

Talisman Individual Executive Protection Policy

The Constantly Changing Exposures Executive Face

As a professional executive in Luxembourg, you face an ever increasing risk of regulatory and professional liability exposures.

This document highlights just some of the exposures possibly faced by executives in an ever increasingly litigious business environment. It is evident that liability threats are growing in volume and from a variety of sources. You should understand the extent of the insurance protection provided by the entity and how or whether you can access it. However, it is equally as important to consider the additional benefit of obtaining personal cover too.

WHO CAN BRING A CLAIM AGAINST YOU?

Claims can be brought against you by any of the company's stakeholders, for example, owners, investors, lenders, employees, securities holders, and bondholders. More commonly they arise from: customers, consumer groups, competitors, business partners (vendors and suppliers), government enforcement and regulatory agencies.

CLAIM TRENDS

The insurance market has highlighted a growing number of Directors and Officers Liability (D&O) claims across industry groups and jurisdictions; this trend appears set to continue. Claim notifications are estimated by insurers to have increased substantially over recent years.

Board members and senior managers of even very small companies, who never imagined that they would be sued, increasingly find themselves embroiled in litigation or battling regulatory enforcement actions. It should be borne in mind that these exposures do not conclude when an individual ceases to act as a director as, under the statutes of limitation, liability would continue, and therefore, coverage to include such past liability is also something to be considered.

POTENTIAL SOURCES OF A CLAIM

- In addition to shareholders and investors, third parties that are most likely to bring claims against an individual executive are; employees (Employment Practice Liability), regulatory authorities (within Luxembourg but now increasingly overseas involving cross border regulators), customers, suppliers and competitors.
- General regulatory enforcement (CSSF, SEC, DOJ, FCA and others) arising from various issues such as corruption, antitrust, insider trading etc., breach or alleged breach under the UK Bribery Act 2010, Foreign Corrupt Practices Act 1977 or equivalent legislation.
- Claims from the entity itself or even from fellow directors both current and past.
- Increased focus on the role of independent / non-executive directors including the expansion of the personal liability of executives for mismanagement and nondisclosure.
- Changing health & safety legislation; encompassing such issues as "corporate manslaughter" and "environmental" exposures.
- The misuse of confidential or privileged data, especially involving social media sites.
- Directors' remuneration reforms, including disclosure of remuneration package(s), direct or indirect, and proper authorisation procedures.



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- New management acting against the previous management of an organisation.

All of these almost certainly lead to defence costs being incurred, but may also lead to awards being made against individual directors. Fines may also be levied, although the payments of fines are only covered where insurable by law.

Perhaps the biggest exposure of all is the reputational and financial risks to you personally that such a claim or allegation would create.

REPUTATIONAL RISKS

The most valuable asset of any professional executive in any territory, and particularly perhaps in Luxembourg, is their reputation. As here, directorships are generally selected and awarded based on a person's reputation. It is therefore imperative that consideration be continually given to managing, maintaining and protecting this most precious of commodities. In the event that, for whatever reason, an executive becomes involved in any form of allegation or claim then, not only does a defence need to be mounted, but simultaneously the protection of reputation needs to be considered. This will, in all likelihood, require specialist advice and potentially the services of public relation consultants to minimise, when possible, the exposures faced, a point reflected in the **Talisman Individual Executive Protection** policy.

POLITICAL, REGULATORY AND CRIMINAL SCRUTINY

Since 2008, social and political developments have placed stark focus on self-reporting and whistle blowing. Politicians are also becoming more intrusive, either through regulators or more openly, in addressing politically manifested issues; and more recently in banking scandals, the protection of privacy and tax. A key result of the above is the desire to bring legal action against individuals.

PERSONAL LIABILITY EXPOSURES

Stakeholders, regulators, state attorneys and criminal courts are insisting on transparency, ethical business conduct and individual accountability. Since the sovereign debt crisis there has been an increasing trend throughout Europe for stakeholders, who have suffered losses, and regulators, to target individual directors. This can usually lead to claimants seeking both monetary redress (e.g. fines, damages) and non-monetary redress (e.g. board changes, disqualification, imprisonment) and holding individual directors accountable.

Regulators worldwide, who received widespread criticism for their handling of the recent crises, have become highly motivated to identify and punish individuals responsible for corporate misconduct.

SHAREHOLDER UNREST



Shareholders are redefining expectations leading to directors now being increasingly challenged, including via social media. Shareholders are also more prepared to litigate as a result of their awareness of their rights and changes in litigation options, which makes it easier to bring a claim.



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CROSS BORDER EXPOSURES

The increase in Mergers & Acquisitions activity means that many businesses are considering overseas expansion especially into emerging economies, where liabilities may be very different and regulatory compliance less easy to establish.

This growth in activity means that individuals face greater exposures from corporate transactions such as mergers, acquisitions, management buy-outs and initial public offerings.

STRICTER LEGISLATION

New emerging and constantly changing legislation, including international anti-bribery and corruption laws and corporate manslaughter acts, continues to increase the responsibilities faced by executives.

As a result of this, and other legislation, executive and non-executive directors are increasingly accountable for their actions under changing legislation and regulatory frameworks and the evolving attitudes and expectations regarding corporate performance.

DATA PRIVACY LIABILITY

Now with the General Data Protection Regulation in full force across the EU, businesses found not to have adequately disclosed breaches or protected their users, face enormous fines. There have been numerous cases of large data breaches and cyber-attacks affecting some of the largest and most prestigious entities globally. Public disclosures have revealed there have been over 1500 global data breaches in the last year, with prime focus based on the severity and number of records taken, the type of data in those records, or the extent to which criminals can exploit the data they take.

We have reflected on just some of the potential exposures faced. They demonstrate why we responded to our clients' needs with

the **Talisman Individual Executive Protection** policy. It provides greater certainty than reliance on the entity's protection if you face a situation that could impact you personally.



OTHER READING

Our Policy Overview, Pricing Model & Renewal Process and Potential Obstacles communication sheets are available on request, or if you have any queries or require any further clarification please do not hesitate to contact us at:

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