



Structuring Multinational Insurance Programs:

Cross-border Challenges to Business Travel & Personal Accident Insurance

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I. Overview

A corporate purchaser of a multinational business travel or personal accident insurance program has a few seemingly simple requirements:

- insurance coverage that responds to their specific local needs;
- “execution certainty” with respect to benefits and claim payments; and
- “compliance certainty” that the policy he or she purchases will stand up to scrutiny from both insurance regulators and tax authorities around the world.

However, achieving all three objectives is not a simple task. Uniform coverage and consistent treatment are difficult to achieve across a world of complex and sometimes onerous licensing and taxing requirements. Nevertheless, there are approaches to enterprise-wide multinational business travel and personal accident programs that minimize compliance risk and maximize control over insurance coverage and benefit levels.

To better understand the challenges faced by multinational accident and health programs, consider two scenarios, each with a separate set of questions:

- An executive employed by a multinational company based in the United States has a life-threatening injury in Spain, where the executive seeks critical emergency health care. She is insured under a US business travel accident policy. Will the US insurance policy issued by a US insurer that is not licensed in Spain directly pay the Spanish hospital for the executive’s health care services?
- An executive employed by the Mexican subsidiary of a multinational company based in the United Kingdom dies in a car accident in Mexico. He is insured by a group personal accident policy issued to the UK parent company by a UK insurer that is not licensed in Mexico. Will the UK insurance policy directly pay the personal accident policy’s covered death benefits to the deceased’s estate in Mexico?

Risk managers and benefits managers need to confront such questions in advance, and compare them to the capabilities of their company’s existing insurance programs. The need for such a careful analysis is particularly acute for multinationals that do business in countries such as Argentina, Brazil, China, India, Japan, Mexico, Russia and Switzerland—all of which restrict the ability of resident individuals and companies to purchase insurance coverage from unlicensed insurers.

Based in large part on where risks are located, where the multinational corporation is headquartered and where the insurance transaction is conducted, purchasers of multinational business travel and personal accident insurance can encounter both unanticipated execution risks and unforeseen tax and regulatory liabilities—each challenging the implementation and performance of the insurance. The costs, both financial and reputational, can be surprisingly large, and may be the responsibility of the multinational company, not its broker or insurer.

This report explores the following:

- The various insurance coverages traditionally constituting standard multinational business travel accident and group personal accident insurance policies.
- Recent enforcement actions affecting multinational insurance programs.
- The concept of “insurable interest” and how it may apply to certain insurance coverages to promote compliance certainty.
- Best practices on how to structure multinational business travel and group personal accident insurance programs.
- A checklist of factors to consider when insuring employees under a multinational business travel and group personal accident insurance programs.

II. Market Considerations

The multinational business travel and personal accident insurance market offers two distinct approaches to insuring employees, their relatives and their companions:

- A single insurance policy issued to the parent company in the parent's jurisdiction, insuring the parent's employees and the employees of its subsidiaries, affiliates and joint ventures worldwide.
- A "master" insurance policy issued to the parent company in its jurisdiction, insuring the parent's employees, coupled with local policies issued to the parent's subsidiaries, affiliates and joint ventures, with appropriate local covered benefits and limits insuring the risks of local employees. The master policy may contain Differences in Condition (DIC) coverage and Differences in Limit (DIL) coverage that fill potential coverage gaps in the local policies.

Each approach invites distinct regulatory and fiscal challenges.

Personal Indemnity versus Corporate Indemnity

The payment obligations within multinational business travel and personal accident policies are complicated. For instance, in the UK and Continental Europe, claims under Accidental Death and Dismemberment coverage generally are paid directly to the employee or to a beneficiary. "Assistance coverage," however, may entail reimbursement not to the employee, but to the employer or third-party vendors. Similarly, Out-of-Country Medical Coverage—global insurance protection for medical costs incurred during travel in countries other than an employee's home country—generally requires direct payment to the medical provider for treatment and/or evacuation to the home country. To the extent that the employee has incurred any out-of-pocket expenses relating to medical treatment outside the home country, claims reimbursement may be made to the employee or the employer in the employer's home country.

