Insurance & Reinsurance Procurement in the Middle East

RIMS: Risk Forum Middle East

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Global Programmes – Middle East

Middle East’s key economic sectors are global

- Energy/Oil & Gas
- Mining/Extractive
- Financial
  - Banks
  - Insurance
- Ports & Terminals
- Aviation
- Industry
  - Steel
  - Petrochemicals
Drivers for Global Programmes

Issues impacting purchase of multinational insurance

- Global insurance market
- Demand for global insurance solutions
- Insurance regulation
  - Insurers
  - Brokers
- Insurance licensing
- Policy terms and conditions
- State control/provision of insurance
- Premium/tariff control
- Insurance tax
- Control of claims
- Sanctions
  - Participants on the programme (US carriers)
  - Location of assets/risks being insured
  - Destination of insurance funds
Compliance/Regulatory Issues

Local regulation/compliance
- Insurance of local risks to be via a local licensed carrier
- Generally precludes insurance being provided directly by an international insurer not locally licensed
- Offshore Freezones generally only allow reinsurance
  - Remedy can be fine or imprisonment for carrier
  - Insurance may be non-enforceable locally
  - Complaints to Home state regulator
- May dictate policy form e.g. local terms and conditions
- May impose an underwriting tariff/tax
Global Programme Options

1. Local policies only
   - Purchase of separate, unrelated local insurance policies
   - In each country where the insured has exposures
   - Policies underwritten locally by local carriers
   - Tailored to local practice and regulatory requirements
   - Access local markets
   - Claims servicing and payment locally
   - Reality – backed by reinsurance, and low local retentions
2. Single global insurance policy
   - Issued by an insurer in insured's home state
   - Covers worldwide exposures
   - Insurer may or may not have licences outside home state, therefore risk of non-admitted insurance business
   - Risks and insurance needs assessed centrally
   - Coverage under one policy with consistent terms/conditions/exclusions
   - Central servicing of claims and payments
   - May not cater for local requirements/practices
Global Programme Options (cont'd)

3. Combined/Controlled Master Programme
   - Global policy issued in insured's home country
   - Local policies issued in various local countries
   - Core/master policy wording defines global insurance cover
   - Difference in conditions/difference in limits policy/cover to fill the gap between local policies/global/core/master wording/coverage
   - DIC/DIL "tops up" the local policy response to the equivalent of core/master wording/coverage
   - Reverse DIC/DIL operates the other way
   - Global policy also covers risk where no local policy
   - Use of excess layer drop down covers e.g. D+O higher layers to cover shortfalls on lower layers or to address jurisdiction specific risks e.g. Defence costs for D+O claims
Role of Captives In Global Programmes

Captive insurer owned/managed by multinational utilised for
- Insurance Procurement
- Risk Management
- Fiscal advantage/tax efficiency
- Consistency in service delivery

Major multinationals own significant captive insurance companies
- Oil & Gas
- Mining
- Telecommunications
- Construction
- Financial
Role of Captives In Global Programmes (cont'd)

Role in Claims - Options
- Align with insured
- Part of the (re)insurance market
- Neutral

Increasingly self insured/less reliance on reinsurance
- 20 year trend
- Build up of tax efficient funds
- Need for independent sign off on transactions between Bus (e.g. Captive and Insureds)
  - Premium
  - Claims
  - Tax driven
  - Corporate governance driven
Key issues for captives:

<table>
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<tr>
<th>Management</th>
<th>Tax heavens and OECD</th>
<th>Insurance of Joint Ventures</th>
<th>Financial Interest clauses allowing parent company to collect claim as if the local insured suffering the loss.</th>
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<tr>
<th>Location</th>
<th>Claims role</th>
<th>Interlocking clauses, excess clauses and other collectible insurers</th>
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<td>Offshore</td>
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Role of Captives In Global Programmes (cont'd)
Role of Captives In Global Programmes (cont'd)

Additional issues for captives
- Insurance of Joint Ventures
- Interlocking clauses, excess clauses and other collectible insurances
- Financial Interest Clauses allowing parent company to collect claim as if the local insured suffering the loss.
- Advantages and pitfalls of cut through clauses
Role of Captives In Global Programmes (cont'd)

- Knowledge of directors
  - Knowledge holders at insured
  - Imputed knowledge e.g. Directors
  - Information barriers

- Miscellaneous issues
  - Insurance of joint ventures
  - Allocation of insurance proceeds
  - Insurance of third parties
  - Restrictions on claims control imposed by fronting insurers
Example EU Multinational Global Insurance Programme (Captive)

- Re(Insurers)
  - Guernsey Captive
    - Fronting Smoother Reinsurer
      - Master/Core wording
      - DIC/DIL
      - Global Fronting/Local Insurers
        - Oman
        - UAE
        - Egypt
        - Kuwait
        - EU BU
Example EU Multinational Global Insurance Programme

