

Talisman Individual Executive Protection Policy

Potential Issues / Obstacles

It is important to highlight that Directors and Officers Liability (D&O) should not be confused with Professional Indemnity Liability.

D&O insurance operates when a director or officer of the company is personally the subject of legal action. Such circumstances could put an individual's entire personal wealth and reputation at risk. Professional Indemnity refers to cases where the company is held liable in the course of the business. .

What potential issues and obstacles can arise with personal reliance on an entity's D&O placements and why should Individual Executive Protection be considered?

Even if the instructing parent company or entity you are working with has traditional D&O Management Liability insurance in place, it may not provide the support you need should a personal liability situation arise.

POLICY ANALYSIS

Before considering the full policy terms and conditions it is important to consider how a D&O policy might interact with the company indemnification objectives, and how claims against directors and officers might be conducted and settled.

It is then necessary to establish what level of access to the policy wording and schedule the individual executive has, in order to establish and control exactly what cover is, or perhaps is not, in force. Below is a summary of some of the exposures and questions to ask or consider, although this is not an exhaustive list of factors.

Coverage / Aggregation Exposures

- Has the policy been fully paid up at inception and subsequent renewals? What cancellation conditions apply for both the entity and Insurers? What happens in the event of the insolvency of the Insurer?
- What are the implications if the entity itself ceases to exist, or if the subsidiary, for whom you act, ceases to operate?
- What level of Indemnity is provided and do you have to share this with fellow directors or perhaps an even wider definition of insured person(s)?



- How does the limit of coverage aggregate and does the policy include language regarding "order of payments" for named individuals, in effect prioritising their defence ahead of others?
- What happens if a claim occurs during a time when your status is being changed from a director to non-executive director?
- What cover is provided for regulatory investigations and will cover respond for costs prior to a claim being made?

Luxembourg Compliant

- Is the policy subject to and fully compliant with Luxembourg regulations and laws? Should a coverage dispute arise, in which territory will this be heard and will it be subject to the insurance supervisory authority in Luxembourg?
- What level of cover is provided for retired directors, what is the policy extended reporting period and are they compliant with Luxembourg requirements?

CONTACT

We would be delighted to present or discuss our services with you.

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Notification / Control of Claims / Duty of Disclosure

- “Notification language” will apply to the policy; therefore you need to ensure any circumstance is reported in line with such condition. Any breaches may mean claims could be excluded for non-compliance. Therefore, do you know to whom, how and when notification is required?
- What constitutes, and therefore triggers, a claim under the policy, allowing for the defence to be commenced?
- The basis on which claims are to be controlled is a further consideration. Are you able to elect your own defence counsel or do you need to use an insurer’s approved panel? In the event of an allegation being made against you, it would be normal for you to want to have as much control over the defence as possible.
- What run off cover exists in respect of changes in control i.e. acquisition or sale?
- What level of excess or deductible applies to the coverage, particularly relevant if some form of captive or entity self-insurance exists?
- Compliance with full disclosure to Insurers is a further point for consideration. Have all factors material to the risk faced by you within Luxembourg been adequately communicated to an Insurer, which is likely to be based in an overseas territory?

Indemnification Agreements

- It is assumed by many that holding a directorship means indemnity is automatic when, in fact, legislation is often more focused on what directors can be indemnified for, rather than simply stipulating they must be covered. Legal restrictions governing what risks businesses are allowed to indemnify against will often also apply.

The above are intended to reflect just some of the exposures worthy of consideration, but do highlight the importance of understanding the protection afforded by any entity-purchased Directors & Officers policy. This document is not intended to undermine the benefits of such covers, but simply to demonstrate why, in response to our clients’ needs, the **Talisman Individual Executive Protection** policy has been created, to allow greater certainty in respect of the individual.



Please refer to our Policy Overview, Pricing Model & Renewal Process, Constantly Changing Exposures Faced communications; all available upon request.

For further details in respect of the cover available, or should you have any queries or require any further clarification, please do not hesitate to contact us at:

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