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Financial Lines

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Directors and Officers Liability Insurance

The sources of possible actions against directors are wide and varied. As one of the leading Directors and Officers (D&O) liability insurers in the world, we know that directors are particularly exposed following merger and acquisition activity and company liquidations. Employee actions against directors are another frequent source of claims in areas such as racial discrimination, sexual harassment and unfair dismissal. Further actions can arise as a result of Regulators' actions under various statutes, such as the Companies Act 1956, Securities and Exchange Board of India Act 1992, Foreign Exchange Management Act 1999, etc.

Reports on Corporate Governance like the Kumaramangalam Birla Report 1999, the Narayana Murthy Report 2003 and Clause 49 of the listing agreement with stock exchanges, etc. set out the breadth and scope of board level responsibilities more clearly than ever before. These statutes set the standards for directorial behaviour and at the same time increase the potential for actions against directors who fall short of these standards. Defence costs and damages in such actions can vary from thousands to millions of rupees and the length of time taken to settle cases can extend from several months to several years.

The regulatory environment facing the directors of today's companies is more rigorous, and their responsibilities more onerous than at any time in living memory. The next few years will see even tighter legislation and increasing globalization of business, thus subjecting directors and officers to closer scrutiny from shareholders, customers, employees, suppliers and regulators not just in the global market place but also in their domestic environment.

Tata AIG has anticipated this changing environment. We know how important it is to give directors and officers the best possible protection. We have a history of successful innovation and market leadership in providing management liability insurance and offer a comprehensive Directors & Officers Liability Insurance solution - CorporateGuard.

<u>Public Offering of Securities Insurance (POSI)</u>

The Indian capital markets are witnessing an unprecedented boom and corporate India is all set to leverage this opportunity to raise funds and achieve their corporate objectives. However, this increased market exposure leads to increased stakeholder litigation and with this increase in litigation comes a growing awareness of the responsibilities incumbent on the directors and officers of companies.

This is especially true when the company makes a public offering of its securities. Signatories of a public prospectus have a personal responsibility for its contents and could therefore be found personally liable for the losses of securities holders arising from misrepresentations within the prospectus. These potential liabilities arising out of the issue of a prospectus can be very large. Most securities actions are fuelled by unfulfilled investor expectations, so as well as being substantial, legal actions can also occur much after the transaction. IPO Insurance (also known as Public Offering of Securities Insurance - POSI) addresses these uncertainties by ring-fencing securities exposures in a single premium, transaction-specific policy.

<u>Professional Indemnity / Errors and Omissions Insurance (PI / E&O)</u>

Provides protection for the company and its subsidiaries for claims brought in respect of negligent acts, errors or omissions in the performance of professional services. The policy is meant to pay for defence expenses and damages and includes amounts that the insured is legally required to pay because of judgments, arbitration awards or the like rendered against the insured, or for settlements negotiated in accordance with the coverage afforded by the policy.

Crime / Fidelity Insurance

It is precisely because companies trust their staff, that many companies don't think they need protection from fraud. The unpleasant statistic is that about 90% of company fraud is carried out by a company's own employees, and it is usually by its managers and supervisors.

The truth is that it's the more trusted and senior staff that have knowledge to skirt round security measures and set up insidious fraud systems. And when they strike, it's usually not once, but again and again over a period of time (often years), sometimes on their own, sometimes in collusion with outsiders.

Clever concealment is why most frauds are uncovered by accident and why recovery rates are so low. Fortunately it's only the minority of trusted staff who turn nasty but there are many reasons why they do turn nasty - company separation, which can be emotionally devastating and financially crippling, company restructures which breed resentment with new bosses, frustration with career prospects, a looming retirement date and pension worries and even boredom.

All of these situations can and do give trusted staff the malign motivation to steal. Of course, we hope they don't, but the facts speak for themselves. We have developed our Crime insurance products for companies that don't want to rely on wishful thinking and require protection or safeguard from such frauds.

Note: For complete details on policy coverage and interpretation, please refer to the policy wording.