



ACE Bermuda International

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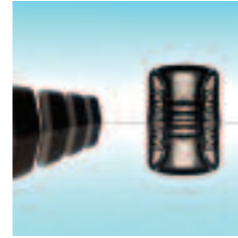
The information contained in this document is intended to provide only a general description of the CODA product. For terms and conditions of coverage, please refer to the specific policy wording.

This document is neither an offer nor a solicitation of insurance or reinsurance products.



CODA

*Personal asset protection for Directors and Officers
of UK Companies - now available in the UK*



The litigation environment is rapidly changing in the United Kingdom, with directors and officers increasingly held liable under the law for a wide range of actions, increasing their personal liability to claims and awards.

Against this background of increased litigation and legislative changes, directors and senior executives more than ever need to be certain that they have the maximum personal financial protection in order to be able to fund lengthy legal disputes or potentially catastrophic settlements.



Introduction

The litigation environment is rapidly changing in the United Kingdom, with directors and officers increasingly held liable under the law for a wide range of actions, increasing their personal liability to claims and awards. In particular:

- The implementation of the Companies Act, 2006 will codify for the first time the duties of directors and introduce a formal procedure to allow shareholders to bring derivative lawsuits against boards of directors;
- Aggressive and highly successful US plaintiffs' lawyers are actively pursuing clients in the UK;
- Directors and officers of UK companies are becoming targets of criminal proceedings in other countries;
- US courts continue to apply US securities laws to foreign individuals involved in the sale of securities in the US; and
- There has been a marked increase in regulatory and criminal proceedings.

Against this background of increased litigation and legislative changes, directors and senior executives more than ever need to be certain that they have the maximum personal financial protection in order to be able to fund lengthy legal disputes or potentially catastrophic settlements. This protection can be achieved by:

- Ensuring that a company's articles provide for the maximum indemnification protection allowed by law;
- Seeking a deed of indemnity or other contractual protection in service agreements with their company; and
- Maintaining the broadest insurance protection available.

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ACE Bermuda International now offers a specially designed UK insurance policy which maximises the personal protection of directors and officers when their company is unable or unwilling to indemnify them. This policy is tailored after the industry leading CODA policy offered by ACE Bermuda and offers very wide personal asset protection to directors and officers at the time when they need it the most.

Traditional D & O liability insurance, which is purchased by most companies, generally covers claims against directors and officers under two parts. The first part covers the *personal liability* of directors and officers for loss not indemnified by the company (Side A coverage). The second part covers the *company's indemnification* of directors and officers (Side B coverage). The Side A coverage for loss not indemnified by the company is the most important to directors and officers since that is the coverage that protects their personal assets.

For a variety of reasons, a company may be legally prohibited from indemnifying or financially unable to indemnify its directors and officers, or may wrongfully fail to grant such indemnification. In those instances, the director or officer will be forced to personally pay any defence costs, settlements or judgements in any claim against him unless Side A coverage responds.



CODA Side A Policy

The CODA policy affords only Side A coverage and is solely dedicated to paying loss which is not indemnified by the company for any reason. There are a number of unique advantages to the CODA policy, including:

A. Broader Coverage

CODA can afford much broader coverage than is available under a Side B policy. CODA's standard UK policy provides some of the broadest coverage terms available, including the following features:

- Policy may not be rescinded or avoided, in whole or in part, for any reason;
- No presumptive indemnification (coverage applies without any deductible if the company rightly or wrongfully refuses, or is financially unable, to indemnify);
- Broad definition of "Loss" (expressly includes exemplary, punitive and multiple damages);

Claims Scenario:

A company collapses with little warning. The serious fraud office brings a criminal prosecution for fraud against certain ex directors. The directors have indemnification agreements but they are useless in view of the company's insolvency. CODA provides coverage over and above the underlying insurers, but is prepared to "drop down" and advance defence costs in the event that those underlying insurers rescind their policies or fail to respond following the liquidator's insistence that the underlying limits be preserved for other, reimbursable claims being made against the current board. The CODA policy ensures that those ex directors have adequate resources to successfully defend the allegations and clear their names.

- Narrow illegal remuneration/dishonesty exclusions:
 - not applicable to Defence Costs;
 - applies only if illegal remuneration/dishonesty established;
 - does not apply to individuals who have not been found guilty of such behaviour;
- Narrow "insured v. insured" exclusion:
 - not applicable to independently prosecuted shareholder derivative claims;
 - not applicable to Claims outside US or Canada;
 - not applicable after Parent Company has change of ownership or becomes insolvent;
 - not applicable to Defence Costs;
 - not applicable following a change in the composition of the board;
 - not applicable to advances by the Company in accordance with sections 309B(4) and 337A(4) of the UK Companies Act 1985.

Claims Scenario:

A derivative claim is brought by a shareholder of a UK company, under new provisions contained in the Companies Act 2006, against the directors. The underlying policies contain a professional services exclusion and refuse to advance defence costs. The company indemnifies the directors but they are found liable at trial and are obliged to refund the advanced costs and are liable to the company for £6m in damages. The CODA policy fills the gap in coverage and indemnifies the directors for all sums they must pay to the company.

