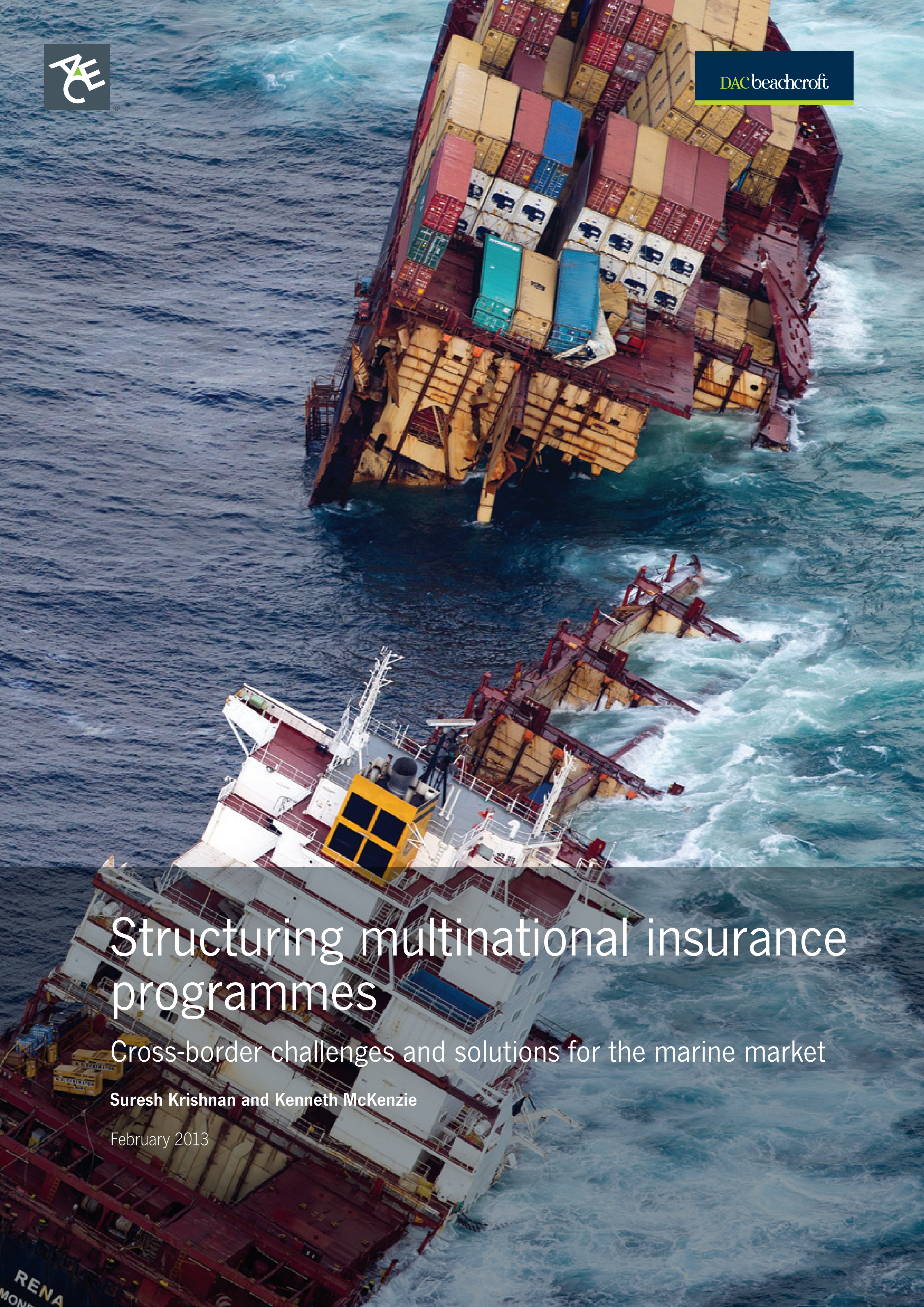

Structuring multinational insurance programmes

Cross-border challenges and solutions for the marine market

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Focus on marine

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From its very beginnings several centuries ago, marine and cargo insurance has always been highly international in nature. Moreover, as demonstrated by recent loss events as diverse as "DEEPWATER HORIZON", the 2012s "COSTA CONCORDIA" tragedy and New Zealand's worst ever maritime environmental disaster occasioned by the grounding and breaking up of the "RENA", the scale of marine risks has continued to grow.

