Directors and Officers Report

Empower Results®

Table of Contents

Corporates confront 'unprecedented' uncertainty

Company Directors and Officers (D&O) are facing unprecedented times. Not only are they having to manage a whirlwind of change and disruption in their business models as factors such as technology, changing buyer behaviours, socio-demographic shifts and climate change begin to exert their influence, but they're also being confronted by the global spread of a highly litigious culture.

Litigation spreads

Driving much of this trend is an increase in securities litigation and an expansion of class action type litigation. While traditionally it was the US which has been home to the most overbearing regulatory environment and largest settlements, there has been a significant growth in litigation in other countries and regions such as Australia which, as this report shows, is seeing its own spike in shareholder class actions.

The Securities Exchange Commission (SEC) is not standing by however and continues to step up enforcement on non-US domiciled US listed companies where we have seen the regulator pursue claims related to corruption and money laundering and environmental damage.

What does all this mean for D&O insurance?

A combination of inadequate ratings with larger almost 'catastrophe-like' settlements being seen in an overall deteriorating claims environment, has meant that insurers have been feeling the pressure at both ends of the business. The inevitable consequence is a drive by insurers to price risk differently to allow for the increased frequency and size of their D&O related losses – losses not previously contemplated in their rating models. It's one reason why this report shows an almost universal hike in pricing – by as much as 50% or more in some instances – as well as restrictions in cover and even markets withdrawing from certain industry sectors as appetites wane.

Structural shift

It's clear a structural shift in the market is taking place. Up to now, financial lines and especially D&O have offered insurers an uncorrelated alternative to their more traditional property and casualty book. This appeal has led to a pool of lead insurers staying relatively consistent with the primary markets dominated by the traditional, large financial lines players competing to take business off each other either through price, available capacity, widening terms and conditions, or all three. In excess layers, we saw new carriers come in and as a result pricing decrease significantly, resulting in many insureds using the savings to buy additional limit / coverage.

The good times for buyers are over however and every D&O buyer should expect – with their broker – to work harder to get cover whilst minimising rate increases as best they can and holding on to acceptable limits.

Manage the challenge

D&O plays an incredibly important role for companies looking to attract and retain the best management team in an environment where heightened and increased oversight is a fact of corporate life with new and emerging focus on areas around environment, reputation, sexual harassment, discrimination, and cybersecurity. This report, based Aon´s leading data and analytics capabilities combined with our international network of leading D&O expertise, aims to shine a light on the big changes being seen in D&O by businesses around the world and to help insureds prepare and navigate the changing market and challenges that it throws up.

Asia

D&O markets in Asia have become more cautious and price reductions are increasingly rare. In the last two quarters there has also been a significant market correction with many insurers adjusting their appetite for D&O. A number of insurers have either partially or fully withdrawn from the Asian market. In addition, a leading D&O insurer is looking to limit their exposure by withdrawing capacity from the global account segment (accounts that exceed US$10 billion in market cap, assets, or turnover) unless there is a significant change in the rate on line

There are numerous other examples of market changes in the last two quarters including insurers exiting non-Singapore risks and off shore risks, as well as reviewing their attachment points whilst also reducing the capacity they are willing to deploy.

In contrast to the pricing changes seen in the US for example, renewals have been either broadly flat or, at most, up to 10% in sectors such as industrials, pharma and life science, and communication, media, and technology. The exception is for financial institutions which are seeing more significant increases in the range of 10% -20%, with cover also being restricted.

Insurers are asking more questions and clients need to be prepared to answer them accurately and succinctly to ensure they are in the best position to get the coverage they need and at the best price. Australian and USA listed companies that have experienced D&O claims over the past 12 months should expect to see a change in their terms and conditions.

Claims

Turning to where the most regular and high cost D&O claims are occurring, claims related to employment practices are being settled for anything between US$500,000 to US$3 million (excluding defence costs). Regulatory related claims are also seeing an increase due to increased empowerment of and oversight by in-country regulators which is having a direct impact on companies and their directors. From a shareholder perspective, class actions are more commonly seen against companies that have US exposure (via share listings) and as a result of M&A transactions.