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- Narrow "bodily injury/property damage" exclusion:
 - not applicable to pollution claims excess of the company's general liability (or similar) programme;
 - not applicable to claims by security holders;
 - not applicable to claims against directors excess of the company's general liability or similar insurance;
 - not applicable to emotional distress or mental anguish;
- Insurer approval for law firm or counsel to defend claim not required;
- Insurer can only cancel for non-payment of premium;
- Seamless coverage - if standard exclusions contained in the CODA policy are found to be more restrictive than those in the immediate underlying policy then they are automatically amended in order to ensure that seamless coverage is provided over and above such underlying cover;
- Recoveries by way of subrogation automatically allow for reinstatement of policy limit;

Claims Scenario:

A tragic accident at an industrial plant results in widespread pollution throughout the country, contaminating both farmland and waterways as it gets into the foodchain. Directors face multiple claims from shareholders, regulators, landowners and consumers; with the exception of shareholder lawsuits, the underlying insurers decline to provide coverage on the basis of an environmental exclusion. The company, facing huge financial problems, claims to be unable to provide indemnification to its now ex directors and there is no other insurance available. CODA provides coverage for the shareholder lawsuits on an excess basis, but drops down in order to provide primary coverage for both defence costs and any ultimate liability arising out of the other claims.

- No denial of coverage in the event of late notice, providing the Insurer's interests aren't materially prejudiced;
- Broad coverage available (with a sub-limit) for extradition costs, by way of endorsement;
- Cover for pollution claims, over and above the company's general liability (or similar) programme.

B. No Limit of Liability Dilution

The limits of liability under the CODA policy apply only to non-indemnified loss incurred by directors and officers. In contrast, the limits of liability under a traditional D&O insurance policy also apply to loss indemnified and in some cases directly incurred by the company. Directors and officers can lose their personal protection under a traditional D&O insurance policy if the company has to meet significant covered losses. That risk does not exist under the CODA policy.

Claims Scenario:

A UK public company and its directors are the subject of a securities claim by ADR holders in the US. The SEC indicates that it may take steps against the company if it honours indemnification agreements. In the circumstances, the company does not indemnify. The directors are covered by the underlying D&O insurance but because of the size of the claim and the fact that the company itself is also covered under a securities entity extension attached to the policy, the underlying policies are liable to become exhausted. CODA's excess provisions then apply and coverage for costs and the eventual settlement is provided by CODA to the directors after the underlying policies have been exhausted.



ACE Limited has an S&P rating of A+ and ACE Bermuda International has an A.M. Best rating of A+. As a part of our underwriting process we examine carefully the quality of the security offered by underlying insurers and would strongly recommend that clients do likewise.

C. Drop Down Coverage

The CODA policy sits in excess of a company's traditional D&O insurance policies. However, CODA will drop down and fill gaps in coverage in the underlying policies to the extent that CODA affords broader or better coverage than the underlying policies. This "drop down" coverage applies if:

- The underlying policy does not cover a claim or wrongfully refuses to respond to a covered claim;
- The underlying insurer is financially unable or prohibited by law to pay loss of the directors and officers; or
- The underlying policy is rescinded or avoided.

Where CODA drops down and becomes primary insurance, no deductible applies.

Claims Scenario:

A company's primary insurer goes into insolvent liquidation following notification of a claim by the directors of a group company overseas. Whilst the main board of the holding company in the UK have indemnification agreements the directors of the relevant subsidiary do not because of local restrictions on indemnification. The CODA policy "drops down" to indemnify those directors.



How can I find out more?

In the first instance we would encourage you to discuss any questions that you have with your broker. If you need to contact us directly, then please feel free to do so at our Dublin or London address shown at the back of this brochure.

In particular, you may be interested in:

- Seminars - our regular seminars examine in detail the practical implications of the variations in language and wordings used in primary D & O policies.
- Audits and Workshops - our specialist underwriters, together with an independent law firm are available to provide a review of existing D & O programmes. A fee is charged for this service, which is designed for those clients particularly interested in a detailed examination of their current cover.



About ACE

The ACE Group of companies is a global leader in insurance and reinsurance serving a diverse group of clients. Headed by ACE Limited (NYSE: ACE), a component of the Standard and Poor's 500 stock index, the ACE Group conducts its business on a worldwide basis with operating subsidiaries in more than 50 countries. ACE Bermuda Insurance Ltd. (ACE Bermuda) is a Bermuda-based subsidiary of ACE Limited and offers insurance products and services through Bermuda and non-US based intermediaries.

About ACE Bermuda International

ACE Bermuda International, formally known as ACE European Markets is a subsidiary of ACE Bermuda. It started operations in 1997 providing low-frequency, high-severity excess capacity to European and international clients, following the underwriting discipline and guidelines developed by ACE Bermuda for US clients. ACE Bermuda International predominantly writes Excess Liability, Property and Professional Lines business through its headquarters in Dublin and branch office in London. The Professional Lines department operates principally out of the London branch, where CODA submissions can be handled from a wide range of Lloyd's and non-Lloyd's brokers.

About CODA

Corporate Officers & Directors Assurance Ltd. (CODA) was formed in 1986 by its policyholders who elected ACE Bermuda as its manager. ACE Bermuda acquired CODA in 1993.

CODA is designed to give comprehensive financial protection to directors and officers when their company fails to indemnify them or when traditional insurance programmes fail to respond. CODA is offered by ACE Bermuda to the directors and officers of a broad range of US based corporations, and is widely recognised as the premier provider of excess/difference-in-conditions insurance in the US marketplace. Our latest CODA product is designed specifically for the UK market and has been developed by ACE Bermuda International in collaboration with CODA underwriters at ACE Bermuda.