

June 2023

D&O - UK market overview and update

The challenging conditions seen in the Directors & Officers (D&O) market between 2019 and 2021 have calmed. The significant rate rises during this period were due to a combination of Lloyd's syndicates and London market insurers posting significant D&O losses. At the same time, Insurers halved the limits they were prepared to quote, and many insurers stopped new business submissions. In several notable cases, entire D&O books were closed and placed into run-off. This series of events caused a sizeable reduction in capacity in a market that had continued to grow.

The Covid-19 pandemic brought even more uncertainty on a global level. And while the pandemic appears to be largely behind us now, insurers remain cautious of indirect Covid-related losses, especially in light of the current inflation and cost-of-living crisis. A company becoming insolvent or being placed into administration may automatically trigger a notifiable D&O event, and actions by creditors are often a source of D&O claims. Furthermore, the sheer number of global firms that had to seek support from governments or increase their borrowing during the pandemic, and are now struggling with increased overheads, means insurers will pay close attention to company financials when reviewing submissions this year.

Alongside these concerns are other considerations, such as the war in Ukraine and Environmental, Social & Corporate Governance (ESG) risk. ESG has become a significant rating factor for D&O insurers and is a key area of focus for them. Exposures continue to develop and form a core concern for D&O insurance, particularly for listed companies. Globally, governments, regulators, and shareholders (and even litigation funds on behalf of shareholders) are all now more willing to hold directors accountable for the actions of the companies they run. As an additional cautionary note, the wider insurance market has begun to experience rate rises.

This is partly due to the number of catastrophic events reported in recent years and fallout from other macro multi-class events, such as the war in Ukraine. Insurers' own reinsurance renewals have also been quite challenging, with reports of substantial rate increases. Given past rate rises, this is unlikely to impact the D&O market. However, it is worth highlighting as a potential headwind as any prolonged challenges in the reinsurance sector may slow the D&O market's recovery.

Premium rates

The good news is that several new insurers have entered the D&O market in the past 12 months. These insurers do not have the significant claims tails of other more established insurers and have added much-needed capacity. Additionally, improved data review and analysis have allowed all insurers to break down and better understand specific D&O subsections of risk that increased reported claims activity. The overall result is a much-improved market appetite.

Premium rates are therefore generally very competitive compared to recent years. Reductions are common across the market, though on certain risks this may be offset where terms and conditions, which may have been significantly restricted in recent years, require improvement to provide suitable coverage. We often see clients taking advantage of market conditions to increase their limits and coverage back to previous levels.

However, certain sectors and risk profiles do remain challenging, with minimal market capacity and higher market rates continuing in the cannabis, coal, blockchain and SPAC related risks for example.



Coverage restrictions

Some sectors continue to see coverage restrictions imposed on policies. These will vary but below are some basic examples of certain areas to watch out for:

Mining/O&G sectors: Pollution exclusions are common, but where possible carve-backs/sub-limits for defence costs should be sought. Payment and Gratuity Exclusions are also standard where activities are undertaken in higher-risk overseas territories.

Biotech/Pharma sector: Intellectual property exclusions are common, but where possible carve-backs/sub-limits for defence costs should be sought. Watch out for Opioid or other similar exclusions. Sometimes these aren't prominent in an insurer's wordings and, where applied, should be read carefully to check whether the language is limited to opioids or is a potentially more extensive exclusion.

Tech sectors: Intellectual property exclusions are common, but where possible carve-backs/sub-limits for defence costs should be sought. Cyber-related exclusions can also sometimes be applied, which could remove D&O cover for a GDPR-type event/investigation. Depending on the tech sub-sector, additional conditions may be considered.

Public offerings: Initial public offering (IPO) and future offering exclusions are often applied to D&O policies. Companies should ensure they declare any recent IPO to insurers, or there may be no cover. Companies that are already listed should try to ensure that reasonable carve-backs/threshold limits are provided by insurers. This measure will ensure that any smaller funding rounds undertaken over the next policy period are automatically covered. Otherwise, they will need to be notified, and cover may be excluded and subject to an additional premium.

Bodily Injury (BI): a BI exclusion can be found on every D&O policy, but typically, there are carve-backs provided for defence/investigation costs where a regulatory proceeding is brought against the directors (corporate manslaughter, for example). If you operate in an industry with higher BI exposure, some insurers may apply an absolute exclusion, removing this cover entirely.

Insolvency: With many companies experiencing a cost increase on their bottom line, insurers are paying close attention to company financials. Companies operating in sectors requiring high exploration/development/research/private equity/start-up costs can expect to have their financials scrutinised. Additional questions may be asked to gain clarity on specific points.

Where insurers remain uncertain about a company's financial stability, they may add an insolvency exclusion, which is a very significant restriction on a D&O policy. We would not recommend such a clause unless there are no other options available or the directors collectively are prepared to accept the personal risks of such an exclusion on the policy if the premium is too expensive otherwise.

Making sure your broker understands your risk and has discussed potentially significant exclusions with you is essential in ensuring D&O cover meets your board's requirements. With D&O market conditions easing, it's worth exploring whether any conditions and exclusions imposed on D&O policies in recent years can be relaxed or removed.



Premium settlement

Insurers are aware of the increased potential for businesses to fail in the current economic climate and are under pressure to settle premiums promptly. Consequently, insurers can, on occasion, seek additional comfort about the liquidity position of their insureds and the potential for bad debt when underwriting. An increase in more stringent payment conditions on some policies and a reluctance among insurers to extend payment timelines has already been noted. Therefore, the affordability of premiums and how they will be settled should be given early consideration so as not to breach any policy payment conditions. Where applicable, companies will also need to bear in mind the additional costs incurred through third-party premium financing facilities. They should also view D&O as a vital cover to protect the directors should the business fail.

What we can do

Clear's specialist D&O team can provide a comprehensive no-obligation review of your existing cover and current policy wording to ensure you have the right cover at the correct market premium levels. If that happens to be the cover you have in place, we will be transparent with you and advise you to maintain it.

It is essential that you provide an excellent presentation to insurers since this will stand a far better chance of a positive response from the market. Proposal forms give only basic information. And while we will supplement this material by reviewing publicly available information on websites and RNS feeds, we advise you to go beyond the questions posed by the insurer. Doing so ensures you fully explain your business, particularly where the insurer asks for additional information.

Ultimately, no one knows a business better than its directors. Successfully demonstrating this often assists D&O underwriters, who are naturally very risk conscious, in being able to justify favourable terms.

Contact us

If you would like to discuss D&O insurance solutions in more detail, please contact:

020 7280 3450

Limits of indemnity and placement structures

The basis of the indemnity limit on D&O policies has historically been written on an 'aggregate' basis (i.e., the limit is the total available regardless of how many claims are reported). However, on selected risks in the UK, 'Any One Claim' (AOC) cover is slowly re-emerging. AOC provides a limit for each separate claim rather than a single overall aggregate limit. D&O claims tend to be low-frequency high-impact events. In other words, it would be unusual for a D&O risk to have multiple separate events in a policy year. While AOC cover is an attractive selling point (and may provide sleep-easy protection for directors should the worst happen), it should not take precedence over the underlying conditions of the policy that may exclude key cover.

Insurers are also more willing to increase their line sizes and limits available, which were significantly reduced compared to previous years. Where capacity of GBP 1m or GBP 2.5m was only previously available, insurers are now prepared to consider GBP 5m. On more significant risks or risks with a desirable profile, sometimes GBP 10m lines can be quoted by a single market, and very large towers of cover are available once again for those bigger companies looking to return limits to previous levels.