resulting in disputed claims, restitution obligations and the risk of reputational damage, Mr Kelly explained.



He added that, while the FoS ground up model removes the need for a local market management presence, "the insurer is challenged to centrally meet the communication expectations of local customers... And general good requirements in some EEA territories insist that an FoS insurer appoint a local claims representative and/or contribute to a guarantee fund. An FoS business opportunity must stack up to cover these resource commitments," he said.

Mr Kelly added: "Although from an operations perspective FoS has many challenges, the opportunity to maximise efficiencies is considerable when support services are centralised. This is particularly the case for FoS ground up solutions, where underwriting risks from the primary level within many EEA territories under one policy

eliminates the need to issue several local policies."

For risk managers, it is a win-win situation at the moment with full capacity, better pricing, strong balance sheets, wider wordings, and a very soft marketplace. And risk managers increasingly look to a global insurer to provide coverage.

Brokers report that in the past, there was a tendency to use a different insurer for different classes of business, such as property, casualty or marine. But now there is a trend to amalgamate it with one insurer.

Not necessarily under one multi-risks policy, but all the covers with one insurer. And clearly this is particularly important if a claim hits two classes of insurance, such as, for example, casualty and E&O.

Brokers also report that buyers are also purchasing higher local limits within their global programmes, especially on the casualty side.

So as far as the supply side is concerned, it is all good news for risk managers.

More and more insurers hope to enter the global insurance programme business, and though this may only be through partnerships and networks, it still provides alternatives and competition. And even if they are currently only able to gain fronting business, this again delivers greater choice for the risk manager, and lower fronting costs.

And for the global players, the potential competition has prompted them to expand their networks, re-launch their solutions, broaden their range of products, and a much greater effort to ensure that their offerings are fully compliant. Throw in a soft market, and it is a good time to be a multinational looking for a global insurance programme.

However, what is also clear is that global insurance programmes are becoming more complex, or at least, arranging them is becoming more complex.

With a greater choice of fronting insurers, networks of insurers used as well as global insurers, more types of cover placed in global programmes, a greater focus on compliance—all of this requires far more planning and administration.

This is why the role of the global broker is so crucial in the design and coordination of the programme, whether it be to ensure compliance, plug gaps in cover or manage retentions and the captive involvement or to aid the communication with overseas operations.



The Role of the Captive

6.

“A captive is a very transparent mechanism for managing risk within the group itself”

A CAPTIVE IS A USEFUL, THOUGH NOT ESSENTIAL, PART of a global programme that can provide a tax efficient way of funding retentions, whilst at the same time helping to coordinate a multinational insurance programme.

A captive can be particularly useful where a group is decentralised, providing a central focus for local retentions, and a bridge between group and local retention levels.

A captive based in the EU can be used to provide the primary cover and issue policies throughout the EEA which can then be reinsured in the open market.

A captive in a non-EU domicile [and therefore generally non-admitted] can provide the link between the admitted and non-admitted parts of the programme.

For example, a foreign subsidiary may buy cover through a locally admitted fronting insurer which then reinsures to the captive. The captive then buys excess cover to provide catastrophe protection, or may reinsure back to the fronting insurer. And a captive can also be used to reinsure the controlled master programme.

Captives can help to provide an element of flexibility for multinational insurance programmes, particularly in relation to the allocation of premium and the establishment of retention levels. It is this flexibility that makes a global programme so invaluable. Group retention levels can be set at a higher level than local levels and provide premium savings.

Premium can be allocated according to the

exposures and the quality of the risk, rewarding or penalising subsidiaries. In this sense, the global programme becomes a valuable tool for encouraging risk management and the implementation of loss control measures, throughout a company's network of overseas subsidiaries. Furthermore, the success of such measures, as well as the quality of the risks, can be assessed centrally through unified claims information and claims analysis.

Many risk management and loss prevention measures are expensive and some do not necessarily have an immediate payback in terms of a reduction of losses.

Perhaps more importantly, even where there is an immediate benefit in terms of a reduction in losses, or in severity of losses, many insurers do not immediately take this into account when it comes to setting the premium level. Insurers often prefer to wait until an improvement in the risk shows up in the loss record, perhaps over a two or three year period.

Where a captive is used by the company, any risk management measures implemented by local subsidiaries can be immediately rewarded in terms of reduced premium levels.

This is the best way to change attitudes within a group, through a carrot/stick process.

Where a subsidiary has a positive attitude towards loss prevention and implements the group risk management programme, then it can be rewarded with lower premiums.

