Corporate Governance and D&O Liability
Survey of Listed Companies in Singapore

&

A Study of Cases against Directors in Singapore
(Based on historical data)

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INTRODUCTION

• The study comprised of two parts:
  - A survey: to assess the awareness of corporate governance and D&O liability issues in Singapore
    - Questionnaire sent to 472 companies listed on SGX
    - Response rate of 22% (105 companies)
    - 14 respondents did not disclose their identity
  - A study of historical legal records: to determine the actual number of cases brought against directors in Singapore
    - Data obtained from legal databases
    - Period 1975-2003
    - Does not include cases filed outside Singapore
RESULTS FROM THE SURVEY.....
RESPONDENTS

Listing

- Mainboard: 59%
- Sesdaq: 28%
- Not Disclosed: 13%
RESPONDENTS

Market Capitalisation of Respondents (S$)

- Up to 50m: 33%
- 50m-100m: 18%
- 100m-200m: 13%
- 200m-300m: 10%
- 300m-500m: 3%
- 500m-1b: 4%
- over 1b: 6%
- Not Available: 13%
RESPONDENTS

Industry Sector

- Mfg: 29%
- Services: 14%
- Commerce: 13%
- Construction: 9%
- Tpt/Stor/Com: 4%
- Hotel/Restaurant: 3%
- Finance: 4%
- Multi-Industry: 6%
- Properties: 2%
- Others: 3%
- Not Available: 13%

www.cgfc.nus.edu.sg
www.jltasia.com
Controlling Shareholders

- Family: 35%
- Management: 28%
- Public: 14%
- Institutions (non-govt.): 10%
- Others: 10%
- Government: 3%
CORPORATE GOVERNANCE

- Majority felt that CG in Singapore is comparable to those of USA & UK and is higher than the other Asian countries.

<table>
<thead>
<tr>
<th>Perception of Corporate Governance Issues</th>
<th>Agree or Strongly Agree</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is substantial diversity in the standards of corporate governance amongst companies in Singapore</td>
<td>66%</td>
</tr>
<tr>
<td>Most companies in Singapore could be doing more to strengthen corporate governance</td>
<td>84%</td>
</tr>
<tr>
<td>Shareholders and regulatory authorities are demanding higher standards of corporate governance</td>
<td>94%</td>
</tr>
<tr>
<td>Higher standards of corporate governance demanded by shareholders and regulatory authorities have increased</td>
<td>70%</td>
</tr>
<tr>
<td>liability for Directors and Officers</td>
<td></td>
</tr>
<tr>
<td>Government-linked companies in Singapore have better corporate governance than other companies</td>
<td>57%</td>
</tr>
<tr>
<td>Good corporate governance has a beneficial effect on a company’s financial performance (e.g., higher share</td>
<td>48%</td>
</tr>
<tr>
<td>price or lower cost of capital)</td>
<td></td>
</tr>
</tbody>
</table>
CORPORATE GOVERNANCE

• 58% of the respondents felt that Hong Kong and Japan had similar level of corporate governance as Singapore.

• Majority (54%) of the respondents agreed that majority of directors on the board should be independent and most (95%) believe that independent directors should be independent of both management & controlling shareholders.

• Majority (68%) agreed that the audit committee should comprise entirely of independent directors while only about half the respondents held the same views for the remuneration committee and nominating committee.
Nearly three-quarters (72%) of the respondents felt that the Code of Corporate Governance should contain different guidelines for companies of different sizes.

Majority (around 80%) agreed that there should be a cap on the number of non-executive directorships in listed companies that can be held by a person in full-time employment or any other person.

Around 54% felt that the CEO & Chairman positions should be held by different persons, 20% disagreed, while only a third agreed that the Chairman should be an independent director.
All companies, except one, reported taking some measures to increase their standard of corporate governance.

Data for Hong Kong (used in this entire presentation) is obtained from the “Corporate Governance and Directors’ & Officers’ Liability Survey of Listed Companies in Hong Kong”, 2003 commissioned by Jardine Lloyd Thompson Limited and conducted by Policy 21 Ltd., The University of Hong Kong
D & O LIABILITY

- Inadequate or inaccurate disclosure of information and accounting and other fraud were the top two reasons for D&O liability claims.