Top three D&O trends

- Pricing pressure likely to increase, particularly in financial institutions
- Insurers adjusting their appetite for D&O
- Information demands have increased

Looking ahead

There is increasingly a need to showcase the best of the client to the markets with significant focus being placed on the provision of detailed underwriting information. Clients may have to review their renewal strategies with their brokers and look to introduce market roadshows into the process to ensure that they are best positioned to get the coverage they need. Preparation will be key and the message should be "start early". Every broker will have to work hard to remarket the risk to as many markets as possible in order to secure the best terms whilst also managing expectations on both sides (client and insurance market) so that any budgetary approvals can be secured.

Overall Trends

Asia	Rate Change	Retentions	Capacity	Insurer Attitudes	Coverage
Energy	Flat	Flat	Ample	Prudent	Stable
Construction	Flat	Flat	Ample	Prudent	Stable
Power	Flat	Flat	Ample	Prudent	Stable
Financial Institutions	10-20% increase	Increasing	Tightening	Prudent	Restrictive
Marine	Flat	Flat	Ample	Prudent	Stable
Industrials	0-10% increase	Flat	Ample	Prudent	Stable
Consumer Staples	Flat	Flat	Ample	Prudent	Stable
Pharma & Life Science	0-10% decrease	Flat	Ample	Prudent	Stable
Communication, Technology & Media	0-10% increase	Flat	Ample	Prudent	Stable
Healthcare	Flat	Flat	Ample	Prudent	Stable
Consumer Discretionary	Flat	Flat	Ample	Prudent	Stable

Canada

The Canadian D&O market continues to be in a state of transition. Insureds located in the province of Quebec are facing the toughest market conditions compared to the rest of the region due to the statutorily mandated defence cost outside the limit (DOL) within the Quebec Civil Code and the material impact it has on claims payouts. Tougher areas continue to be US exposed business, dual listed, mining, oil and gas, and pharma and tech.

While available domestic capacity is stable – with one insurer exit in 2019 – it is being deployed conservatively with many established carriers reducing capacity for public companies. Capacity from the traditional wholesale market is challenged on all D&O placements, with significantly different premiums from expiring as well as reduced capacity and higher attachment points.

Publicly traded insureds, especially dual listed companies, are facing the largest increases in premiums (outside of Quebec) as well as upward pressure on retention levels. These businesses are experiencing 10% - 20% increases on average, with higher increases based on specific risk factors. Those listed solely on the Toronto Stock Exchange are seeing premium increases in the range of 0% - 10% and possible increases in retention levels.

Privately held insureds and not for profit organisations are experiencing premium increases although smaller (0% - 10%) with larger increases related to exposure changes (i.e. growth, US exposure or claims activity).

Claims

Shareholder claims, with a focus on event driven litigation, are expected to continue at their current frequency but be more costly to defend. Defence costs can range in the $1,000,000s and settlements are – on average – being made from $3 million to $15 million depending on several factors including the jurisdiction(s) that the action is brought, and the allegations made. D&O claims against private companies are on the rise due to bankruptcy/ solvency challenges, shareholder actions (such as oppression), M&A activity, employee claims and failed IPOs.

Crime related claims reflect the growth in social engineering type incidents along with employee theft, resulting in average claims ranging from US$100,000s to US$1 million. Employment related claims are also experiencing some activity in Canada but more frequently in the US. Again, the quantum is around US$100,000s to US$1 million for claims in Canada, and could be higher when senior executives are involved, or the claim is brought in the US.

Top three D&O trends

- Defence cost outside the limit (DOL) is an issue in Quebec and clients in this province will continue to face extremely challenging renewals unless there are new developments such as a change to the Quebec Civil Code
- Shareholder claims, brought in the secondary market, involving adequacy or timeliness of corporate disclosures. Industries that involve dynamic projections or large projects (such as mining) have historically been a target for plaintiff firms
- The profitability of the Canadian D&O insurance book is under pressure. While the frequency of claims has not materially risen, the cost to defend has increased and the cost of claims in the private company sector is also on the rise

Looking ahead

With the prevalent natural resources sector in Canada (oil and gas, mining, and forestry) and securities claim trends, there is an increasing underwriter focus on sustainability/potential environmental liabilities, and in some cases, insurers are exiting the sector. Recent attention has been on tailings dams and oil sands, and if D&O capacity continues to exit from these areas, this will create a capacity issue for clients and materially impact premiums. Cyber exposure, and its impact on directors and officers, will also continue to be a growing focus.

