

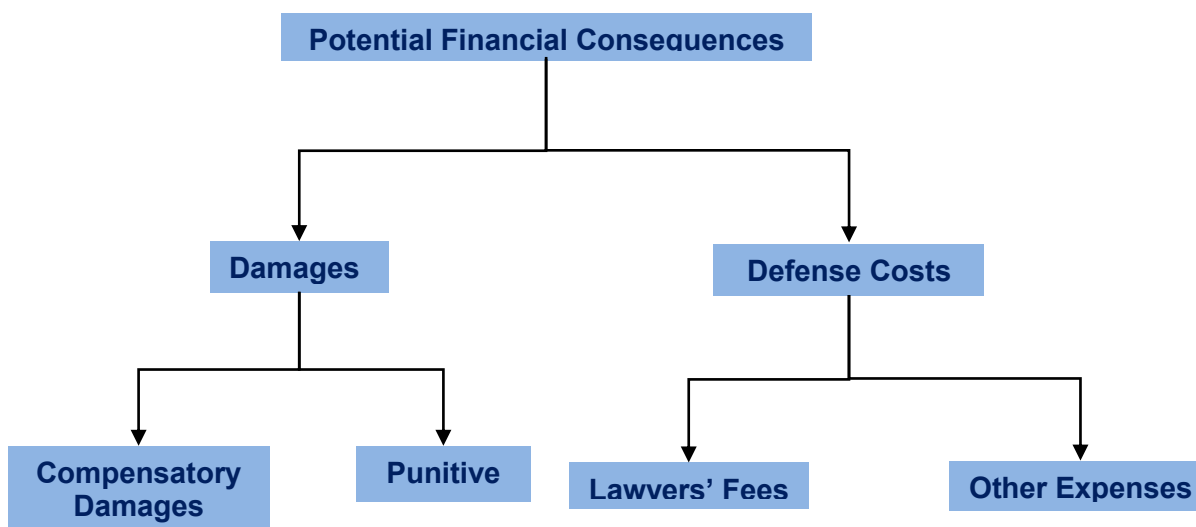
Liability Risks

Introduction

22nd April 2016 saw the coming together of two distinguished organizations in the insurance industry, in the form of a liability insurance workshop that was conducted at FICCI, New Delhi. Securenow Insurance Broker, in collaboration with Raheja QBE, conducted the workshop for its vast network of clients and partners, in order to help them understand the scope and increasing need for liability insurance in India. The workshop was a valuable platform for eminent leaders in both companies to voice their views on the trends in the liability insurance space, with Mr. Praveen Gupta (CEO and MD of Raheja QBE), Mr. Farzan Khansaheb (Chief Underwriting Officer at Raheja QBE) and Mr. Kapil Mehta (Founder and CEO of SecureNow Insurance Brokers) presiding as speakers through the event.

What are Liability risks?

Liability risks are risks that a company or an individual is legally obligated to pay in case of any damage or breaching of standards due to its operations, a product, an act or neglect.



Liability Insurance in the Indian Context

Liability insurance, at its most basic, is a form of general insurance that protects the insured against the possibilities of lawsuits or other similar legal claims against them.

Often considered inessential in the Indian context, it protects a company financially against any known or unknown liabilities that may arise in the future.

The environment for doing business in India is changing fast, companies are getting into newer markets and ideas, it becomes necessary for companies to realize and understand the extent of their exposures. Companies growing by way of expansion, mergers and acquisitions or to simply having more clients abroad, are exposed to laws of different countries that they may not be familiar with. For example, North America and Australia are known to be highly litigious countries, defense costs are extremely high and damages could amount up to millions of dollars directly impacting profitability.

Therefore, clients must be prudent and diligent in choosing the right insurance cover according to their exposure and jurisdiction.

New and revised company laws demanding the transparency and accountability of governance in Indian companies have become more stringent, and as a result cases of employees suing their employers for wrongful termination, sexual harassment, discrimination, loss of opportunity, etc. are becoming more common. Management including the board of directors, human resource department can be held directly liable.

For example, recently, a major Indian IT company hired two senior executives on contract for three years; however, in the first year itself differences arose with the CEO, allegations and counter allegations were made, and the executive's contract was terminated. The executives sued the company, the entire board and the CEO for Rs 20 (Crores) in damages and received a favorable order in lower court.

In another example, an employee filed a case of wrongful dismissal against the UK subsidiary of an India IT company, she claimed she was not appropriately paid during her employment and due to excessive work stress she had developed health problems. The suit was filed for Rs. 1 Crore. The company pursued the case in court initially but ended up settling out of court for Rs. 20 lakhs, defense costs paid were approximately Rs. 60 lakhs.

Insurers usually charge a higher premium from companies that are doing business in the US and Canada as even a small claim will lead to thousands of dollars worth of just litigation costs. Hence, it is important to check if UK jurisdiction is covered under the policy as we see that litigation cost was higher than the damages.

As previously mentioned, the regulatory environment in India has been changing at a fast pace and many of new regulations, as per The Companies Act 2013 make the employees, directors, the board accountable for the decisions they take on a day to day basis and hold them responsible for any statements, information, negligence in their scope of work.

