



Directors' Liability Survey 2022

Regional overview, Asia

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Directors' and officers' risk landscape has witnessed rapid evolution in Asia in recent times. While the universal trends such as the impact of pandemic, environmental and other ESG issues and growing concerns around cyber claims dominated this transition, closer to home, a spate of changes to the regulatory environment acted as a key catalyst. Some of the key trends witnessed in Asia include the following:

China: Effective 1 March 2020, the revisions to Securities Law of People's Republic of China (PRC) came into effect. These revisions further improved the basic

system, embodying the direction of marketisation, rule of law, and internationalization. Amongst the various highlights are the key revisions around improving the investor protection system, significantly increasing the cost of securities violations and further strengthening of information disclosure requirements.

These changes increase the uncertainties around potential risks for directors and officers considerably. There has been a recent ruling which marks the first ever securities class action ruling in China and is expected to have a long-lasting effect on D&O litigation trends in the country. Despite these developments, it is notable that the risk of shareholder actions/disputes was not highly ranked by respondents in Asia, with only 51% of respondents considering that the risk was very significant or extremely significant.

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Japan: The Companies Act Reform Bill, which came into force on 1 March 2021, represents a key step towards enhanced corporate governance standards in Japan. Additionally, the recent revisions to the Corporate Governance Code of the Tokyo Stock Exchange further stipulated fundamental principles for effective corporate governance for listed entities. These key changes include provisions around the mandatory appointment of outside directors for listed companies and establishment of systems for appropriate determination of remuneration for directors and the like. Most importantly, the Reform bill for the first time established the procedure for conclusion of D&O Liability insurance policies, involving approval of a shareholders' meeting or, for a company with a board of directors, approval of the board of directors.

It further established rules under which companies may indemnify their directors and officers against expenses incurred in defending an action involving their liability. With developments such as these, it is unsurprising to see that regulatory risk is identified as the number three risk in Asia, with 64% of respondents identifying it as very significant or extremely significant.

Pandemic: The focus has now shifted from the immediate impact of the pandemic to long-term issues, especially in emerging economies in Asia. The uncertainties around recovery, operational adjustments to the ever-changing regulatory and compliance landscape, and the mismanagement of disclosures have added to the long list of unanticipated risks for directors and officers. We expect continued and detailed scrutiny on financial sustainability, work force management and future business prospects as the part of the lingering impact of the pandemic on the D&O Liability landscape.

U.S. class action exposure for American Depositary Receipts (“ADRs”) - listed companies – The growing extra-territorial risk of U.S. securities litigation through ADRs has been an emerging concern for listed companies in Asia with either sponsored or unsponsored ADRs. U.S. plaintiff firms continue to target international companies through their ADRs and there has been a significant uptick in such attempts in recent times. The financial impact of litigating in the U.S. could be severe, hence why we are witnessing heightened concerns around this risk from a D&O liability perspective. However, recent developments in the U.S. courts may ameliorate some of this concern for companies with unsponsored ADRs.



Risk ranking overview – by region

How significant are the following risks for the directors and officers of your organisation (whether financially or reputationally).



(% of 'Very significant' or 'Extremely significant')

Source: Directors' Liability Survey 2022

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