Arranging Multi-National Liability Covers

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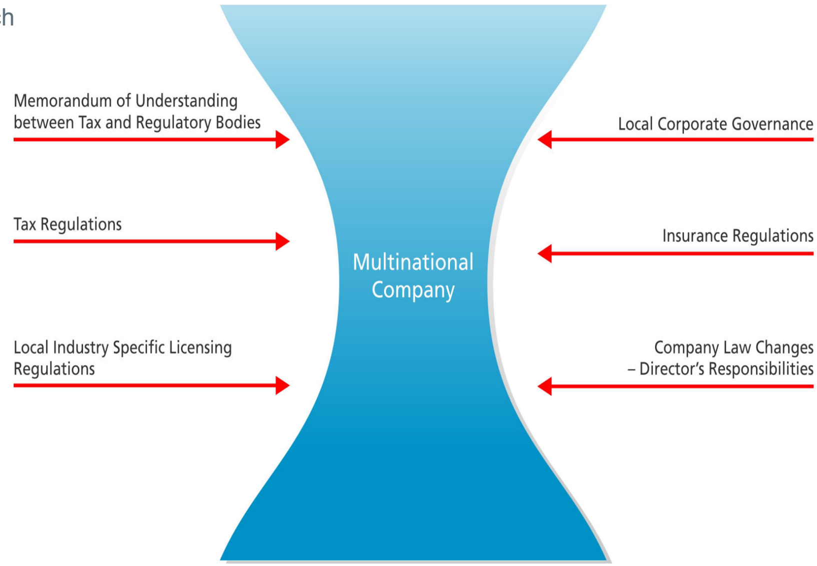
Overview

- 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

Potential Tax Paradox on Global Insurance Policies – An example

	P&L Overseas Subsidiary (Non-admitted not permitted)	P&L Ultimate EU Parent
Premium expense paid to insurer centrally – premium taxes may not be paid correctly		(1,000,000)
Premium recharged – may not be tax deductible at subsidiary level	(500,000)	500,000
Insurance Premium Tax – average rate of 11%	55,000	
Loss suffered by the overseas subsidiary	(10,000,000)	
Claims received from non-admitted insurer – may be treated as "Taxable Income" by the local tax authorities		10,000,000
Tax may be suffered by Ultimate Parent on Claims – avg. income tax rate 25%		(2,500,000)

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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

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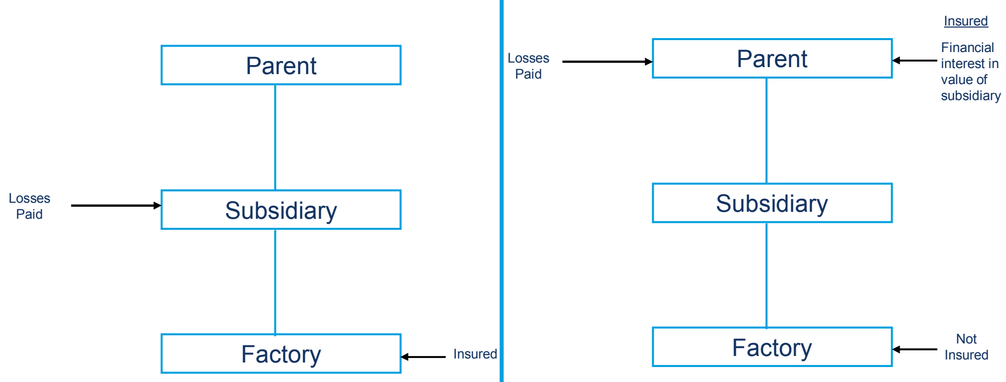
Financial Interest Cover

Traditional



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

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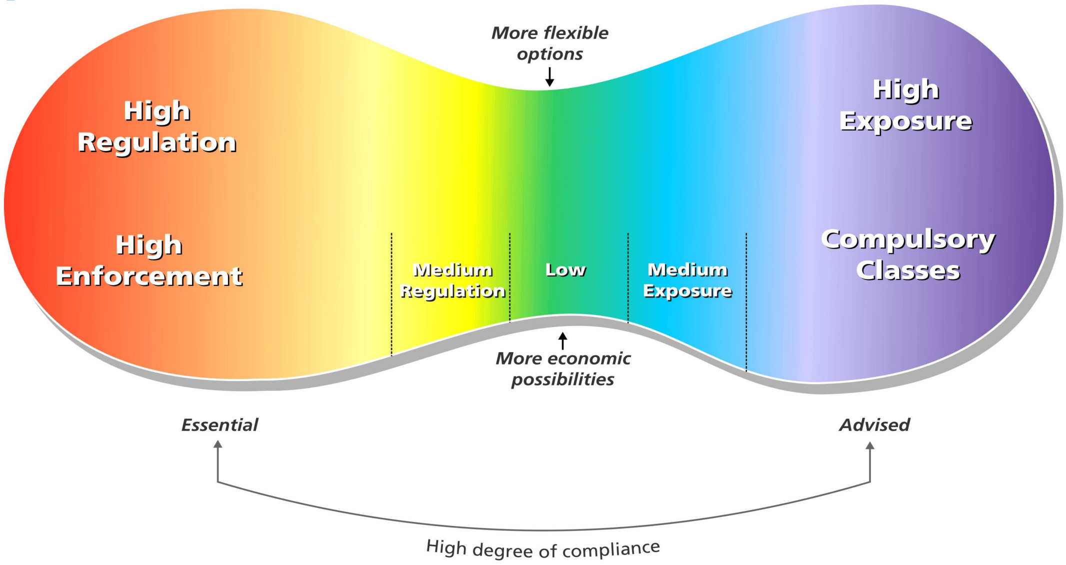
"The Compliance Continuum"



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Questions

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