

Improved Directors & Officers Cover

Important Changes to the Motor Trade Policy

Following a review of the cover available under this Section of the policy, we are making a number of improvements and amendments.

We are introducing these changes to policies which are due for renewal or which commence on or after the 1st December, 2011.

Details of the key changes are set out below. Your insurance adviser has been provided with a detailed description of the changes being made, and you should contact them if you would like further information.

A new policy wording, which will replace your existing wording, will be issued to you incorporating these changes following your instructions to renew or commence cover.

The guidance provided below does not, nor is it intended to, represent the complete terms and conditions of the updated policy wording. Please read this guidance in conjunction with your updated policy wording and policy schedule.

A Policy Overview which provides a wider summary of significant features, benefits, exclusions or limitations of the cover is available from your insurance adviser or the Allianz Insurance office that issued your policy. Alternatively you can download a copy from our website via the link www.allianzbroker.co.uk/products/documents/commercial.htm

When you receive your new policy wording, please take the time to read it to ensure that it meets your needs and that you understand it's terms, exclusions and conditions.

If you wish to make a change or if there is anything you do not understand, please let your insurance adviser or the Allianz Insurance office that issued your policy know. Adjustments are easily made and both ourselves and your insurance adviser will be pleased to help you.

Please retain this Client News with your policy documentation.

The key changes are:

General Enhancements

The wording has been generally enhanced to provide broader operation and amended for clearer intent. In addition the number of main cover exclusions has been reduced.

Cover Enhancements

The scope of policy cover has been improved, and you will automatically benefit from the addition of a number of new covers. This is intended to be a brief summary of the changes and reference should be made to the policy wording for full details.

The key additional covers added are:-

- **Non Executive Directors Cover**

Cover is provided for non executive directors where the Limit of Liability is exhausted and indemnity is not available from the company or any other source.

An additional Limit of Liability of £250,000 per director applies but there is no overall restriction with regard to the number of individuals involved.

- **Investigation Additional Cover**

Costs and legal expenses of individuals in connection with the preparation for or attendance at official and professional investigations into their actions or those of the company are automatically covered up to the Limit of Liability.

The following cover has been amended:

- **Pollution Cover**

Cover for pollution is now provided up to the Limit of Liability where indemnity is not available from the company. Cover is also provided for shareholder derivative actions



New Cover Extensions

The following Extensions to cover have been added:

- **Automatic New Subsidiary Cover**

Cover will automatically extend to include any new subsidiary company acquired or created during the period of insurance provided that its total assets do not exceed 50% of your total assets, it does not have any of its securities listed on an exchange, and is not a Financial Institution. Cover will be subject to the payment of an additional premium, and any terms and conditions that we require.

- **Management Buy-Out**

Upon your request we will provide a free 45 day continuation of cover for the relevant directors and officers should a subsidiary be involved in a management buy-out, in respect of wrongful acts committed by an insured person subsequent to the buy-out.

- **Past Insured Person**

Provides lifetime cover for retired individuals (except where disqualified from holding office), or those who have left the company voluntarily, in the event of their not having protection via any ongoing insurance. Cover includes costs in respect of any investigation or self reporting investigation.

- **Reputational Crisis Costs**

Costs incurred in seeking the services of a crisis management firm or public relations consultant in order to mitigate the adverse effect on an insured's reputation as a result of a claim, circumstance or extradition proceeding.

We have an agreement with a panel of professional advisers to provide assistance in the event of a reputational crisis. Alternatively, you may use a service provider of your choice, for which you must obtain our prior written consent.

A sub-limit of £5,000 any one circumstance/person and £50,000 in the aggregate in the period of insurance applies to this extension.

- **Entity Cover Extension**

This extension provides cover to specifically protect the company as opposed to its directors and officers. It enables liability claims to be brought directly against the company and for cover to respond on behalf of the company. Cover includes

- legal defence costs and expenses and settlements or damages awarded against the company for an actual or alleged Wrongful Act
- Investigation Costs in respect of an Investigation under the Health and Safety at Work Act 1974 or the Corporate Manslaughter and Corporate Homicide Act 2007.

Cover is subject to a sub-limit of £500,000 or 50% of the Section Limit of Liability whichever is the lower, and a deductible of £5,000 each claim applies unless successfully defended

This extension is subject to the cover general exclusions and conditions, and in addition excludes:-

- Employment Practice liability
- liability relating to competition, restraint of trade, or deceptive acts and practices in trade and commerce
- private placement or public offering of any securities
- performance or failure to perform professional services
- infringement of copyright, patent, trade marks, service marks, trade secrets, title or other proprietary or licensing rights or intellectual property of any product or services
- contractual liability except in respect of defence costs
- pollution other than in respect of shareholders derivative actions
- any trust fund, pension scheme, profit-sharing scheme or employee benefit scheme
- claims brought or maintained by or on behalf of the company
- bodily injury and property damage other than in respect of the cover provided for investigation costs in respect of an investigation under the Health & Safety at Work Act 1974 or under the Corporate Manslaughter and Corporate Homicide Act 2007
- efficiency or performance of any products or services.

