STRUCTURING MULTINATIONAL INSURANCE PROGRAMMES

ISSUES FOR RISK AND INSURANCE MANAGERS TO CONSIDER WHEN INSURING PROFESSIONAL INDEMNITY RISKS ACROSS BORDERS

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The basics of Professional Indemnity insurance

What is PI insurance?

PI insurance traditionally covers professionals who provide advice or other services to clients against the risk of civil claims by those clients, and in some cases by other persons, for financial loss suffered by those clients as a result of the professional firm's negligence or breach of duty of care in the provision of those services. It is sometimes called errors and omissions insurance.

Why is PI necessary?

In many jurisdictions, a business that provides professional advice or services to clients owes those clients (and possibly others) a duty to exercise "reasonable skill and care" in doing so. If it fails to do this, it will be exposed to claims for loss suffered as a result of its negligence or breach of duty. These claims will usually be for direct financial loss but can extend to other consequential losses, or losses that were reasonably foreseeable as a result of the negligent act or breach of duty, and can often include the legal costs of bringing the claim.

Today most multinational organisations understand well their general liability (GL) obligations for personal injury and property damage, and how to manage these risks efficiently across the organisation's global footprint. This is accomplished by implementing multinational insurance programmes that use a combination of master and local policies, and other features. However, multinational organisations that provide professional services typically face an additional category of liability risks, which can result in claims for negligence, misrepresentation or breach of duty – none of which are included in standard GL insurance policies. These more specialist risks can be included in professional indemnity (PI) insurance policies.

Introduction

PI insurance policies are often drafted to insure all civil claims made against the insured organisation, with only specific claims – such as those for patent infringements and claims by employees – excluded from the scope of insurance. Many professional firms (for example lawyers, accountants, and architects) carry PI insurance because they are required to do so, either by law, or by their professional or regulatory bodies. The number of jurisdictions where PI insurance is compulsory is increasing. Italy provides one example, where many categories of professionals, including architects and engineers, are now legally required to maintain PI insurance. However, the growing number and size of claims against professional firms, and the increasing costs of defending those claims, means that many professionals choose to purchase PI insurance even if not legally obliged to do so. Indeed, many clients now require their professional advisers to carry PI insurance as a precondition to engaging them.

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Professional services firms are aware of the value of a comprehensive PI policy to cover them for risks in their home jurisdiction. They also understand the importance of obtaining PI insurance when they enter into new jurisdictions. Usually the PI insurance they take out in the new jurisdiction either corresponds to the insurance that is required under local regulations or is insurance that their clients have insisted upon. However, astute risk and insurance managers in global professional services firms now apply the experience they have gained in structuring

multinational insurance programmes for more traditional property and liability classes in order to efficiently and effectively integrate PI risks into their global insurance solutions. Research conducted by ACE in 2014 with 280 Europe-based risk managers in multinational organisations confirms an increased appetite. One of the key themes from that research is risk managers' perception of heightened cross-border liability risk, with PI being ranked as one of the top five risk categories that they believe create the greatest exposure for their multinational operations[1]. Further, when asked which types of risk they would consider integrating into a multinational insurance programme over the next few years, PI was highlighted by 38% of the respondents, ranking in joint second-place behind casualty risk.

This report identifies key questions that insurance and risk managers and brokers should ask when designing effective multinational insurance solutions for their PI insurance needs. Undertaking a risk analysis before determining the nature and extent of the PI insurance to be purchased is not only a sensible approach but should lead to the design of a more effective multinational PI insurance programme. The report begins by discussing the question of jurisdiction and its implications. It then highlights the importance of defining the scope of an organisation's professional services activities, and the need to consider the specific people and legal entities that require PI insurance. Next, it discusses the key elements by which insurance under a PI policy is delineated, each of which needs to be considered in order to determine whether the proposed multinational insurance solution will perform as expected. It then explores the issues that arise by virtue of the organisation's global footprint, including the importance of determining what master policy, local policy, and difference in conditions (DIC) and/or difference in limits (DIL) structures are appropriate, and the role and interplay of excess insurance in the overall structure.

