

## GLOBAL ENVIRONMENTAL RISK MANAGEMENT

The last 18 months have witnessed some of the most devastating environmental catastrophes since Chernobyl. These include the numerous environmental issues resulting from the earthquake and tsunami in Japan, more than one million cubic meters of toxic sludge released in Hungary and the Deepwater Horizon oil blowout in the Gulf of Mexico. These events, coupled with rising environmental protection initiatives, more stringent regulations, increasing enforcement and our clients' growth and strategic expansion into new countries have pushed the importance of global environmental risk management to new levels. As a result, we consider it a paramount responsibility to help our clients better understand their environmental exposures and evaluate their risk transfer/risk mitigation options.

### SOME KEY REGULATORY DEVELOPMENTS

Both developed and emerging nations are attempting to prevent, limit and repair the damage of pollution and establish a legal framework to fund remediation. The following includes some of the regulatory developments and progress made towards this effort.

- **EUROPEAN UNION** All 27 member states have now incorporated the EU Environmental Liability Directive into domestic legislation. This is a new, strict liability regime, the purpose of which is to ensure that companies whose activities cause environmental damage will be financially liable for remedying and preventing that damage in accordance with the Polluter Pays Principle.
- **EUROPE'S "REACH" INITIATIVE** A program aimed at **R**egistration, **E**valuation, **A**uthorization and **R**estoration of **C**hemical Substances.
- **EUROPE'S IMPENDING INDUSTRIAL EMISSIONS DIRECTIVE** A new environmental directive aimed at tightening up regulations on carbon emissions and encouraging the adoption of clean technologies.
- **UNITED KINGDOM** The Environmental Damage (Prevention & Remediation) Regulations 2009.
- **CHINA** New tort liability law which represents a shift towards a tougher Western-style tort system.
- **ARGENTINA** Environmental insurance required for any company performing any activity posing a threat to the environment (primarily for funding remediation and cleanup).
- **INDIA** Proposed developing a National Environmental Protection Authority and has recently pursued global companies operating in India for environmental damages.

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- **OTHER COUNTRIES** Many countries are becoming more environmentally sensitive and are moving towards some form of mandatory financial security, such as environmental insurance; e.g., Portugal, Spain, Greece, Hungary, Czech Republic.

## VARYING CARRIER APPROACHES AND PROGRAM STRUCTURES

Many environmental insurers have developed significant underwriting infrastructure to write coverage on a truly global basis. Underwriting in keeping with the political and regulatory framework of other countries is a key consideration when selecting a carrier and designing an insurance program. In our experience, there are three basic options for designing a multinational or global environmental insurance program.

- Reliance on admitted, local policies (where available).
- Reliance on non-admitted insurance – Typically a single non-admitted policy with a worldwide territory endorsement. Insurers are writing such coverage on a “financial interest” basis as insurers may not be able to pay claims directly to the location actually incurring the loss (if claims are paid, they would need to be paid to the U.S. business entity and then repatriated to the foreign country).
- The use of a controlled Master program comprising locally admitted policies for all appropriate overseas locations supported by a Master policy, which ultimately dictates the global terms and conditions through Difference in Conditions/Difference in Limits (DIC/DIL) provisions.

When contemplating the structures mentioned above, consider such issues as potential tax implications/consequences, claim management/payment, central administration and program coordination. Carriers have different ways of assessing countries from an insurance, regulatory and compliance perspective. Organizations need to be aware and properly advised on the issues surrounding tax treatment, claim adjusting and the potential insurance consequences.

Environmental coverage is increasingly important in today’s world, whether driven by regulatory requirements, contractual obligations or simply due diligence and prudent risk management. Proper evaluation of our clients’ programs is an integral component of any discussion involving their organization and current business trends, global expansion plans and the applicable regulatory climate(s).

Willis has a sophisticated, experienced and well positioned global Environmental broking network with expertise in 20 offices around the world.

## CONTACTS

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