With these covered benefits and payment obligations as backdrop, employers must consider the following questions: May a covered claim be paid in a country that severely restricts a local insured from purchasing unlicensed insurance to insure local risks? May a covered claim be paid in a country in which the insurer is not licensed?

The answers to these questions depend on local law. Recent enforcement actions demonstrate that compliance with cross-border regulations is dependent on the jurisdictional treatment of local insurance brokers, the insurer and the parent company's local insurable interests.

A Primer on Group Personal Accident Insurance

- Group personal accident insurance provides protection to employees and their families in the event of accident-related death or disability. The coverage may be limited to on-the-job accidents, or extend to accidents occurring at any time.
- Covered benefits include accidental death, dismemberment, permanent total disablement and (in certain jurisdictions) permanent disability continental scale benefits
- Personal accident coverage is traditionally viewed as a centerpiece of most group benefit programs, and serves as a critical recruitment and retention tool.
- Multinational group personal accident programs enable benefits managers to identify, define and adjust benefits in multiple jurisdictions, and enhance consistency and transparency in benefit levels, claims administration and payment.

A Primer on Business Travel Accident Insurance

- Business travel accident insurance provides a broad array of benefits (including personal accident insurance) for employees travelling on business within and beyond national borders. In some instances, the insurance may also cover employees' relatives and travelling companions.
- Purchasers of business travel accident coverage can provide a broad array of benefits on a worldwide tiered basis, and may adjust coverage and benefit levels to local market requirements.
- Most business travel accident policies provide for medical-related expenses incurred during travel, including out-of-country medical expenses, hospital cash, and (in the case of death) repatriation.
- Most business travel accident policies also provide "Assistance coverage," including emergency evacuation expenses. They may also cover travel inconvenience expenses, including trip cancellation/travel delay costs, baggage loss or theft, and loss of personal money and documents. Some policies provide indemnity for legal liability arising from bodily injury and damage to property.
- Depending on the coverage, claims are either paid to the employer to reimburse it for payments made to employees, or directly to an employee or his or her beneficiaries when a covered loss occurs. Assistance coverage often utilizes the services of travel assistance providers, which are subsequently reimbursed by the insurer for the rendered service.

III. Challenges Facing Multinational Insurance Programs

Multinational corporations strive to operate across national borders in as seamless a manner as possible, taking advantage of internal efficiencies to maximize pricing, innovation and profit. Multinational corporations' insurance programs similarly strive to achieve global consistency, control and efficiency. Rather than having each corporate affiliate negotiate an insurance policy in its own jurisdiction, multinational insurance programs start with a centralized approach towards optimal terms, conditions and price. The global risk manager or benefits manager leads this effort, and bears responsibility for its performance.

However, as with so many other forms of multinational transactions, the variety of national regulations governing the purchase of insurance policies pose a challenge to this consistent, cost-effective approach.² As a result, it has become arduous to design multinational business travel and personal accident insurance programs that achieve consistent worldwide protection and limits, while addressing each country's tax and regulatory requirements. The question becomes: Will the program deliver on the promise of worldwide insurance protection and address potential tax and regulatory consequences?

In many cases, the answer is yes. In Europe, for example, a single accident and health policy purchased by a British parent company from an insurer licensed in the UK can legitimately cover subsidiaries throughout the European Union.³ Similarly, a traditional single "blanket" global business travel accident policy purchased by a US parent company from a US insurer can legitimately cover its subsidiaries in the US, and in other countries where that insurer is licensed or otherwise permitted to insure local risks. The rules are generally relaxed with respect to Out-of-Country Medical insurance: many countries generally permit insurance secured outside its borders for non-residents travelling within its borders. For example, Mexico allows non-residents to purchase coverage abroad to cover medical expenses that might occur during their visit to Mexico.⁴

There is less certainty, however, in the growing number of countries that highly restrict the sale of non-admitted insurance. India, for instance, is one of several countries that have recently moved to tax an insured's local subsidiary for loss payments received outside India. That raises the question of whether a single multinational policy would indemnify an individual directly employed by a parent company's affiliate in India against a claim brought in India.

