



LUXEMBOURG

INDIVIDUAL EXECUTIVE PROTECTION POLICY

THE CONSTANTLY CHANGING EXPOSURES EXECUTIVES FACE

TIEP 2015.001

AS A PROFESSIONAL EXECUTIVE IN LUXEMBOURG, YOU FACE AN EVER INCREASING NUMBER OF REGULATORY AND PROFESSIONAL LEGAL LIABILITY EXPOSURES THROUGH THE MANY POSITIONS YOU MIGHT HOLD.

It may not always be apparent regarding both the insurance protection you need for the varied activities you carry out or indeed what cover might be provided for you personally. Within this document we have highlighted just some of the exposures faced by executives today in an ever increasingly litigious business environment.

WHO CAN BRING A CLAIM?

Claims can be brought by the company's stakeholders, for example, owners, investors, lenders, employees, securities holders, and bondholders. Claims more commonly though, 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 by more than 60% in less than a decade.

POTENTIAL SOURCES OF A CLAIM

- Shareholders / Investors / Creditors / Company/ Third Parties.
- In addition to shareholders and Investors, third parties that are most likely to bring claims against an executive are; employees (Employment Practice Liability), regulatory authorities (within Luxembourg but now increasing overseas / cross border regulators), customers, suppliers and competitors.
- Regulatory enforcement activities (CSSF, SEC, DOJ, FCA and others) on various topics (corruption, antitrust, insider trading etc). But also the specific implications of a breach or alleged breach under the UK Bribery Act / FCPA / equivalent legislation.
- (UK) New Senior Managers Regime comes into force from March 2016 to replace the Approved Persons Regime.
- (UK) The FCA website advises that since 2012 there have been significant increases in attestations by individuals. In 2014 there were 59 personal attestations given in the wholesale and investment management area.

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

All of the above 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.

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.

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

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Below we have explored in a little more detail some of these exposures that today's executives face;

REPUTATIONAL RISKS

The most valuable asset of any professional executive in any territory and particularly in Luxembourg is their reputation. It is based on this that directorships are held and selections are made. It is therefore imperative that consideration be continually given to managing and maintaining 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 reputations need 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.

POLITICAL; REGULATORY AND CRIMINAL SCRUTINY

Since 2008 social and political developments have delivered 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 being a development in the desire to lead actions 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 usually can lead to claimants both seeking 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 now 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 M&A 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

Constantly changing legislation, such as the Environmental Liability Directive, as well as the UK Bribery Act / FCPA / DOJ / and equivalent legislation. Anti-corruption enforcement and corporate manslaughter acts are continually increasing 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 expectation regarding corporate performance.

DATA PRIVACY LIABILITY AND SOCIAL MEDIA ISSUES

Allegations regarding the misuse of confidential or privileged data, especially involving social media sites, is now perhaps the biggest risk for executives as often they do not appreciate or aren't adequately informed about the company's exposure to data and security breaches. This can lead to allegations that they have therefore not fulfilled their fiduciary duty to the company to properly review and address risk. There have been numerous cases of large data breaches and cyber attacks affecting some of the largest and most prestigious entities globally.

Our intention here, has been to reflect just some of the potential exposures faced, but those raised demonstrate why in response to our client's needs & requirements the **Talisman Individual Executive Policy** has been created, allowing greater certainty in respect of the coverage afforded to the individual.

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

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