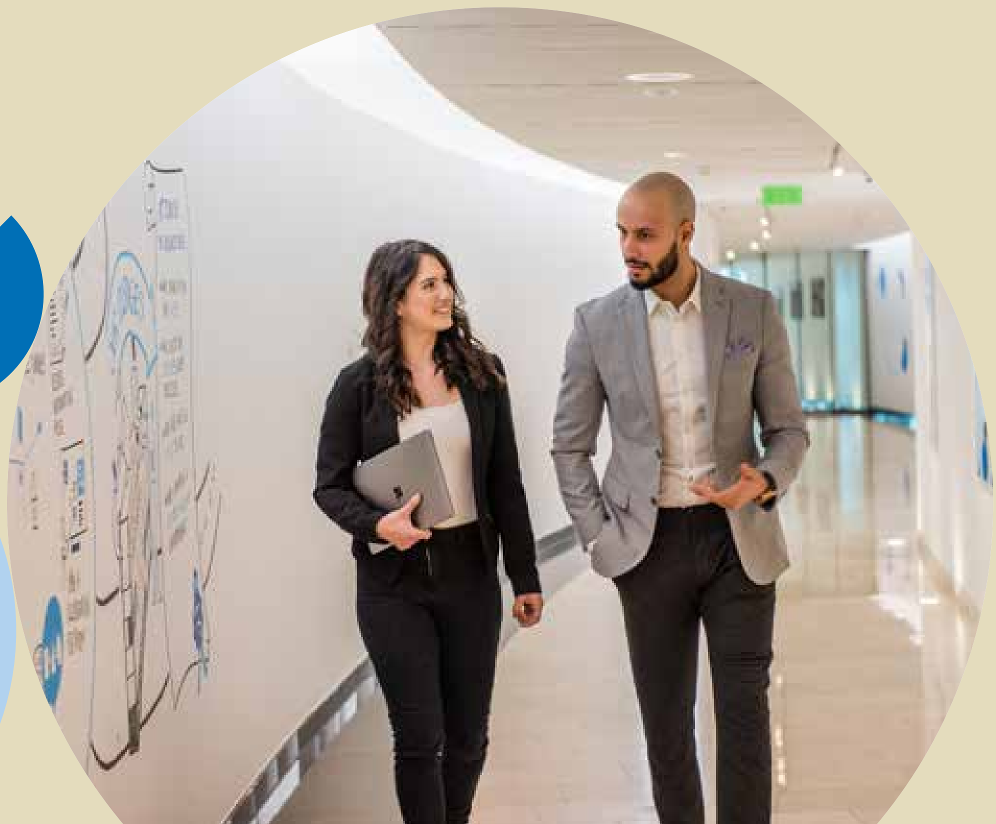
Customer Brochure

Protecting Business by Protecting People

Corporate Co-Director Insurance

Why purchase Corporate Co-Director Insurance?

The directors of a company are often the major shareholders and make all the key decisions for the business. A successful business depends on the co-operation and experience of its directors. If one of these directors becomes seriously ill or dies it can create great difficulty for surviving directors and the deceased's successor(s) alike.



The remaining directors may be faced with a new shareholder and director who has little business expertise and contacts. If the deceased director owned more than 50% of the business, disagreements may arise if the deceased's successor(s) – who would now be the majority shareholder – has different plans for the future of the business.

Ideally, the deceased's shares would be bought back by the remaining shareholders, directors, or by the company itself. However, they may not have the money available to do this. The deceased's successor(s), on the other hand, may not wish to become involved in the business and might find it difficult to sell their shareholding. They might welcome a cash sum at this difficult time.

Corporate Co-Director Insurance gives the company the security that there will be funds available to buy back shares if a director dies and in doing so maintain its control over the company's affairs.

The complexity of the corporate share purchase arrangement means it is a method of share protection insurance that should not be considered without the assistance of legal and taxation advisors. This is because it needs to comply with Company and Revenue Law.

The Zurich Corporate Co-Director Insurance policy can also cover you if a director is diagnosed with a serious illness.

The insurance can only be arranged on a 'Life of Another' basis where the company is the policy owner and the director is the life insured.

Forms required

- Corporate Co-Director Insurance Application Form
- Corporate Co-Director Insurance Double Option Agreement
- Corporate Co-Director Insurance Financial Questionnaire

This brochure is designed as a quick reference to the main features of the policy. For full details of any individual cover or any other aspect of the policy, you should consult the Policy Document, which is definitive in all matters of interpretation and entitlement to benefit. In the event of any conflict between this brochure and the Policy Document, the provisions of the latter will prevail.

The structure of a company

A company is a legally separate entity from the shareholders that own it. The shareholders appoint directors to the management board of the company. Where shareholders are actively involved in the company, they generally appoint themselves as directors and in that role make all the important decisions for the company. The death of a director who has a significant shareholding in the company can have serious repercussions for all parties.

The surviving directors

The surviving directors now have a new business partner, the deceased's successor(s), who may not be familiar with the business.

- They may also lose control if the deceased director owned more than 50% of the company.
- The ideal solution would be to buy the deceased director's shareholding.

The deceased director's successor(s)

- The successor(s) may find themselves with a shareholding in a company in which they want no involvement and for which they have no ready market.
- The company's Articles of Association may give the other shareholders the right to block the sale of the shares to an outside party.
- They might also be experiencing cash flow difficulties because of the loss of the deceased's salary.

Zurich's Corporate Co-Director Insurance solves these problems for both the surviving directors and the deceased's successor(s) by providing the capital the company needs to buy back the shares of a deceased director.

