

MARSH FINPRO GLOBAL GLOSSARY



This glossary is intended to help industry professionals understand concepts related to global insurance programs. This includes directors and officers liability (D&O), professional/errors and omissions (E&O) liability, employment practices liability (EPL), pension fiduciary liability, and cyber exposures. Collectively, these are known as financial and professional (FINPRO) liability lines of insurance.

For more information on the below terms and other risk and insurance issues, please visit marsh.com or contact your Marsh representative.

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A

ADMITTED COVERAGE

An insurance policy issued by an insurer in a territory in which that insurer is locally licensed. Other than in territories in which a [Lloyd's of London](#) license is used, an insurance program is generally admitted only where it is issued.

Marsh colleagues and clients can access [Marsh Global Insight](#) for guidance on these local rules by product line. Risk professionals can access Marsh Global Insight through [the Marsh Portal on marsh.com](#).

Also see: [Nonadmitted Insurance](#).

ADVANCEMENT

Reimbursement by a company and/or an insurer of the costs incurred by a director or officer as they are incurred rather than after the final disposition of the claim, which could be years later. This term is often incorrectly combined with [indemnification](#).

[Click here for more information.](#)

AMERICAN DEPOSITARY RECEIPT (ADR)

A negotiable certificate issued by a depositary bank and then offered to the US market representing a specified amount of a foreign security that has been deposited with a foreign branch or agent of the depositary. ADRs can be traded in the same way as other registered American securities and may either be listed on a US exchange or traded over the counter (OTC). An ADR listed and traded on a US exchange meets the first prong of the US Supreme Court's ruling in [Morrison v. National Australia Bank](#) and is therefore governed by US law even if the security to which the ADR is tied is traded abroad and the alleged fraud occurred outside of the US.

There are three types of ADRs:

- **Level 1** ADRs are the most basic, featuring the lowest requirement levels from the US Securities and Exchange Commission (SEC). These are not listed on exchanges; instead, they are found in the over-the-counter market.

- **Level 2** ADRs are listed on an exchange or quoted on NASDAQ. These have slightly more requirements from the SEC, but typically get higher visibility trading volume.
- **Level 3** ADRs are floated as public offerings on US exchanges. These are able to raise capital and gain substantial visibility in the US financial markets and therefore have the highest level of potential securities exposure.

[Click here for more information.](#)

ANTI-MONEY LAUNDERING (AML) RULES

Laws and regulations designed to protect the international movement of funds against illicit activity. Regulators monitor financial institutions that receive or facilitate international payments (including insurance companies that receive premiums and pay claims globally) to determine if they are meeting applicable standards.

Regulators often require additional documentation to accompany local insurance placements based on the country. This is due in part to establish that the associated premium payments are part of a legitimate business transaction. Rapid global change to the network of AML laws means that it may be helpful to determine in advance of each insurance renewal what, if any, relevance these rules might have on local placements.

Also see: [Know Your Client](#).

[Click here for more information.](#)

ARTICLE 50 OF THE TREATY ON EUROPEAN UNION

Sometimes referred to as the Lisbon Treaty, the article allowing for a member state (country) to leave the [European Union](#) (EU) and setting out a two-year procedure for doing so.

[Click here for more information.](#)

Also see: [Brexit](#).



B

BRANCH OR REPRESENTATIVE OFFICE

A local office that does not require all of the legal formalities of creating a local corporation, limited liability company, or partnership. In many jurisdictions, local branches are required to register locally and are generally subject to the same territorial rules and regulations as subsidiaries (and are typically easier to open and close).

This means that the local officers may have local exposures in the jurisdiction, and local coverages — such as D&O, E&O, and crime, among others — may be warranted if the operations are sizable, even though there may be no local directors.

The local branch will have an operational name address for insurance purposes if the enterprise has:

- Registered locally.
- Local bank accounts.
- Entered into local contracts/leases.
- Local employees.

[Click here for more information.](#)

BREXIT

The United Kingdom's departure from the [European Union](#) (EU); short for "British exit." In a referendum on June 23, 2016, a majority of UK voters chose to leave the EU. Notice has since been provided under [Article 50](#) and negotiations for the UK's withdrawal from the EU have begun.

Once the UK is no longer part of the EU, the [freedom of services](#) structure out of London may no longer be viable for those FINPRO accounts where the majority of our placements use that strategy.

The UK is expected to remain in the EU for up to two years after having notified the EU of its intention to leave or until a withdrawal agreement comes into force. The exit negotiations can be extended beyond two years if all EU member states agree.

Potential scenarios include a:

- **Hard Brexit:** The UK leaves the EU swiftly, likely with a free trade agreement (FTA) with the EU. Without a UK-EU trade agreement, World Trade Organization rules would apply.
- **Soft Brexit:** The UK leaves the EU but negotiates continued membership in the European Economic Area (EEA), thereby staying in the single European market while giving up influence over single-market rules.
- **Smooth Brexit:** The UK leaves the EU with agreements in place on trade, immigration, and the border between Northern Ireland and the Republic of Ireland.