Recent Enforcement Actions Affecting Multinational Insurance

1. United States of America—enforcement action against a broker:

- In a 2011 enforcement action, a local New York broker was alleged to have secured, over a 15-year period, \$30 billion in non-admitted property and casualty insurance from Lloyd's of London for more than 300 educational institutions and charities.
- Although New York permits a local insured to independently procure insurance from an unlicensed insurer for a risk based in the state, the placement of this insurance must take place outside New York, and not involve the services of a broker based in New York. The law also requires the local insured – not the broker – to remit premium taxes to state authorities.
- The New York State Insurance Department fined the broker \$3.4 million and ordered it to pay back-taxes owed by policyholders.
- As the case demonstrates, the procurement of non-admitted insurance entails greater risk for brokers as well as insureds.

2. Brazil—enforcement action against an insurer:

- In 2011 the Brazilian insurance regulator charged a Texas-based life insurance company with illegally selling life insurance in Brazil over several years. The insurer lacked a Brazilian license, a fact not known to its Brazilian policyholders. The insurer was fined approximately \$6.2 billion.
- Had the insurer transacted insurance business with Brazilian insureds only in the US, it would not have been subject to Brazilian regulation. But, since the insurer was alleged to have used local Brazilian "brokers" to solicit business on its behalf, the insurer was at risk of local regulatory sanctions for carrying on the business of insurance in Brazil without a license.

3. Argentina—enforcement action against insured and broker:

- In 2009 Argentine insurance authorities fined a local insured eight times premiums paid and a broker 15 times premiums paid for illegally transacting life insurance business with an unauthorized foreign life insurer.
- Argentina has historically prohibited non-admitted insurance. The potential penalties for insuring, issuing, producing, or purchasing policies from an unauthorized insurer may be (i) a fine of up to 25 times premium, payable by the insured and the producer; (ii) a fine of up to the equivalent of US \$100,000, payable by the insurance company; (iii) the voidance of the policy; and (iv) individual liability of officers and directors of the insurer and others involved in the transaction.¹

The answer, at least in India, depends on which position is ultimately sustained: the insured's position that a single policy may be procured by the parent company to insure its worldwide interests, the benefits of which are not taxable in India, or the Indian regulator's position that it is that parent company's Indian affiliate that has, in effect, purchased that single non-admitted insurance policy to insure its employees and that, therefore, the policy benefits should be taxable in India.⁵

In addressing this question, the concepts of (a) insurable interest and (b) transparency in insurance documentation are valuable tools for parent companies, brokers, and insurers.

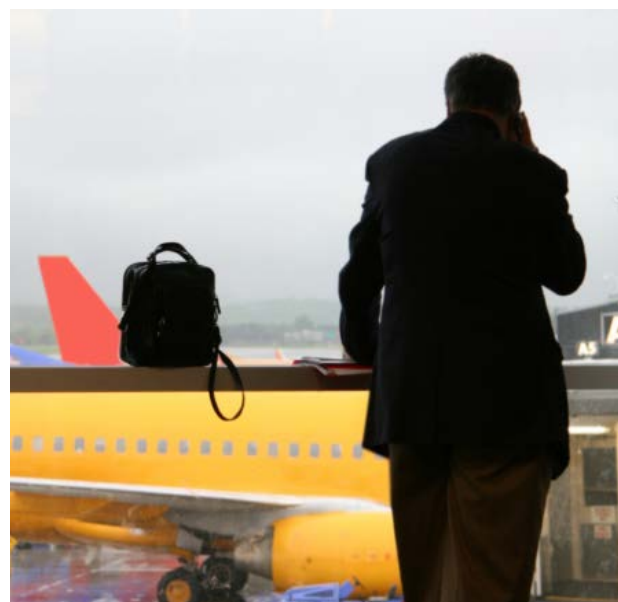
IV. Solutions to Multinational Insurance Challenges

There are several ways in which multinational enterprises can address regulatory and tax challenges in jurisdictions that prohibit non-admitted insurance or otherwise impose conditions on brokers, agents and insureds:

