



LUXEMBOURG

INDIVIDUAL EXECUTIVE PROTECTION POLICY

POTENTIAL ISSUES / OBSTACLES

TIEP 2015.001

ENTITY DIRECTORS & OFFICERS INSURANCE PLACEMENTS, WHAT POTENTIAL ISSUES AND OBSTACLES CAN ARISE?

Before considering the potential implications in this respect it is firstly important to highlight that Directors and Officers Liability (D&O) should not be confused with Professional Indemnity Liability. Professional Indemnity refers to cases where the company is held liable in the course of the business. However, D&O insurance operates when a director or officer of the company is personally the subject of legal action. Such circumstances could put his/her entire personal wealth and reputation at risk.

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 D&O's might be conducted and settled.

It is then necessary to establish what level of access to the policy wording and schedule is possible, allowing you to establish and control exactly what cover is or perhaps isn't in force. Below is a summary of some of the exposures worthy of consideration, although this is not intended to be an exhaustive list of factors affecting coverage;

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 implications exist if the entity itself ceases to exist, or if simply the subsidiary for who 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 level of excess or deductible applies to the coverage, particularly relevant if some form of captive or entity self-insurance exists?

- What happens if a claim falls between your status changing as 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 Law? 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 and the Extended Reporting Period and is this compliant with Luxembourg requirements?

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 who, 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 Insurers 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?

L
U
X
E
M
B
O
U
R
G



LUXEMBOURG

INDIVIDUAL EXECUTIVE PROTECTION POLICY

POTENTIAL ISSUES / OBSTACLES

- 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 focussed 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 Policy** has been created, to allow greater certainty in respect of the individual.

Please refer to our Policy Summary and Premium Rating Data Sheets for further details in respect of the cover available, or alternative should you have any queries or require any further clarification please do not hesitate to contact us at:

luxprotect@talismaninsurance.co.uk

Talisman Insurance Broking Ltd has prepared this document exclusively for its Luxembourg Executive Protection clients and certain permitted recipients. Talisman Insurance Broking Ltd does not accept any liability or responsibility to any third party in respect of this document. This information is correct as at the date of writing and has not been updated in respect of any events which might have occurred subsequent to the date of writing.