

Technical Specifications: Directors & Officers Liability Insurance

The need for company executives to have leading coverage has never been greater.

The rise in shareholder activism, environmental, social and governance pressures, cybersecurity exposures, strict corporate governance compliance requirements and regulatory scrutiny and intervention have all contributed to an increasingly challenging environment for the executives of public and private companies. The globalisation of business, coupled with geopolitical tensions, also exposes directors and officers to a range of evolving overseas risks.

The Liberty Specialty Markets (Liberty) 02-22 Directors & Officers Liability (D&O) policy wording is designed to respond to these challenges, with numerous enhancements providing broad protection.

The Liberty Advantage

- ▶ Liberty's 02-22 D&O policy wording offers a level of cover that directors and officers need in this increasingly hostile business environment.
- ▶ The ability to offer limits up to US\$50 million makes Liberty an attractive lead insurer for large publicly listed and private companies.
- ▶ Our multinational footprint facilitates the placement of D&O policies throughout the world.
- ▶ Our claims specialists have substantial experience with large complex claims, including multinational litigation.
- ▶ Our experienced underwriters have significant local authority to tailor the policy to suit insured's needs. In practical terms, this means no waiting for overseas approval.
- ▶ Backed by our parent company, Liberty Mutual Group – a Fortune 100 company – Liberty has the financial strength and experience to proactively manage claims.
- ▶ Liberty has a proven history of stability throughout volatile market conditions.

Defence Select – providing freedom of choice to insureds

Liberty's 02-22 D&O policy wording offers two options in relation to the appointment of legal representation, in the event of a claim. The insured is required to select one of these options prior to policy inception.

If the insured chooses not to take up “Defence Select”, this will be marked as “Not Included” in the policy schedule and the policy will provide access to a selection of panel law firms comprised of experienced defence lawyers with whom Liberty has pre-agreed discounted rates. As legal costs form part of the limit of liability, lower legal costs means more limit available for indemnity. Liberty’s current panel law firms can be found at <https://lmi.co/dopanellawfirms>. In the event that a claim is brought in a jurisdiction in which Liberty does not have a panel law firm, or if a material conflict of interest exists between insureds, a non-panel law firm may be appointed, at their market rates, to conduct the defence and settlement of a covered claim.

Liberty acknowledges that insureds may have a partnership with, or preference to retain, a non-panel law firm and has therefore introduced the “Defence Select” option to allow the insured freedom of choice. If the insured chooses to take up “Defence Select”, this will be marked as “Included” in the policy schedule and the insured will have the right to appoint any law firm of its choice, at their market rates, to conduct the defence and settlement of a covered claim.

What cover is offered under the 02-22 D&O policy?

- ▶ **Defence Costs Paid in Advance** – prior to final resolution of a valid claim.
- ▶ **Self-Report, Raid, and Inquiry Costs & Expenses Paid in Advance** – costs and expenses associated with a self-report, raid, internal inquiry or inquiry (including industry wide inquiries and without requiring an allegation of a wrongful act against the insured) and paid prior to final resolution of a self-report, raid, internal inquiry or inquiry.
- ▶ **Company Securities Liability** – this insuring clause provides cover for the company for its acts, errors or omissions in connection with the ownership, purchase or sale of, or the offer to purchase or sell, securities in the company.
- ▶ **Directors Additional Limit of Liability** – if the limit of liability is exhausted, this extension provides an additional limit of liability for each director, up to the Additional Limit specified in the policy schedule in the aggregate for all directors.
- ▶ **Continuous Cover** – this extension allows the insured to late notify facts under a previous policy issued by Liberty, if such facts could have been notified under the previous Liberty policy, however, the insured failed to make such notification.
- ▶ **Backdated Continuous Cover (Optional)** – this optional extension, if included, provides indemnity for any claim that arises from facts that the insured first became aware of after the Backdated Continuity Date specified in the policy schedule, if such facts could have been notified under a previous policy not issued or co-insured by Liberty and had not been notified under the previous insurer’s policy. Liberty will indemnify the insured in respect of any such claim in accordance with the terms and conditions of the previous insurer’s policy, provided that such policy does not provide broader cover than the Liberty policy.
- ▶ **Fines & Penalties** – this extension provides cover for fines and pecuniary penalties imposed by law as a direct result of a claim or inquiry, which an insured person is required to pay, provided that the fines and pecuniary penalties are insurable under applicable laws.
- ▶ **Lifetime Cover for Former Insured Persons** – in the event of a change in control and/or if the policy is not renewed or replaced, this extension provides an indefinite extended reporting period to former insured persons who have retired or resigned during the policy period.
- ▶ **Outside Directorships** – this extension provides cover for an insured person acting in the capacity of a director, officer, trustee, governor, board advisor, board observer or equivalent of an outside entity at the request of, or with the formal consent of, the named insured or a subsidiary.
- ▶ **Personal Taxation & Superannuation Liability** – this extension provides cover for any unpaid taxes or superannuation contributions of the company that an insured person becomes personally liable to pay as a result of a claim arising from the insolvency, receivership or external administration of the company.

