

# Professional Indemnity & Directors and Officers cover

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# Agenda

- What is Professional Indemnity
- Key Aspects of a PI policy
- What is Directors & Officers Insurance
- Key Aspects of a D&O policy

# What is Professional Indemnity?

- Breach of Professional Duty:
- Negligent Duty or Omission
- Misstatement or Misleading Statement
- Unintentional Breach of IPR
- Unintentional Breach of Confidentiality
- Libel or Slander
- Dishonest, Fraudulent or Malicious Acts by Employees
- Loss of Documents

# Why buy Professional Indemnity?

1. Government Agencies
2. Commercial Organisations and Clients
3. Institutes and Professional Bodies

# Why buy Professional Indemnity?

4. Protects Clients Business and Finance
  - A professional business' s exposure to risk is usually low but the consequence can be high
  - The value of a contract has little or no relation to the potential claim
  - Claims often occur well after the work has been completed “out of the blue”
  - Legal costs of defence, even if there is no claim, can be considerable
  - You don' t have to have made an error to be sued

## **Key Aspects of a PI policy**

- Civil Liability or Negligence based Wording
- Claims Made
- Limit of Liability – Agg or AOC/Costs incl or excl?
- Geographical Limits and Jurisdiction Limits
- Exclusions
- Retro-Active Date
- Excesses
- Minimum Terms and Conditions

# Developments in the PI Market

Over the last 24 months:

- Commoditisation, standardisation, systemisation at lower end
- More competitive local markets
- Reversal of enhanced solicitors PI wording due to massive insurer losses
- Investment Losses – advisers being blamed
- Claims Notifications increasing drastically from Recession Exposed Professions

# Why Buy D&O

## Directors Objectives:

- Preserve and enhance shareholder capital
- Act in the best interests of the company

## Directors Responsibilities:

- Under Statute
- Under Common Law



# Why Buy D&O – Sources of Liability

## 1. Tort (Civil Wrong):

- Care & Skill
- Fiduciary Duty

## 2. Statute

## 3. Contract

# Why Buy D&O – Web of Legislation

- Companies Acts (various) - Regulator: ODCE
- Safety, Health & Welfare at Work Act 1989-2005 - Regulator: Health and Safety Authority
- Environmental Protection Act 1992 - Regulator: Environmental Protection Agency
- Future Web
  - Criminal Justice Act 2011
  - Central Bank Bill 2011

# What is D&O Insurance?

- D&O insurance **indemnifies** the directors for claims against them personally for **wrongful acts**
- Judgements, settlements and defence costs
- Combined Code (June 2008) that “The company should arrange appropriate insurance cover in respect of legal action against its directors”
- Purchase of D&O Insurance now permitted under Co’s (Auditing and Accounting) Act 2003 – S. 56

# **Indemnification**

## **Company's Articles of Association**

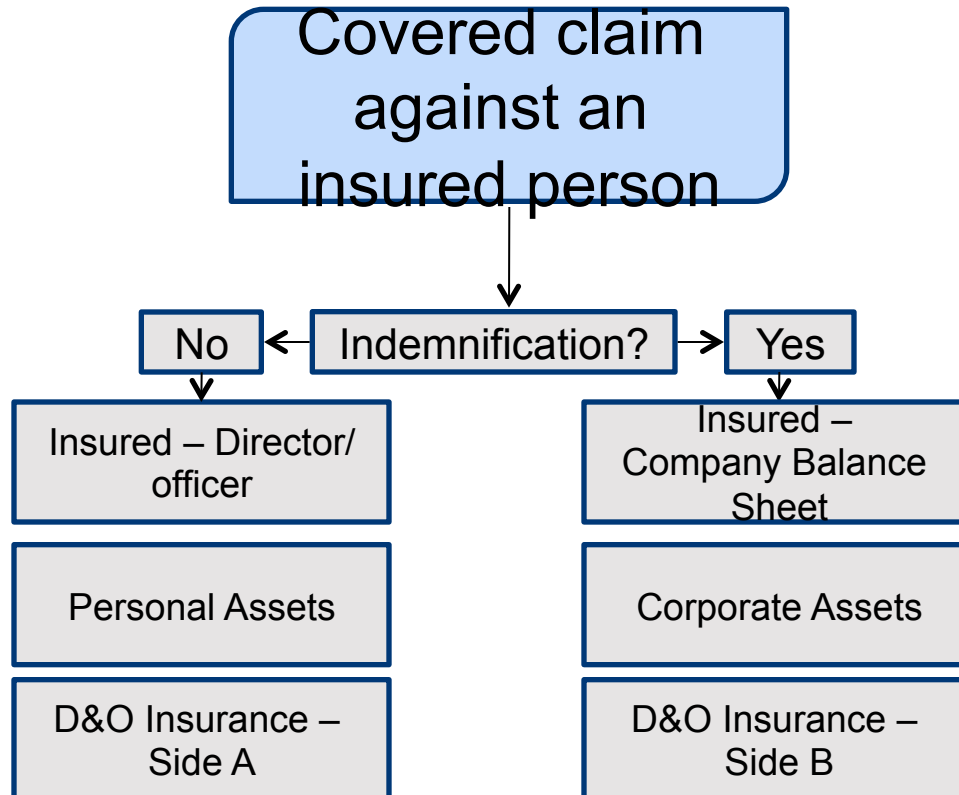
### **Situations where Indemnification isn't available or legally permitted:**

- lack of funds to indemnify
- files for bankruptcy/insolvency

### **When the decision to indemnify is not automatic:**

- hostile take-over & articles of association changed
- Director or Officer - employment terminated

# D&O Policy Construction



# D&O Policy Construction

Policy can be taken out in 3 formats:

- Side A Cover and Side B Cover
- Side A Cover
- Individual Director Cover

# Key Aspects of a D&O Policy

- Claims Made
- Aggregate Limit of Liability
- Geographical Limits & Jurisdictional Limits
- Who is an Insured Person?
- Wrongful act?
- Loss?
- Exclusions
- Extensions

## Developments in D&O Market

- Commoditisation of small ticket D&O
- Re-Instatement Limits/Extra cover for Non-Execs
- Regulatory Response Teams
- Possibility of buying broader tailored Independent Directorship Liability wordings (IDL)
- Cover for claims against the company- Corporate Legal Liability
- Pre-investigation costs cover
- Investigation costs now costing more than claims



# Key Takeaways

## PI Policy

- Entity Cover
- Professional Liability
- Regulators/customers

## D&O Policy

- Individual Cover
- Management Liability
- Regulators/Shareholders