Directors Liability
Product briefing

A fresh look at directors' protection

New Zealand directors operate in a pressured environment, having to make tough and complex decisions against a backdrop of increased regulation and legislative change. Their liability protection needs to be robust enough for today and adaptable enough for tomorrow.

At QBE Insurance, we have taken a fresh look at our Directors Liability Policy to ensure it does just that. QBE's new Directors Liability Policy (DOL 0514) has an expanded definition of both 'Director' and 'Claim' and now includes:

- automatic worldwide cover;
- prospectus cover (other than for IPO's);
- emergency defence costs;
- exposure change run off eighty-four (84) months;
- public relations expenses;
- bail bonds;
- extradition proceedings;
- tax liability (NZD 1,000,000).
- fines, penalties and punitive and exemplary damages (except in the USA);
- investigations cover (now to policy limit, up from NZD 250,000);
- Health and Safety defence costs including corporate manslaughter (now to policy limit, up from NZD 250,000);
- pollution (now includes damages; up from NZD 250,000 defence costs only)

Optional extension – retired directors

In the event that it is not renewed, and not replaced by an alternative insurance, our new wording can be extended to include eighty-four (84) months run-off cover for retired directors and officers.

Defence costs

Our Directors Liability Defence Costs Policy (DDC 0514) works hand-in-hand with our new Directors Liability Policy (DOL 0514). The Directors Liability Defence Costs Policy protects clients by ring-fencing funds for defence costs where a Law Reform Act s.9 charge may apply. Clients need to determine how they will split their limit of indemnity between the two wordings.

Who needs it?

QBE's Directors Liability Policy is designed for New Zealand companies looking to protect their directors, all of whom operate under the shadow of unlimited personal liability. The policy can indemnify the directors direct or can reimburse the company if it has indemnified its director(s) in the first instance.

Cover comparison

QBE's new Directors Liability Policy includes significant enhancements compared to its earlier version:

Cover	QBE Directors and Officers Liability Policy (DOL 0704)	QBE Directors Liability Policy (DOL 0514) NEW
Bail Bond	–	10% Limit of Indemnity (NZD 300,000 max.)
Public Relations Expenses	–	NZD 100,000
Corporate Manslaughter Defence Costs	–	Included

Cover	QBE Directors and Officers Liability Policy (DOL 0704)	QBE Directors Liability Policy (DOL 0514) NEW
Extended Reporting Period/Discovery	Optional	Automatic Unilateral/30 days 12 months @ 75%
Emergency Defence Costs	–	10% Limit of Indemnity 14 days
Extradition Costs	–	Included
Fines and Penalties	–	Included * (where legally insurable)
Tax Liability	–	Included (NZD 1,000,000 max.)
Health and Safety Defence Costs	Sub-limit NZD 250,000	Full Limit of Indemnity **
Management Buy Outs	–	Included
Investigations and Enquiries	Sub-limit NZD 250,000 (attendance must be legally compellable)	Full Limit of Indemnity * (even if attendance is not legally compellable)
Retired Directors	Not included	Optional (84 months)
Insured vs Insured	Excluded	Not excluded ***
Pollution	Defence Costs only Sub-limit NZD 250,000	Not excluded * Full Limit of Indemnity
War, Terrorism and Nuclear Events	Excluded	Not excluded

* except for the USA and those territories under its jurisdiction
** except for claims relating to nuclear power generation
*** except for some USA claims

Note: The key policy differences have been summarised for your convenience. However, please remember that cover always remains subject to full policy terms and conditions.

How is it underwritten?

QBE's Directors Liability Policy is individually underwritten and can be tailored to meet the unique needs of your clients. When assessing the risk, our underwriters consider various factors such as the:

- experience of the directors;
- number and type of outside directorships;
- company's activities and current projects;
- company's financial condition;
- company's and directors' claims history.

What isn't covered?

