

**Management...** *the members of the executive administration of an organisation or business*

**Risks...** *the possibility of incurring misfortune or loss*

**Insurance...** *Markel?*

## Background

We have been at the forefront of developing Directors and Officers Liability, Entity / Legal Expenses and Employment Law Protection for over twenty years.

Most of our recent 'pioneering work' has been concentrated on providing insurance solutions for Private Limited Companies and Limited Liability Partnerships, being the first Insurer to introduce policies for these types of business.



## The Trinity of Risks

Having focused on this sector for so long, we fully appreciate their particular concerns and have designed protection that is **relevant for them** rather than introduce alien terminology or obscure policy conditions which confuse the **real risks**: -

**...running the Company**

**...complying with legislation**

**...employing staff**

## Target Business

- Established Companies
- Management Buy Outs / Buy-Ins
- New Start-ups
- Companies seeking a share placing/ stock exchange listing / external investment
- Companies on the acquisition trail
- Companies in financial difficulties or undergoing restructuring

## Scope of Cover

Traditionally policies have been issued under separate arrangements, but our Management Risks approach now caters for these three areas under one arrangement: -

- **Directors & Officers Liability ('D&O')**
- **Entity Defence ('Entity')**
- **Employment Law Protection ('ELP')**

'State of the art' protection is afforded under one policy, with each Insuring Clause providing 'stand alone' limits of indemnity.

### Comprehensive Protection

Whilst we would strongly recommend that wherever possible, an Assured should seek to arrange comprehensive protection by effecting all three Insuring Clauses, we are willing to consider providing the D&O and ELP covers in isolation.

Unlike some Insurers, all of our covers are based upon the same 'broad form' wording, regardless of size.

## Take a closer look!

Here are some examples of potentially grey areas which we address under the different sections of our policy:



### D&O

- No standard exclusions in respect of '1 v 1' or Major Shareholder claims
- Corporate Manslaughter
- Environmental Proceedings
- Extradition Proceedings
- Retired Directors

### Entity

- Breach of contract (goods and services)
- Tax investigation

### ELP

- No 'TUPE' exclusion
- No onerous Helpline conditions

# Directors and Officers Liability

Directors are the 'mind and will' of the Company.

They are **personally responsible** for their own actions with **unlimited liability**.

Directors and Officers can find themselves personally liable to the company, its shareholders, investors, creditors and the general public. In some cases they may even face criminal sanctions.

## Who do we cover?

The D&O section provides protection for all Directors and Officers of the company from the Chairman to the most junior officer.

## Covers

- the legal liability of directors or officers of the company
- legal costs and expenses in respect of
  - any investigations
  - the defence of any legal action seeking disqualification of a director
  - extradition proceedings (including appeals)

It also reimburses the Company where the Company is obligated to reimburse its directors and officers under the terms of its constitution.

The limit of indemnity provides for additional legal costs and expenses cover for non executive directors when the conventional limit has been exhausted and retrospective approval of 'emergency' costs and expenses which may have been incurred prior to notifying the claim.



## Personal PR Assistance for Directors and Officers

When a Director or Officer has been accused of a wrongful act (the consequences of which could affect his/her livelihood), cover extends to include the costs of using a public relations specialist to deal with adverse press, publicity or media attention within the United Kingdom.

**MARKEL (UK) assist**

# Entity Defence

*N.B. This is an optional section of the policy but is only available when either the D&O or ELP covers are selected.*

There are occasions when an action is brought against the Company rather than an individual. In these circumstances standard D&O policies would not respond.

## Who do we cover?

Entity Defence provides cover for the 'Entity' (the Company) in respect of specific situations which arise in the United Kingdom, and are particularly relevant for businesses of this type.

## Covers

The Entity's legal costs and expenses

### Identity Fraud

- in establishing that someone has fraudulently entered into an agreement with a third party by representing themselves as the entity.

### Investigations

- Regulatory, Health and Safety and the like.

### Corporate Manslaughter

- in defending a prosecution brought under the Corporate Manslaughter and Corporate Homicide Act

### Breach of Contract

- in defending a claim which alleges breach of contract for goods or services provided.

### Pollution

- in defence of an allegation that a director, officer or employee has committed a wrongful act which results in pollution.

### Taxation

- in negotiating on their behalf, following a tax investigation by HM Revenue and Customs and/or in an appeal.

### Data Protection

- in defending a claim following a breach or alleged breach of the Data Protection Act and/or in an appeal.

