

BUSINESSGUARD

Directors & Officers Liability Insurance for SMEs

The threat of personal litigation against the directors and officers of companies of all sizes continues to increase, yet many small to mid sized businesses are oblivious to their exposures. This could prove to be costly.

Directors and officers are exposed:

- ▶ Financially – they are personally liable for their actions. Potential litigants can include employees, creditors, customers, competitors and regulators
- ▶ Criminally - their liberty is at stake, and again, financially, the costs of defence can be high, sometimes reaching six figure sums
- ▶ Through Investigations - by regulators or trade bodies. An area of high financial risk for directors and one of the biggest triggers for claims in the UK
- ▶ To their own employees – for instance allegations of sexual or racial discrimination and with new laws on disability discrimination, directors could easily find themselves defending their actions, or inactions, at employment tribunals, as well as in the media.
- ▶ Not just in the past, but in the future as well. Responsibility and liability for their actions remain with directors, long after they have left the company, even into retirement.

Given these trends and the threat of unlimited personal liability facing directors and officers, it is surprising that so few mid-market companies buy Directors and Officers Liability insurance. Businesses of all sizes are threatened.

AIG Europe's BusinessGuard Directors and Officers Liability policy offers executives protection from the financial consequences of their past, present and future actions. Cover includes defence costs against actions which could threaten their own personal assets and possibly lead to imprisonment.

Cover

- ▶ "Wrongful Acts": Breaches of duty or trust, neglect, error, misstatement, misleading statements, omission, negligent act or any other act wrongfully committed
- ▶ Advancement of defence costs
- ▶ Damages awarded against the director or officer including exemplary damages for libel and slander
- ▶ Company reimbursement
- ▶ Investigation legal fees and expenses, covering the company and the individuals
- ▶ Blanket cover for any person deemed to be a director or officer, past, present and future
- ▶ Managerial/Supervisory staff included as insured persons
- ▶ Employment Practices Liability claims including cover for "emotional distress"
- ▶ Insured v Insured:
 - employment practice claims
 - contribution and indemnity claims
 - any claim initiated by a former director or officer
 - shareholder derivative claims
 - defence costs
- ▶ Pollution defence costs
- ▶ Outside directorship cover
- ▶ Automatic cover for new subsidiaries
- ▶ Bi-lateral discovery

Optional cover

- ▶ Employment Practice Liability Insurance for claims against the company
- ▶ Crime insurance

Cover excludes

- ▶ Professional Liability
- ▶ Pension Trustee Liability

Indemnity limit

- ▶ Up to a maximum £1 million

Profile of target companies

- ▶ Turnover less than or equal to £10 million
- ▶ No assets or turnover in North America
- ▶ UK registered with Private Limited status
- ▶ Been in business for over 18 months

Excluded companies

- ▶ Financial Institutions
- ▶ Hi-tech, Bio-tech, Telecoms, IT or pharmaceuticals

BusinessGuard Directors and Officers Liability is one of a range of products for SME companies from AIG Europe. This product profile is intended as a guide only. Scope and terms are subject to the terms and conditions of the policy. A specimen policy is available on request.

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Directors & Officers Liability Insurance for SMEs

1. Director Disqualification	Over 1500 directors disqualified in 2004. Disqualification orders are from 2 to 15 years. Even after the ban the stigma remains: credit history and personal reputation are permanently damaged. D&O is designed to pay for the legal defence costs as and when they are incurred. We understand the legal processes, and AIG has one of the most experienced and tenacious claims teams in the world. It's good to have the strongest and toughest in your corner when facing such a crisis.
2. Investigations	It's very easy to complain about a company. The DTI's Companies Investigations Branch considered complaints against almost 5000 companies last year. The financial risks of investigations are considerable – we pay out more for investigations in the UK than anything else under D&O cover.
3. Personal Liability	Directors' personal assets, their houses, savings and pension funds, are at risk, whether they have acted deliberately, negligently or innocently. Mistakes can be very costly. D&O Insurance is not designed to cover dishonest or fraudulent acts, but there are plenty of examples of directors found personally liable when they haven't been dishonest, deliberate or fraudulent - just failing to take sufficient care - in which case awards and defence costs would be covered.
4. Criminal Liability	Directors could go to prison, for their actions, inaction or ignorance. The very best defence can be invaluable, but very costly. D&O Insurance cannot cover the criminal penalties - that is against public policy - but it can cover the costs of defending a claim up until the point guilt is established.
5. The SME Set-up	Fast, flexible and energetic but often with little risk management infrastructure (in house legal, risk managers or compliance managers) and few formal control processes, sooner or later, some businesses are going to make expensive and very time-consuming mistakes.
6. Family Companies	Family run businesses, which make up a large proportion of UK businesses, carry with them exposures for the individuals concerned. Family companies can be a hotbed of dispute – internally and externally.
7. Inadequate Cover? Legal Expenses vs. D&O Insurance	Legal Expenses policy limits are much lower (e.g. £50,000, £75,000, £100,000) which is inadequate for larger protracted actions. Legal Expenses insurance only responds when an insured has reasonable prospects of success. It's precisely because directors might well lose an action that D&O insurance is so essential (to fund defence costs or settlements). Faced with a career and lifestyle-changing crisis they will not want to rely on legal expenses policy that will only cover them if they are likely to win.
8. Policy can be extended to cover Employment Practice Liability claims against the company	Any employee suing in respect of an alleged employment practice violation is likely to direct their action at their employer who, in most circumstances, will be the company. They may, particularly in cases of discrimination, also name individual colleagues, supervisors or directors. It is therefore important to protect both employees and the company.
9. Broad definition of employment practice violation	The comprehensive nature of the employment practice violation definition including, specifically, claims made pursuant to the Employment Rights Act 1996 gives employees and the company wide protection.
10. Policy can be extended to cover crime losses the company discovers during the policy period	Employee Dishonesty or Third Party Computer Funds Transfer Fraud can cause large losses and even financially devastate small to medium companies. It is therefore important to protect the company against such losses. In addition, expenses cover is provided for any corporate identity fraud.

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These are brief product descriptions only. Refer to the policy for full terms and conditions applicable. Any scenarios are given as brief examples which may give rise to claims. These descriptions should not be relied on to justify coverage in any situation.