BREXIT-PROOFING

Steps that companies can take to protect their interests when the UK leaves the EU. The Marsh Brexit steering committee recommends that clients Brexit-proof their relevant global insurance policies or programs — including those issued out of the UK — using the passporting function of the EU's [freedom of services](#) convention.

BRIBERY ACT 2010 (UK)

- A UK law introduced in response to concerns about unethical conduct by public officials, at home and abroad, and the desire to update and consolidate existing laws on bribery. Notably, like the US [Foreign Corrupt Practices Act](#) (FCPA), the Bribery Act has extraterritorial reach both for UK companies operating globally and foreign companies operating in the UK.

The Act created four prime offenses:

- Two general offenses covering offering, promising, or giving an advantage and requesting, agreeing to receive, or accepting an advantage.
- A discrete offense of bribery of a foreign public official.
- A new offense of failure by a commercial organization to prevent a bribe being paid to obtain or retain business or a business advantage. Should this offense be committed, an organization can defend itself by proving that it "had in place adequate procedures" to prevent bribery.

While the Bribery Act is in some respects similar to the FCPA, there are important differences between the two. The Bribery Act is materially broader in scope. It includes both foreign and domestic



bribery of “any person,” while the FCPA’s sole focus is bribery of foreign public officials.

[Click here for more information.](#)

Also see: [Foreign Corrupt Practices Act](#).

BRIC

An acronym for Brazil, Russia, India, and China. Together, these countries have attracted significant investment from global companies. Each country presents multiple challenges to relying on a single global insurance program to address local exposures, with [nonadmitted insurance](#) not being permitted and little or no local tradition/expectation of local corporate [indemnification](#).

For this reason, many of our multinational clients include local FINPRO placements in these jurisdictions. Due to possible constraints on local reinsurance, local placements may need to be completed on a [standalone](#) basis (versus a [controlled master program](#)).

C

CASH BEFORE COVER (CBC)

Local regulations requiring an insurer to have already received the premium for a policy before it is permitted to provide insurance protection. This creates the potential for coverage gaps where an account is not billed until (or shortly before) its effective date.

Insurers might refuse to pay a local FINPRO claim in a local jurisdiction when these regulations have not been satisfied; instead, the global policy pays where it is negotiated and where there are no CBC rules). Check [Marsh Global Insight](#) or discuss with your [Multinational Client Service](#) representative to determine if this is relevant to your global placements.

Modified cash before cover countries are those territories in which the premium must be paid within 30 days from inception of coverage or the policy cover will lapse until the premium is fully paid. Insurers may be leery of backdating coverage in such jurisdictions.

CIVIL LAW JURISDICTION

A system of law under which fixed laws and statutes are determinative, with past judgments serving only as loose guides. Laws around the world vary greatly, often divided between civil law and [common law](#) systems, in which prior legal precedents or judicial rulings are used to decide cases. (Other countries use religious and tribal legal systems.) Civil law’s global footprint is often traced to Napoleonic Code; for example, it is used in many countries conquered by France during the Napoleonic Wars or subsequently settled by peoples conquered during the Napoleonic Wars). According to the CIA World Factbook, 150 countries use civil law systems; 80 countries use common law systems.

From the FINPRO perspective, in addition to the fact that most civil jurisdictions do not permit [nonadmitted insurance](#), they tend to view liability as a personal rather than a corporate matter and may have little or no local framework for [indemnification](#).

COLLECTIVE REDRESS ACTION (CLASS ACTION)

An action in which multiple claimants with similar claims sharing common characteristics jointly seek a remedy against the same defendant(s). Until recently, class actions were rarely seen outside of the US, but this is rapidly changing.

The European Commission’s 2013 recommendation on collective redress invited member states to adopt a collective redress local legal framework by July 2016. As of this writing, not all EC members have done so.

[Click here for more information.](#)

Also see: [European Union](#).

COMMON LAW JURISDICTION

A system of law under which prior legal precedents or judicial rulings are used to decide cases. Laws around the world vary greatly, often divided between common law and civil law systems, in which fixed laws and statutes are determinative, with past judgments serving only as loose guides. (Other countries use religious and tribal legal systems.) Common law and its concepts are often traced back to England and were transplanted to its colonies, including Australia, Canada, India, and the US.



From the FINPRO perspective, common law jurisdictions (with the exception of India) tend to permit *nonadmitted insurance* and usually have developed and tested local frameworks for *indemnification*. These jurisdictions may see more FINPRO claims because they are viewed as more litigious.

COMPULSORY COVERAGE (MANDATORY COVERAGE)

Any type of insurance that an individual or company is legally required to purchase in a local jurisdiction. Often, this insurance must be purchased locally to ensure local payment.

FINPRO lines typically are not compulsory other than for certain professional liability and/or crime coverages (especially for financial institutions) where the local rules will need to be consulted at the time of placement.

A major exception to the rule that D&O insurance is not locally compulsory is joint stock companies in Romania. These include public and private companies with Romanian registered shareholders or subsidiaries incorporated in Romania whose shares are either completely or partially owned by a non-Romanian parent company.

[Click here for more information.](#)

Also see: *Marsh Global Insight*.

