

# Directors' and Officers' Insurance

A GUIDE FOR LIFE SCIENCES COMPANIES

ENTER



**Gallagher**

Insurance | Risk Management | Consulting

## Why D&O insurance for life sciences?

Directors of life sciences businesses carry a huge weight of responsibility, and yet many companies, especially in the start-up phase, may not recognise the true value of a directors' and officers' policy.

In a fast-moving, complex, and highly-regulated industry such as life sciences, it's important to protect your key people legally, because they are personally responsible for every decision made regarding the company.

Inadequate D&O cover could put the company's assets and the personal assets of the directors and officers at risk.





## What is D&O liability insurance?

Directors' and officers' (D&O) liability insurance indemnifies management and the board of directors for claims which may arise from the decisions and actions taken within the scope of their duties.

It is designed to cover the financial cost of compensation claims made against them, as individuals, for actual or alleged wrongful acts.

## What are 'wrongful acts'?

'Wrongful acts' refers to poor business decisions and/or acting negligently, and can include:

- Breach of trust
- Breach of duty
- Misleading statements
- Error
- Wrongful trading
- Neglect

## What does a D&O policy cover?

- ✓ Legal defence costs
- ✓ Compensation costs



## Why is D&O insurance important?

Directors and senior managers can be held personally liable for the consequences of a wrongful act and their liability is unlimited. Without adequate D&O liability insurance, directors' personal assets are at risk. This can also extend to spouses where property and other assets may be jointly owned.

Even if the individual director is not personally liable, if they are named in an action, then significant legal defence costs (often hundreds of thousands of pounds) may be incurred in establishing a defence.

Directors can still be pursued or investigated after they have left a business, or the business is sold or no longer trading.

## Wouldn't a regular business insurance policy cover a company's directors and officers?

No, not necessarily. In a business insurance policy, there may be gaps where the indemnification of directors and officers by the company is unavailable. D&O insurance is often viewed as a method of filling in these gaps.

A company may initially pay costs on behalf of a director, but would look to their D&O policy for reimbursement.



## Who can make a D&O claim?

Claims against directors and officers can be made by:

- ✓ Employees
- ✓ Shareholders
- ✓ Investors
- ✓ Competitors
- ✓ Regulators
- ✓ Other third parties

## What types of claims can be made?

There are numerous possible claims scenarios in the life sciences sector, including:

- **Director versus company**—claims by shareholders who are unhappy with the company's direction due to decisions made at the board level.
- **Corporate insolvencies**—claims resulting from insolvency, where individuals can be targeted by administrators and creditors seeking to recoup losses.
- **Regulatory investigations**—legal action against the company and its executives if a regulatory investigation uncovers wrongful acts.
- **Contract disputes**—e.g., disputes around licensing agreements, ownership of intellectual property, access to research results, non-payment, and non-performance.
- **Criminal actions**—e.g., bribery and corruption.
- **Defamation**—a claim could arise due to comments written or spoken about a competitor, a supplier, or a former employee.
- **Harassment and discrimination**—in cases of breach of supervisory duties (i.e. failing to act on allegations) a board of directors can be held liable.
- **Information privacy and data breaches**—e.g., accusations of accessing the personal emails and messages of employees, or failing to provide sufficient cybersecurity training and IT systems.



# Other key considerations

## Attracting board members

Potential directors and non-executive directors will often require D&O cover to be in place, viewing it as a vital part of the organisations risk management programme. It can help demonstrate your commitment to protecting the individuals involved in the management of your company.

## Mergers and acquisitions

In the case of a merger or acquisition, directors may end up being held liable for lack of due diligence, miscalculation of synergies and/or overpayment, or integration issues resulting from poor planning. Remember, even after a business is sold, directors can be pursued or investigated.

## Environmental responsibilities

There is increased pressure on decision-makers in life sciences companies to limit the environmental impact of products, through all stages of their lifecycle. Shareholders, customers, and other stakeholders will expect to see evidence that the decisions and actions of a company's directors will reflect the company's ESG statements.





