Covernotes

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Time to direct yourself to D&O Insurance?

Heading up a company is not easy. Directors are governed by a plethora of laws and regulations threatening financial exposure and personal sanctions should any breach occur. It may not even be a result of their personal negligence. They may just have been unaware what others under their control and jurisdiction were doing.

New legislation is on the horizon, to add to the corporate manslaughter, food safety and hygiene legislation that can already fine directors, or mete out a prison sentence as a result of penalty increases in 2016. Those at the helm of their businesses need insurance protection more than ever before.

Currently, the highest-profile impending legislation is undoubtedly GDPR (General Data Protection Regulation), set to be introduced in May 2018 and capable of quickly catching out negligent directors. This alone is a good example of why D&O (Directors and Officers) insurance is essential, to be protected when claims need defending and to have expert help, plus financial backing in presenting a defence.

But the risks do not begin and end with GDPR. Claims can be brought against a company director or officer by a number of different stakeholders, under the terms of the Companies Act 2006 – something it pays to study.

Whilst employees can make a claim against a company under the Employment Rights Act and Equality Act, they can also bring a case against an individual director or directors, if their grievance relates to harassment or discrimination.

Two pieces of recent legislation – the Modern Slavery Act 2015 and the Criminal Finances Act 2017 – can also land an individual director in hot water. Even if they have done nothing to infringe laws relating to modern slavery, money laundering, tax evasion or corruption, they can be deemed culpable for failing to prevent the illegal actions of an employee.

Creditors are another group who can force a legal case against a company's directors, if a company becomes insolvent and they believe wrongful trading has occurred.

Then there are the regulators, such as HMRC and the HSE. They have the power to examine the actions of directors in depth. Any regulatory investigation they instigate is usually a long-drawn-out, complicated affair that can quickly eat up both financial and manpower resources.

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Social media has heightened the potential for defamation claims being brought against company directors. Additionally, those operating in sectors such as construction could fall foul of the Environment Act 1995 and the Wildlife & Countryside Act 1981.

Despite the multitude of scenarios that could present issues, and the fact that defending claims can cost thousands of pounds even if a director is found 'not guilty' of negligence, illegal activity or an employment breach, many directors continue to head to work each day with no protection in place. Industry surveys suggest three-quarters of company directors have no D&O insurance, even though a 2017 survey revealed that 36% of UK respondents working in the financial services sector said there had been a claim or investigation involving their directors or officers.

Sometimes, directors mistakenly believe their company's liability insurance policies provide protection. Others do not realise they could be held personally liable for a misdemeanour or crime and lose personal assets if found guilty. Some rely on the company being able to indemnify them when in many cases it cannot.

D&O insurance is surprisingly inexpensive, despite the variety and breadth of legislation it covers. With GDPR on the horizon, creating yet further regulation for directors to comply with, this is an area of protection to consider sooner rather than later. To discuss your D&O insurance requirements, please contact us.

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Take charge of your online reputation

More than half of British businesses suffer unfair negative reviews, according to research by online reputation management expert Igniyte, but 40% of SMEs never bother to check whether any damaging reviews about their business have been posted online.

These worrying figures suggest many of today's SMEs, lacking an in-house IT or marketing department that can monitor how they are perceived online, are running their businesses blindfolded. This is despite 89% of people saying online reviews influence their buying decisions and 77% of SMEs stating that a good online reputation is important for business.

Whilst most SMEs fully understand the value of word-of-mouth recommendations in the offline world, they make no attempt to counteract negative reviews in cyberspace, by creating positive online PR.

This area of risk management – online reputation management (ORM) - is new to most SMEs and, even if they know about it, it is probably something on their to-do list that they will not have had time to explore.

Busy businesses find it hard to stay abreast of negative customer reviews on sites such as TripAdvisor and TrustATrader. They can also be oblivious to vocal and frank comments posted by former employees who use recruitment-focused websites like Glassdoor. However, there are ways to tackle this issue and reduce the influence of potentially damaging opinions and ratings.

