

“D & O 1987 – 88”

An FT Insurance Information Group Survey by Sue Copeman, N.H. Stanbury – Directors & Officers Ltd.

As the publisher's foreword indicates, comprehensive information about directors and officers liability outside the North American markets has not until now been easy to obtain. Indeed, with the notable exception of "Directors' and Officers' Liability Insurance" (The Insurance Institute of London, 1986), which deals primarily with the legal and structural aspects, little has been published by way of analysis and survey of this class of business. Given that the whole environment of D & O Liability has recently been, is now and probably will continue to be kept very much in focus both by legislative trends and by well-publicised actions, it is appropriate that a survey of this nature should now appear and Sue Copeman has made a thorough job of it.

The survey has three parts: an analysis of the markets both in the U.K. and overseas, including the U.S; a report on how U.K. D & O cover is perceived by both those who have cover and those who do not; a comparison between the various U.K. policy wordings currently available. The survey was completed and published in September 1987 and can be considered generally correct at that date although, in the nature of things, it is apparent that some information is by now out of date. The publisher's intention to produce a periodic revision will doubtless obviate most of these difficulties, assuming that the insurers and others consulted by the author (including this reviewer's company) maintain the co-operation shown in the production of this first issue.

The U.K. market analysis includes a brief resume of legal liabilities attaching to directors and a summary of the vexed question of the effects of S.310, Companies Act 1985 on the validity of D & O. It then usefully lists the main providers of cover in the company and Lloyd's markets with their fundamental underwriting approaches, criteria and capacity. Similar, albeit briefer, data is provided in respect of markets in the U.S., Australia, France, West Germany, Japan, India and South East Asia.

The second part of the publication is perhaps the most valuable as it consists of a fairly thorough and penetrating survey amongst a sample of some 121 U.K. companies, 49 of which buy D & O cover. The results will be of particular interest to both insurers and brokers, who often have little or no unbiased feedback on the reaction of their clients or prospects towards cover offered or incepted. Some surprising (and often alarming) comments have been made, particularly by those who have not effected cover. One is worthy

of quotation: "Cover is not bought to ensure that all executives use due diligence"; bringing to mind the denial of a safety net to a trapeze artist on the grounds that his skill or concentration might thereby be reduced (and causing him in reality to limit both energy and initiative to a minimum).

Finally, the survey makes a clause-by-clause comparison between the standard policy wordings used by nine D & O insurers. As one might expect (given that underwriters are often involved in more than one scheme and that imitation is the sincerest form of flattery) there are significant similarities between several of the wordings – and few major differences, although sufficient arise for an astute director to, perhaps, home-in on one or two insurers as offering him better apparent cover than the norm. Usually, this will be because definitions or exclusions are less restrictive and one may speculate as to the changes which will now be made as a result of the survey after it has been digested by all insurers!

Taken as a whole, the survey is a bold attempt to summarise the state of the art prevailing in a class of business which is growing in importance. There is little doubt that D & O is less well understood by directors and officers themselves than it should be, as many of the consumer comments make clear. D & O insurers have to overcome a fair amount of prejudice and ignorance if the director in the street is to be as well protected as he needs to be; this is no easy task bearing in mind the apparent inability of some brokers and professional advisers to get to grips with this class of business and its legal considerations. In highlighting these aspects, both good and bad, the survey fulfills a need and could usefully be updated regularly. Mrs. Copeman has performed a difficult initial task with energy and thoroughness and her book deserves a much wider readership than it will probably get – few outside the specialist market are likely to be willing to pay the non-subscribers' price of £175 (£200 from 1.1.88) for 62 pages of A4, however valuable the content, and it would be interesting to know the basis for pricing used by the publisher. Certainly, it would be unfortunate for this or similar publications to be terminated because total sales proved significantly fewer than potential customers.