

# Breakfast Club HCMC

20/11/2013

## DIRECTORS & OFFICERS' MANAGEMENT LIABILITY D&O INSURANCE

**Au Quang Hien  
AEGIS Co.,Ltd**

**FIVE SPEAKERS!  
FIVE MINUTES EACH!**



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- **About BrokersLink**
- **AEGIS Background & Our Consultancy & Services**
- **The Risk Environment & Risk Management Objectives**
- **Directors' & Officers' Liability – Risks & Exposures**
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## About BrokersLink

- BrokersLink is one of the **largest global alliances** of independent insurance brokers/consultants and related specialized service providers.
- BrokersLink has become a **premier platform for multinational companies** with 300 offices in more than **100 countries** around the world, placing more than **14 billion USD** of premium in the market place.
- BrokersLink offers **comprehensive insurance brokerage and risk management services**, employee benefits, risk engineering, claims management, business continuity planning, disaster recovery, and captive feasibility management services.
- BrokersLink is a **client oriented alliance**. We are committed towards **excellence, customer service, global know-how**, and **local market knowledge**.

## About BrokersLink



· BrokersLink 's **members are leading brokers & consultants** in their own market. Our Clients benefit from their extensive knowledge and expertise in each country.

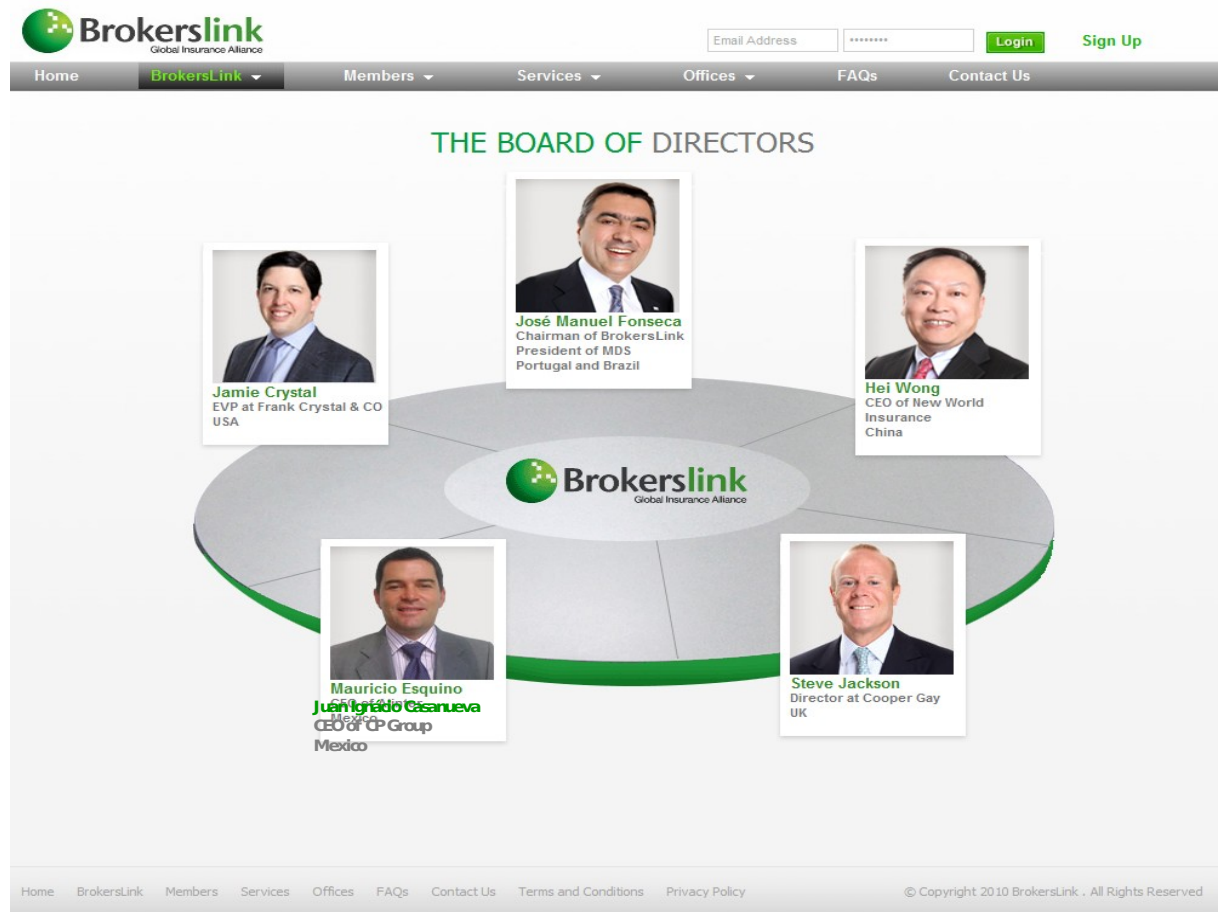
· BrokersLink is a **global knowledge network**, leveraging the sharing of skills, expertise and culture among our **members** and **specialized service providers**.

· BrokersLink is a **relationship based alliance**. The **close** relationship between BrokersLink members allows clients to benefit from their availability to provide **high level insurance brokerage and risk management services**.

# About BrokersLink

§ BrokersLink is a **UK based company** (London), governed by a multinational **Board of Directors**, supported by a distinguished and experienced **CEO**, fully dedicated to the management and development of the alliance.

