



Online Document

Directors' & Officers' Liability

Directors' & Officers' (D&O) Liability

“D&O is an essential element of your insurance programme in today’s increasingly litigious society”

Executive and non-executive directors are increasingly accountable for their actions under changing legislative and regulatory frameworks and given evolving attitudes and expectations regarding corporate performance.

The main external changes underlying this increase in the personal liability of directors are changes in legislation and regulations in the areas of corporate governance, employment law, health and safety, etc. and the increasing powers of regulators. Moreover, there is a new focus on the communication of information to shareholders, and a greater willingness of shareholders and other third parties to sue.

Some of the more frequent causes of claims against directors and officers include:

- stock price volatility
- poor financial condition
- mergers and acquisitions (M&A) activity
- insider trading
- financial restatements
- failure to disclose problems relating to the purchase of a subsidiary
- accounting irregularities.

Critical questions that you need to consider

Have you recently reviewed the scope of cover granted under your D&O policy? D&O is a complex product, with a wide variation in the breadth of cover from different providers.

The Extradition Act 2003 provides the USA and other countries with extensive powers to instigate extradition proceedings against UK directors and officers. Will your D&O policy cover the costs associated with resisting these proceedings?

Are your board members fully aware of the conditions and exclusions of your D&O policy? Non-executive directors in particular are keen to understand the amount and scope of cover available, to satisfy themselves that they will have access to sufficient defence costs in the event of a claim.

In the changing claims environment, have you reviewed the adequacy of limits and programme design?

Will your policy be able to meet the evolving needs of your business, especially if it ventures into new jurisdictions?

Contact us for further information on our business insurance services