

A high-angle, black and white photograph of a person standing on a floor with a large grid pattern, likely a skylight. The person is silhouetted against the light coming through the grid, and their shadow is cast on the floor below them. The grid pattern is composed of large, rectangular panels.

Directors and Officers
Do You Know The Risks?

CODA

Personal Asset Protection for Directors and Officers

You have been asked to serve
on the board of directors
of a large company.

**You may be willing,
but are you ready to take the risk?**

As a member of the board you can be sued
and your personal assets are at risk.

Will your company indemnify you?





CODA

For more than two decades the CODA policy form has been providing high quality personal asset protection insurance for directors and officers of large multinational corporations. CODA is a flagship policy of ACE Bermuda Insurance Ltd. (ACE Bermuda). The CODA policy demonstrates ACE Bermuda's ongoing commitment to listen to clients' needs and develop a premier product through continued enhancements.

The sole focus of the CODA policy is to provide the broadest possible coverage for directors and officers when their company fails to indemnify them, or when traditional insurance programs fail to respond to their needs.

Since 1986 the CODA policy has served a significant number of the Fortune 1000 companies and has been available to all major industries. The vast majority of CODA clients have been purchasing CODA policies for many years, demonstrating the significance and unique value of the CODA policy. In 2006, ACE Bermuda International, a subsidiary of ACE Bermuda, expanded the CODA brand and launched a CODA policy designed specifically for the UK market.

Mounting Pressures on Corporate Directors and Officers

Corporate directors and officers are increasingly vulnerable to claims for alleged wrongdoing in a wide variety of contexts.

Most frequently, these lawsuits come from disgruntled shareholders (and a highly sophisticated plaintiffs bar) who stand ready to sue directors and officers for any perceived breach of responsibilities.

Institutional investors, who have the resources and commitment to aggressively litigate their claims either individually or on behalf of a class, often bring these claims. These lawsuits allege, for example, inaccurate or misleading public disclosures, financial irregularities, imprudent merger decisions, mismanagement, self-serving transactions, excessive executive compensation and unfair trade practices.

In today's ever-changing environment, shareholders are not the only ones attacking directors and officers. Regulators, employees, creditors and even competitors are demanding more accountability when perceived wrongdoing exists.

If a claim is made against a director or officer, the financial exposure can be devastating. The cost of defending even meritless allegations is often enormous.

Corporations frequently indemnify their directors and officers in these claims, but not always. If the corporation is not legally permitted, is not financially able or simply refuses to indemnify the director or officer defendant, the personal assets of the director or officer must be used to pay these potentially catastrophic costs and settlements, absent quality insurance coverage. That is where the CODA policy responds.

In this uncertain climate, it is more important than ever that directors and officers understand the risks and stay aware of current and emerging trends.

1986

Corporate Officers & Directors Assurance Ltd. (CODA) formed by 53 US corporations to provide a solution to the lack of D&O insurance for personal asset protection.

CODA offers both primary and excess DIC - 1 and 3 year annual aggregate policies with guaranteed renewal terms based on formula rating.

1989

First CODA claim payment.

1993

ACE Bermuda acquires CODA and offers dedicated side A coverage.

1996

Pollution carve-out of the bodily injury/property damage exclusion.

Restricts the Insured v. Insured exclusion to claims brought by the Company with the participation of two or more senior executive officers.

2000

Defense costs carve out of the conduct exclusions.

Introduces dedicated independent directors policy.

Non rescission of policy for financial restatements.

Dynamic Environment

The world has changed dramatically for directors and officers in recent times. For example:

- Global economic uncertainty and the unprecedented demise of large Fortune 1000 companies together with risks arising from sub-prime losses, failed banks and federal government bail-outs means that there is more uncertainty today than ever before.
- The size and frequency of settlements in securities class action suits has dramatically increased as have the number of shareholder derivative lawsuits against directors and officers.
- The Sarbanes-Oxley Act of 2002 mandated unprecedented corporate governance reforms and imposed harsh penalties for violators.
- Some courts are creating higher standards of conduct and diluting the business judgment rule protections for directors and officers.
- Plaintiffs and regulators are seeking large personal payments from directors and officers and are prohibiting the company from indemnifying directors and officers.
- Directors and officers are more often sued simultaneously in multiple proceedings by different claimants (including class action opt-outs), creating the risk that some directors and officers may exhaust the traditional D&O insurance policies and leave other proceedings or other directors and officers uninsured or underinsured.

In this uncertain climate, it is more important than ever, that directors and officers understand the risks and stay aware of current and emerging trends.