Overall Trends

Canada	Rate Change	Retentions	Capacity	Insurer Attitudes	Coverage
Energy	10-20% increase	Increasing	Tightening	Prudent	Restrictive
Construction	0-10% increase	Flat	Ample	Flexible	Stable
Power	0-10% increase	Flat	Ample	Flexible	Stable
Financial Institutions	0-10% increase	Flat	Ample	Prudent	Stable
Marine	0-10% increase	Flat	Ample	Flexible	Stable
Aviation & Aerospace[1]					
Food, Agribusiness & Beverage	0-10% increase	Flat	Ample	Flexible	Stable
Pharma & Life Science	20-30% increase	Increasing	Tightening	Prudent	Restrictive
Communication, Technology & Media	20-30% increase	Increasing	Tightening	Prudent	Stable
Healthcare	0-10% increase	Increasing	Ample	Prudent	Stable
Retail / Wholesale trade	10-20% increase	Increasing	Ample	Prudent	Stable
Mining - NEW	20-30% increase	Increasing	Tightening	Prudent	Restrictive

[1] *Not a meaningful class of business for D&O trends*

Europe

Across EMEA, the D&O market is a story of rate increases of up to 20% for most industry sectors and by 50% plus in certain distressed areas in the UK, Netherlands, Spain, Italy and Belgium. Global companies or those with US exposures are facing big challenges; premium increases in excess of 100% for US listed large accounts are not uncommon and there has been a focus on the terms and conditions including deductible levels.

There are country exceptions to the predominant theme of rising rates: Finland reports that there is an element of stability especially when dealing with domestic insurers in the SME and middle market segment. This is also true of other Nordic countries, where while Norway is seeing rate decreases in some segments of as much as 20% thanks to portfolio solutions and new insurers entering the market, particularly attracted to smaller and mid-market businesses. There are other countries across the region, including Spain, who are experiencing a similar dynamic in the SME and middle market client segments where insurers both local and international continue to focus in order to try and balance out their portfolios. However, here it is more a matter of less drastic increases with rate rises contained to between 0 and 5%.

The prevailing wind however is of capacity constraints. Lloyd's review of underperforming classes has resulted in limited capacity for syndicates and rate increases to build sustainable portfolios for the long term. There are something like 60 markets for D&O across the region but they all have very specific requirements about where they attach and which types of industry or size of clients they will work on. Consequently, the number of primary insurers is not as large as it needs to be leading to rate rises, increased retentions and, in some cases, reduced capacity.

One assessment by a leading reinsurer suggests that the entire financial lines sector needs a 15% rate uplift with no uptick in loss trends each year for the next two years to get back to a break-even combined ratio. If that is not achieved, insureds can expect to see further exits and the knock-on effect of dwindling capacity providers.

Claims

Insolvency related claims are featuring strongly in a number of European countries as the global economy slows or stalls. These are impactful because they result in Side A losses – the original 'low-frequency, high severity' product – and failed businesses further drains the repeat premium pool. Event-led losses are having a big impact on claims as are US securities class actions and non-US collective actions. Increased focus and investment by the international investment community (e.g. US private equity firms) combined with the fact that many companies in the region continue to be family owned, has seen a rise in conflict of interest type claims causing an uptick in both the number of claims and the cost due to the use of international law-firms.

Top three D&O trends

- Premium rises are happening in almost every sector and every country with some sectors particularly hard hit
- Capacity is being squeezed across the region
- Claims developments are outpacing reserves

Looking ahead

Clean risks will not be absolved from continued pressure on rate, retention and coverage, and better submissions will be needed from all insureds as part of a more lengthy and challenging renewal process. Transparency with board members will be important to ensure there is enough budget to respond. The unintended consequence of navigating this changing market is also likely to be more costly and complicated claims management issues as insurers may look to limit their exposure or avoid claims on technicalities. Cyber and climate change are also likely to play an increasing role in the D&O market as will slowing economic growth.

