



## D&O Sales Playbook



Bring on tomorrow





D&O insures directors and officers against hostile actions by third parties (such as official regulators, customers, receivers or administrators) or indeed by their own company. It pays for external counsel fees to defend a director or officer in such actions, as well as damage awards and settlements as long as no fraudulent behaviour is established against them.



Growing opportunities for brokers to sell D&O insurance:

#### **DIRECTORS' FINANCIAL EXPOSURES**

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#### **INCREASING D&O CLAIMS**

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#### **DIRECTORS' LIFESTYLE EXPOSURES**

Defending actions and allegations, even unfounded ones, can be very time consuming and stressful. An adverse finding and disqualification can have grave consequences for future career prospects, while any appeals process can only extend the timeframes, and the uncertainties. Meanwhile the direct financial damage from loss of earnings and loss of assets, and the resulting lifestyle impact can be devastating.

#### **A LARGE MARKET**

Directors are exposed to actions and investigations regardless of the size of the company or the sectors in which it operates. The increasing number of claims point to the fact that Directors are becoming more aware of these exposures. These factors combined with the broad D&O appetite of AIG underwriters present brokers with substantial market opportunities for this class of insurance.

#### **DIRECT ACCESS TO DECISION MAKERS**

It is worth emphasising the sensitive nature of D&O insurance to the directors and officers. This provides brokers with direct access to companies' most senior executives to explain, clarify and confirm their D&O coverage. This in turn presents opportunities to build longer term client relationships – particularly in the event of a D&O claim.

#### **INTERNATIONAL BUSINESS EXPOSURES**

As businesses become more international due to globalisation, Directors and Officers should be aware that claims in some international courts, such as the UK and USA are increasingly common and even where such courts can be persuaded to decline the jurisdiction, legal costs will be necessarily incurred in preliminary hearings to challenge this jurisdiction. Also laws set by a foreign country can have far reaching consequences. For example the UK Bribery Act - which is applicable to English Directors in the UAE even if they are not specifically working for an English company - the Directors must comply with the provisions of the Act. AIG's Corporateguard D&O policy will cover legal costs in relation to (alleged) mismanagement.

#### **SUMMARY: ATTRACTIVE D&O OPPORTUNITIES**

A tough regulatory environment, increasing D&O claims, heightened awareness of intense personal exposures, a large market and possibilities for brokers to gain client access at the highest levels, suggest very attractive opportunities for brokers to sell D&O. The following sections look in more detail at: the target market for D&O; sales arguments for first-time buyers of D&O, selling AIG to the client as the D&O insurer, servicing aspects for the broker, suggestions for overcoming D&O sales obstacles and finally some claims scenarios.

A positive characteristic of D&O insurance is that there are no business sectors that we can not underwrite.

Our D&O appetite extends to any solvent and credible business and this presents a large target market for insurance brokers.

#### All business sectors

From local SMEs, charities, voluntary associations and other membership organisations to major international corporations

#### Including "tough risks"

e.g. public D&O (including US listings), energy, technology, aerospace and start-ups.

#### Including Financial Institutions

e.g. asset managers, hedge funds, property funds, private equity, venture capital, banks



#### HYPOTHETICAL CLIENT: SME RETAILER

Alpha is a family-owned retailing business specialising in womens' clothing and footwear. Alpha employs 45 people, across 4 retail outlets with annual revenues of \$8m. Although trading for over 25 years it didn't purchase D&O insurance until 2009 as directors were becoming increasingly concerned about the volume of regulatory activity and potential funding difficulties.



#### HYPOTHETICAL CLIENT: REGIONAL RETAILER

BLING CO is a family owned luxury retailer established over 20 years ago in Dubai. Today BC group has a footprint expanding throughout the GCC while representing over 50 luxury brands. BC group services its customers through more than 300 stores with a team of nearly 2000 professionals. For the first time BC is shopping for D&O due to the higher risks in their rapidly expanding operations and increasing concerns on regulatory activity and potential funding difficulties



#### HYPOTHETICAL CLIENT: LISTED CORPORATION

SWEET Homes is a property development company with developments in over 20 countries and is listed on one of the local stockmarkets. SWEET Homes' board is acutely aware of the possibility of management liability actions in its home jurisdiction and value our experience and expertise in this area.

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Clients who are “first time buyers”, not having yet made the decision to purchase D&O insurance, need to understand at least in general terms the extent of their potential exposures and the protection offered by the insurance.

Here are some suggested discussion points.

