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IBA Insurance Conference 2023

Legal frictions and solutions in international programmes

19 April 2023

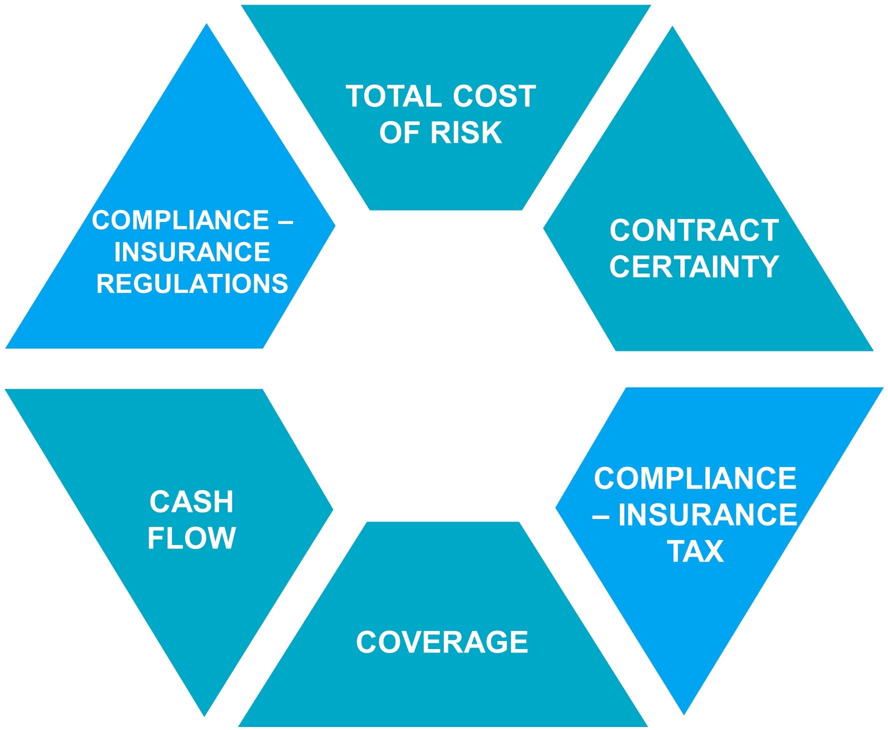
A business of Marsh McLennan

Agenda

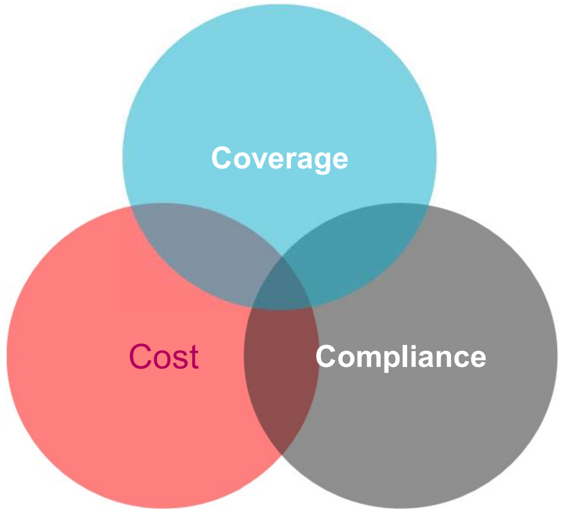
- Multinational Companies Needs and Expectations
- Misconceptions and Pitfalls
- Typical Global Programme Structure
- Regulatory and Tax Issues
- Fireside Discussion
- Q&A

