

Global Programmes 2011



In Search Of Nirvana



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World trade experienced a remarkable recovery during 2010, helping to mitigate many of the aftereffects of the global recession. According to the World Trade Organisation, international commerce jumped 14.5 percent in 2010, the largest annual increase recorded by the WTO since it began its current data set in 1950. The dramatic increase essentially erased the 12 percent slump experienced in 2009, returning global trade to peak 2008 levels and demonstrating the continued resilience of globalisation.

Earlier this year, WTO economists were projecting a more modest 6.5 percent growth rate for 2011, taking into account the lingering effects of the catastrophic Japanese earthquake and tsunami and other events. Even this lower rate would exceed the 6 percent average annual growth in world trade between 1990 and 2008. More recently, however, we have seen rising concern over the continued strength of the global recovery, driven by worries about sovereign debt, stubborn unemployment in many sectors and other persistent problems.

In such a still very uncertain world, the risks multinational organisations face are likely to become more diverse and challenging. More stringent regulation and capital requirements, driven by local country responses to the global financial crisis, may mean more complex compliance risks. Global supply chains may become increasingly vulnerable to natural catastrophes as well as local financial and/or political disturbances. Clearly, traditional property and casualty risks must also be more carefully and creatively managed in an ever-riskier global environment.

As the contributors to this important document will make clear, the search for Nirvana in the achievement of truly effective global risk management requires commitment to collaboration, transparency and shared goals among all parties – customers, brokers and insurers. Without question, the best response to an increasingly risky world will continue to be unified, centrally managed global programmes built to respond in coordinated, consistent ways anywhere in the world.

We hope you find the 2011 edition of this insightful report to be valuable to you in considering the benefits that an integrated, global programme can bring to your organisation.

A handwritten signature in black ink, appearing to read 'Hürlimann'.

Thomas Hürlimann
Chief Executive Officer
Zurich Global Corporate

Nevermind Nirvana

WELCOME TO THE second annual management report on global programmes

written by Tony Dowding, brought to you by *Commercial Risk Europe* and sponsored by Zurich.

Why do we publish an in-depth report on global programmes every year?

Well quite simply because it is an incredibly important subject for the CRE readership and one that is very much a moving feast.

Our research shows that all risk managers with cross-border exposures want to deliver a comprehensive, consistent and compliant insurance programme that covers all the main risks at a cost-effective price.

The problem is that this is quite simply not very easy to do. Local insurance and fiscal rules are inconsistent, often vague and sometimes even contradictory.

Total compliance is therefore actually difficult to achieve and not because risk managers themselves, their brokers, insurers or even tax advisors are not up to the task.

Risk managers could spend a fortune to try and ensure that they are completely up to date with the latest rules and still miss a trick in some distant territory where they operate because the local supervisor simply failed to notify anyone of a change.

The construction of a global programme therefore is by its very nature a commercial process in which the risk manager must balance the requirement to be 100% compliant within the confines of tight budgetary limits, particularly relevant today.

The logical solution to this conundrum is to build a strong partnership with the best service providers possible that have the skills



and spread needed to deliver the goods and, at the same time, raise awareness and knowledge of the requirements with other departments within the corporation such as tax and audit to draw on their help to make it work.

As with all risk and insurance management strategies, it relies on effective prioritisation, teamwork and delegation to make the best use of limited resources.

In this sense, it seems obvious to me that national supervisors and tax authorities also have a responsibility to explain their changing requirements as quickly and clearly as possible to help companies comply.

This is why an industry-wide effort with the involvement of the authorities to help insurance buyers make sure they stick to the rules and pay tax when and where it is due is such a good idea. We look forward to following this effort for CRE readers throughout the next 12 months.

In the meantime, thanks again to Zurich for its support that made this report possible. The market should appreciate its effort to help spread knowledge and awareness of such a critical topic through this independent platform provided by CRE. We clearly interviewed a number of Zurich's experts when researching this report but also plenty of its competitors and other market players such as brokers to provide an unbiased assessment of the latest matters and strategies involved with the creation of the best global programme possible.

I hope you enjoy the read and look forward to receiving any comment or feedback.

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In Search Of Nirvana

All risk and insurance managers want to be 100% compliant when they buy global programmes but it remains very difficult to be certain that all local rules are strictly adhered to because they appear to be open to interpretation. Insurance managers, brokers and insurers are, however, currently working hard, and need to continue to work hard, to plug the gaps and ensure that full compliance is achieved at a reasonable cost

THE AIMS OF A GLOBAL INSURANCE programme may be varied, but risk managers want to be secure in the knowledge that, in the event of a loss, they can make a valid claim and have it paid.

They want security that the claim can be paid in the required way, and in the required place, and security that the organisation is totally compliant.

However, organisations have very different attitudes as to exactly what compliance means, how claims are to be paid, and their appetite for risk. This is why global programmes are tailor-made solutions rather than off the shelf products.

The design of a global programme will depend on a number of factors, not least the amount of control that the risk manager has over the various subsidiaries.

It is also important for the risk manager not only to work with the broker and insurer, but also with others within their own organisation. The success of a programme may also require greater involvement from legal, treasury and other departments in its design.

As for who should be responsible for compliance, it is too important an issue to be ignored by any of the three parties involved: insured, broker and insurer.

Recent cases show that all have faced fines and financial penalties in relation to this. There should be joint responsibility and close cooperation between all three parties.

There also needs to be communication between the parent company and subsidiaries to ensure they are well informed in advance, especially about compliance.

To support a successful placement, an insurer requires data, and the better and more comprehensive the data, the easier it is to properly underwrite the risk. A global programme therefore requires time and effort upfront if it is to work satisfactorily.

Insurers are demanding more and more information, especially in relation to global property programmes and

catastrophe zones. And the information must be kept up-to-date and constantly monitored.

Risk managers are often frustrated because they receive different answers from different insurers and brokers about compliance and local regulations and laws.

The problem is that these rules and laws are often vague, unclear, or lacking in detail, and so it becomes a question of interpretation of the 'grey areas'. Insurers and brokers are naturally cautious about giving a legal opinion. At the same time, many have spent large sums on obtaining legal interpretations.

There are different insurance solutions for different situations—there are no standard off the shelf solutions. However, low-limit local policies, together with high level master policies are disappearing. It is more common to see local policies up to EML/PML and then a master policy or DIC/DIL policy above it, with risk managers much more focused on evaluating potential exposures and costs, and carrying out objective analysis.

There is a difficult balancing act for risk managers—cost versus coverage versus compliance. Risk and insurance managers face tough cost pressures from their organisations with regards to insurance buying, but at the same time they face an equal amount of pressure to ensure that all their insurance arrangements are compliant. However, risk managers are more sophisticated and have better analysis and assessment of risks than ever before, and as a result, they are better able to balance cost and compliance.

In the past, global programmes tended to focus on property damage and business interruption, and public and product liability. Other covers have been increasingly added to global programmes, including directors' and officers' liability (D&O), marine transit, environmental covers, crime, fiduciary, global travel accident, construction and terrorism coverage.

BROADER SCOPE

D&O was commonly insured on a non-admitted basis. But it is now generally insured with locally admitted policies to ensure compliance. Professional lines is a relative newcomer to global programmes but has grown rapidly. Marine cargo insurance is a growing area for global programmes, and an area that has its own unique challenges, as losses can occur where the insured has no operations.

There is a concerted move by regulators and tax authorities to clamp down on those attempting to thwart, avoid or bypass regulations and laws—largely a response to the current economic and financial difficulties and efforts to raise revenue and protect local interests.

This is true for Europe, the US, Latin America and Asia. There are also some signs of cross-border regulatory collaboration and potential regulator copycat actions.

Ferma and Airmic have said that understanding local rules and regulations and ensuring that the programmes are compliant should be a fundamental part of the service offered by insurers and not used as a competitive factor.

They are looking to work with insurers and brokers on a market-wide database of regulations. The response from insurers has been generally supportive but also somewhat lukewarm about the practicalities.

In the end, everyone benefits from such a market

solution. The regulators and tax authorities should welcome a move that encourages compliance. Insureds and brokers will have some security about compliance. For insurers, it should mean that they too can ensure they themselves are compliant. And, at the same time, it would ensure that they compete on the traditional basis of pricing, coverage, service and claims-paying ability, as well as still being able to focus on the interpretation of grey areas, and providing local representation combined with global reach.

CHAPTER ONE—THE RISK MANAGER'S VIEW

Joint Responsibility, Not Liability

This chapter investigates what risk managers, the people that really matter, want from their global programmes, what service they expect to receive from their insurers and brokers and what role they expect to play in the design and implementation of a programme that really works

A GLOBAL PROGRAMME IS NOT A FIXED entity. Nor is it a homogenous one. Global programmes are unique tailor-made solutions for organisations, ranging from the highly complex to the relatively simple. 'Relatively' because the one thing that global programmes have in common is that they are time-consuming, difficult and far from straightforward.

Depending on the needs of the organisation, they can vary in size, scope and detail. However, whether it is a programme covering a single line of business in a handful of European Union territories, or a major multi-line programme covering more than 40 countries worldwide, the aims of the risk manager in each case are generally the same: security.

They want to be secure in the knowledge that in the event of a loss, they can make a valid claim and have it paid.

While that sounds a simple and reasonable aim, there are many, many obstacles in the way. And the security issue runs much deeper: security of the insurer, security that the claim can be paid in the required way, and in the required place, and security that the organisation is totally compliant and not liable to fines, rejection of claims or indeed, imprisonment of senior executives.

Within these basic aims, risk managers have a whole variety of different requirements, and, of course, their

organisations will have very different attitudes to exactly what compliance means, how claims are to be paid, and their appetite for risk. This is where global programmes become tailor-made solutions and an off the shelf approach simply cannot work.

CASE FOR CULTURE

Urs Lüthy, Global Relationship Leader, Zurich, explained, "I think risk managers all have different philosophies and approaches, depending on the risk appetite and tolerance of the corporations they work for. Insurance is not a stand-alone risk management function, but has to be viewed as a piece of a company's enterprise risk management approach."



Urs Lüthy

This is an important point. The global insurance programme will be driven by the risk management culture of the organisation, and further, by the corporate philosophy of that organisation.

For example, the attitude towards insurance compliance will often stem from the attitude of the organisation generally towards compliance in all spheres.

