

The background of the slide is a photograph of the Allianz Arena stadium in Munich, Germany. The stadium's exterior is covered in white, inflated, balloon-like panels that create a textured, undulating surface. The Allianz Arena logo, consisting of the word "Allianz" followed by the Allianz symbol (a circle with three vertical bars) and the word "Arena", is mounted on the facade in large, blue, three-dimensional letters. The sky is a clear, pale blue.

Allianz  Arena

AEB Round Table Event 26-04-2011

Introduction to Director's and Officer's Liability Insurance (D&O)

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Allianz 

Agenda

1 Legal environment affecting D's and O's:

1.1 Litigation examples

1.2 Areas of risk for D's and O's

2 D&O Coverage

2.1 D&O Policy – Types of Coverage

2.2 D&O “sleep well at night” Policy

2.3 Legal base for Directors and Officers liability in Russia

3 Introduction to Public Offering of Securities Insurance (POSI)

3.1 Life example

3.2 Prospectus Liability Coverage

3.3 D&O + IPO extension vs. stand alone POSI

1. Legal environment affecting D's and O's

1.1. D&O Litigation: India - Satyam - The
good times
Satyam Computer Services Ltd ([NYSE: SAY](#))



What Business Demands.

1.1. D&O Litigation: India - Satyam - The
good times
Satyam Computer Services Ltd (NYSE: SAY)



What Business Demands.

- India's 4th largest IT Company (consulting and IT services)
- Over 53,000 employees worldwide
- More than 600 clients including Nestle, General Motors
- In 2007 Ramalinga Raju (Chairman) was named by Ernst & Young entrepreneur of the year

1.1. D&O Litigation: India - Satyam – After the bubble burst

7 January 2009 – Chairman and founder Ramalinga Raju resigned after notifying board members and the Securities and Exchange Board of India (SEBI) that Satyam's accounts had been falsified



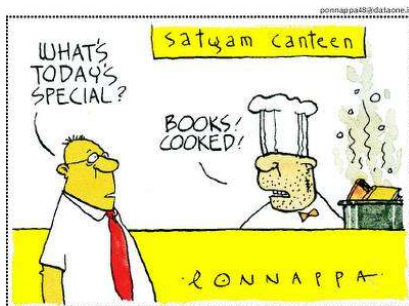
Period

1.1. D&O Litigation: India – Satyam – After the bubble burst **Allianz**

7th January 2009: Ramalinga Raju resigned

“It was like riding a tiger, not knowing how to get off without being eaten”

- Inflated cash/ bank balances of US\$ 1.09 bn
- Set up false sales contracts over several years inflating profits
- Created over 1,000 fictitious staff so he can pay himself



9th January 2009: Ramalinga Raju arrested on charges of forgery, breach of trust and criminal conspiracy

14th January 2009: Satyam's auditors issued statements that accounts could no longer be relied on

1.1. D&O Litigation: India - Satyam - After the bubble burst

-Not possible for Satyam's shareholders to take a class action lawsuit against the Company in India

-BUT Satyam had an American Depository Shares (ADS) ADR Level-3 listing and filed a prospectus with the U.S. Securities and Exchange Commission (SEC)
-> at least 13 class action lawsuits in the US

US Class Action Claim!



Class action has quickly arisen suing for US\$2 billions of dollars against all Directors and the Company.

1.1. D&O Litigation: Largest securities

Company	Amount paid out to claimants, US\$
Enron	8 138 000 000.00
WorldCom	7 640 000 000.00
Cendant	3 724 000 000.00
AOL Time Warner	3 591 000 000.00
Royal Ahold	1 100 000 000.00

Source: Cornerstone Report “D&O Litigation trends in 2006”/ Aon, June 2009

*All settlements are the cumulative result of multiple suit – some suits are still outstanding

1.1. D&O Litigation: Russia **The decision of the Moscow Arbitral Court**

Chairman of the Board and CEO of “Dialog-Optim” Bank are obliged to pay a 1 mln rouble loss for “hiding” the assets

(Source: “Vedomosti” №231 (1758) dd. 07.12.2006)

Claims of “Sovcomflot” shareholders v. Managing Board

Ex CEO is sued \$200mln for concluding contracts on artificially low prices

(Source: “Vedomosti” №138 (1665) dd. 28.07.2006)

Decision of Moscow Arbitral Court dd. 30.05.2006, Case #N A41-K1-1079/06

The Court found several Board Members of the insolvent “ASB-bank” guilty in purchasing non liquid bonds and obliged them to pay out 200 mln roubles to the victims/ depositors

(Source: “Kommersant DENGI” №22 (578) dd. 05.06.2006)

Decision of the Moscow Court

The ex Chairman of the Board of an insolvent bank “Nazionalnii” was sued for 240 mln roubles

