ACE GPS℠

Responses to Ten Frequently Asked Questions on Compliance and Policy Language for Multinational Programmes

1. There has been a lot of talk recently about non-admitted insurance. What is it?

- Non-admitted insurance is insurance of a risk located in a jurisdiction where the insurer is not licensed or authorized.
- To protect residents from unfair insurance practices and guard against insurer insolvencies, regulators generally require insurers assuming risks in their jurisdictions to be licensed or authorized so that they can protect the interests of their residents and constituents.

2. Is a master policy providing DIC/DIL cover considered non-admitted insurance if a local policy is in place?

- It depends on whether an insured domiciled in the local jurisdiction can claim cover under the master policy. If the answer is yes, non-admitted insurance of the local insured has been provided regardless of whether additional protection is provided by a locally licensed carrier.
- A locally admitted policy doesn't convert the master policy to admitted insurance.

3. Is all non-admitted insurance unlawful or prohibited?

- No, not all non-admitted insurance is unlawful or prohibited. Local views on non-admitted insurance vary greatly.
- Countries such as the US, Canada, Australia, Singapore and Chile permit local residents to buy insurance from any insurer they choose, even if the insurer is not locally licensed, provided regulations pertaining to the purchase and sale of non-admitted insurance are followed.
- Other countries, like Brazil, Russia, India and China, take a different view and expressly prohibit residents from purchasing insurance from a non-admitted

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insurer regardless of who initiates the purchase or where the parties do their business.

- In many countries, the laws are less clear on the subject.

4. So why is non-admitted insurance a topic of discussion now?

- As the global economy expands, the scope of insured risks is expanding into regions that were not within the scope of past insurance coverage, subjecting purchasers, sellers and brokers of multinational insurance to the complexity of complying with the laws of more and more countries.
- Lawmakers are increasingly regulating previously unregulated or loosely regulated activities. Many of the countries where insurance is required today were not part of yesterday's programmes and the laws of such countries were less sophisticated or were non-existent, or the regulators simply took a different view of foreign insurance purchases.
- Complying with local insurance regulations and laws is of increasing importance for multinational businesses, and a vital part of their internal governance, as well as for their auditors, their insurance brokers and their insurers.

5. Can you provide some specific examples?

- In 2001, the European Court of Justice's 2001 *Kvaerner* decision provided the first judicial analysis supporting a European Union regulator's right to assess insurance premium tax on foreign insurance purchased to cover a local risk.
- In 2007, the issue was considered again in *DSG International Insurance Services,* re-emphasizing the regulatory appetite to pursue insurance tax revenues.
- The insurance departments of various US states (including New York, California and Florida) have entered into Memoranda of Understanding with dozens of countries, including insurance regulators in Germany, the United Kingdom, China, France, Bermuda, to assure better cross border information sharing regarding regulated entities. The standard terms document mutual agreement to exercise existing regulatory powers to facilitate the foreign regulator's scrutiny of unlicensed insurance activities within their own borders.

6. What issues should a multinational company, its broker and insurer consider when developing a multinational programme in today's environment?

- The first step is to evaluate how a master policy which provides DIC/DIL cover is to be designed and implemented in order to meet policyholder needs, keeping in

mind the jurisdictions in which the exposures lie and how they are to be covered in a cost-effective and compliant manner.

- In addition, consideration should be given to whether premium tax or stamp duties will be assessed on premium charged for non-admitted insurance of a local risk and how to fulfill those obligations. Consequently, the multinational, broker and insurer need to consider whether non-admitted insurance is the best way to provide coverage.
- The advantage of admitted insurance is that it satisfies compulsory or statutorily required insurance obligations, it can be used as evidence of insurance, it provides the local entity with a licensed policy, and it allows the locally licensed insurer to handle calculation and remittance of premium taxes.