As Guy Malyon, Head of Broking for Aon Global in the UK, said, "I think with the bigger clients compliance is much more of a factor. I wouldn't say it's a general trend but without doubt the bigger clients want to be more compliant. It does depend on the company you are dealing with. I deal with a financial institution and for them compliance is top of the list. They live in a compliant world and they want to make sure that their programme is compliant, but then there are other clients that aren't quite as concerned about it."

Helen Hayden, Group Insurance Risk Manager, Prudential PLC, said that from her perspective as insurance risk manager for a company that is subject to regulation, she needs to be able to demonstrate that she has complied

“Risk managers all have different philosophies and approaches, depending on the risk appetite and tolerance of the corporations they work for. Insurance is not a stand-alone risk management function...”

URS LÜTHY

with all the regulations which apply to the purchase of insurance and insurance services in every territory in which her company operates.

“I want to be able to purchase insurance cover which is as consistent as possible and as comprehensive as I need within the above parameters,” she explained. “I also want contract certainty, and by this I mean knowing when and where my master policy is wider than my local policy, so I am aware beforehand in what circumstances I would need to rely on the DIC/DIL (Difference In Conditions/Difference In Limits) clause. Whilst DIC/DIL is not an option in some jurisdictions, being aware of where the limitations may occur before a claim materialises is important.”

Ms Hayden added that for her, non-compliance is not an option: “It is the same regulator for our insurance purchase as it is for our life insurance sales.”

Another important aspect is the amount of control that the risk manager has over the various subsidiaries. Global programmes tend to evolve as the organisation grows, and so many overseas subsidiaries may have had considerable control over the purchase of insurance. Indeed, in the past most subsidiaries would have been left to deal with their own insurance locally with little, if any, input from the corporate headquarters.

Moving to a coordinated global programme would almost inevitably have led to some conflict between the head office and the subsidiaries. The extent to which this conflict was resolved, one way or another, will have influenced the future development of the programme.

If the head office had exerted its power and ensured that the subsidiary used the chosen multinational insurer, levels of cover and terms and conditions, then the programme would now look very different than if the local subsidiaries had retained an element of control over the insurance purchase.

“Each programme and each company is very different and it depends on the level of control that the risk manager has and, indeed, the size of the team the risk manager has and, also the size of the broker,” said Aon’s Guy Malyon. “It really does depend often on the level of control the risk manager has because the more he can control the local operations, the more easily the information comes back.”

Donal Kelly, Regional Operating Officer, UK, Ireland and Nordic Region at XL Insurance, said, “Global programmes

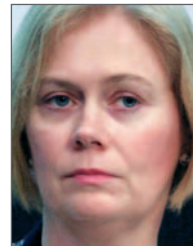
provide a comprehensive, harmonised cover for clients’ global risk exposures. For centrally organised companies with a common risk management approach and insurance standards, global programmes can be an extremely cost effective solution, but they require good communication by the central risk managers with their local offices to manage the programme—and the same goes for insurers and their brokers.”

It is not just risk appetite that will vary, but also where the organisation wants the claim paid. Ultimately, insurance is all about getting a claim paid, but in the context of global programmes, it is also just as important where the claim is paid, or rather, where it is able to be paid.

If an organisation only wants claims to be paid centrally, then global programmes become considerably easier.

But most organisations will want to reimburse the local subsidiary in some way, whether rebuilding a damaged factory, or a liability claim. And without local insurance policies there could be all kinds of tax problems in many territories.

The reality is that most risk managers want some sort of flexibility about the payment of claims—to be paid locally where possible, but occasionally paid centrally if required. And again this will decide the overall structure of the programme.



Helen Hayden

Finally, there is the issue of compliance. According to Helle Friberg, Group Risk & Insurance Manager, Hempel A/S, and Deputy Chairman of DARIM, the Danish risk management association, the biggest issue when it comes to global programmes, from a risk manager’s point of view, is that the rules and legislation are not uniform throughout the world with regard to admitted and non-admitted insurance and the associated tax issues. The fact that it is not always transparent what the rules are in a specific country obviously does not help either.

Ms Friberg said that the one thing that would make her life easier with global programmes would be ‘aligned legislation throughout the world, allowing non-admitted covers’.

And she is not alone. As compliance has crept up the corporate agenda, so non-admitted insurance has become an increasingly unreliable option. In the past there was much more differentiation between organisations, with some, as now, heavily focused on compliance, and others taking a much more lax view.

This latter view was common and many organisations relied heavily on blanket non-admitted covers. This was aided and encouraged by insurers and brokers and, even to an extent by the regulators themselves, because laws and regulations were often lax and poorly enforced.

But now, with the focus on greater enforcement and tougher rules and regulations, and stiffer penalties, there is much less differentiation.

Most organisations aim for full compliance, and the

number of organisations that are prepared to risk non-compliance, or to gamble where the regulations are unstated or unclear, is falling rapidly.

So, as to what risk managers want from their programmes, it was neatly summed up by John Hurrell, Chief Executive of Airmic, the UK's risk management association, in his opening address at the *Commercial Risk Europe* Risk Frontiers Global Programmes seminar earlier this year.

He pointed out that Airmic's annual survey had revealed that there are three critical issues that insurance buyers and risk managers need their global programmes to satisfy.

"The programme needs to be compliant with all local laws, regulations and fiscal requirements," he said. "The policy must pay claims in the required country, in the required currency without fiscal sanctions or penalties, and changes in local requirements must be automatically addressed." This is not too much to ask, he added.

What do risk managers want from their insurer?

To begin with, risk managers want all the usual things that they want from an insurer: security, claims-paying ability, breadth of cover, and competitive pricing.

The financial security of insurers, and hence their claims-paying ability, used to be a huge issue for risk managers, and it is still clearly a concern. But the situation has improved considerably, as a recent report from Standard & Poor's Ratings Services revealed.

S&P said it foresees continued ratings stability over the next two years for global multiline insurers that it rates. In its report, 'Global Multiline Insurers Are Heading For Continued Ratings Stability, Despite Multiple Hurdles', S&P said that their geographic and business line diversification were a main contributor to the ratings stability of these insurers.

"Management teams at the companies generally have been working toward capital efficiency and margin preservation, which provide additional support," it added.

However, S&P pointed to their ability to maintain resilient capital adequacy as a top area of focus, and stressed that European insurers also face uncertainties linked to the impact of Solvency II on their capital management, investment policies, and business positioning.

Solvency II, when and if it eventually arrives, will therefore have an impact on global programmes, though whether it will be in terms of increased costs or a greater focus on the established global players, is not yet clear.

As far as breadth of cover is concerned, as we shall see later in this report, more and more lines of business are being considered for global programmes.

And competitive pricing has, for some time, been less of an issue with the extended soft market of recent times. Though, given this year's catastrophes, a hardening of rates may be imminent, or indeed, for some catastrophe classes and regions, a hard market may already be here.



John Hurrell

But for a global programme, risk managers also require a number of other crucial characteristics of their insurers.

Global representation is clearly of vital importance. A multinational programme requires an insurer that is represented in as many countries around the world as possible, covering the countries in which the buyer operates and may look to expand into in the future.

The aim is to have policies issued locally and serviced locally, but with just one insurer running the programme, and providing excess covers to ensure worldwide uniformity.

Experience in multinational programmes is important, particularly when one is dealing with a large number of countries.

The numerous tax and regulatory requirements around the world, combined with different legal systems, different cultures and different languages, mean that multinational insurance programmes are complex and time-consuming to put together. Experience in the complex process of putting together such a programme should not be underestimated.

It is not just about local policy issuance. A multinational insurer must be able to provide DIC/DIL covers, master programmes and/or umbrella policies in order to boost the local policies to the required level of protection.

Risk managers also expect the insurer that controls a master programme to have the ability to allocate premiums to the local operations of the buyer according to the requirements of the parent company.

This must involve a considerable degree of flexibility, since the parent may wish to use the allocation of premium to encourage subsidiaries to implement group risk management programmes.

As well as rewarding or penalising local operations for their attitude towards risk control, the parent may wish to allocate premiums on the basis of a number of different factors, such as exposure, size of operation, ability to pay or claims experience.

The insurer will need to work with the buyer on all these methods of allocation, and be flexible enough to accommodate all the different factors.

As with the choice of any insurer, the multinational insurer must be able to handle claims quickly and efficiently and ensure prompt payment of claims, wherever they need to be paid.

However, this is even more important where a large

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However, this is even more important where a large number of different countries are concerned and where exchange controls, currency fluctuations and inflation all have to be taken into account...

number of different countries are concerned and where exchange controls, currency fluctuations and inflation all have to be taken into account.

Perhaps most important of all for a risk manager is the need to ensure that the insurer combines central control with local service.

Local service is important but there must be a level of central control. Consistency and uniformity of cover are high on the list of a multinational company's requirements from a programme, and this requires the insurer to be able to have a high degree of control over its local offices.

However, there must also be a balance, with local offices having the flexibility to adapt cover to the particular needs of the local subsidiary, whilst still fulfilling the parent company's requirements.

Andreas Berger, CEO Regional Unit London, Allianz Global Corporate & Specialty (AGCS), and Chief Regions and Markets Officer on the global board of AGCS, said that he believes it is important that an insurer has its own local insurance operation that underwrites in the country and is not simply a representation for servicing existing global clients only.

This is to ensure that they fully understand local practices, local peculiarities, and have a thorough understanding of the market and the laws and regulations, and how to interpret those laws, he explained.

Clive Hassett, Head of Multinational Risks, ACE European Group, said risk managers have, over the past few years, become far more demanding of their brokers and their insurers to receive an appropriate level of service from them.

He pointed out that if a company has subsidiaries that operate in 65 countries around the world, and there is a programme with an insurer that is going to issue policies in all of those countries, "the risk manager wants, and demands, that those policies are issued within a certain timescale, not what was the case several years ago when some would get issued quickly, some would take a little bit longer, some may not happen at all. Risk managers, quite rightly, are becoming less tolerant of companies that won't deliver on their service commitments and I believe are recognising that there is a price to be paid for that level of service excellence," he said.

Who is responsible for compliance?

Above all, of course, what risk managers want from their

insurer and broker is a compliant programme.

It clearly does not matter how competitive the pricing, how broad the coverage, or how integrated the programme is, if when a claim comes in, it is denied on the grounds of non-compliance, or cannot be paid to the relevant operation.

Nor does the level of cost savings achieved matter if non-compliance results in unexpected premium taxes, or worse, fines.

It is certainly the main issue for risk managers with their global programmes. A recent Airmic membership survey found that nearly 30% of risk managers regard global compliance as one of their top three concerns.