The cargo market has not been immune, as evidenced by the notable market exposures reported in the Australian floods and Hurricane Sandy, as well as a significant cargo market loss in North Africa at the hands of the Arab Spring uprisings. As these risks have become increasingly complex, so demand for suitable insurance products has required a sophisticated and innovative approach from the insurance industry in response, especially where multinational clients are involved.

"Buyers, brokers and insurers should not be lulled into thinking that, just because compliance issues have traditionally had a lower profile in marine insurance, they do not need careful consideration in our increasingly globalised world."

This report is in two parts. Consistent with the rest of ACE's series of reports on how to structure a multinational insurance programme, the first part sets out the general principles which need to be considered when developing a multinational programme for any class of risk. The second part of the report looks at the specialised context of marine insurance, Contractors All Risk (CAR) and Erection All Risk (EAR), with their distinct characteristics, and examines the extent to which these principles apply. This report ends with a checklist of questions and issues that the marine insurance community as well as the property insurance community should be considering when designing and implementing a multinational programme insuring marine risks. Our conclusion is that while marine exemptions allow the insurance of marine risk to take place in a relatively benign environment from a compliance perspective, they are not a panacea. Buyers, brokers and insurers should not be lulled into thinking that, just because compliance issues have traditionally had a lower profile in marine insurance, they do not need careful consideration in our increasingly globalised world.

Part 1: Key principles and issues governing the structure of a multinational insurance programme

Introduction

Multinationals face different local laws and regulations in each of the jurisdictions in which they do business, across the entire range of their operations. Nevertheless, insureds want consistency of cover and certainty that the insurer will be able to pay the insured in the event of loss without tax or regulatory issues. Equally, the insurer wants to know that it will not be breaking any local requirements (including those relating to payment of insurance premium tax) by issuing cover to an insured in any given location.

On the face of it, the simplest solution would be for the multinational client to buy cover for all its locations from a single insurer licensed in each location, achieving a degree of consistency of cover while addressing local variables. However, with nearly two hundred countries worldwide, each with their own disparate laws governing the insurance of local risks, there is no globally available licence to underwrite insurance, nor is there likely to be in the future.

Where is the business of insurance conducted?

Multinational companies may find either that they are obliged to purchase insurance cover for local risks from a domestic insurer (at least unless the local market is unable or unwilling to take the risk) or a relatively small pool of foreign but locally licensed insurers[1].

A patchwork of local policies from local insurers is unlikely to be easily assembled into a consistent and comprehensive picture. There are relatively few multinational insurers with sufficient geographical reach to be able to offer meaningful and adequate cover so as to deliver a broadly consistent and still compliant result.

Because multinational insurance programmes have increasingly come to be centrally negotiated and arranged in the parent company's country of domicile, a somewhat inaccurate perception has gained currency that most countries prohibit "non-admitted" insurance[2]. In reality, almost all countries allow in principle the purchase of insurance from "non-admitted insurers" i.e. those not technically licensed to underwrite insurance business in the jurisdiction. The most restrictive countries, such as Argentina, China, India, Japan[3], Mexico, South Korea[4], Russia[5] and Switzerland require express government consent before local risk may be "exported" to an unlicensed insurer. Others may permit non-admitted cover, but only when accompanied by conditions or restrictions which may make such a purchase cumbersome or uneconomic for the insured. Examples of these are Brazil, Canada, and the United States.

While it is true that ocean marine generally enjoys more exempt status than other lines of insurance, the fact remains that locally issued and compliant policies responsive to local law and conditions are inherently unlikely to produce identical results even to those issued in their neighbouring jurisdictions.

