

D&O renewal

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Prepare early for a trouble free D&O renewal

by Michael Lea



This current period of economic uncertainty has led to much speculation about how the insurance market will react. For Directors' and Officers' (D&O) liability there is no doubt that there will be some effect upon renewals and we will have to wait to see how this impact will manifest itself over the coming months. However, by starting to consider renewals early and equipping yourself with a few simple measures and techniques you can ensure your renewal is trouble free.

D&O Insurers and their management may cut back on the level of authority given to grass roots underwriters and some have issued instructions to their underwriters to resist premium reductions or impose premium increases. In an effort to centralise the underwriting process, decisions on terms and conditions, particularly for Insureds with any U.S. exposure are referred to underwriting committees.

Following and excess markets are becoming more selective about which primary lead markets (main insurers) they are prepared to follow. This is because they need to ensure that the primary leader, who drives the defence of a D&O claim, has sufficient resources and experience to do so competently. This is also true of A Side DIC placements which provide for drop down over underlying insurers should they become insolvent and not be able to pay claims.



Insurers are focussing heavily on the capability of their client's senior management and may insist on a more intrusive underwriting process or a pre renewal meeting with CEO or CFO before setting terms. Clients providing access to senior management and thereby demonstrating willingness to provide the information requested of them by insurers will undoubtedly see the benefits of this in their renewal terms.

It isn't all bad news for insureds though. Unlike the hard market of the mid 1980's there is still plenty of D&O Insurance capacity with placements of US\$300m and more available at competitive terms, and there is no sign of Insurers looking to impose coverage restrictions. By following a few simple steps, companies can ensure that they differentiate themselves from their peers and achieve a trouble free renewal.

1 Start early

For a major D&O programme, you should be strategising with your broker and collating renewal submission information at least three months before renewal.

2 Transparent

Be transparent with the information you provide and provide this information in the format that insurers like to see it, rather than just a copy of the latest analyst presentation. For example, most insurers would like to see the share ownership of their client broken down by country of domicile of shareholder, type of shareholder (i.e.: individual or institutional), and type of share owned (ie: Nasdaq, ADR, GDR).

3 Compliant and succinct

Provide details of your compliance with applicable corporate governance guidelines in a succinct format and provide details of internal policies for revenue recognition, corporate communications and insider trading. This will undoubtedly avoid questions and subjectivities from underwriters down the line.

4 Identify your appetite for risk

Work with your broker to identify your appetite for your own risk through retentions, coinsurance or exclusionary language and formulate an idea of what will constitute an acceptable renewal programme. This may provide an opportunity for your broker to manage expectations and identify your 'hot buttons' before the placement is underway. Through

this process both you and your broker can be much more pro-active in taking the deal to market.

5 Capable individuals

You must ensure that your risk is being considered by capable individuals. Clearly this is crucial where your broker is concerned, but as important with each potential carrier, where access must be sought to the decision makers. You must satisfy yourself that the individual practitioners working on your account have sufficient experience of operating in a harder market, and that they have strong relationships with the decision makers to whom the risk may ultimately be referred.

6 Time your renewal

At the end of each calendar quarter, brokers and underwriters are extremely busy. Inevitably more work gets delegated to junior staff during these times. June and January may be the worst times to renew a policy and should be avoided where possible, as underwriters and brokers are at full stretch. Most Insurers will have their own Reinsurance treaty renewals at this time, which may affect their certainty over what they are able to do, and cause some decision paralysis.

7 Use your relationships

There is a logic to using the same insurers who are involved on the property and casualty placements where possible, in order to secure visibility and senior management involvement, as well as maximum leverage in negotiations. Without doubt the strength and size of a corporate relationship will be taken into account in the underwriting process. No underwriter will want to attract their colleagues' or management's scrutiny, for being the one who lost one of their best clients.

8 Make an impact

Effecting a renewal presentation by senior management, ideally CEO or CFO, to the insurers demonstrates to markets the level of importance the D&O policy commands within the company and has real impact. It also provides a platform for questions to be asked of the senior people running the company. Importantly, it also builds trust, which will be crucial later on in the process when trying to get markets to release terms early enough for them to be carefully considered and evaluated and for the broker to obtain terms from alternative primary markets and/or excess layer markets.

9 Establish claims and service protocols

It is not a good time to discover that the claims process is lacking or inappropriate for your requirements after a loss has occurred and claim has been made. It is key to have in place "best practice" protocols that clearly set out the responsibilities and

expectations for both insured and insurer at the outset of the policy to reduce the risk of a claim becoming adversarial. Similarly, if service protocols are agreed there is clarity about the expectation levels for response times and this will help to reduce potential conflicts.

10 Stick to agreed milestones

There should be time prior to renewal to get all capacity in place and policy wordings agreed. It sounds very simple but if a strict time line is not adhered to, placements can lose momentum whilst insurers concentrate on more pressing issues, or worse, you may be forced into rash decisions because the expiry of your current programme is rapidly approaching and things are behind schedule.

Conclusion

There has never been a time when the procurement of broad protection for board directors has been more important.

Brokers are playing a key role by helping their clients and underwriters to gain comfort and trust in each other by careful management of the renewal process, thereby securing not only the most favourable renewal terms and conditions but more importantly a partnership built on trust that will endure when the directors and officers need it most.

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Give your D&O policy a free health check

Current market conditions mean now more than ever is the best time to review your D&O policy.

D&O exposures to shareholders, regulators, environmental agencies or the general public have led to a growing trend in the frequency and severity of lawsuits.

Insurers have responded to this by launching many new primary D&O policy forms. With no consistency between insurers each form has different ideas, enhancements and concepts.

Through our unique position at JLT we work on all UK, US and International forms. This has given us the ability to create a comprehensive database of all available enhancements. We can now negotiate JLT wordings with the highest common factor of improvements for your current D&O policy.

We have a team of D&O specialists who are experienced within the US, Asian, European and London markets. Using our knowledge, expertise and the information we have collated we can now offer you a free no-obligation health check of your current D&O policy.

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