AIG

Multinational Insurance

What Can Go Wrong When Something's Not Right

The fast-paced expansion of regulatory change and corresponding scrutiny worldwide make it increasingly challenging to manage multinational insurance programs. In Canada, companies are watching closely to see how the Organization for Economic Cooperation and Development's (OECD) protocol around Base Erosion and Profit Shifting (BEPS) reshapes parameters for how financial transactions will be scrutinized. The Canadian Revenue Agency (CRA) is also increasing its oversight of both corporate and individual taxpayers.

While regulatory landscapes continuously shift, the need for companies to carefully consider how they structure multinational insurance remains constant. There are many options — ensconcing coverage in multiple local policies, relying on a single global policy, or combining both in a global controlled master program. Some structures are drawing more regulatory attention than others. To avoid the regulatory microscope, it is increasingly important to ensure that multinational programs are compliant with all local requirements. Captives are especially vulnerable to scrutiny under the OECD's BEPS protocol as there is specific language directed at them.

This dynamic backdrop underscores the importance of a properly structured multinational insurance program and the potential repercussions if it, or a captive insurance program, is deemed non-complaint.

Caught in a Captive

Regulators are watching captives closely to ensure they are formed and operate for insurance purposes. Tax audits are likely to become more prevalent, as authorities seek to ensure that local premiums are commensurate with the local risk. Where they are deemed not to be, regulators may view the captive as a tax-evading vehicle. In this case, fines and penalties will be assessed and tax deductions could be inadmissible. Along with this financial exposure, allegations of captive misuse can create far-reaching reputational damage.

A multinational company that has a captive and also needs to issue policies in other countries for its affiliates, may be bound by local regulations in those countries. Accordingly, if the jurisdiction where the multinational affiliate operates requires locally licensed paper to be issued, the captive may likely fall afoul of local rules if it were to issue the policy directly itself. In short, a captive needs to prioritize regulatory compliance in the same manner as a traditional insurance company, recognizing that the regulatory landscape is ever-evolving.

If coverage is deemed non-complaint, the stakeholders may face substantial fines and penalties, as well as lasting business ramifications. Authorities in Switzerland recently voided a non-admitted professional indemnity policy that a local broker purchased from a foreign insurer, leaving the insured without coverage for claims. The broker was also banned from the federal register and prohibited from practicing in Switzerland.

An Argentinian insured and its broker were respectively fined eight and 15 times the policy premium, after purchasing a policy from an unlicensed foreign insurer. The illegally issued policy was also voided from inception, leaving the insured with no recourse for losses or claims.

The additional stakeholders, time zones and language barriers often result in delays in the implementation of a multinational program. If issuance of a policy or insurance certificate is simply delayed — whether by a captive or a traditional insurer — the insured could fall out of compliance with local regulations and contractual requirements. This is a common problem, especially in countries requiring cash before cover.

Such delays not only cost the insured vital financial protection; they can also halt major projects, such as engineering and construction work, in their tracks. Delays on property policies can put financing out of reach or render the policy non-compliant with the covenants in debt lending agreements. Contract certainty will be unattainable and claims services may cease until policies are in place.

In addition, all parties will have to go back to the drawing board for substantial re-work, potentially involving re-allocation of premiums and adjustments to program design, to get the derailed multinational program up and running properly.

Here again, there is the spectre of reputational damage. From the client's perspective, the consequences of non-compliance could (and should) have been avoided with the job done properly at the onset.

Contemplating Claims Payments

How and where claims are paid under a multinational insurance program require careful consideration. A carrier may be prohibited by local law, or refuse to handle a claim in country where it isn't licensed. As such, it's important to evaluate the insured's ability to manage a claim or loss in another country without a local policy. For example, will the insured be able to retain counsel, loss control experts or others to assist with claims adjustment, or arrange for immediate medical treatment, evacuation, local housing or accommodations in the wake of a loss? Additionally, is the insured well-enough capitalized to pay for losses without insurance proceeds or a capital infusion from the parent?

The insured may not be able to accept claim payment locally. This is particularly true in territories where non-admitted coverage is not permitted.

Companies may be surprised at what's uncovered when cross-border payments are questioned. Consider the Adidas example: the German-based multinational manufacturer suffered a fire at its warehouse in India, for which its Indian subsidiary received a $10 million claim payment under a local policy, while the parent received $20 million in Germany under the master policy. The Indian tax authority asserted that the claim payment to the parent was designed to evade local taxes and assessed taxes against the Indian subsidiary for claim payments in Germany and India.

Since policy forms evolve in step with the trends, claims and losses in their local markets, overseas forms may not respond adequately to a local loss. Without a local policy in place, you may be left without adequate coverage for a local loss. If particular terms and conditions are necessary to adequately protect local exposures, insureds should carefully evaluate whether those terms and conditions are only available under a local policy or if a global/overseas form will adequately address them as well.

Doing It Right

There is no single "right" way to design a multinational program — it depends on a company's individual needs, strategies and preferences. But all programs must be designed with full consideration of evolving regulatory realities, as well as exposure, claims, and proof of insurance requirements in particular jurisdictions.

A captive can fill a pivotal role, but should be set up and structured transparently, and fronted by a trusted insurer that can provide the checks and balances needed to show regulators it is fulfilling its intended purpose as an insurance provider.

Multinational insurance is unlike any other insurance; it's a discipline unto itself requiring a dedicated infrastructure, with specialized professionals, processes, and technology that connect globally and locally.

AIG is helping our clients implement multinational coverage that works as it should — as well as avoiding the consequences of non-compliance, at a time when regulators are watching more closely than ever.

Contact

Ryan Gustafson
1-416-596-3935
Ryan.Gustafson@aig.com

MI-A 09/18