On the other hand, subsidiaries that are poor risks and resist implementation of loss prevention measures can be penalised with higher retentions or higher premiums.

“What we have heard from many clients is that it can often be more effective to try and influence behaviours through adjusting premiums than leaving the business to feel the direct impact of the losses,” said Charles Winter, Head of Risk Finance at Aon Global Risk Consulting.

“This might seem slightly counter-intuitive, but if you have a captive with a mechanism whereby it can reward good behaviour and penalise poor loss history, then a higher number for insurance goes into the budget, which they have to bear whether it is ‘lucky’ or not in terms of having a loss.”

All of this has to be done within the context of transfer pricing rules. The premium has to reflect the risk, taking into account all the different risk factors, and it is important to ensure that there is a robust procedure for the assessment of the different factors that determine the rate that is applied.

CAPTIVES AND COMPLIANCE

“Captives act as a focal point for all the group's retentions,” said Mr Winter, “and allow the ability to provide a balance between the risk appetite at the group level and the most efficient way for the group to purchase insurance, with the needs of local operating companies which can be quite small legal entities with, therefore, very different risk appetites and ability to bear retained loss. The ability to create that portfolio across multiple territories and business units is one of the key things that a captive can do within a global programme.”

He added, “If you look at the pure costs of operating a global programme, a captive does introduce potentially some additional costs in terms of its own administration or in terms of additional premium taxes, but what we often see is that the true alternative is to not have the global programme working properly at all, as the local operations may start buying infill cover, or may not want to participate. So it is a small cost worth paying to have a captive involved, to have the programme function efficiently.”

Captives can help to provide an element of flexibility for multinational insurance programmes, particularly in relation to the allocation of premium...

According to Jonathan Groves, Senior Vice President, Captive Consulting Leader, Marsh, a captive is 'the cleanest route to having a global retention in a compliant fashion, at a local level.'

He explained that a captive has a number of advantages. It is transparent, it is efficient and is not a particularly expensive mechanism. It is tried and tested, it works with the fronting insurers, and ensures that the global retention is managed efficiently. Therefore it satisfies the needs of the local requirements at a group level.

As far as disadvantages are concerned, he pointed out that it does require capital to be allocated to this risk and collateral is required.

"By using a captive, I would say there are probably fewer compliance complications," said Mr Groves. "It is a very transparent mechanism for managing risk within the group itself. So you may have additional tax obligations but from a purely compliance perspective, other than the rules and regulations in the domicile, it should actually lessen the compliance burden rather than increase it."

On the question of where a captive should be based to provide the greatest benefit, Mr Groves believes it depends on the definition of a global programme.

It may be that a company operates in 20 of the European Union states, or in 70 countries worldwide. For a typical global programme that covers 50 or 60 countries around the world, he believes that an offshore jurisdiction is better.

"This is principally because you are not going to get the benefits of being able to do away with the locally admitted policies, so you might as well go somewhere where the environment is appropriate for reinsurance business, since the only way a significant chunk of the business will be able to reach the captive will be on a reinsurance basis. Arguably some of the EU jurisdictions, because of their capital requirements, make it far less conducive to doing business from a pure reinsurance perspective," said Mr Groves.

However, some believe that the role of captives in a global programme is currently diminishing because of the impact of the soft market.

Nick Wild, Executive Chairman of JLT's worldwide captive and insurance management operations, pointed out that in the past, captives have participated in global programmes and have been used to sort out problems where fronting insurers have not been able to find a

solution or have simply been too expensive.

"But a lot of that seems to be dropping away because there is a lot of competition in the global insurance programme market at the moment," he said. "Captives are a bit restricted in what they can do to help because there is no one domicile where you can put a captive that will cover every territory or region. So captives have perhaps a diminishing role to play in global insurance programmes because there are ready-made solutions in the market."

Lockton's Andrew Cornish said: "Where captives have been long-established, we are broadly still seeing them being used, possibly less because of the soft market. However, there seem to be relatively few new captives being set up, although it's not unheard of. There seems to be a much better and more balanced view when looking at new captives about the whole life cycle of a captive, particularly with regard to the issue of closing down a captive when it is no longer needed."

It is not just the soft market that is having a detrimental impact on captives in global programmes. The very nature of the global programme with its numerous jurisdictions and laws, means that the captive can struggle to achieve the goals of the global programme.