The report concludes with a review of the main considerations that underpin any multinational insurance programme. In line with previous ACE reports in the series, the report ends with a short checklist of key questions that are particularly relevant when developing a multinational PI insurance programme.

1. ACE European Risk Briefing, 'Changing multinational risks and evolving solutions', September 2014.

Question one:

What jurisdiction applies to us and what are the implications?

The question of jurisdiction is important for a number of different reasons. The applicable jurisdiction will determine (i) what is the legal framework of any PI liability; (ii) what particular laws and regulations apply; (iii) what is the expected frequency of claims; (iv) whether PI insurance is compulsory; and (v) whether the applicable jurisdiction can be explicitly chosen in certain situations, especially where the organisation is providing ad hoc advice in a particular country on a short-term basis.

The starting point, when designing multinational PI insurance, is to ask which legal framework applies. This question refers not just to the legal basis of the 'home' jurisdiction of the insured organisation, but also to the legal basis or framework of the different jurisdictions in which the organisation operates.

At last count, there were more than 200 member states registered with the United Nations in New York City, many of which have distinct legal systems and frameworks. Fortunately, they tend to fall into one of two main categories:

1. Civil law – this is the most widespread legal system and is a codified or constitutional-based legal system. It is found in countries such as **France** and **Germany,** and also the **Peoples' Republic of China** (but not **Hong Kong** where the 'One Country Two Systems' principle sees the survival of English common law until at least 2047).
2. Common law – this is usually called English common law, since it originated in **England.** It has, however, been adopted by many other countries and jurisdictions, including **Canada** (except **Quebec**), **Australia, India** and **Singapore.**

Other countries have a hybrid legal system that combines more than one type of legal framework, most often a mixture of civil and common law. Examples include the legal systems of **South Africa** and **Thailand.** In the **United States**, the legal system derives largely from common law but also incorporates a number of civil law elements.

The legal principles within the same type of legal system tend to be similar. For example, in jurisdictions with a common law system, such as **England & Wales** and **Hong Kong,** liability for professional negligence can be traced back to two basic common law legal principles, namely:

- The requirement to carry out what has been agreed by the parties to the contract (contractual liability); and
- The duty not to harm others (tortious liability).

In civil law jurisdictions, professional indemnity liability usually arises under the relevant civil code.

After determining the legal framework within which they operate, multinational organisations that provide professional services should then shift their consideration to other factors. These include the likelihood of a client bringing a claim and what that client may be able to recover in damages. Some jurisdictions are more litigious than others; for example, the **United States** and, more recently, **Australia.** In these jurisdictions, there may be the added risks of large awards of damages (including large awards for punitive damage), contingency fees, onerous discovery obligations and the uncertainty of jury trial awards.

Jurisdictions also differ in their requirement for compulsory insurance. Countries that require compulsory insurance for certain professionals tend to be those where there are increasing risks of litigation or that have a sophisticated litigation environment. Jurisdictions such as Australia, Canada, members of the European Union including **England & Wales, Hong Kong** and the **United States** require insurance as a precondition to providing certain types of professional services. On the other hand, **Brazil, China** and **India** are examples of countries where there are few, if any, requirements for compulsory PI insurance.

The requirements are, however, constantly changing. Gradually, more professions are being required to obtain PI insurance. In July 2014, the UK Government introduced new legislation requiring regulated healthcare professionals

INSURING PROFESSIONAL INDEMNITY RISKS ACROSS BORDERS

Guide to legal jurisdictions around the world: what type of legal system is in place

Selected Countries	Australia	Brazil	Canada ex Quebec	Canada (Quebec only)	China ex Hong Kong	China (Hong Kong only)	England & Wales	Other Europe[1]	India	South Africa	Thailand	United States
Common law	X		X			X	X		X	Hybrid	Hybrid	X
Civil law		X		X	X			X				

Guide to mandatory PI insurance around the world: by law (L) or by professional governing body (B)

