

DIRECTORS AND OFFICERS LIABILITY INSURANCE

What is it and why should companies purchase it?

What is D&O?

Directors and officers of companies of all sizes have certain personal liabilities which come with the fiduciary duties of their position. When directors are accused of breaching these duties, actions are brought against them personally and this can have devastating consequences for the individuals concerned, even if they have done nothing wrong. A common misconception is that being a director of a limited liability company in some way limits the director's personal liabilities. This is not the case - directors' personal liabilities are unlimited.

D&O insurance provides a pool of money for the directors of a company that can be drawn on to fund defence and settlement costs and to pay for the cost of legal representation at investigations.

Almost every large UK company purchases D&O for their directors. The exposures are so onerous that most business people operating at this level would not accept a board or non-executive position without first reviewing the company's D&O policy to ensure that they are adequately covered. The exposures for smaller companies are just the same - the law doesn't discriminate between small and large companies - and in some respects are actually higher. Government bodies such as the DTI, HSE and SFO are increasing their focus on SMEs and the number of investigations of companies in this sector is rising rapidly.

Why should companies purchase D&O?

1. Directors' personal liabilities are unlimited and in the course of carrying out everyday duties for a company, directors are exposing themselves personally to lawsuits, investigations and criminal prosecutions. Without insurance, directors can end up having to re-mortgage (or worse), just to pay legal fees.
2. When a director needs to defend lawsuits, investigations and prosecutions, being able to draw on insurance funds to hire the best law firms in the country is going to help achieve the best possible outcome. Having an experience D&O claims team - on side can also help.
3. There are an increasing number of government bodies that can investigate a company - the DTI's Companies Investigations Branch, the Health and Safety Executive (HSE), the Serious Fraud Office, the Disability Rights Commission just to name a few - and increasing focus

on smaller businesses. Even when there is no initial allegation that a director has done anything wrong, having the funds to obtain legal representation at these investigations enables directors to gain the best possible outcome.

4. Last year:

- a. Over 1500 directors were disqualified for between 2 and 15 years,
- b. the DTI's Companies Investigation Branch looked at almost 5,000 companies,
- c. the HSE issued over 11,000 notices and prosecuted 982 cases.

5. Convictions for corporate manslaughter could soar under the new legislation that came into force in April 2008.

Claims Scenarios

Directors can face financial liabilities from a number of scenarios - here are just a few.

A director of one company was sued by one of his distributors. It was alleged that he had deliberately breached an exclusive distribution agreement and that he had used commercially sensitive information within this agreement for personal benefit. Eventually the distributor dropped the case against the director - but not before the director had incurred £200,000 defence costs.

A director was sued by a group of his shareholders for negligence after the company's fortunes declined rapidly. After consultation with lawyers, it was decided that the best course of action was to settle out of court. The directors D&O insurance funded the final settlement as well as the legal costs. The sums involved would have been sufficient to personally bankrupt the director in question.

An HSE investigation into a fatality at work turned into a full-blown public enquiry which a director was required to attend. The D&O insurance policy funded his legal representation at the enquiry and enabled him to demonstrate that the fatality had not arisen out of any negligence or wrongful act on his part.

For more information relating to our D&O insurance please contact your Business Development Executive or call 01204 600 345 to arrange a visit.