**THEME**

**RELEVANCE OF D&O**

**ACTIONS AND INVESTIGATIONS**

Is the business prepared for actions and investigations by government bodies, professional or trade regulators, staff, competitors and other stakeholders?

AIG D&O covers insureds against any “actual or alleged act, error or omission” regardless of who makes the allegation

1

**INCREASING CLAIMS**

Has the business considered the growing number of D&O claims against companies and directors in the MENA region and around the Globe?

2

An advantageous time to purchase D&O is when the claims environment is deteriorating – but before the company and its directors experiences any claims themselves

**SIZE OF ACTIONS**

Does the business and directors understand the potential scale of actions which can easily run into millions?

The amounts involved in D&O actions can be a shock the first time companies and directors experience one. AIG offer D&O limits up to USD 50 million

3

**TRAUMA OF ACTIONS**

Does the business and directors understand the potential trauma of a claim?

D&O claims can be extremely stressful and distract the company’s leaders from its business. Claims focus directly on the actions and behaviours of individuals and can run for years

4

**INNOCENT DIRECTORS**

The company and its directors may have done absolutely nothing wrong but may still have to defend themselves

D&O protects insureds against actual or alleged acts

5

**COMPANY WON'T PAY**

Do directors understand the company may be unwilling to pay their costs?

6

AIG D&O responds to protect directors regardless of whether the employers can pay for the individual directors’ defence costs, damages and settlements

7

**COMPANY CAN'T PAY**

Do directors understand that the company may be financially unable to pay their costs?

8

AIG D&O responds to protect insureds regardless of the company’s financial condition

**COMPANY NOT ALLOWED TO PAY**

Do directors understand that the company may be legally prevented from paying their costs?

9

AIG D&O responds and funds defence costs until fraud is actually proven

## NOTES

- 1** D&O actions come from a wide range of sources. Of the thousands of D&O claims we have handled since 2005, the top sources of claims are:
- Regulatory & Criminal actions including corruption, anti-trust, misappropriation of assets.
  - Bankruptcy actions brought by receivers / derivative actions.
  - Claims against directors by the company or shareholders for breach of fiduciary duty.
  - Claims by third parties against the company eg anti-competitive behaviour or misrepresentation naming directors as co-defendants.

- 2** Our own analysis of claims made against directors and officers shows a 63% increase between 2007 and 2012. This reflects: the after effect of the global financial crisis with more bankruptcies and company claims against their executives for breach of fiduciary duty; and more scrutiny by regulators and stakeholders of the behaviours of individual directors. There has been a general demand for more ethical business conduct and more corporate transparency and an increasing trend to hold individual directors accountable and seek monetary and non-monetary redress (eg disqualification, imprisonment, board changes).

- 3** Today, roughly 5,000 medium to large family firms exist in the Middle East, with net assets totaling \$600 billion. These companies constitute 75 per cent of the private sector economy and employ 70 per cent of the labour force in the GCC region. Family run businesses carry with them exposures for the individuals concerned. Family Companies can be a hot bed of dispute both internally and externally

[For an analysis of D&O claims trends click here.](#)

- 4** D&O claims can go on for a long time – years in some cases, particularly regulatory claims and fraud investigations. This can be very stressful and very expensive. It may not just be directors who are faced with actions and investigations. Sometimes claimants take a “scattergun approach” to naming people and it can be a great shock to junior managers and supervisors to be faced with such actions, especially as the financial amounts claimed can be very high.
- 5** AIG, as a major D&O insurer, has handled many examples of completely unfounded and even mischievous actions against our insureds which can still be very time consuming and stressful for the individuals involved whilst expensive to defend.

- 6** Sometimes employers want to distance themselves from directors who they think might have committed a wrongful act. With D&O insurance in place directors need not be concerned about having resources to defend themselves as the policy is there to look after them – even if their company refuses to indemnify them.

- 7** Among the top 5 sources of D&O claims are Company v Insured actions, such as claims brought by or on behalf of the company against directors for breach of fiduciary duty causing misuse of capital.

- 8** Bankruptcy actions such as claims brought by receivers for continued trading whilst insolvent or asset stripping are another top 5 source of D&O claims.

- 9** In many countries the law does not specifically allow companies to indemnify their directors for defense costs, damages and settlements.

AIG has outstanding D&O attributes in terms of its claims capabilities, its policy coverage, its culture of technical expertise, innovation and its complete familiarity with different customer groups which you can recommend to your clients with confidence.

