

DIRECTORS & OFFICER'S LIABILITY INSURANCE

In the 1930s Lloyd's of London introduced coverage for corporate directors and officers and it took several years to gain importance and lots of changes have been undergone till date.

In the era of stringent corporate laws and regulations that an organisation need to follow, the directors and principal officers of the company are provided the attorney and hence is duty bound, responsible and accountable for all the small or big issues which might attract penalties when are not followed or regularly complied with in accordance with the laws. In order to cover such liabilities towards the directors/officers a concept called DIRECTORS & OTHER OFFICERS LIABILITY INSURANCE (D & O Insurance) is practiced. It is also known as Insurance of management errors and omission policy.

Directors and Officers Liability Insurance (often called D&O) is insurance payable to the directors and officers of a company, or to the corporation itself, to cover damages or defence costs in the event they are sued for wrongful acts while they were with that company and personal assets of the directors and the assets of the company are also taken into account. D&O insurance is usually purchased by the company itself, even when it is for the sole benefit of directors and officers. Reasons for doing so are many, but commonly would assist a company in attracting and retaining directors. Hence the premium thereon is paid by the company generally.

Section 201 of the Companies Act, 1956 provides that any provision which exempts any director from indemnifying any liability in certain aspect such as breach of trust, breach of duty, etc. shall be void. Modern practices have evolved a concept i.e. taking an insurance policy which have however has not been debarred under section 201 of the act and hence and such insurance can be the undertaken.

In a recent spate of litigation, a number of adverse court verdicts regarding the liability of directors and officers of companies to a third party were passed where the directors and officers were held personally liable for payment of compensation to the third party. Ordinarily, the directors and officers are bound by duty towards the company itself, shareholders, employees, creditors, customers, competitors, members of the public, government and other regulatory bodies. Any breach or non-performance in the duties can result in claims against the companies and/or its directors of the company by reason of any wrongful act in their respective capacity. The Directors' and Officers' Liability Insurance policy has been designed specifically to meet any financial liabilities imposed upon them. Defence costs and damages in such actions can vary from thousands to millions of rupees and the length of time taken to settle cases can extend from several months to several years

D & O Insurance protects a company's Directors and Officers from:

- Employment Practice litigations,
- Regulatory investigations,
- Customer suits,

-Accounting irregularities,

-Other stakeholder claims, etc.

A common misperception of D&O insurance is that it makes directors or officers able to engage in acts they know to be wrong; this is not the case. Intentional acts are not covered in D&O insurance. Only negligence by directors or officers would be covered.

The policy guides the extent of indemnification whether available or not for any litigation. Also, coverage is available on a 'claims made' basis and applies only to claims made against the Board of Directors during the policy period, irrespective of when the wrongful act occurred.

However following are not covered under D & O Insurance:-

-Criminal Behaviour,

-Any type of Defamation,

-Fines and Penalties,

-Environmental Damage,

-Professional Liability (though professional liability can be insured under professional liability policy),

-Depending upon the Terms and Conditions of the policy.

Various Insurance Companies have started providing D & O insurance which shows the popularity of this concept even study says that after the Satyam Fraud enquiry on D & O Products have shown a jump of 50%. Further, clause 175(2) of the Companies Bill, 2009 also provides for provisions in respect of Directors & Officers (D&O) Insurance. Hence the popularity of such insurance is worth noting.

EXTRACTS FROM BOARD REPORT OF A COMPANY

Directors' and Officers' Liability Insurance and Indemnities

The Company purchases and maintains liability insurance for its Directors and officers and those of the subsidiaries of the Group, as permitted by the Companies Act(Amendment) 2006. The insurance policy does not provide cover where the Director has acted fraudulently or dishonestly. The Company believes that it is appropriate to provide such cover to protect Directors from innocent error as the Directors carry significant liability under criminal and civil law and under the UK Listing, Prospectus and Disclosure and Transparency Rules, and face a range of penalties.

In addition the Articles of Association of the Company contain an indemnity provision in favour of the Directors of the Company against proceedings brought by third parties, subject to the Companies Act 2006, to allow the Company to pay defence costs for the Director where the Director is exonerated.