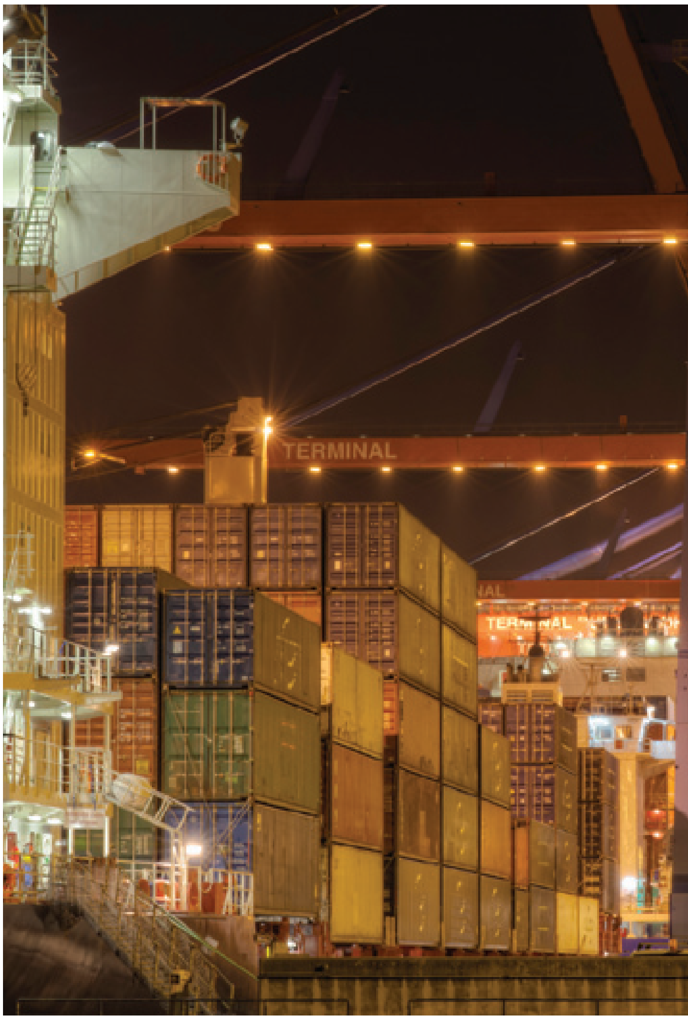
[1]For example, the Brazilian Insurance regulatory bodies, SUSEP and CNSP regulate the marine insurance market in Brazil. Insurance must be issued by a licensed company with an office in Brazil and registered with SUSEP. Although the local market provides customized cover, with limits and terms commensurate with the risks underwritten, common coverage grants include total loss plus assistance and salvage – general average, with the option for collision liability and particular average coverage.

[2]*See, Beyond Non-Admitted: A Closer Look at Trends Affecting Today's Multinational Insurance Programs; Structuring Multinational Insurance Programmes: Addressing the Current Challenges in Europe; Structuring Multinational Insurance Programmes: Current Challenges in Australia, New Zealand and the Asia-Pacific Region; and Structuring Multinational Insurance Programs: Current Challenges in Argentina, Brazil and Mexico at* http://www.acegroup.com/Media-Center/ACE-Perspectives/ACE-Perspectives.html.

[3]Japan does not permit an unlicensed insurer to conduct business without authorisation. While, in principle, the purchase of insurance from an overseas company is not permitted, there are some limited exceptions. These exceptions can be divided into the following two categories: (1) Prior permission: A customer who desires to purchase insurance overseas may apply to the Financial Services Agency ("FSA") for permission (i.e., such application is initiated by the customer). (2) Certain types of insurance policies: The general prohibition referred to above does not apply to reinsurance, ship-related insurance, aircraft-related insurance, aerospace-related insurance, international transportation insurance and overseas travel insurance. With respect to insurance policies that may be procured overseas (i.e. pursuant to the exceptions), such policies can be directly issued to the customer.

[41]South Korea does not permit an unlicensed insurer to conduct insurance. A licence is required and the product requires to be registered with the regulatory authorities. The exception is if a foreign insurance company sells a product that is not already sold in the market. Confirmation of this would be required from the Insurance Association.

[5]A resident of the Russian Federation may not purchase insurance from an overseas insurance company not licensed in accordance with the legislation. Clause 1 of the Article 6 of the Russian Federal law No. 4015-1 dd. 27.11.1992 "On the organisation of insurance business in the Russian Federation" states that the insurers must be legal entities which are registered and licensed on the territory of the Russian Federation and in accordance with the Russian law. Even a local broker, registered on the territory of the Russian Federation cannot provide a service connected with the conclusion of insurance contracts on the territory of the Russian Federation on behalf of foreign insurance companies. Local brokers can place insurance between foreign insurers and residents of the Russian Federation in respect of civil liability of owners of automobile transport if travelling abroad.



Model solutions

As a result, innovative insurers working with knowledgeable brokers have devised multinational models, usually featuring a master policy, conventionally bought by a multinational in its own home jurisdiction or from a leading insurance centre, which provides local cover and, where permitted, pays locally. This is combined with local policies in those countries where the master policy insurer:

- has no presence;
- is not licensed;
- as an unlicensed insurer may not be able to pay a claim without the claim payment being questioned by local regulators; or
- where there are adverse fiscal consequences to the local claimant, insured or local broker.