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#### CLAIMS EXPERTISE

Whatever kind of action you face, AIG has already dealt with something similar before: world leaders in D&O, MENA's largest D&O claims team and international claims expertise that handled thousands of management liability claims in 2013.

#### WIDE PROTECTION

AIG D&O cover offers broad protection, high capacity, few restrictions, simplified wording and added value consultancy and support services. We constantly upgrade our coverage to ensure that clients' protection keeps up with their exposure.

#### CONSTANT INNOVATION

Your cover is up to date. AIG is always innovating and improving their protection so it keeps up with directors' exposures – such as extradition, environmental and social media risks.

#### FOR SMES

The impact of a D&O claim can be more traumatic to directors of smaller companies who may not have experienced an individually targeted action before. They may not have the internal infrastructure (legal, HR etc) to support their directors and so, our own deep experience of handling D&O claims is even more reassuring and valuable.

#### FOR MAJOR CORPORATIONS

If you are a major corporation you are in safe, experienced hands, AIG leads the D&O insurance of the boards of more listed companies in the MENA region and around the Globe than any other insurer.

#### FOR INTERNATIONAL BUSINESSES

If your business (and directors) go beyond your own country then you are in safe and experienced hands because AIG has the industry's largest owned international network and more D&O licenses in more countries than any other insurer.

#### COMMITMENT AND SUSTAINABILITY

We are a world leading D&O insurer with over 40 years experience. You can be confident of our long-term commitment to protecting your clients' directors and our long-term ability to deliver claims expertise and claims payments when they are needed.

## NOTES

- 1** For instance AIG D&O also covers the costs of PR consultants to help policyholders manage internal and external communications after a claim.
- 2** Insured Persons shall be entitled to request advice from the insurer upon giving notice of any circumstances which in their opinion may subsequently give rise to a claim for which coverage would apply, as to their legal position and any steps which may be appropriate to avert or minimize such a risk.
- 3** Our D&O cover is worldwide. A great optional benefit of our global D&O network is that if a claim is brought against our directors in an international jurisdiction, they can get the benefit of any AIG D&O policy that offers the most favourable coverage for that jurisdiction.

The breadth and depth of our D&O expertise enables us to effectively support our brokers' D&O development activities before and after they have acquired the client.

Our technical and distribution support, accelerated pricing and underwriting options and of course outstanding claims service. All designed to help you win and retain more D&O business.

## Customising D&O

We support your business acquisition by customising D&O for your particular customer groups (such as specific industries) by formatting content, coverage, pricing and limits for example.

### Sales and marketing support

Our brokers also benefit from the D&O experience and support of our local sales and development teams. Brokers also have access to our website with a range of D&O marketing materials to help grow their D&O portfolios with AIG.

### Pre-bind technical support

Over 8 AIG D&O underwriters across the MENA region means we can deliver outstanding technical expertise to our brokers, such as clarifying cover points, explaining pricing and underwriting criteria, helping you resolve client queries and "what if?" scenarios.

### Accelerated underwriting & pricing for sme prospects

We have great experience servicing the D&O needs of major corporations but also offer simple and efficient processes and "pre-underwritten" options to enhance your prospecting of small and medium sized clients.

### Leverage our claims expertise

AIG has the world's largest and most experienced D&O claims team. D&O claims can be extremely stressful for the individuals involved and run for years. Our skill and expertise in handling them can confer great credit and loyalty from the client to the broker.

### Hassle free security

We are constantly upgrading our D&O coverage so you can be confident that your clients' protection keeps up with their exposures. Also you can be sure that when your clients do have a claim, our experienced claims team will be there to advise and guide them expertly through the process.

### Long term revenue generation

Our experience is that once in place, the great majority of D&O policies for small and medium sized businesses roll-over year on year with minimal maintenance from the broker and insurer. It is good renewable income for the broker.

Our experience suggests that most purchase obstacles raised by clients relate to their uncertainties about their D&O exposures and resulting reservations about the pricing.

This can be compounded by confusion about the support they rely on from their employers after an action, investigation or allegation. All of these obstacles can be effectively countered.

