

riskfree D&O INSURANCE

Mark Parris, a director of Risk Partners, explains the advantages of having a personal D&O liability insurance policy.

COMPANY BANKRUPTCIES, WHITE-COLLAR fraud and hostile takeovers have become common news in the corporate world. In addition to the host of current class actions, Slater and Gordon recently announced its intention to launch a class action on behalf of shareholders hit by a 30 per cent plunge in the share price of engineering company Downer EDI. This was triggered following the company revealing in August 2006 that a projected profit of \$125 million would in fact be a \$25 million loss.

This coincides with increasing scrutiny of directors by regulators and the courts which means that the climate for directors has never been more precarious. For years company directors have relied on traditional D&O coverage for protection. However, as corporate litigation has evolved and D&O policies have been tested, a number of serious inadequacies in coverage have become apparent.

Directors have traditionally focused on the legal soundness of a D&O policy. One of the most significant aspects of D&O coverage is that the

policy provides coverage for all the company's directors. This means that the cover purchased is shared by all the directors and in some instances the company itself. A director can be caught out if the policy limits are eroded during the policy term by a large legal action and a director may also be forced to use counsel chosen by the insurer. Because it is a shared cover, one director's actions may also prejudice another director's coverage if, for example, there is a misrepresentation or non-disclosure when the policy is renewed.

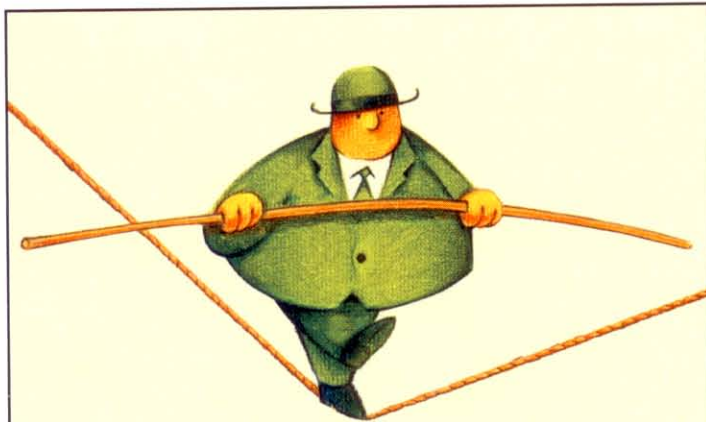
Most D&O policies respond once the company indemnifies its director. If the company will not provide that indemnity because it is unable to by law, for instance where there are allegations of fraud, then a director can be left with no coverage. If a company becomes bankrupt then clearly it cannot fund indemnities, and the D&O policy may become part of the company assets, leaving the directors exposed.

For retiring directors and those on a number of boards, keeping track of the insurance coverage provided by each company can be complex. Different types of companies may give different levels of cover and retired directors may find their coverage cut off altogether if the policies are not renewed.

So how can company directors address their exposures? A watertight company indemnity and comprehensive D&O policy is an excellent start, but a personal D&O liability insurance product can be another means by which company directors can retain control of their insurance protection. Like traditional D&O policies this product also provides cover for defence costs, damages and judgments in legal, administrative, regulatory, and criminal or civil proceedings. However, unlike traditional D&O, the policy is purely for individual directors, eliminating the hazards of a shared policy. Directors sitting on several boards can include a number of different directorships on the one policy, thereby minimising the administration of their insurances. In the event of litigation the director can choose their appointed counsel.

One thing that directors need to be aware of when considering personal D&O liability products is whether the policy is intended to respond as a primary cover or in excess of any existing D&O coverage and/or company indemnity. A primary insurance product is available for immediate cover for directors in the event of a claim and can therefore act as a director's main source of protection. In contrast, an excess coverage is usually a 'policy of last resort' which only responds once traditional D&O cover is and/or indemnities are exhausted. This is a vital distinction if a claim arises.

Traditional D&O insurance has earned its reputation as an essential tool in a director's arsenal. However, astute directors need to be aware of its shortfalls and consider all the available options. Directors work hard to achieve their success and they should ensure that their insurance works as effectively as they do. **Ⓛ**



Risk free D&O insurance.

Directors' Personal Liability Insurance has been designed to protect individual directors and officers of public and private companies, by putting the control of insurance back in the hands of the director.

This one policy thoroughly covers all your directorships, avoids the gaps in traditional D&O policies and eliminates the hazards of sharing a policy limit with fellow directors.

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