CONTROLLED MASTER PROGRAM (CMP)

A global insurance program that is structured with a “master” policy that is usually issued in the parent company’s home territory. CMPs are supported by multiple fronted policies in local countries to cover local exposures and ensure regulatory compliance, with one shared global aggregate limit of insurance.

In a CMP, an insurer issues a master policy that provides the broadest coverage available to the program and also potentially acts as *DIC/DIL* coverage over the local policies issued in each country. Not all jurisdictions will permit the master global policy to pay locally (especially if *nonadmitted insurance* is not permitted in a given jurisdiction).

Also see: *Good Local Standard*.

CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT OF 2007 (UK, ALSO KNOWN AS THE MANSLAUGHTER ACT)

A landmark UK law under which, for the first time, companies and organizations can be found guilty of corporate manslaughter as a result of serious management failures resulting in a gross breach of a duty of care.

The Act clarifies the criminal liabilities of companies where serious failures in the management of health and safety result in a fatality. For the company to be found guilty, the negligence of a corporate director must first be legally established. So while prosecutions will be of the corporate body and not of individuals, the directors, board members, or other individuals may still be prosecuted for separate, related health and safety offenses.

Although D&O policies generally do not cover the resulting liability for the corporation, under the Manslaughter Act, they often cover any “defense costs” of insured persons for legal actions under the Act (which might otherwise be excluded under a bodily injury exclusion).

[Click here for more information.](#)

CURRENCY DEVALUATION ENDORSEMENT

An endorsement that covers the deficiency in the amount of loss payable under the local admitted policy solely as the result of official government devaluation of the currency in which the admitted policy is written.

This clause is rarely used in connection with FINPRO placements but is something to consider.



D

DATA PROTECTION OFFICER (DPO)

A corporate officer responsible for ensuring the security of a company's data. This role may be required under the [EU's General Data Protection Regulation](#). However, many companies may choose to have someone in this role even if it is not legally necessary.

As a duly elected and appointed corporate officer, this individual could be covered under both D&O and cyber insurance policies.

DE FACTO DIRECTOR

An individual who, although not formally appointed as a director, performs the acts or duties of a director or is judged to be a director in law and according to whose directions and instructions (rather than expert or professional advice) other directors and/or employees are accustomed to act. Whether such a person fulfills the qualifications of a director or enjoys the rights and privileges of a director, he or she is generally held liable as would a duly appointed or elected director.

Also see: [Shadow Director](#) and [Global Equivalent](#).

DIFFERENCE IN CONDITIONS (DIC, ALSO KNOWN AS GLOBAL LIBERALIZATION WORDING)

Generally found in [controlled master programs](#), provisions that seek to expand narrower coverage in local policies where the master policy is broader (downstream DIC). There are generally a few exceptions to this provision, such as restatements and additional outside-the-limits coverage that may appear in the master policy.

A concern is that such DIC provisions may not be legally allowed in the local country, which is especially likely where [nonadmitted insurance](#) is not permitted. Such provisions may work best when they are found in both the master and local policies, but many insurers report that either they do not exist locally or would not be permitted locally.

Upstream DIC is a provision usually found in a master policy. It provides that where claims coverage would be broader in the master policy than under the local policy, these terms will be

imported (upstreamed) into the master policy/program for local claims where local coverage has been or will otherwise be exhausted.

Also see: [Controlled Master Program](#), [Difference in Limits](#), and [Nonadmitted Insurance](#).

DIFFERENCE IN LIMITS (DIL)

Provisions that seek to increase the amount/limit of coverage in a local policy where the master policy in a [controlled master program](#) provides greater limits.

Such provisions may not be legally allowed in a local country. In such cases, it is expected that the client would be permitted to access the excess limits in the global program for a local claim, but the global program may not pay in the location where the claim was made.

See also: [Difference in Conditions \(DIC\)](#), [Controlled Master Program](#).

DUAL BOARDS (TWO-TIERED OR BINARY BOARDS)

A corporate structure that includes two separate boards of directors:

- A managerial/executive board that is responsible for daily management as well as tactical decisions.
- A supervisory board that is responsible for strategy and oversight of management.

Dual board systems are thought to have developed in Germany and are seen in many European countries, China, and Japan. Such a structure may be optional in other parts of the world.

From a D&O perspective, a dual board company is likely to see more claims brought by the supervisory board than by shareholders. This in part is why there are usually limitations to any D&O policy exclusion that would limit claims brought by an insured (the insured-versus-insured exclusion) so they do not serve to preclude coverage.

[Click here for more information.](#)



E

EUROPEAN ECONOMIC AREA (EEA)

An area that unites European Union (EU) member states with Iceland, Liechtenstein, and Norway to form a single internal market governed by the same basic rules. As Iceland, Liechtenstein, and Norway are not members of the EU, they cannot participate in rule-setting.

Importantly for FINPRO global placements, a single *freedom of services* insurance policy can act as admitted insurance in all EU and EEA territories and can satisfy local insurance requirements.

Also see: *Freedom of Services*.