<table>
<thead>
<tr>
<th>Reasons for D&amp;O liability claims</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inadequate/inaccurate disclosure</td>
<td>73%</td>
</tr>
<tr>
<td>Accounting &amp; other fraud</td>
<td>69%</td>
</tr>
<tr>
<td>Conflict of interest</td>
<td>67%</td>
</tr>
<tr>
<td>Mismanagement leading to poor financial performance</td>
<td>60%</td>
</tr>
<tr>
<td>Interested party transactions</td>
<td>57%</td>
</tr>
<tr>
<td>Personal trading in shares of company</td>
<td>54%</td>
</tr>
</tbody>
</table>
## D & O LIABILITY

### Sources with High/Very High Threat of Potential Claims Against Directors and Officers

<table>
<thead>
<tr>
<th>Source</th>
<th>Singapore</th>
<th>Hong Kong</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulators/Government</td>
<td>26%</td>
<td>47%</td>
</tr>
<tr>
<td>Institutional Investors/Banks</td>
<td>18%/25%</td>
<td>39%</td>
</tr>
<tr>
<td>Small/Minority Shareholders</td>
<td>12%</td>
<td>31%</td>
</tr>
<tr>
<td>Customers</td>
<td>21%</td>
<td>27%</td>
</tr>
<tr>
<td>Competitors</td>
<td>10%</td>
<td>15%</td>
</tr>
<tr>
<td>Employees</td>
<td>8%</td>
<td>15%</td>
</tr>
</tbody>
</table>
Many see an increasing threat of claims against directors and officers.

**Assessment of Risk**

- **Singapore**
  - Today: 11%
  - In Future: 35%

- **Hong Kong**
  - Today: 12%
  - In Future: 36%
D & O LIABILITY

• Over three-quarters of the respondents provide insurance cover against D&O liability claims, however, high coverage amounts are very rare.

• In the Hong Kong survey, 41.5% of the companies did not have D&O liability insurance while in Singapore, the figure is 21%.

D&O Insurance Coverage (S$)

- No Insurance: 21%
- <10m: 40%
- 10m-30m: 35%
- 30m-50m: 2%
- 75m-100m: 1%
- >150m: 1%
D & O LIABILITY

Largest Insurers

<table>
<thead>
<tr>
<th>SINGAPORE</th>
<th>HONG KONG</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chubb</td>
<td>AIG</td>
</tr>
<tr>
<td>43%</td>
<td>25%</td>
</tr>
<tr>
<td>AIG</td>
<td>Chubb</td>
</tr>
<tr>
<td>13%</td>
<td>15%</td>
</tr>
<tr>
<td>ACE Insurance</td>
<td>ACE Insurance</td>
</tr>
<tr>
<td>7%</td>
<td>14%</td>
</tr>
</tbody>
</table>

Above percentages based on companies having D&O liability insurance

- Annual premium (% based on cos. having D&O insurance)
  - Less than S$40,000 : 86%
  - Between S$40,000 and S$100,000 : 8%
D & O LIABILITY

- Most companies (45%) which did not have any D&O liability insurance said that they did not buy one as there are very few claims against directors and officers.
D & O LIABILITY

- Majority agreed that non-executive directors should be informed of their insurance cover before they are appointed.

<table>
<thead>
<tr>
<th>Views on D&amp;O Liability Insurance</th>
<th>Agree or Strongly Agree</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchasing D&amp;O liability insurance may increase the likelihood of claims</td>
<td>7%</td>
</tr>
<tr>
<td>Having D&amp;O liability insurance helps retain experienced directors</td>
<td>60%</td>
</tr>
<tr>
<td>D&amp;O liability insurance premium is good value for money (premium paid versus risk covered)</td>
<td>51%</td>
</tr>
<tr>
<td>D&amp;O liability insurance is an essential part of a listed company’s insurance programme</td>
<td>80%</td>
</tr>
<tr>
<td>D&amp;O liability insurance is an essential component of corporate governance</td>
<td>68%</td>
</tr>
<tr>
<td>Directors and Officers are very interested in the scope of D&amp;O insurance cover these days</td>
<td>62%</td>
</tr>
</tbody>
</table>
D & O LIABILITY

• 54% said that they provided education to their directors and officers on their legal duties and liabilities

• Overall, respondents in Singapore and Hong Kong are in agreement on most issues with regard to D&O liability.

