



# Global Construction: International Opportunities, Local Risks

Building A Multinational Insurance Program for Contractors

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#### **William Hazelton**

In today's global marketplace, more construction companies are seeking growth opportunities in foreign countries. International projects may provide attractive alternatives, particularly when local markets slow down, and developing markets have experienced remarkable growth in infrastructure and building. China has been on a decades-long building spree, and Middle Eastern nations continue to invest in massive developments. Cross-border construction activity among developed countries, particularly European nations and Japan, remains robust. For construction companies that are considering or already involved in projects in foreign countries, however, it's important to remember that while the opportunities may be international, the risks are often local. That presents a number of challenges when it comes to assembling an insurance program that provides consistent coverage and services across national borders.

To illustrate the complexities of operating in various countries worldwide, consider the fact that contractors must deal with differing local regulations just within the United States. A project in New York City, for example, will be subject to a widely different set of rules than one in New Orleans. The same considerations apply internationally, particularly where it concerns risk management and insurance. Companies doing business in multiple countries face different laws and regulations in every country where they operate. Those differing laws present a number of complications for ensuring that there is adequate and compliant insurance coverage. Policies that don't comply with local regulations may not provide the company with coverage that is adequate in the local jurisdiction

or may lead to unexpected problems with taxes and fines. Beyond regulatory concerns, contractors working in new countries may want the confidence and convenience that comes with having access to reliable local services to handle any local issues or claims.

While it might seem that the ideal solution would be to purchase one policy to cover all risks everywhere, that's often neither possible nor practical. Construction companies should consider a mix of local policies in the individual countries combined with a global controlled master program in their home market to ensure that the insurance complies with local laws and that the program provides consistent coverage across all their operations and addresses gaps in conditions and limits.

#### **Global Growth, Growing Complexities**

Construction services represent a significant portion of global trade. World exports of construction rose 2% to \$115 billion in 2012, the World Trade Organization estimates, with the European Union and Asia representing the major share of that trade.<sup>1</sup>

Between 2005 and 2012, construction was one of the most dynamic services sectors, with an average annual growth of 11% in exports, despite a downturn during the financial crisis, according to the WTO.<sup>2</sup> The leading importers of construction represent both developed and emerging economies, including the EU, Angola, Japan, Russia, Korea, China, Saudi Arabia, the United States, Algeria and Kazakhstan. While international trade in construction has been growing, every country retains its own laws regarding insurance, which makes building a multinational insurance program more challenging.

U.S. contractors taking on projects in emerging markets face unique challenges. From a legal perspective, compliance for U.S. contractors operating outside the U.S. is much more complex than for their domestic organizations. Because they operate in different countries, multinational contractors must adhere to a myriad of local national laws and regulations in several countries with regard to the duty of care they owe to the general public and other third parties. They may need to deal with issues involving the extraterritorial scope of legislation and rules pertaining to jurisdiction and choice of law. While the U.S., Canada, Western Europe, Australia and most of the rest of the developed world have established employer duty-of-care legislation, the majority of the countries where these new global projects are available have not enacted such legislation.

While some emerging markets may not have articulated or enforced employer duty-of-care legislation; employers may still face liability. Expatriates, business travelers to and from these countries, and third-country organizations who might claim negligence against U.S. contractors may seek compensation based on the higher duty of care required by U.S. law rather than that of the country where an incident occurs. It is possible that U.S. firms may be held liable to the highest duty-of-care levels in their home or the host countries. A contractor's insurance program should be flexible enough to handle claims in several different jurisdictions and provide adequate coverage for awards granted in emerging as well as developed legal jurisdictions.

A contractor that relies solely on an insurance policy issued in its home market to cover all of its international exposures may find that it doesn't have the coverage it thought it had when a claim arises in a foreign country, or when



it finds that its insurer can't pay a claim in that foreign country because it is not locally licensed. For the payment of a loss to be made directly to an insured subsidiary in a given country, the insurer needs to be acceptable under local law. Besides the inability to pay a claim, insurance companies and their insureds may risk confiscation of paid funds or treatment of the payment as income subject to local tax, fines and penalties.