MAJOR CONCERN

Indeed, the compliance of global insurance programmes was the fastest-rising of Airmic members' concerns, according to the survey. It now ranks second only to reputational risk as their main worry, or as Airmic put it, "There has been mounting anxiety about how to make global programmes meet the network of international insurance premium tax and regulatory rules."

Incidentally, Airmic has said that its preferred terminology is 'understanding of regulatory requirements or databases'—it is concerned that use of 'compliance' implies that there is a lot of non-compliance. Whilst it is difficult, said Airmic, it does not believe there is wholesale non-compliance.

Some might argue that one of the roles of the broker and insurer is to ensure that the global programme is fully compliant. A risk manager might reasonably say that they are paying for the programme to be arranged and policies to be issued and the least they can expect is that those policies will be compliant.

As John Hurrell, Chief Executive of Airmic, told the recent *Commercial Risk Europe* Global Programmes seminar, "Despite all of the investment which goes into global compliance, we seem to be no nearer a solution than we were when we first looked at this some years ago. The reality is that brokers and insurers have invested heavily in their own compliance requirements but not necessarily in the compliance requirements of their clients."

Hempel's Helle Friberg said, "I think that as the situation is now, the risk manager should feel responsible for not bringing the company in any jeopardy, and hence be in control, however, I believe that legally it should be the responsibility of the insurer."

Others, notably insurers, would argue that it is the broker's remit to ensure compliance, and of course, brokers might argue that compliance is the responsibility of the insurer.

It is true, perhaps, that the onus tends to fall on the insurer because it is arguably the most regulated entity—insurance is, after all, one of the most regulated industries in the world. But the fact is, compliance is everyone's responsibility: the risk manager, the broker and the insurer.

"There is a joint responsibility for compliance,"

according to Yves de Mestier, Head of International Network, Axa Corporate Solutions. “International programmes only work if there is a good level of understanding between the three players: the customer, the insurer and the broker. All together they have to anticipate the difficulties in the territories involved in the programme, and check the most appropriate decisions together.

QUESTION OF COMMUNICATION

“If the risk manager wishes to be followed by the sister companies all over the world, he must anticipate the issues and the difficulties together with the broker and the insurer and prepare all the arguments. The communication with the sister companies is also crucial, to ensure they are well informed, in advance, of where the issues should be, especially with regard to compliance.”

Claude Galileo, Managing Director, Global Network Practice, Willis, said, “Compliance is a legal subject. We provide information on what you can and cannot do around the world, but we do not provide legal advice, we are not attorneys. Brokers and insurers have a responsibility to provide information to the client on what you can and cannot do, but the client also has responsibilities to seek legal advice in situations that they feel uncomfortable with.”

Or as Karen Gorman, Partner, Global Risk Solutions, JLT Specialty Limited, put it, “Clients rely on the broker and the insurers to guide them. We can make recommendations and they have to make an informed decision on how far they go.”

Praveen Sharma, Global Practice Leader, Insurance Regulatory and Tax Consulting, at Marsh, said that if a programme doesn't work from a compliance perspective, everyone will be affected in some way, so it is essential to have the participation of all interested parties, such as the broker, the insurer and the risk manager.

“We are doing a lot in this arena with systems, processes, tools and resources to equip our brokers to be able to give pertinent information to the client,” he said.

“Insurers also need to step up to the plate and take responsibility regarding not just compliance for themselves, as some insurers are, but also compliance overall, ensuring that the client is not put at unnecessary regulatory or tax risk. The insurers need to be more transparent and proactive. Some insurers are, but others are still somewhat behind and they need to realise that we are all in this together,” continued Mr Sharma.

For the risk manager, it is important to not only work with the broker and insurer, but also with others within their own organisation. “Increasingly, just about every meeting in the last few years that I've had with risk managers includes representatives from the tax department, legal representatives and/or finance representatives,” said Mr Sharma.

“Compliance is an important issue for risk managers and they feel that this needs proper attention. There should be no surprises for a company's tax department or legal people later on if things go wrong. Every issue pertaining to a global programme needs to be addressed up front, well

“Increasingly, just about every meeting in the last few years that I've had with risk managers includes representatives from the tax department, legal representatives and/or finance representatives...” PRAVEEN SHARMA

before renewal, to ensure that all the interested parties in a multinational company are fully aware and cognisant of things that could or could not happen in a global programme,” he added.

Paul Hopkin, Technical Director at Airmic, agreed. “There is a greater need for liaison because of the profile of this issue,” he said. “Risk managers are sharing the issue with interested parties such as treasury, legal and human resources. Risk managers are connecting to more people within their companies on this issue,” he said.

Prudential's Helen Hayden said that risk managers have been working with their counterparts in other parts of the business for many years, but she agreed that it was particularly important to understand the implications that global programmes may have on all parts of the business.

A practical example of how more parties need to be involved in global programmes is highlighted by ACE's Clive Hassett. He said that transfer pricing arrangements is an area that will increasingly be discussed in the context of global programmes.

He pointed to a scenario where a payment has been made to the parent company, and where appropriate transfer pricing arrangements are in place between the parent and its subsidiaries.

“Bearing in mind that all multinationals have fairly stringent intercompany pricing arrangements—because of OECD rules—those arrangements could well be complementary and assist such a movement of funds from one country to another,” he said.

“That's an area we are starting to look at and have done quite a bit of work on, and I think it's a relevant point and an issue that needs to be explored some more. That's going to require the risk managers to involve their treasury people and their financial people as they put these programmes together,” added Mr Hassett.

There are clear benefits from the greater involvement of legal, treasury and others in programme design. As for compliance, it is too important an issue for all parties to be left to someone else.

Recent cases show that insurers, brokers and insureds have all faced fines and financial penalties in relation to this. Perhaps it should be viewed from the point of view that there is joint liability and therefore joint responsibility.

Lots of Information

In this chapter we ask what the insurers want to ensure that global programmes work. The answer is as much information and as quickly as possible to achieve real contract certainty

WHAT DOES THE INSURER REQUIRE from the customer and broker to support a successful placement? Clearly, it is all about the data. As always with insurance, the better and more comprehensive the data, the easier it is to properly underwrite the risk.

Teresa Scott, Global Relationship Leader, Zurich in the US, explained that insurers need underwriting information to support the allocations that will be done, including values at risk, premiums to be allocated, and so on—what she described as a kind of bordereau of information relative to those local placements.

But she added, “It is important that we have the overarching view as to what the customer is trying to achieve. From an operational standpoint we need to think through such issues as allocation and billing. The extent to which they want local subsidiaries billed, for example, could potentially make it very costly if we issue an invoice and policy to each individual subsidiary.”

She went on, “If there is a way to consolidate subsidiaries into a division or one group, or perhaps billing the broker and have them send out the independent invoices to the divisions, this can streamline the cost effectiveness of the administration. It can become quite a critical issue from the customer’s perspective, in terms of understanding how their internal accounting is managed.”

Willis’ Claude Galileo said, “You have to provide the underwriter with information about exposures, values, number of employees, payroll—you are expected to provide that level of detail, and obtaining it is a challenge. It depends on how centralised a company is, and decentralised companies will be more of a challenge and the broker or advisor will have an important role.”

“The other question is: How much of this information is actually used by the underwriter in this soft market?” he said. “Some of the information is used, especially where a company has a lot of losses. But if you have a fairly straightforward financial institution that doesn’t own a lot of property overseas, and has had no major claims, then it becomes less important,” added Mr Galileo.

One of the most common issues faced by insurers is the last minute approach to implementing global programmes, according to Philippe Gouraud, SVP, Head of Major Accounts & Multinational, Chartis Europe. “Take, for example, premium allocation. It sounds pretty basic but, without it,

the whole programme delivery stays in its starting blocks. Not to mention the issue of countries where coverage incepts only once the premium has been paid,” he said.

“I think that too often the programme delivery is still considered as a secondary back office function which can be dealt with later—as a result the teams tasked to get it done at either end of the transaction chain can find themselves scrambling to obtain the required information: from obtaining local contact details to the premium allocation, and even, sometimes, key issues for structuring programmes, such as the desired policy form, local limits, and so on,” he explained.

Clearly, a global programme requires time and effort upfront if it is to work satisfactorily. Indeed, ACE’s Clive



Teresa Scott

Hassett said that the success or otherwise of how a global programme operates is heavily dependent on carrying out the right preparation and having the knowledge and understanding of what the client requires from that programme before it incepts: “That way the programme can be correctly designed with the right limits, and appropriate limits, in place in the various subsidiary companies upfront.”

He added, “My view is very much that the broker, client and the insurer should get together during the design stage of the programme and go into it in far more detail than tends to happen at the moment. Clients need to look at each particular country and ask themselves the question, how do we expect our insurance to respond in this particular country if an event arises—in terms of what cover do we need and what limit do we need and how important is that particular operation in that country to the organisation and how critical is it? Then to make sure there is sufficient local coverage in that policy to adequately respond if in the worse case the incident occurs.”

In other words, it is vital to ensure that any potential stumbling blocks, any issues or problems, are ironed out before the policy comes into effect, as it will be much more

“If [they can] consolidate subsidiaries into a division... and have them send out the independent invoices to the divisions, this can streamline the cost effectiveness of the administration...” TERESA SCOTT

costly and difficult to sort out afterwards.

This sounds like obvious common sense, but it does not always happen. And this may be because there often isn't enough coordination between the parent company and the various subsidiaries, and not enough dialogue about possible local issues.

Zurich's Urs Lüthy said, "Generally speaking, global programmes make most sense when there is central global coordination for insurance placements. Having to discuss and negotiate all local policies and premiums individually is adding a lot of inefficiency and duplication of efforts to a programme. The same applies to the broker and insurer—what is negotiated centrally needs to be executed locally, obviously always in line with local rules, regulations and market standards."

He went on, "Basic risk and exposure information is key. Depending on the line of business this might be asset values, turnover, number of employees or other risk-relevant data. Given the steep increase of natural catastrophe losses in the past years, detailed location information for property insurance has become even more key than in the past."

He explained, "Generally, more detailed information leads to less uncertainty on the insurer's end, which in turn will lead to a more efficient risk transfer process—which will show itself in more adequate premiums. Further, it is important to understand where the risk is actually located, as this will be driving the compliance aspect of any programme."

The issue of location information for property insurance was taken up by Aon's Guy Malyon. "At the moment in terms of global property, for example, the information requirements are getting greater and greater for a global property programme, if you bear in mind the natural catastrophes around the world," he said.

"The insurers have lost quite a bit of money so they

are going to want to know more information about those critical catastrophe zones. So, information is becoming crucial," continued Mr Malyon.