Selected Countries	Australia	Brazil	Canada ex Quebec	Canada (Quebec only)	China ex Hong Kong	China (Hong Kong only)	England & Wales	Other Europe[2]	India	South Africa	Thailand	United States
Accountants	B		L	B	L	L	L	L				
Architects	B		L	L		L	L	L/B				
Asset appraisal					L							
Insurance brokers	B		L		L	L	L	L	L[3]			
Chartered surveyors	L			L		L	L	L				
Engineers	L/B		B	L/B		L	B	L/B				
Financial advisors	L/B		L	B		L	L	L				
Healthcare professionals	L		L	L		L	L	L		L		L[4]
Mortgage brokers	B		L	B			B					
Notaries					L			L				
Solicitors and barristers	L		L			L	L	L				L[5]
Veterinarians	L		B			B	B	L				

[1]Except for Bulgaria, Cyprus, Greece, Latvia, Malta, Romania and Spain
[2]Except for Cyprus, Latvia, Malta and Romania
[3]Including insurance web aggregators (premium aggregators) and insurance marketing firms
[4]Only in Colorado, Connecticut, Kansas, Massachusetts, New Jersey, Rhode Island and Wisconsin
[5]Only in Oregon

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(including doctors, nurses, midwives and physiotherapists) to carry PI insurance. An even more recent example is the new requirement for Taiwanese insurance brokers to maintain PI insurance. The following professions are generally subject to compulsory PI insurance requirements, whether required by law or regulation, or by the relevant governing or professional body:

- Accountants (e.g. Australia, Canada, China, Hong Kong and England & Wales)
- The construction sector, including architects and engineers (e.g. Canada, Hong Kong, Italy, France, Spain and England & Wales)
- Doctors and other healthcare professionals (e.g. Australia, Canada, Italy and England & Wales)
- Solicitors and barristers (e.g. Australia, Canada, Hong Kong, most continental EU countries and England & Wales)
- Insurance intermediaries, such as brokers and agents (e.g. Australia, China, Taiwan, Hong Kong, India and England & Wales).

The underlying laws and legal system of the jurisdictions in which a multinational organisation operates are obviously important. However, the effect of jurisdiction can be mitigated through the judicious use of a 'choice of law and jurisdiction' clause included in the terms of professional engagement.

Where local law permits, a choice of law and jurisdiction clause can determine the laws that will govern any action brought against the organisation and the jurisdiction in which any potential litigation must take place. Litigation outside the organisation's home jurisdiction can be immensely time-consuming, expensive and challenging, and can impose the additional burdens of, for example, having to pay for travel and hotel costs, incurring time away from work, finding lawyers to represent the organisation in a different location and requiring documents to be translated. A choice of law clause may also assist an organisation to potentially avoid liability which could otherwise be

found against it in a different jurisdiction, or enable the organisation to benefit from, for example, a 'loser pays winner's costs' system (which is the norm in England, but not in the US). Of course, the jurisdiction being nominated in the contract should have some relevance to the agreement, not least to avoid the allegation of 'forum shopping'.

Choice of law clauses can also limit the impact of 'temporary' jurisdictions in circumstances where professionals travel abroad and provide advice to clients in locations where the organisation does not have an office or physical presence. Here, the professional services organisation can run the risk of being liable for advice not only in the 'temporary' jurisdiction in which it was given, but also in the organisation's 'home' jurisdiction, where the principal offices are located. A choice of law clause can stipulate that only the 'home' jurisdiction's laws apply to the professional services rendered.

Question two:

What scope of professional services does our organisation provide?

Many organisations, even within the same profession, will offer different services or a range of services. Law firms, for example, usually restrict their activities to the provision of legal advice; however, multinational law firms may find themselves providing advice relating to the laws of several jurisdictions. For them, it is important to be aware of any legal or regulatory restrictions on providing advice on the laws of one jurisdiction when situated in a different jurisdiction. Other multinational professional services organisations, for example 'the big four' accountancy firms, are reinventing themselves as multi-service organisations that offer their clients a range of services including tax, advisory, trustee and company secretarial. Some organisations may also choose to provide a fuller suite of services in certain markets, while restricting their portfolio of services in other markets for commercial, or even regulatory, reasons.