7. What changes should be made to the standard master policy to keep it current with today's regulatory environment?

- There is no one answer or a single approach to resolve all issues or achieve legal compliance while assuring that the insurance programme meets the insurance needs of a multinational company.
- To meet this challenge, ACE has developed solutions that can be used singly or in combination to develop custom programmes designed to fit the needs of a sophisticated marketplace.
- One solution is to provide admitted insurance in all countries where the multinational enterprise requires evidence of insurance (or just wants to assure that the local entity has its own policy). For large programmes with large limits, or where an important programme attribute is to ensure consistency in terms and limits throughout the coverage territory, the local policies can be combined with coverage under a master policy with the DIC/DIL extension that does not cover any entity domiciled in a jurisdiction that prohibits non-admitted insurance.
- Another solution is to avoid the complexities of non-admitted insurance altogether by providing the benefits of a master policy with DIC/DIL cover to the group insured parent and eliminating insurance of any entity located in a country where the master policy insurer is not licensed.
- In this way the master policy provides only admitted insurance to the group parent and responsibility for premium tax compliance is assumed by the insurer (or by the broker for surplus lines policies).
- Additionally, the terms of the master policy clearly match the anticipated claims adjustment and payment process that will apply in the event of a covered loss while solving the problem of foreign currency exchange controls and barriers to the insured's receipt of loss payments made by a foreign insurer.

8. If the master policy insures the group parent insured, how will the insurer pay covered losses?

- Consistent with past practices, local insurers will continue to pay covered losses to the entities insured under the local policies—or on their behalf in the case of indemnification insurance. Also consistent with past practices, insurers will evaluate on a case by case basis whether a DIC/DIL master policy loss covering a local insured on a non-admitted basis may be paid locally.
- Traditionally, where the master policy cover has been provided on a non-admitted basis, covered losses have been paid to the group parent insured in the jurisdiction where the master policy insurer is licensed and not to the local insured.
- To the extent non-admitted insurance is locally permissible and the insured has elected to continue to receive coverage on a non-admitted basis, DIC/DIL losses covered under the master policy will be paid locally wherever legally permissible.
- In circumstances where non-admitted insurance is not permissible, claims will be paid to the parent company under the master policy, based on the parent's financial interest in its local subsidiary. Under this structure, the parent will receive indemnity for its own loss, not the loss of its subsidiary. The amount of the payment will be calculated by reference to the local loss and the parent may elect to reimburse its subsidiary or affiliate for the local loss (if it wishes).
- We believe that as multinational enterprises evaluate the practicalities of non-admitted insurance, the logistics required to comply with tax and parafiscal obligations, and rules around how to achieve placement of non-admitted insurance, reliance on non-admitted insurance will continue to decrease and insureds will rely on admitted products to meet all of their insurance needs, including admitted DIC/DIL cover in the master policy for the group parent insured.

9. How does ACE pay premium taxes?

- Currently, ACE arranges for insurance in over 150 different jurisdictions, relying on its own network of licensed ACE insurance companies as well as about 100 non-ACE network partner insurers who accept business referrals from ACE and agree to meet ACE's strict client service standards.
- Each of these companies is required to comply with all laws applicable to it, including premium registration requirements and local tax and parafiscal obligations. As locally licensed insurers, they have the mechanisms and local legal presence to support compliant programmes.
- In those jurisdictions where the producing ACE office is responsible to collect and remit tax on the master policy, ACE will fulfill its obligations to do so. If the

insured or its broker is responsible to collect and remit applicable insurance taxes, ACE will collaborate with the insured and the broker to support compliance.

10. What is ACE's recommended solution to the challenges faced by multinational insurance brokers and international corporations?

- Rather than impose a "one size fits all" approach, ACE has developed solutions that can be used singly or in combination to develop customized programmes designed to avoid the pitfalls of prohibited non-admitted insurance while consistently meeting the needs of customers located in US, UK, European, South American and Asian markets.

- The most important aspect of ACE's solution is to protect the parent company under the master policy when a loss, not insured under a local policy, occurs. By insuring the parent company under the master policy, the complexities of non-admitted insurance are eliminated and the parent company continues to receive the benefits of an insurance policy that offers limits excess of the local policies and fills in gaps in the local policies.

- The master policy will indemnify the parent company in its home country for covered losses triggered by events overseas. Local policies will continue to be issued where requested and claims covered under those policies will be paid locally, as always.

- To further simplify the global approach to insurance, premium for the parent company's master policy will be invoiced and paid in the parent company's home country and the ACE company issuing the master policy will calculate and pay taxes applicable in the home country jurisdiction—eliminating the shared challenges of allocating premium and paying taxes for non-admitted insurance in foreign jurisdictions, especially in countries that disallow non-admitted insurance.

- As an alternative, the multinational parent company can elect to include as insureds under the master policy all related companies domiciled in jurisdictions where non-admitted insurance is permitted. The portion of the premium charged for non-admitted insurance of the foreign risks will be allocated among those jurisdictions, and ACE will work with the parent company and its broker to support compliance with insurance premium tax requirements.