

PrivateEdge

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Agenda

- Recap of Directors and Officers Liability insurance
- Why AIG
- Why Private companies don’t buy D&O
- PrivateEdge Coverage
- IQP Walkthrough
- End

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WHO IS COVERED?

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Who is covered?

Insured 5.32

- **Insured Person 5.34**
  - Directors and Officers
    - Entity and subsidiaries
    - Past, Present, and Future
  - Employee (that has managerial responsibility)
  - Trustee
  - Shadow Directors
  - Outside Entity Directors

- **Company 5.9**
  - Policyholder
  - Subsidiaries

Subsidiary 5.60

1) controls composition of BOD;
2) controls >50% of shareholder or equity voting power; **OR**
3) holds >50% of issued share capital or equity

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CIVIL OR CRIMINAL ACTS?

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Civil Liability

- Investigation, Defense Costs, Settlement, Damages Awarded,

Criminal Liability

- Investigation, Defense Costs
  1) Must be acquitted
  2) Granted relief under the Companies Act 2016
  3) Proceedings are discontinued or not pursued

Exclusions:

1) Bodily Injury / Property Damage
2) Environmental Violation
3) Professional Services
4) [Add any relevant Exclusions to this Client]

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The Role of Directors and Officers is more onerous

- D&O's carry **personal responsibility**
  - Not only for their actions
  - But also where they fail to act in certain circumstances

Increased Personal Responsibility

- Can be sued by shareholders, creditors, customers, competitors, employees, and members of the public

Increased Regulation

- Increased regulatory action – actively investigating the affairs of companies and prosecuting where appropriate
  - MACC, SC, etc.
- Cost of legal representation during such matters is significant (regardless of the outcome)

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Exposures D & O face

- Securities litigation
- Regulatory actions
- Allegations of misrepresentation
- Employment practices
- HR issues
- Shareholders actions
- Reporting errors
- Inaccurate or inadequate disclosure
- Exceeding authority
- Other breaches of fiduciary duties

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CLAIMS MADE OR OCCURRENCE?

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D & O Claims-made Policy

- A Claims-made policy is one that is triggered when a claim is made against the **Insured** during the **policy period**, regardless of when the wrongful act that gave rise to the **claim** took place.

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Why AIG?

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Why AIG?

Market Leading Position

- Worldwide Experiences, Local Services
  - AIG 100
- Major Player in Asia Pacific
- General Insurance Company of the Year 2018
  - @ 22nd Asia Insurance Industry Awards
- Own Capacity

Market Leading Services

- Nationwide and Worldwide Branches Support
- Local Claims Handling Team
- Claim Payment within 30 days
- Global Liberalization

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DragonShield
Market Leading Coverage

- **Claims**
  - **“Secrecy Provision”**
    - Relief of notification obligations due to statutory confidentiality obligations
  - Payment of Defense Costs, Investigation Costs, Extradition, and other Costs **within 30 days**

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WHY PRIVATE COMPANIES DON'T BUY D&O

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D&O is only for Public Companies

- We are only a small company
- My company only has a handful of employees
- Who would want to sue a charity organization/ association?

- As a small company, you may be least prepared for legal battle & the ensuing cost, whether it be an employment practices breach or an investigation from a regulator
- Protecting your personal assets

- The Same Laws Apply! E.g. Intellectual Property Infringement

- I don't have D&O risks because I don't have shareholders

- If you're making decisions on behalf of your company, you can be made liable

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D&O is only for Public Companies

- I don't need D&O - mine is a family run business

- Business continuity & legacy issues
- 2nd & 3rd generation on board
- Non-family management

- We do not have business elsewhere and no business dealings in US or Europe. We know our employees well & our customers have been with us for decades

- Other exposures you may face besides your employees or customers :
- Vendors, supplier lawsuits
- Competitor (unfair trade practices)

- D&O insurance is too expensive!
- Invest in PrivateEdge now!

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Percentage of private companies sued by :

- Customers
- Vendors/Suppliers
- Government/Regulator
- Competitor
- Partner or Shareholder

Source : hubinternational, 27 Jan 2017

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PrivateEdge FP Case Studies

Breach of Contract

An entity was sued by its former agents after it terminated their contract in order to replace them with fulltime staff. The agents sued for non-payment of commission

Misconduct

An employee was dismissed after sending a stream of offensive emails to colleagues about one of his senior managers. However the employer failed to follow proper process in dismissing the employee and the case was settled for a 5 figure sum.

Fire Safety Regulations

Directors were prosecuted by a local authority after persistently failing to comply with fire regulations. They claimed that the alterations required to be made to their premises by the local authority were unnecessary.
We funded the defense of the directors and a successful outcome was achieved.

Source : AIG Malaysia PrivateEdge FP Brochure

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PrivateEdge Not For Profit

Charities, Clubs, Trusts, Associations, etc

Errors & Ommissions, Fraud or Dishonest Acts by Employees or Third Parties

NOT intended to replace PI Insurance
- To avoid cover gap between D&O & PI

PI Coverage Not applicable to certain professions
- Excluding: Legal, Financial or Environmental
  Construction, A&E
  Certification and Licensing
  Healthcare, Medical treatment or scientific research
  Services under a direct contract

- Can still apply for PrivateEdge but without PI Coverage.

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PrivateEdge NFP Case Studies

PROFESSIONAL LIABILITY:

Failure to satisfy member's expectation

A sports club arranges sporting activities for members and provides training to members. A member was not happy with the outcome of the training and sues the sports club, claiming for the training fees paid & other damages

Appointment of incompetent service provider

An incorporated owner of an apartment building appointed a property manager to manage the building. An elevator malfunctioned as the property manager failed to organize routine maintenance of the elevator. The entity was sued for appointing such property manager.