§ BrokersLink **strategic vision** is set by its Board, strongly committed towards the development of the alliance.



The screenshot displays the BrokersLink website's 'THE BOARD OF DIRECTORS' section. At the top, the BrokersLink logo (a green globe with white dots) and the text 'Brokerslink Global Insurance Alliance' are visible. Below the logo is a navigation bar with links for Home, BrokersLink, Members, Services, Offices, FAQs, and Contact Us. A search bar with 'Email Address' and a password field is also present, along with 'Login' and 'Sign Up' buttons. The main content area features a central graphic of a globe with the BrokersLink logo and text. Surrounding this globe are five portrait photos of board members, each with their name and title:

- Jamie Crystal**: EVP at Frank Crystal & CO USA
- José Manuel Fonseca**: Chairman of BrokersLink, President of MDS Portugal and Brazil
- Hei Wong**: CEO of New World Insurance China
- Mauricio Esquino**: CEO of CP Group Mexico
- Steve Jackson**: Director at Cooper Gay UK

At the bottom of the page, there is a footer with links for Home, BrokersLink, Members, Services, Offices, FAQs, Contact Us, Terms and Conditions, and Privacy Policy. A copyright notice reads: '© Copyright 2010 BrokersLink . All Rights Reserved'.

## Presence Worldwide



BrokersLink has a **worldwide presence** with members in more than 100 countries from **Asia Pacific, Europe, North America** and **Latin America**.

- § The support provided by members is supplemented by **strong partnerships** in other territories, such as Africa, Ireland and other countries.

## **AEGIS Background**



**AEGIS is an independent insurance intermediary focusing on providing total service solutions in insurance and risk management consulting.**

**The creation of AEGIS brings together the expertise and experience of partners from Vietnam and the United Kingdom who are highly qualified insurance and risk management professionals with extensive overseas and local experience and network.**

**AEGIS was formed in 2002. AEGIS is now one of the leading insurance consultancy firm in Vietnam**

**AEGIS is a member of the insurance network professional brokers, member of Brokers Link, thus our presence is in over 60 Countries and we and our Partners look forward to providing unprecedented services to you either in Vietnam, the Region or anywhere Worldwide.**

## Our Mission & Our Vision



### **Our Mission**

We focus on the needs of our clients by being their business partners in insurance & risk management and we aim to establish ourselves as the name of service excellence in the industry.

### **Our Vision**

We are totally dedicated to adding value to our customers, employees and the community by delivering excellence in the provision of insurance management solutions.



## **Our Consultancy & Services**

- **Business Risk and Insurance Consulting**
- **Insurance Assessment and Risk Exposure Analysis**
- **Risks Strategy, Insurance Placement and Management**
- **Regional/Global Program Coordination Services**
- **Claims Consulting and Settlement**
- **Loss Prevention Services**
- **Placement of Specialized Insurance Products**
- **Other Financial Risk Transfer Mechanism**
- **On-going Advisory & Support Services**