- For those covered benefits, such as Accidental Death & Dismemberment insurance, that require direct indemnification to an employee of a local affiliate or a designated beneficiary, the purchase of local policies counters possible local regulatory concerns over the purchase of non-admitted insurance from an unlicensed insurer and addresses challenges to the non-admitted insurer over the payment of benefits directly in the local jurisdiction.
- For those covered benefits where the employer is the ultimate recipient of the policy benefits, either a single policy may be purchased by the parent company in the parent's jurisdiction, or a combination of local policies and a master policy with a DIC/DIL provision may be purchased by the parent company in the parent's jurisdiction. In order to mitigate unintended regulatory and tax implications arising from a single global insurance policy, it is recommended that local policies with appropriate limits be purchased in local jurisdictions. For covered benefits not provided in the local policy, or where the preferred limits are not locally available, a master policy with DIC/DIL features may respond to a claim if the benefits are appropriately paid to the parent company having a legitimate insurable interest in the local loss.

Insurable Interest

- A parent company typically has an economic or financial interest in its affiliates through share holding, ownership interests, or via legal or contractual obligations. In many countries, including the US, UK, France, Germany, Switzerland, Mexico, Brazil, Australia, Singapore, Hong Kong and others, this financial or economic interest is insurable.
- For example, the value of the indemnity available to a UK parent arising under its insurable or financial interest in its affiliates may be agreed to equate to the liabilities that its affiliate has incurred to pay the relevant injury and travel benefits to an employee.
- The parent company may procure insurance directly for its insurable or financial interest in such entities, and augment local insurance policies with DIC/DIL coverage features in a parent policy.⁶
- A locally admitted insurer issues the local policy complying with the local insurance laws, and calculates and remits applicable insurance taxes and fees. Claims under such local policies are adjusted and paid locally.
- Master policy premiums are paid by the parent insuring the parent for its insurable interests in its worldwide exposures and insuring potential coverage gaps in local policies. Claims under the parent's policy can be paid to the parent in its jurisdiction.



- This approach to structuring a multinational business travel and personal accident program provides coverage terms that satisfy the participants in the multinational program while mitigating execution uncertainty, including the risk of unauthorized insurance penalties in local jurisdictions. Through inter-company transfers and cost allocations reflected by appropriate contemporaneous documentation, the expenses and benefits of the global insurance program may be exhibited in a transparent and materially compliant manner.⁷

The most prudent approach for a multinational corporation is to purchase local policies (where required) and complement the local policies with a master policy that may provide wider coverage and additional limits over and above what is available locally. This can be implemented globally or on a regional basis. Adopting this approach addresses many of the challenges outlined in this report, and promotes the following benefits:

- (i) The premium under local policies is paid to the local insurer—which remits appropriate local premium taxes. Claims under such policies are paid in the jurisdiction where the local insurer is licensed;
- (ii) The premium for insurance under the master policy may be allocated to one jurisdiction;
- (iii) Applicable taxes and fees under the master policy may be paid in the jurisdiction in which the master policy is issued;
- (iv) Claims covered under master policies may be paid to parent companies or a specific insured under the master policy. Although insurable interest is applicable under common law as well as civil law, specific country laws should be consulted so that payments to the parent company do not have potentially adverse and unintended consequences;
- (v) Inter-company cost allocation agreements, such as transfer-pricing documentation, address the costs and benefits shared by the global insurance program in a transparent and materially compliant manner.

V. Checklist

Companies assembling a multinational business travel and personal accident program should consider both a “bottom-up” approach focused on local policy requirements and a “top-down” approach that insures potential gaps in local policies. The following checklist of questions may prove useful in conducting such an analysis:

Considerations for US Employers

- Although US multinational business travel and personal accident policies may pay covered claims to the parent company in the event an employee or beneficiary resides in a jurisdiction where the insurer is not licensed, the payment may be challenged under US federal and state laws that prohibit certain claim payments to a parent company.⁸
- One example is the federal ERISA (Employee Retirement Income Security Act) law. ERISA regulations prohibit employers from engaging in certain transactions with employee welfare benefit plans established or maintained by employers for the benefit of employees.
- Under ERISA's prohibited transaction rule, for instance, the employer may not receive or otherwise use ERISA Plan assets, which may include certain benefits arising out of business travel and personal accident insurance policies.⁹
- To obviate concerns over unintended regulatory and tax consequences, buyers should consult with their tax and finance advisors whether the claim payment may be paid to the parent company in its fiduciary capacity or in trust for the sole use and benefit of the insured employee or beneficiary.

