

Frequently Asked Questions

1. What is the difference between a Directors and Officers Liability Policy and a Professional Indemnity Policy?

A D&O Liability Insurance policy is a insurance cover to protect the personal fortunes of individual directors and officers, in respect of personal liabilities arising out of their wrongful acts. These wrongful acts can be actual or alleged breach of duty, breach of trust, neglect, error, misstatement, misleading statement, omission. A Professional Indemnity policy however is a cover for a company for any negligence, error or omission while rendering or failing to render its professional services.

2. Who all are covered under the policy?

The policy protects individual D&O's. Cover is also extended to include outside entity directors, spouse & legal heir of the insured person, retired directors. Officer is any one in a managerial or supervisory role.

3. Is there a need to name all the directors and officers for which the cover is sought?

This is an unnamed policy which is given to the past, present and future directors and officers of the Company so it is just the Company that will be named in the policy.

4. How does a company decide the jurisdiction / territory coverage that is needed under this policy?

A company should decide the territory of coverage considering the scope of claims that can arise from all its stakeholders. Stakeholders would include shareholders, customers, creditors, employees and regulatory bodies. We have three territory categories in our policy – India only, Worldwide excluding US/ Canada and Worldwide.

5. Are only listed companies at risk of a D&O claim?

No, though Public limited companies are more at risk of a D&O claim arising out of shareholder litigation. However Private limited companies are equally at risk for claims from consumers, investors/ creditors, employees for employment practices claims and regulatory bodies. They are also at a risk for mergers and acquisition related risks, stock repurchases from founders and also employment practices related claims.

6. Are employment practices claims against directors covered under the policy?

Yes, Employment practices claims are covered under this policy and it extends to claims relating to a past present or prospective employee of the company arising out of wrongful dismissal, employment-related misrepresentation, and wrongful deprivation of career opportunities, sexual/workplace/racial/disability harassment of any kind, unlawful discrimination etc.

TATA AIG USP: Superior claims handling ability at domestic level with the support and network of over 130 jurisdictions. Additional Covers offered under the policy are:

- Assets & liberty costs
- Regulatory crisis response costs
- Kidnap response costs (Prosecution costs, Bail bond expenses & reputational damage)
- New Subsidiaries Cover
- Loss definition includes punitive and exemplary damages
- Special excess protection for non-executive directors
- Discovery Period

All we need is the filled TATA AIG Proposal Form and Latest Audited Financials and we are READY to QUOTE !!!!

DIRECTORS & OFFICERS INSURANCE

Directors and Officers can be sued **personally** by any stakeholder for a decision taken by them on behalf of the Company in their managerial capacity

A specialty line of liability insurance that protects Ds&Os from liability arising from their actions or inactions in their corporate or organizational capacities. Designed to respond to claims of alleged errors in judgment, breach of duty or other wrongful acts committed by the Ds&Os in their capacities as such.

A D&O cover is designed to protect directors and officers of a company for any wrongful acts that include misleading financial statements and mismanagement of funds, in respect to their potential exposure for the personal liability which can arise in the course of performing their duties. It also protects the company in respect of payments which it is legally permitted to make on behalf of its directors or officers

1. Why D&O Insurance?

Directors and Officers can be sued personally by any stakeholder for a decision taken by them on behalf of the Company in their professional capacity as Director or Officer of the Company. It provides indemnity to Directors and Officers for:

- legal and defence costs, and
- damages and expenses incurred,

arising from claims brought against them personally, due to wrongful acts in their capacity as Director or Officer of a company.

2. Who can Sue?

- Shareholders
- Creditors
- Employees
- Regulators
- Customers
- Competitors
- Investors
- Other Stakeholders

3. D&O can be held liable for?

Actual or alleged:

- Misuse of corporate funds
- Companies Act violations
- False statements to Government agencies
- Irregularities in securities issues
- Breach of duty to minority shareholders
- Misuse of inside information for personal gains
- Imprudent expansion leading to erosion of shareholder wealth Bankruptcy
- Management integrity issues
- Employment irregularities/harassment
- Auditing and Accounting practices
- Mergers & Acquisitions
- Violation of legal statutes
- Listing of stock or debt on a stock exchange

LIST IS INDICATIVE AND NOT EXHAUSTIVE.....