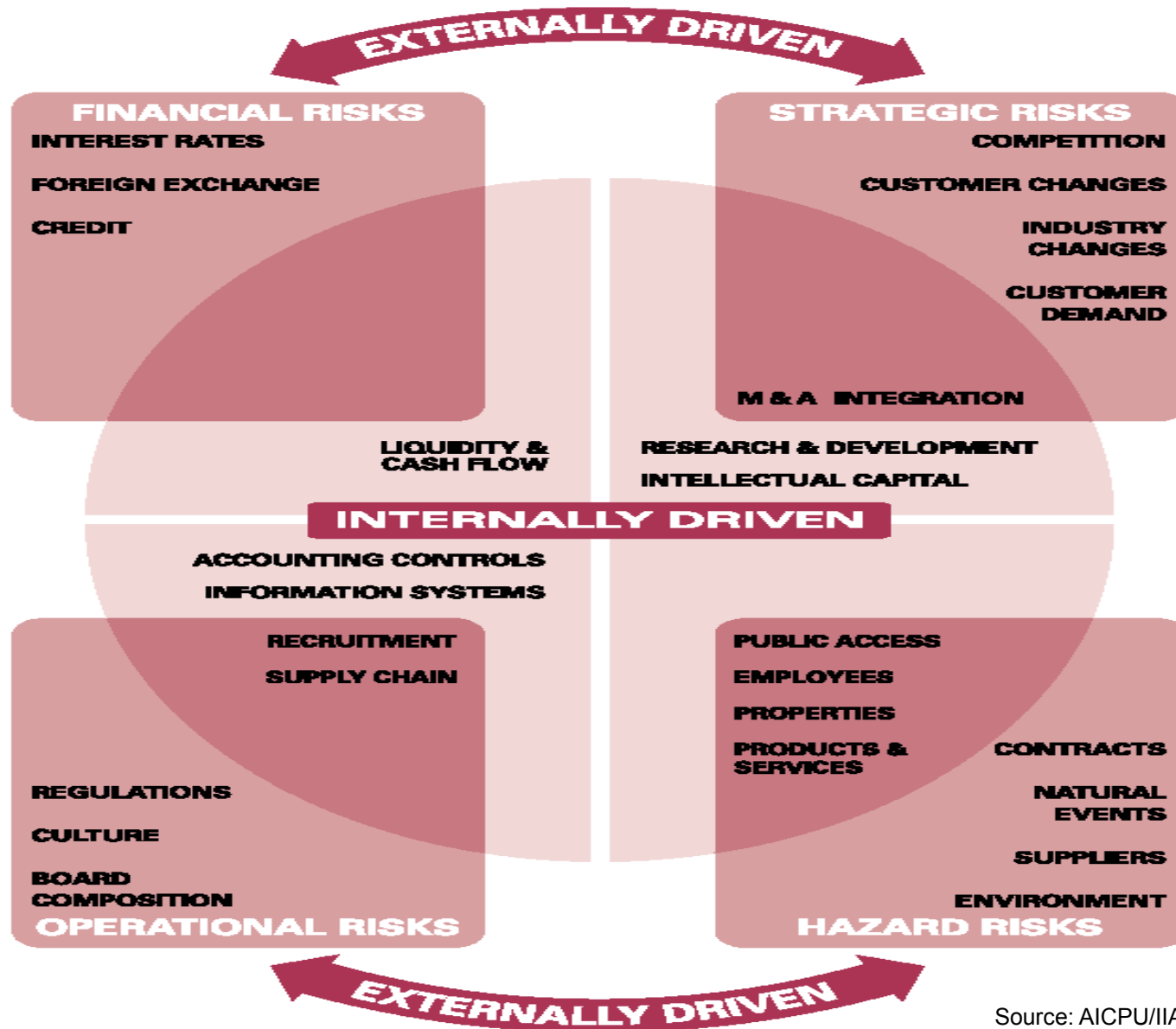
# Our Consultancy & Services



## **Our Consultancy & Services**

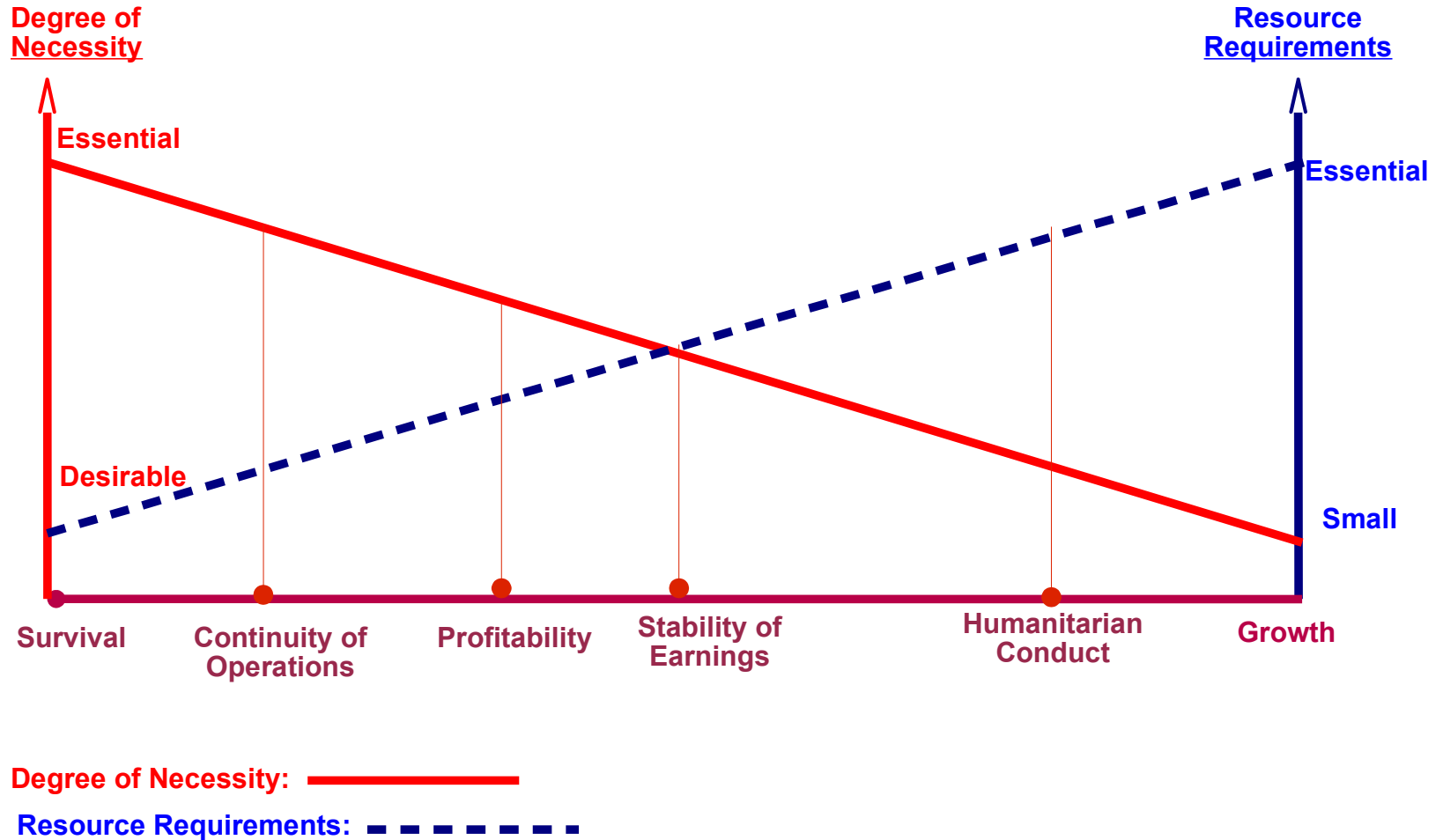
### ***Advantages and benefits to our Customers:-***

