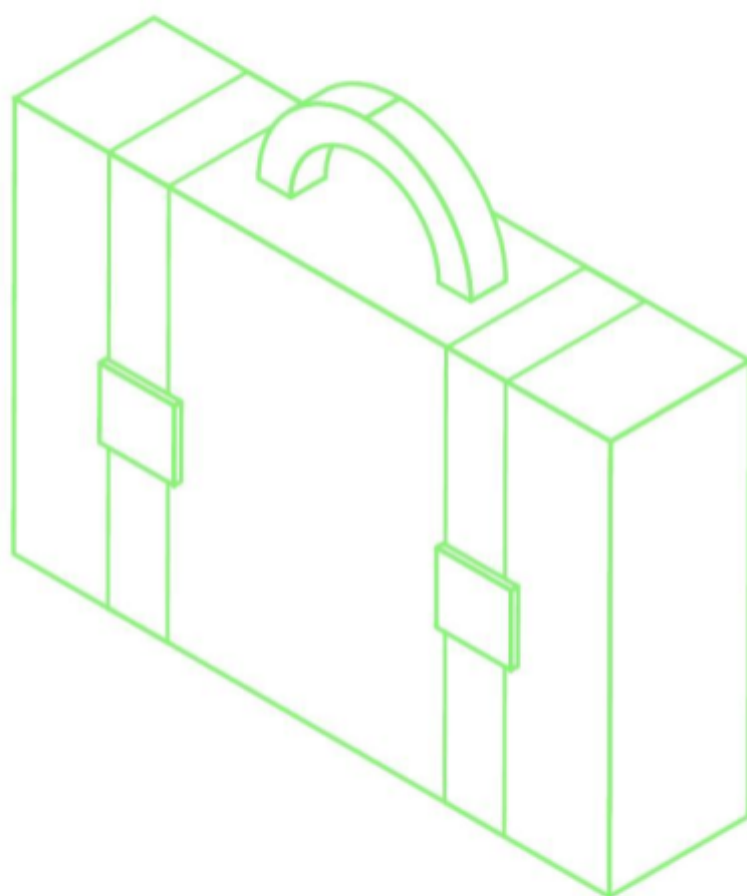


RiskBox Professions



Blog Posts

Outside Directorship Requests

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Outside Directorship Requests



Overview

Modern and comprehensive Directors & Officers Liability policies usually include an extension to protect their directors against any potential liability arising out of work undertaken on the boards of other companies.



There are several reasons why a company may desire a director to sit on another organisation's board. For example:

Financial Interest

This could be sitting on the board of a connected organisation, such as a company launched to be a spin off, or perhaps one that the business has invested in. Having a director placed in this way often makes sense as it can help protect the investment.

Industry Benefits

Many outside directorship positions we see are to sit on the boards of trade bodies and associations. These can be beneficial to the organisation through a raised profile within their sector, as well as helping their industry maintain certain standards.

Altruistic/Educational

Sometimes the benefits of sitting on the board of an outside company may be less obvious. It is quite common for directors to be asked to sit on the boards of other entities in order to learn skills and gain experiences not readily available in their current position. This can help to develop them into a more rounded and effective director.

This is of course by no means exhaustive, as there are many reasons for a company to wish one of their directors to sit on an external board.

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Policy Wordings

The actual wording of these extensions between insurers, and even within the same insurer can vary. For example, some will require this consent to be evidenced in writing, whereas others will not.

Furthermore, wordings change all the time, so what might be true now can be changed by insurers at any time.

This is therefore not a panacea but a valuable step in the right direction and should help evidence the relationship for most potential claims

Definitions

There are a few definitions used in the example templates that require clarifying. Please see these explained below:

Insured Company

This is the name of the organisation that holds the Directors & Officers Liability policy.

Outside Company

This is the name of the external organisation that the Individual has been requested to sit on the board of by the Insured Company.

Individual Name

This is the name of the person from the Insured Company who has been requested to sit on the board of the Outside Company. Please note that this normally extends beyond directors to include employees who sit on the boards of an Outside Company.

Date First Appointed

This is the very first date that the Individual began sitting on the board of the Outside Company.

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The Process

In the event of a claim to benefit from cover under an Outside Directorship extension insurers will usually require the request and/or consent of the Insured Company to be evidenced.

This can be quite difficult, especially for companies where there is only a single director. It can lead to long delays, or even attempts to avoid liability for the claim entirely. We believe these problems will only increase as the Directors & Officers Liability market becomes more fraught.

It is for that reason we now recommend ensuring that these relationships are formalised in writing, and filed so they can be called upon in the event of a claim.

As mentioned earlier, we cannot guarantee doing this will make you compliant with every policy type and every situation, however it is certainly a good start.

At the very least it will help demonstrate the intention and desire of the Insured Company to have the Individual sat on the board of the Outside Company.

Our suggested process is two stage:

- (1) The Insured Company to formally request the Individual takes a place on the Outside Company board.
- (2) The Individual to formally consent to holding the requested position on the Outside Company Board.

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The Request

The first stage is to send out an email to the Individual who will be sitting on the outside entity formally requesting that they take up the position on the Outside Company board.

This email needs to come from a director of the Insured Company.

For instances where there is only one director on both the Insured Company and the Outside Company (i.e. the same individual) this will seem a little ridiculous, and we wouldn't disagree. However it remains the simplest way to demonstrate the policy has been complied with.

Example template below:

As director of *INSURED COMPANY* it is our wish and request that *INDIVIDUAL NAME* sits on the board of *OUTSIDE COMPANY*

We can confirm that we have required *INDIVIDUAL NAME* to maintain this position on the board of *OUTSIDE COMPANY* with effect from *DATE FIRST APPOINTED*

Please note that this email should come from the director of the Insured Company with their email signature clearly displayed showing they are a director of the Insured Company. Once sent it should be kept safe should it be required in the event of a claim.

It does not need to be shared with your broker or insurer except in the event of a claim

Important Note: Date First Appointed

The date the Individual was very first appointed to the Outside Company board should be detailed as above,. This is specifically to avoid insurers concluding that the Individual wasn't required to be in that position before the email date.

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The Consent

The second stage is for the Individual who has been asked to sit on the board of the Outside Company to formally confirm their consent to do so

They should therefore reply to the original email, again ensuring their normal signature for the Insured Company is displayed

Example template below:

As director of *INSURED COMPANY* I formally confirm consent to sit on the board of *OUTSIDE COMPANY*

I can confirm that I have maintained this position on the board of *OUTSIDE COMPANY* with effect from *DATE FIRST APPOINTED*

Again, once sent this communication should be kept safe should it be required in the event of a claim. It does not need to be shared with your broker or insurer except in the event of a claim



Conclusion

We recommend that all positions taken on Outside Company boards are recorded and evidenced in this way.

Whilst there is never any guarantee that this will satisfy all insurers and situations, it should help demonstrate the relationship and speed up most claims.

If you are ever unsure, speak to your broker or insurer, or get in touch with us.