EUROPEAN UNION (EU)

A political and economic union that currently comprises 28 member countries in Europe. Although many of these jurisdictions require *locally admitted insurance* — and still others may have local *international premium taxes* — a single *freedom of services* insurance policy (D&O and E&O, among others) may satisfy these requirements.

The UK has signaled its intent to leave the EU; see *Brexit*.

F

FINANCIAL INTEREST CLAUSE (FINC OR FINC)

A clause that provides express protection to a parent company against financial damage from a local subsidiary's losses when the local subsidiary cannot be directly insured by the global insurance company's master policy.

For example, where there is only a single global program covering local country exposures or a *controlled master program* that does not include local placements in all local territories in which a company operates, the global policy insurer will not be licensed in all of the local subsidiaries' countries (for a possible exception, see: *Lloyd's*).

As unlicensed *nonadmitted insurance* may not be permitted in the countries where some subsidiaries are located, claims adjusting and claim payment issues can arise with the global insurer being barred from performing these services. In such cases, a financial interest clause covers the parent company for its financial interest if the subsidiary suffers an otherwise covered loss in a nonadmitted jurisdiction.

Originally developed for property programs, FINC clauses are not a complete solution, especially for FINPRO programs where individuals face exposure in local jurisdictions (as opposed to corporate liability or damages). Importantly, these local claims may not be *indemnifiable* at the local subsidiary level, breaking the insurable interest chain for *side-A D&O claims*.

Critically, some FINC clauses also create potential complications in expressly limiting coverage under the global or master policy to those territories where admitted insurance is permitted.

Although FINC language in a global or master policy can potentially mitigate certain regulatory and tax risks in countries where unlicensed insurance is not permitted (addressing a significant compliance concern), it does not replace a local policy and does not afford local insurance services such as premium collection, claims handling, or tax settlement.

See: *Admitted Insurance*, *Side-A D&O Claim*, *Controlled Master Program*, and *Indemnification*.

FOREIGN CORRUPT PRACTICES ACT (FCPA)

A US law that prohibits US-listed companies from bribing foreign officials in order to win business or obtain a financial benefit. For decades, this US law was the only enforced global anti-bribery and anti-corruption act in existence. Now virtually all major developed nations have a local equivalent.

The FCPA is intended to create a level field of competition for businesses globally. Importantly, the FCPA applies to conduct occurring anywhere in the world. The FCPA applies to:

- All US publicly-traded companies, whether foreign or domestic.
- Their officers, directors, employees and stockholders.



- Agents of these companies, including consultants, distributors, and joint venture partners.

The FCPA is jointly enforced by the US Department of Justice (for alleged criminal conduct) and the US Securities and Exchange Commission (for civil matters). Penalties for violations can run into the hundreds of millions of dollars and/or result in prison sentences for individuals involved.

[Click here for more information.](#)

Also see: [Bribery Act 2010](#).

FREEDOM OF SERVICES (FOS OR FoS)

The principle that coverage written by any insurer established in the [European Union \(EU\)](#) can satisfy all local requirements throughout the EU and the [European Economic Area \(EEA\)](#). This is sometimes known as “passporting.”

Insurance buyers benefit from the simplicity of having one policy covering potentially all locations in the EU/EEA, reducing policy administration and broker representation. The premium for an FOS policy is allocated by the insurer per EU/EEA country in a risk-related manner to address any obligation for local payment of premium taxes and special local levies ([IPTs](#)).

Some clients, however, may prefer to maintain local FINPRO policies in each country and may value having policies in each local language, with all of the local nuances to coverage being visibly addressed locally. Insurers with broad [global networks](#) can accommodate either structure.

Also see: [European Union](#) and [European Economic Area](#).

FRONTING ARRANGEMENT

An agreement by an insurer to issue a policy on behalf of one or more insurers, reinsurers, captive insurers, or self-insurers. The fronting insurer generally also assumes some capacity exposure.

Some large global companies need more in local limits than any one insurer may be willing or able to provide. For example, they may require a panel of quota share or structured insurance and reinsurances to provide adequate capacity for their global insurance programs, most typically in the area of property insurance.

A fronting arrangement adds complexity to the controlled master program structure; for insurers, it typically involves their fronting group rather than those who would typically underwrite the risk. The fronting insurer may assume some, little, or no risk on a placement other than whether payment will actually be made by those insurers for which it is fronting.

G

GENERAL DATA PROTECTION REGULATION (GDPR)

An [EU](#) regulation designed to harmonize data privacy laws across Europe and reshape the way organizations across the region approach data privacy. It applies to all companies operating in the EU, including the local operations of non-EU organizations. The GDPR also applies to:

- Organizations located outside of the EU if they offer goods or services to, or monitor the behavior of, EU data subjects.
- All companies processing and holding the personal data of data subjects residing in the European Union, regardless of the company’s location.

This makes the GDPR almost a global law.

With an enforcement date of May 25, 2018, the GDPR provides the potential for significant penalties of up to €10 million or 4% of annual global sales.

Although the GDPR has clear and immediate implications for cyber coverage, it may also result in EPL claims (for example, invasion of privacy claims) because it governs the use of employee data. There may also be fiduciary liability insurance implications because companies use and retain employee data related to benefit plans or programs. As the new regulation requires the appointment of data protection officers, D&O policies may also apply.



