

## MARSH INSIGHTS:

# INSOLVENCY CLARION: PERSPECTIVES ON TOPICAL RISK AND INSURANCE ISSUES FOR INSOLVENCY PRACTITIONERS

**Insolvency practitioners operate in a fast-moving and pressurised environment and need their advisers to understand this. Here at Marsh, we adopt a more holistic approach to risk and see our role as advising you of all the issues that may affect your practice, not just with the traditional product-driven advice but using our experience and strength in depth to advise you on all risk-related issues.**

**To assist in this, we will be issuing regular bulletins covering items such as health and safety for your own employees and the use of contingent covers to assist in the sale of assets.**

**Should any of the articles be of interest, please don't hesitate to contact myself or your usual Marsh contact.**

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## BONDING — A PRACTICAL APPROACH

We have noted that some insurers and insurance brokers have increasingly struggled to provide insolvency bonds for smaller firms. Our strongly-held belief is that by adopting the approach of looking at each risk on its merits (rather than a one-size-fits-all, depending on the number of partners), most risks can be accommodated.

We will consider work profile, inspection reports, practice accounts, personal finances, as well as number of partners, and will consider you and your firm based on your own merits.

New clients have commented on how easy the change was and how refreshing to talk to people who understand their issues. Please contact us if you would like to discuss your bonding requirements.



### In this edition:

- Bonding — a practical approach.
- After the event insurance to aid recovery of money owed to an insolvent business.
- Insuring assets for the right amount.
- Attracting and retaining talent.
- What does a directors and officers liability insurance policy cover?

## AFTER THE EVENT (ATE) INSURANCE TO AID RECOVERY OF MONEY OWED TO AN INSOLVENT BUSINESS

As we suspected, the insolvency exemption from the Jackson reforms has continued and we hope no-one was panicked into premature litigation by some of the articles written.

Marsh can arrange ATE insurance to protect insolvency practitioners against the costs of commercial litigation such as this. Premiums can be deferred and will only be due if a case is successful. This insurance can therefore make it possible to pursue bad debts, recover money, and so improve the financial position of an insolvent business.

We are not tied to a small number of insurance providers for this type of cover, and can thus drive price competition to achieve the best result for you.



## INSURING ASSETS FOR THE RIGHT AMOUNT

You will be well aware that assets under your control could be damaged, which is why you regard an open-cover insurance facility as essential. However, how do you know how much cover you need and what the true reinstatement costs could be if a serious fire or other incident occurred? Inadequate and/or inaccurate figures can lead to either insufficient cover – and therefore claims that are not paid in full and assets that are devalued – or money wasted by insuring for a higher figure than you need to.

### HOW WE CAN HELP YOU

Marsh's valuation services can help you provide accurate financial data for insurance purposes, to preserve financial stability should the unexpected occur. Our consultants have extensive knowledge and experience in conducting business interruption and fixed asset replacement cost valuations for insurance purposes.

Regardless of the size of the organisation you are appointed to, or the industry it is in – from retail and manufacturing, to mining, oil, and gas – our valuation experts have the knowledge and experience to accurately determine the proper replacement cost value to insure your assets, with the necessary detail to satisfy insurers. We have developed a full range of property coverage valuation options to serve the varying needs of our clients. Our solutions include:

- A low cost, quick turnaround, high-level analysis that provides data from Marshall & Swift to support your own internal valuation estimates for buildings only. Turnaround time is typically one to a few days.
- A mid-level analysis that can be used as an opinion of value, which uses trend factors to provide an estimate of replacement cost. This approach makes use of the businesses' fixed asset ledgers or statement of values. The deliverable includes a replacement cost analysis and a written report supporting the replacement cost estimates.
- An in-depth, full-replacement cost analysis, including site visits to relevant locations. The deliverable includes a replacement cost analysis and a detailed written report supporting the replacement cost estimates.

## ATTRACTING AND RETAINING TOP TALENT

In your sector, the attraction and retention of top talent is a priority. More and more employers are turning to employee benefits to give their business the edge. Providing employee benefits as part of a remuneration package can make your business more appealing to prospective employees, and help you retain the talent you already have.

Elect — provided by our sister company Mercer — is designed specifically for companies like yours wishing to offer benefits to around 100 employees or less. Your employees can benefit from a range of packages, including:

- Pension schemes.
- Group life assurance.
- Private medical insurance.
- Critical illness.
- Group income protection.
- Cash plans.
- Dental.
- Travel.
- Employee health assessments.

As Mercer is a market-leading employee benefits consultancy, it can help you get access to competitive and beneficial solutions that are normally only available to larger companies.