- **Risk Analyses/Consultancy/Advise**
- **Insurance Program Design/Placement**
- **Claims Handling Services**
- **Loss Prevention Services**
- **Expertise and Experienced**
- **Professionally Qualified**
- **Professional Indemnity Insurance**
- **Network and Market Access**
- **Supplier Relationships**



Source: AICPU/IIA

# Risk Management Objective



Source: AICPU/IIA

## **Directors' & Officers' Liability [D&O]**

### **Directors' & Officers' [D&O] Risks & Insurance Cover**



## **Liability Risk Exposures Environment**

The Liability Risk Exposures may comprise the following liability risks that can be insured to provide financial protection:-

- **Directors & Officers Liability [D&O]**
- **Employer's Liability [EL]**
- **Professional Liability/Indemnity [PI]**
- **Environment Pollution Liability [EPL]**
- **General Public Liability [GPL]**
- **Internet/Cyber Liability [ICL]**
- **Products Liability [PRD]**

This presentation however aims to present in brief the Directors & Officers' Liability [D&O]

Our objective to ensure that You are well protected by delivering:-

- professional insurance & risk mitigation consultancy services
- utilizing our vast experience in developing professional liability insurances
- ensure a comprehensive/broad in scope but cost-effective insurance programme is arranged

## **D&O Liability – Legal Requirements**

### **General Legal Requirements:-**

#### **Vietnam Enterprise Law - Chapter III- Limited Liability Company**

##### **Article 42. Obligations of members:**

5. Being liable individually when acting on behalf of the enterprise to:
  - a) violate the laws;
  - b) engage in transactions or businesses not serving profit of the company but causing loss and damage to third party;
  - c) pay off undue debts when there is a financial danger facing the company.

##### **Article 56. Obligations of members of the Members' Council, director or general director:**

1. The members of the Members' Council and director or general director will have following obligations:
  - a) Performing rights and obligations in a fiduciary, diligent and optimal manner in order to maximize benefit of the company owners and the company itself;
  - b) Pledging loyalty toward profits of the company; not permitted to make use of information, know-how, business opportunity of the company; not permitted to abuse position, powers and property of the company for benefits of themselves or other organizations or individuals;
  - c) Notifying promptly, fully and accurately the company of enterprises in which they or their related persons are sole owner or major shareholders. Such a notification must be displayed at the head office of the company and branches.
  - d) Other obligations as stipulated in the laws and the company charter.
2. Director or general director is prohibited from raising salary or paying bonus if the company is incapable of paying off due debts.



## **D&O Liability – Legal Requirements**

### **General Legal Requirements:-**

#### **Vietnam Enterprise Law - Chapter IV- Shareholding Company**

**Article 116 [ Item 4] of The Vietnam Enterprise Law requires the personal liability of Directors or Officers:-**

Directors and managers have to execute the daily business operation of the company in accordance with the Law, Company Charter, Labor Contract and Decisions affecting company management. If there is a failure leading to and cause loss or damage to the Company, they are personally responsible to compensate the Company for these losses or damages stipulated by applicable Laws

#### **Vietnam Labour Law**

**Article 89, regulating the liability of employee to the company:-**

“Employee is liable for all loss of or damage to company's property(ies) if they are at fault during their job performance in accordance with the applicable law”.

## **D&O Liability – Legal Requirements**

### **General Legal Requirements:-**

#### **Decree 102-2010-ND-CP, providing detailed guidelines for implementation of a number of articles of The Vietnam Enterprise Law**

##### **Article 19- Right of members to institute legal proceedings against chairman of members' council and director (general director):**

1- A member shall have the right, in its own or in the company's name, to institute legal proceedings against the chairman of the members' council and/or the director (general director) in the following cases:-

- (a) The chairman of the members' council and/or director (general director) failed to properly exercise assigned rights and duties; failed to perform or fully or promptly perform a decision of the members' council; or exercised assigned rights and duties contrary to the law or company charter;
- (b) The chairman of the members' council and/or director (general director) used information, know-how or business opportunities of the company for his or her personal benefit or for that of another organization or individual;
- (c) The chairman of the members' council and/or director (general director) abused his or her station or position and assets of the company for his or her personal benefit or for that of another organization or individual;
- (d) Other cases as stipulated by law and the company charter.