Europe

Overall Trends

Belgium

	Rate Change	Retentions	Capacity	Insurer Attitudes	Coverage
Energy	0-10% increase	Flat	Tightening	Prudent	Stable
Construction	0-10% increase	Flat	Tightening	Prudent	Stable
Power	0-10% increase	Flat	Tightening	Prudent	Stable
Financial Institutions	30-40% increase	Increasing	Tightening	Prudent	Stable
Marine	0-10% increase	Flat	Tightening	Prudent	Stable
Aviation & Aerospace	0-10% increase	Flat	Tightening	Prudent	Stable
Food, Agribusiness & Beverage	0-10% increase	Flat	Tightening	Prudent	Stable
Pharma & Life Science	>50% increase	Increasing	Tightening	Prudent	Restrictive
Communication, Technology & Media	0-10% increase	Flat	Tightening	Prudent	Stable
Healthcare	0-10% increase	Flat	Tightening	Prudent	Stable
Retail / Wholesale trade	0-10% increase	Flat	Tightening	Prudent	Stable

Finland

	Rate Change	Retentions	Capacity	Insurer Attitudes	Coverage
Energy	Flat	Flat	Tightening	Prudent	Stable
Construction	Flat	Flat	Tightening	Prudent	Stable
Power	Flat	Flat	Tightening	Prudent	Stable
Financial Institutions	0-10% decrease	Flat	Tightening	Prudent	Restrictive
Marine	Flat	Flat	Tightening	Prudent	Stable
Aviation & Aerospace	Flat	Flat	Tightening	Prudent	Stable
Food, Agribusiness & Beverage	Flat	Flat	Tightening	Prudent	Stable
Pharma & Life Science	Flat	Flat	Tightening	Prudent	Stable
Communication, Technology & Media	Flat	Flat	Tightening	Prudent	Stable
Healthcare	Flat	Flat	Tightening	Prudent	Stable
Retail / Wholesale trade	Flat	Flat	Tightening	Prudent	Stable

France

	Rate Change	Retentions	Capacity	Insurer Attitudes	Coverage
Energy	0-10% increase	Flat	Tightening	Prudent	Stable
Construction	0-10% increase	Flat	Tightening	Prudent	Stable
Power	0-10% increase	Flat	Tightening	Prudent	Stable
Financial Institutions	0-10% decrease	Flat	Tightening	Prudent	Stable
Marine	0-10% increase	Flat	Tightening	Prudent	Stable
Aviation & Aerospace	0-10% increase	Flat	Tightening	Prudent	Stable
Food, Agribusiness & Beverage	0-10% increase	Flat	Tightening	Prudent	Stable
Pharma & Life Science	>50% increase	Increasing	Tightening	Prudent	Restrictive
Communication, Technology & Media	0-10% increase	Flat	Tightening	Prudent	Stable
Healthcare	0-10% increase	Flat	Tightening	Prudent	Stable
Retail / Wholesale trade	0-10% increase	Flat	Tightening	Prudent	Stable