CAUTIONARY TALES

According to Kenneth McKenzie, Head of Dispute Resolution, Davies Arnold Cooper, recent case law [WASA v Lexington; CGU International Insurance v AstaZeneca Insurance Company] provides cautionary examples of what can happen when different laws govern primary and reinsurance policies. They also show that some of the prime aims of parents that use captives in global programmes are at risk of being frustrated.

"They highlight the paradox at the heart of captives in global programmes," said Mr McKenzie. "First, the parent is unlikely to achieve the same cover in all jurisdictions, because of law and regulation responding differently in those locations. Secondly, the loss claimed has to give rise to a legal liability both under the insurance and any reinsurance of the captive; unless there is 'follow settlement' language in the reinsurance that is not guaranteed where the reinsurance is under a different law and/or jurisdiction again. Finally, parents are looking for control over their global programme. This may conflict with the

need for the captive to show reinsurers that it is independent from the parent, and will act as such, when it comes to handling claims," he explained.

Mr McKenzie added: "What you should be thinking about when putting together a global programme, apart from the complex structural and regulatory issues, is to identify where your biggest exposures are and which jurisdictions are the most dangerous for you. You need to have as much of a match as you can achieve between the local, master and reinsurance policies. On the reinsurance side in particular, the captive should look for back to back cover as far as is possible and seek 'follow the settlements' clauses, and be prepared to work at establishing trust and confidence in the minds of the reinsurers from the start of the claim."

Another issue that has been of concern to captive owners is the arrival of Solvency II.

It is clear that for EU-domiciled captives, if catastrophe or long-tail business is underwritten, the amount of capital allocated under Solvency II will increase.

If the captive is in the EU, it will have to allocate more capital to reinsure, or potentially insure, catastrophe or long-tail business, which may change the cost-benefit analysis.

For offshore captives, most are already providing significant amounts of collateral to the fronting company for reinsurance credit exposures, said Mr Groves.

"I think that generally Solvency II won't cause a problem for offshore jurisdictions because the amount of collateral already being provided effectively disregards any value that is in that reinsurance for pure contractual position." And he added: "We cannot see, at the moment, any reason for fronting insurers to be increasing the amount of collateral that they will require under Solvency II."

The big worry with Solvency II was that fronting insurers would not provide their services for a non-EU captive unless that domicile is granted equivalent status.

But captive managers appear confident that fronting will still be available, collateral requirements will not be increased and there should not be an increase in the cost of fronting.

However, with Solvency II still a couple of years away, the situation is still being discussed and no firm decisions have yet been made. But captive owners will need to keep a close eye on developments.



Managing Conflict

7.

“Most conflict arises because of a lack of communication”

ANY RISK MANAGER WILL TELL YOU THAT ONE of the hardest elements of putting together a global insurance programme is selling to the local operations.

Sorting out the insurance is the relatively easy, though time consuming, part. It is the internal politics that can cause the most frustration. Internal politics may be the deciding factor about the success or failure of the programme, which is why communication and dialogue is so vital.

Conflict arises because of the different requirements of the head office and the local operations. This needs to be resolved before a programme can be successfully implemented.

These areas of conflict include central insurer versus local insurer; premium rate and allocation; central broker versus local broker and retention levels.

Conflict can arise particularly over costs, since one of the proposed aims of a programme is to reduce costs.

However, there will inevitably be disagreement between the local operation and the head office where the allocated insurance costs are higher for the local operation than it was able to achieve in the local market.

This can be aggravated by a number of factors, not least deliberate rate-cutting by the local insurer in an attempt to keep the business, or through pressure from the local broker that may be worried about losing its client.

Kapil Dhir, insurance partner at law firm Holman Fenwick Willan, said that premium retention and local support are political issues and may not be susceptible to education.

“Those global insurers with a wide network of licensed subsidiaries can also exacerbate

the problem by insisting that their local insurance company writes the local cover even if it is not a requirement to have locally issued insurance which increases premium,” he said.

“Usually local limits are narrower than the global programme, thereby forcing the insured to pursue the insurer in an inhospitable jurisdiction under the local policy.” He recommends that early engagement with the supervisory authorities is key.

SELLING THE CONCEPT

JLT’s Karen Gorman said that when setting up a global programme, risk managers have to spend time making sure that it is financially viable for their local operations, and then sell it to them.

“It is a relationship process,” she said. Ms Gorman explained that the local manager might

Conflict arises because of the different requirements of the head office and the local operations. This needs to be resolved before a programme can be successfully implemented...



only see his £50,000 deductible and not recognise that the company has a £1m deductible, or he might not understand the captive concept or the self insured retention concept.

