AIDA NEWSLETTER

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Association Internationale de Droit des Assurances

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SARA LANDINI EDITOR

AIDA PRESIDENT'S MESSAGE

This edition brings together three articles addressing Directors' and Officers' liability insurance (D&O) from complementary perspectives: the Portuguese legal framework, the evolution of the Latin American market, and the emerging trends reshaping D&O risk in Europe.

Taken together, the articles illustrate how this type of cover has evolved from a tool primarily designed to protect the personal assets of directors and senior executives against liability claims into an instrument increasingly linked to corporate governance and integrated risk management. The different perspectives show how regulatory developments, increased litigation and the emergence of new risks are expanding the responsibilities of those involved in corporate management.

The common thread is clear: D&O insurance remains an essential form of protection, but its relevance is increasingly connected to the ability of organisations and their governing bodies to demonstrate effective oversight, transparency, appropriate controls and preparedness for crisis situations.

The first article, focusing on Portugal, examines D&O insurance within a legal framework that places particular emphasis on directors' liability and provides limited protection for their personal assets. It considers key aspects of Side A and Side B cover, defence costs, and the way in which international D&O insurance practices interact with Portuguese company and insurance law.

The second article examines the development of D&O insurance in Latin America, where factors such as globalisation, increasing regulatory and corporate governance requirements, and greater exposure to claims have progressively driven demand for this type of cover. Although penetration levels remain uneven, Brazil, Mexico, Chile, Argentina and Colombia are among the region's most developed markets, reflecting the growing importance of D&O insurance as a corporate risk management tool.

,Finally, Benedetta Marcato’s article examines the European landscape and the emerging risks that are changing the exposure of directors and officers. These include cybersecurity, artificial intelligence, ESG factors, greenwashing, regulatory scrutiny and collective redress. The article also highlights how D&O underwriting is evolving from an assessment focused primarily on past claims experience towards a broader analysis of corporate governance quality, organisational resilience and the ability of boards to demonstrate effective oversight and controls.

Esta edición reúne tres artículos que abordan el seguro de responsabilidad civil de directores y altos ejecutivos (D&O) desde perspectivas complementarias: el marco jurídico portugués, la evolución del mercado latinoamericano y las tendencias emergentes que están redefiniendo los riesgos D&O en Europa.

En conjunto, los artículos muestran cómo este tipo de cobertura ha evolucionado desde una herramienta concebida principalmente para proteger el patrimonio personal de los directores y altos ejecutivos frente a reclamaciones de responsabilidad, hasta convertirse en un instrumento cada vez más vinculado al gobierno corporativo y a la gestión integral de riesgos.

Las distintas perspectivas ponen de manifiesto cómo los cambios regulatorios, el aumento de la litigiosidad y la aparición de nuevos riesgos están ampliando las responsabilidades de quienes participan en la gestión de las empresas.

El hilo conductor es claro: el seguro D&O sigue siendo una forma esencial de protección, pero su relevancia está cada vez más vinculada a la capacidad de las organizaciones y de sus órganos de gobierno para demostrar una supervisión efectiva, transparencia, controles adecuados y preparación frente a situaciones de crisis.

El primer artículo, centrado en Portugal, analiza el seguro D&O dentro de un marco jurídico que pone especial énfasis en la responsabilidad de los administradores y que ofrece una protección limitada a su patrimonio personal. Examina aspectos fundamentales de las coberturas Side A y Side B, los gastos de defensa y la manera en que las prácticas internacionales en materia de seguros D&O interactúan con el derecho societario y de seguros portugués.

El segundo artículo analiza el desarrollo del seguro D&O en América Latina, donde factores como la globalización, el aumento de las exigencias regulatorias y de gobierno corporativo, y una mayor exposición a reclamaciones han impulsado progresivamente la demanda de este tipo de cobertura.

Aunque los niveles de penetración siguen siendo desiguales, Brasil, México, Chile, Argentina y Colombia se encuentran entre los mercados más desarrollados de la región, lo que refleja la creciente importancia del seguro D&O como herramienta de gestión del riesgo corporativo.

Finalmente, el artículo de Benedetta Marcato examina el panorama europeo y los riesgos emergentes que están modificando la exposición de directores y altos ejecutivos. Entre ellos se incluyen la ciberseguridad, la inteligencia artificial, los factores ESG, el greenwashing, el mayor escrutinio regulatorio y las acciones colectivas. El artículo también destaca cómo la suscripción de seguros D&O está evolucionando desde una evaluación centrada principalmente en el historial de reclamaciones hacia un análisis más amplio de la calidad del gobierno corporativo, la resiliencia organizacional y la capacidad de los directorios para demostrar una supervisión y controles efectivos.

Carlos Estebenet
President AIDA World.
Association Internationale de Droit des Assurances

COMPARATIVE NOTES

1.THE ROLE OF D&O INSURANCE IN A LIABILITY-ORIENTED LEGAL REGIME.

