Executive Risks

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How Global Has Your Global D&O Program Become?

Since last visiting this topic, we have seen a world of developments in global Directors & Officers (D&O) insurance. The operative word is *more*.

More is at stake. In the US, both the severity of average claims against directors and officers and the size of mega claims (those over $100 million) are increasing. Globally, mergers and acquisitions along with initial public offerings, together worth more than a trillion dollars, fuel a growing number of D&O suits. Perhaps not coincidentally, cooperation between national regulators has resulted in more rigorous enforcement, while the collection of international premium taxes continues unabated.

More attention is being paid by risk managers. Global companies, especially those with a high public profile and/or in highly regulated industries, are looking more closely at how their D&O programs are likely to function at the local level. Many organizations have begun to explore the relevant corporate indemnification provisions (if they exist) in the countries where they operate. This often raises corollary issues relating to currency controls in countries where non-admitted insurance, such as a global program, may not be permitted to pay locally. Whether the object is to place one or one hundred local policies, companies are asking if their current carrier of choice has local D&O policies available in the countries where they operate.

More options for structuring and placing programs are being offered in the marketplace.

Program Structure Issues and Options

A significant development on the insurance side has been the introduction, by three major insurers, of global D&O programs that include local country capabilities. A second tier of carriers, each with a substantial local footprint, offers further choices. Further options are also available in terms of program structure.

Many firms are initially drawn to controlled master programs where their primary carrier on the global (or master) D&O policy also issues separate local D&O policies in countries where local coverage is needed. Payment under any of the local policies reduces the available coverage under the master program. Premiums are allocated out of the current global premium charged, with the addition of frictional or administrative costs for issuing the local policies. Generally, the primary insurer uses its local subsidiaries or affiliates to issue the local contracts, which are reinsured by the primary insurer. This is the most streamlined global program structure and can also be the most efficient to place.

The main alternative is purchasing free-standing local limits. These local D&O policies provide additional, local coverage and act as primary in-country coverage. Payment under these policies does *not* reduce the available coverage under the global tower. One insurer or many can place the local, risk-bearing policies. The premium or cost for each local policy reflects the perceived local exposure and the local insurance marketplace. As local subsidiaries of companies buying global programs are often privately held, the risk-bearing premium can be surprisingly modest, but the ultimate cost depends on the country, the limit and the perceived exposure.

Ultimately, many global programs turn out to be hybrids of these two approaches due to the operation of local law. Even where a controlled master program is the desired goal, certain countries dictate that the risks ultimately reside in the local country (restricting or prohibiting any outside reinsurance back to a master insurer) and may require local underwriting of the risk. Local policies in China, India and Brazil, to use some significant examples, are free-standing local limits and may turn a controlled master program into a hybrid.

How Much is Enough: Determining Local Limits

After you decide to purchase a local D&O policy, the question is: *how much*? Determining adequate limits of D&O insurance always involves a mix of legal and financial concerns, combined with an understanding of your organization's business model and attitude toward risk. To determine the adequacy of local limits, you must begin by considering:

- In which countries are your subsidiaries publicly traded?
- In which countries does your company raise capital (debt, loan financing)?
- In which countries does your company make most/many of its acquisitions?

There may be *more* issues to consider as well.

Roadside Assistance: Guidance Tools

To facilitate the decision-making process, insurance buyers need information: about country requirements, the local claims and legal environment, and the local marketplace. Much of this information should be available through a qualified risk management partner.

Willis has developed a number of tools to this end, including Adviser, our online database of local country information, which offers current profiles of both the relevant local insurance requirements (admitted vs. non-admitted) and the potential premium tax implications. For financial institutions, we provide local claims data through WORLD, the Willis Operational Risk Liability Database. We also have additional tools to assist in both program design and local limits review, including a carrier matrix which summarizes local country capabilities and a local country D&O policy library.

For more on the issue of international premium taxes please visit the Willis International publications page and view our *International Alert* on Canadian federal excise tax on insurance programs. For more on the question of locally non-admitted insurance and global programs, as well as other issues, see the *International Alert* on frequently asked questions about global D&O.

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