In addition, some countries are applying greater scrutiny to foreign insurance coverage, with an eye towards both ensuring compliance and increasing tax revenues. In the event that they are determined to have improperly purchased insurance, companies can face legal action, fines and damage to their reputation. For instance, tax authorities in India recommended that the Indian subsidiary of a German multinational manufacturer be taxed on a \$20 million claim paid outside of India to the parent company to compensate for damage to a warehouse in India.<sup>3</sup> Contractors should also consider the risk of being excluded from projects because of their failure to purchase policies providing compulsory coverage from local, admitted carriers where required.

### **Continuity of Coverage Across Borders**

For companies building or considering projects in foreign countries, a proactive risk management strategy should not only address the wide range of exposures typical in a given construction project, but also the impact that the differing local laws and regulations may have on the insurance coverage. A contractor performing work abroad may have to obtain local insurance policies for various lines of business to cover the risks associated with its operations and to be compliant with local insurance requirements. Companies also have to recognize that there may be significant differences in coverage between seemingly similar policies issued by different insurers in various countries. A contractor who has a general liability policy issued locally by a U.S. insurer and another issued by a local insurer for a project overseas may find that there are significant coverage gaps in the two policy forms.

As they seek to address local issues, however, corporate risk managers also want to ensure that their insurance programs provide a consistent level of coverage at a competitive price across all their operations and territories. From a

risk management perspective, while it might seem that an ideal solution would be for the contractor to arrange coverage in its home country to cover all of its operations wherever they are located around the world with the same terms, conditions and limits, varying national insurance laws make that approach problematic. Some countries do not allow a foreign insurer not licensed in that nation to provide insurance for a foreign company doing business there. Other nations may allow such “nonadmitted” insurance, but in practice make it highly difficult to use or to place. It’s worth noting that the United States, with different regulations in each of the 50 states, can be one of the most complicated countries for non-admitted insurance.

Buying insurance coverage for local risks in different countries may leave the contractor with significant differences in coverage and limits from country to country. Those differences may be bridged with a global master program that provides flexibility as well as consistency and continuity of coverage around the world. Such a program combines non-admitted coverage where possible with local insurance that is admitted, or licensed, in the countries that require it along with difference in conditions (DIC) and difference in limits (DIL) coverage.

### **Building Multinational Solutions**

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A multi-national program that uses “non-admitted” coverage can present a cost-effective alternative to local coverage. Such nonadmitted coverage is usually arranged in the parent company’s home country to insure exposures in other countries. Some countries, however, do not permit non-admitted coverage, while others may allow it subject to conditions such as prior approval. For instance, Brazil, Russia, India, China, Mexico, Japan

and Switzerland impose strict conditions on who they will license and permit to operate within their borders; they also prohibit the purchase of coverage for local risks from non-admitted insurers. In restrictive countries such as these, the use of non-admitted policies raises the chances that a policy may be treated as void, claims payments may be confiscated, or that significant penalties may be levied against the claimant.

In Brazil, insurance must be issued by a licensed company with an office in Brazil and registered with the insurance regulators.<sup>4</sup> Japan does not permit an unlicensed insurer to conduct business without authorization. In South Korea, an unlicensed insurer may not conduct business except in cases where a foreign insurer sells a product that is not already sold in the market. In Russia, even a local broker cannot provide a service connected with the conclusion of insurance contracts on national territory on behalf of a foreign insurance company. Argentina has historically prohibited non-admitted insurance and potential penalties may be up to 25 times premium.<sup>5</sup>

In addition, regulators in countries around the world are taking a closer look at the local operations of multinational companies. These local regulators are concerned not only with whether insurers are working without a license but also how local brokers or insurance buyers are insuring local risks and whether the local operations benefit from the policy. National insurance regulators also have been entering into agreements with their counterparts in other countries to help with cross-border enforcement of local laws.

Contractors doing business in multiple countries should be aware that their global insurance programs may be subject to compliance challenges in some

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countries and that their compliance risk is that they could face taxes, fines and reputational damage. In the past the threshold question was whether non-admitted insurance could be used, but today companies should also consider potential changes in enforcement practices as well as evolving regulations.