## PR Crisis Management for the Entity

In the event of

- allegations of fraud
- serious injury to employees or members of the public
- dismissal or resignation of members of the main board of directors
- official investigations into the entity's affairs

cover extends to include the costs of using a public relations specialist to deal with adverse press, publicity or media attention within the United Kingdom.

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# Employment Law Protection

Employment disputes are becoming more frequent and more costly providing one of the fastest growing areas of corporate liability.

Many companies struggle to get to grips with the ever increasing employment legislation and, however good intentioned, a harmless interview, an employee's request or just a bad day at the office can frequently lead to a costly employment claim.



## Who do we cover?

Employment Law Protection provides insurance for the employer, their management and their employees.

## Covers

- legal liability following an employment dispute
- legal costs and expenses in respect of employment or health and safety investigations

*N.B. Cover not available in Northern Ireland.*

## Employer Helpline

Available FREE for use by our clients and manned by specialist employment solicitors, this service is provided for specific areas of concern

- Dismissals
- Grievance
- Discrimination
- Redundancy

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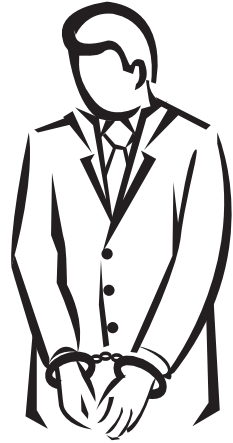
# Directors and Officers

## Extradition Proceedings

Having knowledge of, or being privy to company dealings, can result in an overseas jurisdiction pursuing extradition proceedings against directors and officers to answer charges and allegations.

### For Example...

The recent case of two employees of a bank being extradited to the US to answer certain allegations is an example of this growing trend.



## Corporate Manslaughter / Health & Safety

Being 'held to account' is an increasing fear for directors and officers, particularly with the threat of 'corporate killing' lurking on the horizon.

### For Example...

Recent major incidents involving railway, road transport and chemical industries have highlighted the trend towards holding company directors personally responsible for the safety of their customers (passengers) and employees.



## Environmental Proceedings

As environmental issues move up the public agenda company management has an increasing responsibility to play their part to the full.

### For Example...

Those who run manufacturing or chemical plants have to face up to their personal responsibilities or run the risk of prosecution by industry regulators.

## Major Shareholders (1 v 1)

Whilst firms have to meet the expectations of 'external' investors, other long standing shareholders, including fellow directors, can take action when they feel other members of the management team are not acting in the best interests of the company.

### For Example...

Most directors serving on the board will also be shareholders of the company. If they feel that their fellow board members have not acted correctly, they may be the source of a claim. Any major shareholder (internal or external) will constantly be looking at the performance of the board to ensure their interests are best protected.



## Retired Directors

Over the course of time directors will retire from the company but any claims emanating from the period when they did serve may take time to come to fruition.

### For Example...

A director may have recently retired from the board but unbeknown to him, a third party may be pursuing an action against the board for the actions of the directors whilst he or she was a board member. This is particularly pertinent when a company is sold and the purchaser subsequently alleges financial 'misrepresentation'.

# Employment Law Protection

## Unfair Dismissal

An employee must not be dismissed unfairly from their position. If you feel dismissal is appropriate, then the full, correct procedures must be strictly followed.

### For Example...

An IT manager who won his claim for unfair dismissal did so after his employers failed to follow the appropriate statutory procedures when dismissing him.



## Whistleblowing

An employee must not be unfairly penalised for informing their employer of misconduct of a fellow employee or manager.

### For Example...

An accountant was sacked for gross misconduct after warning his directors that his former chief executive had claimed a substantial amount in cash advances without receipts. He successfully won a claim for unfair dismissal.



## Sexual Discrimination

An employer must not suffer unnecessary discrimination due to their gender or harassment of a sexual nature.

### For Example...

A sales worker successfully sued for sexual discrimination after she was told she was perfect for the job due to her 'blonde hair and long legs'.

## Redundancy

When selecting employees for redundancy, clear evidence must be shown of the selection criteria and process, to avoid discrimination or unfair dismissal.

### For Example...

An employee was advised 12 months prior to redundancy that his production rate was considerably slower than the norm. He was selected for redundancy although no evidence was produced to show how he was selected, no consultation took place and no alternative positions were offered.



## Disability Discrimination

As an employer, you must be fully aware and adaptable to your employees needs when it comes to their disability.

### For Example...

A secretary who was in her first week of employment was dismissed after being told that she wasn't processing information quickly enough. When she was first offered the position, she declared that she had dyslexia, but the employer did not subsequently make any allowances for her condition. The employee won her claim for disability discrimination.