Some key exclusions include claims relating to:

- bodily injury (except in relation to Health and Safety or corporate manslaughter);
- property damage;
- proven fraud;
- IPOs;
- alleged wrongful acts committed by directors of subsidiaries prior to their acquisition;
- prior or pending claims/circumstances;
- USA
  - pollution
  - fines, penalities, punitive or exemplary damages
  - certain legislation governing securities, racketeering or employee retirement scheme.

(Please refer to a copy of the policy wording for full details of exclusions, terms and conditions.)

Claims scenarios

Reckless trading

A manufacturing company supplying agricultural rubber products ran into financial trouble when the sector started to tighten its belt. The directors understood they were in a natural downturn and believed the market would soon pick up so they decided to trade their way out of trouble. The strategy failed and the company went into receivership leaving many creditors out of pocket. On behalf of creditors, the liquidators sued the directors for trading recklessly whilst insolvent. The directors were found guilty and, over a series of losses, the company's Directors Liability Policy paid out over NZD 12,000,000 plus substantial legal costs.

Misled investors

A group of high value investors claimed they had been misled by the Board into taking a substantial shareholding in a growth-focused software company. They alleged the directors had mispresented the state of the company's books and, in particular, had over-inflated new order figures. The case went to court and the judge ruled in favour of the investors. Damages amounted to over AUD 2,000,000 plus legal costs.

Fraud prosecution

Directors were investigated by the Serious Fraud Office and then prosecuted for the alleged fraudulent recording of sales which had not yet been achieved. (The inflation of reported profits would influence the directors' rewards.) The directors were eventually acquitted of all charges but the trial lasted over six (6) months and cost nearly NZD 5,000,000 to defend.

Shareholder claim

Two executives and fourteen board directors were sued by shareholders for paying 'over the odds' for the acquisition of a financially troubled Chinese company. The Chinese company suffered a significant write-down in value seven (7) months after being bought causing shareholders to allege that directors either knew that the financial situation didn't warrant the Chinese asking price or that they were negligent in failing to heed warning signs. Final value of the claim is yet to be determined but will be significant.

Commerce Commission investigation

Allegations were made against both directors and the company as part of an industry-wide price-fixing scandal. A formal investigation by the Commerce Commission followed and the directors were eventually acquitted – but not before they had incurred NZD 230,000 in legal representation expenses.

Breach of fiduciary duty

Directors were accused by company shareholders of breaching their fiduciary duties after they sold a subsidiary company without seeking higher bid offers elsewhere. Investors claimed in Court that the 'unfair process' was meant to discourage other potential buyers.

Non-executive director sues for libel

The finance director of a publicly-traded plastics manufacturer heard rumours about the improper behaviour of one of the company's non-executive directors. Believing the rumours to be true, he wrote a strong letter of complaint to the company Chairman. The non-executive director strongly denied the allegations and sued for libel. The company's Directors Liability Policy didn't contain an 'Insured vs Insured' exclusion and was therefore able to successfully defend the finance director. Defence costs came to NZD 93,000.

Confidential information

Three former directors of a company incurred substantial costs after they were fined by the Securities Commission for their respective roles in an aborted hostile take-over bid. Each director admitted that he had failed to act with due skill, care and diligence in their dealing with confidential information received in preparation of the hostile bid.

Continuous disclosure obligations

The Securities Commission launched civil proceedings against a company and its directors when they failed to meet NZX Listing Rules relating to continuous disclosure obligations following a breach of banking covenants. The total claim came to nearly NZD 1,200,000.

Health and Safety investigation

An HSE investigation into a workplace fatality turned into a full-blown public enquiry which the Operations Director was required to attend. His Directors Liability Policy funded his legal representation and enabled him to demonstrate that the fatality had not arisen out of any negligence or wrongful act on his part. Legal costs reached over NZD 168,000.

For more information contact your QBE underwriter.

The objective of this Product Briefing is to summarise the purpose of the product, the main market for which the product has been designed and key aspects of cover. For full details of cover, please refer to a copy of the policy wording.