Due to differences in local policy language, availability of certain coverage grants or adequacy of local limits, it is customary to set the master, with "difference in conditions/difference in limits" (DIC/DIL) provision, above a combination of local policies or any self-insured retention. This DIC/DIL policy fills the gaps between the local cover and the master policy, both as to applicable limits and different aspects of cover dictated by the liabilities created by the local legal regime or the differing terms of the local policies.

Location….and insurable risk

For payment of a loss to be made directly to the insured subsidiary located where that loss occurs, the insurance needs to be compliant. If it is not, problems arise, ranging through inability to pay at all, confiscation of paid funds, or treatment of the payment as income subject to local tax fines and penalties.

Insurable interest

On the other hand, the insurer can only pay a loss under a policy to a party having an insurable and insured interest.

Many jurisdictions accept a parent company's insurable interest in its own financial stake in its affiliates. Under this approach, payment of a claim other than any part insured under a local policy is made to the parent under a policy issued to it, and compliant, in its country of domicile.

While there is general confidence in the effectiveness of insurable interest clauses in the US, UK and Europe, it is possible that a local regulator could challenge the authenticity of any re-capitalisation by a parent. In addition, parties considering doing business with a local subsidiary may wish to see evidence of its own compliant insurance cover.

Lessons learned

There are no perfect solutions. However, adopting a considered and holistic approach will help to address them as fully as possible. This should:

- understand and address the specific needs of the multinational and its subsidiaries;
- reflect the risk profile of the business in all its locations (including the extent to which they give rise to the sorts of issues outlined above);
- be engineered between the risk management function of the insured and an insurer capable of matching these requirements in full;
- where reliance is placed upon insurable interest provisions, ensure that the group legal, treasury and tax function fully understands the practicalities of how it is to work.

Part 2: Challenges and solutions when structuring a multinational programme for marine insurance

Introduction and an example

It is easy to understand that a German company, with a subsidiary based in Thailand whose factory is flooded, could run into a variety of the kinds of problems outlined in our introduction.

But what happens, for example, where the loss is to goods shipped by the Thai subsidiary to a purchaser in Australia and the goods suffer damage at some indeterminate point in a voyage which may include modes of transport other than purely carriage by sea?

Questions we need to ask include:

- What is the location of the loss?
- Where is the insured located?
- Who has an insurable interest?
- Where should payment of the loss be made and to whom?
- Against whom, and where, should rights of subrogation be pursued?

The evolution of marine insurance law and practice

Marine insurance already answers many of the questions facing contemporary global programmes, except perhaps that of compliance in today's rapidly evolving regulatory environment.

For example, in England, centuries of case law were codified into the Marine Insurance Act 1906, legislation that has been substantially replicated in common law jurisdictions around the world. An international law of the sea has also developed based around codes, conventions, arbitration models, contract forms, rules for establishment of the law and jurisdiction and recognition of principles of ownership and contract liability. Almost every jurisdiction in the world is a signatory to one or other of The Hague, Hague-Visby or Hamburg[6] Rules.

Carriage documentation, and in particular the combination of bills of lading and charter parties, has the role of representing both evidence of the terms of the contract of carriage and of title. Closely linked to this is the principle that the parties can agree at whose risk goods are to be shipped (i.e. the consignor (sender) or the consignee (receiver)) and therefore who procures the insurance. Title to the goods may change hands more than once during the voyage, with the result that the ownership of risk also changes and policy or recovery claims may arise between parties many stages removed from those who were parties to the original contract. International Commercial Terms ('Incoterms') – internationally recognised standard trade terms used in sales contracts – have been developed in response. In addition, legal practice has responded, for example by permitting claiming cargo interests to be identified as a class[7]. While these issues may have greater resonance in relation to arms-length buyer-seller transactions, they do not cease to be relevant in inter-multinational group transactions.

Marine cover today

As purchased from an insurer, typical marine cover today may include:

- loss or damage whilst loading on to and unloading from the carrying conveyance;
- control of the salvage or disposal of their own branded goods;
- buyers' and/or sellers' contingent interest (thus addressing certain areas of uncertainty as to insurable interest and covering off the alternatives);
- delayed discovery of concealed damage;
- increase in the value of goods due to the imposition of duty;
- full payment of general average or salvage charges;
- costs for the removal of debris.

In addition, specialist knowledge and cover is likely to be required for specific types of cargo such as:

- refrigerated or temperature sensitive cargo;
- pharmaceutical products;
- high value consumer and luxury goods;
- hi-tech equipment;
- large or heavy equipment requiring specialist handling;
- bulk commodities;
- petrochemicals.

