



**When an insurance
policy becomes
a recruitment tool**



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Mr Jason Kelly of **AIG Asia Pacific** stresses the vital importance for a company to have D&O insurance. It is so crucial that it acts as a recruitment tool too for the company. He discusses who the beneficiaries would be and also how D&O insurance in Asia differs from that of other regions.

Being appointed as a director of a company is a bit like winning a trifecta of responsibility. Primarily, you serve as a custodian, appointed to a position of trust by the shareholders to act as the controlling mind of the company you serve. Secondly, from that trust emerges the legal duties you owe: to the company, to shareholders, to potential investors, to third parties and, yes, to the growing body of regulators watching over your company's business. Thirdly, from these legal duties spring your exposure to liability; liability which is personal and from which the corporate veil of the company may offer little in the way of protection.

Or, more succinctly, with power comes professional responsibility; with professional responsibility comes personal accountability.

Faced with this triple-whammy of responsibility and accountability, a director needs a properly equipped equipment locker from an insurer that knows the product and the specific market in which they operate. Robust corporate governance, compliance and risk management processes are key tools in ensuring the director's custodianship and legal duties can be properly discharged. The third limb of the trifecta, however, requires a very different type of support; a nimble back-up which can be deployed when a director's exposure to liability becomes most acute. It requires Directors' & Officers' insurance.

Shield and signal

Directors' & Officers' insurance indemnifies directors and officers of a company for the liabilities they incur in performing their roles, to the extent such indemnification is permitted by law. Directors themselves, therefore, are the first obvious beneficiaries of having D&O insurance protection in place. However, they are by no means the only ones who will gain.

The best directors – those with the capability and strength of will to put in place proper governance procedures to protect the company – are realistic enough to recognise that even the most robust governance procedures cannot completely eliminate the risk of a law suit or regulatory investigation. Having in place proper D&O insurance to address this residual risk is therefore often a pre-requisite to being able to attract the best directors to serve.

The second group to benefit from D&O policies are, perhaps surprisingly, human resources departments, recruitment consultants and those tasked with attracting the best talent. They often have to make the availability of D&O insurance transparent during the directors' recruitment process in order to build an appropriate talent pool.

This, in turn, leads to our third set beneficiaries. Those who benefit from having the best directors in place to take on custodianship of the company and oversee proper gov-





ernance and risk management: shareholders and potential investors.

The purchase of D&O insurance by a company, therefore, has come to symbolise the maturity of a company's governance and risk management procedures. Its absence, some might say, conveys the opposite impression. Regulators are alive to this dynamic, as is the case in Hong Kong, where the Listing Rules require a listed company which has not purchased D&O insurance to disclose that fact, so investors and shareholders are aware. Further, not for nothing do the Hong Kong's new Model Articles of Association include specific reference to the company's power to purchase D&O insurance.

D&O in Asia

D&O insurance solutions for companies in Asia first emerged from other D&O insurance markets such as the United States, where product breadth, claims volume and litigation experience was deep. However, as the legal landscape across and within Asia differs from the United States, so too does the appropriate D&O insurance solution for directors of Asian based companies. Markets around the world are different and insurance products should be designed with this in mind.

Class action experience offers case in point. Whereas class action securities claims are common in the 2nd district of New York or the 9th district of California and account for significant element for a director's exposure, they are non-existent in much of Asia Pacific. Further many countries

in Asia have yet to adopt conditional fee remuneration for lawyers which is often, a key driver for class actions.

As a result of the structural differences in the legal landscape between Asia and America, the ideal design of a D&O policy has bifurcated. In America, D&O policies are designed to offer the fullest protection against class action securities claims. In Asia, the optimum design of a D&O policy would focus on regulatory exposure in the form of investigations and resulting legal expenses. These differences should be reflected in the D&O policy – it is not a case of one global size fits all.

AIG is one of the world's leading D&O insurers, with a reputation for client support and thought leadership in every market. Here in Asia

Pacific we are proud of our local policy, the Dragonshield Directors and Officers Liability policy. Harnessing our global expertise in D&O, we have crafted a genuinely local policy for clients in the Asia Pacific region. For the first time in Asia, those companies listed on the HKEx, SGX the JSX or other stock exchanges in Asia have a policy crafted just for them – this is something that no other competitor in the market has done.

A gathering of the experts

During May and June, AIG will be delivering roadshows on corporate governance across seven cities in Asia in partnership with KPMG, Norton Rose Fulbright and PARIMA, the region's risk management organisation. Titled, "What to do when the regulator comes knocking", the events are designed to prompt discussion and learning around the real-world practice of good corporate governance.

Our aim is to raise awareness through these events about corporate governance among risk managers, and to give practical and valuable advice on how to get your organisation ready for the day when a regulator comes knocking.

If you are a risk manager who would like to attend one of the sessions, do contact AIG or your contacts at KPMG, Norton Rose Fulbright and PARIMA. We would enjoy the opportunity to talk to you, and to help you set up your company for a confident and prosperous future.

Bring on tomorrow. 

Mr Jason Kelly is Regional Head of D&O at AIG Asia Pacific.



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