



D&O insurance market in Singapore

There is a very active director and officer liability (D&O) insurance market in Singapore with several hundred million dollars of capacity and numerous insurance companies underwriting the risks.

By

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With the efforts made to encourage Lloyd's and other insurers to establish in Singapore, there is today a significant oversupply of D&O capacity. This means that insurers are prepared to be incredibly competitive in pricing and scope of coverage. While this is very much to the advantage of directors, the latter need to ensure that directors actually review the insurance coverage together with their exposures, and not just feast on the premium discounts.

The quality and suitability of coverage is at risk of being inadequate as the continuing reduction in commissions to brokers means that they are often not able to spend the quality time needed

to structure insurance coverage to suit a client's exposures. As premiums have fallen, there is the danger that D&O policies become increasingly commoditised. Although on the surface the policies have become wider, there is an increased chance that serious flaws in cover, and other technical issues and inconsistencies only rear their ugly heads when it is time for a claim to be made.

All leading D&O insurers have their own policy wordings that grant cover to directors and companies in the way that the insurers wish to provide capacity. A summary of the key Insurers and their Singapore capacity and appetite is shown in the table.

SINGAPORE INSURERS' CAPACITY

SINGAPORE INSURERS	PRIMARY CAPACITY	SELECTIVE RISKS
ACE Insurance Ltd	US\$25million	US-listed companies and Australian risks will be carefully reviewed
AIG Asia Pacific Insurance Pte Ltd	US\$20million	US-listed – US\$5million max. limit
Allianz Global Corporate & Specialty SE Singapore Branch	US\$30million	None specifically but review each risk on its merits
Allied World Assurance Company Ltd	US\$25million	None specifically. Depends on risk quality
Argo	US\$20million	Banks, Stock Exchanges, US-listed
AXA Insurance Singapore Pte Ltd	€15million (Singapore/ Malaysia/ China)	SEC-regulated, Financial Institutions, companies with claims activity
AXIS Specialty Limited (Singapore Branch)	US\$25million	China-listed businesses
Berkshire Hathaway Specialty Insurance Company	US\$100million	China-listed companies and US IPO
Catlin XL Insurance Company Ltd	US\$25million - US\$50million	Individually reviewed
DUAL Underwriting Agency through MSIG Insurance (Singapore) Pte Ltd	US\$20million	US-listed or HO in US; ADR Level 2 and above
Federal Insurance Company (Chubb)	US\$50million	
HDI Global	Not a primary insurer	No FI D&O or entities with ADR level 3 and above
Liberty International Pte Ltd	US\$20million	Not for Profits; Mining Exploration; airlines; US-listed
Newline Asia Services	US\$15million	US-listed
QBE Insurance (Singapore) Pte Ltd	US\$50million	US-listed
Starr International Insurance (Singapore) Pte Ltd	US\$25million	
Tokio Marine	US\$25million	None specifically
Zurich Insurance Company Limited (Singapore Branch)	US\$20million	Adoption/ Foster Care, Auto-related, Aviation, Biotech, Mining, Oil and Gas, Pharmaceutical, US-listed

*Ace Insurance recently acquired Chubb and will go forward under the Chubb brand.

Current Claims Trends

The Singapore claims environment is still fairly benign but there has been an up tick in claims involving regulatory enquiries and employment-related disputes. Directors need to be particularly careful in reviewing the availability of legal representation costs before “official enquiries”. Often regulators “enquire” about potential breaches before launching official investigations, and the costs of hiring external auditor and legal

advice in the enquiry stage can run into the millions. Also there is the question of whether the costs incurred at this stage benefit the company or the insured persons.

With more Singapore companies operating overseas, it is essential that directors understand the implications of this and the change in risk exposure that results. Overseas courts have often proven to be less than impartial when it comes to

10 Questions Directors Should Ask Their D&O Insurance Providers

1. How much available cover do I really have – how is my available limit of cover diluted?
 - a) Within which categories of employee and at what level of seniority do I share the D&O limit purchased by the company on my behalf?
 - b) Does the limit provide cover for the company as well?
2. Do I enjoy the benefit of any cover for fines and penalties awarded against me personally, including those from the recently-introduced SGX listing committees which are empowered to impose fines on companies and directors for breach of listing rules?
3. Do insurers unequivocally commit to waive their right to rescind the policy save as against any individual directors being guilty of fraudulent misrepresentation or non-disclosure?
4. Does the policy provide a mechanism under which insurers will advance all defence costs and legal representation expenses to me pending resolution of any dispute between the company and the insurers as to the extent of such costs being ultimately covered under the policy?
5. Am I covered for the costs of an investigation following death or bodily injury occurring as a result of corporate activity?
6. What provision is there in the policy for my protection in case of an actual or potential conflict of interest between the company and myself as a result of which I may require separate legal representation?
7. How will my policy respond in the event that there is an extradition order made against me?
8. What protection does the policy provide against future claims against me if I retire or resign during the policy period, or if during such period the company is the subject or object of mergers and acquisitions activity?
9. Am I aware of any circumstances that could give rise to a claim against me? Have I told my insurers about this and do I really understand what this means and the implications of failing to do so?
10. With regard to my external directorship positions, do I have proper cover for liability from these under my company's insurance arrangements?

claims involving national interests and involving foreign corporations and directors operating in their countries. Also many countries insist that local policies are put in place rather than paying claims to local directors and corporations using overseas policies. A failure to do this can result in serious frustrations, delays and additional tax payments.

Challenge the Cover

Directors are usually not involved in the negotiation of this fundamental protection of what is after all a personal liability. Then they become surprised and frustrated when a claim situation arises.

Directors should arrange for briefings from their insurance providers at which they have to ask

pertinent questions and really engage in the details of the cover and how it will respond in certain claim scenarios (See box "10 Questions Directors Should Ask Their D&O Insurance Providers").

All too often, directors rely on benchmarking policy limits against similar organisations rather than arranging cover on a risk-based basis that truly reflects their risk profile. For example, DBS and a large European bank may have similar market capitalisations but their risk profiles will be totally different. Benchmarking can be a useful guide but it is a long way short of the complete answer.

Remember, when it is time to make a claim, it will be too late if you discover there is no or inadequate cover. ■