Post-*Brexit*, companies in the UK that process data about individuals in the context of selling goods or services to citizens in any remaining EU countries will need to comply with the GDPR, irrespective of whether the UK retains the GDPR after it leaves the EU. The UK government has indicated it will implement a substantially equivalent alternative legal mechanism to the GDPR.

[Click here for more information.](#)

GLOBAL EQUIVALENT

A person who, in country, is the equivalent of a duly elected or appointed director or officer, as he or she acts with the same authority or fulfills the same role. Global equivalents are sometimes found within the definition of “insured person” in D&O policies.

GLOBAL NETWORK

An international network (local country operations) that is one of the key requirements for effective management and delivery of global insurance programs and the issuance of local policies. Insurers generally own parts of their networks, with the remainder either affiliates (with some ownership level) or associates (a contract relationship). Non-owned local networks are made up of network “partners.”

GLOBEX INTERNATIONAL GROUP

An international risk management, insurance, and employee benefits consulting firm that works with a select number of global insurance organizations to deliver their products worldwide.

[Click here for more information.](#)

GOOD LOCAL STANDARD

A compliant local policy issued by global insurers as part of a controlled master program. As is typical in CMPs across all lines of coverage, these standardized local contracts of insurance are subject to minimal negotiations as to terms, such as limits of liability, retentions or deductibles, and potentially the addition of a sister company endorsement.

INCOMING (ALSO KNOWN AS REVERSE-FLOW BUSINESS)

A local placement in a country outside of a client’s home country, made as a referral and done on a *standalone* basis.

INDEMNIFICATION

The right to be fully reimbursed for costs incurred with a claim, typically upon final disposition of the claim. Generally, any such right for a director or officer would arise under the law that permitted the creation of the local legal entity; the exception would be for an individual serving locally at the request of a parent organization, who may have an additional potential right to indemnification from the parent.

Many jurisdictions have not created any local legal framework for indemnification of corporate officers and/or directors. Some jurisdictions have not anticipated the need to create a legal right to indemnification and advancement under local law; others prefer for legal liability to remain with directors or officers instead of the organization. This is especially likely in *civil law jurisdictions*. Where such local frameworks exist, they may be untested and/or unclear.

In some *dual-board* jurisdictions, a claim brought by a supervisory board is not intended to be indemnified by the organization, and hence would be a *side-A claim*.

Outside of a handful of jurisdictions where the clear right to corporate advancement and indemnification exists under local law and has been tested, more side-A D&O claims involving individual directors and officers should be expected.

Also see: [Advancement](#) and [Waiver](#).

INSURANCE ACT 2015 (UK)

A UK law, which came into force in August 2016, that significantly affects insureds’ disclosure obligations when placing or renewing corporate insurance that is subject to the laws of England and Wales, Scotland, or Northern Ireland.



Although the law does many good things, one of the potentially onerous provisions is the new duty of disclosure and fair presentation. Insureds must conduct themselves at all times with utmost good faith toward insurers. Before a policy is placed at renewal and when varying or extending a policy, insureds have a duty under the act to make a “fair presentation” of the risk and to disclose to the insurer all information, facts, and circumstances that are material to the risk of which the insured “knows or ought to know.”

It is the “ought to know” provision that potentially gives rise to concern. One “ought to know” what should reasonably have been revealed by a “reasonable search” of information available. This is understood to mean that insureds should conduct a reasonable search for, and disclose, material information that is available. This includes information not only held by the organization but also by its agents and by persons and entities that will be covered by the insurance.

[Click here for more information.](#)

INTERNATIONAL PREMIUM TAX (IPT)

A tax on local insurance premiums, or the allocable portion of a global premium, where local persons or property are insured under a global insurance policy. IPTs are set by local law, usually in addition to — rather than as part of — a local premium.

INTERNATIONAL REGULATORY AND TAX CONSULTING PRACTICE (IRT)

A unique resource at Marsh, these professionals found within our [Multinational Client Service](#) group focus exclusively on global regulation relating to multinational insurance programs and the related tax consequences for all lines of commercial insurance.

K

KNOW YOUR CLIENT (KYC)

The patchwork of local rules requiring financial institutions (including insurance companies) to be able to prove that they have done customer due diligence and therefore know who their clients are, especially if they include politically exposed persons (PEPs)—senior foreign political figures, their families, and associates. These rules are generally viewed as a subset of [anti-money laundering](#) laws and regulations.

These rules are becoming an increasingly important part of the process of placing local insurance policies, particularly where premiums are paid locally.

[Click here for more information.](#)

L

LEGAL DEFENSE COST COVERAGE (GERMANY)

A form of insurance purchased by German employers that provides coverage for employees’ defense costs if employees are named in criminal actions. Legal defense cost coverage is similar to a legal expense plan in the US, but should not be confused with D&O liability insurance.

LEGAL REPRESENTATIVE

An individual, either an employee of the company or a third party, who in some countries serves in place of a company’s local director.