(Source: “Kommersant DENGI” №22 (578) dd. 05.06.2006)

1.1. D&O Litigation: Russia – Fresh from

the press
Награда за публичность

20 октября 2010 года, Ведомости, Мария Дранишникова

Статья на сайте-источнике:

http://www.vedomosti.ru/newspaper/article/248049/nagrada_za_publichnost

Фармацевтический холдинг "Протек" щедро вознаградил своих сотрудников за ударную работу над размещением акций на бирже — на бонусы пошло минимум 260,3 млн руб., или 4,5% от суммы, привлеченной компанией на бирже. Инвесторов это не радует

На вознаграждения своим сотрудникам за размещение акций на бирже "Протек" потратил 476,45 млн руб., бонусы ключевым сотрудникам (30 человек) составили 260,3 млн руб., указано в отчете. Менеджмент получил лишь 260,3 млн из 476,45 млн руб., остальные 216,15 млн руб. пошли на оплату юристов, аудиторов и т. д.; комиссия банков в эту сумму не включена, рассказал представитель компании. Таким образом, по курсу на день размещения — 28 апреля — менеджмент получил \$8,96 млн (а если читать отчетность буквально — \$16,4 млн).

1.1. D&O Litigation: Russia – Fresh from the press Ведомости

17.08.2010, [152 \(2670\)](#)

UC Rusal судится везде UC Rusal подала в Красноярский суд иск к «Норильскому никелю», сообщила алюминиевая компания. UC Rusal утверждает, что «Норникель» **нарушил закон об акционерных обществах**, не предоставив копии бюллетеней для голосования, запрос на ознакомление с которыми компания направила еще 5 июля.

Источник: http://www.vedomosti.ru/newspaper/article/243787/na_chno_kopit_deripaska

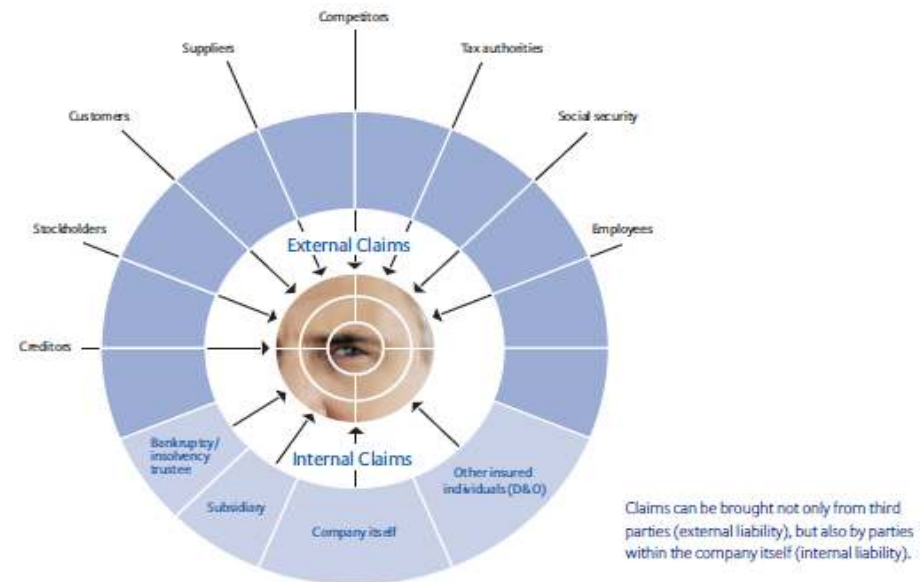
1.2. Areas of Risk for D's & O's

- Public Offerings
- Takeovers, Mergers & Acquisitions
- Antitrust
- Environmental Liabilities
- Other Liabilities affecting the balance sheet (e.g. Products, Professional, Recall, etc.)

Evolving Corporate Governance and increasing exposure for D's and O's!

Who sues D's & O's? External and internal:

- Shareholders
- Employees
- Government / Regulatory Bodies
- Creditors
- Customers
- Suppliers
- Competitors
- Professional Consultants



Solution?

2. D&O Coverage

2.1. D&O Policy – Types of Coverage

- personal liability of company D's and O's as individuals (**Side A cover**),
- reimbursement of the insured company in case it has paid the claim of a third party on behalf of its managers in order to protect them (**Side B or Company Reimbursement Cover**).
- listed stock companies can also obtain cover for claims against the company itself for a wrongful act in connection with the trading of its securities (**Side C or Securities Entity Cover**).