Setting up Corporate Co-Director Insurance

It is necessary to ensure that the legal and taxation background are in order before setting up Corporate Co-Director Insurance. These are discussed in the next section. Then there are two main steps:

- The company enters into a legal agreement called a Double Option or Buy/Sell Agreement with each director. This must comply with requirements set out in the Companies Act 2014 (as amended). The agreement gives the company an option to buy the deceased director's shares from their successor(s) at a fair open market value. It also gives the successor(s) the option of selling their shareholding to the company. The successor(s) can also retain their shareholding if both parties agree not to exercise their options.
- The company takes out a life assurance policy on each director for a sum insured equivalent to the estimated full market value of his or her shareholding to provide funds if a director dies. These funds will mean the company can buy back the shares. The company pays the premiums but these are not an allowable deduction for tax purposes.

The suitability of Corporate Co-Director Insurance

There are both legislative and taxation issues that need to be examined to ensure that a Corporate Co-Director Insurance arrangement is appropriate.

The legal power of a company to purchase its own shares*

The Companies Act 2014 allows a company to buy back its own shares if certain conditions are satisfied. The relevant conditions, for current purposes, include:

- The buy back must be allowed by either (i) the company's constitution; (ii) rights attaching to the shares; or (iii) a special resolution of the shareholders.
- Where the buy back is to be authorised by a special resolution, the shares to be bought back must not be included in the vote and the contract or the terms of the buy back must be provided to the shareholders (if requested) in advance of the special resolution.
- A public limited company cannot buy back all its own shares, effectively liquidating itself. After the buy back, no less than 10% of the nominal value of the total issued share capital of the company must be owned by shareholders other than the company.
- Only fully paid up shares may be purchased by the company, and, when buying back the shares, they must be paid for in full.
- Companies can only buy back shares out of profits available for distribution, as defined by the section 117 of the Companies Act 2014. If there is currently a negative pool of profits available for distribution, the company may not be able to buy back the deceased director's shares even if it receives the full benefit of the policy on that director's life.

The taxation treatment of the buy-back of the company's own shares

The taxation treatment will depend on whether the buy-back of shares is deemed to be a distribution by the company. If it is, the company would have to deduct dividend withholding tax at the standard rate on the amount paid for the shares. The successor(s) who is selling the shares is then liable for income tax at their marginal rate on the amount of the net distribution received plus withholding tax. However, a credit is allowed for the withholding tax deducted at source.

All the following conditions must be satisfied to ensure the buy-back is not treated as a distribution:

- The company must be an unquoted trading company, and the purchase of the shares must be wholly or mainly for the benefit of a trade carried on by the company.
- The purchase of the shares is to facilitate the disposal of the shares by the successor(s) and does not have the intention of avoiding taking dividends.
- The vendor must be tax resident and tax ordinarily resident in the State for the year in which the company is purchasing the shares. The residence and ordinary residence of the deceased's personal representative is taken as that of the deceased immediately prior to death.
- The shares must have been owned by the vendor and the deceased director for a combined period of at least three years where the shares are being bought after the shareholder's death.
- After purchase of shares by the company, the vendor must have reduced their shareholding by at least 25%.
- After purchase of shares by the company, the vendor may no longer be connected with the company.

Note: If the vendor is selling the shares to pay Capital Acquisitions Tax (CAT) on those shares and could not have discharged this CAT liability by other means without undue hardship, the buy-back will not be treated as a distribution in any event. Similarly, if the shares are quoted, the buy-back will never be treated as a distribution.

* Zurich Life does not provide legal or tax advice. We recommend you contact your legal and tax advisor before proceeding with a buy-back of shares.

Tax treatment where the buy-back is not treated as a distribution

Capital Gains Tax (CGT) on shareholding

On his or her death, the deceased director does not suffer CGT on his or her shareholding. The shares are deemed to be acquired by the successor(s) at their market value on the date of death. If the successor(s) sells their shares to the company shortly afterwards, any increase in the value of the shares from the date of acquisition to the date of disposal will be liable for CGT.

Capital Acquisitions Tax (CAT) on shareholding

There is no liability to CAT if the deceased's spouse inherits the shares. The normal rules relating to CAT (i.e. Inheritance Tax or Gift Tax) apply if someone other than the spouse inherits the shares.

The disposal of shares by the successor(s) after inheriting them from the deceased director would result in the loss of any CAT business relief claimed. **Professional advice should be obtained if this scenario is a possibility as it may be financially significant.**

Serious Illness and Permanent Total Disability cover

We have focused on insurance cover for the death of a director throughout the brochure. If you are including Serious Illness or Permanent Total Disability cover in a Corporate Co-Director Insurance arrangement, you need to consider the following:

- The precise definition of ill health would need to be agreed for serious illness cover. A director who fully recovers from serious heart surgery may not want his or her share of the company to be compulsorily purchased by the other directors.
- Where a director is diagnosed as having a serious illness, he or she would face Capital Gains Tax on the disposal of his or her share of the company. If the director is over 55 and certain conditions are met, retirement relief may apply which reduces his or her Capital Gains Tax bill.

For more information

Talk to your Financial Broker or advisor

Call our Financial Planning Team directly on 0818 202 102

Email us at customerservices@zurich.com

Visit our website at zurich.ie

Zurich Life Assurance plc
Zurich House, Frascati Road, Blackrock, Co. Dublin, A94 X9Y3, Ireland.
Telephone: 01 283 1301 Fax: 01 283 1578 Website: www.zurich.ie

GR: 6254 Print Ref: ZURL BICCB 4 1021 Product Ref: JAS

ZURICH®