

Professional Indemnity & Directors and Officers cover

Louise Kidd
Chartis Europe Limited

Agenda

- What is Professional Indemnity
- Key Aspects of a PI policy
- What is Directors & Officers Insurance
- Key Aspects of a D&O policy

What is Professional Indemnity?

- Breach of Professional Duty:
- Negligent Duty or Omission
- Misstatement or Misleading Statement
- Unintentional Breach of IPR
- Unintentional Breach of Confidentiality
- Libel or Slander
- Dishonest, Fraudulent or Malicious Acts by Employees
- Loss of Documents

Why buy Professional Indemnity?

1. Government Agencies
2. Commercial Organisations and Clients
3. Institutes and Professional Bodies

Why buy Professional Indemnity?

4. Protects Clients Business and Finance

- A professional business' s exposure to risk is usually low but the consequence can be high
- The value of a contract has little or no relation to the potential claim
- Claims often occur well after the work has been completed “out of the blue”
- Legal costs of defence, even if there is no claim, can be considerable
- You don' t have to have made an error to be sued

Key Aspects of a PI policy

- Civil Liability or Negligence based Wording
- Claims Made
- Limit of Liability – Agg or AOC/Costs incl or excl?
- Geographical Limits and Jurisdiction Limits
- Exclusions
- Retro-Active Date
- Excesses
- Minimum Terms and Conditions

Developments in the PI Market

Over the last 24 months:

- Commoditisation, standardisation, systemisation at lower end
- More competitive local markets
- Reversal of enhanced solicitors PI wording due to massive insurer losses
- Investment Losses – advisers being blamed
- Claims Notifications increasing drastically from Recession Exposed Professions

Why Buy D&O

Directors Objectives:

- Preserve and enhance shareholder capital
- Act in the best interests of the company

Directors Responsibilities:

- Under Statute
- Under Common Law

Why Buy D&O – Sources of Liability

1. Tort (Civil Wrong):

- Care & Skill
- Fiduciary Duty

2. Statute

3. Contract

Why Buy D&O – Web of Legislation

- Companies Acts (various) - Regulator: ODCE
- Safety, Health & Welfare at Work Act 1989-2005 - Regulator: Health and Safety Authority
- Environmental Protection Act 1992 - Regulator: Environmental Protection Agency
- Future Web
 - Criminal Justice Act 2011
 - Central Bank Bill 2011

What is D&O Insurance?

- D&O insurance **indemnifies** the directors for claims against them personally for **wrongful acts**
- Judgements, settlements and defence costs
- Combined Code (June 2008) that “The company should arrange appropriate insurance cover in respect of legal action against its directors”
- Purchase of D&O Insurance now permitted under Co’s (Auditing and Accounting) Act 2003 – S. 56

Indemnification

Company's Articles of Association

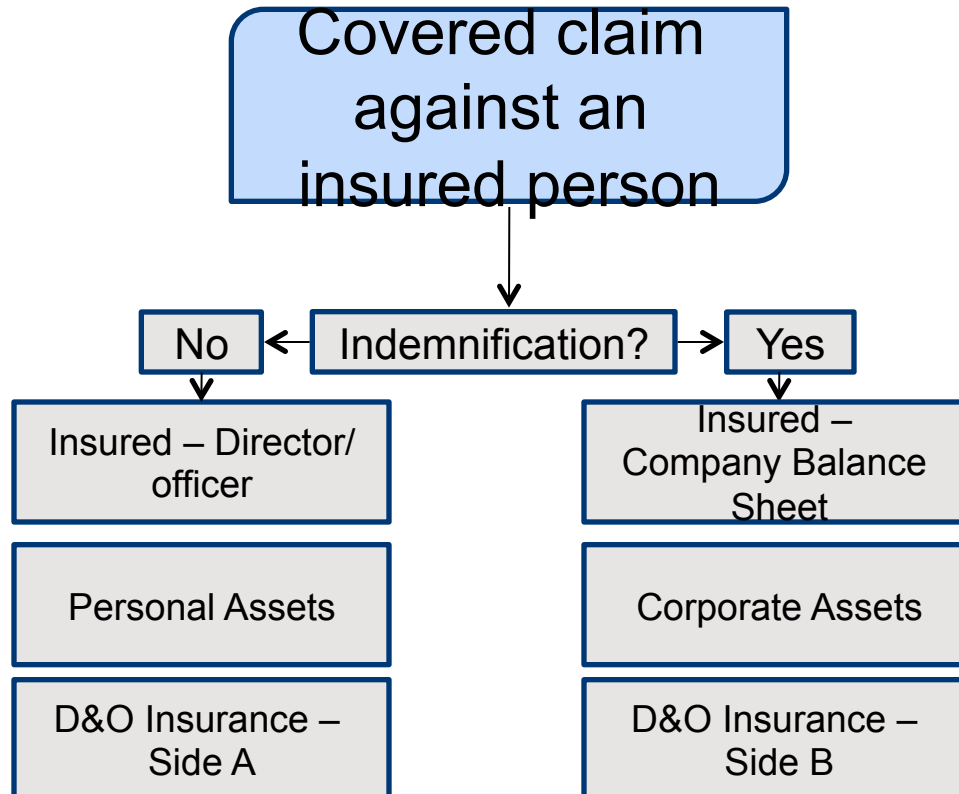
Situations where Indemnification isn't available or legally permitted:

- lack of funds to indemnify
- files for bankruptcy/insolvency

When the decision to indemnify is not automatic:

- hostile take-over & articles of association changed
- Director or Officer - employment terminated

D&O Policy Construction



D&O Policy Construction

Policy can be taken out in 3 formats:

- Side A Cover and Side B Cover
- Side A Cover
- Individual Director Cover

Key Aspects of a D&O Policy

- Claims Made
- Aggregate Limit of Liability
- Geographical Limits & Jurisdictional Limits
- Who is an Insured Person?
- Wrongful act?
- Loss?
- Exclusions
- Extensions

Developments in D&O Market

- Commoditisation of small ticket D&O
- Re-Instatement Limits/Extra cover for Non-Execs
- Regulatory Response Teams
- Possibility of buying broader tailored Independent Directorship Liability wordings (IDL)
- Cover for claims against the company- Corporate Legal Liability
- Pre-investigation costs cover
- Investigation costs now costing more than claims

Key Takeaways

PI Policy

- Entity Cover
- Professional Liability
- Regulators/customers

D&O Policy

- Individual Cover
- Management Liability
- Regulators/Shareholders