LITIGATION FUNDING (LEGAL FINANCING)

In jurisdictions where the individual may be a legal entity rather than a natural person, coverage for local insured persons may already have been clarified, or may need to be modified, so as to cover legal representatives that are legal entities.

Payment by a third-party of some or all of a plaintiff’s litigation costs and expenses in return for a share of the proceeds if litigation is successful. If the litigation is not successful, the litigation funder bears the costs it has agreed to fund, lifting these from the shoulders of the plaintiff.

In many jurisdictions, there may be deterrents to litigation, including a loser pays rule under which the unsuccessful party must pay the other party’s legal costs. These sums may also be covered by the litigation funder.

The US — along with a number of other countries — permits litigation funding, but the US market for such services remains relatively small. Most US states do not have a loser pays rule, and contingency funding is often used to manage some of the ongoing



expenses associated with bringing a lawsuit. The most notable jurisdiction with legal financing, from a FINPRO perspective, is Australia.

LLOYD'S OF LONDON

A unique insurance market that currently has an unrivaled concentration of specialist underwriting expertise, leading insurance companies, and a global network that provides capacity to insure some of the toughest risks in the world innovatively and competitively. Much of the capital available at Lloyd's is provided on a subscription basis; Lloyd's underwriters work together as syndicates to underwrite risks and programs.

Due to the structure of Lloyd's local licenses, a single Lloyd's policy may act as locally admitted insurance in more than 80 countries. For FINPRO lines, the list is shorter (roughly 66 territories) and does not include the BRIC countries, where most of our global clients have local operations.

[Click here for more information.](#)

M

MARSH ALPHA™

Proprietary, enhanced *side-A D&O* coverage underwritten by leading *Lloyd's of London* syndicates, which is thus able to serve as locally admitted coverage in Lloyd's D&O territories.

Where clients buy multiple layers of side-A, *DIC* cover, Marsh Alpha can serve as either the primary or excess side-A, DIC policy.

MARSH CYBER ECHO™

Proprietary, enhanced excess cyber coverage written out of London and underwritten by leading Lloyd's of London syndicates. Marsh Cyber Echo provides "follow form" excess coverage for clients in any industry sector and risk profile around the world.

MARSH DELTA™

A proprietary suite of enhanced management liability products (D&O, EPLI, fiduciary, and crime) for non-US risks. This suite of

products can be used for the non-US exposure of US-based global companies. Marsh Delta is underwritten out of London by a panel of insurers from which it is possible to select *Lloyd's* licensed syndicates so that Delta acts as *admitted coverage* in *Lloyd's* licensed jurisdictions.

MARSH FINANCIAL LINES ECHO™

Proprietary, enhanced excess financial lines coverage written out of London and underwritten by leading Lloyd's of London syndicates; includes a reinstatement and sublimit duplication and drop-down features.

MARSH GLOBAL INSIGHT

An online portal accessible by Marsh colleagues and global clients that combines information from Axco (the most prestigious provider of global insurance market information and statistics) along with Marsh's own insights into global insurance rules, regulations, and norms.

Marsh colleagues and clients can access *Marsh Global Insight* for guidance on these local rules by product line. Risk professionals can access Marsh Global Insight through [the Marsh Portal on marsh.com](#).

MORRISON V. NATIONAL AUSTRALIA BANK

A seminal 2010 US Supreme Court decision that places significant limits on the extraterritorial reach of US securities laws. A D&O case, *Morrison* is also frequently (if not more often) used in E&O cases to defeat standing or class certification.

Described as an F-cubed case, the issue before the court was whether foreign holders of the securities of a foreign company, purchased on a foreign exchange, should be permitted to participate in a securities class action in the US.

The court held that such individuals could not bring, or be a member of, a related US securities class action and instead would have to seek available remedies in the jurisdiction in which they purchased the securities.

In *Morrison*, the court set out a "transactional test" to determine the law governing fraud claims in cross-border situations on the basis of the place where the fraud was committed. "[T]he focus of the



Exchange Act is not upon the place where the deception originated,” the court said, “but upon purchases and sales of securities in the United States.”

[Click here for more information.](#)

This US Supreme Court decision has spurred local jurisdictions around the world to develop their own local class or collective action procedures to ensure that potential non-US plaintiffs are able to see recoveries outside of the US.

Also see: [American Depository Receipts](#).

MULTINATIONAL CLIENT SERVICES (MCS)

Marsh's own global network of internationalists who focus on the execution of global programs; in North America, they are available to assist in FINPRO accounts upon request. We strongly suggest that this request be made where MCS is already assisting on other lines of insurance on an account. Alternatively, their assistance may be requested in cases where there are more than an easily managed number of local placements (even if there is no other client engagement).

MCS can be a strong, integral part of the client service team, with deep and broad knowledge of global programs and the challenges that can arise in implementation.

MULTINATIONAL MANAGEMENT LIABILITY REPORT

A proprietary Marsh FINPRO report that is tailored to the relevant jurisdiction of each global client. The report considers both local insurance and local D&O risk characteristics, in an algorithm to facilitate discussions on where a client might prioritize local placements.