Risk and insurance managers must be aware of the different service models in use and the need to identify precisely what services are being provided, in which markets and by which entities within their organisation. Only in this way can they ensure that the organisation's PI insurance adequately covers all entities against potential claims that may arise from the provision of any of these professional services.

> Many organisations fail at the outset to determine exactly which of their operating entities and people are exposed to the risks of a claim in the different jurisdictions in which it operates.

Question three:

Who do we need to insure?

Once the professional services organisation has established which legal system and laws and regulations apply to its operations, what services it provides, which entities provide these services and the potential PI risks it faces in each of the jurisdictions in which it operates, it then needs to consider against which entity or persons a claim could be brought.

When purchasing PI insurance, most professional services organisations seek to ensure that all relevant entities and people are covered. However, many organisations fail at the outset to determine exactly which of their operating entities and people are exposed to the risks of a claim in the different jurisdictions in which it operates.

When determining who needs to be covered under a PI programme, organisations should consider the following questions:

- What professional services do each of its legal entities provide?
- What is the legal status of each of these entities (e.g. are they a stock corporation, limited liability partnership, joint venture, etc.)?
- If any of the entities is a partnership, are all of the partners covered?
- Can directors and officers of a corporate trading entity also be liable for PI claims?
- What vicarious or contingent coverage might the organisation require for acts committed by employees, agents or subcontractors?

Question four:

What for us are the key elements of a PI insurance programme?

The next issue for consideration by risk and insurance managers is how the PI exposures of the global organisation can best be insured. Before considering more technical, structural issues, some basic key elements by which insurance under a PI policy is delineated must first be understood. These include:

The period of insurance

This is the period for which the insurer will indemnify the insured organisations for its negligent acts. There is often a time lag between:

- when the allegedly negligent work or act was performed;
- when its effects become apparent; and
- when a claim is made.

A PI policy therefore generally operates on a 'claims-made' basis. This means that the policy in force at the time the claim is made against the organisation is generally the policy that will provide coverage for the claim. This is regardless of when the work was undertaken or when the alleged act of professional negligence took place.

There are several advantages in having a PI insurance policy operate on a 'claims-made' basis:

- there is never uncertainty about which insurer should pay out the claim as it is clear which insurer is 'on risk' when the claim is made;
- it is much less likely that the insurer 'on risk' will be unidentifiable or no longer in business when a claim is made; and
- since the current insurer is 'on risk', insureds are able to review the adequacy of their insurance contemporaneously and adjust it accordingly.

As claims may still be brought against an organisation many years after services have been provided or projects have been completed, it is often prudent for an organisation to maintain PI insurance until those potential claims become statute-barred.

Organisations should also bear in mind that because the 'claims-made' principle creates tail risk for insurers, changing the insurance carrier can add to the risk of the organisation's multinational PI insurance programme not performing as expected later down the line. Also, it increases the burden on the organisation to make sure that all potential problems or errors are known and reported to the incoming insurer.

> A multinational professional services organisation can expect that the availability of local claims-handling expertise will translate into better claims service.

Defence costs

Defence costs incurred by an organisation to avoid or reduce its liability are typically payable in advance of any indemnity for damages. Defence costs can be particularly onerous in instances when organisations may not have access to expert lawyers or require additional support in unfamiliar overseas jurisdictions, such as emerging markets. In a global context, the quantum of potential defence costs therefore requires careful consideration, and risk managers will need to work with their insurance partners to ensure the defence costs provisions in their PI policies meet their needs.

Retroactive date

It is important to note that a retroactive date functions as an exclusion. If a retroactive date is imposed, claims arising from wrongful acts taking place prior to that date will not be covered, even if the claim is first made during the policy period. Risk managers should be aware of the impact of these types of restrictions, especially when changing insurers, so as to ensure that there are no gaps in coverage.

