



# Elite IV

*Directors & Officers  
liability insurance*



### What is Directors & Officers insurance?

It is a form of insurance that protects directors, officers and other people with managerial responsibility from legal and other costs they may become personally liable to pay as a result of litigation by various parties including shareholders, government bodies, regulators, liquidators/receivers, creditors and other third parties.

The coverage can be extended to include cover for the company itself under certain circumstances, including Health & Safety investigations and Employment Practices Liability claims.

### Why do I need it?

We now live in an increasingly regulated environment. The personal liabilities facing a director have increased dramatically in recent years. The Companies Act 2006 codifies directors' duties including the long-established fiduciary duties as well as the common law duty of care and skill into a statutory statement of seven general duties.

Among other things, personal legal responsibility for company directors can encompass:

- Involuntary, constructive or gross negligence manslaughter and far reaching health & safety legislation
- Anti-discrimination regulations, including sexual, racial and age discrimination
- Employment disputes, including wrongful, unfair or constructive dismissal, harassment and wrongful discipline
- Wrongful trading i.e. trading in the knowledge the business is or will become insolvent
- Unpaid taxes where the company has become insolvent

Even if allegations are unfounded defence costs can be crippling.

Other legal costs, such as attending at investigations into the affairs of the company, should not be underestimated. As a director or officer you may also be held personally liable for the actions or omissions of others.

### But my company is 'Limited Liability'!

It is an unfortunate, and regrettably persistent, myth that the company having limited liability status protects directors and officers from personal liability. It does not. In reality, a director's liability is potentially unlimited even to the extent of a charge on his salary if assets such as his house, cars and savings do

not meet his liabilities. The limited liability status provides significant protection to shareholders but virtually nothing to officers of the company.

In addition, there is no restriction on the size of company being sued. Arguably, smaller companies are more at risk as they tend not to have the infrastructure or resources either to prevent incidents or to keep up with changing legislation.

### Who could sue directors & officers?

A list can include, but is not limited to:

- shareholders
- customers
- suppliers
- employees
- contractors
- regulatory bodies
- creditors
- competitors
- liquidators and / or receivers
- government departments / organisations, for example
  - Health and Safety Executive
  - HM Revenue & Customs
  - Department for Business, Enterprise and Regulatory Reform
  - Local authorities
  - Competition Commission
  - Environment Agency in England & Wales / Scottish Environmental Protection Agency and many more!

### What examples are there where a claim on a D&O policy could have been made?

The following examples are provided for illustrative purposes only and are not a guarantee of coverage. Coverage is always determined on a case-by-case basis in accordance with applicable policy terms and conditions.

Two directors of a County Armagh hotel operating company were fined £1.1m each for tax evasion. They were also given suspended four-year jail sentences and have been banned from directing any company for seven years. The case involved a three year investigation by HM Revenue and Customs.

***Defendants with D&O cover could have claimed recovery of legal representation expenses involved in the investigations and defence costs involved in the court proceedings. The fine would not have been covered.***

A Northern Ireland construction company director has been fined for safety breaches after his friend and employee was killed in a site accident when a wall in the grounds of a

house collapsed on him as he was digging a trench. The director pleaded guilty to failing to ensure the safety of a person working for him and two further charges of contravening health and safety regulations by not carrying out a risk assessment. He was fined £12,500 and so was the company. Both he and the company were ordered to pay prosecution costs of £3,000 each. He must find a total of £31,000 to meet the fines and costs.

***Had he had D&O cover, the director could have claimed the defence costs involved in the proceedings against him. Although the fine would not have been covered, the cost to defend the director was significant.***

A County Derry business director has agreed to a six-year disqualification after he was investigated by the Department of Enterprise, Trade and Investment (Deti). His company went into liquidation with an estimated total deficiency of £153,000. Deti considered that he had allowed the company to trade to the detriment of creditors when he knew or should have known the company was insolvent.

***Defendants with D&O cover could have claimed recovery of the defence costs involved in the proceedings against the director.***

Three newspaper executives were fined £1,000 each in Belfast for publishing an article which led to the postponement of a criminal trial. The trio were brought before the High Court by the Attorney General for contempt of court.

***Defendants with D&O cover could have claimed recovery of the defence costs involved in the court proceedings. The fine would not have been covered.***

A Belfast-based wireless firm and company director have been fined for using transmission equipment in Co Monaghan. The firm admitted contravening the Broadcasting and Wireless Telegraphy Act. The company was fined EUR3,000 and ordered to pay EUR500 costs. The director was fined EUR3,300 with EUR500 costs.

***Defendants with D&O cover could have claimed recovery of the defence costs involved in the court proceedings. The fine would not have been covered.***

#### **What elements of coverage are provided?**

**Elite IV** covers loss resulting from a wrongful act, including:

- Damages, judgments, settlements bail bond costs, crisis costs, deprivation of asset costs, prosecution costs, public relations expenses and defence costs
- Legal representation expenses
- Losses incurred within 30 days of buy-outs

- by management of a subsidiary company
- Costs arising from extradition proceedings
- Tax contributions where the company has become insolvent and there is personal liability of an insured
- Losses incurred for civil fines and penalties imposed pursuant to Section 78ff (c) or Section 1 78dd - 2(g) (2) of the US Foreign Corrupt Practices Act or any similar legislation in any other jurisdiction
- Actions between directors of the company
- Where there has been fraudulent conduct, non-disclosure, misrepresentation or intent to deceive, the policy will nevertheless be maintained for each innocent director
- Cover for employment related wrongful acts
- Cover for whistleblower issues
- Cover for actions raised against insured persons in respect of pollution
- Cover for extradition proceedings
- In the event of takeover or merger - an option for up to 6 years run-off cover if the company is acquired: provides cover for claims notified after expiry of policy period

#### **Why ACE?**

##### **Stability**

ACE European Group is part of the ACE Group of Companies, one of the world's leading global commercial property and casualty insurance organisations. Headquartered in the UK, ACE European Group has established branch offices in 20 countries across Europe, Freedom of Services permissions to operate in 30 EEA countries and affiliates in Russia, The Middle East and Africa. Established in 1985, the ACE Group has grown rapidly by building long-term partnerships with brokers and clients in each of the world's major insurance markets.

##### **Innovation**

ACE is one of the most innovative providers of insurance products and services in today's global marketplace. We pride ourselves on the quality and experience of our staff who are specialists in their fields. Using this experience we focus on products and services in market segments where this specialist knowledge creates a natural alliance with customers. In addition we tailor our products and services to support the key business goals of those select segments.

##### **Experience and expertise**

ACE Europe has a highly respected underwriting team holding a significant degree of knowledge on the issues and liabilities faced by directors. Working with brokers and clients, we provide quality cover and a claims service that meets the needs of companies and directors in today's rapidly changing legal environment.



This information is descriptive only. Please refer to the policy document for full terms, conditions and exceptions.



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