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Admitted Versus Non-Admitted International Policies

If your company is expanding internationally or looking to restructure your risk management program to include international exposures, it is important to know your options as well as in-country requirements when placing international policies.

Making the decision between admitted and non-admitted programs lies in the volume and nature of your overseas operations as well as local insurance regulations and requirements.

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Admitted coverages are issued in-country by insurance carriers that are licensed to write coverages in that country. Conversely, non-admitted coverage refers to policies covering overseas exposures that are placed in the U.S., with all premiums and most claims paid in the U.S.

International controlled master programs can be structured in three main ways:

- **Fully admitted**–policies in all countries where an insured has a registered entity
- **Fully non-admitted**–no admitted policies issued for international locations; the policy only includes excess coverage
- **Hybrid**–admitted coverages in some countries for certain lines of insurance and non-admitted coverage in others

Admitted Programs

Placing a local policy is typically driven by the following issues:

- **Language**–Carrier-issued policies in local languages, improving the local insured/broker's ability to interpret the intent of the policy
- **Allocation of premium**–Provides a method for allocating premium to local entities. There is little need to perform management adjustments or internal billings and, most importantly, allows for applicable local tax collection and remittance
- **Certificates of insurance**–Allows an insurer and/or broker to issue certificates of insurance in local language and format. Also allows most administration to take place in-country without involving U.S. risk management, thus decreasing certificate issuance turnaround time
- **Coverage**–Can be tailored to the policy's jurisdiction, address local laws and regulations and, in some instances, can be broader than a master difference in conditions/difference in limits (DIC/DIL) contract
- **Claims**–Allows the local insurer and broker to assist with claim adjustments and settlements. Claims can be paid on behalf of the insurer in the country without fear of cross-border taxation, fines and/or penalties that may be applied to non-admitted claims settlements. Non-admitted claims settlements under master DIC/DIL or umbrella contracts are subject to cross-border taxations, fines and/or penalties
- **Tax deductibility**–Allows for tax deductibility, if local premiums are paid on a local policy. If premiums are not paid locally but paid under a master DIC/DIL contract, in-country regulators may question taxes and fees. One must weigh the cost associated with a fully-admitted program against tax deductibility benefits
- **Good corporate citizenship**–Demonstrates good citizenship on the part of the insured, if the law prohibits the purchase of non-admitted insurance, and that the insured supports the local economy and pays taxes associated with its operations. Not to mention, additional taxes and fines that can be applied
- **Legality**–Some countries prohibit purchasing non-admitted insurance. If an insured does not want a local admitted policy in a country where non-admitted insurance is prohibited, the insured can self-insure in that territory (if local coverage is not mandatory/compulsory). However, if premiums are allocated or claims are settled under a master DIC/DIL contract and transferred to the local entity, the insured may be subject to taxes, fines and/or penalties issued by the country's regulators

Non-Admitted Programs

For many companies with a limited number of overseas operations (only export sales, project consulting or occasional executive trip/travel), a non-admitted program may be the most effective vehicle for providing international coverage.

A non-admitted program is preferable for those companies that meet the following criteria:

- The U.S. company does not have any foreign subsidiaries, taxable entities or other permanent legal presence
- Foreign exposures do not include vehicle ownership, employed local nationals or other exposures that may fall under indigenous compulsory insurance requirements
- The U.S. company operates overseas only through branch offices, joint ventures or minority interests
- Any potential claim can be shown to be suffered by the U.S. parent company, regardless of location of the accident/loss
- Overseas assets are carried on U.S. or other offshore company balance sheets
- Loss payment does not need to be made directly to the overseas entity
- Admitted insurance is not required by contract
- Evidence of admitted insurance, such as certificates of insurance or shipping documentation for customs, is not required

Advantages of Non-Admitted Programs

Advantages of the DIC/DIL policy include:

- Consistent coverage worldwide on broad U.S. terms and conditions
- Centralized control of the insurance procurement decision-making process
- Use of fewer carriers allows opportunities for risk pooling and account underwriting
- Local policy issuance can be costly, especially if the exposure does not generate a premium to sufficiently compensate the insurer for the risk taken and the administration required. The insured may be subject to minimum premiums

Non-Admitted Coverage Issues

Many companies have significant, permanent operations overseas, including sales offices, distribution centers or manufacturing facilities. For these clients, a non-admitted program presents several problems, including:

- Non-admitted coverage may be illegal, particularly for compulsory lines of coverage such as workers' compensation, employer's liability and automobile liability. The insurer, local insured and broker could be subject to fines, revolked licenses and/or imprisonment
- Foreign governments will not allow local firms to declare insurance premiums paid in the U.S. as a tax-deductible business expense
- Claim payments received in the U.S. for damage suffered by overseas subsidiaries could be treated as repatriation of dividends or other income rather than a loss recovery and, therefore, subject to taxation by the IRS
- The overseas financial manager could be left out of decisions that can affect local profitability. If local managers lack sufficient information on the non-admitted program, they might arrange coverage independently, duplicating coverages and premiums
- There is no local insurance company/broker representation for program administration and claims handling. Under a non-admitted program, certificates of insurance cannot be issued on locally acceptable forms
- The insured may need to be fully involved in the claim settlement process, including coordinating loss adjusters, assigning local counsel, etc. Without an admitted policy in place, this control can be stripped from the company
- Policies issued in the U.S. do not address specialty exposures particular to certain countries or the nuances of Napoleonic, Muslim or Common Law, resulting in a misinterpretation of the coverages in place instead of the coverages that were originally desired

This article is intended as an overview and should not be viewed as legal advice. Please consult with your attorney if you have any questions.

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353 North Clark Street | Chicago, Illinois 60654 | 312.595.6000
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