<table>
<thead>
<tr>
<th>Comparison between Singapore and Hong Kong</th>
<th>SINGAPORE</th>
<th>HONG KONG</th>
</tr>
</thead>
<tbody>
<tr>
<td>Companies should inform directors of their insurance cover before they are appointed to the board</td>
<td>73%</td>
<td>76%</td>
</tr>
<tr>
<td>D&amp;O liability insurance helps in retaining experienced directors</td>
<td>60%</td>
<td>59%</td>
</tr>
<tr>
<td>D&amp;O liability insurance premium is good value for money</td>
<td>51%</td>
<td>48%</td>
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<td>70%</td>
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KEY CONCLUSIONS

• More should be done to improve corporate governance in Singapore.

• Shareholders and regulators are pushing for better corporate governance and that has increased the liability for directors and officers.

• There should be limits on the number of non-executive directorships that can be held by an individual.

• Many companies still do not provide education to their directors and officers on their legal duties and liabilities.
KEY CONCLUSIONS

• Inadequate or inaccurate disclosure and fraud are the two most likely reasons for claims being brought against directors and officers.

• Threat of claims against directors and officers likely to increase over time.

• D&O liability insurance is an essential part of good corporate governance.

• Non-executive directors should be informed of their D&O liability insurance cover before appointed.
RESULTS FROM THE HISTORICAL RECORDS...
NUMBER OF CASES

• 86 cases recorded in Singapore between 1975-2003
  – 79 cases involved private limited companies
  – 7 involving public limited companies

• Possible Reasons
  – Shareholders in public limited company may prefer to “walk out” if unsatisfied with how management has been dealing with company
  – In Singapore, derivative or representative action still restricted to unlisted companies
  – Standard higher in public companies due to legal requirements (e.g. independent directors, timely reporting & disclosure, etc.)
NUMBER OF CASES

• Number of cases has been rising steadily over the past three decades

Number of Cases

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1975-1984</td>
<td>7</td>
</tr>
<tr>
<td>1985-1994</td>
<td>23</td>
</tr>
<tr>
<td>1995-2003</td>
<td>56</td>
</tr>
</tbody>
</table>
PARTY INITIATING ACTION

- Creditors initiated the most number of cases (excluding criminal actions) accounting for 21% of the cases.
NATURE OF LITIGATION

• In 78% of the cases, civil suits were taken against the directors

Nature of Litigation

- Criminal: 22%
- Oppression: 13%
- Claims in tort: 9%
- Breach of duty of care & skill: 3%
- Breach of fiduciary duty: 30%
- Contractual claims: 23%
- Of directors accused of breach of fiduciary duties, many (36%) had more than one reason cited against them.
- Conflict of duty & interest most frequently cited reason (40%).
NATURE OF LITIGATION

• 19 cases involving conflict of interest
  – Misappropriation of company property: 42%
  – Competing with the company: 32%
  – Accepting bribes/profiting at the company’s expense: 26%

• The directors were alleged to have benefited monetarily at the company's expense in 44% of all the cases filed against them.
JUDGMENTS

- The directors lost in 71% of the cases filed against them

Who Won the Case

- Defendant (Director): 28%
- Others: 1%
- Plaintiff (Initiator): 71%
JUDGMENTS

• In 27% of the cases, damages were awarded to the plaintiff, with amounts ranging from S$ 80,000 to S$53.3 million.

• For the criminal cases, directors who were convicted received jail sentences ranging from 3 months to 8 years.

Nature of Remedies

- Damages: 27%
- Jail: 13%
- Restoration of property: 6%
- Fine: 3%
- Others: 15%
- Disqualification: 2%
- Injunction: 1%
- Jail & fine: 1%
- Not available: 32%
INDUSTRY ASSOCIATED WITH CASE

- Real estate and construction accounted for the highest number of cases (24%).

- 15% of the cases were in the industrial goods and services sector and another 13% in the transportation sector.
CONCLUSION

• Number of cases against directors is on the rise in Singapore

• Based on historical trends, if a director is sued, the probability of him winning the suit is less than 30%.

• The claimant will often bring an action under many sub-heads so as to increase his chance of winning.

• Directors in the construction industry appear to be attracting more lawsuits as compared to those from other sectors.
Thank You...