## Other Covers

### D&O for Clubs and Societies

Available exclusively 'online' a Directors and Officers policy which is specifically designed to cover the directors, officers, committee members or trustees of clubs or societies in particular sports, social, working men's or welfare clubs and societies.

### D&O for Residents Associations

Another 'online' D&O policy offering that covers the directors, officers, committee members or trustees of a Residents Association.

### Covers

These policies cover the legal liability of directors and officers including investigations and defence of any legal action seeking their disqualification as a director.



### Not for Profit Management Liability

Those responsible for the management and administration of 'not for profit' organisations or charities are often unpaid, but this does not absolve them from their duties as trustees and managers or protect them from numerous potential liabilities.

Trustees duties are derived from the deed or document governing the trust, from statute and from common law. Inadvertent neglect or ignorance of these duties can lead to a breach of trust or duty and the potential of unlimited personal liability for the trustees involved.

### Covers

The governors, directors, council members, officers and trustees for their wrongful acts and the 'not for profit' organisation or charity when they are permitted or required to indemnify them.

Cover can be extended to include professional indemnity, loss of documents and fidelity.

More often than not, many of these risks are now insured under our Social Welfare arrangements.

## Other Covers

### Pension Fund Trustees Liability

Responsible for administering the trust in accordance with its governing documents and the disposition of the funds in the trust, pension fund trustees fiduciary duties also extend to encompass a number of other related obligations.

For many years trustees have sought protection from liability by insisting upon the incorporation in trust deeds of 'exoneration clauses', but public and market sentiment has tended to swing away from reliance upon such provisions with beneficiaries seeking to hold someone accountable for any (perceived) shortcomings.



### Covers

The trustees for their wrongful acts, the trust and the employer company where they are permitted or required to indemnify the trustee (including any exoneration clause), legal representation and the trust following a fidelity loss. Cover extends to include loss of documents, defence costs, spouses and estates of trustees and (where permissible) fines and penalties imposed by any pensions regulators.

The policy has a wide definition of trust and assured so as to cater for all types of situation and includes employees where they are deemed to have acted as a trustee. It can also be extended to include trustee or employee dishonesty, pursuit of service providers and theft of the trusts property.

## Fidelity

Generally available as a policy extension, as an operative Insuring Clause under one of our 'combined' policies or, on occasions, as a separate 'stand alone' policy.

## Covers

Loss of money or goods arising from the dishonest or fraudulent acts of employees and generally extends to include loss of property or funds through computer fraud or fraudulent transfer instructions by third parties (other than employees).

# Risk Management

We appreciate that running a business is challenging and that the myriad of legislation makes it increasingly difficult to keep fully abreast with corporate governance and employment issues.

We therefore seek to help our clients by giving them access to a number of specialist services which are provided on our behalf and we also provide general advice and assistance.

## MarkelUKAssist

MarkelUKAssist is a resource that we make available to those of our clients who may benefit from the professional help and advice on offer. The service is generally FREE of charge.

**(N.B. Service will be restricted where client has elected not to insure all aspects of the policy).**

## Resource Centre

Access to a wealth of useful information via the Internet, providing practical, legal and risk management news and advice, including: -



**MARKEL (UK) assist**

[www.markelukassist.com](http://www.markelukassist.com)

## PR Crisis Management Service

Use of our public relations specialist, *The Counsel House*, to help you manage media attention in the event of a (defined) crisis (subject to policy terms and conditions).



## CRB / SCRO Background Screening Services

Access to a registered CRB / SCRO background check umbrella organisation, *Complete Background Screening Ltd*, with the advantage of discounted rates and NO REGISTRATION FEE.



## Employer Helpline

Access to a FREE employer helpline manned by employment law specialists *Beachcroft LLP*. Assistance is available for any employment law dispute that could lead to a claim under your Markel policy.



## Employer Assistance

Access to a wealth of useful information including useful employment guides and legislation updates.

# MarkelUKOnline

Our MarkelUKOnline facility allows you to quote, bind and renew business online.

For further information or to request a demonstration of the system please contact your local branch underwriter.

**MARKEL (UK) online**



Birmingham  
Bristol  
Cambridge  
Edinburgh  
Leeds  
Manchester  
Reigate

[www.markeluk.com](http://www.markeluk.com)

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Policyholders must refer to the actual policy issued for the binding terms, conditions and exclusions of cover.

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Registered in England No. 2430992

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MRB/06/08