The types of liability insured

PI policies usually insure almost all civil claims but often exclude claims for breach of intellectual property rights and bodily injury/property damage. However, insurance for these risks can often be added to the PI policy for an additional premium. Having considered the legal requirements for PI insurance in the territories in which their organisation operates, risk and insurance managers should ensure that all the policies they purchase provide the organisation with the breadth of coverage required in each market.

Claims-handling requirements

Some territories impose a duty on the insurer to defend the claim against the insured organisation. If the duty to defend lies with the insurer, then it is obligated to assume control of the defence of the claim against the organisation, including selecting legal counsel and paying legal fees. In contrast, if the organisation has the duty to defend, then it will be responsible for engaging its own legal counsel. In such circumstances, the insurer will most likely require the organisation to seek the insurers' consent before instructing legal counsel and before the insurer reimburses the organisation for funds expended in the defence of the claim.

Organisations should also satisfy themselves that their insurer has local claims-handling expertise in the markets where they have exposures, whether through the insurer's own local presence and decision-making capability, or through a well-managed global network using third parties who are bound by clear service standards. This is a highly relevant factor when choosing a multinational PI insurer. A multinational professional services organisation can expect that the availability of local claims-handling expertise will translate into better claims service, including the prompt handling of claims, better access to experienced lawyers and investigators, and familiarity with local laws, customs and practices.

Territorial and jurisdictional limitations

In addition to checking for any other notable policy terms, conditions, limitations, and exclusions (all within a multinational context), risk and insurance managers should also ensure that the territorial (where the act is committed) and jurisdictional (where the legal demand can be submitted) limitations adequately meet the organisation's needs.

Question five:

How should a multinational PI insurance programme be structured to meet our needs?

It is important that organisations ensure their insurance programmes provide effective protection against risks in each of the jurisdictions in which they do business as well as the service capabilities for defence, valuation, claims adjustment and payment. There are practical, technical constraints when structuring multinational insurance programmes. However, there are some wider issues that merit consideration.

Today's sophisticated multinational insurance programmes offer a combination of risk financing and risk transfer. A multinational programme for PI risks can be structured in a number of different ways – at the parent/headquarter level only, at the subsidiary/local affiliated offices level only, or through a combination of parent and subsidiary level protection.

A multinational programme that offers a single global master insurance policy issued to the parent company in the parent's home jurisdiction should be designed to insure the parent, its subsidiaries and joint venture partners (and in some cases their respective directors and officers as well) against PI risks. However, it may not be enough for the parent company or the joint venture partner to arrange only a single global insurance policy, as it may not comply with local requirements. A local, 'admitted' policy may be required to protect the organisation's business in the particular jurisdiction in which the subsidiary, affiliate or other majority or minority shareholders in the joint venture reside or operate.

Depending on the ownership structure or contractual relationship between and among the operations, companies with overseas operations in several countries may want to design a multinational insurance programme that includes local policies tailored to the individual regulatory regimes in place in each country. Given the changing legal and operating environment, in many cases, it may be more appropriate to structure the multinational programme through standalone local policies with appropriate local insurance and limits that are then supplemented with a 'master umbrella policy' issued

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to the parent company containing DIC/DIL coverage to fill any gaps in the coverage or limits provided under the local policies. The arrangement of having local policies for subsidiaries in the countries where they are based is common, especially in jurisdictions that mandate insurance coverage for particular risks, place restrictions on or have local requirements for unlicensed insurance covering local risks, or place an onerous process on a local risk manager or local broker seeking to procure non-admitted insurance. A locally admitted insurer will, in such cases, underwrite and issue the local policy in compliance with the local insurance laws, and will calculate and remit the applicable insurance taxes and fees. Claims under such local policies will be adjusted and paid locally.

For the parent company or headquarters, there will be a financial or economic interest in its subsidiaries and affiliated companies through shareholding or other ownership interests, or perhaps via legal or contractual obligations. In the **United States,** in many countries in the **European Union** (including the **United Kingdom, France** and **Germany**), in **Switzerland, Mexico**, **Brazil, Australia,** and countries in **Asia** (including **Singapore** and **Hong Kong**), financial or economic interest is insurable – the parent company may procure insurance directly for its 'insurable interest' in subsidiary entities. The parent policy can supplement local policies arranged by subsidiaries and offer the parent company DIC/DIL protection.

