

# Directors' and Officers' Personal Liability



## Directors & Officers Unlimited Liability

D&O insurance policies offers liability cover for company **managers** to protect them from claims which may arise from the decisions and actions taken within the scope of their regular duties. As such, D&O insurance has become a regular part of companies risk management.

Companies purchase D&O cover because managers can make mistakes. D&O coverage includes financial protection for managers against the consequences of actual or alleged **"wrongful acts"**. Policies cover the personal liability of company directors but also the reimbursement of the insured company in case it has paid the claim of a third party on behalf of its managers in order to protect them.

Coverage is usually for **current, future and past directors** and officers of a company and its subsidiaries. D&O insurance grants cover on a claims-made basis. This means that claims are only covered if they are made while the policy is in effect or within a contractually agreed extended reporting period, which can extend up to another 72 months or even longer in some countries.

*Even in a company with limited liability status, personal liability is unlimited. Directors and officers are under increasing scrutiny, and it is commonplace for allegations of wrongful acts to be made.*

### Where can a claim come from?

*Here's just a few areas where claims could be made against you:*

- Companies Act 2006  
(hundreds of possible areas of non-compliance)
- Employment practice liability
- Health and safety at work
- GDPR - General Data Protection Regulation
- Disability Discrimination Act
- Racial, sexual and age discrimination
- Insolvency Act
- Corporate manslaughter
- Pollution
- Former directors and non-executives
- Mergers and acquisitions
- E.U. directives and regulations
- Investigation expenses
- Consumer protection

and more.....

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## Claim Examples for D & O

A **director** signed a company cheque but omitted the word 'Limited'. The cheque was not honoured and by the time the corrected cheque was re-presented, the company had gone into liquidation. As a consequence, the managing director was held personally liable for the value of the cheque, over £30,000

The **company secretary** of a leisure group who owned a number of bars was prosecuted for short measures being served at one of the bars.

A Director is detained at an overseas airport while on a business trip, and is questioned by the country's authorities regarding the activities of his employer which, it is alleged, could be illegal in the country.

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A claim for **unfair and constructive dismissal** has been brought against the Finance Director of a distribution company by a **former employee alleging sexual harassment** and other inappropriate activity including sending text messages out of working hours and inviting her on nights out.

A **director** was sued by one of his distributors for deliberately breaching an exclusive agreement and for using commercially sensitive information within the agreement for personal benefit. His policy funded some **£200,000 of defence costs** and the distributor eventually dropped the case.

## Who is at risk?

- Directors
- Managers
- Other officers
- Controlling shareholders

## What should you do?

- Assess GDPR impact on your company
- Document a policy
- Review D&O & Cyber risk insurance policies
- Review personal liability risk with board
- Develop policies, circulate copies
- Comply with obligations
- Review third party risk and related contracts
- Have clear responsibility and reporting lines

## What is not covered by a D&O policy:

- Known claims and circumstances
- Fraudulent and dishonest conduct
- Risks covered by other classes of insurance
- Insured parties suing each other
- Litigation against the company entity
- Catastrophic events for the insurer
- Claims the insurer is not permitted to cover

## Who might claim against you?

Possible claimants might include:

- Shareholders
- Employees
- Creditors
- Auditors
- Customers
- Suppliers
- Regulators