- a. What are the insurance coverages, and how and to whom will claim payments be made under each benefit?
- b. What conditions are imposed by a local jurisdiction for an affiliate to insure business travel and personal accident risks?
 - i. If insurance is arranged, must a locally licensed insurer issue the policy?
 - ii. Are there circumstances in which an unlicensed insurer may insure local risks and pay claims directly at the location of risk?
- c. If only local insurance is allowed, does it provide the expected coverage?
 - i. Is the local policy tailored to insure the local affiliate's reimbursement obligations under applicable covered benefits?
 - ii. Is the local policy tailored to make direct payments to the claimant or beneficiary?
 - iii. Is DIC coverage needed to insure gaps in the local policy?

- d. If only local insurance is allowed, does it provide the expected limits locally?
 - i. Are local policy limits adequate to insure the local affiliate's reimbursement obligations under applicable covered benefits?
 - ii. Is the local policy tailored to make direct payments to the claimant or beneficiary?
 - iii. Is DIL coverage needed to insure gaps in the local policy?
- e. If DIC/DIL is needed, how may an unlicensed insurer insure local risks and comply with local laws?
 - i. How may an unlicensed insurer provide a benefit or pay a covered claim in the local country?
 - ii. Which entity (the insured, broker or insurer) calculates, collects and remits appropriate taxes in countries where an insurer is not licensed?
- f. If DIC/DIL is needed in a jurisdiction that restricts non-admitted coverage, how may DIC/DIL be compliantly provided to the parent?
 - i. What risks are covered and where are such risks located?
 - ii. How is premium allocated and paid?
 - iii. Where will premium taxes and/or other fees and surcharges be remitted?
 - iv. How will claims be adjusted and paid?
 - v. Are applicable inter-company cost allocation agreements, such as transfer pricing documentation, agreed prior to binding insurance to address potential tax consequences and promote transparency of cash flows?

VI. Conclusion

When designing and implementing a multinational business travel and personal accident insurance program in international jurisdictions, clients, brokers and insurers should be aware of how the program is structured and how covered benefits are offered. Multinational insurance buyers and brokers also need to understand the corporate structure of the enterprise and the impact it may have on insurance protection, e.g., to determine if the structure will withstand implementation risk in countries that restrict the use of non-admitted insurance. Buyers and brokers can obtain advice from their own legal and financial specialists to structure a comprehensive global insurance program that meets their specific needs. Attention to these requirements and the need for documentation and supporting contractual arrangements should result in a materially compliant multinational business travel and personal accident insurance program.

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ACE Group Multinational Capabilities

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Endnotes:

