

Distinctive. Choice.



Executive Risks – Protecting Directors & Officers

Professional & Executive Risks

Risk and Insurance Services

Overview

In recent years the profile of Directors and Officers (D&O) Liability Insurance has changed significantly in Asia. Corporate scandals in the USA have heightened the exposures of directors to legal liabilities. D&O related claims, litigation and damage awards are increasing across the region; and the “blame culture” trend of seeking to apportion fault, responsibility and redress at law, is spreading. Most noticeably, regulators are increasingly flexing their muscles, across jurisdictions.

Organisations in Asia are increasingly cognisant of the need for good corporate governance.

The global financial crisis may be waning, but it is likely that as people take stock of their losses and seek compensation from those they consider responsible, the effects of the crisis will continue for some time.

Executive Risks is a fast evolving area of insurance now encapsulating a wide variety of different, but closely related covers. At Jardine Lloyd Thompson (JLT), we have for several years been developing our specialist resources in Asia to deal with these emerging exposures. This expertise is housed within our Professional & Executive Risks (ProEx) team.

The following are some of the key covers handled by our ProEx specialists:

D&O Liability Insurance

The challenging trading conditions currently prevailing in global markets means that directors' and officers' personal accountabilities have never been under greater scrutiny. While in the past claims from shareholders were perceived as the greatest risk, claims from regulators, customers, liquidators, creditors and members of the general public are increasingly common.

The ability of corporations to attract and retain directors, officers and senior management often depends to a great extent upon their ability to provide indemnification to those individuals. Depending on local laws and practice, a corporation may only be able to provide its directors and officers with limited indemnification and in many jurisdictions indemnification is expressly forbidden. Where no or limited indemnification is available, directors and officers will have total exposure to their personal assets.

D&O Liability Insurance provides coverage against actual or alleged breach of duty, dereliction or neglect of duty, misstatements and errors or omissions.

D&O policies have evolved significantly over the years. The changing risk environment has led to the provision of enhanced coverage that includes residual limits for non-executive directors, and loss mitigation expenses. Definitions are also being widened to include topical risks such as extradition actions and corporate manslaughter proceedings.

Employment Practices Liability

Employment Practices Liability (EPL) policies provide coverage for legal costs, expenses and actual awards against the corporate entity, its directors, officers and employees for the violation of employment practices laws and regulations.

The policy covers legal costs for both alleged and actual violations. It would also cover attendance at official investigations, enquiries and dispute resolution proceedings.

Fiduciary Liability

Claims arising out of the provision of a pension or employee benefit plan are often excluded from D&O Liability policies. Fiduciary Liability policies are designed to respond specifically to the growing number of claims arising out of Fiduciary and Pension fund litigations.

In some jurisdictions, regulators either recommend or demand that pension funds take out separate insurance against fiduciary liability in order to avoid having to rely upon extensions provided by other corporate insurance policies where the limit may be eroded by unconnected litigation.

Prospectus Liability/Public Offering of Securities Insurance (POSI)

Directors and officers are often most at risk when the company undertakes a public offering of securities and as part of the process, issues a listing prospectus. The prospectus invites investors to purchase shares or other securities, based on financial information and undertakings. In this event, directors and officers (and other parties) would be personally liable for the contents of the prospectus and the accuracy of the information therein.

The majority of D&O policies do not cover Prospectus Liability except by endorsement. A standalone Prospectus Liability policy not only covers the company and its directors, officers, and the selling and controlling shareholders but can also be extended to include the issuing underwriter and the advisors to the transaction. The policy covers the company against securities claims arising from the offering of its securities (equity or debt) through initial or secondary offerings.

A Prospectus Liability policy is a single premium multiyear policy of up to six years often coinciding with statutory limitation periods.

Bespoke solutions

We also have experience in developing manuscript and customised insurance products. These range from developing manuscript policy wordings for some of Asia's largest conglomerates to developing products that protect unusual exposures not provided for by off-the-shelf policy wordings or risks which ordinarily most insurers decline. Our ProEx specialists welcome the more challenging scenarios.