Important Issues for Multinational Companies

The C6 Conundrum



The C3 Concept



GOAL: maximise the overlap of these competing factors

Global Insurance Programmes

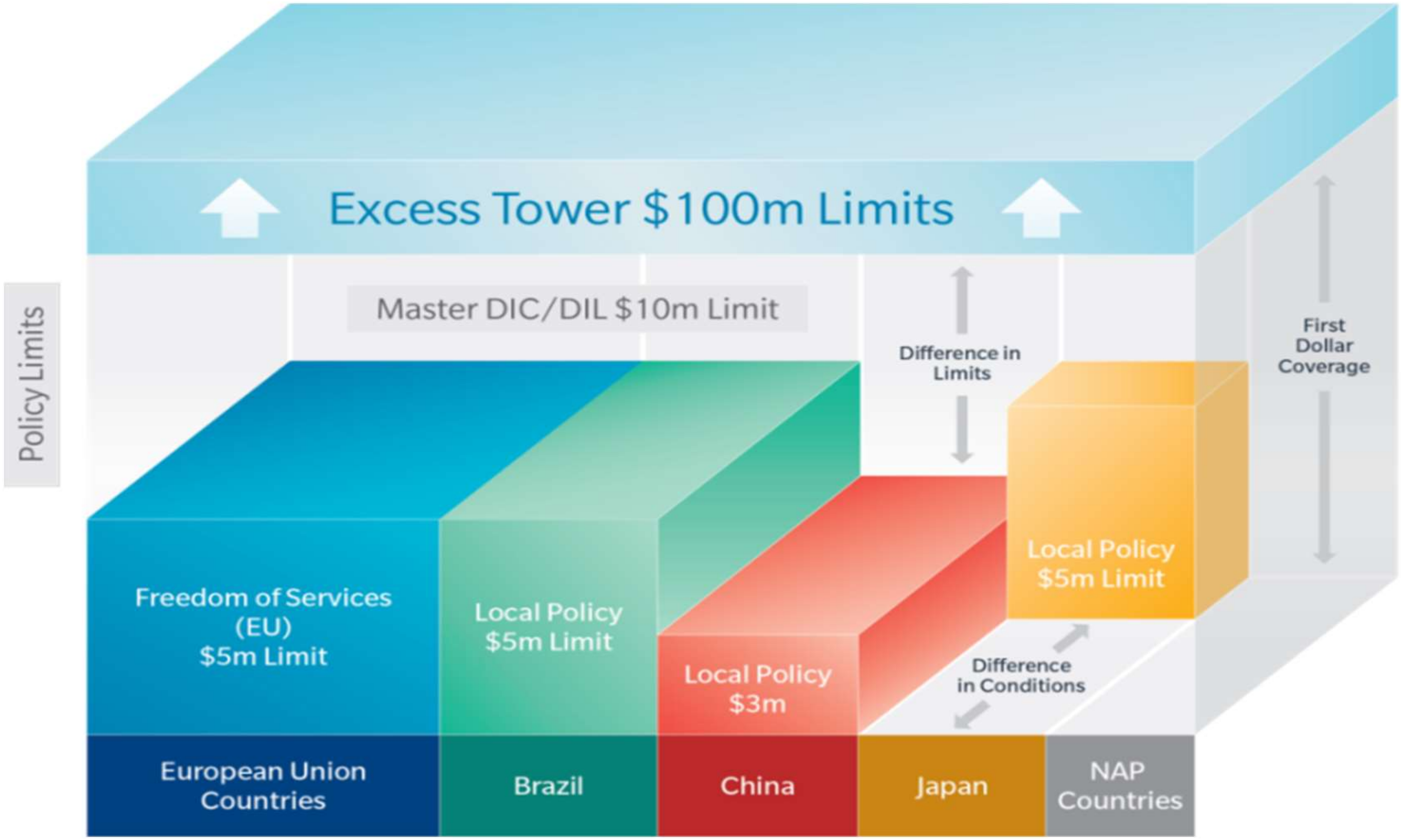
Certain misconceptions cleared

- If there is a local policy – the whole global programme is compliant.
- Global insurer is able to pay claims in every country.
- The insurer is always right as regards regulations and taxes.
- The broker or insurer is responsible for the remittance of premium taxes.
- Premium allocation is the responsibility of the insurer or the broker.
- Central payment of local policy premiums is much easier.
- Master and excess policy premiums can be recharged to all insured entities.
- Insurer/broker can invoice the insured entities for master/excess policy premiums.
- The Financial Interest Cover clause is confusing and untested.