[6]International Convention for the Unification of Certain Rules of Law relating to Bills of Lading ("Hague Rules"), and Protocol of Signature *(Brussels, 25 August 1924)*; The Hague-Visby Rules *(The Hague Rules as Amended by the Brussels Protocol 1968)*; United Nations Convention on the Carriage of Goods by Sea ("Hamburg Rules") *(Hamburg, 31 March 1978)*

[7]In litigation between cargo and the ship, the former interest may validly be described in the generic *"owners of cargo lately laden on board the vessel [ ]"*, a recognition of the practical difficulty of identifying who the owners actually are at the time the proceedings are issued.

The changing compliance environment

The forms of coverage that have been developed largely address issues of insurable interest so that they are often, but not necessarily always, compliant. With the advent of globally established insurers and the rise of domestic insurance industries, marine cover need not always be underwritten on a non-admitted basis.

While it once would have been accepted by local regulators that insurance of these specialist risks could only be bought in specialist markets, this type of unquestioning acceptance is diminishing as a small number of global insurers emerges and as regulators seek greater protection for their own local markets[8]. This is true in many regions, not least in developing insurance markets where local capability is becoming more sophisticated.

Compliance therefore remains a real issue for multinationals purchasing marine insurance. The recipient of goods in a jurisdiction which is highly restrictive to non-admitted insurers will need to ensure that either (a) in its contract documentation ownership and risk with respect to the goods does not pass until delivery or (b) its insurance is compliant for separate and multiple coverage grants. The following case study illustrates these issues and suggests possible solutions.

A case study: international sale of goods and marine cargo insurance

Scenario

A German manufacturer sells products to customers in Brazil, Singapore and Canada. The cargo is shipped to Rotterdam and then on to the various consignees. Transport is on land from the final port to the delivery destination where a factory is to be constructed incorporating the consigned goods.

> “While it once would have been accepted by local regulators that insurance of these specialist risks could only be bought in specialist markets, this type of unquestioning acceptance is diminishing as a small number of global insurers emerges and as regulators seek greater protection for their own local markets.”

Insurance

It is for the contracting parties to agree at what point title should pass and who arranges insurance cover. Sale of the goods could be ex-factory i.e. at buyer's risk, or on terms such as Cost Insurance and Freight (CIF); where the consignor includes in the purchase price carriage insurance upon which the consignee can claim on receipt of documents of title. Title to the cargo may change hands more than once during carriage and the policy has to allow for this. Hence, a marine policy is assignable unless it contains terms to the contrary[9].

It is intended that the buyer can proceed to receive settlement for loss or damage to the goods in transit as though it was the original assured (which, notionally, it is). From an insurer's point of view, this process means that cover is provided and claims are paid to parties in other countries. This raises the question whether the insurance is compliant in the country where the claim is to be paid and whether a single policy can be issued by a non-admitted insurer in the seller's local insurance market. When Construction All Risk (CAR) or Erection All Risk (EAR) Policy grants are combined with a marine policy, the issues about a single policy covering marine risks, construction risks and business interruption risks may pose challenges to payment expectations in the jurisdiction where the loss or claim has occurred.

Marine insurance issues to consider

In the scenario described above, no problems should arise for a German insurer in so far as the goods and the company with the insurable interest in those goods remain in Europe, since the EU "passport" system permits European insurers regulated in their home member state to conduct business across the EU[10].

However, the analysis may change once the insurable interest, and therefore the benefit of the policy, moves outside the EU. For example, the passage of title to the Brazilian purchaser, may (in the eyes of the Brazilian insurance regulator) amount to an illegal policy underwritten in contravention of laws which require a Brazilian domiciled company to place insurance in the local market. In particular, problems may arise if a loss is suffered and a claim needs to be paid locally in Brazil. The specific regulatory status of the marine policy very much depends

[8]**India:** http://online.wsj.com/article/SB10001424052748704050204576218132454647812.html
Brazil: http://riotimesonline.com/brazil-news/rio-business/brazil-targets-unregistered-financial-services/
New York: http://www.nypost.com/p/news/business/brokers_sin_of_commission_Ljk7D2Scc1R9RXAz7FSBnJ

[9]Marine Insurance Act 1906 (MIA) section 50. American Bonding & Trust Co. v. Baltimore & O.S.W.R. Co., 124 F. 866 (C.C.A. 6th Cir. 1903); Caribe Carriers, Ltd. v. C.E. Heath & Co., 784 F. Supp. 1119, 1992 A.M.C. 1382 (S.D. N.Y. 1992); Conoco, Inc. v. Republic Ins. Co., 819 F.2d 120, 1987 A.M.C. 2975 (5th Cir. 1987); Classic Concepts, Inc. v. Poland, 570 So. 2d 311, 15 (Fla. Dist. Ct. App. 4th Dist. 1990).