"And so in his eyes, he believes it is not as good a deal as he could get through his local high street broker. So it is a big challenge to overcome. It is our job as brokers to help the risk manager in formulating the global programme in such a way to help them explain it to their local operations," she said.

In general, these days there has to be much greater dialogue and discussion between the buyer, the broker and the insurer at master level than there was in the past.

Countries in the programme have to be reviewed individually so that everyone is clear about what can be done, what cannot be done and what the solution may be.

And then this has to be communicated at local level.

So while it is about communication, it is also about having the right information to communicate.

Lockton's Tim Higgins said that it is benchmarking their client's captives far more frequently in terms of pricing and structure. "Subsidiaries overseas are looking at their allocations and saying that they can get this for half the price, which may well be true, but

they are getting a quarter of the cover. So we have to help clients with the management information they need to explain that it is a good deal and is in keeping with the corporate philosophy. So benchmarking is very important."

Aon's Karl Hennessy believes that the challenge for a lot of risk managers is to secure the central mandate. "You can get a lot of resistance to a coordinated central approach, and it is imperative that you get a strong central mandate from management to help support the risk manager otherwise he will find it incredibly difficult to get the cooperation of subsidiaries. There is always a dynamic between a centralised head office function and local management who like to retain control."

And Clive Nicholls, Vice President, Global Markets, Crawford & Company UK & Ireland, pointed out that global programmes need to be sold correctly within an organisation if the end objective is to deliver consistency and security, and lower cost is to be achieved.

"All involved need to understand what the objectives are. And it is also important from a legal compliance standpoint that all of the components of the programme both primary and reinsurance are fully understood if conflict is to be avoided. The devil is always in the detail and the greater the input to produce clarity at the start the better the outcome. Most conflict arises because of a lack of communication."

GLOBAL CLAIMS HANDLING

Claims handling is, of course, another potential area of conflict. Claims handling under a global programme needs particular attention and is an area that requires specialist help, especially where a global programme includes both admitted and non-admitted covers.

One important area is the extent to which claims are handled locally or centrally. The issue is not so much about how the handling is apportioned, but to ensure that everyone involved in the programme knows what the correct procedures are in the event of a loss.

It is, therefore, important to have an agreement about which claims will be handled locally and which will be handled centrally. At the same time, procedures for claims control, including approval levels, need to be established.

The actual payment of claims is another area that needs to be agreed and established at the start of a programme. Local policies will clearly mean that payments are made locally. But for excess covers, or where the policies are issued locally but are part of a centralised programme, it is very important to have a degree of flexibility built into the programme, about whether the claim can be paid locally or centrally.

This will allow the claims payment to be made in the most beneficial way to the group as a whole.

This may be affected by a number of different factors, including taxation issues, corporate policy, and currency issues.

Tax may affect the way in which the claim is paid, since in some cases, a claim made under a non-admitted policy will be taxable in many territories, being deemed to be not an insurance claim, but unearned income.

Corporate policy can also dictate the way in which claims are paid. The parent company may decide not to pay a claim to the relevant subsidiary, but use the money in some other way which is deemed to be more beneficial to the group as a whole.

This may be true of a local operation that is being wound down or restructured.

Exchange rates can also influence the way in which the buyer wishes to have the claim paid. Depending on exchange rate fluctuations, it may not make sense for the claim to be paid to the subsidiary because of a weak currency or if there is high inflation in that territory.

The current economic climate will naturally fuel fears that claims will rise rapidly because claims tend to increase during recession and downturn across many different lines of business.

However, Crawford's Clive Nicholls said: "I'm not sure there will be an upsurge in claims as such, for those organisations running global programmes invariably have a significant degree of self insurance, be that via a captive or large retention. That said we have this year seen a number of naturally occurring disasters such as the earthquake in Chile and there is always the possibility that these natural events have a greater frequency."

He added: "What I do think is likely to be a feature in straightened financial times is that those claims that do arise will be subject to closer scrutiny by those involved to ensure that all that can be claimed for is, and that payments throughout are prompt to protect cash flow."



Finding the Best-Fit Solution

8.

“Once you break up a global programme, it is a pain in the proverbial to try and put it back together again.”

IN AN IDEAL WORLD, WHAT THE GROUP RISK MANAGER at a multinational wants is peace of mind for his board that all the insurable risks of the entire group are covered, in a simple uniform way.

But this is just not possible. And it is not the insurance industry's fault. It is because of the diversity of regulations and tax systems around the world.