Thus, the use of an 'insurable/financial interest' clause can potentially assist in ultimately getting the claims payment to where it is actually required.

In many countries, the parent's economic loss can be measured by reference to the subsidiary's actual loss – essentially, a form of 'agreed value' policy. In other words, if a subsidiary suffers a loss, the parent company is deemed to suffer a concomitant loss by virtue of the parent's interest, including financial, in the subsidiary. Should the local subsidiary not have the financial resources to meet local damage awards, pay fines or repatriate properties as required, the parent can also insure against its costs in meeting those amounts on the subsidiary's behalf.

From a technical perspective, the following specific questions must be asked, and a decision-making process similar to that for more traditional lines of insurance must be followed.

Questions include:

- What are the legal/contractual obligations between/among local offices and the parent/headquarter office negotiating and procuring the global insurance programme?
- Is one master policy issued in the home jurisdiction sufficient to provide coverage in all global locations?
- What is the role of an 'insurable or financial interest' clause in determining what is insured and where a claim will be paid? Are the considerations different if the claim occurs outside the home jurisdiction? Does having a local policy change the considerations?
- If local policies are required in certain countries, must they be issued on an 'admitted' basis by an insurer authorised or licensed to conduct insurance business in the relevant local jurisdiction or, as in the US and Canada, will a non-admitted policy suffice?
- Must the local policies be standalone or can they mesh with the master policy, which acts as an umbrella policy providing DIC/DIL coverage in the local jurisdiction, and can the master policy insurer legally pay claims? Have all claims adjustment and payment issues been carefully considered?

The legal status of 'non-admitted' policies varies from jurisdiction to jurisdiction. For example, in the **People's Republic of China,** local and DIC/DIL policies can co-exist and a DIC/DIL policy can supplement or supersede the local policy, but a DIC/DIL policy may only pay claims in China when the DIC/DIL insurance company is licensed to operate in China (i.e. both the local and DIC/DIL policies must be 'admitted' policies). Thus, payment of a claim in China under what is considered a 'non-admitted' policy would be unlawful.

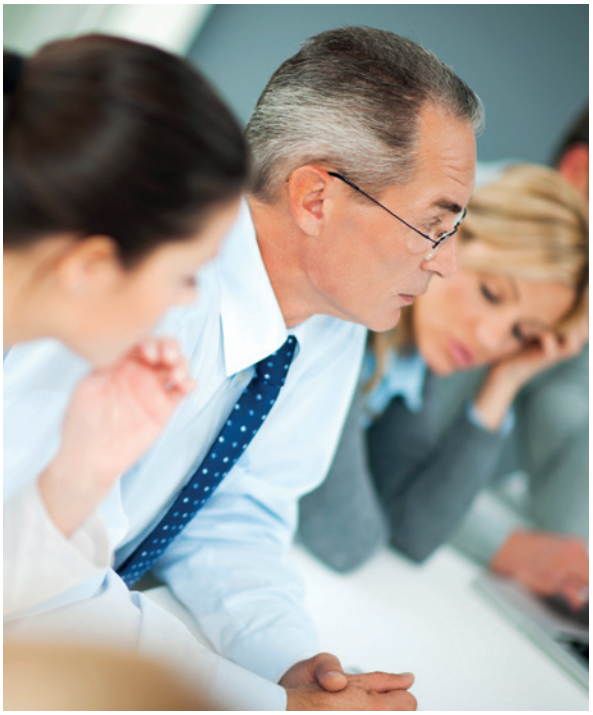
In contrast, in **Hong Kong,** local 'admitted' and 'non-admitted' DIC/DIL policies can co-exist and a 'non-admitted' DIC/DIL policy can supplement or supersede the local 'admitted' policy. The only exceptions to this are certain compulsory classes which can only be written by insurers that are authorised to carry on insurance business in Hong Kong. As a consequence, provided that the insurer is not otherwise carrying on insurance business in or from Hong Kong, it is permitted for an offshore insurer to pay claims in Hong Kong under a 'non-admitted' DIC/DIL policy.