### **Local Services Can Be Crucial**

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Besides compliance issues, companies should address issues such as how local claims will be handled and paid, and which other local services they may need in the event of a claim or incident. In Italy, for instance, claims have to be handled locally. For a project in Brazil, premium taxes have to be collected and paid locally. In Mexico, surety bonds will have to be issued by a locally admitted company. Companies building projects in the European Union may want to purchase environmental coverage that responds to the demands of the European Environmental Liability Directive in order to provide proper insurance protection for potential liability associated with damage to the environment or natural resources.

Because foreign projects necessitate travel, contractors also have to think about how they will protect their own personnel when they are working or traveling abroad. Companies should consider coverage and assistance for medical and political emergencies, including evacuation and relocation, as well as coverage for kidnapping and extortion. Because plans and local situations can change rapidly, services such as web-based travel management support that includes updates on security and health alerts may be a valuable addition. When it comes to coverage for foreign emergencies, potential complications include whether a policy issued in the home country

can directly pay medical expenses for a covered employee to a hospital in a foreign country that prohibits non-admitted insurance.

On a broader level, catastrophe planning should be part of a global risk management strategy. To deal with a catastrophe, companies may want coverage for crisis management services that includes public relations and media outreach to help protect their reputations in the event of an incident. Expert consulting advice on environmental, health and safety needs for foreign projects should also be considered. Training services that help to overcome language barriers may be a valuable addition to a local safety program to help ensure that a foreign project conforms to company-wide safety standards and procedures.<sup>6</sup>

### **Public–Private Partnerships May Bring New Risks**

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Another consideration for contractors revolves around how the project is structured. Typically in the United States, construction projects have been driven either by the owners or the contractors and the insurance coverage reflected that through an owner- or contractor-controlled insurance program (OCIP/CCIP). Today, more U.S. projects are being structured as public-private partnerships through which public projects such as roads, bridges, or even hospitals and schools are financed with private equity. The investors are then paid back over a term of years with revenues from the project.

Because the structure is more common in Europe, U.S. contractors considering projects abroad may be encountering it for the first time. Such partnerships, however, are gaining popularity in the

United States as individual states and municipalities may see it as an attractive alternative to paying for the project through tax revenue or government-issued bonds. For contractors, public-private partnerships raise questions about how risks and liabilities are apportioned among the parties. In such a partnership, contractors may find themselves sharing responsibility for risks that are not typically part of a standard project or with increased exposures for professional liability.

### **Merger And Acquisitions Impact Insurance Programs**

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With the growth of the global construction economy, and the growing need for the development or improvement of infrastructure in emerging economies, contractors are taking on more projects in new jurisdictions. This increasingly multinational approach has led to consolidation and merger-and-acquisition activity in the construction marketplace. As U.S. contractors perform more work overseas, they are forming new partnerships and new companies in order to execute construction activity more efficiently in local markets. At the same time, foreign contractors seeking opportunities in the United States may look to acquire U.S. companies as well.

As this trend continues, companies also need to consolidate their insurance programs to achieve better efficiency by individual lines of business and to meet insurance requirements in different countries.

### **Local Risks, Global Solution**

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For contractors working in more than one country, maintaining consistent

insurance coverage across borders while controlling costs presents a number of challenges. Laws vary significantly from country to country as do the local insurance markets. A program that combines local policies in the countries where that is required with a controlled master policy in the home market may offer the best solution. This approach helps to ensure that the appropriate coverage is there when a claim arises and that the local policy is in compliance with the country's regulations. With a controlled master policy and admitted insurance from local carriers, contractors potentially gain greater insight into their claims trends and an increased ability to identify locations experiencing significant losses. With this information, contractors will be in a better position to take corrective action and reduce losses.

It isn't just the varying insurance regulations and markets that should be addressed. When setting up a global controlled master program, contractors should evaluate the insurance carrier, its experience and presence in foreign markets and its relationships with local insurers around the world. The carrier should offer local expertise in international legal structures, regulations and customs. It should provide global servicing for local policy issuance, premium collection and claims handling; be able to provide local claims handling and management services where needed; and offer the capability to manage and track all of a company's global insurance programs. Contractors will want to work with a carrier that has deep experience in the construction industry domestically and internationally. The mix of global competencies with local and industry expertise is just as crucial in a carrier as it is in the insurance program itself.

