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MORE OPTIONS IN INDIA

Insurance buyers in India will have more options starting January 1, 2009. Government authorities recently moved to relax tariff rules and, starting in the new year, insurance companies in India will be allowed to offer additional covers and variable deductibles. Basic policy wording will remain unchanged. Additional covers, which will in most cases come with additional costs, are expected to add attractive options to the marketplace.

Navigating the murky waters of insurance coverage protocol in India can be daunting, not only because of what is mandated by Indian law, but because of what is not.

Insurance practices in India are governed by the Insurance Regulatory and Development Authority Act, 1999 (IRDA Act), the Foreign Exchange Management Act administered by the Reserve Bank, the Insurance Act of 1938, and by convention and custom.

NON-ADMITTED POLICIES ARE ILLEGAL

Generally speaking, policies issued abroad are illegal in India; i.e., insurance documents required in this country must be issued by a licensed insurer in India. At the same time, there is no statutory requirement here to buy insurance except with respect to auto liability and public liability for industries engaged in handling hazardous chemicals. Nor is it required that organizations insure any assets. But should insurance be purchased, it must be done through an insurer licensed in India. To what degree this rule applies to other forms of insurance, such as liability and directors and officers (D&O), among others, has not been clearly spelled out.

In the absence of any legal mandate, we still recommend admitted insurance for non-property coverage (such as liability and D&O), because both outward and inward remittance of foreign exchange is subject to Reserve Bank (the Central Bank) regulations, and the insurance regulator would be within its legal rights to investigate any insurance claim remittance, unless such covers or limits

are not available in India. Indian subsidiaries of multi-national corporations operating here tend to seek protection under the master insurance programs arranged by their parent company. This arrangement does not hold true for property and has only very limited use with respect to other classes of business, such as liability. Let us briefly examine how it works for D&O, product liability and clinical trials coverages.

GLOBAL INSURANCE PROGRAMS – ARE THEY RELEVANT?

In theory, a global program may offer protection to Indian subsidiaries with respect to D&O, product liability and clinical trials coverage, but, in practice, it does not necessarily do so for the reasons shown below.

- A policy document issued in New York or London cannot be admitted in evidence here.
- Insurers, therefore, cannot step in to conduct a case on behalf of their clients.
- Should any award/compensation be made, it may not be possible to transfer claims from overseas insurers to Indian companies without being questioned by the Reserve Bank and the Insurance Regulator, who will usually withhold approval unless it can be demonstrated to their satisfaction that these covers are not available in India.

The situation is further complicated by the fact that even when covers are available in India, the capacity offered by the Indian market is small so that the support of overseas insurers is often critical in order to provide the amount of coverage needed. Does this imply that global programs do not apply in India? Not necessarily. Global programs do have limited applications, most specifically on difference-in-condition and difference-in-limits bases (DIC/DIL). Such an arrangement calls for the global insurance program to drop down to the Indian requirement when the local Indian policy does not admit the claim because the scope of Indian cover is limited or the limits offered are inadequate.

LIMITATIONS OF INDIAN COVER

Should Indian subsidiaries buy the broadest covers for the maximum limits possible? Again, not necessarily. It is widely acknowledged that Indian insurers do not offer the broad form covers available in the West, and that Indian covers are generally limited in scope. It is also recognized that the capacity of Indian insurers to offer huge limits of indemnity is restricted. A USD 50 million dollar liability cover is a rarity in India. Under these circumstances, should there be a claim for, say USD 5 million, and if the Indian policy has a limit of USD 2 million, it may be possible to recover the balance from the global program. In our view, it should be possible to justify to the Reserve Bank as well as to the Regulator that the award was beyond expectation and could not be handled within the Indian policy limits; hence, the recourse to the global program. Adopting this stance without any evidence of an Indian insurance policy, however, is not likely to win approval from the Bank or the Regulator.

We recommend, therefore, buying a standard local cover up to reasonable limits. This would serve as a primary cover, and could always sit under the global program. Should the Indian policy limit or cover turn out to be inadequate to a claim, seeking recourse under a global program would then be easier and justifiable. Government agencies expect that insurance be purchased within the country as far as possible, and there is no getting away from it.

SUMMARY

A global cover is useful but not a substitute for a local primary cover. The best arrangement is one where the global program sits in excess of an Indian primary cover, which has been arranged in accordance with Indian market practices and requirements.

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