

## Risk Management Best Practice

### Top things a director should know about D&O risk

- ▶ Be as transparent and candid as possible, there is nothing worse than a bad surprise
- ▶ Make sure that risk management is a culture not a department
- ▶ Understand that the current business environment involves dynamics and complexities that increase at the same time and that a shift of power towards regulators and compliance in general is occurring – an explosive mixture that will probably increase management risks going forward
- ▶ Recognize new challenges such as cyber, IT and digital transformation which add to the normal risks
- ▶ Instill first-class cyber and IT risk management with the help of an insurer, including smart back-up systems and emergency solutions
- ▶ Keep open communication channels to authorities, regulators, capital markets, employees
- ▶ Keep record of emails, meetings minutes, calendar and all other documentation related to current managing role
- ▶ Choose a defense lawyer carefully, based on qualifications with defending D&O lawsuits in similar cases; in any doubt, the insurer can provide a recommendation
- ▶ Maintain an early risk dialogue with the insurer, before asserting a claim for damages against a D&O
- ▶ Involve the insurer early on if trying to mitigate/settle a claim or potential claim
- ▶ Set up a system for reporting claims internally so that colleagues understand what to look out for and what needs to be reported internally and to insurers.

### Top things a director should be asking about their D&O exposure

- ▶ Ask about sensitive compliance-related topics such as sanctions and embargos, tax haven registrations (money laundering, tax evasion), smart tax engineering that may be legal but no longer accepted, cartels, price fixing, corruption and bribery, and tax and accounting fraud
- ▶ Find out about the style and substance of investor communications and the public in general, including authorities and NGOs, relating to media sensitive topics such as environmental, social and governance (ESG), corporate social responsibility (CSR), etc.
- ▶ Find out about the “classic” D&O topics, such as M&A, capital measures, IPOs. A company’s internal risk management and compliance structure/organization should have all these points on the radar, and procedures in place that adequately address/prevent all the above (probably the only defense left for D&Os in case they face a problem in one of these areas)
- ▶ Beware of conflicts where both a corporate entity and its directors are insured under the same policy, but their interests may not be aligned: Which implications and possible impact could such a conflict have over D&O exposure/coverage?
- ▶ Ask proper questions in the event of representation by a holding company: For example, a holding company appoints a director to the board of another company to represent its rights and interests, where the holding company holds 25% of the shares: Which D&O policy would be applicable? The holding company or the D&O policy of the company where the director is working?
- ▶ Ask about a notice of circumstances and when/how to notify the insurer about it
- ▶ Ask if prior approval is needed from insurers, before instructing/appointing a defense counsel
- ▶ Decide if you should discuss steps with the insurer before intending to admit liability or pay money to third parties without insurer’s prior consent and agreement, since this fact could prejudice the ability to obtain an indemnity under the policy, even if that liability is considered to be certain.