While in the past claims from shareholders were perceived as the greatest risk, claims from regulators, customers, liquidators, creditors and now members of the general public are now increasingly common.

Risk and Insurance Services

Strategies for securing optimum insurance protection

The challenging trading conditions prevailing in today's insurance market demand a proactive, structured and aggressive strategy. Insurers carefully scrutinise the details of all risks. Not only do they require fully completed proposal forms, they also review:

- Listing details
- Share price history
- Annual financial statements and interim financial reports
- General background and peer review
- Litigation details involving the company or similar companies
- Details of the company's corporate governance policy
- The company's board composition
- External directorship positions

Despite these challenging conditions, however, we are seeing more insurance capacity being deployed into Asia and thereby greater opportunities to secure improved coverage at cost-effective pricing. At JLT we pride ourselves in being able to strike the right balance for our clients.

As a leading provider of Executive Risks coverage in the region, JLT educates and persuades insurers to evaluate each individual organisation on its own merit. By understanding in detail the risk profile of a company and by anticipating and alleviating the concerns of the insurers, we are able to optimise the level of risk retention, terms, scope of cover and pricing.

Partnership approach yielding the best results

We advocate and promote a proactive relationship between

JLT, our clients and insurance providers. Wherever possible, JLT introduces senior managers from our clients to the insurers. Insurers gain tremendous security from hearing first hand the client company's strategy and practices. As a result, JLT is able to negotiate the most favourable terms and pricing.

What if things go wrong?

Ultimately, D&O and related insurance products are not policies which have a high frequency of claims. If adverse situations develop it's only then that the true value of our ProEx specialist is recognised. At JLT we have seen and have been involved in a wide range of claims across the region. These range from:

- Spectacular collapses and insolvency of some very substantial organisations
- Regulatory investigations and interventions of the highest profile
- A whole range of very sensitive legal actions

It is when such events transpire that JLT shows its true value, by helping clients manage what is never a straightforward process.



About JLT Asia

Jardine Lloyd Thompson (JLT) Asia is a market leader in insurance and reinsurance broking, risk management consultancy and employee benefits services.

Our operations in Asia date back to 1836. Today, JLT Asia is one of the most experienced brokers in Asia, with over 700 staff in 12 locations - China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Macau, Philippines, Singapore, Taiwan, Thailand and Vietnam.

JLT Asia's technical abilities and expertise span a wide range of specialist areas:

- Affinity
- Aviation
- Captives
- Capital Risks
- Construction
- Employee Benefits
- Energy
- Interactive Technology Solutions
- Major Corporate Risks
- Marine (Cargo and Hull P&I)
- Professional & Executive Risks (ProEx)
- Property
- Reinsurance (Treaty and Facultative)
- Risk Management
- Small & Medium Enterprises (SME)
- Wealth Management

Our specialists are renowned for their innovative approach to developing integrated insurance, reinsurance and alternative risk transfer solutions.

Integrity is a hallmark of the JLT organisation. Our quality and compliance regimes are among the most thorough in the industry.

You can obtain more information about JLT Asia at: www.jltasia.com

Ali Chaudhry

Tel: +852 2864 5500

Email: Ali_Chaudhry@jltasia.com

William Seccombe

Tel: +65 6411 9371

Email: William_Seccombe@jltasia.com

Enquiries: ProEx@jltasia.com

REGIONAL OFFICES

China

Tel: +86 20 6681 4888

Hong Kong

Tel: +852 2864 5333

Indonesia

Tel: +62 21 2995 2500

Japan

Tel: +81 3 3517 3030

Korea

Tel: +82 2 397 8100

Malaysia

Tel: +60 3 2723 3388

Philippines

Tel: +63 2 706 8500

Singapore

Tel: +65 6333 6311 / 6333 6006

Taiwan

Tel: +886 2 2395 4611

Thailand

Tel: +66 2 626 2500

Vietnam

Tel: +84 8 3822 2340

Website: www.jltasia.com