Europe

	Overall Trends				
	Rate Change	Retentions	Capacity	Insurer Attitudes	Coverage
Germany					
Energy	20-30% increase	Flat	Ample	Flexible	Stable
Construction	10-20% increase	Flat	Abundant	Flexible	Stable
Power	20-30% increase	Flat	Tightening	Aggressive	Restrictive
Financial Institutions	0-10% increase	Flat	Ample	Flexible	Stable
Marine	10-20% increase	Flat	Ample	Flexible	Stable
Aviation & Aerospace	30-40% increase	Flat	Tightening	Prudent	Restrictive
Food, Agribusiness & Beverage	20-30% increase	Flat	Ample	Flexible	Stable
Pharma & Life Science	0-10% decrease	Flat	Ample	Flexible	Stable
Communication, Technology & Media	20-30% increase	Flat	Ample	Flexible	Stable
Healthcare	0-10% increase	Flat	Ample	Flexible	Stable
Retail / Wholesale trade	20-30% increase	Flat	Ample	Flexible	Stable
Ireland					
Energy	10-20% increase	Flat	Tightening	Prudent	Stable
Construction	10-20% increase	Flat	Tightening	Prudent	Stable
Power	10-20% decrease	Flat	Tightening	Prudent	Stable
Financial Institutions	20-30% increase	Increasing	Tightening	Aggressive	Restrictive
Marine	10-20% increase	Flat	Tightening	Aggressive	Restrictive
Aviation & Aerospace	10-20% increase	Flat	Tightening	Prudent	Stable
Food, Agribusiness & Beverage	10-20% increase	Increasing	Tightening	Flexible	Restrictive
Pharma & Life Science	>50% increase	Increasing	Tightening	Aggressive	Restrictive
Communication, Technology & Media	>50% increase	Increasing	Tightening	Aggressive	Restrictive
Healthcare	20-30% increase	Increasing	Tightening	Prudent	Restrictive
Retail / Wholesale trade	10-20% decrease	Flat	Tightening	Flexible	Stable
Italy					
Energy	10-20% increase	Increasing	Tightening	Prudent	Stable
Construction	10-20% increase	Increasing	Tightening	Prudent	Stable
Power	10-20% increase	Increasing	Tightening	Prudent	Stable
Financial Institutions	20-30% increase	Increasing	Tightening	Prudent	Restrictive
Marine	10-20% increase	Increasing	Tightening	Prudent	Stable
Aviation & Aerospace	10-20% increase	Increasing	Tightening	Prudent	Stable
Food, Agribusiness & Beverage	0-10% increase	Increasing	Tightening	Prudent	Stable
Pharma & Life Science	40-50% increase	Increasing	Tightening	Prudent	Stable
Communication, Technology & Media	0-10% increase	Increasing	Tightening	Prudent	Stable
Healthcare	10-20% increase	Increasing	Tightening	Prudent	Stable
Retail / Wholesale trade	10-20% increase	Increasing	Tightening	Prudent	Stable
Netherlands					
Energy	30-40% increase	Flat	Ample	Prudent	Stable
Construction	20-30% increase	Flat	Ample	Flexible	Stable
Power	10-20% increase	Flat	Ample	Flexible	Stable
Financial Institutions	10-20% increase	Flat	Ample	Flexible	Stable
Marine	10-20% increase	Flat	Ample	Flexible	Stable
Aviation & Aerospace	10-20% increase	Flat	Ample	Prudent	Stable
Food, Agribusiness & Beverage	10-20% increase	Flat	Ample	Flexible	Stable
Pharma & Life Science	>50% increase	Flat	Abundant	Prudent	Stable
Communication, Technology & Media	>50% increase	Flat	Ample	Prudent	Stable
Healthcare	10-20% increase	Flat	Ample	Flexible	Stable
Retail / Wholesale trade	30-40% increase	Flat	Abundant	Prudent	Stable