He said the more information you can get the better, so that insurers know exactly what they are picking up. "Sometimes I think there is a case that insurers are asking questions because they want to tick their own internal audit boxes, but everything's within reason. There's information that is absolutely critical and there's 'nice to have'."

Nick Murrell, Head of Property, JLT Specialty Limited, said that insurers are looking increasingly at accumulation of values. "Whereas before it may have been possible to not provide full details on all locations, they now want detailed information on all locations. Certain underwriters will want to know the accumulation of all the values, especially in high catastrophe regions," he said.



Karen Gorman

JLT's Karen Gorman added, "One area where clients can struggle that I've seen recently is that they can come up with book values but when it comes to converting them to replacement value, that is when there are issues, particularly in the technology sector where it is not that easy to come up with replacement values—quite often it can be cheaper to buy new equipment. If it is offices and stock, that is easier to evaluate than network equipment, for example."

Insurers want as much information as possible, but time is always issue. Policies renew annually and inception dates must be adhered to. And so the timely delivery of information to the insurer is particularly important, as are final instructions for local policy issuance to ensure that there is contract certainty on day one of the policy.

Plain Hard Work

Any risk manager who wants a global programme will first have to appreciate that, above all, it takes a lot of old fashioned slog and a lot of data to come up with the goods. This chapter identifies what is needed and how best to organise it

GLOBAL PROGRAMMES HAVE OFTEN BEEN described by risk managers as hard work, time consuming and sometime just plain difficult. Prudential's group insurance risk manager, Helen Hayden, explained that there are a number of key areas of concern when it comes to global insurance programmes. "The first is obtaining the correct information to understand what you need to do and where," she explained.

"The second is finding a broking and insurance partner who can provide the cover and service where required. And finally, understanding that this issue is not going to go away, nor is it going to be 'solved' in the short term and recognising that the implementation of such programmes is a far more complex and time consuming job than it was in the past."

COLLECTING THE INFORMATION

The time consuming element generally refers, at least in part, to the collection of all the data that is required.

A global programme requires a vast amount of information to be collected before it can be planned and implemented. This information needs to come both from the parent company, regarding its aims and objectives, and from the individual subsidiaries in each territory.

The information that needs to be gathered relating to the parent company includes an analysis of the benefits of a global programme and of its ability to reduce the total cost of risk to the group as a whole through bulk buying. It also includes an analysis of the level of cover which the company requires worldwide, as well as the scope of cover,

"At Zurich, whenever a global programme is being newly structured, underwriters will obtain current data to make sure the chosen structure is the most efficient one [and] in line with all local regulations..." URS LÜTHY

and what it is prepared to pay for such cover.

Before any programme can be implemented, there needs to be a lengthy process of gathering information from the subsidiaries around the world. The information will be vital to the structuring of the programme.

To begin with, there will need to be a full risk survey of all operations, where possible, to ensure the risk manager (and the insurer) knows exactly what the exposures are, where they are located, and the extent of interdependent risks.

This requires a full list of all subsidiaries and foreign operations of the company, their assets and earnings, and the type of ownership. Local operations will need to supply full information on property values, machinery and plant values, stock value, business interruption exposures, and estimated maximum loss figures.

For liability exposures, information required will include employee numbers, wage roll, and turnover, as well as what products are manufactured or assembled (with regard to product liability). For both property and liability, full loss information will be required, showing both paid and outstanding losses.

The group risk manager will need to assess the local insurance programme to see where it can be improved upon, in terms of costs, greater cover, and filling any gaps.

Information required will include full details of insurers and brokers, solvency ratings, reinsurance arrangements, claims servicing records, policy wordings, liability limits, adequacy of sums insured, risk management capability and quality of loss control and risk surveys.

None of this is easy, even for the most centrally controlled groups. It requires considerable resources, something that many risk management departments (which may often amount to a single group risk or insurance manager) may not have an abundance of, especially in the current economic climate.

Nick Murrell, Head of Property, JLT Specialty Limited, said, "The more information that we are able to provide, the better the terms and conditions, premium levels, and coverage. But some clients simply don't have the resources dotted around the world or the expertise to ask their colleagues to go out and get the information. We have a network of local brokers that can go in and offer their local expertise."

He added, "Brokers can also place someone in a client's company to help accumulate all the information where they don't have the resources because the risk management team is stretched. Brokers can offer this as an additional service. Also, on the property side, a risk engineering firm can sometimes go to the locations and sites and advise the people and put a data system together."

JLT's Karen Gorman added, "Some clients want to find the information themselves, and they are the clients that

usually have a network or some central reporting tools, or they may use software to collect the information from their operating units. Other companies seek broker support with data collection. But it is only as good as the information you put in, so it still does depend on the sources of the information that you are going to.”

She said that another option for companies is to have the local brokers in the network go into the local operations and fill in questionnaires to get the data to feed back to the centre.

“However, what we are finding more and more is that clients know their business better than us. They have the knowledge of their own business,” she said.

It is not simply a question of collecting all of this data, but ensuring it is up-to-date. As Marsh’s Praveen Sharma pointed out, constant monitoring and evaluation of the programme is vital. “Invariably, most risk managers or brokers or insurers look at last year’s renewal and if nothing has changed in terms of factual data, they simply renew the policy in the same way,” he said.

“What companies should be doing, and increasingly are doing, is to conduct a clean sheet analysis and ask, ‘What is the risk that we’ve got? Where is the risk located and what are the rules and regulations of that country? Do I need to transfer that risk to an insurer? If so, how can the risk be transferred? What are the options available to me to cover it and the cost/benefit of each option?’”

WHO PROVIDES THE COMPLIANCE DATA?

The other information that is crucial in a successful global programme is the compliance data. This includes regulatory, tax and legal information about the various jurisdictions around the world where the group has operations. Regulatory information includes the use of non-admitted insurance, compulsory insurances, broker laws, compulsory cessions, and exchange control regulations.

Tax information includes premium taxes (as well as their application to non-admitted insurance), other possible taxes such as fire brigade taxes, VAT, stamp duty, excise taxes, withholding taxes, the existence of tax treaties, the tax deductibility of premium allocations, and the taxation of non-admitted claims reimbursed to subsidiary.

Legal information includes the legal situation regarding employment, health and safety, employers’ liability, public liability, product liability and environmental laws.

This raises the vexed issue of who is responsible for providing this compliance data. And this is where it becomes difficult and all the ‘grey’ areas raise their ugly heads.

The crux of the matter is this: risk managers expect their broker or insurers to provide the data. And insurers and brokers will do just that and have, in some cases, spent an awful lot of money on lawyers ensuring the quality of the data.

The problem is that risk managers often receive different and conflicting opinions as to what is required in different

jurisdictions in order to be compliant.

And it is not the insurer’s or broker’s fault. The problem is that laws are often vague, unclear, or lacking in detail, and so it is all a question of interpretation. And ask a lawyer, or indeed a tax consultant, for an opinion, and he may be able to give you three or four.

“Risk managers are frustrated that when they start to construct a global programme, at that very early stage, they get different answers from different insurers and brokers about where a local policy is needed, what limits are required, what the tax implications are, and overall how much it’s going to cost and what the structure is going to look like,” said ACE’s Clive Hassett.



Praveen Sharma

The sources of data are either the insurer’s or broker’s own database, or an independent fee-based service (such as Axco). Zurich’s Urs Lüthy explained, “I don’t think there is one generally used source of compliance data today. At Zurich, whenever a global programme is being newly structured or renewed, underwriters or service specialists will obtain current data from our information platform to make sure the chosen structure is not only the most efficient one, but also in line with all local rules and regulations. The same platform is used to ensure appropriate identification, calculation and payment of all relevant out of territory taxes which are applicable to the insurer. There are many ways of covering cross-border risks and each has different compliance and tax implications.”

Whatever the source, there will be an element of interpretation in the data. And as such, there will always be caveats. “No matter how many databases you go to, and there are several that are used by the industry, it is never going to look the same,” said Willis’ Claude Galileo.

“Some of it is subject to interpretation. They are sometimes unclear. You can have two departments overlooking insurance in a territory—one is the insurance regulator and the other is the tax department,” he continued.

“We have seen legislation that says non-admitted insurance is prohibited, but in the same country, the tax authorities take taxes from a client on a non-admitted placement. So there are regulators that are not talking to each other in the same country. It is not consistent. Not only is the legislation not clear, how they manage the rules within the country with tax versus insurance regulations is sometimes different,” added Mr Galileo.

He continued, “You have to look at it country by country and risk managers have to balance compliance with cost and we as brokers have to give our opinion, and we will be cautious about that.”

Insurers and brokers are naturally cautious about giving a legal opinion. Allianz’s Andreas Berger said it is important for risk managers to have a good understanding of the legal framework and to have their own assessment of the compliance situation. It is also important, he stressed,

to team up with the right partner that has a detailed understanding of the specific insurance compliance in each country because increasingly, laws are changing rapidly, particularly in large emerging markets like Brazil.

He explained, “There are two levels of information available publicly, there is the actual law and then there is an interpretation of this. Frequently the basic law or regulation raises more questions than it answers, as we saw earlier this year in Brazil. Often a regulator will not give guidelines to their laws and the emphasis is then on those affected by the law, the insured, the broker and the carrier, to make sure they comply. Each of these companies will have been established in different ways, there is no ‘one size fits all’ approach, and this will influence the interpretation of the law. It is, therefore, sensible for the risk carrier to be placed as close to the regulator as possible, which is why Allianz prefers to use local offices.”

HEAD FOR DETAIL

Zurich’s Teresa Scott said there are still differing views as to what is required from a compliance standpoint. “The more concerns a company has over doing business in certain countries, or perhaps companies that may feel they are a target for government expropriation—these companies tend to be a lot more conservative,” she said.

“They want everything to be done absolutely by the book, and guarantee they are compliant, with cost being less of an issue. Others take more of a risk and use the master policy as a way to provide the difference in conditions cover that they need,” added Ms Scott.

Chartis’ Philippe Gouraud said that generally speaking, it is the insurance company’s responsibility to design the multinational programme, based on the requirements set by the client and the broker. The ability to accommodate such requirements is limited first by the regulatory framework (i.e. is it allowed?) and the availability of a network, preferably owned, or alternatively partnered with (i.e. does the insurance company have the license?), he explained.

