

# **DIRECTORS AND OFFICERS LIABILITY INSURANCE POLICY (COMMERCIAL) PROSPECTUS**



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## DIRECTORS AND OFFICERS LIABILITY INSURANCE POLICY (COMMERCIAL)

### PROSPECTUS

#### ***Directors' and Officers' Liability Insurance: insurance cover for escalating liability risks in the daily course of Business***

**Global business and supply relationships as well as more stringent compliance requirements are increasing the liability risks faced by corporate leaders and executives. If they make poor decisions, they can be held liable for financial losses – personally and unlimited. Magma Directors' & Officers' (D&O) Liability Insurance gives decision-makers the peace of mind they need to perform their work effectively.**

Management and boards take over responsibility for their companies. Business activities can however result in losses impacting the financials of their own companies or third parties – be it as a result of a mistaken investment, non-compliance with a new law or making false statements during a tender process. Executives are increasingly confronted with claims for financial losses. Corporate leaders face unlimited liability for financial losses with their personal assets.

Directors and officers may be personally liable to any party that has an interest in the affairs of the company, and they can be and are sued in their individual names. A breach of duty exposes their individual personal assets (and even assets in their spouse's names) to claims, which combined with the doctrine of joint and several liability amongst the Board members, could mean paying out these assets for the liability of the entire Board. Directors and officers owe duties of care to a host of other "persons" - this may include the corporation itself, shareholders, prospective shareholders, investors, employee's, creditors, customers, suppliers, liquidators, regulators, competitors, the Government and fellow directors.

With liability well established and with increasing statutory duties and an increasingly litigious environment, the number of actions against Directors is increasing.

Magma Directors' & Officers' (D&O) Liability Insurance provides a safety net to those executives affected, which covers them in an emergency and prevents seizure of their personal assets.

## ***What Is Directors & Officers Liability Insurance?***

The Directors & Officers (D&O, Executive and Management Liability) Insurance is coverage designed to address the personal liability that company directors, officers and other members of a corporate board can incur for their acts and/or decisions arising from their duties, which may or may not be indemnifiable by the corporation.

## ***Who Does the Directors & Officers Liability Insurance Protect?***

It is usual to protect **the directors and officers of the parent company and its subsidiary companies**.

The subsidiary companies of overseas based parent companies can usually insure, although they will often have no protection for claims from the parent company itself.

A directors and officers insurance policy will usually protect:

- **All past and present directors and officers** and those appointed during the currency of the policy.
- **The Company when it reimburses** its directors and officers

## ***Who Is An Officer?***

An officer of a company is probably legally defined in your jurisdiction, but generally speaking is any employee or director of a company who is involved in corporate policy and corporate decision making. Officers are not limited to only company directors.

## ***What Protection Does the Directors & Officers Liability Insurance Provide?***

Due to corporate indemnification, the D&O Insurance policy is a two-part contract. The first part provides coverage for individual directors and officers for their personal liability when they are not indemnified by the corporate entity. The second part reimburses the corporation for its obligation to indemnify its directors and officers for claims made against them. Generally, the two insuring agreements are complimentary

**(1) Directors and officers liability** - This protects the directors or officers of the company against **loss** arising from claims made against them jointly or severally during the period of insurance because of any **wrongful act** committed by them in their capacity as a director or officer.

**(2) Company Reimbursement** - This protects the company against any payment that they may elect to make and are entitled legally to make arising out of claims made against any director or officer during the period of insurance that the directors and officers section of the policy would cover.

**Loss** - this protection will be for:

- Damages or judgments or settlements and associated costs and expenses;
- Prosecution (criminal or otherwise) defense costs;
- All other costs and expenses;

The insured will need to obtain the written consent of insurers before they incur costs and expenses.

**Wrongful Act** - This includes any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission, breach of warranty of authority or other act wrongfully attempted by the director or officer.

**Advancement of defense costs** - directors and officer's liability policies include a provision to advance defense costs as they are incurred. If the policy does not protect such defense costs they will be potentially subject to repayment to insurers.