Other Key Amendments

- **Wrongful Act Definition**

Extended to include cover in respect of the Bribery Act 2010. The definition will read as follows:-

- Any actual or alleged misrepresentation, misstatement, misleading statement, error, omission, defamation, negligence, breach of warranty of authority, breach of fiduciary duty, Employment Practice Wrongful Act or any other act, including
- a with respect to shareholder derivative actions only, any proposed act; and
 - b any violation of the Companies Act 2006 (or any re-enactment thereof or the equivalent legislation in any other jurisdiction)
 - c any violation of the Bribery Act 2010 (or any re-enactment thereof or the equivalent legislation in any other jurisdiction) by the Insured Person acting in their capacity as such or any matter claimed against the Insured Person solely because of such capacity.

- **Claim Definition**

Extended to include proceedings for an offence under the Corporate Manslaughter and Corporate Homicide Act 2007, and proceedings following a request for deportation, extradition or arrest warrant.

- **Defence Costs Definition**

Extended to include emergency defence costs up to a sub limit of 10% of the Limit of Liability, and the premium for a financial instrument such as bail and civil bonds, excluding the collateral cost of such instruments.

- **Loss Definition**

The definition has been re-worded to clarify the extent of cover provided. In addition it has been extended to include cover for civil fines and penalties imposed in relation to the Foreign Corrupt Practices Act or similar legislation subject to a sub limit of £1,000,000. The definition will read as follows:-

Any:

- a Amounts which the Insured Person is legally liable to pay for a Wrongful Act (including settlements, awards of damages, awards of punitive and exemplary damages, pre and post-judgment interest on a covered judgment or award, or awards of costs).
- b Defence Costs incurred as a result of a Claim for a Wrongful Act

Enforceability of payment for punitive, exemplary and the multiplied portion of multiple damages shall be governed by the applicable law that most favours coverage for such damages. With respect to civil fines and penalties imposed in relation to Section 78ff (c) (2) (B) or Section 1 78dd – 2(g) (2) (B) of the Foreign Corrupt Practices Act, or similar legislation in any other jurisdiction, the liability of the Insurer will not exceed in the aggregate a sub-limit of £1,000,000 of the Section Limit of Liability (such sub-limit being part of and not payable in addition to the Section Limit of Liability).

Loss shall not include:

- a criminal fines and criminal penalties;
- b remuneration or employment related benefits;
- c any sum pursuant to a financial support direction or contribution notice by the Pensions Regulator;
- d taxes other than to the extent that personal liability of a director under Cover A for non-payment of corporate taxes is established by law in the jurisdiction in which the Claim is made and such liability constitutes Non-Indemnifiable Loss;
- e any amounts which may be deemed uninsurable under the law applicable to this Section or in the jurisdiction in which the Claim is brought other than in respect of amounts which are punitive, exemplary or the multiplied portion of multiple damages as specified above;
- f punitive or exemplary damages awarded for an Employment Practice Wrongful Act.

- **Insured versus Insured Exclusion**

Exclusion 6 has been amended to provide broader cover. There is no exclusion in respect of one insured person making a claim against another insured person provided the claim is brought outside of the USA.

For claims brought within the USA cover is provided for defence costs up to the Limit of Liability for:

- Employment Practice claims
- Claims brought by liquidators or receivers
- Contribution or indemnity matters resulting from other claims
- Shareholder derivative actions
- Claims brought by former directors or officers
- Whistleblower situations

- **Claims Conditions**

The claims conditions have been amended for clearer intent and broader operation.

Claim reporting is no longer subject to restrictive 'condition precedent' conditions. We have also extended the notification period to report claims after expiry of the period of insurance up to 90 days.

A separate Circumstances Condition has been introduced to clarify the information to be provided when notifying circumstances which are reasonably expected to give rise to a claim.

A Priority of Claims Payment Condition has been introduced to clearly set out how claims payments will be prioritised, and to provide flexibility to overcome the complexities which can occur in terms of when monies are actually due to be paid to the various parties involved .

- **USA/Canada Deductible – Company Reimbursement Cover**

In respect of any claim brought within the jurisdiction of the USA, an increased deductible of £5,000 will apply to Company Reimbursement Cover unless we advise you otherwise.