In the worldwide construction market, it often makes sense for contractors to

take advantage of opportunities in new countries. While evaluating the risks and potential rewards of such projects, contractors should be careful to make sure that their insurance program provides the coverage, services and flexibility they need, both locally and globally, and that their carrier offers the right combination of expertise and breadth. When it comes to international construction projects, the right insurance coverage can play a crucial role in long-term success.



#### About the Author:

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**William Hazelton** is Executive Vice President in Chubb's Environmental Risk Division and Construction Industry Practice. Based in New York City, Mr. Hazelton has responsibility for the development, underwriting, and delivery of environmental risk solutions for brokers and their clients, from small or mid-size to large multinationals. In this capacity, Mr. Hazelton manages a national team of environmental underwriting specialists deployed throughout the U.S. In December 2012, Mr. Hazelton was announced as the Construction Industry Practice Leader. In this role, Mr. Hazelton is responsible for driving the overall strategic and tactical delivery of the company's products and services within the Construction Industry Practice. Mr. Hazelton has more than 20 years of underwriting and claims experience.



As contractors evaluate the risks associated with international projects, here are some key issues that should be addressed in structuring a robust and compliant insurance program.

#### Checklist for Contractors

##### **What are the options for international insurance coverage?**

Generally, there are three approaches: one policy to cover the parent company and all its interests worldwide; stand-alone policies in each country; and a single global master policy issued to the parent combined with local policies in each country.

##### **Can one policy cover all risks?**

It's possible, but it's important to consider if this approach this will comply with local regulations, if claims can be paid locally and if it will provide desired local services.

##### **What are the advantages of admitted and non-admitted insurance?**

Non-admitted insurance may offer cost savings, while locally admitted policies may better address local regulatory concerns and provide more comprehensive local services. It's crucial to weigh the issues that are specific to each country and to balance them with corporate risk management goals.

##### **Can non-admitted insurance be used in that location?**

Non-admitted coverage can often be used, but there are varying regulations and issues that should be considered. Besides regulatory issues, contractors should consider practical concerns, such as how claims will be paid and how the policy will be serviced. If these concerns raise issues, a contractor may want to consider a locally admitted policy instead.

##### **Will locally administered claims adjustment be required?**

If the claim needs to be paid locally, then it may be necessary to have a local insurer with local claims adjusters.

##### **To whom can claims be paid?**

Contractors need to consider whether the claims can be paid to their local affiliate or only to the parent. Certain countries may not allow foreign insurers to pay claims to the local affiliate. Where claims need to be paid locally, then the insurance will have to be compliant with local regulations.

##### **Who will collect and pay local taxes?**

If the jurisdiction requires that taxes be paid on premiums or claims, the contractor should be clear on who will collect and pay the taxes. For local policies, claims collections and tax remittances, will be handled in the local country. If a single policy solution is put in place, the local taxes may have to be paid by the local broker or the local insured, depending on how the premium costs are allocated between the parent company and its local unit.

##### **Are there differences in coverages and limits?**

Contractors should not assume that similar policies issued in different countries will provide the same terms, conditions and limits. By pairing local coverage with a global master program that includes DIC/DIL coverage, contractors can avoid gaps in coverage and ensure continuity across national borders.

## Endnotes:

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1. International Trade Statistics 2103,” World Trade Organization, p. 162 See: [http://www.wto.org/english/res\\_e/statis\\_e/its2013\\_e/its2013\\_e.pdf](http://www.wto.org/english/res_e/statis_e/its2013_e/its2013_e.pdf)
2. International Trade Statistics 2103,” World Trade Organization, p. 140
3. “India to tax Adidas insurance claim,” Wall Street Journal, March 23, 2011. See: <http://online.wsj.com/news/articles/SB10001424052748704050204576218132454647812?mg=reno64-wsj>
4. Structuring Multinational Insurance Programs; Cross-Border Challenges and Solutions for the Marine Market,” ACE Group, Suresh Krishnan and Kenneth McKenzie
5. Structuring Multinational Insurance Programs: Cross-border challenges to Business Travel & Personal Accident Insurance,” Ace Group, Suresh Krishnan, Sheena Shah, Ronald Williams
6. “White Paper on Public-Private Partnerships,” The Associated General Contractors of America, See: <http://www.agc.org/galleries/advy/PPP%20White%20Paper%20Final%202.pdf>





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