

The ABC of management liability insurance – and why you need it

Businesses of all sizes are trading in a more litigious environment, with claims of wrongdoing on the increase. Legal proceedings brought by customers, shareholders, investors, suppliers and even employees can cost companies – and their directors – dearly. Without adequate management liability insurance, any senior manager in your business could find themselves having to cover the legal costs of defending themselves against a claim out of their own pocket.

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If you would like to discuss management liability insurance solutions in more detail, please contact:

020 7280 3450

What is management liability insurance?

Management liability insurance, also known as Directors & Officers (D&O) insurance, provides legal protection for directors, senior managers and officers for claims made against them for wrongful acts they have committed or are alleged to have committed in their company roles.

Do you need it?

If you hold a senior decision-making position in your business, you'll have liabilities, statutory duties and responsibilities relating to that role. If you fail or are alleged to have failed in fulfilling any of these obligations (or act outside the parameters of your position), you may face civil, criminal or regulatory proceedings. Without management liability insurance, you run the risk of being unable to defend against actions such as disqualification from your position, civil proceedings, criminal prosecution, or meet any compensation costs that arise from an unsuccessful defence.



How management liability insurance works

A management liability policy provides a comprehensive range of coverage. It is divided into three parts – **Side A**, **Side B**, and **Side C**:

Side A Individual Cover provides personal protection for your directors and officers acting in such capacity where no other indemnification exists. A director's personal liability is unlimited, so their own assets are at risk if cover is not in place.

Side B Company Reimbursement provides balance sheet protection for your company where it provides or is legally required to indemnify your directors or officers under Side A. In the UK, a company often provides or is legally required to indemnify directors and officers.

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Alongside **Sides A & B**, **Side C** cover offers **additional protection**:

1

Corporate Legal Liability (CLL) provides cover for claims made against the company rather than individual employees. However, this is not a replacement for other types of cover such as professional indemnity, employers liability or cyber liability, as the CLL section will contain restrictions in these areas.

2

Employment Practice Liability (EPL) offers financial protection, both to individual directors and officers, and the company balance sheet, against awards of damages and defence costs arising from claims made by employees, including wrongful dismissal, harassment or allegations of discrimination.

How a claims-made policy works

Management liability or D&O insurance works on a claims-made basis. If a claim arises, it must be reported under the policy in force at the time the claim is made and not the policy that was in force at the time of the alleged wrongful act. For this reason, you must renew management liability insurance annually to ensure that cover remains in force for current and past actions.

Where can claims arise?

Management liability insurance claims can arise from a variety of sources, including but not limited to:

The company, or other directors - The company or other directors can accuse a fellow director of a wrongful act and bring action against them.

Claims Example: A director has interests in other companies and is accused of diverting business to one of those entities. The other directors (or the company itself) bring a claim against the director personally for breach of duty, and refuse to allow the company to indemnify the director accused of the wrongful act.

Creditors - Directors often provide guarantees when the company takes on loans or stock onto the balance sheet. If the company fails to pay back a loan, or amounts due for stock/services received, the creditors can pursue the directors.

Claims Example: A company enters administration and creditors bring a claim against the directors personally, alleging misleading statements or misrepresentation of the company.

The sale of the company, or its shares - Should a company be sold or sell a percentage of its shareholding, the purchasers could subsequently bring a claim against the directors if they allege the directors misled or misrepresented the worth of the company and overstated its value.

Claims Example: Following the sale of the company, further information comes to light that leads the buyer to allege that the directors overstated the true purchase value. A claim is brought against the former directors alleging misleading statements, or misrepresentation.

Regulators - There are over 90 Regulators in the UK both statutory and professional. For companies that fall within their remit, any have the potential to launch an investigation into a company and/or its directors, alleging a wrongful act has taken place.

Claims Examples:

- I. Following the death of an employee or member of the public: the HSE conduct an investigation and bring Corporate Manslaughter charges against the directors.*
- II. Following a data breach: the ICO conducts an investigation alleging GDPR breaches.*
- III. Following an tax investigation: HMRC or the SFO bring actions against the directors.*

Shareholders - If they are different to the directors, Shareholders can also bring claims against directors and officers in connection to any of the above examples, if they feel directors have not acted in the best interests of the company, or been negligent, resulting in a financial loss to shareholders.

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