Europe

Overall Trends

Country	Sector	Rate Change	Retentions	Capacity	Insurer Attitudes	Coverage
Norway						
	Energy	10-20% increase	Flat	Tightening	Prudent	Stable
	Construction	0-10% decrease	Flat	Tightening	Flexible	Stable
	Power	0-10% decrease	Flat	Tightening	Flexible	Stable
	Financial Institutions	10-20% increase	Flat	Tightening	Prudent	Restrictive
	Marine	0-10% decrease	Flat	Tightening	Prudent	Stable
	Aviation & Aerospace	0-10% decrease	Flat	Tightening	Prudent	Stable
	Food, Agribusiness & Beverage	0-10% decrease	Flat	Tightening	Flexible	Stable
	Pharma & Life Science	10-20% increase	Flat	Tightening	Prudent	Stable
	Communication, Technology & Media	0-10% decrease	Flat	Tightening	Flexible	Stable
	Healthcare	0-10% decrease	Flat	Tightening	Prudent	Stable
	Retail / Wholesale trade	0-10% decrease	Flat	Tightening	Flexible	Stable
Portugal						
	Energy	Flat	Flat	Ample	Flexible	Stable
	Construction	0-10% increase	Increasing	Tightening	Prudent	Stable
	Power	0-10% increase	Increasing	Tightening	Prudent	Stable
	Financial Institutions	0-10% increase	Increasing	Tightening	Prudent	Restrictive
	Marine[1]					
	Aviation & Aerospace[1]					
	Food, Agribusiness & Beverage	Flat	Flat	Ample	Flexible	Stable
	Pharma & Life Science	Flat	Flat	Tightening	Prudent	Stable
	Communication, Technology & Media	Flat	Flat	Ample	Prudent	Stable
	Healthcare	0-10% increase	Increasing	Tightening	Prudent	Stable
	Retail / Wholesale trade	Flat	Flat	Abundant	Flexible	Stable
Spain						
	Energy	0-10% increase	Flat	Ample	Flexible	Stable
	Construction	20-30% increase	Flat	Ample	Prudent	Restrictive
	Power	0-10% increase	Flat	Ample	Flexible	Stable
	Financial Institutions	>50% increase	Flat	Ample	Prudent	Restrictive
	Marine	0-10% increase	Flat	Ample	Flexible	Stable
	Aviation & Aerospace	20-30% increase	Flat	Ample	Prudent	Restrictive
	Food, Agribusiness & Beverage	0-10% increase	Flat	Abundant	Flexible	Stable
	Pharma & Life Science	>50% increase	Flat	Ample	Prudent	Stable
	Communication, Technology & Media	>50% increase	Flat	Ample	Prudent	Stable
	Healthcare	0-10% increase	Flat	Ample	Prudent	Stable
	Retail / Wholesale trade	0-10% increase	Flat	Abundant	Flexible	Stable
Sweden						
	Energy	0-10% increase	Flat	Tightening	Prudent	Stable
	Construction	0-10% increase	Flat	Tightening	Prudent	Stable
	Power	0-10% increase	Flat	Tightening	Prudent	Stable
	Financial Institutions	10-20% increase	Flat	Tightening	Prudent	Restrictive
	Marine	0-10% increase	Flat	Tightening	Prudent	Stable
	Aviation & Aerospace	0-10% increase	Flat	Tightening	Prudent	Stable
	Food, Agribusiness & Beverage	0-10% increase	Flat	Tightening	Prudent	Stable
	Pharma & Life Science	10-20% increase	Flat	Tightening	Prudent	Stable
	Communication, Technology & Media	10-20% increase	Flat	Tightening	Prudent	Stable
	Healthcare	0-10% increase	Flat	Tightening	Prudent	Stable
	Retail / Wholesale trade	0-10% increase	Flat	Tightening	Prudent	Stable

[1] *Not a meaningful class of business for D&O trends*

Europe

Overall Trends

Switzerland

	Rate Change	Retentions	Capacity	Insurer Attitudes	Coverage
Energy	0-10% increase	Flat	Abundant	Flexible	Stable
Construction	0-10% increase	Flat	Abundant	Flexible	Stable
Power	0-10% increase	Flat	Abundant	Flexible	Stable
Financial Institutions	10-20% increase	Flat	Tightening	Prudent	Restrictive
Marine	0-10% increase	Flat	Ample	Flexible	Stable
Aviation & Aerospace	0-10% increase	Flat	Ample	Prudent	Stable
Food, Agribusiness & Beverage	10-20% increase	Flat	Tightening	Prudent	Stable
Pharma & Life Science	20-30% increase	Increasing	Tightening	Prudent	Restrictive
Communication, Technology & Media	10-20% increase	Flat	Tightening	Prudent	Restrictive
Healthcare	Flat	Flat	Ample	Prudent	Stable
Retail / Wholesale trade	0-10% increase	Flat	Tightening	Prudent	Stable

United Kingdom

	Rate Change	Retentions	Capacity	Insurer Attitudes	Coverage
Energy	20-30% increase	Increasing	Tightening	Prudent	Restrictive
Construction	>50% increase	Increasing	Tightening	Flexible	Stable
Power	30-40% increase	Increasing	Tightening	Prudent	Stable
Financial Institutions	10-20% increase	Increasing	Tightening	Prudent	Stable
Marine	20-30% increase	Increasing	Tightening	Flexible	Stable
Aviation & Aerospace	20-30% increase	Increasing	Tightening	Flexible	Stable
Food, Agribusiness & Beverage	20-30% increase	Increasing	Tightening	Flexible	Stable
Pharma & Life Science	>50% increase	Increasing	Tightening	Prudent	Restrictive
Communication, Technology & Media	>50% increase	Increasing	Tightening	Prudent	Stable
Healthcare	>50% increase	Increasing	Tightening	Prudent	Restrictive
Retail / Wholesale trade	>50% increase	Increasing	Tightening	Prudent	Stable

Latin America

Latin America's D&O experience is one of widespread price increases across most industry sectors and in almost all countries, although two countries report a more stable environment; Argentina is reporting a broadly flat market aside from financial institutions which are seeing increases of up to 10% and Colombia where for the middle market (limits below US$3M) rates are mostly flat or down (0 to -5%) in several areas including marine, aviation, and, noticeably, healthcare provided that the insured´s benefit from good loss experience though for higher limits, carriers are pushing for increases from 5%-10%.Peru and Mexico also report financial institutions being hit by large rate increases but by 50% or more. Colombia is the only Lat Am country surveyed to see D&O rates flat or down in several areas including marine, aviation, and, noticeably, healthcare.