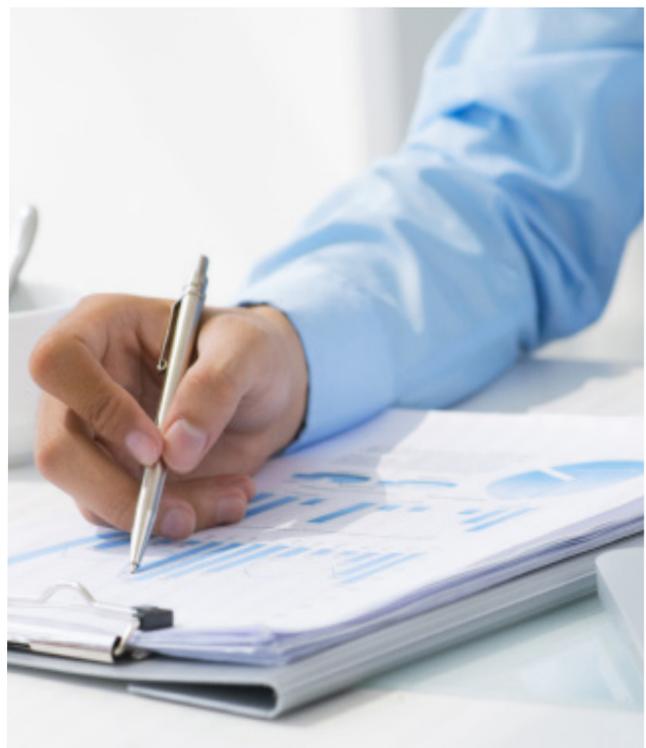
We will be pleased to introduce you to our colleagues at Mercer if you would like to discuss employee benefits.

## WHAT DOES A DIRECTORS AND OFFICERS LIABILITY POLICY COVER?

We find there is often confusion as to what directors and officers (D&O) insurance is. This article aims to explain it.

A directors and officers (D&O) liability insurance policy is designed to protect the personal financial assets of individuals against any legal liability they may incur in their capacity and by reason of their position as directors and/or officers of a corporate entity. There are traditionally two key sections of cover:

- Directors and officers liability (or Side A cover): This protects the directors or officers of the company against loss arising from claims made against them jointly or severally during the period of insurance because of any wrongful act committed by them in their capacity as a director or officer.
- Company reimbursement (or Side B cover): This protects the company where it has indemnified a director or officer as a result of claims made against any director or officer during the period of insurance because of any wrongful act committed by them in their capacity as a director or officer.



## DIRECTORS AND OFFICERS LIABILITY

*Continued from page three*

The definition of a “wrongful act” is typically very broad and includes any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission, breach of warranty of authority, or other acts committed by the directors or officers in their capacity as such. The policy provides cover for damages, as well as defence costs. Defence costs are ordinarily advanced by insurers as they are incurred.

### WHAT DOES IT NOT COVER?

A D&O policy will not cover all liability that a director and/or officer may face. Each insurance policy will need to be reviewed in full to assess the scope of cover. The main limitations are likely to include there being no cover for:

- Fraudulent or criminal acts.
- Professional liability (which may be covered under a professional indemnity insurance policy).
- Claims made prior to inception of the current policy (which may be covered under a prior policy).
- Illegal remuneration or profits.

Although liability arising from fraud/dishonesty and criminal acts is excluded (as a matter of public policy, even in the absence of an express policy exclusion), a policy will usually pay defence costs up until the point that the fraud/dishonesty or crime is proven (with a mechanism for insurers to recover defence costs if such a finding is made).

### HOW TO MAKE A CLAIM

Whether or not a claim (or potential claim) against a director and/or officer falls within the scope of the insurance cover is not the only issue that needs to be considered. It is also important to ensure that appropriate notification has been made to insurers, as ineffective notification (or failure to notify at all) can result in an otherwise valid claim being denied.

D&O policies are almost always written on a “claims made” basis. As the name suggests, the policy that responds is the one in force at the point in time that a claim is made against the director and/or officer. It may be possible (and sometimes mandatory) to notify circumstances that might give rise to a claim. In that event, any later claims arising out of such circumstances are “deemed made” against the director and/or officer at the time the circumstances were first notified.

### Contact Marsh

For help or more information regarding any of the topics profiled in this publication, please contact your usual Marsh representative or email:

[insolvency@marsh.com](mailto:insolvency@marsh.com)

The information contained herein is based on sources we believe reliable and should be understood to be general risk management and insurance information only. The information is not intended to be taken as advice with respect to any individual situation and cannot be relied upon as such.

Statements concerning legal, tax or accounting matters should be understood to be general observations based solely on our experience as insurance brokers and risk consultants and should not be relied upon as legal, tax or accounting advice, which we are not authorised to provide.

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