[10]Pursuant to the Third Non-Life Insurance Directive 92/40/EEC.

upon the contractual relationship between the consignor, consignee and any other parties contractually involved in the shipment as well as the broker and insurer in the placement of appropriate insurance.

Certain contractual arrangements, such as CIF for the entire transit, may pose fewer problems than others. If, however, a policy is issued which does not cover the entire transportation of goods, it may be necessary to purchase separate insurance cover for local inland transit[11]. On current indications, Brazil may allow assignment of cover purchased by a foreign consignor prior to transfer of title. Such cover may extend to any inland Brazilian leg of the transit, but caution may be advisable as, by this stage, the risk is located in Brazil, whereas previously it was not.

The position in Canada is less protectionist. First, the *Insurance Companies Act (ICA)*[12], permits foreign insurers to insure risks in Canada so long as that class of insurance is listed in the insurer's order to insure and the insurance company is otherwise compliant with the ICA and its regulations[13]. Second, a foreign insurer may insure outside Canada a risk (through its head office or a branch located outside Canada), regardless of the location of the risk. If the insured item passes into Canada the insurable interest rests with whomever has the benefit of the policy[14].

Accordingly, in the scenario described above a foreign insurance company insuring a cargo originating in Germany can cover risks arising in Canada, without being subject to the ICA. Conversely, under different facts, a German insurance company, through its Canadian branch, could insure risks in Canada in accordance with the ICA (and any applicable provincial or territorial requirements), if it is deemed to be carrying on "insurance business" in Canada.

The position in Singapore is even more permissive. The Monetary Authority of Singapore (MAS) has adopted a very flexible and business-friendly approach to marine insurance requirements, allowing parties maximum freedom to contract. There is no prohibition against non-admitted marine insurance, nor is there any requirement that policies covering local risk be governed by Singapore law[15].

Contractors All Risks (CAR) or Erection All Risks (EAR)

Our example assumes that the Brazilian cargo is for use in the construction of a factory. The question may arise whether a Marine Cargo cover can be combined with a Contractors All Risks (CAR) or Erection All Risks (EAR) cover or, as a Marine cargo policy, have a CAR/EAR extension. While such covers are relatively infrequently encountered at present they may become more common in the future. Delayed Start Up (DSU) cover for construction projects is increasingly common as an incidental cover extension to marine risks and may be a harbinger of more developments of this kind.

> "The specific regulatory status of the marine policy very much depends upon the contractual relationship between the consignor, consignee and any other parties contractually involved in the shipment as well as the broker and insurer in the placement of appropriate insurance."

[11]The Brazilian regulatory body, CNSP - Conselho Nacional de Seguros Privados (National Council of Private Insurance) and SUSEP - Superintendência de Seguros Privados (Private Insurance Superintendence), along with the Brazilian Civil Code prohibits insurance by non-licensed companies, which must comply with various requirements in order to operate in Brazil, including minimal equity capital, retention limits per risk, premium limits for intragroup operations and protective measures for the local market, mainly affecting reinsurance. However, CNSP and SUSEP do not prevent foreign companies purchasing insurance overseas for risks located abroad where the ultimate policy beneficiary might be a Brazilian company. Recently, under Resolution nº 21/2011 issued by Camex (the Brazilian Foreign Trade Chamber - "Câmara de Comércio Exterior"), the Brazilian Government indicated that the adoption of international market trade practices such as Incoterms including CIF in Brazilian imports and exports are expressly allowed. Usually in Brazil, an intermodal policy is issued in order to cover the entire period of transportation and there are provisions for inland, ocean marine and aerial carriage (CNSP resolution nº. 12/1988). However, if the whole journey is not covered, separate insurance cover for the inland transit must be issued locally. Local payment of claims may be subject to taxation, for instance when remittance is to a private bank (IOF - Tax on Credit Operations, Exchange and Insurance).

[12]Overseen by the Office of the Superintendent of Financial Institutions (OSFI).

[13]Office of the Superintendent of Financial Institutions Canada, Advisory Bulletin, 2007-01-R "Insurance in Canada of Risks" (May 2009); Insurance Companies Act, S.C. 1991, c. 47 s. 573. A foreign insurer, authorised under the ICA to insure in Canada risks, operates in Canada on a branch basis. When operating on a branch basis, the Canadian operation is not seen as a separate legal entity. Where a foreign insurance company has been granted an order by the Superintendent, virtually every aspect of its insurance business in Canada is subject to requirements such as record keeping and vesting of assets in trust in Canada, among other requirements as set out under Part XIII of the ICA.

