CARGO CLAIMS & MARINE INSURANCE – LESSONS FROM AFRICA

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Introduction and Overview

- What is Marine Insurance?
- Cargo Claims
- Key Considerations for Risk Managers in Africa
- The Geopolitics and Legal Regime of Marine Insurance in Africa
- Structuring Marine Insurance for multinational companies in Africa

What is Marine Insurance?

- Insurance against the perils of marine commerce
  - For example, if a ship sinks in transit, various types of losses are possible: loss of cargo; loss of profit from sale of cargo; damage to ship; third-party liability; personal injury
  - Key difference between marine insurance and other types of insurance is that the "marine adventure" or peril insured must be specifically *maritime* in nature
  - A contract of Marine Insurance may, by it's express terms, or by usage of trade, be extended to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage

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Cargo Claims

Generally, the insurance policy holder should submit documents in support of cargo loss or damage that include:

(1) import invoices and customs entry;

(2) Bill of lading, tally sheet, outturn record or survey report;

(3) discharge records at final destination

Key Considerations for Risk Managers in Africa

From Danger to Opportunity

- He who runs after good fortune runs away from peace. – African proverb

Managing Cargo Claims Through a Risk Policy

- YOUR AIM MUST BE A CONTROLLED ENVIRONMENT.
- Emphasis on Businesses in Africa to have a risk policy in place
  - Risk analysis
  - Operations procedure
  - Monitoring
  - Reporting

Managing Cargo Claims through Commercial Contracts

- Using INCOTERMS

- Ensuring that contracts meets all insurance requirements?

- Bills of Lading & Charterparties are also contracts

The Geopolitics and Legal Regime of Marine Insurance in Africa

Differing Legal Regimes

- The process employed in obtaining marine insurance is regulated differently by states on the continent
- Africa possesses differing restrictions on marine insurance contracts reflecting each country's attempt to avoid a deficit in the balance of payments
- Restrictions reflected in the market practices of different countries on imports, exports or a combination of both.

- the exact content of national legislation varies from country to country, with differences occurring in the following major categories: insurable interest, the form and content of the policy, assignment of the policy, rules on the voyage policies concerning commencement, delay and deviation

- An example of the difference between the various national legal regimes which affects cargo insurance, involves the duration of the insurance coverage typically known as warehouse to warehouse calculated from the time of discharge.

Compliance with Restrictions

- Enacting provisions requiring F.O.B or C&F imports only
- Role of Commercial Banks in Issuing Letters of Credit and ensuring compliance with local insurance
- Customs valuation of Imports on C.I.F and the need to insist on evidence of local insurance.

Structuring Marine Insurance for multinational companies in Africa

Major Considerations

- Understand and address the specific needs of the multinational and its subsidiaries
- Reflect the risk profile of the business in all its locations
- Engineer between the risk management function of the insured and an insurer capable of matching requirements in full

- Where reliance is placed upon insurable interest provisions , ensure that the group legal, finance and tax function fully understand the practicalities of how it is to work