

Insurance & Reinsurance

SEGUROS & RESSEGUROS

February, 2014 | Year 2 nº 2

Article 1. Adopt the provisions of this circular, which establish general guidelines for liability insurance for directors and officers of companies (D & O liability insurance).

Article 2. After the publication of this circular, insurance companies wishing to begin providing [RC] D & O liability insurance must submit their specific insurance plan to SUSEP for analysis and filing purposes, the contractual conditions and the respective technical actuarial certificate note of which must comply with the present provisions and with applicable legislation.

Article 3. Sets various definitions applicable to claims-made policies in general and to D & O liability insurance in particular.

A Claim is defined as: the generic designation given to notifications (legal or extralegal) communicating the institution of formal administrative proceedings, civil action and / or criminal action against an insured, claiming compensation (monetary or otherwise) and / or his civil liability and / or criminal, through an act allegedly harmful, when practiced by him in the exercise of his functions in the policyholder. The notification of the initiation of arbitration procedures aimed at evaluating acts committed by the insured in the exercise of their functions are also considered claims.

An Insured is defined as: the individuals for whose benefit a company hires insurance where such persons, during the period of insurance, and / or during the period retroactivity, serve, begin to serve, or have served as:

a) An Officer or Director or Advisor, or any other executive position, for which they have been elected and / or appointed, under the condition that, if

legally required, the election and / or appointment has been ratified by competent bodies;

b) Management position for which they were hired, if the company is jointly liable in relation to acts and decisions committed by such persons in the exercise of their functions;

An Insured may also be, if extension of coverage is purchased: the individuals who would not normally be, but that due to the extension of coverage of the insurance have become an insured, such as:

a) Individuals who hold, start to occupy, or have occupied the positions described in the preceding definition, for the periods indicated, in the subsidiaries and / or affiliates of the company;

b) Individuals who, by virtue of legal provisions, occupy, start to occupy, or have held, for the periods indicated, management positions in the company, and / or its subsidiaries and / or its affiliates, such as auditors, trustees, liquidators and / or stakeholders, among others;

c) Individuals employed by the company or its subsidiaries, or its affiliates, or the insured, to give advice to the latter, of any kind, such as lawyers, consultants, accountants, private secretaries, technicians, among others.]

Article 4. D & O liability insurance is a type of liability insurance taken out by a company (policyholder) to benefit individuals who perform, at the company and/or its subsidiaries and or affiliates, and/or begin to perform, and/or have performed, executive positions, as a result of their appointment, election or employment contract (insured).

§ 1 D & O liability insurance policy must be contracted on a claims made basis.

§ 2 The provisions of applicable rules and regulations regulating claims-based policies shall apply, except as follows:

I – the possibility of changing the policy to an occurrence-based policy

II – any that conflict with provisions of this circular.

Article 5. In D & O liability insurance, the insurance company covers its policyholders, when held liable for damages caused to third parties as a result of fraudulent or negligent unlawful negligent [culposos] acts, committed while performing the positions to which they were appointed, elected and/or hired, for reimbursement of indemnification that they are required to pay, by way of compensation, pursuant to a final court judgment, or as a result of arbitration, or by agreement with the injured third parties with the consent of the insurance company.

§ 1 The cover is conditional on full compliance with all of the provisions of the contract, in particular those governing claims-based policies, as regards the dates of occurrence of the damage and the dates for submission of claims.

§ 2 Instead of reimbursing the policyholder, the insurer may:

I – offer the possibility of direct payments to the injured third parties;

II – reimburse the policyholder if the latter has paid monies corresponding to the indemnification covered by this insurance on behalf of the insured.

§ 3 The cover does not cover defense costs and attorneys' fees of the insured, unless additional coverage therefor is specifically contracted.

§ 4. Cover shall be provided up to the maximum limit of indemnity (LMI) contracted by the policyholder for each cover, which is collectively applicable to all insured, while respecting the respective aggregate limits (LA), and, when appropriate, the maximum insurance coverage provided by the policy (LMG).

§ 5. Insurance companies may not act concurrently as policyholder and insurer for D & O

liability insurance that insures their own executives, and/or those of their subsidiaries and/or affiliates.

Article 6. D & O Liability Insurance does not cover the civil liability risk of the insured due to the following:

I – damage caused to third parties by the insured, in their capacity as citizens, when not acting in their positions at the policyholder and/or its subsidiaries and/or its affiliates, in situations that are covered by another line of insurance, i.e. general civil liability insurance;

II – damage to third parties when working as freelance professionals, away from their positions at the policyholder and/or its subsidiaries and/or its affiliates, which comes under another line of insurance, i.e. professional civil liability insurance;

III - environmental damage, which comes under another line of insurance, i.e. environmental liability insurance (pollution).