[14]It is also relevant to note that in Canada, the federal and provincial/territorial governments share jurisdiction over foreign insurers. Thus, for example, while a foreign insurer may be considered not to be insuring in Canada a risk (according to the ICA), its activities may require a licence under one or more of the insurance statutes of the provinces or territories in Canada. As such, it is recommended that foreign insurers consult the relevant provincial or territorial statutes in addition to the ICA. See also Structuring Multinational Insurance Programs: Insights into Cross-Border Insurance Regulations In Canada at http://gps.acegroup.com/src/ace_focuson_canada-final2.pdf

[15]Singapore has a highly developed marine insurance market, with the capacity to underwrite very large marine risks in all major classes and even specialised lines such as full terrorism cover. In line with the MAS's stated aim for Singapore to become a re/insurance hub for the region, some 80% of marine risk underwritten in Singapore never actually enters the country. Under Singaporean law, many of the rules peculiar to insurance law such as insurable interest, remedies for non-disclosure, etc. have their genesis in English jurisprudence. With a few notable exceptions and except where modified by statute, Singaporean common law has developed along very similar lines to that of England. Accordingly, Singapore courts and arbitrators continue to cite English authorities extensively in marine insurance disputes.

CAR/EAR or project works material damage covers tend to exclude transits by sea and air but it is not unusual to include transit or storage within the jurisdiction i.e. inland transit. Where this is the case, CAR/EAR cover will still typically include a specific clause which provides that if a more specific marine cargo insurance policy has been arranged for the transit, loading or unloading of materials and equipment for incorporation in the project that is the policy that will respond. This type of clause has been adopted in some policies in the Brazilian market in accordance with the type of risk involved, consistent with the territorial limits provisions of the specific marine cargo policy.

While a number of countries where compliance enforcement is otherwise rigorous tend to accept incidental non-marine extensions within the marine exemptions, stricter scrutiny is likely to be applied to CAR/EAR cover. Purchasers may well need local cover rather than being able to include such cover in a broader end-to-end package. Several jurisdictions relax their compliance rules somewhat if verifiable attempts to purchase local cover have been unsuccessful[16].

An alternative approach might be to seek the CAR/EAR extension in conjunction with an insurable interest provision in the master policy that allows policy proceeds to be paid to the principal in its home country. However, the restrictive presumption in destinations such as Brazil and China (where, paradoxically, such cover is in especially high demand) may require separate cover as the default option.

In Canada, CAR/EAR cover may be procured and implemented outside of Canada – subject to any local requirements, such as that cover must be purchased in the local province for a government contract. Insureds and their brokers should carefully review the local law in the province where the property to be insured is located, when determining whether CAR/EAR cover can fall under marine insurance exemptions from requirements to purchase local insurance for local risks, or whether local policies are required to insure the construction risk.

Singapore, with its fairly liberal approach to unlicensed insurance, should permit CAR/EAR cover to be insured with an unlicensed insurer subject to local requirements requiring local insurance for government-sponsored projects[17].

Lessons learned

While marine insurance enjoys a substantial degree of exempt status from otherwise applicable compliance rules, the lack of convergence between international insurance markets and laws means that many issues must be reviewed on a country by country basis. This is particularly true where the cover shifts from “pure” marine to more complex bundling of incidental protections. Where a destination country, such as Brazil, requires local insurance, or where countries such as Canada impose significant conditions on the “exporting” of local risks to an unlicensed insurer, it may be necessary for cargo insurance and ancillary covers such as CAR or EAR to include locally issued policies to ensure seamless cover. A possible solution in such situations is to phase the cover in a series of consecutive local policies underlying a master policy, to protect segments of carriage where locally compliant cover is required. While the local covers could be purchased as each phase of carriage is completed and the next commences, it is more likely that the entire warehouse to warehouse transit will be placed at inception of the first stage.

[16]For example in Brazil, this test is satisfied when 10 refusals of cover can be evidenced. Circular SUSEP No. 392/2009 provides that, for contracts related to risks for which the insured has not been obtained coverage in the country, SUSEP may at any time require that the insured and/ or broker submits the following documents:

1. Copy of the consultations made to at least ten (10) insurance companies operating in Brazil in the business at hand;
2. Copies of documents issued by insurers mentioned in the previous item, with their negative for the insurance coverage, with the justification presented thereby;
3. A copy of the consultation made to the insurer abroad in the same conditions as those found in the consultation made to local insurers.