The ACE Report

The ACE Report provides timely information on current developments surrounding D&O liability and insurance. To obtain a copy of the latest issue of The ACE Report or to be placed on our mailing list, please contact us or visit www.acebermuda.com to view an electronic archive.



2006

Introduces dedicated officers only policy.

Optional additional limit for independent directors within the CODA policy.

Independent directors carved-out of the conduct exclusions.

CODA product launched in UK market by ACE Bermuda International.

2008

Introduces dedicated retired directors policy.

Policies issued at inception.

DIC feature responds within 60 days if underlying carrier fails to pay.

2010

Board empowered carve-outs to Insured v. Insured and bodily injury/property damage exclusions.

Coverage for arbitration costs outside the limit.

- As an ACE Bermuda product, CODA is backed by a solid and sound financial balance sheet. The ACE Group's strong capital base, financial stability, diversified earnings stream and multinational operating platform are strong indicators that the company is strategically well positioned for future growth and development.
- Solid financial strength and credit ratings confirmed by S&P and AM Best - visit www.acebermuda.com for current ratings.
- Commitment to a high level of service to clients and brokers.
- Commitment to contract certainty with policies issued at inception.
- Over two decades of specialized experience handling sophisticated Side A claims for individuals facing significant personal liabilities from complex and often high-profile litigation.
- Over two decades of custom side A underwriting experience.
- Commitment to product innovation and market leadership (see our timeline in this brochure).
- Recognized thought leadership demonstrated by our professionalism and knowledge of evolving issues and trends for example, the publication of The ACE Report.

Why CODA?

ACE Bermuda is committed to providing responsive D&O insurance products and services of the highest quality to the worldwide market. The CODA Side A insurance policy has been widely recognized as providing broad coverage available for directors and officers and continues today to be the benchmark against which all other policies are compared. CODA protects the personal assets of directors and officers when they are not indemnified by the company.

Directors and Officers (D&O) insurance is the single most visible and important insurance program within a company's insurance portfolio. D&O insurance presents a complex array of difficult insurance, indemnification, bankruptcy, tax, securities and litigation issues, which must be understood and evaluated to assure a quality program.

Unlike standard D&O policies on the market, CODA insures only claims that are not indemnified by the corporation, thus providing the ultimate backstop protection for directors and officers when no other financial protection is available. Further, CODA covers only directors and officers – not the corporation – so there is no danger of the corporation eroding the coverage for the directors and officers. In addition, once the CODA policy is issued, it belongs solely to the directors and officers, not the corporation.

ACE Bermuda prides itself in being responsive to client needs, applying underwriting flexibility and creative solutions to unique circumstances or requests. For example, the CODA policy form has been continually enhanced in response to the ever-changing claims environment and client concerns, and it has introduced many of the extraordinary Side A coverage features now copied by other insurers.

See the enclosed CODA product insert for detailed product features or contact your broker.



CODA Policy Suite

ACE Bermuda's unique suite of CODA policies meet the ever changing demands of our clients:

- *Directors and Officers*
- *Officers Only*
- *Independent Directors*
- *Retired Independent Directors*
- *Retired Officers*

By providing this coverage in a more holistic manner we can eliminate the competing interests and conflicts which arise between the various external and internal directors, creating greater comfort for all.

These coverages can be purchased either individually or as a packaged product providing for maximum protection and ease of administration. This approach provides flexibility for clients to design programs that are tailor made to meet their needs.

How can CODA be used in a D&O insurance program?

Insureds can use CODA in their D&O insurance program in a variety of ways as illustrated.

CODA as Primary

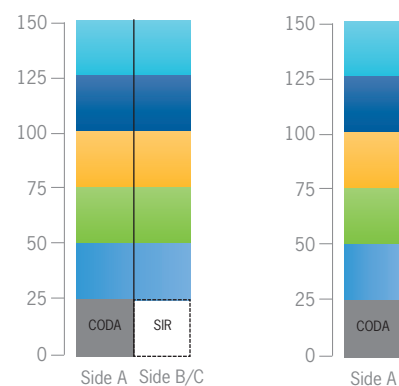
CODA can be the primary policy, with other excess policies following the broad terms of CODA .

CODA Excess and DIC

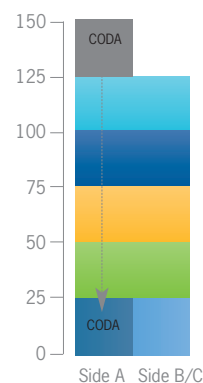
Alternatively, CODA can be excess of a traditional D&O insurance program. However, pursuant to the DIC feature in the excess CODA policy, CODA will drop down and fill any gaps in coverage in the underlying policies to the extent CODA affords broader coverage than the underlying policies.