Note: This report does not include tax considerations.

Also see: [IRT Practice](#).

N

NONADMITTED INSURANCE

An insurance policy issued by an insurer in a territory where that insurer is not locally licensed.

Nonadmitted insurance is generally not allowed in most jurisdictions around the world. However, it may be permissible in certain limited circumstances — for example, upon prior approval by the local supervisory authority or if local requirements are met that demonstrate that local coverage is not available.

For FINPRO lines, in local countries where nonadmitted insurance is not permitted, the global policy may not be legal, binding, and admissible, making insurers unwilling to pay claims locally. This is a critical concern, especially where indemnification may not be permitted locally.

[Marsh Global Insight](#) can provide information as to whether nonadmitted insurance is permitted. Please note that this information does change (although rarely) and should be considered at each renewal.

Marsh colleagues and clients can access [Marsh Global Insight](#) for guidance on these local rules by product line. Risk professionals can access Marsh Global Insight through [the Marsh Portal on marsh.com](#).

Also see: [Admitted Insurance](#).

P

PASSPORTING

Insurance industry term for [freedom of service](#) capabilities. This is the right of a company in the EU (and the wider EEA) to do business throughout the region without needing to obtain additional authorization or comply with alternative local laws so long as it complies with all rules and regulations in the country of origin.

[Click here for more information.](#)



PRESUMPTIVE INDEMNIFICATION

A provision previously found in most D&O policies stating that where an insured company was legally permitted and financially able to indemnify an individual, to the fullest extent permitted by law, an insurer would assume that the company had done so. This meant that a claim would presumptively fall under side-B of a D&O policy, rather than side-A, and that the retention applied to the matter.

This was not helpful to individual insureds where their organizations delayed advancement of funds or outright refused indemnification and insurers felt that indemnification was legally possible. Hence, it has been removed from many D&O policies.

R

ROAMING EXECUTIVE

An executive at a multinational company who has regional, cross-border responsibilities (for example, a compliance or sales executive for a region) despite being technically only a director, officer, or employee of a given subsidiary in a single country.

Due to the cross-border nature of their positions, regional executives may be named in claims throughout a region, including countries where they are not duly elected or appointed directors, officers, or employees of any locally established entities.

Also see: [Sister Company Endorsement](#).

“RULES OF THE ROAD”

A Marsh term referring to the intercountry document outlining the communication protocols and business goals of a cross-border client engagement.

This term is typically not used for small FINPRO [controlled master programs](#).

S

SENIOR MANAGEMENT REGIME (SMR)

A UK regulation intended to increase personal accountability in the wake of the global financial crisis. The SMR, which took effect in March 2016, applies to all relevant financial institutions, including banks, building societies, credit unions, Prudential Regulatory Authority (PRA)-designated companies, insurers, and reinsurers.

The SMR is directed at chief executive officers, chief finance officers, executive directors, and individuals responsible for key business areas, chairs of board subcommittees, chief compliance officers, and money laundering reporting officers. There is also a general catch-all for other managers deemed to hold “significant responsibility” functions.

The SMR provides regulators with an expanded toolbox to enforce the new laws. This includes the ability to impose unlimited fines on senior managers engaged in gross misconduct leading to bank failings and to apply a reverse evidential burden in certain regulatory proceedings.

[Click here for more information.](#)

SHADOW DIRECTOR

“A person in accordance with whose directions or instructions the directors of the company are accustomed to act,” per Section 251 of the UK Companies Act 2006 and Section 27 of the Irish Companies Act 1990 (as well as similar statutes in other jurisdictions).

This person or corporate body, although not officially appointed to its board of directors, controls or influences a company’s management. Those giving instructions or advice in a professional capacity (for example, as accountants or lawyers) are not deemed to be shadow directors, as their advice tends to be limited to specific aspects of the business.

[Click here for more information.](#)

Also see: [De Facto Director](#).



SIDE-A D&O CLAIM

A D&O claim for which no corporate indemnification is legally or financially permitted or available. These claims are especially likely in civil law jurisdictions where the law may create personal liability for directors and/or officers but there is no local legal framework for indemnification.

Older D&O insurance policies may include *presumptive indemnification* under which if the insured is permitted to legally and financially indemnify its directors and/or officers, the insurer will presume that the insured has done so. Hence, the insurer will not advance or pay these amounts on behalf of the individuals until the policy's retention or deductible has been satisfied.

Also see: *Indemnification* and *Financial Interest Clause*.

SIDE-B D&O CLAIM

A D&O claim that the insurer reimburses or pays on behalf of a company that has indemnified, or would otherwise indemnify, its directors and/or officers.

SIDE-C D&O CLAIM

A D&O claim made against the entity; such coverage is not purchased (or available) in every jurisdiction. Coverage may be limited to securities claims, typically defined as claims brought under the securities code or by or on behalf of securities holders.

SISTER COMPANY ENDORSEMENT OR EXTENSION

A provision intended to broaden the coverage for insured persons beyond those who are directors, officers, or employees of local entities, named to include any similar persons who are ultimately directors, officers, and/or employees of the parent organization.