## How does D&O coverage work?

D&O insurance grants cover on a 'claims made basis', meaning claims are only covered if they are made while the policy is in effect (or within an extended reporting period).

Limits of indemnity range from £500,000 to multimillion pound limits for larger companies, and are commonly placed on an 'aggregate' basis. This means that the limit of indemnity applicable is the maximum amount insurers will pay during any one period of insurance, not per claim.

It is also important to note that D&O insurance does not provide cover for deliberate fraudulent activity by a director.

## Forms of D&O cover

A standard D&O policy generally has two primary insuring clauses, Side A and Side B, with an optional third, Side C. Together, all three coverages provide broad protection for individuals and the company.

### Side A coverage:

Coverage operates as personal asset protection for the directors and officers.

### Side B coverage:

Operates as balance sheet protection for the company's obligation to indemnify its directors and officers

### Side C coverage:

Operates as balance sheet protection for the organisation's own securities exposure





## The current D&O market

The D&O market continues to be challenging as capacity is restricted and underwriters are asking for much more information prior to quoting any risk.

The services of an experienced and well-informed insurance broker can prove to be vital in negotiating and procuring coverage.

Gallagher has extensive experience in placing D&O policies in the life sciences sector, and can negotiate on your behalf over terms and price, helping to ensure you have adequate cover in place.

We can also support your company and directors through the claims process, helping to minimise stress and working towards a swift resolution.





# Our products explained

## Management Liability

### Absolute

Our specialist Directors' and Officers' worldwide policy, designed specifically to protect the personal assets of senior executives against claims and allegations made by regulators, shareholders, employees, the company, and other third parties.

**Benefit from broad coverage, a range of additional benefits and minimal exclusions.**

### Definitive: Management Liability

Our comprehensive Management Liability policy, specifically designed for UK private small and medium-sized enterprises (SMEs). Definitive is designed on a modular basis, so companies can pick and choose the coverages most relevant to their business. Side A and B cover is included, as well as other products.

**Modules can include D&O, Employment Practices Liability and Pension Trustees' Liability.**

## D&O Top Ups

### Optimum

Robust top up cover for USA-domiciled and listed companies, providing directors with an additional, top-up layer of protection above the primary D&O policy.

**This Side A, Difference in Conditions (DIC) coverage protects directors when conventional D&O policies have been exhausted, fail to indemnify, or fail to trigger.**

### Solo

Robust top up cover specifically for non-USA domiciled and listed companies, providing directors an additional, top-up layer of protection above the primary D&O policy.

**This Side A, DIC coverage protects directors when conventional D&O policies have been exhausted, fail to indemnify, or fail to trigger.**

## Commercial Crime

### Prestige

Our specialist Commercial Crime combined offering for mid-market and large corporates worldwide, especially those with international exposure.

**Traditional risks such as fidelity and third party crime are included, as well as newer forms of crime such as Social Engineering.**

### Definitive: Crime Only

A crime product designed for small and mid-market UK private limited companies (with or without international exposure), across all industries.

**Covers employee dishonesty and third party fraud.**

## Transactional Risks

### Warranties & Indemnities

Covers liabilities arising from the representations and warranties within an acquisition agreement.

### Public Offering of Securities (POSI) / IPO

Covers liabilities related to prospectus information that is deemed to be misleading, or fails to disclose material information.

### Tax Indemnity

Potential tax liabilities flagged during an acquisition due diligence process or post completion restructuring can be mitigated.



# About Gallagher

Gallagher is one of the world's largest insurance brokerage, risk management and consulting firms. As a community insurance broker and trusted local consultant, we help people and businesses move forward with confidence. With more than 43,000 people working around the globe, we're connected to the places where we do business and to every community we call home. Managing risk with customised solutions and a full spectrum of services, helping you foster a thriving workforce, and always holding ourselves to the highest standards of ethics to help you face every challenge—**that's The Gallagher Way**.

These are brief product descriptions only. Please refer to the policy documentation paying particular attention to the terms and conditions, exclusions, warranties, subjectivities, excesses and any endorsements.

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