- ▶ **Public Relations Expenses & Reputation Protection Expenses** – these separate extensions provide cover for costs and expenses incurred by an insured person in engaging a public relations firm or consultant to protect an insured person’s reputation as a result of negative publicity arising from a wrongful act which has or could reasonably lead to a claim, self-report, raid, internal inquiry or inquiry or to disseminate the findings of a final adjudication in favour of an insured person arising from a claim, self-report, raid, internal inquiry or inquiry.
- ▶ **Shareholder Derivative Investigation Costs** – this extension provides cover for costs and expenses incurred by the company in determining its response to a shareholder derivative demand or shareholder derivative suit.
- ▶ **Company Employment Practices Liability (Optional)** – this optional extension, if included, provides cover for the company in respect of claims alleging an employment practice breach.

Other Extensions include:

- ▶ Asset & Liberty Expenses
- ▶ Bail Bond & Civil Bond Expenses
- ▶ Change in Control – Run Off Cover
- ▶ Cost of Living Expenses
- ▶ Court Attendance Costs
- ▶ Emergency Expenses
- ▶ Extended Reporting Period
- ▶ Extradition Costs
- ▶ New Subsidiaries
- ▶ Occupational Health & Safety Costs

Other Conditions & Definitions

- ▶ **United States of America: Company versus Insured Person** – this exclusion excludes cover for claims brought by or on behalf of the company against an insured person only within the USA, its territories or protectorates or to the extent that the laws of the USA or its territories or protectorates, apply. Furthermore, cover is written back for claims for contribution or indemnity, shareholder derivative suits, claims alleging an employment wrongful act and defence costs.
- ▶ **Notification of Claims, Self-Reports, Raids & Inquiries** – this claims condition provides that if an insured is legally prohibited from making a notification, this does not give rise to late notification, provided that the insured makes such notification to Liberty within 30 days of being legally able to do so.
- ▶ **Allocation Clause** – this claims condition specifies the basis for allocation of partially covered matters or insureds and clarifies that, where defence costs also benefit a matter which is not covered or a non-insured party, Liberty will pay all common defence costs. If agreement cannot be reached on the allocation of the proportion of a claim, Liberty will pay for a senior counsel to determine a fair and reasonable allocation and these costs will not form part of the limit of liability.
- ▶ **Severability, Non Avoidance & Non Imputation** – this general condition offers protection to innocent insureds, in the event of another insured’s non-disclosure or misrepresentation.
- ▶ **Preservation of Right to Indemnity** – this general condition provides that, if the company is legally required or permitted to indemnify an insured person but fails or refuses to do so, then Liberty will pay for the loss or other amounts insured under the policy on behalf of the insured person.

- ▶ **Subrogation** – this general condition provides that, if Liberty recovers amounts pursuant to its rights of subrogation, which exceed the costs incurred by Liberty in the recovery action, such amounts will be repaid by Liberty to replenish the limit of liability.

Responsive and integrated claims management

Liberty's claims team takes a pragmatic, commercial approach to claims resolution.

Our claims team acts decisively and looks for ways to pay claims fairly and dependably. We work together as one team to build long-term relationships with our brokers and clients, making excellent customer service a priority.

Global reach. Financial strength. Local authority.

Distinct, complex and constantly evolving – every business is as unique as their insurance needs.

To confidently progress in the face of risk and uncertainty requires a level of security you can only achieve through working with specialists.

Liberty Specialty Markets offers a breadth of world-class insurance and reinsurance services to brokers and insured clients. We bring value and solutions to more than 25,000 of Asia Pacific's most significant business and government organisations – helping protect what they earn, build and own.

We're part of the global Liberty Mutual Group, a Fortune 100 company that's been in business since 1912 with a Standard & Poor's 'A' (strong) rating.

 [View our office locations](#)

 [Meet our Directors & Officers team members](#)



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