

FIVE CRUCIAL D&O INSURANCE CONCEPTS

With inside knowledge there are several ways to dramatically improve the quality of the D&O / Management Liability Insurance you purchase.

AS SCRUTINY AND PRESSURE UPON

Directors intensifies, the quality of Directors Insurance takes on increasing importance. However, it is often surprising how little attention is paid to the quality of cover. The assumption that all D&O insurance policies are essentially the same is erroneous as there can be a material difference in the quality of cover you purchase.

If you have responsibility for arranging the D&O Insurance policy then forewarned is forearmed. You can improve the quality and effectiveness of the cover you arrange, and often for no additional cost.

sharing the aggregate limit with the Entity.

If there is a claim and multiple Directors and the Entity itself are named then an aggregate limit can be eroded quickly.

The Entity could buy its own limit separate, but the key takeaway is to understand exactly who is sharing your D&O policy limit and then make informed decisions.

Are all policy restrictions contained in the Exclusions?

It's understandable to assume that all restrictions to your policy are contained in the policy exclusions. However be aware that some restrictions are contained in policy

Endorsements

An insurance policy is a legal contract that comes in two parts:

1. the Policy Wording & Schedule; and
2. Any additional clauses commonly referred to as Endorsements.

Pay particular attention to Exclusions contained in Endorsements because they have been applied specifically to your risk. Standard ones to watch for are Shareholder Exclusions; Insolvency Exclusions; Specific Matter Exclusions and Contingent Liabilities Exclusions. If an Insurer has applied an exclusion by Endorsement it's because the Insurer sees that area as a concern. If that's the case then try to remove it for the very same reason.

Sub-limits

When you purchase insurance you purchase a headline number e.g. \$5m or \$10m. However look to the sub-limits. Sub-limits are smaller limits that are applied to specific areas of coverage such as Investigations, Fines & Penalties, and Extradition costs. Focus attention on increasing the sub-limits on areas that matter to you rather than just worry about increasing the overall policy limit.

All is negotiable

There is considerable difference in quality between policies. The good news is that D&O insurance is also a negotiable product, and every wording, even the 'best', can be modified / improved.

Whilst some of the enhancements may come at a cost, others can be negotiated in for no additional charge. We suggest you take a few moments to really review the D&O Insurance you have purchased. Simply knowing what improvements to ask for, and how to ask for them, can have a material impact in the quality.



Sharing cover with the entity?

The original purpose of Directors Insurance was to protect the individual, with the Policy only responding to claims against the Directors and Officers but not to claims against the Entity itself.

Over time this position changed. Private Companies began purchasing Management Liability Policies which extends cover to the Entity on the basis that the Directors are usually the owners and want to protect the Entity as much as themselves. Listed Companies started purchasing Entity cover (Securities cover) because it was a genuine insurance risk they needed to insure. This is fine as long as it's understood that Directors are

definitions and general conditions, and others are defined by 'what is not said'.

Some common examples:

1. The definition of Loss can be comprehensive, but can also then include a list of items that are not covered. Typical language includes the words "Loss shall not include...".
2. Many policies have specific General Conditions in relation to 'Changes in Risk; Other Insurance; Valuation of Losses'. Each in their own way imposes a restriction on the cover.
3. What's 'not said' in a policy also matters. For example, the policy may cover investigation cover where a wrongful act is alleged but what about where no wrongful act has been alleged?