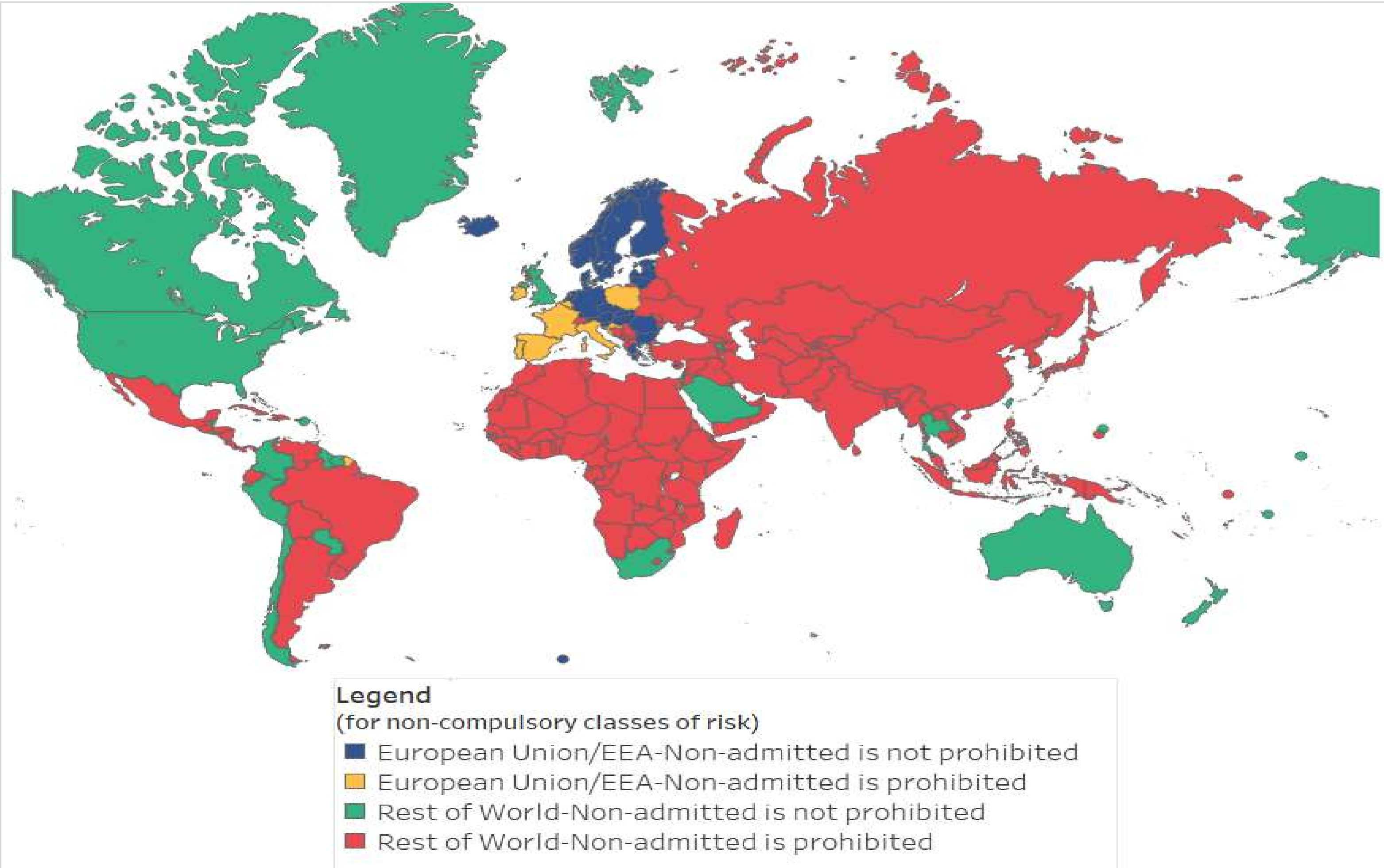
Pitfalls for Multinational Companies – "unbudgeted surprises"