Features

- EU based multinational
- Operations in Oman, UAE, Egypt and Kuwait plus EU locations
- Head office in EU
- Captive in Guernsey
Example EU Multinational Global Insurance Programme

Master/Core Wording

- Global policy issued to main EU insured by captive
- Fronting provided by a major global insurer with locally admitted carriers
- Smoothing facility (same as fronting insurer) utilised to reinsure fronters
- Smoothing facility reinsures into the captive
- Captive reinsures into the global (re)insurance market (London/Munich/Zurich/New York)
- Core/master wording basis of cover
- DIC / DIL cover fills the gaps
- Financial Interest Clause
Some Issues for Consideration

Risk Architecture

- Complex contractual structure for risk transfer
- Can be different proper laws/ dispute resolution/ forums
- Alignment of terms/conditions/exclusions up the line from BU to (re)insurers
- "Back to back" coverage achievability
- Claims cooperation/control/association
- Differing legal regimes apply different requirements on reinsureds and remedies for breach
- DIC/DIL effective/mechanism for consistent coverage distribution
- Need for contract certainty to be ascertained before there is a loss
Global Programmes – Claims Issues

Issues - Property

- Global supply chain emphasises complexity of claims involving multinationals
- Property loss in one country can lead to a multinational insured suffering business interruption in several jurisdictions and contingent business interruption losses for supplier/customers
- Claims investigation and settlement increasingly governed by local country laws and regulations
Global Programmes - Claims

Issues – Casualty

- Who appoints local defence counsel?
- Who appoints local experts/adjusters/consultants?
- Who do they report to?
- Who can see reports?
Contract Certainty (1)

- Contract certain and claim certainty
- Insurance procurement risk
- Insurance is a double purchase
  - At placement
  - When there is a claim
Contract Certainty (2)

- Issues at placement
  - Insurance architecture
  - Cooperation and control issues
  - Notice and consents
  - Claims scenario planning
  - Claims protocols
- Where there is a claim:
  - Reporting
  - Transparency
  - Coverage issues
  - Expectation management
Interest insured, limits, premium, brokerage...

- Notification
- Investigation
- PoA or "Ex gratia"
- Coverage Issues
- Key Contract Terms
- Applicable Law
- Documentation
- Claims Protocol
- Reservation of Rights
- Without Prejudice
Guiding principles

• "Some contracts are actually incapable of being understood at any point in time because they are so badly drawn, but the court's endeavour is always to make some sense our of nonsense."
• "For insurance: as opposed to a corporate or property transaction, the approach has been one of deal now, detail later."

Longmore LJ in WASA v Lexington [2008]
Common Claims Issues

- **Practical issues:**
  - Dealing with claims department;
  - Role/support of broker is key;
  - Loss adjuster appointment/reporting;
  - Reservation of rights;
  - Lengthy investigation;
  - Requests for information/documentation.

- **Coverage issues:**
  - Misrepresentation/non-disclosure;
  - Breadth of notification;
  - Late notice;
  - Conditions precedent/warranties;
  - Claims control;
  - Claims cooperation.
Pre Claims Systems

- Claims handling protocol
  - Who acts for whom? Role of adjusters?
  - Cooperating, providing information and reporting
  - Early identification of coverage issues
  - Captive/fronting issues

- Reporting lines
  - Internal – Risk Management, legal
  - External – loss adjusters, claims handlers

- Line up the team: technical, accounting, legal
- Pre Claims planning - stress test the process
- Claims preparation costs clause!
Manage the Claims Process

- Internal roles/external support
- Claims notification – internal coordination; breadth; change of insurer
- Managing the evidence
  - Avoid post loss creation of disclosable documents
  - Managing technical investigations
  - Keep key players/witnesses onside
- Early evaluation of outcome determinative issues
  - Strengths and weaknesses of claim
  - Possible non-disclosure/misrepresentation defences
  - Other key policy terms / conditions
  - Jurisdiction / proper law issues – comparative coverage analysis
Manage the Claims Process (Cont'd)

- Engage with insurers
  - Agree facts / technical issues
  - Establish quantum
  - Agree what is in dispute
  - Agree a timeline for resolution
- Mitigation obligations
- Reservation of rights
- Without prejudice correspondence
- Payments on account
- Structure negotiation but plan for formal dispute resolution
Management of an Insurance Claim – "the Virtuous Circle"

- Pre claim planning and contract review
- Lessons learned
- Managing the claim
- Coverage issues
Contract Review – the checklist

- Proper law/jurisdiction (dispute resolution clauses)
- Limitation of actions/contractual time bar
- Pre-contractual disclosure
- Identity of the assureds
- The Period of Insurance
- Subject matter insured
- The sum insured and limits of cover
- Loss/Damage
- Measure of Indemnity (Valued/Unvalued)

- Causation (All Risks or Defined Perils)
- Exclusions and buy backs
- Conditions Precedent and Warranties
- Notice requirements/knowledge holders
- Geographical limits
- Due diligence requirements
- Subrogation
- Claims handling protocol
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