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PROFESSIONAL INDEMNITY INSURANCE

Over the years many brokers have questioned the need for Professional Indemnity Insurance. 'I've been in business for many years and never had a claim, I don't need this insurance' is a common statement. If you compare the environment that brokers work in now days to that of 5 or 10 years ago, business risk and formalities has changed vastly with more responsibility placed on role of a finance broker. In the past the need for this insurance may not have been as evident, however in the current environment the need for protection is more apparent than ever.

All professionals who provide advice whether direct or indirectly and are remunerated by way of fee or commissions for their service all have an exposure to professional negligence claims following an allegation or actual breach of professional duty owed to a customer, supplier or third party. It can be the case that someone may allege your were negligent even though you believe you've done nothing wrong, if this happens you will have to incur costs defending these allegations – this is where professional indemnity insurance can be of great value.

▪ **ANTIMONEY LAUNDERING & COUNTER TERRORISM LEGISLATION**

Anti-Money Laundering and Counter-Terrorism Financing laws apply to most financial services offered by financial institutions in Australia and impact on many aspects of an organisation's relationships with its customers, employees, agents and contractors. One of the principal requirements of the law is to implement procedures to identify, manage and mitigate the money laundering and terrorism financing risks a Reporting Entity (Financier) may reasonably face when providing designated services. A reporting entity (financier) must carry out a procedure to verify a customer's identity before providing a designated service. Identity verification involves collecting and verifying "know your customer" (KYC) information. In the case of a Finance / Mortgage Broker undertaking the Customer Identification on behalf of the Financier, in order for the Financier to comply with the AML & CTF Act, Brokers are required to be appointed as an agent as per section 37 of the Act (37 Applicable Customer Identification Procedures May Be Carried Out By An Agent). If a Financier uses an agent they will remain liable for the compliance with the AML /CT Act. Fines and Penalties imposed for non-compliance or a breach of the Act are substantial. There is no requirement for a financier to have a formal agreement with an agent with regards to the identification process. However most financiers are introducing new agency agreement which incorporate the AML / CT legislation requirements that are to be undertaken by brokers. The Act is required to be adopted by all Financiers by 12th December 2008.

HOW DOES THIS LEGISLATION EFFECT PROFESSIONAL INDEMNITY INSURANCE

It is likely that there will see an increase in allegations or claims against brokers relating to breaches of their professional duty in this area.

CAFBA member's PI Insurance policy provides protection for the Insured Person(s) or Company for any breach of duty owed in regards to undertaking the appropriate identification checks as required during the normal course of business.

We recommend that those members whose insurance policy is not through the CAFBA Facility check with their broker and obtain confirmation in writing that cover is provided with respect to this breach of duty they may owe with regards to the client identification process.

▪ CONTRACTUAL LIABILITIES

With the introduction of the AML / CT legislation, most lenders are introducing new agreements with brokers to ensure they comply with the new legislation. We highlight the extent of cover provided by professional indemnity insurance in relation to contractual liability.

- The Insurer will not be liable for any liability assumed by the Insured under any express warranty, guarantee, hold harmless agreement, indemnity clause or the like unless such liability would have attached to the Insured in the absence of such agreement.
- Where a Claim is an alleged breach of contract the Insurer will not reduce their liability by the mere fact that contributory negligence is not available as a defence.

Cover is provided where in absence of the agreement the liability would still be owed. It is not going to extend to cover any breach of contract where additional liability is assumed or as an agent.

It is always recommended that when entering in to a new agreement you seek legal as to the nature of the agreement and to ensure that you are not signing an agreement where you assume a liability that wouldn't have existed except for the contract or that waives your rights.

▪ FINES & PENALTIES

Professional Indemnity Insurance does not provide cover for Fines & Penalties that may be imposed as a result of a breach of your professional duty. (Refer to Statutory Liability as detailed below for information on alternative covers that are available for protection of fines and penalties.)

MANAGEMENT LIABILITY INSURANCE

Management Liability Insurance is a comprehensive insurance product that has been designed specifically for private companies and their directors and officers. It combines Directors' & Officers' Liability Insurance with several other policies, to provide a broad range of cover for management under the one policy, including:

- Directors & Officers Liability
- Company Reimbursement
- Employment Practices Liability Insurance
- Fidelity Guarantee Insurance
- Official Investigation and Enquiries Costs
- Statutory Liability (Fines & Penalties)
- Occupational Health & Safety
- Defence Costs

A summary of a few key areas of cover are:

▪ **DIRECTORS & OFFICERS LIABILITY**

Directors & Officers Liability Insurance policies provide cover for their personal cost of legal representation at a prosecution, inquiry, investigation or examination for directors and officers. For such cover to be provided it is usual for attendance to be legally compelled and that the prosecution, inquiry, investigation or examination involves the affairs of the company.

Directors and Officers are personally and legally responsible for all aspects of the conduct of a company. The nature of this legal relationship between a Director and the company is fiduciary. Fiduciary is a duty to act with fidelity and trust to another. Directors must act honest, in good faith and to the best of his or her ability in the interest of the company. Failure of a Director or Officer in carrying out his or her duty properly can result in them being held personally liable.

Directors & Officers Liability Insurance covers the personal liability of a company's directors and officers.

Claims can arise from a business relationship including dealings with:

- Employees
- Customers
- Vendors
- Government agencies
- Investors
- Suppliers
- Competitors
- Creditors

▪ **STATUTORY LIABILITY INSURANCE**

Statutory Liability Insurance generally provides protection for pecuniary or administrative penalties which a company is required to pay pursuant to any Act, except for those matters for which the Company is legally prohibited from insuring under Australian law

Liability insurance policies, such as directors and officers liability insurance, professional indemnity insurance and business liability insurance generally exclude cover for fines and penalties because the insurer's intention is to protect against liability for compensation or damages.

Many Acts of Parliament, for the purpose of penalty provisions, do not differentiate between negligence or carelessness on one hand and dishonesty or recklessness on the other. A good example is the civil penalty provisions of the Corporations Law. Some Acts also impose strict penalty provisions on companies and individuals, regardless of their direct involvement in an actual breach. Companies, directors, officers and employees therefore face the possibility of being penalised for an innocent and unintentional contravention of an Act.

The intention of statutory liability insurance is to provide protection against liability to pay penalties where there has been an inadvertent or unintentional breach of an Act. The insurance will not provide protection where there has been a willful breach, dishonesty, fraud or gross negligence or recklessness. In some cases insurers will also pay legal defence costs, but only if there are reasonable grounds for defence.

OUR INSURANCE PRODUCTS & SERVICES

How many times have your clients left arranging insurance for their finance till the last minute?

If your client needs insurance urgently prior to settlement or is not happy with their existing insurance arrangement, we will do our best to get them a quote urgently. We offer a broad range of insurance products and services through a vast panel of insurance companies that are available for most industries. Further information on types of insurance products and an overview of policy coverage is available on our website -

www.optimuminsurance.com.au

CONTACT DETAILS

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Further details on CAFBA Members Insurance Products is available at:
www.optimuminsurance.com.au/cafba

SEASON'S GREETINGS

Wishing you and your family a Merry Christmas and a Happy and Safe New Year.

Thank you for your support throughout 2008 and helping make our year an outstanding success. We are looking forward to an exciting 2009.

Best Wishes, Amanda Smith

Instead of sending printed Christmas Cards we are making a donation to several charities Save the Children and Guide Dogs.



Disclaimer:

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