1. Insurance terms (cover and limits) of local policies inadequate
    - Gaps in coverage: leading to company paying claims out of its own resources
2. No Director's & Officer's insurance policy in overseas countries
    - Unable to receive funding for defence costs and payments to third parties
3. Premium payment: Central vs Local
    - Adverse cash flow and foreign exchange, Transfer Pricing issues on cross border transactions
4. Premiums not allocated/recharged to insured entities of multinational group
    - Tax deductibility of expense foregone
5. Premium tax audits by tax authorities – Insurer and multinational group
    - Unpaid premium taxes plus interest plus penalties
6. Receipt of claim monies by parent company of multinational group
    - Corporate income tax cost, double taxation risk, corporate finance anomaly
7. Evidence of insurance to third parties
    - No local policy & the insurer not licenced, contractual terms not fulfilled
8. Insurer not willing/able to pay claims to the insured or to the third party
    - Leading to claims being unpaid or the company funding the loss out of its own resources

Typical Global Insurance Programme



Insurance Regulations Diverse and Inconsistent



Shifting Taxation Landscape

- **Technical developments**
  - Kvaerner (2001) and A Ltd (2019) European Courts of Justice precedent: “Location of Risk”
  - OECD Base Erosion and Profit Shifting (“BEPS”): impact on captive insurance companies
- **Tax authorities want their “pound of flesh”**
  - Increasing number of insurance premium tax (IPT) audits being conducted – EU (Germany and Belgium in particular), US, Canada, Switzerland, Australian New Zealand
  - German tax rules changed from 1 January 2021 – potential for double taxation
  - UK tax authorities looking to bring in new regulations for payment of IPT on premiums paid to non-EU insurers
- **Tax rates and payment responsibilities**
  - Whilst income tax rates reducing, premium tax rates are increasing (or new rates being introduced)
  - In the UK and EU, the insurer must allocate premiums, collect and pay IPT thereon
- **South Africa, Chile, Peru, Australia, New Zealand, US, and Canada**
  - Premium related taxes payable by **INSURED** directly to tax authorities on non-admitted insurance premiums paid to foreign insurers
- **Income/corporate tax implications**
  - Premium deductibility may be denied in certain territories.
  - Claims from insurers may be taxed – twice!

Increasing Premium Tax Landscape

Premium Tax Rates	2008	2023
Netherlands	7.5%	21%
Finland	22%	24%
Greece	10%	15%
Hungary	-	10%
India	12.36%	18%
Mexico	15%	16%
Ireland	2%	7%
South Africa	14%	15%
United Kingdom	5%/17.5%	12%/20%
Slovakia	-	8%
Gulf Cooperation Council	-	5%
Saudi Arabia	-	15%
Spain	6%	8%
Singapore	7%	8%
Yukon	2%/3%	4%

Manage Unbudgeted Surprises

Five Step Process

	Points for Consideration
1	Understand your internal business model to ensure that the insurance programme is “fit for purpose
2	Identify various risk retention and risk transfer options *Cost/Benefit of each option including claim payment protocols under various scenarios*
3	Ensure that there is consistency in wording between local and master insurance policies
4	Premium Allocation Methodology – “just and reasonable, robust and defensible” and well documented
5	Identify all premium tax obligations in respect of all policies – local, master and excess layers

Let’s Discuss

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Q&A

Praveen Sharma, Managing Director

Global Leader – Insurance Regulatory & Tax Consulting Practice, Marsh Multinational

Mobile: +44 (0) 798 357 8035

Email: praveen.sharma@marsh.com

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