“Last, but not least, a key factor is the willingness to pay for a bespoke requirement,” he said. “Take the example of using a manuscript policy in Russia. You need an insurer with the related local license, a drafted bespoke policy that complies with local rules and standards, and then you need to file the manuscript wording with the regulator. It can be done, but all this consumes resources, which someone has to pay for, and it takes time which is often a luxury we don’t have.”

Axa’s Yves de Mestier said, “It is important to be aware well in advance that there are cases where you cannot send money from head office to another territory because of local compliance issues. There are territories where the non-admitted rules are very clear and well-written, and others where they are not. There are some territories where there are tax penalties but no one is absolutely sure how they are applied.”

He added, “It is why all these aspects must be discussed and debated with the customer before the inception date and then everybody knows what risks can be taken. There is no magic solution to this. We have to be very transparent and provide risk managers with all the information we have, and if there are areas where we are not sure, we should say we are not sure.”

Petra Riga, Head of Sales and Distribution for International Programmes from Zurich, said, “Companies failing to comply with insurance regulatory laws and foreign insurance premium tax laws can pay a high price in voided coverages, fines and delayed or disqualified claims payments. Although business is increasingly conducted globally, insurance regulatory laws usually do not take this into consideration. This presents significant challenges to multinational organisations looking to establish international insurance programmes.”

She explained that Zurich is helping brokers and their clients to meet these challenges with its Multinational Insurance Application For Brokers, an online tool which can be used to help structure international insurance programmes, using a comprehensive database of information.

“The aim of the Multinational Insurance Application (MIA) is to help make certain that international insurance programmes are aligned to insurance regulatory laws and foreign insurance premium tax laws, giving confidence that from a non-admitted perspective, the applicable requirements are being met,” she said.



Petra Riga

MIA contains information for approximately 180 countries and territories from a non-admitted perspective and it is continually being developed to produce more refined and in-depth information. The data is updated to incorporate any local country regulatory changes when notified by Zurich’s legal network.

Petra Riga explained that the information in MIA is provided in the context of five Business Scenarios, including non-admitted ground up, DIC/DIL, Excess and where the policyholder and insurer are in different countries. MIA also supplies information on a variety of insurance activities including claims payments and risk engineering activities in the context of the selected Business Scenario.

“MIA makes it easy for brokers to provide clear, straightforward answers to questions on the complex subject of conducting non-admitted insurance business, from the perspective of an insurer that is not licensed or otherwise authorised to conduct insurance business in the country where the risk is located,” she said. “It considers all of the fundamentals of an international insurance programme—namely line of business, country of risk, Business Scenario and out-of-territory taxes.”

Opportunity Knocks

All global insurance solutions are supposed to work and in most cases do work as intended. But the best insurance manager is the one that works out the best solution with the right insurer and manages to deliver a cost-effective solution in the process. This chapter asks how this can be done and what insurers must do to deliver the goods for customers

GLOBAL INSURANCE SOLUTIONS ARE TAILOR-made and non-standard and as such, require a partnership between the insured, the broker and the insurer. No two global programmes look the same and much discussion is required to ensure that it provides exactly what is required by the risk manager.

“The starting point is always to have a clear-cut strategy as to what the purpose of insurance should be,” said Zurich’s Urs Lüthy. “The requirement for a programme to be ‘compliant’ is probably the most obvious one—in today’s world, no one will knowingly purchase a ‘non-compliant’ programme. However, there might be a discussion about which solution best meets the customer’s business needs while being in line with all relevant rules and regulations.”

According to Mr Lüthy, it all comes back to the risk tolerance of any individual company. “In a perfect world, a risk manager should be in a position where he can judge whether it is more economical to retain a certain risk in a company’s own books or to transfer it into insurance markets,” he explained.

“In the context of international programmes, a customer might rely on an international insurer to pool his global risks back onto one central facility, where a decision can be taken about what aspects of a risk are being retained, and what piece is to be transferred into the insurance or even capital markets, for example in the form of cat bonds,” continued Mr Lüthy.

Having established what is to be retained and what is to be transferred to the insurance market, there are many options—there are different solutions for different situations. But there are some general patterns that emerge.

TOP DOWN MODEL

The Aon Global Risk Management Survey 2011 highlighted some of these trends. Respondents with operations in more than one country were asked how they purchase and control their insurance programmes.

The majority (59%) said that their corporate headquarters control procurement of all of their global and

local insurance programmes, while 38% said their corporate headquarters purchase some lines and leave local offices to handle other lines. Just 3% allowed each operation to buy their own insurance with no coordination from corporate headquarters.

Looking in more detail, the survey found that among organisations that control procurement of insurance for cross-border operations from their corporate headquarters, half said that they purchased programmes which have global policies issued to the parent, and local policies issued to local operations.

Only 8% bought global policies issued to the parent with no local policies, and just 4% bought local policies only. And 37% of companies used a combination of methods.

Allianz’s Andreas Berger said that in some cases there may be a phased approach to a global insurance programme solution, for instance moving to regional programmes which are then merged into a pure global programme.



Philippe Gouraud

“We always believe that when we have international insurance programmes then you should have local policies in place,” he said. “Even if you have freedom of service policies, it doesn’t take away the burden to do all the premium allocation for the local territories, tax payments and so on. We believe in local policies, as part of the global programme under the master cover, which have the best local solution as far as the wording is concerned and the limit structure is concerned.”

Chartis’ Philippe Gouraud said that the best and simplest way is to have local policies everywhere. “But the reality is often different to this candid view. Take excess liability limits: it’s a fact that high excess capacity providers do not have licenses everywhere, that global carriers are not willing to ‘front’ hundreds of millions for these carriers, and that clients are not prepared to pay the cost it would require,” he said.

In the end, in order to achieve the right outcome from a global programme, it is necessary to consider cost, compliance, the tax issues, the claims situation, and to ensure that you have the right global partner

“So the reality is that these limits are issued on a non-admitted basis. Faced between the choice of having a programme ‘mostly’ compliant versus not buying catastrophic protection, the choice for corporate clients is easy. Everybody does their best based on what is reasonably achievable,” he said.

Marsh’s Praveen Sharma said he believed that the days of low limit, local policies, regardless of the potential exposure in that country, together with high level master policies, are fast disappearing.

“People are now evaluating the exposure in a particular country, looking at the potential exposures as if they were a standalone company, evaluating the costs, evaluating the insurer’s capability of servicing the losses, and they are benchmarking the information. Objective analysis is now being conducted particularly in the countries where they have major operations,” he said.

As a result, Mr Sharma said there is no one standard off the shelf solution, but what he has found is that the ‘Manhattan skyline’ type of structure is now becoming more prevalent. This is where the potential exposures are evaluated in the countries where a company has significant operations with the company buying local policies up to EML/PML in that country. Then, to balance the commerciality of the whole arrangement with the compliance aspect, together with the cost factor, there is a master policy or DIC/DIL policy above it.

JLT’s Nick Murrell pointed out that in the current climate, “There are a lot of quota share structures with large limits, because there is a lot of capacity—a lot of insurers are looking to write the business, and pricing is very competitive. If the market turns, then you will come back to a layered structure. There is a lot of capacity at the moment still there to place large quota share sub-limits.”

COST V COVER V COMPLIANCE

Airmic’s Paul Hopkin said that there is the same dynamic in place as ever, between a fully decentralised programme with every subsidiary doing its own thing on one extreme, and a fully centralised programme, everything purchased on a global basis with no local purchasing. “Very few companies sit on one extreme or the other,” he said.

He added, “There has always been that dynamic between ‘how do I get the most cost-effective programme in place that means I get benefit of scale to the greatest extent that I can, and where there are particular local regulatory requirements, I will acknowledge that I may have to buy locally to cover those issues’. The dynamic is still the same but perhaps the awareness and the level of analysis is changing. The decision to perhaps buy locally is more carefully analysed than it was previously,” he said.

Zurich’s Teresa Scott said, “Companies are asking the questions about compliance and it is continuing to be an important issue. On the whole, more and more people are going for compliance over cost. And then it becomes our responsibility to defend the cost that we have in order to make them feel comfortable that what they are paying is

legitimate and really a requirement.”

It is not an easy balancing act for risk managers. They are facing tough cost pressures from their organisations with regards to insurance buying, but at the same time they are facing an equal amount of pressure to ensure that all their insurance arrangements are compliant.

“When talking about costs versus compliance, the cost is the external premium but you have to factor in the retention as a lot of larger companies retain a lot of the business in a captive,” said Aon’s Guy Malyon. “So you’ve got to balance the self-retention, the cover and the compliance. That’s quite a fine balancing act,” he added.

The growing importance of compliance over cost is seen across the board as far as global programmes are concerned.

On the marine cargo side, Steve Gillen, Head of Marine Claims, Zurich, said, “Cost is always a major factor, but the balance has started to swing in favour of compliance. Brokers are often looking for compliant solutions without cost and that is where the real challenge now exists for the larger companies. Risk managers are much more sophisticated and much more cognisant of the need for compliance and so they do balance the extra cost to be with a global player that can provide the solution, but it has to be cost-effective and it has to fit in to their overall programme.”

INFORMED CHOICE

Risk managers and insurance buyers are more sophisticated and have better analysis and assessment of risks than ever before, and as a result, they are better able to balance cost and compliance.

“I don’t believe that is really an issue,” said Allianz’s Andreas Berger. “If people go for a global programme solution then that is an intentional informed decision the risk manager takes. He will take into consideration any exposure as well as the servicing costs. It can backfire if you try to save costs by not spending enough time looking into the legal framework and compliance issues. So it is money well spent.”

Chartis’ Philippe Gouraud said that the issue of cost, cover and compliance is inherently imbalanced. “If we keep looking at programmes in terms of frictional delivery cost, then isn’t the optimum solution not to buy anything? It would be ‘cheap’ and headache free! So, is the question about cost or is it about value? If instead of looking at the ‘cost’ of compliant programmes, we started considering the ‘value’ of a programme that actually works, then maybe the debate would shift a bit,” he said.

In the end, in order to achieve the right outcome from a global programme, it is necessary to consider cost, compliance, the tax issues, the claims situation, and to ensure that you have the right global partner.

‘EXTRAORDINARILY COMPLEX’

But there are other issues and pitfalls that add to the complexity of programmes and their design. Just one is highlighted by Ian Canham, Partner, Corporate Risk Solutions, Lockton, who explained that where

multinational companies arrange their insurance programmes centrally on a global basis, the best response to date has been to rely on the Difference in Cover and the Difference in Limit (DIC/DIL).