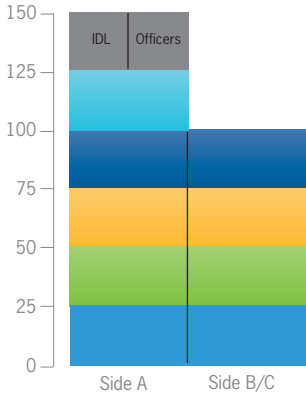
CODA as Primary



CODA Excess & DIC*



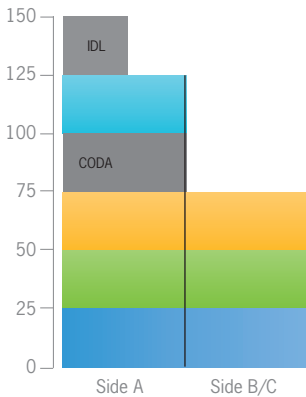
CODA IDL/Officer-Only Policies*



Separate CODA policies for Independent Directors and Officers

In response to recent litigation trends and the heightened desire by both independent directors and officers to maximize personal asset protection, CODA policies are able to provide Independent Director Liability (IDL) and Officer Only Liability. Both policies contain all the broad features of the standard CODA Excess DIC policy but dedicate the policy limits to just the independent directors and officers respectively and can not be eroded by claims against other individuals or the Company.

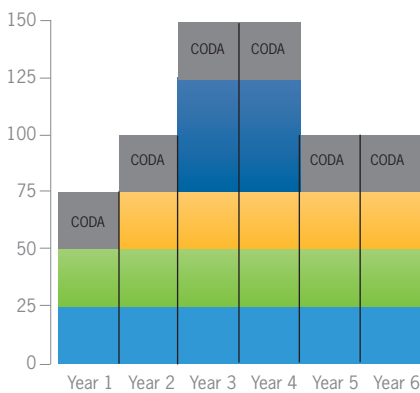
CODA IDL Additional Limit*



Additional Limit within the CODA Excess DIC policy for Independent Directors and for Officers

Alternatively for ease of purchasing, CODA IDL and/or Officers Liability coverage can be purchased as an additional limit within the CODA Excess DIC policy rather than as stand-alone policies. The additional limit comes with the advantage of being dedicated to independent directors and officers respectively, as mentioned above, and sits excess of the main CODA Excess DIC policy limit as well as any other Side A policy excess of the main CODA policy. Also there is specific policy language that allows the insureds to maximize their insurance recoveries in the event a claim triggers both the main CODA Excess DIC policy limit and the additional limit.

CODA Retired Independent Director Policy*



CODA for Retired Independent Directors

Former or retired independent directors have unique concerns arising from the potential for future claims against them based on their alleged wrongdoing while they were in office. The CODA Retired Independent Director Policy addresses this concern and offers future protection if any claims are made after the director's retirement from the board. Under standard D&O policies these future claims may be denied. The CODA Retired Independent Directors Policy provides a guaranteed amount of high quality personal asset protection for retired directors for an extended period of time (usually 4-6 years).

* CODA provides DIC coverage and may become primary



Claims Handling is one of our Core Strengths

All CODA policies are backed by decades of experience in handling complex and high profile Side A claims. Such exposures may arise or can be exacerbated for a number of reasons including:

- Erosion of all or a large portion of the directors and officers liability insurance limits by claims against the company or other individuals.
- Failure of company to indemnify their directors and officers.
- Other directors and officers liability policies failing to pay covered claims.

Do Side A Policies Really Cover Claims?

The following examples of claim payments demonstrate that non-indemnified D&O losses arise in a variety of contexts and can be large.

- A \$47 million payment by CODA in settlement of more than 180 different lawsuits filed over several years, all of which became non-indemnifiable when the company subsequently filed for bankruptcy.
- A \$8.25 million payment by CODA in settlement of a lawsuit against D&Os of an insolvent company. The underlying D&O policies did not cover the settlement because of the broader insured v. insured exclusion in the underlying policies.
- \$6 million payment by CODA in settlement of a shareholder derivative lawsuit for which the underlying insurers denied coverage based upon an exclusion not contained in the CODA policy.
- A \$3 million payment by CODA in settlement of a lawsuit that was not indemnified by the company because the defendants' conduct did not satisfy the requisite indemnification standard. The underlying D&O policies did not cover the settlement due to an exclusion not contained in the CODA policy.