Magma D&O insurance provides insurance cover for directors and officers in case of a claim, resulting out of a financial loss, made against them due to a wrongful act while serving in their responsibility. In the event of a claim, Magma deals with the issues of what is covered and who is liable and pays compensation for justified claims.

## ***Exclusions***

The policy does not cover liability or costs arising from:

- The gaining of any personal profit or advantage to which there is no entitlement;
- Any dishonest or fraudulent act;

This exclusion would not apply to the successful defense of an allegation.

- Major shareholder claims (usually 15% or more shareholding);
- any pending or prior litigation at the inception of the policy, or deriving from the same facts as alleged in such pending or prior litigation;
- "Insured versus Insured" claims, that is actions brought by any insured director or officer or the company against any other insured director or officer. But this exclusion does not apply to derivative actions or claims instigated and/or pursued independently of any insured director or officer or the company; this exclusion does not apply to employment claims;
- pollution and contamination, but not claims from a shareholder
- acting as a trustee or fiduciary under law or administrator of any pension, profit sharing or employee benefit program;
- bodily injury, sickness, disease, death of any person, or damage to or destruction of any tangible property, including loss of use;

### ***What Are The Circumstances Which Might Give Rise To A Claim?***

Many circumstances may give rise to a dispute between a company director / officer and other parties including:

- Employment disputes - e.g. allegations of wrongful dismissal or discrimination
- Negligent misstatements especially with regards to the company's future Profitability
- Failure to ensure that statutory payments are made - taxation, licenses, etc.
- Failure to supervise those to whom responsibility has been delegated
- Agreeing to excessive company borrowing
- Allegation of breach of trade practice
- Acting beyond the scope of authority
- Making unauthorized payments
- Conflicts of interest
- Sexual Harassment
- Bad advice
- Approval of corporate acquisition with resulting loss of corporate assets
- Violations of specific provisions or articles or by laws / state statutes

## **What Gives Rise To Legal Proceedings?**

Legal proceedings against directors and officers usually arise following certain events:

- Change of control of a company perhaps following the death of a principal shareholder
- The publication of an officer report on the company affairs
- Dishonesty of a director or officer
- Dramatic change in share value
- A public offering of shares
- Appointment of a receiver
- Acquisition or mergers
- Issue of a prospectus
- Change in ownership
- Boardroom disputes
- Poor trading results

## **Policyholders' obligations**

- DO NOT accept any liability or make any offers of settlement, without the prior agreement of insurers.
- There is an obligation under the policy to notify all potential claims or claims-like circumstances to the insurer as soon as practicable.

## **Steps forward**

- Notification of Circumstance (as soon as practicable – on receipt of notice): By sending a mail to us.
- Deputation of Attorney in discussion with us.
- Obtain Consent to negotiated Settlement

## **What is payable under claim**

- Defense Costs (Excluding fees of in house lawyers)

- Damages
- Out of Court Settlements
- Reasonable expenses if any as outlined in the respective policy

### ***Claims Made Policy***

This is a "claims made" policy of insurance. This means that the Policy covers you for Claims made against you and notified to Magma during the Period of Insurance. This Policy does not provide cover in relation to:

- events that occurred prior to the Continuous Cover Date of the Policy (if such a date is specified);
- Claims made after the expiry of the Period of Insurance even though the event giving rise to the Claim may have occurred during the Period of Insurance;
- Claims notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy;
- Claims made, threatened or intimated against you prior to the commencement of the Period of Insurance;
- facts or circumstances of which you first became aware prior to the Period of Insurance, and which you knew or ought reasonably to have known had the potential to give rise to a Claim under this Policy;
- Claims arising out of circumstances noted on the Proposal Form for the current Period of Insurance or on any previous Proposal Form.

However, where you give notice in writing to Magma of any facts that might give rise to a Claim against you as soon as reasonably practicable after you become aware of those facts but before the expiry of the Period of Insurance, the Policy will, subject to the terms and conditions, cover you notwithstanding that a Claim is only made after the expiry of the Period of Insurance.



***Important Note:***

The details furnished above are only a summary of product features and do not describe the entire terms, conditions and exclusions on the Policy. For further details or clarifications on the Policy contact Magma officials or your insurance advisor. We shall be pleased to furnish further details.