“In Lockton’s view, global insurance buyers could be in for a shock, however, if they think this is a 100% foolproof method of achieving genuine contract certainty and peace of mind,” he said. Lockton came to this conclusion after the ‘extraordinarily complex’ renewal of a global programme for a blue chip firm that operated under a locally devolved partnership structure, he said.

“From this quite painful experience we learnt that all the participants in the insurance buying chain should consider adopting a belt and braces approach and ensure you have the broadest wording for every territory. Our view is that insurers are simply not geared up to do this at the moment,” said Mr Canham.

Neo Combarro, Executive Director, Lockton, explained that risk managers may need to review their own procedures and timescales “because where it was previously acceptable to provide renewal data at the last minute, we believe

that with regard to global programmes it may not even be enough now to start 90 days before inception.”

He added, “You need to ensure that the renewal process has a six-month lead-in before inception, identify regulatory obstacles in local jurisdictions at the kind of granular level, particularly when dealing with jurisdictions such as Russia or Georgia, that will give you a terrible headache but might ultimately save your job.”

He went on, “Some clients may think we are being alarmist, others will hopefully wish to drill right down into it. This message is for clients for whom compliance is a core value. We are talking about a six-month lead-in with a view to ensuring inception, all contracts formally agreed, issued, delivered and received. The broadest contract certainty and coverage you can get in local jurisdictions, not just a few bits of paper you can wave at the finance director to say you have ticked the right boxes.”

He said, “Ultimately this is about behaviour. If you look at business process change in general, it is a challenge to behaviour and culture. People have to do things differently: brokers, underwriters, policyholders.”

As Wide As Long

Insurance managers want and need to include as many lines as possible in their global programmes but unfortunately it is not that easy. This chapter asks what coverages should be included and how

IN THE PAST, GLOBAL PROGRAMMES TENDED TO focus on property damage and business interruption, and public and product liability. In reality, there are very few, if any, insurance covers that cannot be included in a multinational programme, if required.

Other covers that are now commonly placed into a global programme include directors’ and officers’ liability (D&O), marine transit, and environmental covers. Aon’s Global Risk Management Survey 2011 found that the most common global policy types were:

- general liability, including public/product liability (89%)
- property damage/business interruption (81%)
- directors’ and officers’ liability (68%)
- auto/motor vehicle liability 46%
- workers’ compensation/employers’ liability 45%
- crime 38%
- other 9%.

Zurich’s Teresa Scott pointed to a number of exposures that are increasingly being added to global programmes, notably D&O, but also crime, fiduciary, marine, global travel accident type covers, and construction. “A lot of times companies have construction attached to their standard property programme, but increasingly construction is separated out,” she said.

Axa’s Yves de Mestier also sees a range of new covers being included in global programmes. “We see more marine cargo programmes than before, it is a growing trend, and also new products on the environmental side, D&O and terrorism coverage,” he said.

“It is an interesting trend and is pushed by companies from major markets. There is an inadequacy today between the level of sophisticated coverage that we have in the major countries, such as environment, D&O, E&O, and the expected level in more emerging countries. We cannot apply the same level of cover for those new products everywhere in the world in the same way.”

What about more esoteric risks? Aon’s Guy Malyon said, “I think you can globalise most things but it depends on the level of compliance you want. For many clients, the bigger ones that I deal with, they want to try and take a global approach in everything because that is probably the way you are going to optimise your total costs and ensure a consistent level of cover around the world.”

XL's Donal Kelly said they provide global programmes which encompass most of the classes in which they operate including casualty, property, environmental and professional lines. "Global programmes can be a very cost-efficient global solution, but for some more 'esoteric' risks a local solution might be a better option."

D&O

For many years, directors' and officers' liability was one of the most common classes to be insured on a non-admitted basis. The argument for this was that it was often not available in local markets, or not at the level required, or simply that the group required all directors and officers in the group to have the same level of protection, regardless of where they were situated in the world.

But all that has changed and compliance is now a major issue for D&O, like other coverages.

D&O is a common feature in global programmes, as Aon's risk manager survey found, stating, "In recent years, globally administered programmes for D&O and other lines of coverage are gaining popularity as local regulations and requirements evolve and the carrier's abilities to administer these programmes strengthen."

The survey found that the greater the number of countries that a group operated in, the more likely it was to purchase global D&O insurance coverage. Around 58% of companies operating in 2–5 countries purchased global D&O insurance coverage and 64% operating in 6–10 countries, compared with 78% of companies operating in 26–50 countries.

"Over the last 18 months global compliance has become a big, big issue," said JLT's Karen Gorman. "And it is not just on property and casualty anymore that everyone is seeking compliant global programmes, it is now moving to things like crime and D&O and professional indemnity and everyone is now looking at how they place their covers to make sure that they are not exposing their local companies to non-compliance and themselves to non-compliance."

As Axa's Yves de Mestier explained, D&O is a good example of where there are growing requests for local coverage. "I think it is a good trend because, in the past, insurers were covering too many exposures abroad from the master policy, which was not compliant. But in many territories they are not able to write D&O business in their own market because the line of business is not well known and there is not much expertise locally, and they do not have adequate wordings, so we are obliged to adapt those needs according to the level of maturity of the local market."

Willis' Claude Galileo said that everyone used to think D&O was a US issue, but it has gone well beyond the US, to Germany, the Netherlands, Italy and elsewhere. "We say to risk managers, do you have a local liability policy around the world and the answer is yes, in every country. We tell them, you have directors in these countries so why not have a D&O policy in these countries as well. If you want to protect your corporation and directors, you need local D&O policies."

Germany is a good example. D&O insurance is now compulsory for a director of an AG company and there is a compulsory local deductible. So, JLT's Karen Gorman explained, as a compulsory insurance it must be insured in Germany, not elsewhere, not even in Europe as the Freedom of Services [legislation] excludes local compulsory covers.

The growing demand for D&O insurance to be included in global programmes is partly driven by compliance but also by the directors themselves, she said. "Local directors on appointment are asking for proof of their D&O insurance. They know that the laws are getting more and more stringent with regard to director's responsibilities," she said.

Eugene 'Trip' Sheehan, D&O Practice Leader of Marsh's FINPRO practice in Boston, speaking at *Commercial Risk Europe's* Global Programmes seminar earlier this year, explained that the ability to indemnify directors and officers around the world is not clear cut. He said that in some jurisdictions it is very clear what you can, and cannot, indemnify for, while in other jurisdictions there is no guidance at all.

He pointed to a survey of Marsh's Fortune 250 clients in the US on the leading reasons that they decided to put local D&O policies in place and the number one reason was to provide coverage certainty for the local directors and officers.

The second reason was regulatory tax compliance in the local jurisdiction, the third was that it was requested by local directors, and the fourth because they were concerned about local exposure.

Nigel Brook, Partner, Clyde & Co LLP, said, "D&O insurance offers particular challenges. Directors and officers move around, and claims can be significant, and these factors make it harder to manage. Also some solutions available to a parent in respect of its international subsidiaries will simply not work for individual executives when it comes to Side A cover."

PROFESSIONAL INDEMNITY

Professional lines is a relative newcomer to global programmes but has grown rapidly. Until five or six years ago, very few companies had global programmes for professional indemnity, which tended to be done on a non-admitted basis providing worldwide coverage.

But as Louise Dennerståhl, Global Underwriting, Zurich, said, there has been a big change.

"At the end of 2006, early 2007, we rolled out the professional [lines] global programmes," she said. "And the most difficult thing at that point was to get [people] to understand the need for a global programme. We have come far from those days, and most of our customers and brokers now understand this."

She highlighted one issue which was still a concern. This is where people assume that, because they have a liability programme, they don't need to worry about professional indemnity. Or if they have professional indemnity on the master policy, they can manage with a local liability policy.

"It is important that insureds are sold the right coverage," she said. "The knowledge has come far, there are

more insurers, so we are in a better place as an industry,” explained Ms Dennerstahl.

She added, “You might ask an insurer for a local policy issued in the country, but then you may get just a general liability wording and not a professional indemnity wording, which is not sufficient. Or you might also have a situation where you have an architects’ or engineers’ programme, and when you look at the local policies that are issued, it refers to miscellaneous professional indemnity.”

Lack of knowledge has been a problem in the past, she said, as it is a relatively new concept and it has taken time for it to be understood by the market.

She said there is a lot more cross-border regulatory collaboration and it is very clear that there is a lot more discussion and ongoing cooperation between regulatory authorities.

However, she added, “There are some brokers and customers that don’t understand how a programme should work—it is not only down to the insurer to make everything happen, it is also down to the broker to communicate, and for the insured to communicate to subsidiaries. And that is where we still have a few issues, where we don’t get the underwriting information we need to process the programme. It is getting much, much better but, in some cases, we still see a lack of knowledge.”

MARINE CARGO

Marine cargo insurance is a growing area for global programmes, and an area that has its own unique issues.

As Steve Gillen, Head of GI Marine Claims, Zurich, explained, “Marine is one of the few truly global classes of insurance—it is a risk and exposure that can show up in any country and the loss can occur anywhere.”

He said that often losses, or situations surrounding cargoes that can lead to financial loss, whether it be physical damage or general average or salvage, will occur where the insured has no operations. He added that if a vessel goes aground in Indonesia, and it is a shipment from Australia to Hong Kong, it is important to have people on the ground with local capability, expertise, and knowledge, but at the same time, to have an insurer with a global

footprint that has a broader understanding of global transit.

This unique aspect of marine also has an impact on compliance. “If you have a factory in Afghanistan, you need to know what the laws are there,” said Mr Gillen.

“But if you have a shipment that flies over Afghanistan, you might not have considered it in terms of compliance. But if you have to make an emergency stop, suddenly there are laws and regulations to deal with. It is global insurance without necessarily knowing where you might be globally,” he added.

Compliance is particularly important with regard to marine insurance because typically cargo coverage is covered from warehouse to warehouse, and not just the voyage.

Problems can occur where companies try to save costs by not placing a local policy, on the basis that they are only shipping to a port in another country. But as Mr Gillen pointed out, “nothing just goes to the port anymore, people don’t pick goods up at a port, it goes to a distribution centre and then to a store. Often it is only when the goods reach a store that the risk is no longer borne by the original manufacturer.”

If the shipment goes inland, even to a warehouse near the port, and you have a loss in that land leg of transit which is typically covered under a marine policy, it could be in violation of the local regulatory requirement for that country. And losses are more likely to occur in the transportation from ship to warehouse rather than on the ship. Mr Gillen explained that, generally, goods in transit are damaged or stolen either on the first leg or the last leg of transit.