As the online world grows in importance and continues to inform purchase decisions, there are a number of tools available, to assess the business risks you could face because of your online profile, that we as your broker can access. Using the outputs from such tools will better inform and help you consider remedial steps to put in place.

The cyberworld is full of new challenges and opportunities. We are here to help our clients face them. Online reputation management is a key area of business risk management that should not be overlooked. If you would like to discuss your options, please contact us.

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Brokers v tick-boxes: The playing field will level

The reasons why clients prefer to use a professional insurance broker, rather than price comparison and aggregator websites, are likely to be reinforced by the end of 2018, as regulators seek to create a more level playing field when it comes to professional standards.

For some years now, there have been concerns about the way in which insurance is bought online, with customers having to work their way through a series of tick-boxes that sometimes do not exactly fit their individual requirements. Such a process may also encourage the busy purchaser to click on what looks like the best option, simply because they do not really know how to answer a question.

Price comparison sites tend to rank results purely on the basis of price competitiveness, rather than considering whether or not a policy is right for the individual customer and their needs. Consequently, it has been difficult for the customer to easily compare product quality.

Additionally, customers using these sites have not always understood how comparison websites earn their money, with some thinking this is through advertising, others believing it is via click-throughs to provider websites and some stating it is via commission payments.

However, change is on the way in 2018. The new Insurance Distribution Directive, due to come into force in October 2018, is set to enhance consumer protection within the insurance-buying process. Firstly, it will require all personnel involved in insurance sales to undergo at least 15 hours of continuous professional development each year.

Secondly, anyone selling insurance will have to disclose the obligations of the contract, supply in-depth information about the risks insured and make it clear who pays for their service and how that payment is taken.

Experts believe such requirements will make it more complex and costly for direct insurers and price comparison sites to sell insurance, whereas brokers have been used to guiding customers through this process for many years. Deloitte says online insurance providers will have to ensure that the customer journey through their site, and the underlying algorithms used, adhere to these new legal requirements. This will not be an easy process.

This legislation has been described as a "levelling of the playing field". But whatever it is called, there has probably never been a better time to place your trust in your broker and to be guided through the options most suitable for your needs, rather than trying to guess what they are.

For a full risk assessment of your needs, please get in touch to find out how we can protect your business and ensure you have the right cover in place.

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The silver lining of the 'Ogden rate' cloud

The ramifications of Spring 2017's 'Ogden Rate' changes are being felt across the personal-injury-prevalent motor and higher-risk trades, but is this anything to worry about and what can be done to lessen the pain?

The Ogden rate is a calculation applied to lump sum payments awarded to those who suffer injuries, the impacts of medical negligence, car crashes and other incidents, as well as to the payments that the families of those killed in such cases might receive.

Once a lump sum payment is agreed, it is adjusted to take into account the interest a recipient could accrue by investing the sum. After years of low interest rates, the Chancellor cut the Ogden rate from 2.5% to -0.75% in March 2017, creating a situation in which insurers have had to put more money aside to pay both past and future victims.

At the 2.5% rate, interest on a £1000 sum invested would have been £24.39, requiring the insurer to only pay £975.61 per £1000, to make up the agreed settlement sum due. At the -0.75% rate, the insurer now has to pay £1007.56 per £1000 awarded to the claimant, to give them the financial support the personal injury award was intended to provide. Thus requiring an extra £31.95 per £1000 awarded the insurer has to now set aside for settlements. On a £300,000 award this equates to an extra £9,585.00; on a £5million award the extra is £159,750!

The sectors most affected by the Ogden rate change have been the motor industry, from haulage to passenger transport and private motor to motor trade, plus other high-risk sectors such as construction. Many insurance policies involving liability, whether that is employers' liability or public and product liability, have faced premium increases.

Young drivers are already paying around £1000 a year more for their insurance as a direct result of the Ogden rate change, and over-65s can expect to pay £300 a year more for their insurance. Other private motorists could see increases of £50-£75 a year.

The increases affecting motor fleets are unprecedented and proving a huge shock to fleet operators, many of whom are having to absorb increases of 25% or more.