## **D&O Liability – Risks & Exposures**

### **What are the Directors duties?**

#### **Administrative**

##### **Statutory**

- Accounts
  - Annual return
  - Filing requirements
- ##### **Substantive Statutory**
- Honesty and diligence
  - Not to misuse information
  - Disclosure
  - Duty not to engage in wrongful trading

#### **Common Law**

- Care, skill and diligence
- Fiduciary duties
- Acting in company's best interest
- Avoiding conflicts of interests
- No secret gain
- Not to misuse information
- Disclosure
- Using powers for proper purposes

## D&O Liability – Risks & Exposures

### What are the main risks?

#### Fiduciary Duties:

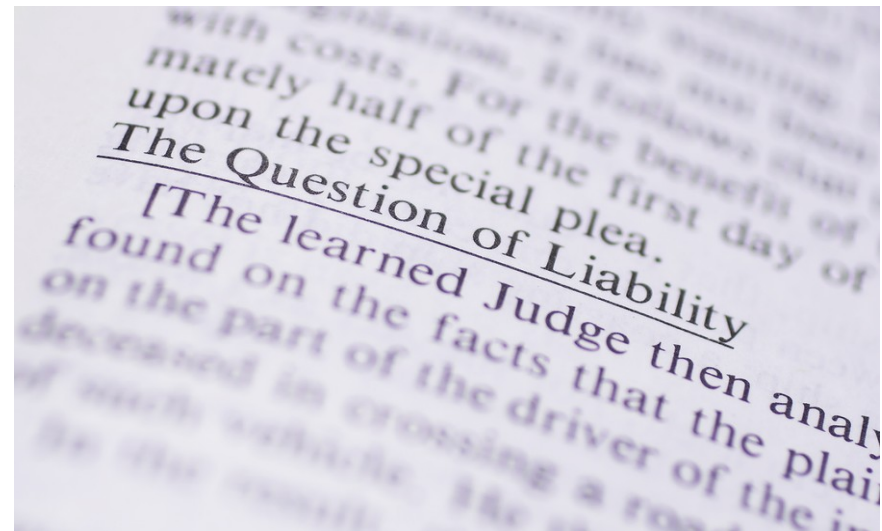
- Directors hold positions of trust to act bona fide for the interest of the company.

#### Duties of Skill, Care and Diligence:

- Supervisory Duties

#### Statutory Duties:

- Real Estate Business Law
- Bankruptcy Law
- Competition Law
- Construction Law
- Enterprise Law
- Environmental Pollution Law
- Labour Law
- Securities Law
- Taxation Laws
- Other Regulations



## **D&O Liability – Risks & Exposures**

### **Who brings threaten actions to sue Directors & Company?**

#### ***Shareholders***

Negligence  
Mismanagement of company assets  
Negligence in public statement

#### ***Investors***

Error or omission in financial reporting  
Misrepresentation in the prospectus

#### ***Employees***

Unfair dismissal  
Discrimination

#### ***Liquidators and Receivers***

Error or omission in financial reporting  
Mismanagement of company assets

#### ***Regulatory Bodies***

Civil and criminal

#### ***Environmental Groups***

Environment Contamination  
Environment Pollution

#### ***Creditors/Banks***

Error/omission in financial reporting  
Credit Liability

#### ***Customers***

Quality of Goods  
Errors & Omissions  
Professional Negligence

## **D&O Liability – Risks & Exposures**

### **Limited Companies and Unlimited Liabilities**

- Shareholders of Ltd Companies have limited liabilities – TRUE
- Directors of Ltd Companies have limited liabilities – FALSE
- Limited Companies limit the liabilities of a shareholder to the amount of money invested in the company – TRUE
- No such limitation exists for D&O's – TRUE

## D&O - Insurance Coverage



### D&O Insurance Policy Coverage:

This insurance will indemnify the Claims first made against Insured during Policy Period for any Wrongful Act in the Insured's capacity as Director, Officer or Employee.

#### Coverage A

- **Director and Officer Liability:**

Pay Loss arising from services performed as an Insured Person [Director or Officer], where the Company cannot indemnify the Director or Officer.

#### Coverage B:

- **Company Reimbursement:**

Pay Loss in respect of which it is lawful for the Company to indemnify an Insured Person [Director or Officer]

## **D&O - Insurance Coverage**

### **D&O Insurance Policy – Major Coverage:**

- **Management Error**
- **Employment Practice Error**
- **Outside Entity Directors**
- **Company Reimbursement**
- **Acquisitions/ Disposals**
- **Discovery Period**
- **Occupational Health and Safety**
- **Initial Offering, Listing or Trading**
- **Secondary Securities Offering**
- **Shareholder Pollution Action**



## **D&O - Insurance Coverage**

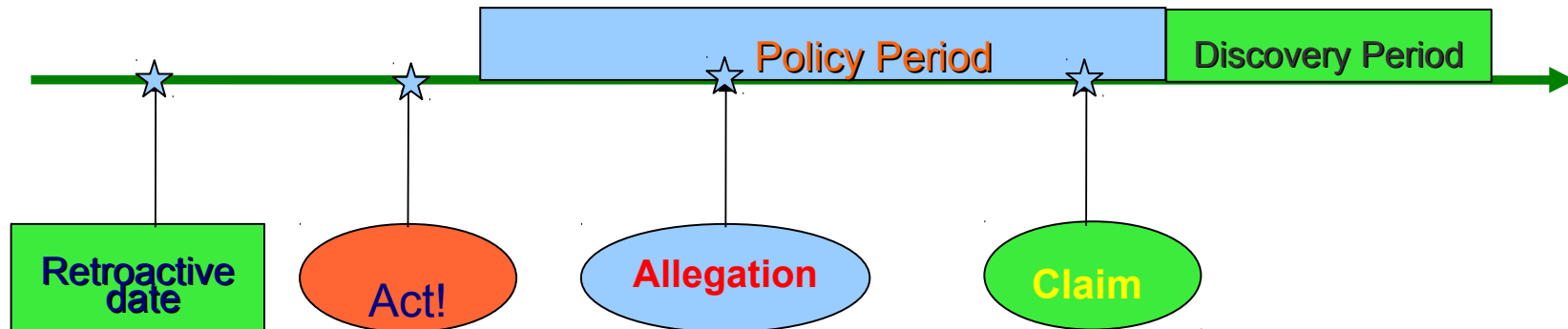
**This Insurance Policy is a "claims made" policy. This means that the policy covers you for claims made against you and notified to the insurer during the period of cover. This policy does not provide cover in relation to:-**

