

Company managers' insurance cover

Every company manager¹ who accepts to take an office is aware that he/she is taking along with his/her office a number of tax, civil and criminal liabilities. The current development of regulations and the importance of corporate governance rules have increased the awareness of the managers towards the financial consequences of these liabilities.

If the company managers' insurance policy is fairly standard in listed companies, it is not always true in small and medium-size companies.

And yet, such insurances will be appropriate for either the benefit of a manager who owns a majority stake in the company or for the benefit of a manager who has no stake in the company. The first shall be able to cover the liabilities consider on its personal assets and the second shall deal this insurance cover as part of his/her package deal therefore increasing the attractiveness of the position offered.

This kind of insurance cover is subject to articles L.124-1 to L.124-5 of the French Insurance Code. It may be subscribed at any time.

Whether they are submitted to French or to foreign laws, these contracts follow the same pattern.

These insurance policies are subscribed by the company on behalf of its managers (the insured).

The scope of the insurance cover takes into account the group of companies and consequently includes the holding company as

well as the subsidiaries, whether held directly or indirectly, in France or in foreign countries.

The insured are the individuals appointed as company manager. In France, such persons are the *président du conseil d'administration* (i.e. Chairman of the Board of Directors"), the *administrateurs*, the *membres du Directoire* (i.e. directors), the *directeurs généraux*, the *gérants* (i.e. CEOs), the *directeurs généraux délégués* (i.e. deputy CEOs) as well as the individuals representing the company managers when the latter are corporate entities. Moreover, individuals who are deemed as company managers ("*dirigeants de fait*") by the Courts are generally also insured pursuant to these insurance policies. Therefore, these individuals can be indemnified for the lawyers' fees incurred before a decision of the Courts is taken.

Pursuant to article L.124-1 of the Insurance Code, the insurer shall be liable only if, following a tort provided for in the contract, the injured third party makes an out of court claim or a court claim to the insured party.

Pursuant to article L.124-1-1 of the Insurance Code, a loss means any damage or set of damages occurred to a third party, resulting from an event that has given rise to one or more claims.

Concerning the types of liabilities which are insured, insurance policies are generally based on the principle of an insurance covering all risks exception made of a certain number of risks which are specifically listed. For instance, are often excluded:

- ◆ Claims resulting from:
 - a benefit, a remuneration or a personal advantage to which the insured was not entitled,
 - a willful or fraudulent fault committed by the insured,

¹ Company managers or managers refer to one company's "*dirigeant*" who has been appointed by the relevant corporate bodies and has been granted specific corporate powers by the laws and regulations or by the articles of association.

- an event causing liability mentioned in an investigation or during an amicable, administrative, judicial, criminal or arbitral proceedings, prior to the date of effect of the insurance policy,
- ◆ Claims aiming at the reparation of the physical or pecuniary loss caused or of non pecuniary loss resulting from a physical or pecuniary loss,
- ◆ Taxes, fines and penalties imposed on the insured by the laws and regulations, the judicial, administrative or arbitral Courts or resulting from contracts.

Additional insurance covers can be negotiated in order to cover specific cases.

The insured party can include directors which are corporate entities.

The lawyers' fees paid by the company in order to defend itself in joint proceedings against the company and its manager can also be included in the insurance policy.

Additional cover can also include the financial consequences for the company of a Court's decision considering that the manager's fault can not be separated from its duties ("*faute séparable des fonctions*"). Indeed, pursuant to case laws, in such case, the Courts consider that the company is liable and shall be condemned to indemnify the third party, whereas if the fault can be separated from the

duties of the manager, the latter shall personally bear all consequences.

Once subscribed and correctly negotiated, these insurance policies efficiently cover the main risks to which the company managers are exposed, such as lawyer's fees in particular in criminal proceedings, minority shareholders' claims and litigation pertaining to asset deficiencies when the company is wound-up by Court decision.

If the insurance policy has to cover claims before foreign jurisdictions, needless to say that local specificities will have to be taken into account, in particular if the company has subsidiaries in the United Kingdom or in the United States.

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Ichay & Mullenex Avocats is a French law firm focusing on all legal issues related to the new technologies, the green business and the sustainable development in France and abroad. They are considered experts in intellectual property and Internet law, e-commerce, online gaming, data protection. Ichay & Mullenex Avocats also assists its clients on all issues related to financing, mergers & acquisitions, restructuring, etc. and advises them on their litigation and arbitration procedures.

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