Liability Insurance: Sure Uncertainty and Great Expectation
10th – 12th September 2012
Robinson College, Cambridge

Overview
- Traditional structure of global programmes
- What is the problem?
- Local policies
- Non-admitted cover
- Local regulations and tax
- Financial Interest cover
- A compliant global programme?
Regulatory Crunch for Multinational Companies

Multinational Companies Wish List

- Global insurance policies to be compliant – from regulatory and tax perspective
- Credible and rated insurers
- Cost of risk as low as possible
- Consistency in policy wordings
- Contract certainty particularly around claims settlement
- Pragmatic and practical approach and solutions
Global Master Programme – Issues for Multinational Companies

- How can a risk, located in a country where non-admitted is not permitted, be covered?

- How can a loss, arising in a country where non-admitted is not permitted, be adjusted and paid by the insurer?
  - Will the global insurer pay the loss directly to the entity which suffered the loss?
  - Will the global insurer pay the loss to the parent company?
  - Is this clear from the wording of the Master Policy?
  - If Financial Interest Cover endorsement included in the Master Policy, what are the implications for the Multinational Company?

- If local policies required, what local limits should be purchased?
  - How can the insurer/broker assist in the determination of the local limits?
  - Can premiums be paid centrally or will they have to be paid locally?
  - What about DIC/DIL cover, premiums and related taxes?

- Premium allocation and internal recharge of global programme premiums

Insurer Issues

- Licensing obligations
  - Freedom of Services/Establishment
  - Lloyd’s licence 66 countries including EU/EEA
    - US surplus lines licence

- Direct cover on a non-admitted basis
  - Non-admitted not permitted

- Premium allocation
- Loss adjustment services
- Claims management and settlement

- Premium related tax collection and settlement
  - Relevant documentation in support
Local regulations

- Range of regimes
  - relaxed – e.g. UK
  - medium – e.g. USA
  - strict – e.g. Argentina, Mexico

- Will breaches be detected?
  - regulators talking
  - tax bodies
  - exchange control

- Penalties
  - e.g. Argentina

Examples of Regulatory Issues

- In the European Union, inconsistent regulations
  - Certain member states require local risks to be covered by EU insurer
  - Non-admitted permitted in a few member states such as UK

- US risks could be covered on a direct procurement basis
  - But confusing and impractical regulations, which vary from state to state

- Brazil, Russia, India, China, (“BRIC”) strictly prohibit non-admitted insurance
  - In certain countries exemptions could be sought from the local regulator

- In Australia – Regulation of Direct Offshore Foreign Insurers

- In Canada, Insurance Companies Act amended from 1 January 2010

- Warning issued by Mexican Regulator about potential penalties for non-compliance

- Argentinean authorities imposed fine of 23 times the premium for non-compliance
Local Policies

- **Pros**
  - comply with local regulations
  - conformed to needs of local entity
  - local service

- **Cons**
  - strength of local insurer?
  - extent of cover?
  - coordination with rest of programme?

Non-admitted Cover

- **Pros**
  - strength of carrier
  - consistency of service and terms
  - cost-effective

- **Cons**
  - remote?
  - non-compliant?
Taxation Issues for Multinational Companies

- Premium allocation methodology
  - “Just and reasonable” basis
  - Documentation

- What premium related taxes has to be paid to the insurer?

- What premium related taxes has to be paid directly to the tax authorities?

- What about premium related taxes on premiums relating to risks located in countries where non-admitted insurance is not permitted?

- Evidence of premium related taxes paid via the insurer

- Potential income tax implications on premiums and claims

- Tax warranty/indemnity clause in the Master Policy

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 Potential Tax Paradox on Global Insurance Policies – An example

<table>
<thead>
<tr>
<th></th>
<th>P&amp;L Ultimate EU Parent</th>
<th>P&amp;L Overseas Subsidiary</th>
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</thead>
<tbody>
<tr>
<td>Premium expense paid to insurer centrally — premium taxes may not be paid correctly</td>
<td>(1,000,000)</td>
<td>(500,000)</td>
</tr>
<tr>
<td>Premium recharged — may not be tax deductible at subsidiary level</td>
<td>(500,000)</td>
<td>(10,000,000)</td>
</tr>
<tr>
<td>Insurance Premium Tax – average rate of 11%</td>
<td>55,000</td>
<td>(500,000)</td>
</tr>
<tr>
<td>Loss suffered by the overseas subsidiary</td>
<td>(18,000,000)</td>
<td></td>
</tr>
<tr>
<td>Claims received from non-admitted insurer — may be treated as “Taxable Income” by the local tax authorities</td>
<td>10,000,000</td>
<td>(2,500,000)</td>
</tr>
<tr>
<td>Tax may be suffered by Ultimate Parent on Claims – avg. income tax rate 25%</td>
<td></td>
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Financial Interest Cover

- A different approach to DIC/DIL Structures
  - insures the value of a subsidiary, not the value of the asset
  - calculation of loss
  - payments will be made to lead office, not locally

- Enables local compliance but does not replicate traditional global – policy coverage
Financial Interest Cover

- A solution to all global policy issuers?
  - Legal analysis
  - Mismatch in loss and recovery
  - Regulatory views
  - Implementation through wordings

A Compliant Global Programme?

- Local policies where required/appropriate
- Master policy where allowed
  - alone or
  - local policy plus DIC/DIL
- Financial interest cover
Questions

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