Article 7. The contractual provisions of D & O liability insurance plans must be subdivided into three parts, to be known as the general conditions, special conditions and individual conditions, the characteristics of which are as follows:

I – the general conditions contain the common provisions applicable to all basic cover included in the plan and the following are mandatory:

a) Provisions laid down in specific laws and regulations, including those governing claims-made policies but, in particular, the terms listed in Article 3 of this circular must appear in the glossary, it being acceptable to use definitions equivalent to those set out in the aforementioned article;

b) A clause providing for the cover of defense costs in civil court proceedings, where it is made clear that the insured can freely choose its attorneys, and that the coverage of legal costs and attorneys' fees is subject to contracting additional special coverage;

II - special conditions stipulate the specific provisions of each of the basic coverage under the plan, but possibly making changes to the general conditions. It is mandatory that the insurer provides the main basic insurance coverage, pursuant to article 5 of this Circular, and that the insurer covers the persons performing executive positions exclusively at the policyholder of the insurance, with the optional basic cover to extend the insurance to the following:

a) persons who have performed and/or begin to perform the jobs to which they have been

nominated, elected and/or hired, exclusively at the policyholder;

b) persons who have performed and/or begin to perform executive positions, at subsidiaries of the policyholder exclusively;

c) persons who have performed, begin to perform and/or have performed executive functions, at companies affiliated to the policyholder exclusively;

d) persons who for legal reasons, perform, begin to perform and/or have performed management positions at the policyholder, and/or its subsidiaries and/or its affiliates;

e) persons who perform, begin to perform and/or have performed executive functions at subsidiaries acquired or established by the policyholder after the first insurance policy came into force;

f) persons who have performed, begin to perform and/or have performed executive functions in societies that have become affiliated to the policyholder after the first insurance policy came into force;

g) persons who do not qualify as insured under the above cover, but who but provide assistance, have provided assistance and/or provide assistance in the future to the assist policyholders, providing professional services as auxiliaries, consultants and/or technicians;

III - the particular conditions alter the general and/or special conditions and are classified as additional coverage, specific clauses or particular clauses, depending on the nature of the changes introduced:

a) The additional coverage covers risks excluded implicitly or explicitly in the general and/or special conditions (e.g., moral damages, when risk is excluded); it is mandatory for there to be the offer of additional coverage covering defense costs and attorneys' fees, and it is optional for there to be additional coverage providing for extension of the insurance to insure the assets owned by persons who are related by family and/or legally with the insured, such as the following:

1. the heirs, legal representatives and/or estate of the insured when deceased;

2. the spouse or partner of the insured;

b) the specific clauses alter the provisions of the general conditions, the special conditions and/or additional coverage, it being mandatory for there to be

a specific arbitration clause, pursuant to applicable law and, where appropriate, a specific clause covering the option for separate coverage for emergency expenses incurred by the insured while trying to avoid and/or mitigate the damage, observing the provisions of the contract;

c) The particular provisions apply to changes made for specific policyholders, and do not need to be stated in the plan submitted to SUSEP, whenever they not reduce the rights of the policyholders.

Article 8. If the contracting of coverage is dependent on the contracting of other basic coverage, there must be explicit mention of this fact in the respective special conditions of the former.

Article 9. If the contracting of additional coverage is dependent on the contracting of certain coverage, there must be explicit mention of the fact in the respective particular conditions.

Article 10. For each coverage, the maximum limit of indemnity (LMI) and an aggregate limit (LA) must be stipulated.

Sole paragraph. It should be noted that the maximum indemnity limit for each coverage (LMI), as well as the respective aggregate limit (LA), are not cumulative and are not interconnected.

Article 11. It is optional to establish a maximum limit to cover (LMG) in D & O liability insurance plans.

Article 12. References to any foreign legislation are prohibited.

Sole paragraph. The use of foreign expressions relating to D & O Liability Insurance, when habitually employed in the Brazilian insurance market is permitted, provided that they are translated nearby or a translation thereof is found in the insurance glossary.

Article 13. Insurance companies already offering D & O LIABILITY INSURANCE, which do not wish to suspend their operations with insurance, must submit to SUSEP, within 180 (one hundred and eighty) days after the publication of this circular, for analysis and filing purposes, a new insurance plan, the contractual conditions and actuarial technical certificate of which

must be adapted to the current applicable standards and regulations.

Sole paragraph. Plans for D & O Liability Insurance in force on the date of publication of this circular, will be closed and placed on file from the from 270th (two hundred and seventieth) day inclusively after such date.

Contacts:

Dennys Zimmermann

+55 (21) 2127-4228

dzimmermann@mayerbrown.com

Julio Costa

+55 (21) 2127-4222

jcosta@mayerbrown.com