All of these issues can be dealt with if they are discussed before the policy comes into effect. However, he said, the insurer often doesn’t get the opportunity to sit directly with risk management and/or financial management of the insured until after a policy is in place. “I’m a big fan of trying to get everybody together either before a placement or immediately after the placement of a policy so that you can walk through some of the potential issues and scenarios that might arise before a claim or incident occurs,” concluded Mr Gillen.

Regulatory Clampdown

Compliance is a growing issue and one where the potential penalties have grown considerably. New laws and regulations, greater enforcement and increasing penalties around the world have focused people's attention on ensuring compliance

IT IS CLEAR THAT THERE IS A CONCERTED MOVE BY regulators and tax authorities to clamp down on those attempting to thwart, avoid or bypass regulations and laws. This is not so much a global move discussed and coordinated by regulators, but individual territories responding to the current economic and financial difficulties and looking to raise revenue and protect local interests. There are few regions that have not shown a tightening of regulations or enforcement—it is true for Europe, the US, Latin America and Asia.

“It goes without saying that western economies are attempting to relieve the pressure on their deficits by increasing tax receipts,” said Paul Wordley, Partner at Holman Fenwick Willan. “This has been a key feature of the EU’s demands on Greece and in a more subtle way, for example, has been a focus of the UK government for the last two years. More overtly, and in a more global manner, regulatory regimes are moving away from the ‘light touch’ approach favoured by many businesses and are adopting variations of the ‘intensive and intrusive’ regulatory structure which has been adopted in the UK and Europe.”

Marsh’s Praveen Sharma said, “We have seen increasing evidence in the European Union member states of tax authorities challenging multinational companies to prove that their premium allocation methodology is just and reasonable. Also, they are challenging them to prove that they have paid the correct premium tax in their jurisdiction based on that premium allocation methodology, and if not, to explain why.”

In Belgium, Germany, Austria and France, the tax authorities are going out and proactively auditing global programmes. And to add to all the problems, insurance regulations are not consistent, even within the EU—while non-admitted insurance is not prohibited in the UK for non-compulsory classes of risks, French risks have to be covered by an EU insurer.

In North America, regulatory and revenue authorities have been particularly active when it comes to global programmes. The US, of course, is particularly challenging, simply because it is, in effect, 50 different countries independently working within their own insurance regulations.

But the situation is even more challenging in the US, because the IRS is looking at federal excise taxes. “They are

looking at US companies that are subsidiaries of overseas parents to see whether they have paid the 4% excise tax and if not, demanding to know why,” he said. “Similarly, in Canada, the Canadian Revenue Agency have been very aggressive over the last two years regarding the 10% excise tax, again looking at premium allocation methodology and looking at proof of tax payment.”

A number of countries in Latin America have been ramping up their regulations or clamping down on non-compliance. In Brazil and Argentina, recent changes related to reinsurance have been causing headaches for insurers. In Argentina, a new reinsurance regulation places severe restrictions on the provision of cross-border reinsurance. Under the new regulation, Argentinian insurance companies will be required to place all of their reinsurance coverage within the limited Argentinian market. And in Brazil, the IRB’s monopoly has been removed, but 40% of a facultative risk must be placed with local reinsurers.

In Argentina a recent life insurance case has seen the regulators impose a fine of eight times the value of the premium policy on an insured and 15 times the premium on a broker for the placement of non-admitted insurance. And the Mexican regulator announced at a press briefing two years ago that if its insurance regulations are breached buyers will not only be fined, but possibly go to jail.

According to Holman Fenwick Willan’s Paul Wordley, “Certain jurisdictions, particularly Latin America, have regulatory structures which address the claims process. For example, these might require insurers to appoint/use local adjusters/consultants and to deal with the claim in a specific manner, often within a specified time frame. Failure to comply might deem the claim admitted.”

CROSS-BORDER REGULATORY EFFORTS

Having said that the increase in regulatory pressure has largely been on an individual territory basis, there are, in fact, some signs of cross-border regulatory collaboration and potential regulator copycat actions. Mr Wordley explained that it is perceived that many non-EU countries will seek equivalence with Solvency II standards.

He said the Indian regulator has adopted an insurance business transfer methodology based upon a structure similar to that in Part VII of the Financial Services and Markets Act 2000, and the Chinese regulator is adopting regulations to improve standards in respect of life insurance sales.

“Taken individually, these might be examples of coincidental convergence,” he said, “but our experience of regulators around the world leads us to believe that regulators have actively been engaging with each other more regularly and more deeply since the western financial crisis began.”

To emphasise this cross-border regulatory collaboration,

“Often companies don’t think about the tax ramifications of the structure until a loss occurs. That is when people start to become concerned about where the loss payment is going to be made...” TERESA SCOTT

the International Association of Insurance Supervisors (IAIS) announced recently that it is building the ‘Common Framework for the Supervision of Internationally Active Insurance Groups’ (ComFrame) as a supervisory response to the increasing globalisation in the insurance sector combined with the key lessons learnt from the financial crisis. The IAIS said this will foster cooperation among supervisors and close regulatory gaps.

The IAIS said it was seeking to improve the supervision of Internationally Active Insurance Groups (IAIGs) and in a consultation paper, it has set out exactly the aims of ComFrame.

According to the IAIS, ComFrame will:

- Develop methods of operating group-wide supervision of IAIGs in order to make group-wide supervision more effective and more reflective of actual business practices
- Establish a comprehensive framework for supervisors to address group-wide activities and risks and also establish principles for better supervisory cooperation in order to allow for a more integrated, international approach, and
- Foster global convergence of regulatory and supervisory measures and approaches.

Peter Braumüller, Chair of the IAIS Executive Committee, said, “A global framework for the supervision of internationally active insurers is one of the most important initiatives on IAIS’s agenda. It will not only enhance the effectiveness and efficiency of supervision of these groups, but also contribute to our continuing efforts toward stability in insurance markets around the world.”

Whether all of this will help or hinder global insurers remains to be seen. It may result in a more consistent, but tougher, regulatory approach. And how much this will help risk managers with their global insurance programmes is another question entirely.

What is clear, however, is that regulators are getting tougher, more international in approach, and more diligent. For example, JLT’s Karen Gorman said that German and Italian tax authorities regularly visit Lloyd’s and Lloyd’s brokers for audits to see what risks they have with German exposures and whether taxes have been allocated correctly.

Willis’ Claude Galileo said that Germany is a country of concern. “We understand that German regulators have flown to places like Japan and Korea to evaluate how insurance companies were doing business, whether or not

they are compliant with the German insurance and tax rules. Argentina, India, China and Russia—we are concerned about these territories because of the anecdotal stories that are coming out about fines and non-admitted losses and payments being banned or confiscated.”

He said regulators are talking to one another, both US and overseas, at conferences and so on. “Once regulators start talking cross-border, who knows what could happen?” he said.

LEGAL AND ACCOUNTING PITFALLS

Holman Fenwick Willan’s Paul Wordley pointed to four areas where risk managers must be aware of potential legal and accounting pitfalls:

- compliance with local jurisdiction regulatory issues regarding local licenses to write certain classes of business and the fact that certain jurisdictions do not allow global programmes to drop down via DIC/DIL provisions in a master policy
- local IPT issues remain a problem
- contract certainty/lack of legal review of insurance wording and architecture used to deliver risk transfer remains a problem often only highlighted in the claims process
- auditors will not recognise the value of claims receivables unless considered an absolute certainty.

A recent new story in the *Wall Street Journal* reveals the problems that companies can face over non-admitted insurance. It was claimed that India was planning to tax part of an insurance claim made by an international clothing company following a warehouse fire in India. The company reportedly said that the premium for the global insurance policy was taken out outside of India and therefore the claim received abroad wasn’t taxable.

But the Indian tax authorities believed that the claim belonged to the local unit and that it was an attempt to avoid Indian taxes. The story also said that the Indian tax department was unable to get information from the company as to which company paid the premium for the insurance policy.

The taxation of DIC/DIL claims can be a difficult area. “The tax ramifications of these structures are important and particularly where it relates to claims payments,” said Zurich’s Teresa Scott. “Often companies don’t think about the ramifications of the structure until a loss occurs. That is when people start to become concerned about where the loss payment is going to be made. It is important to think through these issues in advance.”

She added, “If you pay under the master contract to the holding company which then wants to get that money into the country and reimburse the local subsidiary, it can be a taxable event if they are infusing capital into that country. It depends on how it is accounted for.”

Clyde & Co’s Nigel Brook said that insurers and brokers are often targets for enforcement action when non-compliant insurance is arranged, but in the more aggressive countries risk managers too are vulnerable.



“One potentially ticklish issue is how to account for and pay premium taxes,” he said. “Even if the risk manager can find a solution that works for insurance regulatory purposes, this could have unforeseen tax consequences. Claims payments can prove a challenge as well. The authorities may query payments from abroad—all the more so if there is exchange control in place. And depending on the nature of the payment, it may be given adverse tax treatment locally.”

One of the main areas that can cause problems with revenue authorities is premium allocation. The criteria for premium allocation include size of exposure, claims experience, quality of the risk, level of local premium tax and other tax issues, previous premium rate paid by local operation, and size of operation and ability to pay.

CARROT AND STICK

Premium allocation is also, of course, a vital tool for risk managers when it comes to implementing a group risk management programme. Premium allocation can be used as a ‘carrot/stick’ technique to reward/penalise subsidiaries over the adoption and implementation of risk management and loss control measures.

However, the extent to which this flexibility over premium allocation can actually be used is limited due

the attitude of revenue authorities. In general, revenue authorities will be looking for appropriate rates to be set when it comes to multinational premium allocation. By this, it is generally understood to mean rates based on the level of rates in the local market. Companies must be wary of being seen to charge too low a premium, or indeed too high a premium, as the local revenue authorities may feel that it does not reflect the true exposure. They may decide that the premium payment does not constitute insurance and therefore will not allow it to be tax deductible.

In particular, the revenue authorities will be concerned about rates that are too high, as this may be interpreted as an attempt to gain the maximum amount of tax deductibility and not a reflection of the true exposure. Where the rate is too low, the revenue authorities may perceive this as an attempt to avoid premium taxes.

Marsh’s Praveen Sharma highlighted the issue of premium allocation at the recent CRE global programme seminar. “Risk managers must work on their premium allocation methodology and ensure that it is ‘just and reasonable,’” he said. He added that it was vital for buyers to fully document the methodology. “This is because regulators will, at the very least, want to see that a logical effort was made to comply with the rules.”

A Market Solution?

