A new direction for directors and officers coverage

Changes in attitudes, lawsuits, statutes worldwide force global companies to buy locally-admitted D&O

By Kathleen Ellis

A company that acquires a new property in a foreign country will usually review its property and casualty insurance to be sure it is in compliance with local laws. Until recently, however, directors and officers liability insurance has not been a part of this assessment.

The standard approach to this line has been for the U.S. parent company to buy insurance in the United States that provides protection worldwide. Underwriters anticipated the global risks of the company, regardless of where the operations were located. And because instances of lawsuits brought against a U.S. company's foreign subsidiaries and their directors or officers were relatively rare, no additional insurance was really needed. But that is beginning to change.

With recent changes in local statutes, as well as suits against directors and officers in countries such as Brazil, China, the United Kingdom and Canada, U.S.-issued contracts may no longer be comprehensive enough to address all of the exposures. To cover these emerging exposures, companies may need to consider purchasing a locally admitted D&O policy in addition to their master policy.

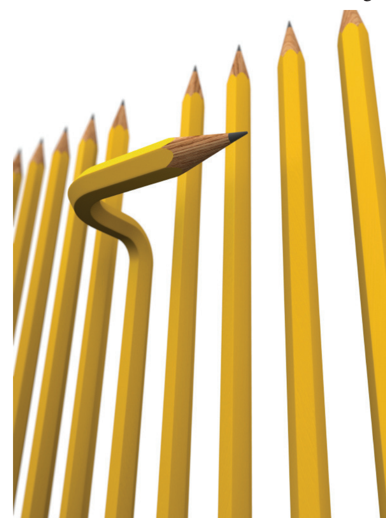
Many countries have admitted requirements for D&O, but until recently, these laws often were interpreted to apply to property and casualty risks only. Even though they may not be compelled by law to buy locally admitted D&O insurance, many companies may find that the global solution they've purchased for years is no longer satisfactory.

The evolving risk

For years, D&O liability was considered a problem primarily for companies based in the United States, where plaintiffs' attorneys are notorious for filing class-action lawsuits. But as more countries begin to adopt U.S. attitudes about litigation, the risk of a lawsuit against a foreign subsidiary and its directors and officers can no longer be discounted.

Changes to local laws, along with an increased awareness of corporate compliance and premium tax issues, are increasing the risk level for companies with operations in foreign countries.

Regulators — not just in the United States, but internationally as well — are showing an increasing interest in issues such as corporate transparency, accountability and compliance. This translates into higher expectations and standards for subsidiaries of corporations around the world and the need to comply with local requirements and laws in all ways.



The consequences of a local lawsuit could have serious repercussions for a U.S. parent company as well as its subsidiary. Lawsuits can be long and expensive and can generate significant negative publicity, putting the company's brand and reputation in jeopardy.

Meanwhile, under certain circumstances, senior executives can be jailed and personal assets can be confiscated.

Local D&O policies provide another layer of protection for foreign subsidiaries and their directors and officers. Without locally admitted insurance, these individuals could face the costs of a lawsuit and risk losing their personal assets.

When it comes to claims, countries such as Brazil require a local policy if the local subsidiary expects to protect and receive restoration for D&O suits brought in that country. Other countries require admitted insurance in the event of a claim as well.

There are other strong, practical reasons to have a locally admitted D&O policy, such as currency valuation and tax liabilities in the event of a claim.

For instance, under a standard contract, claims by a U.S. parent company would likely be paid in U.S. dollars, but defense costs often have to be paid by the subsidiary in the local currency. In that case, the U.S. parent company would incur a significant tax liability if it attempted to transfer money to the foreign subsidiary to pay legal fees or other fines or settlements. Conversely, a locally admitted policy would pay claims in the local currency.

Agents and brokers can help

Brokers and agents can play a key role in making sure that their corporate clients have the proper D&O insurance protection.

To start, they should begin by asking their clients about their international operations and future plans. Do they have operations in foreign countries and if so, which ones? Are they planning to expand into other foreign countries? Aside from these basic risk-assessment questions, there are additional items to consider.

Is the client exposed to public scrutiny because of its operations? Is admitted insurance for D&O required? Do laws prohibit claims to be settled outside of the country? Is the client publicly traded in the country? Does the client have bonds, notes, bills or securities in that country? Are there a large number of shareholders in that country? Is this country one with a developed economy?

If a local D&O policy is needed, agents and brokers will need to identify and work with an insurer to provide a global solution.

The program's success will depend on that carrier's ability to execute the local policies in the local language, while also coordinating the insurance program for the parent. It is important to seek out a policy from an insurer with an international presence or an insurer that can provide local protection through an affiliate.

Even though it is possible for businesses to set up operations in a foreign country without a locally admitted D&O policy, the standard U.S.-issued contract often cannot provide truly global protection. Without a local policy, businesses are at risk and may have little or no protection to help them pay for a loss. IJ

Kathleen S. Ellis is a senior vice president of Chubb & Son, and manager of Multinational Risk Group - Global Accounts.