As a result, there is no such thing as a global insurance policy. So what is on offer?

At each end of the spectrum, there is the local admitted programme where subsidiaries buy insurance locally, and the non-admitted programme that involves the use of a non-admitted insurer [an insurer that is not locally registered in the territory of the subsidiary].

But what is the best structure for a global programme? For many years, the answer was a combination of the admitted and non-admitted programmes because of local restrictions, tax issues, or the structure of the group.

This varied from buying compulsory classes from locally admitted insurers, but other classes from non-admitted insurers, to purchasing admitted insurance for the broadest available cover, and then buying non-admitted excess cover. Or buying admitted insurance but through a fronting insurer, and either self insuring the excess or buying excess cover.

This did not solve the problem of gaps and differing terms and conditions, and

differing limits, around the world. Therefore Difference in Conditions and Difference in Limits (DIC/DIL) cover became the solution.

However, the DIC/DIL cover is usually purchased on a non-admitted basis and in some countries it can be penalised in the same way as primary non-admitted cover. In others it may still create problems in terms of premiums and claims and their tax status.

Many companies have adopted a master policy approach, which is designed to plug all the gaps in the local policies, and will be issued by one insurer, or a panel of insurers.

As well as providing DIC/DIL cover to fill in gaps in countries where admitted insurance is necessary, the master policy can also provide the full cover where non-admitted insurance is permitted.

UNDER ATTACK

However, in the brave new world of greater enforcement of regulations and taxation, master policies and DIC/DIL covers are under attack.

As ACE's Suresh Krishnan explained, “Because of increased international regulatory scrutiny over cross-border insurance, the potential regulatory and tax consequences for insurers, producers and insureds of ‘broad-form’ named insured clauses in master policies may outweigh the perceived benefits of the clauses.

“Therefore, in the evolving regulatory climate, the traditional community must reconsider the traditional multinational policy structure.”

Denis Whelan, Counsel for ACE European Group's P&C business said: “Simplifying the master policy and its ‘broad-form’ coverage is an important first step in designing a global programme that can withstand international regulatory and tax scrutiny. Therefore, removing any of a parent company's subsidiaries, affiliates, and joint ventures located in jurisdictions that do not allow non-admitted insurance as additional insureds will significantly reduce the risk that a non-admitted insurer under a master policy will be deemed to be conducting business in those jurisdictions.”

A controlled master programme, or integrated global programme, in which one global insurer with a network of locally admitted operations provides admitted cover across the group, is one solution, but there is a limited choice of insurer and not all countries may be

covered. And it will probably be expensive.

Risk managers of global companies are all very aware of the issue of compliance. But there are two limitations to full compliance—the first is that it is simply not possible to have an integrated programme in some countries. And secondly, there is the cost issue.

“There is a premium scale benefit of an integrated global programme—the benefit is that you buy one policy instead of buying 100,” explained Axa's Philippe Jouvelot.

“It is simply an economy of scale. There are, however, expenses that are multiplied. You have the cost of capital, the reinsurance back to the master, and so on. So you have a big economy of scale with the premium, but you have a significant increase in cost in the arrangement of the programme. Of course, a non-admitted policy would be cheaper but it would not be legal.”

Aon's Karl Hennessy points out that there is no such thing as a 100% globally compliant insurance programme which is centrally controlled. “It would be massively expensive to put that in place, so companies have to make a commercial decision about territories. For example, the cost of issuing a policy in a certain territory might be significantly out of proportion to what the overall risk might be. It has to be an informed decision rather than finding out after the event that you haven't done something,” he said.

As non-admitted insurance becomes less of an option around the world, insurers have looked to find a solution, or rather, an alternative to taking the fully admitted route.

The truth is, there is no solution, but there are alternatives that may suit some companies [but certainly not all]. The latest alternative is the so-called ‘financial interest clause’. This was developed by Zurich but has been adopted in various guises by a number of other insurers, such as ACE and XL.

It is not a panacea, and as Lockton's Tim Higgins pointed out, “Compliance is compliance, and for primary liability, the only way to be compliant and to minimise tax issues is to have an admitted policy. A financial interest clause achieves a lot but it doesn't take away a lot of the inherent compliance problems. It is a step forward and it is a good point of clarification, but it is not an all aspects fix to this compliance issue.”

It will clearly suit some organisations, and even some classes of business, better than

others. But, nevertheless, it is an attempt to provide buyers with a solution to a problem.

Zurich's Martin Strnad explained that financial interest coverage has been presented to certain regulators, and 'a number of claims have been paid to parent companies for their respective balance sheet losses. I am not aware of territories raising objections.'

