

What is Directors & Officers Liability Insurance:

Liability insurance payable to the directors and officers of a company as indemnification for losses, including defense costs, as a result of claims brought against them for alleged wrongful acts committed in their capacity as directors and officers.

What is covered:

1. Claims following “wrongful acts” by the directors and officers.
2. Costs, charges and expenses incurred by the insured for the successful defense of allegations of any criminal act, wilful misconduct, breach of trust, reckless trading or breach of authority by directors.

Important Caveat - For purposes of this cover it is important to note that ALL costs, charges and expenses advanced shall be repaid to the Insurers immediately should the defense or reasonable appeals as agreed with Insurers, be unsuccessful i.e. the Director is found guilty upon final adjudication or admits to the allegations.

What is a Wrongful Act:

- Breach of duty;
- Breach of trust;
- Act;
- Error;
- Omission;
- Misstatement;
- Misleading Statement;

Important Salient points:

- The Insured under the policy is the Director or Officer and not the Company.
- Actions of one director or officer will not be imputed to others, i.e. should one director be found guilty but the others are found to have acted bona fides, cover will still be afforded to those “innocent” directors.
- Directors and officers of Subsidiaries are covered under this policy. A Subsidiary means any company which the Company or a Subsidiary controls through:
 - holding a majority of the voting rights; or
 - the right to appoint or remove a majority of its board of directors; or
 - controlling alone, or pursuant to a written agreement with other shareholders or members, a majority of the voting rights therein.

Cover can be extended to include the following:

- Additional Excess Limit
- North American Jurisdiction

- Environmental Impairment Shareholder Derivative actions
- Environmental Impairment Defense costs
- Outside Directorship Liability
- Aggregate Reinstatement

Coverage Considerations:

- Importance of the **RETROACTIVE DATE**:

Whilst the policy is on a claims made basis it will only cover those wrongful acts which occurred on or after the retroactive date noted in the schedule, i.e. if the retroactive date is noted as 1 January 2018 but the wrongful act occurred on 12 December 2017 this will not be covered.

- Implication of the **AGGREGATE LIMIT**:

The limit of indemnity is in the annual aggregate. This means that the one limit applies to all “Directors” of the Company. Careful consideration should go into choosing the limit of indemnity given that one director could claim and exhaust the limit for all others.

Major Exclusions:

- Liability following from an intentional, fraudulent, dishonest wilful or deliberate actions
- Personal profit gained by a Director or officer to which they were not entitled.
- Actions which are deemed “Contra Bonos Mores” or which are not insurable by law such as Criminal Fines and Penalties
- Professional Duties
- Commissions and Bribes
- Retirement Fund Trustee exposures
- Major Shareholder exclusion

Who could benefit from this type of cover:

1. Board Members of the Company, including former Directors, alternate Directors and the Company Secretary
2. Prescribed Officers as defined in the Companies Act of 2008
3. A person who is a member of a committee of the board of the Company, including the audit committee.
4. Employees of the Company to the extent that such employees are acting in a managerial or supervisory capacity within the Company or are construed so to be within the meaning of any applicable law or regulation governing such matters

D&O Protect administered by Snyman & Van der Vyver Finansiële Dienste (Edms.) Bpk.
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