“The arrangement and purchase of compliant insurance programmes to protect operations at both a local and central level remains difficult and complicated. There are a myriad of different laws and regulations that exist worldwide, some of which are clear and some of which are distinctly opaque. This leads to uncertainty, unpredictability and ambiguity.”—The Airmic Guide to Compliance of Multi-National Insurance Programmes

IF THERE IS ONE THING THAT RISK AND INSURANCE managers dislike, it is ‘uncertainty, unpredictability and ambiguity’. And this is especially true when it comes to global programmes. Compliance is uppermost in most risk and insurance managers’ minds and they want their programmes to be as compliant as possible. But as we have seen, too often the answers they receive from insurers and brokers can vary considerably. Risk management associations, notably Ferma and Airmic, have highlighted this issue and argue that compliance should not be used as a competitive advantage by the insurers. In other words, understanding local rules and regulations and ensuring that the programmes are compliant should be a fundamental part of the service offered by insurers.

The ultimate solution would, of course, be a market-wide database of the rules and regulations on a national basis that could be provided by, and updated, by the local supervisors themselves. However, even if it were possible, it has been suggested that the International Association of Insurance Supervisors (IAIS), which is clearly the organisation that has the means to tackle the issue, is currently too busy with Solvency II to take on anything new.

Whether this opinion has come from the IAIS itself is unclear, but the idea that an organisation such as the IAIS cannot deal with more than one issue at a time sounds extraordinary. It is more likely perhaps the IAIS does not see this as a priority, or even a problem, and hence the need for insureds and the insurance industry to try and tackle the problem as best they can, whilst at the same time keeping up the pressure on the IAIS and individual regulatory authorities to see what can be done to improve the situation.

The move towards a market solution is being pushed by the risk management associations. As Airmic explained in its guide, “Airmic has the view that there is a need for a

single source of compliance information for all territories that is reliable and current, capable of interrogation and can provide a forum for resolution of uncertainty. The proposed database would provide guidance on the areas where there is uncertainty and details of the penalties of non-compliance.”

What information is required from such a database?

According to Airmic’s guide, it encompasses:

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

The information would cover such issues as:

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

Speaking at *Commercial Risk Europe’s* Global Programme Seminar, Peter den Dekker, Corporate Insurance Risk



David Martin

Manager, Stork BV and President of Ferma, said, “All the big insurers are using local experts such as lawyers, accountants and the like to find out what the local rules mean, how they change and what the changes will mean. What we would ideally work out is how that work can be done more efficiently so that there are not armies of lawyers and accountants all doing the same thing on behalf of the insurers and ultimately paid for by the customers, the members of Ferma.”

The risk management associations have begun a process in which they work together with insurers and brokers to try and develop a market database of rules and regulations. There is obviously a major element of legal interpretation, but the aim is to produce a database that everyone can agree to work with, as a basis for compliance.

The issue was raised at the *Commercial Risk Europe* seminar and it was there that an initial meeting was agreed between a number of leading insurers, brokers and Airmic and Ferma. Airmic’s Paul Hopkin explained that this first meeting, which took place in early summer 2011, was a preliminary one, and stressed that it was a ‘work in progress’. He explained, “There is no definite plan of action. The meeting was a recognition of the issues, and taking

stock of where we are and how best to progress.”

He added that they were looking at the scope of what is essential information from the buyer’s perspective. “As buyers, we do need confidence that compliance is ensured from our point of view. We are scoping as to what any database that is developed should have as a minimum set of information.”

He said that Airmic recognised that regulatory requirements were on three levels. “We recognise that the insurance company has to look after its own regulatory position, the broker needs to ensure that the programme arranged with the risk manager complies with all regulations, and that ultimately the risk manager has to be confident it will work, that when claims arise, there won’t be any regulatory issues to trip over,” he said.

But he stressed that collection of the factual information should not be a competitive advantage. “The availability of a database or regulatory information is not a competitive issue. But because it is subject to interpretation and application, this is where insurance companies can compete—the way they use that data, the way they compile a programme, that is where their intellectual property and experience comes in,” he said.

“As buyers we understand and recognise that much of it is about interpretation. But the buyers’ perspective is to say to insurers and brokers: ‘assure me that your interpretation is based on a sound knowledge of the requirements and based on a sound analysis of those requirements’.”

INSURERS’ RESPONSE

The response from insurers has been generally supportive but also somewhat guarded. There has been an acknowledgement that it is ‘good to talk’ and that there could be some progress, but any solution would be limited in scope.

David Martin, Head of Sales & Distribution at Zurich, speaking at the CRE seminar, said his company had been happy to discuss how it could share its information for the benefit of risk managers and was happy to continue the debate. “We will be supportive of an industry-wide approach. It would obviously be in the interests of our customers, brokers and ourselves. We can probably also be persuaded to contribute what we have currently,” he said.

Mr Martin said that, in his opinion, leadership in such an effort should be provided by the natural intermediaries, the brokers. “They are positioned to respond to, and understand, the needs of customers and drive market solutions. Secondly, I think it is practical. By our reckoning three broker firms probably control in excess of 80% of this market and if they were persuaded to work together, I think a solution would be pretty quick and insurers would see this as a serious attempt and probably participate,” he said.

But what do those other insurers think about a market database solution? Allianz’s Andreas Berger said, “I can understand that the market wants a clearer understanding of the basis of compliance information, the sources of the regulations, and so on, and I think that it is something we

can definitely discuss and take part in those forums.”

However, he added, “There are territories around the globe where it is not easy and there is not always a straight answer. Sometimes the answer is not very straightforward because the legal situation in those countries is not very clear, as it just builds up the legal framework and that’s why risk dialogue and assessment of risks are so important. You can’t treat those countries the way that you treat a standard European country where you have had cases on a daily basis and you know how to handle those special peculiarities in Spain or France and so forth.”

He went on, “The question for me is exactly what people want—do they just want the full list of legal and compliance data and get a common understanding on those laws? We, then, can agree that this is exactly the applicable law and that’s how it was applied or is applicable in a certain circumstance. We need to be clear about what we really want to share as an industry. An insurer or a broker that invests in building the global expertise, the global infrastructure and adds substantial intellectual input, it will be seen as a competitive advantage that has a value.”

Axa’s Yves de Mestier said that it is not about getting the adequate information but what is done with it. He pointed to the example of the recent 40% reinsurance retention regulation in Brazil. “This regulation is well-known by everybody in the world, it has been well circulated,” he said.

“The information is known, but the issue is not only to have the information about the regulation, but how the regulation will be applied,” he said. “What will happen if the 40% retention share is declined by the local reinsurers—do we have any possibility to get derogation for reinsurance out of Brazil or not? What will happen if the local market conditions on the 40% retention are different from the programme conditions? Do we have to apply local conditions on 100%? It is not clear in the law.”

He said the added value is to know what to do with the results, how there can be adequate interpretation of local regulations, or the lack of regulations, or where two local regulations apparently provide exactly opposite points of views. This will not come from a market database, he explained.

“The idea of a central market database providing information in the public domain is certainly interesting, but I am not totally sure that it will change the life of the risk manager,” he said. “When a risk manager selects an insurance company, they are also selecting the quality of their international organisation, their reputation.”

He added that if the supervisory bodies around the world were able to provide a database with their interpretation of the rules, their interpretation of what the market should do and should not do, this would be useful, but he believes the market is very far from that—even in Europe. “And if we had such a database, who would accept the liability if the information provided is a mistake—who will be liable?” he asked. “And will it conform to article 85 of the Rome Treaty? Maybe. Maybe not.”

Chartis’ Philippe Gouraud said his company was

committed, through Ferma and Airmic, to identifying how best to define and contribute to a 'market solution'. "But I have to admit that I have reservations about it, leaving aside the anti-competitive pitfalls," he said. "I believe that the real issue is not about setting up a market-wide database with 'compliance' information. Firstly, from experience, this information is not only about 'yes' or 'no', it often requires interpretation. But most importantly, when a client comes to us, we provide them with our view about how to integrate a given country into their global programme."

XL's Donal Kelly said, "Recent proposed initiatives to discuss the local tax and regulatory issues, including that of a common database around Global Programmes, should be welcomed. While making sure we don't run foul of competition laws, it makes sense for the industry to cooperate and address these complex market-wide topics in an effort to provide greater clarity and consistency in the end product."

'NOT A SILVER BULLET'

ACE's Clive Hasset said there are other issues beyond the pure black and white factual information. "That basic data is, in my judgement, a fundamental building block, but in the overall delivery of a global programme there are an awful lot of other activities going on that need to happen for that programme to be successful," he said. "A global database that everyone in the insurance industry used—brokers, risk managers, insurers—would not guarantee that a global programme would work and deliver all that it's supposed to do. It's definitely not a silver bullet."

Overall, then, insurers are supportive of the idea of a possible market solution, but many are somewhat lukewarm as to the practicalities and the desirability of removing compliance issues as a competitive factor, and concerns over whether it would actually benefit risk and insurance managers because of the issue of legal interpretation.

Others are far more positive about the prospects, notably Marsh's Praveen Sharma. "There is a lot of obfuscation and muddying of the waters going on at the moment," he said. "All of the risk managers that I have spoken with are looking for consistency of application of the regulations,

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"We will be supportive of an industry-wide approach. It would obviously be in the interests of our customers, brokers and ourselves. We can probably also be persuaded to contribute what [data] we have currently..."

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DAVID MARTIN

whether they are black, white or grey. They understand that the regulations are sometimes inconsistent, ambiguous and vague. Nevertheless, the market needs to work together towards consistency of application of the regulations."

He added, "So what would be helpful, and this is where the process is going towards, is that the commonality of data sharing would lead toward the consistency of application of the data, ensuring that the company, the ultimate insured, is not left in confusion trying to decide whose interpretation is right. The differentiators amongst insurers should be the traditional aspects of servicing, relationship, pricing, not the regulation itself, or the interpretation of the legislation."

In the end, who benefits from all of this? The regulators and tax authorities in the individual territories should welcome a move that encourages compliance. Risk managers and their corporate boards should be able to sleep more easily, and brokers will be able to ensure that their clients' programmes are compliant. As for insurers, it should mean that they too can ensure they themselves are compliant, whilst at the same time ensuring that they compete on the traditional basis of pricing, coverage, service and claims-paying ability. And for those insurers who have spent time and money on compliance data, there will still be benefits—there will always be grey areas that require interpretation, and at the end of the day, it is local representation, combined with global reach, that ensures the best structure, the best cover and best servicing of the policy overall.

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