Therefore, the purchase of insurance abroad will only be compliant with local regulations if the insurance has been procured with at least ten (10) Brazilian insurance companies (or with the existing companies, in the event that less than 10 insurers offer this product in the local market) and the risk was declined by all of them. Taxes will be withheld on the remittance of premium abroad.

[17]There is no general restriction on a resident of Singapore purchasing insurance from an overseas insurance company not licensed in Singapore. However, an insurer cannot carry on any class of insurance business in Singapore as an insurer unless registered with the Monetary Authority of Singapore (MAS) in respect of that class of business (s. 3(1) of the Insurance Act (Cap. 142)). For the purposes of the *Insurance Act,* references to carrying on insurance business, or any class of insurance business in Singapore, means the receipt of proposals for, or issuing of, policies in Singapore or the collection or receipt in Singapore of premiums on insurance policies (s. 2(5) of the *Insurance Act).* The *Insurance Act* contains a general prohibition against a registered insurance broker negotiating any contract of insurance with an insurer (directly or indirectly) except with a registered insurer (s. 35ZE(1)). The general prohibition referred to above does not apply to reinsurance, business relating to risks outside Singapore or such other risks as may be prescribed (s. 35ZE(2)). The MAS may where is it satisfied that, by reason of the exceptional nature of the risk or other exceptional circumstances, it is not reasonably practicable to comply with section 35ZE, permit a registered insurance broker: to negotiate the contract of insurance with such insurer as the insurance broker sees fit; and if in the opinion of the MAS the case requires it, to effect the contract of insurance and receive premium in Singapore on behalf of such insurer.

Multinational marine checklist:

Applying these various principles to our scenario, we can begin to assemble a useful checklist of questions:

1 May one policy insure all risks?
This is unlikely. Admitted/non-admitted insurance issues are likely to arise. Given the tendency for increased protectionism in emergent economies whose international insurance markets are still relatively undeveloped, even where recent legislation has been passed which appears to facilitate a single global programme, results may be unpredictable.

2 Are there different considerations as between Ocean Marine v. Inland Marine?
Exemptions from compliance obligations may apply in some jurisdictions to ocean carriage but it is highly likely that inland transit, at destination, will raise compliance issues, potentially requiring local cover. Similar issues can arise with respect to storage extensions. Is the storage still incidental to the marine transit or has it in truth become a stand-alone domestic storage risk, requiring local policy cover.

3 Do any of the participants to title in the cargo need local policies or DIC/DIL policies?
Local policies may be needed and hence DIC/DIL may be appropriate to help achieve consistency.

4 What about ancillary insurance coverage grants such as CAR–EAR covers?
Although many of these ancillary covers are traditionally provided in one policy, consideration should be given to where claims are expected to be paid, and who are to be the beneficiaries of such payments. Property and casualty cover may have distinct payment routes compared with the business interruption or financial protection covers. One stream may have to be insured locally while the other may be included in the policy purchased by the principal.

5 To whom can the claim be paid?
Local payment of claims by an unlicensed insurer should only be made when the insurance complies with local laws. Consequently, such local payment of claims may also give rise to unanticipated tax issues. When carriage documents appropriately reflect transfers of title, the corresponding insurance may work effectively to mitigate unanticipated adverse fiscal implications.

6 Are reinsurance arrangements compliant?
As with direct insurance, the insurer will need to ensure that, where necessary, the reinsurance complies with local market regulations requiring reinsurance to be purchased from local markets.

Conclusion

When it comes to considering today's complex compliance questions in the context of marine insurance, with its long history and own unique cross-border considerations, some issues raised in the first part of this paper become less problematic while others become more so.

Although it may be possible to mitigate many compliance risks, the general compliance principles attaching to multinational insurance programmes apply equally where the class of business under consideration is marine. Insurers, brokers and clients ignore them at their peril.

Ultimately, insureds, their brokers and their insurance partners seeking to implement a compliant multinational insurance programme of marine insurance must first consider the same questions as they would when developing a multinational programme in any other class of insurance. The issues, as ever, remain complex and – as we have outlined elsewhere in this series of reports – the solutions are rarely easy. However, careful attention to right questions, combined with a focus on local requirements, consultation with subject-matter experts, and the need for appropriate documentation and supporting contractual arrangements, should result in a materially compliant multinational marine insurance programme.

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