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1. Directors’ Internal and External Liability Risks

1.1. The Company, Corporate Creditors, Shareholders and Third Parties as Potential Claimants

The Portuguese Companies Code[1] (Código das Sociedades Comerciais, hereinafter “CSC”) establishes both the internal liability of directors vis-à-vis the company and their external liability towards corporate creditors, shareholders and third parties. Conceived as a legal mechanism for controlling directors’ discretionary powers, directors’ civil liability is enforced through the action ut universi, the shareholder action ut singuli, and the civil actions that creditors, shareholders and third parties are statutorily entitled to file.
The CSC is primarily focused on the accountability of directors rather than with the protection of their personal assets. Accordingly, it prohibits contractual provisions excluding or limiting directors’ liability (Article 74, 1, CSC), adopts a particularly restrictive approach. to settlement agreements and waivers of compensation by the company (Article 74 CSC), and remains silent on both the taking out of Directors’ and Officers’ (D&O) liability insurance by the company and the corporate indemnification arrangements.,

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2 MACRO TRENDS AND EMERGING RISKS IN D&O INSURANCE IN EUROPE

MARKET AND UNDERWRITING PERSPECTIVE

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Abstract

This article examines the evolving European Directors and Officers insurance landscape from a market and underwriting perspective. It argues that, although pricing conditions remain favorable for many buyers, the underlying risk environment is be**coming broader, more complex and less predictable. Traditional D&O exposures such as insolvency, financial misstatement, fiduciary duties and M&A disputes now interact with cyber governance, AI, ESG disclosure, greenwashing, sanctions, operational resilience, regulatory investigations and collective redress. The analysis focuses on Europe and the UK and considers how insurers are adapting risk assessment and policy wordings in response to these developments.**

Keywords: Directors and Officers insurance; D&O underwriting; European insurance market; cyber governance; artificial intelligence; ESG; collective redress; policy wordings; Financial Institutions.

1.Introduction: D&O insurance in a changing governance environment.

Directors and Officers insurance in Europe is entering a complex phase. Market conditions remain favorable for many buyers: capacity is available, competition is strong, and well-managed companies continue to secure stable or reduced premiums in several European markets. This is evident in Spain, France and Italy, where competition has supported premium reductions and broader coverage requests, and in the UK, where buyer-friendly conditions persist although reductions are slowing.

At the same time, the liability environment for directors and officers is becoming broader and less predictable. Traditional D&O risk drivers—insolvency, financial misstatement, fiduciary duties and M&A disputes—remain important, but now sit alongside newer sources of board accountability: cyber governance, operational resilience, AI, ESG disclosure, greenwashing, sanctions, private credit, regulatory investigations and collective redress.

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3.THE REALITY OF D&O INSURANCE IN LATIN AMERICA: EVOLUTION, CHALLENGES, AND MARKET DEVELOPMENT

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Introduction

Directors and Officers Liability Insurance (D&O Insurance) has become one of the most significant risk management tools available to corporate directors, officers, managers, and administrators. Its primary purpose is to protect the personal assets of individuals serving in leadership positions against claims arising from errors, omissions, negligence, or breaches of duty committed during their managerial functions. As corporate governance standards evolve, and regulatory frameworks become increasingly demanding, D&O coverage has acquired growing importance throughout Latin America.

Despite its relevance, the development and penetration of D&O insurance across the region remain uneven. While some Latin American countries have embraced the coverage as a fundamental component of corporate governance, others continue to exhibit relatively low levels of adoption.

Nature and Purpose of D&O Insurance

D&O insurance is a form of professional liability insurance designed to preserve the personal assets of directors, managers, and corporate administrators against the economic consequences of claims arising from their corporate decisions and actions. The coverage generally includes reimbursement of legal defense expenses, settlement costs, and indemnities resulting from civil liability claims brought against insured executives.

Within the broader category of professional liability insurance, D&O insurance occupies a unique position because it addresses the specific risks associated with corporate management. Modern executives regularly make strategic decisions involving investments, financing, mergers and acquisitions, regulatory compliance, labor relations, and fiscal obligations. Any mistake, omission, or lack of diligence in these areas may generate substantial personal liability

.Accordingly, D&O insurance has evolved from an optional corporate benefit into an essential risk management instrument, often serving as a prerequisite for attracting and retaining qualified directors and senior executives.

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FUTURE EVENTS

4 MARCH
EXCECUTIVE COMMITTE MEETING
PRESIDENTIAL COUNCIL MEETING
at Valencia University, Valencia Spain.

5 MARCH
LOS PRINCIPIOS INTERNACIONALES DEL CONTRATO DE REASEGURO (PRICL): UNA VISIÓN DESDE IBEROAMÉRICA.
Law Faculty, Valencia University, Valencia Spain.

14-17 SEPTIEMBRE 2027
WORLD CONGRESS
HAMBURG GERMANY
International working groups sessions- General Assembly- PC and EC Meetings, Plenary sessions..

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