

Why do we need Directors and Officers Liability Insurance?

Directors and Officers Liability Insurance cover (usually referred to as D & O) protects a company's directors, officers and senior managers, i.e. the 'decision makers' in any business, against claims arising from their decisions and actions taken whilst managing their business. Most modern policies can also be extended to indemnify the Company - Entity cover.

The duties and responsibilities of a director have been established through statutes, regulations and case law and can be broken down into the following areas:

Duty of Care and Skill

This is a common law duty that requires Directors to act with 'the care an ordinary man would take in the same circumstance on his own behalf' and with the skill expected from someone with his 'particular knowledge and experience.' Where duties are delegated the Director is responsible for ensuring that the person to whom the duties are delegated is sufficiently experienced, reliable and honest.

Fiduciary Duty

Directors must act honestly, in good faith and in the best interest of the company and must ensure that they do not have any conflict of interest.

Statutory Duty

There are numerous statutes that effect the conduct of Directors & Officers – including the Companies Act 2006 with over 200 offences, Insolvency Act 1986, Health & Safety at Work Act 1974, Environmental Protection Act 1990 – etc, to name but a few.

If a Director / Officer is thought to have failed in any of his duties then a claim could be brought against him personally from any one of a number of sources :-

- Shareholders
- Creditors
- Government & Regulatory Bodies
- Employees
- Auditors
- Liquidators
- Customers
- Suppliers

In a claim situation, the Director's entire personal wealth is at risk! Directors cannot rely on the company indemnifying them. Often such indemnity from the company will be a contravention of the Companies Act. In the event of insolvency for example, there would be absolutely no prospect of the company indemnifying the Directors & Officers. However, the Directors and Officers Liability Insurance Policy will pay on behalf of the Director / Officer – his legal costs and expenses and any civil damages awarded against him subject, of course, to the level of cover / limits of indemnity selected.

Given the ‘ compensation culture ‘ in which we seem to be living, the number of D & O type claims submitted is increasing year on year, which is not particularly surprising when you consider :

- Regulation is increasing.
- There is a greater awareness on the part of third parties of the duties and responsibilities of a Director.
- Shareholders and other third parties are becoming more aware of their rights.
- Lawyers are now able to act on behalf of plaintiffs on a ‘no win no fee‘basis.

The above information should serve to illustrate the absolute need for D&O cover !

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The information contained on these web pages is for general guidance only and is in no way a substitute for seeking professional advice on your specific circumstances.