

User Guide: D&O insurance

What is Directors and Officers Liability Insurance (D&O)?

D&O liability insurance offers coverage intended to protect individuals from personal losses if they are sued as a result of their regular duties as a director or an officer of a business or other type of organization. It can also cover the legal fees and other costs the organization may incur as a result of such a suit.

D&O coverage includes financial protection for managers against the repercussion of actual or alleged “wrongful acts”. D&O policies cover personal liability of directors and officers of a company or organization for losses or reimbursement of defense costs if legal action is brought against them.

Coverage is usually for past, current, and future directors and officers of a company and its subsidiaries. Typically D&O liability policies are written on a claims-made and reported basis, meaning a claim must be both made against the insured, and reported to the insurer during the policy period (or within a contractually agreed extended reporting period) for coverage to apply.

Coverage can be provided to insure against a variety of hazards, but typically include exclusions for fraud, criminal activity, intentional non-compliant acts, and illegal profits.

D&O insurance structure

The structure of a D&O insurance policy depends on which of 3 insuring agreements are provided (a typical policy includes, ABC coverage).

Side-A:

Side A coverage essentially provides that the insurer will pay covered loss to a director or officer of a company if the company is unable to provide indemnity – either because the company is insolvent, or because it is otherwise legally precluded from doing so. This coverage protects the personal assets of directors & officers. This part of the policy should pay on a first-dollar basis, that is, there should be no self-insured retention or deductible.

Side-B:

Side B coverage is the part of the D&O policy that reimburses a company for its indemnification obligation to its directors and officers. This part of the insurance policy is generally subject to a self-insured retention or deductible. Side B responds most commonly in the majority of claims brought against directors and officers.

Side-C:

Side C coverage, also called “entity coverage”, covers the corporation for its own losses when it is sued together with the directors and officers. The scope of Side C coverage depends on whether a company is public (generally securities claims only) or private (broader coverage). Like Side B, Side C is typically subject to a self-insured retention or deductible. Side B and Side C coverage together are often referred to as “balance sheet protection” for a company.

Side-A DIC

Stand-alone Side A is the type of D&O policy that only provides Side A coverage. This type of Side A policy is also referred to as a “Difference-in-Condition” (DIC) policy. Many companies will structure their insurance program to include a combination of regular ABC insurance policies and Side A-only policies. A Side A DIC policy provides excess Side A D&O insurance that picks up coverage once a company's traditional D&O tower is exhausted. A Side A DIC policy drops down to fill in gaps in a company's D&O

tower when any underlying insurer fails or refuses to pay, attempts to rescind coverage, or becomes insolvent.

Common D&O risk scenarios

- Breach of fiduciary duty resulting in financial losses or bankruptcy
- Employment practices & HR issues
- Shareholder actions
- Inaccurate or inadequate disclosure
- Misrepresentation of company assets
- Failure to comply with regulations or laws
- Lack of corporate governance
- Derivative claims
- Corporate manslaughter
- Reporting error
- Bankruptcy

Common D&O exclusions

- Fines and penalties
- Fraud
- Illegal remuneration or personal profit
- Property damage and bodily harm (except Corporate Manslaughter)
- Legal action already taken when the policy begins
- Claims made under a previous policy
- Claims covered by other insurance
- Intentional non-compliant acts