Source : AIG Malaysia PrivateEdge NFP Brochure

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VIDEO : WHAT IS NONPROFIT D&O?

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Application

Total Asset Size < than RM 100m For Sdn Bhd / RM50m for NFP

- ***Instant Quote Pad Available***

- ***Bind at the spot!***

Total Asset Size > than RM 100m For Sdn Bhd / RM50m for NFP

- ***Available with separate underwriting***
- ***Long Application form Available***

Alternative Terms.

- ***Available with separate underwriting***
- ***Long Application Form Applied***

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Coverage

1.1 Management Liability Cover	PrivateEdge	PrivateEdge NFP	BusinessGuard First
Side A - Direct Indemnification	Cover	Cover	Cover
Side B - Entity Reimbursement	Cover	Cover	Cover
Excess Limit	Cover	Cover	Not Cover
Shareholder Pollution Action and Pollution Condition Defence Costs	Cover Sub-limit: RM 200,000	Not Cover	Defence Cost Cover under Pollution Extension Sub-limit: RM 100,000

3.45. Shareholder pollution action
means any shareholder derivative action brought against any ***insured person*** or ***company*** alleging a ***wrongful act*** arising out of, based upon or attributable to a ***pollution condition***.

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Coverage

1.2 Corporate Liability Cover	PrivateEdge	PrivateEdge NFP	BusinessGuard First
Corporate Liability	Cover Sub-limit: 20% of Policy Limit	Cover Sub-limit: 20% of Policy Limit	Cover
Shareholder Pollution Action and Company Pollution Condition Defence Costs	Cover Sub-limit: RM 200,000	Not Cover	Not Cover
Breach of Contract	Cover Sub-limit: RM 100,000	Cover Sub-limit: RM 100,000	Not Mentioned
Liability to Third Parties Entities due to Employee Dishonesty or Fraud	Cover Sub-limit: RM 100,000	Not Cover	Not Mentioned
Identify Fraud	Cover Sub-limit: RM 100,000	Not Cover	Not cover
Crisis Event	Cover Sub-limit: RM 100,000	Cover Sub-limit: RM 100,000	Not cover

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Coverage

	PrivateEdge	PrivateEdge NFP	BusinessGuard First
1.3 Employment Practices Liability Cover	Optional Sub-limit: Up to 50% of Policy Limit	Optional Sub-limit: Up to 50% of Policy Limit	Cover

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Coverage

1.4 Professional Liability Cover	PrivateEdge	PrivateEdge NFP	BusinessGuard First
Civil Liability	Excluded	Cover	Excluded
Intellectual Property	Excluded	Cover	Excluded
Defamation	(It's covered under Wrongful Acts)	Cover Sub-limit: RM 250,000	Cover
Fraud / Dishonesty	(It's covered under 1.2 (iv))	Cover Sub-limit: RM 100,000	Excluded
Loss of Document	Not Cover	Cover Sub-limit: RM 100,000	Not Cover

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Coverage

2 Extensions	PrivateEdge	PrivateEdge NFP	BusinessGuard First
Investigation Cost - Insured Person	Cover Sub-limit: 50% of LOL	Cover Sub-limit: 50% of LOL	Cover Sub-limit: RM 100,000
Investigation Cost - Entity	Cover Sub-limit: RM 150,000	Cover Sub-limit: RM 150,000	
Regulatory Crisis Event Costs	Cover Sub-limit: RM 100,000	Cover Sub-limit: RM 100,000	Not Mentioned
Corporate Manslaughter and related Public Relation Expenses	Cover Sub-limit: RM 100,000	Cover Sub-limit: RM 100,000	Not Cover
BIPD Defence Costs	Cover Sub-limit: RM 200,000	Cover Sub-limit: RM 200,000	Partially cover under OH&S Defence Cost Sub-limit: RM 100,000
Emergency Costs	Cover Sub-limit: 10% of LOL	Cover Sub-limit: 10% of LOL	Not Cover
Civil Fines and Penalties	Cover Sub-limit: RM 250,000	Cover Sub-limit: RM 250,000	Excluded
Discovery Period	Cover 90 days free 100% AP for 1 year 150% for 2 years	Cover 90 days free 100% AP for 1 year 150% for 2 years	Cover 30 days free for Non-renewal by Policyholder 60 days free for Non-renewal by AIG

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Coverage

2 Extensions (Continuous)	PrivateEdge	PrivateEdge NFP	BusinessGuard First
Lifetime Run-off for Retired Insured Person	Cover	Cover	Not Cover 6 years for Retired Directors
Extradition Costs and Public Relation Expenses	Cover Sub-limit: RM 250,000	Cover Sub-limit: RM 250,000	Not Cover
Asset and Liberty costs	Cover	Cover	Not Cover
Public Relations Expenses	Cover Sub-limit: RM 100,000	Cover Sub-limit: RM 100,000	Not Cover
Court Attendance	Cover Sub-limit: RM 100,000 Director: RM 1,500 / Day Employee: RM 700 / Day	Cover Sub-limit: RM 100,000 Director: RM 1,500 / Day Employee: RM 700 / Day	Not Cover
Automatic cover of new subsidiary	Cover	Cover	Cover
Continuous Cover	Cover	Cover	Not Cover
Tax Liability	Cover Sub-limit: RM 250,000	Not Cover (Less relevant)	Not Cover
Tax Status Costs	Not Cover (Irrelevant)	Cover Sub-limit: RM 250,000	Not Cover
Data Protection Liability	Cover Sub-limit: RM 250,000	Not Cover	Not Cover

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