He added: "What must be admitted is the solution is not always perfectly matching customers' expectations, for example, no money transfer into any prohibiting foreign country is permitted, but on the other hand, not every customer is looking for such transfer into a country. And it does not work as a one size fits all, rather one must very well analyse how it fits to a specific customer's needs. But then again industry insurance business is all about tailored solutions."

The financial interest coverage basically covers the financial interests of the parent company. And so in theory, the risk being insured is not in the country of the subsidiary, but is the territory of the parent company.

"Based on how many US state insurance laws, and English law, view 'insurable interest,' a master policy could insure the parent for its subsidiaries', affiliates' and joint ventures' risks to the extent that it has a direct economic or financial interest in the preservation of these entities' property or in their shareholdings," said ACE's Suresh Krishnan.

"This approach provides coverage and terms that are substantially similar to current 'broad-form' master policies while mitigating the risk of being deemed to constitute transacting unauthorised insurance business," he added.

Brokers are generally supportive of the concept, since it provides an option for clients.

JLT's Karen Gorman said: "As an insurer, they are the ones that will be hauled over the coals, fined and possibly lose their licences, if they write non-admitted business directly into a country. So this is their way of protecting themselves and also making a better solution for the client, as it can help protect the balance sheet."

Aon's Guy Malyon said: "I think what they are trying to do is correct and a good thing. Feedback from clients suggests that they potentially could be more flexible. The insurer tries to set out specific allocations for their so-called red countries where you cannot do non-admitted business, and sometimes clients think this is

a bit heavy. So it is more to do with premium allocation. It comes down to each client and the pressures they are under. Some clients want to be absolutely compliant, no questions asked. Others have to be more flexible for a cheaper price."

The idea of financial interest cover is to protect the balance sheet of the customer. But it clearly doesn't solve the problem of how you settle a claim at master level down to the local level—the claim being paid to the parent company and then paid to the local subsidiary—and the only way to do this is through locally admitted cover.

THE BEST FIT SOLUTION

So what is the best fit? "It depends on the organisational structure of the company," said SAP's Corporate Risk Manager, EMEA, Susann Hübner. "If you have a centralised organisation and your CFO wants to make sure coverage is the same or at least comparable for all subsidiaries, it saves costs and makes administration more effective. Especially as in many countries, certain wordings and limits might not be available at all. If your organisation is more structured and local markets can provide sufficient coverage, this might be an option, which is cost effective as well, but it requires a lot of administration."

XL's Gernot Klantschnig agreed: "Any global programme solution needs to fit around the client's individual requirement and internal structure. For centrally organised companies with a common risk management approach and insurance standards, a global programme can be a very cost effective solution. Obviously, extremely decentralised firms might require a different insurance solution to fit around their company structure, or may need a mid-set change to effectively manage global programmes."

Ultimately, it is down to preference and need. How important is compliance? How important is price? How important is coverage? Some companies will be happy with non-admitted excess capacity, and some will not. For most risk managers, the really important aspect is that claims are paid. Will the programme respond in every territory?

Perhaps that is why there is such a strong focus on compliance, it may be a response to increasing regulatory pressure, or good governance. But in the end, it is all driven by the simple fact that the risk manager needs to know that if there is a loss,

anywhere in the world, the claim will be paid.

It may be that there is no 'one solution fits all' best fit global insurance programme. Some companies will simply let local subsidiaries buy their own cover, on a local admitted basis. Others will mix and match between admitted covers and, where possible/legal, non-admitted covers. Others will have a master programme that allows local subsidiaries to buy local cover, but with DIC/DIL cover to fill in all the gaps. Many others will opt for a global programme with a global insurer issuing local policies.

Whatever form it takes, there are clearly many benefits to a centralised global programme, not least the issue of cost savings. But one of the biggest drivers is the very nature of the centralisation of the programme, which provides the risk manager with the ability to see what is going on with the group's insurance programme, whilst at the same time being able to analyse the global risks and improve risk management.

A global programme can allow for much easier gathering of global claims information which can then be used for risk management analysis.

"If you have a good risk management information system, that can very efficiently collect and collate data, you can get a much better line of sight as to what is happening throughout the world with regard to local insurance, to ensure that you are globally compliant, and ensure a much more disciplined and transparent approach to premium allocation and tax payment," said Aon's Karl Hennessy. "It can mean that the programme is much more aligned to the overall objectives of the company, as opposed to being down to the whim of a local relationship."