For example, a company seeks outside investment from a venture capitalist. The

directors provide all the information required by the VC including all future orders placed. After making the investment the VC finds out that the figures for future orders were exaggerated and not a true representation of the potential of the company. The VC can sue the directors for misinformation for which the director can be personally held liable (their personal assets can be attached).

The Companies Act also extends and defines roles for independent directors who generally do not involve themselves in day to day matters of the company but may be also held liable, regardless of managerial involvement.

The Enforcement Directorate, which is the law enforcement agency of the Indian Government, responsible for upholding laws and fighting economic crimes, and The Serious Fraud Investigation Office have been extremely vigilant in enforcing the directives of the new Companies Act.

The Three Arms of Liability Insurance

During the workshop, participants were given a detailed introduction to the three arms of Liability Insurance, “Professional Indemnity”, “Directors and Officers Liability” and, “Commercial General Liability”.

The Three Arms of Liability Insurance: Professional Indemnity

Professional indemnity is designed for anyone engaged in the professional services such as doctors, lawyers, architect’s engineers, etc. and covers the liability that may arise due to any deficiency in their services provided. The policy covers legal costs and expenses and damages within the overall indemnity limit chosen by the insured

What does Professional Indemnity cover?

- *Liability* to third parties arising from the performance of or failure to execute/perform/complete professional services including:
 - Negligent acts: failure to use a degree of care which a reasonable person would use under the given or similar circumstances
 - Errors & omissions
 - Wrongful acts
- › *Loss* – financial injury to a third party caused by the performance of or failure to perform Professional Services

Liability specifically covers any professional such as:

- Medical Practitioners, Paramedics

- Medical Establishments
- Researchers
- Business Houses
- Teaching Institutes
- Sports Persons
- Architects/Designers
- Engineers
- Advocates/Lawyers
- Financial Consultants
- C.A. / C.S.
- Service Providers
- Counsels
- Brokers

What is covered?

Liability cover, provides expenses for defense related charges such as:

- Compensatory damages
- Settlements
- Legal costs and expenses associated with defending legal actions
- Breach of confidentiality
- Cover for contactors/subcontractors working on behalf of the insured
- Cover for defamation claims
- Cover for employee fraud/dishonesty to third party
- Cover for implied warranties and conditions
- Cover for IPR
- Cover for interference with privacy

- Cover for JVs
- Cover for loss of documents
- Automatic cover for new subsidiaries
- Cover for PR expenses
- Cover for heirs and legal representatives
- Cover for trade practices act
- Cover for vicarious liability
- Cover for contractual liability
- Cover for loss minimization and rectification
- Cover for professional inquiries

Professional Indemnity Insurance (Covering errors, omission, negligence in services)

	Doctors and Medical Establishments	Engineers	Accountants & Consultants	Lawyers
Legal liability and defence costs	Death and bodily injury of patients	Construction damage, death, injury	Financial loss and damages	Financial loss and damages of clients
Negligence of	Insured, qualified nurses, assistants and technicians	Individuals, Firm, employees and consultants	Individual, firm and employees	Individual, firm and employees

The Three Arms of Liability Insurance: Directors' and officers' liability.

This insurance cover shields directors and key officers in decision-making capacity for any negligent acts, misinformation, within their scope of work. This cover will protect the directors' and officers' personal assets that can be attached to the lawsuit. Legal costs and expenses and damages are paid in case of a lawsuit.

Wrongful acts include:

- Misstatement
- Misinterpretation
- Breach of trust or duty
- Breach of warranty or authority

There are many extensions one can buy depending on the risk exposure.

Some of them are:

- Blanket subsidiary cover
- Investigation costs
- Emergency costs
- Employment practices liability
- Pollution defense costs
- External positions/Outside directorship cover
- Entity protection for securities claims
- Libel and slander
- Retired director and officer cover
- Intellectual property
- Entity protection for employment related matters
- Prospectus liability for current/future offerings

The Three Arms of Liability Insurance: Commercial General Liability

Finally, Commercial General Liability, the third most critical aspect of Liability Coverage can be classified as *public liability policy* or a *product liability policy*.

A *public liability policy* covers the amount that the insured would be liable to pay due to any bodily injury or damage to the property of a third party because of the insured's premises. This policy is specially tailored to suit offices, hotels, go-downs, workshops, hospitals, schools and other commercial buildings, basically any premises that are open to visitors.

A *product liability policy*, like its counterpart, also covers accidental death, injury and damage to a third party's property. However, in this case, the incident should have arisen from a defective product manufactured by the insured. This could be in the form of faulty packaging, incorrect usage instructions or even tardy delivery. Companies can claim this cover for impacts seen on both their domestic and international sales, as long as the claim is made within the policy period. Extensions under the policy can be given to include product recall, product guarantee and financial loss.

There are many other types of liability policies depending on what your business is exposed to like cyber risk liability, crime, etc. Insurers are constantly innovating and introducing newer, better products that are suited to the current business environment and needs. The more we understand risk exposures the better we can protect our businesses that will only help companies to grow and expand their horizon.

In Summary

This one-day workshop was well received and attended by senior officials from various multinational, and Indian companies, across geographies and industries; many of the participants found value in exposure to the information that explained carefully and systematically the concept of liability risks, exposures and liability policies that could mitigate such risks in the ever changing, modern Indian business context.