

INSIDE THE CHUBB MARKET

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BUYING HABITS HAVE CHANGED FOR MANAGEMENT LIABILITY POLICIES

What you need to know about Corporate Governance and Exposures facing Small & Medium Sized Companies.

Did you know:

In Singapore¹,

- Of the 86 lawsuits against Company Directors, 79 of those were against private Company Directors
- In all cases against Directors and Officers since 1975, directors lose in 71% of them
- 56 of 86 cases against Directors and Officers occurred since 1995

Recent developments in the local corporate governance scene, affecting both listed companies and Voluntary Welfare Organisations, have proven that the litigation environment in Singapore is evolving.

Every corporate Director and Officer serving in any company or organization is a potential target. Company Executives may be held personally liable for the decisions they and fellow board members or officers make, and this liability can result in serious personal financial loss. Not only have the *rules* changes – but the *game* has also changed for anyone working in an executive capacity.

To illustrate this potential liability, here are some examples of the risks that all Directors and Officers face:

- **“Regulatory” Proceedings:** Today, “Regulatory” bodies such as the Ministry of Health and Environment are increasingly active in taking action against Company Directors. Company directors thus are coming under greater scrutiny to adhere to their fiduciary duties or risk defending themselves in expensive and long-drawn proceedings.
- **Bankruptcy:** Declaring bankruptcy is a reality for some companies, but that reality can carry significant liabilities for the company’s Board of Directors. The Company’s Act and insolvency regulations impose a duty not to conduct the company’s business in a manner so as to defraud its creditors, and thus directors may be held personally accountable for these actions when the company goes bust.
- **Employees:** Directors and Officers might find themselves mired in a suit or claim made against them brought by an employee alleging wrongful termination, discrimination or sexual harassment.
- **Defamation and Misrepresentation:** Statements and representations made by Company Directors in their capacity as such, whether written or oral, could be held against them in a court of law.

¹ Source: *The 2004 Study of Cases against Directors in Singapore* conducted by Corporate Governance and Financial Reporting Centre of the NUS Business School. Commissioned by: Jardine Lloyd Thompson Private Limited.

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In addition to these exposures, corporate officers must be aware that there are duties imposed on them under the law. Some of these include:

- ***Duties to act honestly and in good faith*** Directors and corporate Officers who discharge managerial functions owe duties to the company fiduciaries such as the duty to act honestly and with the utmost good faith.
- ***Conflict of Interest*** A Company Director is under the duty to act bona fide in what he believes is best for his company. Without the informed consent of their company, directors must not place themselves in a position where their personal interests are liable to conflict with their duties to their company. The law requires that Directors disclose personal interests at a meeting and obtain the consent of the Board of Directors.
- ***Duty to act with utmost care, skill and diligence*** A Director is required to perform his functions with reasonable care and attend with due diligence and caution to the work entrusted to him.
- ***Use of Corporate Information*** Directors must not, without the informed consent of the company, use the company's assets, opportunities or information for their own benefit.

Where are the claims coming from?

Did you know:

Nature of D&O Claims notified to Federal Insurance Company Singapore in 2004[^]:

23% Defamation
22% Fraud
11% Breach of Duties
11% Commercial Transaction
11% Employment Practices
11% Inadequate Disclosure
11% Mismanagement

Sources of D&O Claims notified to Federal Insurance Company Singapore in 2004[^]:

34% Business Associates
22% Shareholders
11% Competitors
11% Customers
11% Employees
11% Government Regulators

[^]Source: *Federal Insurance Company, 2006*

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It is the cost of defending these allegations that causes the most financial damage for an individual.

D&O liability is a concern which is increasing in significance and public awareness. One needs to look no further than the front page of the newspaper to see that it is not just the large, publicly traded companies that are facing issues of Corporate Governance. In fact, private company directors face as much risk of litigation as publicly listed companies. More often than not, the law does not permit companies to indemnify their corporate Officers and Directors when they are being sued. In this day and age, the fine line between corporate liability and Directors' and Officers' personal liability is getting thinner. **To respond to the demand by Directors and Officers for protection against such allegations, Chubb has come up with specialized products for these buyers.**

Chubb has a dedicated underwriting centre for such risks and we match that support by having local D&O claims service for your customers. Chubb has unique products to address SMEs, Educational and VWOs.

For more information please contact Jonathan Chan at 65107 340 or email at jdchan@chubb.com.

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