



BERKSHIRE HATHAWAY SPECIALTY INSURANCE

## Shifting Regulatory Environment Prompts New Thinking about Directors and Officers (D&O) Coverage

*Regulatory changes throughout Asia have spurred a new focus on corporate governance and on the Directors and Officers Liability Insurance (D&O Liability Insurance) public companies and their directors, officers and executives rely on to protect corporate and personal assets. Patrick Ko, Head of Executive & Professional Lines, Hong Kong, at BHSI, and Emily Poh, Head of Executive & Professional Lines, Singapore, BHSI, discuss recent trends and their impact on D&O Liability Insurance.*

### WHAT REGULATORY TRENDS ARE YOU SEEING IN THE REGION?

Patrick Ko: Regulatory investigations have become more targeted and aggressive. The Securities and Futures Commission (SFC) in Hong Kong has sharpened its focus on key priorities, including corporate fraud, false or misleading financial statements, IPO fraud, and failures to manage conflicts of interests by senior management of listed companies. Insider dealing and market manipulation, misconduct by intermediaries, and money laundering remain priorities.<sup>1</sup> In the last quarter of 2018 the SFC reported 474 investigations which focused on corporate disclosures, corporate misgovernance, insider dealing, intermediary misconduct, market manipulation and unlicensed activities.<sup>2</sup> The Monetary Authority of Singapore (MAS) has been focusing on early detection of misconduct and effective deterrence. It has stated the key enforcement priorities it will be scrutinizing in 2019 and 2020, which include disclosure of corporate information, insider trading and internal controls to detect and deter market abuse.<sup>3</sup>

### WHAT ABOUT RECENT ACTIONS?

Patrick Ko: As enforcement agencies focus their efforts, we are seeing deeper investigations and higher costs for these large-scale investigations, which often involve multiple individuals. SFC enforcement chief Thomas Atkinson said that in the first half of this year the SFC planned criminal and civil actions against some 60 companies and individuals. In the spring, the SFC brought its first charge against an individual in what is known as the 'Enigma network' stock fraud case; many believe that the charge is the first of many more similar prosecutions to come.<sup>4</sup> In Singapore, MAS is collaborating with other government bodies to bring enforcement actions. In 2017, we saw the first conviction on market misconduct come from a joint investigation of securities fraud by MAS and the Commercial Affairs Department of the Singapore Police force.<sup>5</sup>

<sup>1</sup> SFC Enforcement Reporter, February 2018, No. 3

<sup>2</sup> Source: Securities & Futures Commission of Hong Kong

<sup>3</sup> Source: Monetary Authority of Singapore, Enforcement Report, 23 April 2019

<sup>4</sup> <https://realmoney.thestreet.com/investing/hong-kong-sees-first-enigma-stock-fraud-charge-of-many-to-come-14963841>

<sup>5</sup> <https://www.mas.gov.sg/regulation/enforcement/enforcement-actions/2017/first-conviction-of-market-misconduct-under-the-joint-investigations-arrangement-with-the-commercial-affairs-department>

## HOW ARE REGULATORY AND INVESTIGATIVE TRENDS IMPACTING D&O LIABILITY INSURANCE?

Patrick Ko: There is definitely a heightened focus on individual accountability, which is prompting companies and boards to look more closely at their coverage. In April 2017, the SFC implemented the “Manager-in-Charge” regime, which requires firms to identify executives responsible for key functions and their reporting lines – basically to assist the SFC in identifying and holding individuals accountable, should the need arise, in cases of wrongdoing.<sup>6</sup> In addition, more regulators are requiring the purchase of D&O liability insurance for listed companies in Asia and around the world. Seeing the high costs of investigations – not to mention prosecutions – companies and individuals are also increasingly focused on asking how much coverage is enough. When multiple individuals can be named in a single investigation, along with the corporation, companies are asking themselves will there be enough D&O coverage when it is needed?

## HOW IS D&O LIABILITY INSURANCE EVOLVING TO SUPPORT INSURED IN ASIA?

Patrick Ko: With the heightened prospect of investigations and claims involving both the corporation and the individual, buyers are placing great emphasis on one particular feature – automatic reinstatement of limits. At BHSI, we recently enhanced our Executive First Directors & Officers Liability Policy to include automatic reinstatement across the board – for Side A, B and C claims. This means companies and directors and officers need not worry whether limits will be there when they need them. If limits are exhausted by covered claims, including investigations that may involve multiple individuals and the corporation, they are reinstated in full, automatically, for future claims. Our policy provides broad, customizable coverage for large commercial organizations, in clear and simple policy wording. Executive First D&O Liability Insurance is also backed by the financial strength of BHSI.

**To learn more about Executive First D&O Liability Insurance contact:**



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<sup>6</sup> Source: SFC Enforcement Reporting, February 2018, No. 3

BHSI's D&O Liability Insurance is part of its Executive First suite of executive liability insurance products – all of which are designed to provide clear, current and customizable coverage for commercial and financial firms, including those with the most complex risk transfer needs. Along with D&O Liability Insurance, the suite includes Side A DIC Liability Insurance, Employment Practices Liability Insurance, Fiduciary Liability Insurance, and Private and Nonprofit Organization Portfolios.

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