Retentions are predominantly flat or decreasing, with Puerto Rico and Chile proving an exception. Tightening capacity is also a predominant theme in Peru, Colombia, Ecuador, Puerto Rico, and Chile, while Argentina, Brazil and Mexico report easier access to capacity. Taking Colombia as an example, capacity has been hard to find leading to a requirement for more co-insurance and reinsurance solutions.

Other notable country developments include dramatic price increases in Peru and Brazil following the Lava Jato (Car Wash) corruption scandal which has even hit companies not related to the construction industry. In Colombia, any private policy holder that handles government funds is at risk from investigation by Contraloria (the Office of the Comptroller General of Colombia) which means that there are almost no markets who are willing to write this type of business. The incidence of disputes related to D&O is up in Brazil and regulatory pressure in Mexico is also having an impact on the market.

Claims

Some of the big D&O related claims in this region include an ongoing class action in Colombia related to the Lava Jato corruption scandal, with a current claim reserve of approximately US$4 million. In Mexico, a broadcasting company has also been the subject of a class action in the United States with a possible payout of US$40 million including defence expenses. Class action suits are also seeing an uptick in Puerto Rico with the plaintiffs' bar looking for opportunities where people have been negatively affected financially. Tax related claims in Brazil are also reported to be on the rise with the local tax authorities very active.

Top three D&O trends

- D&O rate increases are being seen in most sectors and most countries
- There is a real capacity squeeze, exacerbated in countries like Colombia where the public officials' market has run dry with no insurers willing to pick up the risk
- High rates of losses are also being reported

Looking ahead

With talk of a hard market prevailing by 2020, D&O cover in Latin America will continue to pose challenges to insureds looking to secure cover.
As ever, those who can provide full underwriting and financial information will be best placed in terms of limiting rate increases and securing the most favourable terms and conditions. The shrinking marketplace will drive greater competition. In some instances, this will be more severe. Whatever the local conditions, insureds should work closely with their broker and aim to start the renewals process earlier.