- ◆ **Events that occurred prior to the retroactive date of the policy (if such a date is specified); Claims made after the expiry of the period of cover even though the event giving rise to the claim may have occurred during the period of cover;**
- ◆ **Claims notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy;**
- ◆ **Claims made, threatened or intimated against you prior to the commencement of the period of cover;**
- ◆ **Facts or circumstances of which you first became aware prior to the period of cover, and which you knew or ought reasonably to have known had the potential to give rise to a claim under this policy;**
- ◆ **Claims arising out of circumstances noted on the Proposal Form for the current period of cover or on any previous proposal form.**

**Below is an illustration for reference with ease:**

## D&O - Insurance Coverage

**Payable Claim: The Claim is in the Policy Period and the Act is after Retroactive Date**



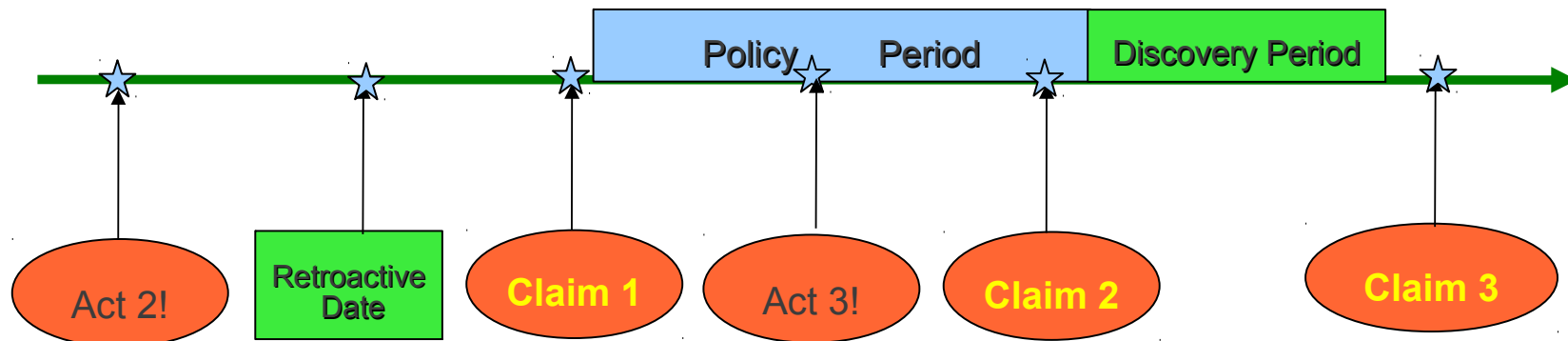
## D&O - Insurance Coverage

**Claims are NOT payable under the insurance policy:**

**Claim 1 - The Claim is made or notified prior to the commencement of the Policy Period!**

**Claim 2 - Event/Act that occurred prior to the Retroactive Date of the policy even the Claim is made during the Policy Period!**

**Claim 3 - Claim made after the expiry of the Policy Period even though the Event/Act giving rise to the claim may have occurred during the Policy Period!**



## **D&O Liability Insurance**

### **Examples on how easily claims can occur:**

- **Busy or rushed times causing pressure during which matters are not fully attended to, or are overlooked.**
- **Communication breakdown causing misunderstanding with clients.**
- **Incomplete supervision of staff activities**
- **The problem of keeping fully up to date with changes in the profession**
- **Computer or office administration suffering a hiccup and causing something to be missed or incorrectly completed.**

### **Sample D&O Claim Cases:**

#### **Class Action Complaint:**

Plaintiffs represents a class of non-insider stockholders who invested in the company. Plaintiffs allege that certain directors and officers failed to disclose material facts and provided them with inaccurate and misleading information. It is alleged that the materials did not disclose the high turnover of management and that the company's website had not yet been developed. The company later went bankrupt. The complaint included causes of action for: (1) common law fraud; (2) negligent misrepresentation; and (3) breach of fiduciary duties.

Settled for over \$1 million and defense costs exceeding another \$1.4 million.

### **Sample D&O Claim Cases:**

#### **Creditor Claim:**

Plaintiff filed a complaint against individual D&Os of a company alleging that its CEO, CFO, & COO conspired to use the plaintiff's services to furnish, install and repair the company's equipment knowing that it was insolvent and was planning to file for bankruptcy protection. Causes of action included: (1) fraud, misrepresentation and non-disclosure; (2) deceptive trade practices; and (3) civil conspiracy.

Total settlement and defense of the individually named defendants exceeded \$100,000.