Indeed, the first step in setting up a global insurance programme always has to be finding good information on the risks and what the exposures are. Finding good information and understanding the total cost of risk enables companies to make a more strategic and proactive decision.

And a global programme can also mean that risk managers can start to develop best practice across the organisation in terms of loss control and engineering, said Mr Hennessy. "You may find that there are pockets of excellence that you might otherwise be unaware of, that you can then effectively cross leverage across the organisation so that you end up with better loss control, as well as better loss mitigation and transfer," he concluded.



Standardisation

9.

“There is a lot of uncertainty, unpredictability and ambiguity”

WHILST YOU MAKE A PHONE CALL to just about anywhere in the world, use your mobile in any country you want, or send a letter to anyone across the globe, the same is sadly not true of risk transfer.

But why is it not possible for regulators and the insurance industry to get together and find a way to simplify the tortuous business of establishing a global insurance programme?

If the telecommunications industry and the postal services sector can do it, why not insurance?

A combination of inertia, self interest, nationalism, defeatism and the sheer complexity of it all has served to scupper any attempt at a solution.

But there are certainly signs in the market that risk managers are fed up and want some action on this.

At the bequest of its members, the Federation of European Risk Management Associations (FERMA) recently entered into talks with the major brokers and other players in an attempt to achieve more clarity over global programmes.

But what can realistically be done to simplify matters?

The first thing is to get to grips with the vast array of rules, regulations, laws and taxes that each country has put in place.

Risk managers need to know about compulsory insurances, premium taxes, compulsory cessations, compulsory pools, restrictions on non-admitted insurance, attitude to premium allocation, exchange controls, currency issues, broker laws, different legal systems, reinsurance

restrictions, and the potential treatment of claims payments as unearned income. All of this for each country where the group operates.

“It does frustrate customers enormously that there is no bible [about] what the rules are, and frankly, there is never likely to be,” said Zurich’s David Martin. “A book of rules is basically just an aggregation of what every country in the world thinks is the right insurance regulations for its country and how it wants to tax it. Things change every week, twice a week.”

However, he said, Zurich is willing to evaluate sharing its underlying data of regulations with the relevant brokers and risk management associations.

INTERNATIONAL STANDARDS

But what about the regulators themselves? Is there scope for the introduction of international standards to help in the construction and management of global programmes?

Would there be a possible role for the IAIS to help to encourage the acceptance of international standards by national supervisors?

“I would really like to see this happen, but I currently don’t see any progress here,” said SAP’s Susann Hübner. “This would be a great success, but a short, or mid-term, solution is not very likely, as many countries are very focused on their local supervision and regulation.”

BT’s risk manager Chris Maurice does not see it happening either. “This isn’t about standards, it is about the different legal jurisdictions that a global programme works across. No supplier has ever looked at this from a customers’ perspective and said, ‘what is it they need and how do we, as an organisation, deliver it?’ At the moment it is, ‘we work this way so this is what you are going to get.’”

“It’s hard to see how we could create standards for international insurance programmes when there are no standards at all applying to the underlying regulation,” said Zurich’s David Martin.

“Most regulators don’t like DIC/DIL covers, because if the rule in their territory is that you have to be licensed in the country, and the premium attracts a tax, then they consider that it is a breach of regulations or tax evasion if somebody does something else,” he explained. “They start off not in favour of these things. We are a long, long way from regulators coming together to make it



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easier for purchasers of international insurance.”

ACE’s Clive Hassett agreed. “International standardisation is a nice idea but I can’t see it happening. A body like the OECD would possibly be one that could perhaps do something, but they are not that active in insurance. Apart from that, I struggle to think of anyone who could take up this issue. It may possibly happen regionally, not to the extent of what you have in Europe with Freedom of Services, in terms of some harmonisation of insurance law, maybe, in certain economic groupings. But there doesn’t seem to be much scope for global harmonisation,” he said.

Insurers are naturally supportive of the idea of some form of global standard, but are unsure of how it would come about in reality. “It is a brilliant idea and it would be certainly very, very helpful, but realistically, who could do it?” asked Axa’s Yves de Mestier. “Which organisation could set up such an international standard? I am afraid that national insurance supervisors would be reluctant to set up such a market code of practice because they are not in the market, and it would take a long time.”

He added, “Perhaps risk management organisations such as AMRAE or FERMA or RIMS could have an initiative to work together to try and set up an international code of market practice for global programmes which would then be adopted by the associations and then

provided to, and accepted by, the insurance industry, at least in a certain number of countries—it would be a good step forward.”

