

Why Directors' & Officers' liability insurance?

Directors and officers of companies hold positions of trust and have responsibility to their company, the shareholders, the employees, and the public at large. As a member of the board of directors or an officer holding an executive position in your company you may be personally held liable for any actual or alleged: breach of duty, breach of trust, breach of warranty of authority, neglect, errors, misstatement, and omissions by anyone in the company.

Anyone dealing with your company can sue you as the directors and officers alleging a financial loss. Exposure varies from shareholders, creditors, business partners, competitors, regulators and even employees. Defending yourself in such adverse circumstances can prove to be a hard, long and costly affair with the end result of it all - was it all worth it?

Are you adequately covered?

Most companies in their Articles of Association with their Directors and officers may have an indemnification clause to cover such exposures, however consider the following:

As an outside or non executive or independent director in a company you are unaware of mismanagement in the company and consequently are held liable as part of the board. The wrongful act is discovered after you have left the company, the indemnification clause does not apply.

The company has been acquired and hence no recourse exists.

In the untimely event of your death, who will defend you and prevent spillover liabilities from affecting your heirs, estates and legal representatives?

A mistake by you in the management of the company may lead the court to attach property held jointly by you and your spouse.

Who Is at Risk?

Directors and Officers of the company whether past, present or future, including any officer in an executive capacity in the company are at risk. The risks of directors and officers are heightened at certain specific junctures such as, when:

- Soliciting funds from the public through an IPO or through debentures on account of misstatements in the prospectus, including suppression of material information
- Innocent non-disclosure of interested transactions
- Private placement of equity or debt with institutional investors
- Breaches of common law or statutes, such as violation of takeover codes
- Misstatements made to potential investors or lack of due diligence during an acquisition process
- Suppression of minority shareholders interests
- Inaccuracy of financial statements, causing a loss to investors
- Employees suing on account of employment related issues
- Expanding business overseas and the prohibitive cost of litigation overseas