### **Sample D&O Claim Cases:**

#### **Shareholder Derivative Action:**

A shareholder derivative action is taken against a company for breach of fiduciary duties on behalf of the directors. The plaintiffs contend that the defendants have failed to provide them with certain information, such as shareholder listings, financial data and other corporate records. They also allege that certain directors borrowed money from the company without the Board's approval and subsequently these loans were forgiven.

Total defense costs and settlement exceeded \$500,000.

#### **Breach of Fiduciary Duty:**

A private company agrees to perform market research for a start-up company in the material management industry. In exchange for their services, the company allegedly agrees to pay the private company \$20,000 in cash and 5% of the privately placed issued shares in the company. The company denies that they explicitly or implicitly agreed to pay the private company in stock. The plaintiffs allege several causes of action, including breach of fiduciary duty.

Total defense costs and settlement exceeded \$800,000.

### Sample D&O Claim Cases:

#### Competitor Disputes:

The plaintiff filed a complaint against their competitor alleging that a former employee, now working at the competition, engaged in unauthorized use of confidential and proprietary information and committed other acts of unfair competition. As a result, the plaintiff alleges it has suffered irreparable and immediate injury. In addition, the plaintiff alleges that the defendant has possession of its confidential information and intellectual property. The plaintiff asserts causes of action for: (1) misappropriation of trade secrets and confidential information; (2) violation of the Computer Fraud and Abuse Act (3) unlawful access to stored information; and (4) unfair competition. The plaintiff seeks: (1) attachment of a computer server; (2) attachment of certain files and documents; (3) injunction - preservation; (4) injunction - proprietary information; (5) injunction - surrender of possession; (6) injunction - non-compete; (7) compensatory damages; (8) exemplary and punitive damages; and (9) attorneys' fees and costs.

Total defense costs and settlement exceeded \$350,000.



### Sample D&O Claim Cases:

#### Competitor Disputes:

The plaintiff filed a complaint against their competitor alleging that a former employee, now working at the competition, engaged in unauthorized use of confidential and proprietary information and committed other acts of unfair competition. As a result, the plaintiff alleges it has suffered irreparable and immediate injury. In addition, the plaintiff alleges that the defendant has possession of its confidential information and intellectual property. The plaintiff asserts causes of action for: (1) misappropriation of trade secrets and confidential information; (2) violation of the Computer Fraud and Abuse Act (3) unlawful access to stored information; and (4) unfair competition. The plaintiff seeks: (1) attachment of a computer server; (2) attachment of certain files and documents; (3) injunction - preservation; (4) injunction - proprietary information; (5) injunction - surrender of possession; (6) injunction - non-compete; (7) compensatory damages; (8) exemplary and punitive damages; and (9) attorneys' fees and costs.

Total defense costs and settlement exceeded \$350,000.

### **Sample D&O Claim Cases:**

#### **Inadequate Financial Reporting:**

A technology company received a complaint from an investor who alleges the company improperly induced the plaintiff to issue a note payable to the company. The plaintiff specifically alleges the company made false representations and other false statements regarding the company's forecasted rate of growth and failure to disclose its tax lien. The company defaulted on the promissory note when it failed to make the required principle and interest payments. The plaintiffs issued a demand letter and filed suit against the company.

The plaintiff agreed to accept the company's offer to convert the promissory note to stock in the company, but the defense costs exceeded \$100,000.

#### **Inaccurate Disclosure:**

A class action suit was commenced by various investors who participated in an internet startup company's a Private Placement that raised in excess of \$5 million to fund capital expenses, to provide working capital and to cover operating losses. An investigation made by and through counsel, primarily from corporate records and public records and documents shows that the Private Placement Memorandum contained an unaudited year end balance sheet and statement of profits and losses which were materially misleading.

Total defense costs and settlement exceeded \$500,000

### **Sample D&O Claim Cases:**

**The following are the cases occurred recently related to Vietnamese Companies and Directors:-**

#### **Former General Director of Jetstar Pacific arrested**

On January 7, 2010, while the story about the sky high salaries of the executives of the State Capital Investment Corporation (SCIC), which specializes in investing state's capital was being widely discussed on Internet forums, people heard that Luong Hoai Nam, former General Director of Jetstar Pacific, a budget airline, was arrested. He was accused of causing the \$4 million-loss incurred by Jetstar Pacific Airlines, where SCIC is managing the state's capital. After eight months and 10 days in temporary detention, Nam was released and exempted from prosecution.

#### **Former Deputy General Director of BIDV**

One month later, on February 5, Deputy General Director of BIDV, a big state owned bank, Doan Tien Dung, was caught red-handed receiving a one billion dong bribe from a Hai Phong-based textile and garment company. The police suspected that Dung had been receiving bribes for a long time, and the total sum might have reached many billions dong.

### **Sample D&O Claim Cases:**

#### **Vinashin's Chair sent to jail**

August was considered the worst time among the business circle, when a series of leaders of Vinashin were dismissed from their posts and summoned for investigations. On August 4, the police arrested the former chair of Vinashin – Pham Thanh Binh, for the serious wrongdoings in the management which had led the economic group onto the verge of bankruptcy.

Binh was arrested just a couple of weeks after the plan on restructuring Vinashin was made public.

After Binh, many other high ranking managers of Vinashin, including managing director Tran Quang Vu and directors of subsidiaries, were also arrested. Within just one month, Vinashin replaced three general directors, and appointed a lot of new people for its higher positions

Once considered the leading corporation in Vietnam's power industry, Vinashin, which aimed to become a leading shipbuilder in the world, has now become the debtor of many domestic and foreign credit institutions.

