



## Trustee Liability Insurance

Like other businesses, corporate trustees have a number of ways of controlling their own risk of liability arising from the conduct of their businesses. Commonly this will include a range of legal and practical protections such as limitations on liability, indemnities where available and clear funding agreements. In addition, however, and where such protections are not available (or not satisfactory) trustees can look to the insurance market for bespoke products.

### Protection for individuals

Many Trustee Liability Insurance products will be designed to protect individual trustees or individuals acting on behalf of a corporate trustee and will be similar to D&O (Directors and Officers) insurance policies. They commonly deal with personal exposure and risk of:

- civil claims brought directly against the individual trustee/representative as a result of their decisions/actions; and
- civil and/or criminal investigations brought by regulators with extensive powers.

In both these scenarios, in addition to the possibility of a finding against the individual, legal costs can be considerable and are a critical element of cover. An employer company will typically be covered to the extent that it has indemnified the relevant individual directly.

Such products may well be relevant and corporate trustees should consider them with their brokers. In addition to being a benefit to the employee (and in some cases employees will demand such cover) it is often in the company's best interests for its representatives to have a clear ability to meet legal costs at an early stage in whatever proceedings they face.

### Protection for the Business (corporate)

Aside from individual protection, corporate trustees will also want protection for the company. This is less a regulatory point (although certain regulators require such insurance to be in place) and more of a matter of business risk.

Insurance for corporate trustees is available in an analogous form to professional negligence policies. These policies can be arranged by brokers and may come with protection for

### Key issues with personal Trustee Insurance

- What types of claim/wrongdoing should be covered? (role, civil claims, regulatory actions)
- Policies are generally 'claims made' so claims should be notified as soon as the trustee is aware of them and they should be extended after the date of termination of employment.
- Notification, limitation and exclusion clauses are key.
- Criminal fines cannot be covered in many jurisdictions.

individuals involved (as above) included. Key issues are:

- Coverage and types of loss: some policies will extend to losses to the beneficial funds or other third parties (such as a company in relation to a corporate pension fund trustee). A careful review of any policy should be undertaken to make sure it provides the protection that is being sought;
- Activities and laws covered: many trustee liabilities will arise under law. Trustees should be careful to ensure that liabilities arising under the relevant legal systems are covered to the extent permitted by law (Although in some cases insurance may be prohibited in a particular jurisdiction in respect to a particular loss, for example where regulatory fines are imposed);

### Keeping a policy valid and claiming validly on it

Where a trustee is planning to place a policy, it is important that all steps are taken to ensure it is validly placed and, when in place, notification is given properly to ensure it can be claimed upon. Key issues include:

- Disclosure of relevant facts about the risk profile and the coverage required will be necessary (unless the trustee is acting as a consumer this obligation can be quite onerous);

- Notification of circumstances which might give rise to a claim often have to be made as soon as the circumstances arise (rather than the claim itself). Notification must be given in accordance with the requirements of the contract. This applies to claims as well.
- Ensure that you understand the relevant law applying to the insurance policy. Different jurisdictions can have substantially different underlying rules for recovery of claims under insurance policies.

## Contact

**Kari McCormick** leads Burges Salmon's **Insurance** practice and regularly advises clients on coverage and interpretation of policies.

For further information on Burges Salmon's services for trustees, please follow these links:

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**Kari McCormick**  
**Partner**

+44(0)117 902 6620

kari.mccormick@burges-salmon.com

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Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400  
6 New Street Square, London EC4A 3BF Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7980 4966

[www.burges-salmon.com](http://www.burges-salmon.com)

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