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## WHO STANDS TO BENEFIT UNDER DIRECTORS' AND OFFICERS' LIABILITY INSURANCE?

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A company's articles of association delegate management of a company to its directors in order to take policy decisions on its behalf. Directors, who are collectively known as the board, also assume the role of agents and trustees in carrying out business and managing assets of a company, respectively. By virtue of these responsibilities, the board and other executive officers may be liable for any breach of authority committed to the company and its stakeholders, such as shareholders, creditors, debtors and even employees.

Directors can be classified into 2 types, namely executive and non-executive. Executive directors are full time employees of the company whereas non-executive directors are not. However, despite this difference, both are in a position of trust and have a duty of good faith to the company. Those of you who are Christians will concur with me by referring to the Bible, according to Paul's letter to the Corinthians, 1 Corinthians chapter 4 verse 2. Directors are not supposed to make personal secret profit, abuse the power endowed on them or breach any confidentiality. Any act conducted by a director that is illegal or outside the powers bestowed will make them liable to compensate the company.

Additionally, directors, who are usually people of high integrity and respect in our societies, are supposed to exercise a high degree of skill and care as they carry out the business of the company in view of their knowledge and experience. Any breach of this duty may lead to an action of damage to directors by third parties.

The responsibility of directors whose companies are listed on the stock exchange market is more onerous than the responsibility of directors of unlisted companies. Directors of listed companies have a duty to post the company's statutory returns, such as the profit and loss account at the end of each financial year. Failure to comply may land the directors with default fines or imprisonment.

No sane person would want to go to prison, let alone pay disciplinary fines. Minet has capacity to devise insurance packages to protect against such legal liabilities. As a company, you may purchase directors' and officers' liability insurance to hedge against the afore-mentioned mound of liabilities.



Directors' and officers' liability insurance provides cover for legal liabilities to pay damages and other costs incurred by directors and senior officers as they carry out the duties of a company. Insurance is provided on a claims-made basis; meaning damages must be made against a director or senior officer in the current policy period. This eliminates carrying forward losses from one policy year to another. New insurers are not prepared to pay claims that could or should have been paid by previous insurers.

For a claim to be admissible, it must arise from actions based on breach of duty, trust, contract, error, misleading statements or any other wrongful acts against an offending director or senior officer, acting on behalf of and for the benefit of the company. Sometimes insurers extend cover to also include civil liabilities.

Insurance cover for directors' and officers' liability is wide. The insured persons are usually past, present and future directors and officers of the company. Whereas the definition of a director is apparent, an officer is someone who manages affairs of a company. That is, individuals employed as general managers, chief executives, company secretaries and the like, are the ones the policy recognizes as officers and are therefore appropriately covered.

I have come across companies that incorrectly call filing clerks records officers. This designation is not covered under a standard directors' and officers' liability policy. The case in point is that the policy does not insure casual or auxiliary employees. Cover is for those individuals who report to shareholders and/or the board, including the board itself. If one makes overall decision in an organization and takes oneself as a shareholders' representative, one stands to benefit from the policy. Sadly, the majority of employees, who are mere decision implementers, are not covered under the directors' and officers' liability policy.

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