

D&O INSURANCE: DO YOU NEED IT?

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Being on the board of directors of a company is a privilege. However, it comes with responsibilities – and liabilities. You may, for example, be sued by, say, a stakeholder who suffers financial loss and attributes it to a failure of your duty as a director.

Directors and Officers (D&O) Insurance provides directors and company officers liability cover for claims which may arise from the decisions and actions taken within their scope of regular duties and responsibilities.

LIABILITY MYTHS

Some directors do not consider D&O Insurance to be necessary. Among their misconceptions are:

- “I will be diligent and prudent in discharging my responsibilities, so there is no risk of liability.”
No matter how competent, prudent and diligent an officer or director is, any business decision, especially in today’s complex and changing environment, can possibly result in losses for the company, and the directors and/or officers can potentially be held accountable for those losses.
- “My company will look after me if I get sued.”
What if the company is the party taking legal action against the director? Even if this is not the case, Section 172 of the Companies Act imposes some restrictions on the company indemnifying the directors for their personal liability.
- “Only publicly listed companies need D&O Insurance.”
Under the Companies Act, the same standard of care and liabilities exists for directors of all companies – private, public and non-profit.
- “People sue companies not individuals.”
Organisations and their individual directors and officers can be named as co-defendants in the same proceedings.

The bottom line is that D&O Insurance supports good governance by making the risks of business decisions manageable and transparent.

D&O IN SINGAPORE

According to the *SID's Board of Directors Survey 2013*, 87 per cent of listed companies provide D&O Insurance as a matter of company policy. Of those who provide, the combined coverage of the insurance for each company is mostly between S\$10 million to S\$30 million (45 per cent) or below S\$10 million (42 per cent).

Insurance industry practitioners whom I have spoken to estimate that the take-up of D&O Insurance among private companies is a lot lower, much less than 50 per cent. Yet, the exposure of liability for private companies exists as it does for the listed companies.

The good news is that the market for D&O Insurance in Singapore has become more comprehensive due to increased competition. The features of D&O Insurance in Singapore are now on par with similar products in the UK and US.

For example, many previous exclusions have been removed. Typically, only the following are now excluded: overlapping or conflicting claims, dishonesty, insolvency, past litigation, fines, bodily injury, property damage, pollution, and employment practice liability.

PERSONAL D&O INSURANCE

The traditional D&O insurance policy is taken by a company for its board of directors as a whole.

In some circumstances, directors may want to consider a Personal D&O Insurance where the policy is taken out in the name of the individual director or officer rather than the entire board of directors.

Personal D&O Insurance can be particularly useful for independent directors who may be unable to ensure that their company purchases

relevant or sufficient insurance coverage. It is also useful to directors who are resigning or retiring from their positions and who seek run-off protection.

Since 2011, SID has arranged for a Personal D&O Insurance policy to be made available to its members. The individual, portable policy provides for protection against liability for up to S\$1 million in three directorships.

While there is no substitute to performing one's duties properly, D&O Insurance provides comfort and assurance to a director, allowing him to make the important decisions confidently, knowing that the risks are being mitigated. ■