

INDEPENDENT DIRECTORS – (D&O) INSURANCE PROTECTION

Independent directors are sometimes drawn into legal proceedings even when allegations against them are not attributable through Board process and they are not directly involved and are not ‘in charge of’ and ‘responsible for’ the company’s ‘affairs’, in connection with any alleged act of wrong doing.

In this context, particularly with regard to criminal proceedings, Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), has brought a sigh of relief to independent directors—as it has to many others—since it affords them an opportunity to present their case before the Magistrate prior to the initiation of formal proceedings, a safeguard that was not previously available. Bharatiya Nagarik Suraksha Sanhita, 2023 is an Act to consolidate and amend the law relating to Criminal Procedure in India. To explore the legal nuances on this aspect further, please read the enlightening article “Criminal Liability of Non-Executive Directors: A New Ray of Hope” underlying this post [here](#) via this link

https://www.lexology.com/library/detail.aspx?g=735e57c5-0a88-40cf-b409-e1832e508cde&utm_source=Lexology+Daily+Newsfeed&utm_medium=HTML+email+-+Body+-+General+section&utm_campaign=Lexology+subscriber+daily+feed&utm_content=Lexology+Daily+Newsfeed+2025-07-24&utm_term=

To navigate legal proceedings effectively, independent directors must stay informed about evolving legislation, judicial interpretations, and regulatory developments that provide legal protections. Legal proceedings cost money. For comprehensive protection, they should be well-versed in the statutory safeguards available to them, consistently and diligently apply the Business Judgement Rule in their decision-making process, include robust indemnity provisions in their appointment agreements, and ensure that the company maintains a comprehensive Directors and Officers (D&O) liability insurance policy.

The Companies Act, 2013 stipulates that the appointment of independent directors shall be formalized through a letter of appointment, which shall set out, besides other things, provision for D&O insurance, if any.

Broadly speaking, the D&O policy provides indemnity to the directors and officers with respect to:

- a) Defence costs for defence against allegations or suits brought against them alleging wrongful acts. While definitions in the policy wordings vary, broadly these costs include all reasonable and necessary costs, charges, fees, and expenses, including legal representation costs (other than insured person's own salaries, commissions, expenses, or other benefits).

These may be incurred in the defence of any claim or in the negotiation of any settlement of any claim or in the appeal of any claim.

- b) Any compensation awarded to the claimants against the Directors and Officers, including out of court settlements entered into with the consent of or jointly with the insurers.

While it is critical to ensure that the coverage is comprehensive with all necessary extensions, independent directors should specifically pay attention to certain key policy extensions, including but not limited to the following:

- Final Adjudication Clause for alleged dishonest conduct
- Dedicated additional limit for independent directors – Its contours and conditions.
- Advance Payment of Defense Costs
- Emergency Costs Coverage
- Extended Reporting Period for retired directors
- Non-Cancellation Clause
- Assets and Liberty Costs
- Order of Payments
- Run Off cover in the event of Merger/ Acquisition

Independent directors must thoroughly review the entire D&O policy for clear understanding to fully grasp its coverage and be aware of their obligations and the dos and don'ts. D&O policy purchase should not be seen as any other procurement process.

For more insights on this subject please read the articles linked below.

<https://www.dandodiary.com/2016/05/articles/international-d-o/guest-post-independent-directors-in-india-risk-exposures-safeguards-and-insurance-protection>

<https://www.liabilityinsurancepractice.com/2018/05/22/do-liability-insurance-dedicated-additional-limit-for-non-executive-directors-independent-directors>

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