Unsolicited Client Note to Claims Department Head

“ On behalf of (our) team, I wanted to personally thank you for the flexibility you demonstrated when we met in Bermuda. We appreciated your support very much. We look forward to enhancing and extending our partnership. Your participation during the claims process went a long way to help build trust, a key element of any long-term partnership. Thank you very much for taking the time to meet with us and most importantly for paying the claim.”

D&O business partner since 1993

Reactions Magazine

In a 2006 survey of brokers carried out by Reactions Magazine, ACE Bermuda's Claims team was awarded the top honors in both claims categories: (1) technical sophistication of claims professionals; and (2) willingness to pay claims.



Key Terms



Virtually all publicly-held companies buy D&O liability insurance. Generally, this insurance is written in two parts. One part (Side A) covers the personal liability of directors and officers for loss not indemnified by the corporation. The second part (Side B) covers the corporation's indemnification of directors and officers. Some policies also contain a third part (Side C), which covers securities claims against the corporation. Side A, needs to afford critically important coverage to the directors and officers if, for a variety of reasons, the corporation cannot or does not indemnify them. Indemnification refers to payments by the corporation of defense costs, settlements, judgments and other losses incurred by directors and officers resulting from claims against them.

For example, depending upon a company's internal indemnification provisions and the applicable state law, corporations may not indemnify directors and officers in the following circumstances:

1. A shareholder derivative lawsuit or a suit brought directly by the company against its current or former directors and officers. For example:

Discovery of accounting errors caused the company to restate its financials and to abandon an attractive merger opportunity. Stockholders initiated derivative lawsuits on behalf of the company against its directors and officers for allowing the accounting errors to occur since those errors led directly to losing the attractive merger opportunity, thus causing the company millions of dollars in damages.

2. Actual violation of the securities laws or other statutes which are intended to deter wrongdoing may not be indemnified by the company for public policy reasons. For example:

The company's stock price dropped 20 percent after a disappointing earnings report. In a related SEC proceeding, the directors and officers are found to have violated the securities laws by not disclosing the adverse information sooner.

3. D&O conduct that is not taken in good faith or with the reasonable belief that the conduct is in the best interest of the company. For example:

The board of directors approved the sale of a subsidiary of the company to one of the CEO's relatives for an amount less than its appraised value and failed to object to the CEO's lavish expense accounts. Stockholders filed suit against the directors and the CEO for mismanagement and waste of corporate assets.

4. Indemnification rights changed by current management. For example:

After a group of private equity investors bought the company, the new management of the surviving company limited the indemnification rights of the former directors and officers of the acquired company. The former public shareholders of the acquired company sued the former directors and officers for wrongdoing in connection with approving and disclosing the terms of the going-private transaction.

5. Financial inability of the company to indemnify. For example:

The company filed for bankruptcy and creditors sued the company's former directors and officers for mismanagement which led to the company's failure. The company's limited resources and the bankruptcy laws prevented the company from indemnifying the defendant directors and officers for their defense costs or any settlement or judgment.

6. Wrongful failure or refusal by the company to indemnify. For example:

The board of directors fired the CEO for ineffective management and poor leadership. A claim was later made against the former CEO by employees for alleged discrimination while in office. The board of directors refused to indemnify the former CEO for the claim even though the company's by-laws required such indemnification.

Protection under a standard D&O liability policy for these non-indemnified losses is less than ideal. Standard policies not only provide protection for the directors and officers, but also insure the corporation to the extent the corporation indemnifies the directors and officers or in some instances when the corporation is a defendant in certain types of claims. Under these circumstances, the policy proceeds may be eroded by the corporation, leaving the directors and officers with little or no insurance to protect their personal assets. In addition, because standard D&O liability insurance policies cover the corporation, their terms are more restrictive than a CODA policy.

Why CODA?

You have been asked to serve
on the board of directors
of a large company.

Now you know about CODA.
Take the risk.

CODA protects the personal assets of directors and officers
when they are not indemnified by the company.
For insurance protection so critical, don't look anywhere else.
To find out how CODA can work for you, contact your broker.



How to contact us:

For more information about ACE Bermuda and the CODA suite of policies please contact your Bermuda or non-US based broker. A full list of Bermuda-based brokers can be found on the Bermuda Insurance Market website at www.bermuda-insurance.org. For general information please email acebermuda@acegroup.com or visit www.acebermuda.com.



ace bermuda

CODA

ACE Bermuda Insurance Ltd.
The ACE Building
17 Woodbourne Avenue
Hamilton HM 08
Bermuda

Mailing Address:
PO Box HM 1015
Hamilton HM DX
Bermuda

Telephone: 441-295-5200
Fax: 441-295-5221
E-mail: acebermuda@acegroup.com
Website: www.acebermuda.com