#### **Thanh Ha project broke down, real estate developers arrested**

Chair of the May 1 Construction and Service Company Le Hoa Binh was arrested for appropriate assets. The company's general director Nguyen Manh Cuong has also been suspected of the same, but he has been released?. Both Binh and Cuong are believed to have been involved in illegal mobilization of capital for the project on Thanh Ha urban area in Hanoi.

### **Sample D&O Claim Cases:**

#### **Big guy jailed because he tried to sway stock prices**

for the first time, Vietnam's stock market, witnessed the arrest of a business general director for his attempts to control stock prices. The order to arrest CEO of Vien Dong Pharmacy - Le Van Dung – was released in late November. Dung is the first person prosecuted for swaying stock prices, since the criminal law was updated to include such cases from January 1.

Prior to the arrest, Dung and Vien Dong Pharmacy became famous as they planned to acquire Ha Tay Pharmacy.

Other managers of Vien Dong Pharmacy, including the finance deputy general director and some other key persons were also arrested following the accusations relating to their attempts to control the stock prices.

#### **The ill fortune of Indochina Airlines' manager**

2010 was also a bad year for General Director of Indochina Airlines Ha Hung Dung, who has been a very well known musician in Vietnam's showbusiness. Booking agents and partners of Indochina Airlines have threatened to sue the airline for the unsettled debts of up to tens of billions dong.

Indochina Airlines is now on the verge of bankruptcy, with no aircraft, no headquarter or staff.

Two years ago, when Ha Dung announced the launching of the first commercial flight, people already anticipated the bad end of the airline, because at that time the aviation market was in crisis.

## **D&O Liability Insurance – In Summary**

### **D&O Purpose & Intent**

- **Directors & Officers (D&O's) have a personal liability when they manage a business**
- **D&O insurance protects that personal liability**
- **D&O is often bought by the Company to protect the Directors' personal assets**
- **D&O provides legal defense costs and will fund settlements for lawsuits against the Directors of the Company**
- **D&O policies almost always pay defense costs – the Insurer cannot decide not to pay because they believe the D&O is guilty or may lose the case**

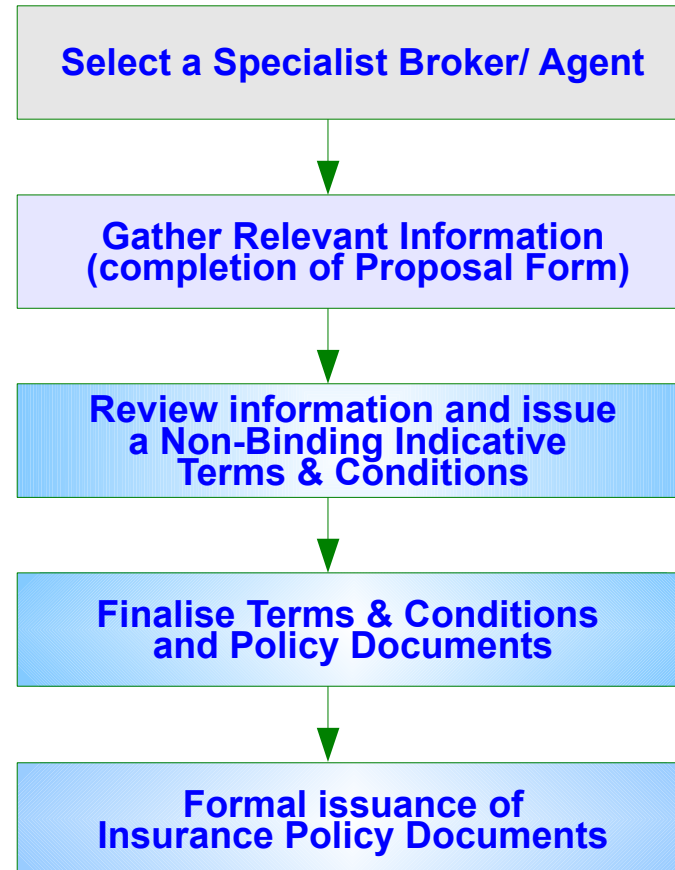
## **D&O Liability Insurance – In Summary**

### **Summary: Why you should consider D&O Insurance?**

- The unknown dangers of investigations
- You can lose your wealth
- You can be put in prison
- SME Do not have resources
- Family disputes/rifts
- Partnerships
- Damaging allegations
- Past, present and future
- Cost of justice

**Corporate Life Assurance**

## **D&O Liability Insurance – Commercial Process**





## BrokersLink Vietnam - Contact Details

### Tran Van Luat (Mr)

**Cell phone:** +84-913-805-096

**e-mail:** tranvanluat@aegisrs.com

### Au Quang Hien (Mr)

**Cell phone:** +84-913-805-091

**e-mail:** auquanghien@aegisrs.com

**Tel:** +84-8-3514 7970

**Fax:** +84-8-3514 7971

**Address:** 16th Floor Saigon Tower, 29 Le Duan Boulevard, District 1, Saigon-HCMC, Vietnam

Please contact us or visit our websites for further information [www.aegisrs.com](http://www.aegisrs.com)

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