

Brazil is one of the few remaining countries with a strict insurance monopoly, which makes use of controlled master (global) programs difficult. Brazil also strictly prohibits non-admitted insurance. These factors directly impact coverage for directors and officers, which, thanks to recent changes in the law, is now in the spotlight in Brazil. Unlike property and casualty coverages, where multinationals can claim self-insurance if coverage is not in place locally, the consequences of missing directors and officers (D&O) coverage affects the individual as well as the company in the event of a claim.

The main concern for local directors and officers is that if they are sued, their personal property and bank accounts can be frozen until a final court ruling is issued. A local D&O policy can be used as collateral to prevent the freezing of assets. However, a global, non-admitted policy cannot be used as collateral for legal reasons.

Another downside of a non-admitted D&O policy relates to final cash payments. Should directors or officers receive claims payments from a non-admitted insurer, they may have to give evidence of the origin of such payments to the IRS. Moreover, cash payments coming from other countries directly to a person in Brazil are subject to a 27.5 percent tax.

It is also possible that a non-admitted carrier may be prohibited altogether from actually paying a claim in Brazil, which could create difficulties for both the insureds and insurer(s).

Recommendation. There is a market for D&O coverage in Brazil. Willis Brazil can help in the placement of such coverage and also help make sure it is integrated properly into a complete international program. Global D&O policies can act as Excess and DIC over

a locally admitted policy. Global D&O policies which cover Brazil should be credited when a local policy is purchased.

For additional information, contact your local Willis office, or Willis International or Anthony Harvey.

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