Note: Sister companies are subsidiary companies owned by the same parent organization.

[Click here for an example.](#)

Complex, global organizations typically have *roaming executives* who need to be covered in the jurisdictions in which they may be the target of claims. These organizations may find it difficult to specifically name or list every major subsidiary that they have in a jurisdiction. A sister company extension can assist in establishing local coverage for the right individuals in these instances.

SPECIAL LITIGATION COMMITTEE (SLC OR SLIC)

In the US, a committee of disinterested (neutral) and independent board members appointed by a board of directors when the company is facing D&O shareholder derivative litigation to consider whether the company's best interest is to pursue or terminate such litigation. The SLC is a last chance for a company to control a derivative claim when a majority of its directors cannot impartially consider the demand. Generally, a court will defer to an SLC's recommendation to terminate a derivative suit if the committee shows that its members were independent, acted in good faith, and had a reasonable basis for their conclusions.

Even where a plaintiff has survived a motion to dismiss for failure to make pre-suit demand, by showing reasonable doubt concerning the disinterest or independence of a majority of board members, that board can still properly delegate its authority concerning litigation decisions on behalf of the company to an SLC consisting of disinterested and independent directors.

From a coverage perspective, it may be useful to consider adding express coverage for an SLC to a D&O policy to ensure that separate counsel and other expert fees engendered by the commission are covered, if desired.

[Click here for more information.](#)



STANDALONE LOCAL POLICY

Individual financial lines coverage (for example, D&O, E&O, or EPL) that a client seeking to obtain locally admitted insurance may buy in each relevant jurisdiction.

Although the purchase of standalone local policies can be coordinated—for example, using a single global broker a selected insurer — each local policy would be individually negotiated in-country. Generally, this approach adds the administrative burden of needing to supply applications for each local placement, although this could be negotiated around.

Each standalone local policy would have a separate limit of liability, be in the local language, and have a locally relevant retention or deductible. The potential aggregation risk from the resulting separate local limits of liability have some carriers concerned; not all global insurers are willing to write multiple, standalone local policies where the total combined local limits are significant.

The popular alternative to standalone local policies is a [controlled master program \(CMP\)](#). Some global programs combine standalone placements with a CMP.

Even where a company seeks a fronted program with shared local limits (a CMP), in some jurisdictions it may need to purchase separate standalone local policies due to local restrictions on reinsurance that prohibit an insurer from reinsuring the shared local limit back to the master policy.

STATUTORY DEDUCTIBLE REQUIREMENT FOR D&O (GERMANY)

The requirement under Germany's Adequacy of Managerial Salaries Act, enacted in 2009, that German stock corporations (Aktiengesetz) purchasing D&O insurance for their executives must include a personal deductible to be borne by the directors in an amount equivalent to at least 10% of the relevant loss, up to an annual cap.

Members of the management board who violate their duties can be jointly and severally liable to the company for any resulting damage.

They may also bear the burden of proof in the event of a dispute as to whether they have employed the care of a diligent and conscientious manager. If the company purchases insurance covering the risks of a managing board member arising from his or her work for the company, such insurance should provide for a deductible of no less than 10% of the damage up to at least an amount equal to 1.5 times the fixed annual compensation of the managing board member.

[Click here for more information.](#)

Many, if not most, of the local subsidiaries of global companies operating in Germany are not German stock corporations, and thus not subject to this requirement. For local subsidiaries subject to the requirement, most global insurers offer a buy-back provision to address this issue (including as part of a controlled master program).

SUPERVISORY BOARD

The part of a corporate structure responsible for strategy and oversight of management. Critically, if the management of a company has failed, liability for this failure can extend to the supervisory board if it does not take sufficient steps to ameliorate the resulting damage. Ultimately, this can mean bringing a claim against executive board members.

Also see: [Dual Boards](#).

T

TAX TRUE-UP ENDORSEMENT

A provision providing for the adjustment of loss to reflect the differences in tax rates between the two countries in instances when an insurer must pay a loss in a country other than where the loss occurred. This endorsement is rarely available on FINPRO placements today, but is still common on other global programs.



W

WAIVER

An approach to [indemnification](#) in some jurisdictions under which shareholders vote annually on whether to waive prior liability for a company's directors and/or officers. This can seem like a formality — especially in cases where a subsidiary is wholly owned by a parent organization — because of the assumption that a company and/or its shareholders will waive liability for its executives.

In some territories, a waiver is valid only against liabilities to the company itself and not to third-parties such as clients, customers, competitors, employees, and regulators.

WRAP POLICY

In the world of global FINPRO programs, policies that separate and segregate US and non-US exposure, so that there is a US program and a rest of world (RoW) program, with all local policies tied into or listed as underliers on the RoW wrap placement. This can be done on a shared limits basis, with the wrap sharing limits with a US placement, or on a completely standalone basis, with separate limits with the same or different insurers.

The benefits of a wrap policy are that with US risks contained in the US program, a wrap placement can be written at more competitive pricing and terms. Local premiums are then allocated out of the lower cost wrap, local IPTs are reduced, and local deductibles or self-insured retentions reflect lower/local norms.





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