#### I'VE NEVER HAD A D&O CLAIM SO WHY DO I NEED TO BUY THE INSURANCE NOW?

- Because the environment has changed, with more intense economic, financial pressures, fallout from the global financial crisis and more challenge to directors' fiduciary duty
- More dangerous for directors now with more regulation, more scrutiny and more claims against directors than ever before
- It is worth remembering that many companies choose to purchase D&O to protect their directors because they want their leaders to be able to operate as freely and as uninhibited as possible

#### THE D&O PREMIUM IS JUST TOO EXPENSIVE

- D&O insurance premiums are modest in comparison with the potential scale of D&O claims, which can be very severe - 7 figures are not unusual and can run for years
- The D&O premium represents an affordable and forecastable investment in directors' protection. Claims can be very expensive in terms of defence costs and damages, and very stressful and damaging in terms of potential disqualification and the impact on future career prospects

#### WE JUST DON'T NEED D&O WE'LL TAKE CARE OF ANY ACTIONS OURSELVES

- Many jurisdictions do not permit companies to indemnify their directors and so individual assets are at risk in defending and settling actions
- Consider the possibilities of employers being unwilling, unable or legally prohibited from funding costs
- Circumstances may look secure and favourable now but relationships and financials can change in the future – particularly in economic situations

#### THERE ARE CHEAPER QUOTATIONS THAN THIS ONE

- Consider the company's D&O claims experience (possibly not an area in which you should seek premium economies)
- Consider whether coverage is up to date as we are continuously upgrading our coverage to ensure protection keeps up with exposures
- Consider our commitment to the D&O market, with over 40 years' experience protecting directors and a proven ability to pay their claims. We'll be there when your clients need us

Here are a number of scenarios illustrating how clients' D&O policies have been called upon to provide professional defence costs, professional representation costs and damages for a variety of actions, investigations and allegations.

The scenarios are all based on actual cases so the details have been changed to ensure confidentiality.

1

#### Criminal action by a state criminal prosecutor

Directors were summoned by the examining magistrate in a criminal investigation, alleging misuse of company assets

2

#### Investigation

Directors were investigated by a regulatory authority about overpayment of public money for business events

3

#### Investigation by an Antitrust Division

A director in a subsidiary company is investigated over allegations of bribery in relation to providing favourable purchasing terms to a customer

4

#### Investigation by Antitrust Division of the United States Department of Justice

The US subsidiary of a MENA company and several of its directors and officers, are under investigation for alleged worldwide antitrust activities

5

#### Alleged breach of fiduciary duty brought by insolvency trustees

Former executives of a real estate company are served with a complaint of negligence and mismanagement by overpaying for foreign real estate

6

#### Mismanagement and asset stripping

Former directors summoned by liquidator for mismanagement and asset stripping after wound up French subsidiary showed significant lack of assets.

[VIEW MORE >](#)

## CLAIMS SCENARIOS CONTINUED

7

### Liquidators

A company, its former directors and its accountant, are being sued with respect to asset stripping for depriving a subsidiary of assets.

8

### Action by subsidiary company

A company's subsidiary claims breach of fiduciary duty by the president of the company's Management Board over failure to supervise derivative transactions.

9

### Shareholder action approved at AGM

Shareholders approved legal action against its chairman and former directors, alleging company losses from transfer of funds to an investment entity.

10

### Action by a customers creditors

A subsidiary is accused of conspiring to mislead creditors of one of its overseas customers. The creditors, which had gone bankrupt, named the parent, subsidiary and directors in the action and allege that they all conspired with the customer and its management to make these misrepresentations.

11

### Action by purchaser after company acquisition

After acquiring the insured company, the purchaser brought legal action against the former MD for allegedly providing false information resulting in an over valuation of the insured's assets.

12

### Securities action by shareholders

Shareholders take legal action against the company alleging that its false and misleading financial information in reports, press releases and analyst conference calls, which caused the Insured's Level 1 American Depositary Receipts and its ordinary shares to trade at artificially inflated prices.



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**AMERICAN HOME ASSURANCE  
COMPANY (DUBAI BR.)**

The H Hotel – Complex,  
Trade Center First, 27th Floor,  
PO Box 40569,  
Dubai, UAE  
Tel: +971 4 509 6111  
Faz: +971 4 601 4018

**ALEXANDER BLOM**

[alexander.blom@aig.com](mailto:alexander.blom@aig.com)

**PIERRE-EDOUARD FRAIGNEAU**

[pierre-edouard.fraigneau@aig.com](mailto:pierre-edouard.fraigneau@aig.com)

**MUHANNAD ABDULMAJEED**

[muhannad.abdulmajeed@aig.com](mailto:muhannad.abdulmajeed@aig.com)

**AISLING MALONE**

[aisling.malone@aig.com](mailto:aisling.malone@aig.com)

**ANNEMIEKE CLANCY**

[Annemieke.clancy@aig.com](mailto:Annemieke.clancy@aig.com)

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