

A variety of factors determine the price of a company's D&O insurance. Some low-risk companies pay pennies on the pound; others pay a lot more, but they understand it's a lot less than the expenses they'd incur in a legal action. Recognising the cost drivers of D&O insurance—a company's exposures, legislation and trends in D&O legal actions—can help you decide what cover your company needs to mitigate its unique exposures.

Company Characteristics and Exposures

To determine the cost of premiums and the limits of cover, insurers review several facets of the company's structure and price D&O insurance accordingly. Some of these attributes include the following:

1. *Is the company mature or young and developing?* Companies with less experience and a shorter history of proven effective management can be a riskier policy to underwrite than well-developed companies that have experienced directors and officers.
2. *What industry is the company involved in?* Operating in certain industries, such as investment banking and securities, may expose executive management to more risks than those for the board members of a small not for profit.
3. *Is the company financially stable?* Insurers consider the amount of debt a company has. If a company's finances are unstable, the business has an increased chance of becoming insolvent during a legal action.
4. *Is the company planning on going public soon?* Initial public offerings, the most common way to go public, increases the exposures for a private company. Issues, such as lack of disclosure or if the company's performance fails to meet expectations, are significant risks for directors and officers during this process.

The Cost Drivers of Directors & Officers Liability Insurance

Insight for business owners and risk managers—provided by **Crendon Insurance Brokers Ltd**

Directors and Officers Liability (D&O) insurance is a fundamental component of any company's risk management programme. A lack of D&O insurance may dissuade talented individuals from seeking an executive position at your company, as they don't want to put their personal assets at risk in the event of a legal action.

As a savvy business owner looking to protect your bottom line, how do you weigh the cost of insurance to protect your senior leadership with the potential risk of a legal action? As regulatory investigations and defence expenses increase, prices for D&O insurance have gone up as well. Corporate indemnification provides the first line of liability protection; but certain circumstances—most notably, if the company goes bankrupt—necessitates that additional protection is offered to directors and officers.

5. *Does your company have employees?* From small not for profits to large, publicly held companies, employment-related claims are the primary cause of legal actions against an organisation's directors and officers.
6. *Does the company operate in foreign markets?* Conducting business internationally can complicate the D&O insurance needed. For example, in addition to domestic laws, each individual country has their own set of regulations to follow.
7. *What is the company's history of past litigation?* Insurers will analyse a company's history of previous legal actions and any adverse business developments and executive management changes.

Trends in D&O Legal actions

Even after a thorough assessment of a company's risks, D&O insurance continues to be a high-severity product, as insurers are often hit unexpectedly with catastrophic claims. It's no surprise that as litigation increases, the price of D&O insurance increases as well. In addition, as the litigation process grows lengthier and if multiple legal actions erupt from a single transaction, a company can quickly exhaust its primary layer of D&O cover.

Some types of legal actions occur less often, but result in catastrophic losses. Other types result in smaller payouts, but occur more frequently. Nonetheless, defence expenses can cost millions of pounds, even if the director or officer is not found liable. Some of the types of legal actions that affect directors and officers include:

- Breach of duty legal actions
- Misstatements
- Employment-related legal actions
- Neglect

What Type of D&O Cover Do You Need?

Your organisation's unique attributes and risks will determine the extent of D&O insurance cover you need. The type of cover affects the cost, and it's important to understand the different types of D&O insurance to determine what covers your risks. Policy options include:

Side A: This cover protects directors and officers when indemnification is not available. For example, if the company goes bankrupt during a lawsuit, this cover would protect directors' and officers' personal assets.

Side B: This cover reimburses a company's indemnification obligations.

Employment Practices Liability (EPL): This cover protects directors and officers against wrongful termination, discrimination (age, sex, race, disability, etc.) or sexual harassment suits from current, prospective or former employees.

Know What Your Policy Covers

While many companies usually focus on the cost of their D&O policy, understanding the scope of the policy is even more critical. Most D&O policies are renewed yearly, and the terms and conditions can change. Read through your policy carefully. Be aware of the following:

- Look at the limits of your liability. Are they enough to cover your exposures? Companies with a lot of risk exposures usually find that they need more than just the primary cover, and purchase excess insurance as well.
- Be aware of exclusions; most D&O policies do not cover claims that arise from fraudulent or criminal acts.
- For some insurance insurers, Employment Practices Liability (EPL) insurance and Fiduciary Liability insurance are policies that are purchased separately from primary D&O insurance. Don't assume they are automatically included in your D&O policy.

For more information on D&O cover options for your company, contact **Crendon Insurance Brokers Ltd** today.