	Covered claim against directors & officers		Covered securities claim against the company itself
	Indemnification?		
	No	Yes	
Who is at risk?	Insured: Directors and officers	Insured: The company	Insured: The company as a defendant in securities claims only
What is at risk?	Personal assets	Company assets	Company assets
Cover?	D&O Insurance: Non indemnifiable liability of directors and officers	D&O Insurance: Company reimbursement of directors' costs	D&O Insurance: Company liability for securities claims
		Retention applies	Retention applies
	Side A	Side B	Side C

2.2. D&O “sleep well at night” Policy

Common D&O risk scenarios:

- Shareholder actions
- Reporting errors, inaccurate or inadequate disclosure
- Misrepresentation in a Prospectus/ Road show
- Decisions exceeding the authority granted to a company officer
- Failure to comply with regulations or laws
- Employment practices & HR issues

Directors could loose all of their personal assets!

Recruiting and retaining the most qualified D’s & O’s

(incl. Independent Directors – in some countries obligatory by law)

2.3. Legal base for Directors and Officers

liability in Russia

- 1995 - adoption of Russian law on joint stock companies
- 2001 & 2006 - major revision of the aforementioned law
- 2011 - bill to be adopted:

Concise and clear language to be adopted in the bill:

1. Basis of acts of D&O to be performed in **good faith** and test of **reasonableness** introduced in the bill

2. The concept of D&O contract is defined (the possibility to insure any liability of D's and O's if otherwise is not prohibited by law).

What if a Company is going public?



3. Introduction to Public Offering of Securities Insurance (POSI)

3.1. Life example

Playboy article could be costly for Google



Google IPO - August 19, 2004
(NASDAQ, ticker: GOOG)

3.1. Life example - Playboy article could be costly for Google

Sergey Brin and Larry Page (Google founders) gave the interview in April, before Google filed for IPO. Its publication in the September issue of Playboy magazine has fallen within the "quiet period" required by securities regulators, giving rise to fears that the floatation would have to be delayed.

Solution: The auction has gone ahead, although Google was forced to make some **changes to its IPO Prospectus** in order to comply with requirements imposed by the US SEC to overcome the potential impact of the article's publication, including:

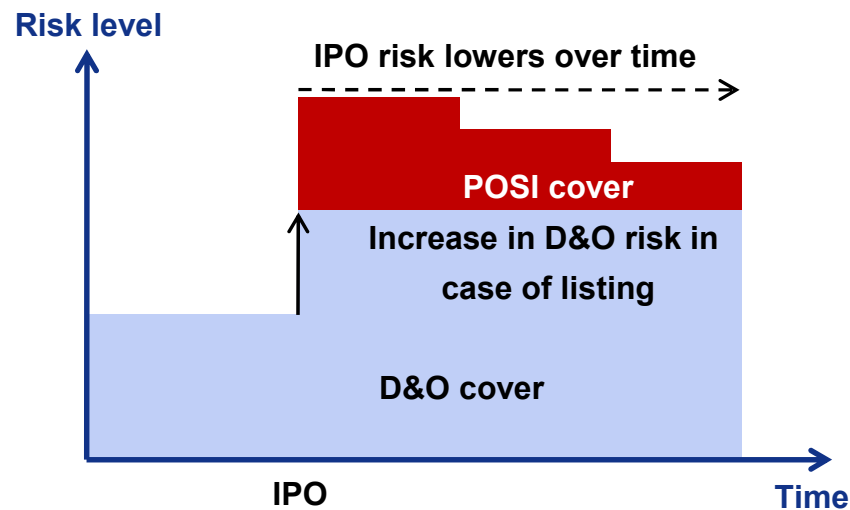
- the addition of a copy of the article,
- the amendment of various errors contained in the article;
- a warning that the company may have violated the quiet period and may subsequently be **at risk of legal action from disgruntled shareholders, if the share price falls after the floatation.**



3.2. Prospectus Liability Coverage

POSI policy provides coverage for the liability of directors, officers and the company involved in issuing the prospectus incl. all prior negotiations, discussions (with their legal advisors, financial advisors, underwriters etc.) and decisions in connection with the offering, the road show or the “red herring”. The Policy can also be extended to include any advisors involved in preparation of the Prospectus document such as investment bankers, underwriters, legal advisors etc.

The policy is a multi-year (typically between 3 and 6 years) policy arising from a single transaction. The length of the policy period will largely depend on the statute of limitation in a specific country, requirements of the Stock Exchange and market practice.



3.3. D&O + IPO extension vs. stand alone POSI

Advantages of extending D&O to include IPO:

- Simple solution (less information required, no need for long internal procedures, etc.);
- A single policy will not lead to allocation issues.

Advantages of stand alone POSI policy:

- Limit is separate from the annual D&O policy – will not be eroded;
- Extended range of insured persons (selling shareholders, underwriters);
- While D&O could only be exposed to “related” risks, POSI is a specifically tailored coverage for IPO.

There are solid reasons for a separate POSI insurance.

Questions & answers

DISCLAIMER

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Thank you
for your attention!