An example of how this works is how global law firms in Hong Kong manage their PI risks. All law firms in Hong Kong are required to sign up to the compulsory Solicitors Professional Indemnity Insurance Scheme, which provides HK$10 million of basic cover for any one claim. Most firms then purchase excess insurance, either locally or via their head office (whether in London, New York or elsewhere). The excess policy typically has worldwide geographical coverage and therefore covers legal advice given abroad.

Question six:

Have we adequately considered the role of excess insurance (either over each local policy or as a single tower)?

Once a decision has been made about the structure of the master/local primary policy or policies, it is important to then take into account the impact of excess PI insurance. Insurance and risk managers need to consider whether it is possible to obtain PI insurance locally in excess of the primary policy, or whether excess insurance is only available as an umbrella tower purchased outside the jurisdictions where the organisation's risks are situated.



It is important to remember that an excess insurance policy is governed by the same insurance regulations and tax rules that apply to the primary policy and the same questions must be considered. Where is the excess insurance policy issued? What does it insure or not insure? And, perhaps most importantly of all, where can claims be paid compliantly?

Two broad options exist. Insurance and risk managers may actively seek 'full' limits in local jurisdictions (sometimes without asking whether the local primary and excess policy provides the organisation with 'full' insurance as may be available in their home jurisdiction). Alternatively, they may procure a local primary policy and then build an excess tower in the jurisdiction where their parent company is located or where excess capacity is traditionally available. Both options may be viable but need to be viewed and analysed in the context of all the jurisdictions in which the organisation operates. It would be ironic if, in the desire to increase coverage certainty, those designing the multinational PI insurance programme failed to take into account all of the issues that can actually reduce the insurance coverage available.

Like a master DIC/DIL policy issued to a parent company in the parent's jurisdiction, an excess policy issued overseas, although fully compliant in the jurisdiction where it is issued, is rarely able to compliantly pay claims or remit the appropriate premium taxes in countries where the underlying loss has occurred. So it quickly becomes clear that lack of advanced planning when structuring a single PI policy or a PI tower in the parent's jurisdiction, or in jurisdictions where excess capacity is efficiently available, can introduce execution uncertainty, potential adverse tax consequences, and potential misrepresentation of locally available limits.

Another important issue to note when considering the interaction between a single PI insurance policy and a multinational PI insurance programme is the certificate of insurance. Where the certificate of insurance evidences both the local limit and the limit outside the jurisdiction, it may not accurately reflect the extent to which the insurance is valid locally and, therefore, may be subject to challenge. Third parties relying on the insurance limit evidenced by the certificate of insurance when procuring services from an organisation may find that insurance coverage available is, in fact, for a far lower limit. This lack of local validity occurs regardless of whether it is the local insurer evidencing local limits and the limits outside the location of risk, or an overseas insurer evidencing both the local limit and the limit it has provided on an overseas insurance policy. The question again becomes one of performance uncertainty. The limits evidenced locally may not, in the aggregate, be directly payable locally – and may not, therefore, be 'valid and collectible' locally.

CONCLUSIONS

Ultimately, the main considerations when structuring a global insurance programme are similar, whether the programme is designed to insure PI or other risks.

1 It is important to understand that local insurance laws apply equally to primary and excess insurance, whether purchased at the parent/headquarter level or otherwise.

2 It must be recognised that, while certain structures – such as overseas excess/DIC-DIL towers combined with local policies – provide the highest level of coverage certainty, they have limitations when not designed appropriately. Questions about local defence and indemnity payments should be at the forefront of any discussion to manage performance expectations.

3 When entering into local contracts, it is important to determine what are the local limits expected by counterparties for conducting business or what are the limits purchased by local organisations when conducting similar business.

This means that, when drafting coverage clauses for primary or excess policies or when providing local certificates of insurance, multinational organisations (and their risk and insurance managers, their brokers and insurers) should take care in adopting wording that avoids redefinition, unavailability of limits locally and other undesired consequences.