Zurich’s Martin Strnad said: “It would be grand to have an industrial insured exemption of some sort as some states in the US know it, but will all regulators around the world agree on that? Perhaps a rule could be put in place for those customers, who have a professional risk manager and who operate over and above specific turnovers, where then non-admitted restrictions worldwide do not apply.” However, he added, “[It would be] quite a task to align all regulators to such an understanding though...”

Mr Strnad pointed out: “The compromise would probably be that the national authorities would insist that IPT still needs to be paid in the country/location of the insured risk [eg. if the customer’s insured skyscraper stands in Greece, that is where IPT is owed]. In the EEA, this concept of paying taxes in the location of risk is regularly followed, despite the freedom to provide insurance services across EEA borders.”

One of the frustrations in all of this is that many local regulators and supervisors do not fully understand how global programmes work. “There is certainly little understanding of the benefits,” said Paul Wordley, insurance partner, Holman Fenwick Willan.

“Some local supervisors understand and some do not, but retention of premiums and support of local markets are keen drivers. The requirement to provide local cover for insurances such as auto, employee liability and third party liability is understandable [although some countries have compulsory insurances which are not typical] but the restrictions in available local cover/absence of local cover can limit or erode the usefulness of a global programme unless it has a broad DIC/DIL clause,” he explained.

Alison Proctor, senior insurance associate, Holman Fenwick Willan, said: “Standardising the DIC/DIL clause would greatly assist insureds to avoid having to bring claims under the local cover where all parties intend the global programme to respond, especially where the vast majority of premium has been paid to the global/master policy at significantly higher premium rates.”

She added: “It is less of an issue for the national restrictions impacting the global programme but more an issue of ensuring that

the global programme responds where a local restriction has been imposed by the local insurer. The effectiveness of the global programme is only as good as its DIC/DIL cover. The reality is that benefits of global programmes need to be sold. Perhaps a cost/benefit analysis demonstrating that increased trade will result would assist?”

A ROLE FOR THE IAIS?

One of the people firmly pushing the need for regulators to look at the issue of global programmes and introduce a standard approach across the world which allows for greater flexibility, is Marsh’s Praveen Sharma.

“Regulators are only interested in protecting the local policyholder whether that is an individual or a multinational. Supervisors are under tremendous pressure to ensure that they are tightening up the regulations, but on the global programmes side, I don’t think they have really understood the full implications for multinational companies, and the nuances around global programmes,” he said.

“It is about time that the International Association of Insurance Supervisors (IAIS) took

a frontline approach to this and discussed how regulations could be structured so as to protect the policyholder where it needs to, to ensure that the policy complies with local regulations as much as possible, and where you have an excess or DIC/DIL policy, there is some flexibility for a multinational company to enter into those arrangements without being seen to be in breach of local insurance regulations,” said Mr Sharma.

“It is a win-win situation for all parties involved,” he explained. “It is a win for the local regulator, because the local risks are protected, jobs are protected and the local economy is thriving—because if there is a big major incident, at least the insurance claim would be paid into the country to rebuild the operations. They can also collect taxes on the premiums that are allocated to those countries. And there is no reason to protect the policyholder because it is a big multinational. They can impose the requirement on the multinational to buy a local policy, but if there is no capacity available, or there is no credible rated insurer that meets the company’s security restrictions, then the multinational should have the flexibility to buy the policy in the London Market or wherever.”

Mr Sharma believes that the IAIS should start the discussion on this, as they need to understand the issues from the interested parties: the insurers, the brokers and the risk managers.

He believes that the IAIS should issue a consultation paper, discuss the issues at the IAIS board level and then with their members, and then see whether there could be a standard modification brought in. “Because at the moment,” he says, “there is a lot of uncertainty, unpredictability and ambiguity.”

And that is causing dismay and frustration amongst buyers of global insurance programmes. Which is why pressure is building for some sort of action, or at the very least, dialogue and debate. FERMA has become involved, and just recently the European Captive Insurance and Reinsurance Owners’ Association (ECIROA) revealed that it has opened talks with the IAIS to try and deliver more certainty for buyers of global insurance. Whether this initiative will progress beyond simple dialogue remains to be seen, but certainly the idea of some sort of standardisation is ‘gaining traction’ as the phrase goes. It won’t be easy—it never is when national politics and national self interest are involved, but the debate has begun.

One of the frustrations in all of this is that many local regulators and supervisors do not fully understand how global programmes work...



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