4. Policy Features?

- Advancement of defence costs
- Coverage for new subsidiaries
- Outside Directorship coverage
- Coverage for heirs and legal representatives
- Joint Property Liability
- Coverage for Employment Practice Liability (EPLI)

5. Policy Exclusions?

- Dishonest or fraudulent acts
- Any profit or advantage to which the insured was not legally entitled
- Pollution
- Bodily injury or property damage
- Major shareholder
- Professional Error or Omission

Case: Dismissing of Senior Employees

Case in brief:

A MNC company had hired in 2001 two senior bankers and they were made to understand that they were to head the new subsidiary.

The setting up of the subsidiary kept getting delayed which soured relationships between the employees and employers. The company in 2003 dismissed both of them citing incompetence and absenteeism as the reason.

Both the dismissed employees filed criminal cases for damages of Rs 80 crore against all the directors of the company alleging cheating, fraudulent misrepresentations about the job profile, remuneration, failing to fulfill terms of employment contract and defamation by press release.

A prolonged legal battle followed and the defense cost incurred by the directors was advanced to them.

Case: Bank Loan Default by a Company

Case in Brief:

A bank had filed a criminal case against company and managing director of the company for default on loan account.

A prolonged legal battle followed the case. The case was dismissed by the lower court and the defaulter had appealed to the higher court.

Defence cost incurred by the director was advanced.

Case: Breach of Immigration Laws.

Case in Brief:

Investigation officials of a foreign government were investigating senior officers of a company for breaching immigration laws. An IT companies employees use to visit the country on Business visas but the government was in the view that the nature of work they performed required them to have valid work permits and pay taxes.

High cost of defense and stringent prosecution and immigration laws were what the company were to face.

However the charges were dropped but a cost of Rs 8 crore was incurred.



Case: Misrepresentation of facts in the offering documents leading to shareholder claims

Case in brief:

A Midwest-domiciled home products company retained an independent research firm to evaluate its new home product. Based on a favorable review by the outside firm, the company raised in excess of \$10 million for the production and marketing of the new product. Prior to releasing the product, the company's internal evaluation team discovered, after extensive testing, that the new product did not work properly. Shareholders have brought suit against the company and the directors and officers for misrepresentation in the offering documents. The plaintiffs assert causes of action for violation of various state securities laws and the Securities and Exchange Act of 1934. Damages alleged in the lawsuit exceeded \$15 million.

Case: Misuse of Power by Managers

Case in Brief:

A private company that manages and operates a major natural resource received a claim against the company and various members of the board of directors. The plaintiff alleged that the board of directors had used their position for their own private benefit and personal advantage, and for the benefit and advantage of their private employers. The plaintiff also alleged that the board of directors assigned a valuable contract without receiving any consideration. The plaintiff further alleged that such assignment also constituted misappropriation of valuable assets for the benefit of a private party in violation of state codes. Total defense costs exceeded \$250,000.

Case: Case against former employee

Case in brief:

The plaintiff filed a complaint against their competitor alleging that a former employee, now working at the competition, engaged in unauthorized use of confidential and proprietary information and committed other acts of unfair competition. As a result, the plaintiff alleged it had suffered irreparable and immediate injury. In addition, the plaintiff alleged that the defendant had possession of its confidential information and intellectual property. The plaintiff asserted causes of action for misappropriation of trade secrets and confidential information, violation of the Computer Fraud and Abuse Act, unlawful access to stored information, and unfair competition. Total defense costs and settlement exceeded \$350,000.

Case: Sexual harassment



Case in brief:

A manufacturer was sued by a former female employee alleging wrongful termination, sexual harassment and sexual discrimination. The plaintiff, an assembly line worker, had an affair with her married supervisor and became pregnant. After disclosing the pregnancy to her supervisor, she was fired. With insurer assistance, the matter was settled quickly for approximately \$500,000.

Case: Unhappy Minority Shareholders stall IPO - DLF

Case in brief:

A real estate company that was planning a large issue had to put its plans on hold on account of a complaint filed against it for defrauding minority shareholders to the extent of \$350m. Although the company did not feel that there were lapses committed by them, they had to revive a lapsed issue of debentures to the minority shareholders in order to resolve the issue, maintain the goodwill of the investors and proceed with the listing. The prospectus had to be rewritten and the company had to approach SEBI for clearances once again.

Case: Ban by SEBI for wrongful involvement of company with broker

Case in brief:

In May 2007, a high profile IPO of a company (in the Port and SEZ sector) ran into rough weather with SEBI restraining the promoters from accessing the securities market for two years. The market regulator has also banned the promoters of the group and seven other entities from buying, selling or otherwise dealing in securities.