4 Finally, it is important to collaborate with a broker and insurer that have truly international expertise and servicing capabilities, as well as with internal and external tax, finance and legal specialists.

This combination enables the parties to work together to plan and document a clear risk financing strategy that is complemented by an appropriate transfer of excess risk, and to ensure the multinational insurance programme achieves performance certainty.

CHECKLIST

Key questions to ask when designing a multinational PI programme

1. **What is the legal status of each of the entities in our global organisation (stock corporation, limited liability partnership, joint venture, etc.)?**
2. **What professional services do we provide? Do we provide the same professional services in each of the countries where we operate, or do these differ from country to country?**
3. **What are the legal requirements for PI insurance in our home country, and in each of the other countries in which we offer services?**
4. **Should we choose a globally integrated multinational PI insurance programme or is a standalone, country-by-country insurance programme best for us?**
5. **Is an integrated global PI programme possible given the countries in which our organisation operates?**
6. **If we choose a standalone PI programme, rather than a multinational programme, what are the challenges in managing consistency of insurance coverage, claims and cash flow?**
7. **If we choose an integrated solution, does our corporate legal status allow us to manage the procurement of insurance on behalf of all of our entities worldwide?**
8. **How do we ensure appropriate local limits and implement the most robust umbrella/excess protection at the parent level?**
9. **How will our umbrella/excess policy respond when a local policy does not insure a claim? Where will claims be paid?**
10. **If our organisation is indemnified at the parent level for a claim made against it in a local country, what issues must we consider when we remit the claims proceeds to that local country?**

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About the authors

Based in New York, **Suresh Krishnan** is Executive Vice President, Global Accounts Division, ACE Overseas General, managing ACE's large multinational customers with complex, underwriting and servicing needs in Asia Pacific, Europe and Latin America. The ACE Global Accounts Division encompasses regional teams of global client and claims executives and multinational servicing units, the North American National Accounts segment, and the global services group that manages the award-winning ACE Worldview® information portal for clients and brokers. Most recently, Suresh was General Counsel for the ACE Group's Multinational Client Group, where he had global legal oversight for matters connected with the company's multinational products and services. He joined ACE in 1999 and served as General Counsel of ACE USA and ACE Financial Solutions. With more than 20 years of experience in the insurance industry, he has authored numerous reports on multinational issues.

Based in London, **Grant Cairns** is regional manager, financial lines at ACE with responsibility for the company's financial lines portfolio – including directors and officers liability and professional indemnity – across its Continental Europe and Eurasia and Africa regions. Grant has 17 years of insurance industry experience, having started his career as a broker within the Willis Group in Australia in 1997 where he focused on both property and casualty and financial lines accounts. He joined ACE in Melbourne as a financial lines underwriter in 2003, ultimately becoming financial lines manager for Australia and New Zealand in 2008. He moved to London with ACE in 2013 and assumed his current role. Grant holds a graduate diploma of finance, specialising in insurance, from Deakin University.

Based in Hong Kong, **Richard Bates** is partner at Kennedys and the head of the Hong Kong office's life and health and corporate and commercial teams. Dual qualified in England & Wales and Hong Kong with over 26 years' experience, Richard and his team advise general, life and health insurers on a wide range of legal issues facing their businesses including regulatory, licensing and compliance matters, portfolio transfers, policy development, wording and approval, agency and broker relationships, commercial agreements, bancassurance and other strategic alliance relationships, data protection, claims management and dispute resolution. **Joanie Ko** is also a partner at Kennedys. Qualified in Hong Kong, Australia and England & Wales, Joanie advises on coverage, management and defence of insurance claims with a focus on financial lines including directors and officers, financial institutions blanket bonds and professional indemnity insurance. She also boasts significant experience in insurance-related litigation, arbitration and disputes.

Kennedys is a leading international law firm that has in excess of 1,200 staff worldwide, with 21 offices in Europe, the United States, Asia Pacific and the Middle East, and an active network of associated offices and co-operations around the world.

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