With recent increases in Insurance Premium Tax having already inflated the cost of insurance for policyholders, fleet operators should consider other positive courses of action that will help them improve how their businesses are viewed by insurers. This means working with their broker to identify areas of risk management for improvement, to help keep claims costs to a minimum. Such positive actions, coupled with a proactive risk management policy in force, will be more attractive to insurers, who should in turn recognise these efforts to mitigate risk by the company and when offering future renewal premiums.

This requires an holistic approach to fleet management, encompassing better health and safety performance, strong fleet management, driver training, the fitting of telematics and cameras, and the efficient management of claims when they do arise.

Such an approach, and a commitment to working with your professional broker on a long-term basis, will assist those wishing to keep their insurance premiums in check.

If you fear what the Ogden Rate's impacts could be on your business, please get in touch and allow us to help you create a programme to ultimately transform your claims experience and make you a more attractive risk in the eyes of insurers. By working with your broker, you can make your business a stronger, lower-risk proposition in the longer-term, proving that every cloud can have a silver lining.

Carillion, the bad-debt domino effect, and how to avoid it

Another construction firm has gone bust, but this time it has attracted more attention than usual. Carillion's suppliers are said to be owed a hefty £2 billion. This will have a knock-on effect for tens of thousands of businesses.

The small firms that handled most of Carillion's work will sadly be those most affected by its demise. Many will never get their payment, damaging a supply chain that is already under immense pressure.

Too often, the smaller businesses who supply behemoths like Carillion are the ones left to pick up the pieces, after the management and secured creditors have taken their slice of the pie.

In Carillion's case, the Financial Reporting Council (FRC) says it is investigating KPMG's audit of the company's financial statements, ahead of its collapse. This raises issues of trust. If we cannot trust the auditor's account of a company's performance and financial health, what can we rely on? Already, Capita is slashing its profit forecasts and Laing O'Rourke is reportedly asking suppliers for a further grace period on its outstanding debts announcing a loss of £67million this year.

The publication Construction News found that last year Britain's ten largest builders made a combined pre-tax loss of £53 million; the average pre-tax profit margin was -0.5%.

Construction is a critically low-margin industry in which receivables can represent the largest unsecured asset.

Subcontractors are particularly at risk as main contractors falter. An observation of the supply chains involved within construction contracts highlights a significant increase in insolvencies across the industry over the last 12 months. But this situation can affect any sector. Maplin and Toys "R" Us are two high street names that have suffered this fate. Retailer New Look and of course restaurateur Jamie Oliver have also had to go through drastic re-structures to remain viable.

Helpfully, there is a means of protection available to a very wide range of businesses - Trade Credit Insurance. This provides peace of mind, along with comprehensive protection against the risk of customers becoming insolvent. Having this in place can enhance customer relationships, lead to improved access to finance for the policyholder, and boost confidence in pursuing commercial opportunities.

As a Trade Credit Insurance policyholder, you would also have access to skilled risk analysts who have sector-specific knowledge that could prove an invaluable addition to your existing credit management processes. There is also access to up-to-date credit information, from both within the UK and overseas.

With the domino-effect of Carillion's collapse likely to continue for a while to come and the talk of darker clouds on the High Street, perhaps now is the time to speak to us about the benefits of Trade Credit insurance protection and how it can help your particular circumstance?

Don't wing it!

Tut, tut. What would Colonel Sanders say? A chicken shop running out of chicken and one of the best-known brands in the world now facing reputational damage and ridicule.

Picking through the bones of the sad story of KFC, which has left customers hungry, angry and even ringing police stations for help, after swapping distributor Bidvest for DHL, one thing is clear: Supply chain insurance is a must for any business reliant on others supplying products, components or anything else essential for the smooth running of their business operations. However, according to international law firm Clyde & Co, half of at-risk businesses have no such cover.

Business interruption protection often fails to address the needs of businesses within a supply chain, which really require specialist and tailored supply chain cover from a broker. Stay unprotected and reputational damage and lost sales could mean you've had your chips!

Contact us now to discuss Business Interruption cover, as our advice never runs out!

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