The big ticket IPO, which intended to raise Rs 1,500 crore, was expected to hit the market in June. The company had already filed its draft prospectus with SEBI for the IPO.

The SEBI passed the order after it found the involvement of promoters of the group — along with stock broker Ketan Parekh and his associates — in the price rigging of the company's stock between October 1999 and March 2001. In the wake of excessive volatility during the period, SEBI conducted an investigation into the buying, selling and dealings into the scrip of various companies under the group.

Shilpa Shetty's firm sued for £6 million



Bollywood actress Shilpa Shetty has been sued for £6 million by the former boss of her newly acquired restaurant chain, on grounds of unfair dismissal.

Jamal Hirani, 42, founder of fast-food chain 'Tiffinbites' is claiming that he was forced out to make way for the star and had earlier filed a lawsuit in an industrial tribunal claiming more than £1.5 million, reported *London Evening Standard* online.

He has now filed a £6 million lawsuit in High Court, based on the 30 per cent of the firm he previously owned.

Hirani alleges that he was forced out by colleagues in a process that led to the firm closing and opening under a new name, the V8 Gourmet Group.

"They manufactured false accusations against me. This ultimately was my company and I have been removed. I understand that since I have left Shilpa Shetty has invested in the business," said Hirani.

Shetty, 34 who became a household name in Britain after winning the reality show *Celebrity Big Brother*, recently became the company's co-chairwoman after she and fiancé Raj Kundra paid £6 million to buy a 33 per cent stake in it.

A spokesman for the actress reacted to the controversy by saying, "The case refers to events that happened before Shilpa and Raj joined. She was always aware this tribunal was coming up and hopes for a fair outcome."



Tata AIG Corporate Guard D&O – Policy Benefits

The benefits of the D&O policy offered by Tata AIG are as follows:

- Auto-acquisition of subsidiaries – Policy can provide automatic cover for newly created or acquired companies (Non-US) whose assets are up to 25% of the total gross assets of the company.
- Insured vs Insured cover - Full defence costs cover for Insured vs Insured claims (including USA & Canada) other than consensual claims
- Definition of loss is very broad and includes punitive and exemplary damages as well
- Special excess protection for non-executive directors - The policy provides a Special excess protection for non-director directors. This limit is over and above the total limit of liability of the policy and the said limit is available per non executive director providing a limit assigned to an individual non-executive director which is not available for any other insured.
- Emergency costs – Emergency defence costs can be incurred (without any specified limit on number of days) without Tata AIG's consent, where such consent cannot reasonably be obtained.
- Regulatory crisis response costs – Apart from investigation costs, the policy pays for costs that are incurred by the 'regulatory response team' in connection with a critical regulatory event viz. raid by an official regulator for review or confiscation of files or interviews of insured persons, receipt of formal notice from any official regulator compelling the insured person to produce documents or answer questions by that regulator
- Prosecution costs – The policy pays reasonable legal fees, costs and expenses incurred by insured person to bring legal proceedings to obtain discharge or revocation of a judicial order imposing: confiscation, suspension or freezing of ownership rights or personal assets of insured persons, temporary or permanent prohibition of insured person from holding office or performing the function of director or officer, official detention or house-arrest, or extradition of insured persons
- Bail bond and civil bond expenses – The policy pays the bail bond and civil bond expenses of each insured person directly in connection with a claim
- Damage to reputation – The policy pays reasonable fees, costs and expenses of public relations consultants retained by insured person to mitigate adverse effect on reputation of insured person from a claim
- Kidnap response costs – The policy pays reasonable fees and expenses of the kidnap consultants incurred in response to any kidnapping, hijacking or wrongful detention of insured person



- Broad definition of 'Insured person' including directors or officers, employee acting in a managerial or supervisory capacity, or any employee alleging employment practice violation, or named as co-defendant with a director or officer, or shadow director, outside entity director, spouse of a deceased or insolvent or incompetent insured person or administrator or executor of a deceased insured person's estate
- Full Severability – For determining applicability of conduct/dishonesty exclusion, the information or knowledge possessed by any insured person shall not be imputed to any other insured person

Tata AIG is the undisputed leader in the "Liability" insurance segment in India and has been having the highest market share in "Liability" segment in India for the past 3 consecutive years ending March 2008, 2009 & 2010 respectively (as per IRDA Journals – June 2009 & June 2010)