- ¹ See Section 2 of Law No. 12, 9888 and Section 23 of Law No. 20,091 (only insurance companies approved by the Argentine Superintendent of Insurance may insure persons or assets domiciled in Argentina). Decree No. 560/2009, Argentine Ministry of the Economy and Public Finance (May 15, 2009).
- ² In **Singapore**, insurers are not permitted to carry on insurance business within the territory (receive proposals, issue policies, collect premiums, etc.) without being registered there. Local entities are free to seek insurance directly from foreign, unregistered insurers, but with a few exceptions local insurance intermediaries are not allowed to be involved in this. The position is even more restrictive in the **UAE**. "The law in the UAE has always required UAE risks to be insured locally, and does not permit "non-admitted" insurance whether for free zones or otherwise (other than for the DIFC, which is dealt with separately)," comments Wayne Jones of Clyde & Co LLP's Dubai office. **Malaysian** rules prohibit unlicensed persons from carrying on insurance business, insurance broking business or adjusting business. However, it is possible to cover Malaysian risk from outside Malaysia, provided that insurance proposals are received, policies negotiated and collection and receipt of premiums and settlements and payment of claims takes place outside Malaysia. Some jurisdictions have extremely restrictive regulatory regimes, which prevent local risk being insured by insurers not authorized by local regions. For example, according to Carrie Yang, a partner in Clyde & Co's Shanghai office, corporations or other legal entities based in **China** are specifically required to insure their domestic risks with insurance companies that are licensed to carry on business in China. Domestic insurance intermediaries are also prohibited from assisting foreign insurers in the promotion, marketing and/or sale of insurance policies in China. **India** similarly prohibits insurers other than Indian insurance companies from carrying on any class of insurance business in India. "In order to carry on business in India, an insurer would have to have a presence in India through a company incorporated in India," according to Sakate Khaitan of Clasis Law. In **Switzerland** non-admitted insurance of risks located there is not permitted, save for MAT (marine, aviation and transport) and war risks, and reinsurance risks may be covered if the risk is located in Switzerland. According to Ricardo Lewandowski of Clyde & Co, the general rule under Brazilian law is that insurance coverage for a risk located within **Brazil** must be placed with an insurance company duly licensed by SUSEP to carry on business in the Brazilian insurance market (Art. 24 of Law Decree 73/1966 and Art. 19 of Complementary Law 126/2007). There are, however, limited exceptions to this rule, for example the case where there is no offer of insurance in the Brazilian market for a particular risk (Art. 6, I, of CNSP Resolution 197/2008). The insured itself and/or its intermediary, which are domiciled in Brazil, are subject to penalties imposed by SUSEP in the event that insurance has been illegally purchased outside Brazil, even in the case of an expired policy (Arts. 19 and 20 of SUSEP Circular 392/2009). Brazilian law does not prohibit a Brazilian insured from contracting insurance coverage outside Brazil for a risk located outside Brazil. Foreign insurers can register with SUSEP to carry on business in Brazil, which will require, amongst other things, the incorporation of a Brazilian company.
- ³ This is achieved through the EU Directives that have created the freedom of establishment and provisions of services regimes, also known as "passporting" regimes, which allow insurers to carry on business and insure risks throughout the EU, subject to authorisation by the regulator of their domicile (e.g. Third Non-Life Insurance Directive (92/49/EEC); Consolidated Life Assurance Directive (2002/83/EC)).
- ⁴ General Law of Insurance Institutes and Mutual Companies, article 3, section II., (1) and (6).
- ⁵ <http://online.wsj.com/article/SB10001424052748704050204576218132454647812.html> (last visited July 30, 2012).
- ⁶ The laws in many jurisdictions around the world recognize the principle of insurable or financial interest that a parent company has in its ownership or contractual interests in its subsidiaries, affiliates and joint ventures. This is true, for example, under English Law; the insurance laws of many U.S. states (including New York, Pennsylvania and California), the laws of most countries in continental Europe and many countries in Asia; the laws of Australia and New Zealand; as well as laws in Argentina, Brazil and Mexico. See Beyond Non-Admitted: A Closer Look at Trends Affecting Today's Multinational Insurance Programs; Structuring Multinational Insurance Programs: Addressing the Current Challenges in Europe; Structuring Multinational Insurance Programs: Current Challenges in Australia, New Zealand and the Asia-Pacific Region; and Structuring Multinational Insurance: Current Challenges in Argentina, Brazil and Mexico at http://gps.acegroup.com/WhitePaper_MediaCenter.html (last visited July 30, 2012).
- ⁷ See Structuring Multinational Insurance Programs: Addressing the Taxation and Transfer Pricing Challenge at http://gps.acegroup.com/WhitePaper_MediaCenter.html (last visited July 30 2012).
- ⁸ See Fla. Stat. § 627.614; 215 ILCS 5/357a; NY CLS Ins § 4237; and Tex. Ins. Code § 1251.005.
- ⁹ See 29 USC § 1106(a)(1)(D).