Latin America

	Overall Trends				
	Rate Change	Retentions	Capacity	Insurer Attitudes	Coverage
Argentina					
Energy	Flat	Flat	Ample	Prudent	Stable
Construction	Flat	Flat	Ample	Prudent	Stable
Power	Flat	Flat	Ample	Prudent	Stable
Financial Institutions	0-10% increase	Flat	Tightening	Prudent	Restrictive
Marine	Flat	Flat	Ample	Prudent	Stable
Aviation & Aerospace	Flat	Flat	Ample	Prudent	Stable
Food, Agribusiness & Beverage	Flat	Flat	Ample	Prudent	Stable
Pharma & Life Science	Flat	Flat	Ample	Prudent	Stable
Communication, Technology & Media	Flat	Flat	Ample	Prudent	Stable
Healthcare	Flat	Flat	Ample	Prudent	Stable
Retail / Wholesale trade	Flat	Flat	Ample	Prudent	Stable
Brazil					
Energy	0-10% increase	Flat	Ample	Flexible	Stable
Construction	0-10% increase	Flat	Ample	Flexible	Stable
Power	0-10% increase	Flat	Ample	Flexible	Stable
Financial Institutions	0-10% increase	Flat	Tightening	Prudent	Stable
Marine	0-10% increase	Flat	Ample	Flexible	Stable
Aviation & Aerospace	0-10% increase	Flat	Ample	Flexible	Stable
Food, Agribusiness & Beverage	0-10% increase	Flat	Ample	Flexible	Stable
Pharma & Life Science	0-10% increase	Flat	Ample	Prudent	Stable
Communication, Technology & Media	0-10% increase	Flat	Ample	Flexible	Stable
Healthcare	0-10% increase	Flat	Ample	Flexible	Stable
Retail / Wholesale trade	Flat	Flat	Ample	Flexible	Stable
Chile					
Energy	0-10% increase	Increasing	Tightening	Prudent	Stable
Construction	0-10% increase	Increasing	Tightening	Prudent	Stable
Power	0-10% increase	Increasing	Tightening	Prudent	Stable
Financial Institutions	0-10% increase	Increasing	Tightening	Aggressive	Restrictive
Marine	10-20% increase	Increasing	Tightening	Aggressive	Restrictive
Aviation & Aerospace	20-30% increase	Increasing	Tightening	Aggressive	Restrictive
Food, Agribusiness & Beverage	0-10% increase	Flat	Tightening	Aggressive	Restrictive
Pharma & Life Science[1]					
Communication, Technology & Media[1]					
Healthcare[1]					
Retail / Wholesale trade	0-10% increase	Increasing	Tightening	Aggressive	Stable
Colombia					
Energy	20-30% increase	Flat	Tightening	Prudent	Restrictive
Construction	20-30% increase	Flat	Tightening	Prudent	Restrictive
Power	20-30% increase	Flat	Tightening	Prudent	Restrictive
Financial Institutions	20-30% increase	Flat	Tightening	Prudent	Restrictive
Marine	0-10% decrease	Flat	Tightening	Prudent	Stable
Aviation & Aerospace	0-10% decrease	Flat	Tightening	Prudent	Stable
Food, Agribusiness & Beverage	0-10% decrease	Flat	Tightening	Prudent	Stable
Pharma & Life Science	0-10% decrease	Flat	Tightening	Prudent	Stable
Communication, Technology & Media	0-10% decrease	Flat	Tightening	Prudent	Stable
Healthcare	0-10% decrease	Flat	Tightening	Prudent	Stable
Retail / Wholesale trade	0-10% increase	Flat	Tightening	Prudent	Stable

[1] *Not a meaningful class of business for D&O trends*

Latin America

Overall Trends

Ecuador

	Rate Change	Retentions	Capacity	Insurer Attitudes	Coverage
Energy	30-40% increase	Decreasing	Tightening	Prudent	Restrictive
Construction	0-10% increase	Decreasing	Tightening	Prudent	Stable
Power	10-20% increase	Decreasing	Tightening	Prudent	Restrictive
Financial Institutions	20-30% increase	Decreasing	Tightening	Prudent	Restrictive
Marine	0-10% increase	Decreasing	Tightening	Prudent	Stable
Aviation & Aerospace	0-10% increase	Decreasing	Tightening	Prudent	Stable
Food, Agribusiness & Beverage	0-10% increase	Decreasing	Tightening	Prudent	Stable
Pharma & Life Science	10-20% increase	Decreasing	Tightening	Prudent	Restrictive
Communication, Technology & Media	0-10% increase	Decreasing	Tightening	Prudent	Stable
Healthcare	10-20% increase	Decreasing	Tightening	Prudent	Restrictive
Retail / Wholesale trade	0-10% increase	Decreasing	Tightening	Prudent	Stable

Mexico

	Rate Change	Retentions	Capacity	Insurer Attitudes	Coverage
Energy	20-30% increase	Flat	Ample	Prudent	Restrictive
Construction	20-30% increase	Flat	Ample	Prudent	Stable
Power	20-30% increase	Flat	Ample	Prudent	Restrictive
Financial Institutions	>50% increase	Decreasing	Tightening	Prudent	Restrictive
Marine	20-30% increase	Flat	Ample	Prudent	Stable
Aviation & Aerospace	20-30% increase	Decreasing	Tightening	Prudent	Restrictive
Food, Agribusiness & Beverage	10-20% increase	Flat	Ample	Prudent	Stable
Pharma & Life Science	20-30% increase	Flat	Ample	Prudent	Stable
Communication, Technology & Media	20-30% increase	Flat	Ample	Prudent	Stable
Healthcare	30-40% increase	Flat	Ample	Prudent	Stable
Retail / Wholesale trade	20-30% increase	Flat	Ample	Prudent	Stable

Peru

	Rate Change	Retentions	Capacity	Insurer Attitudes	Coverage
Energy	20-30% increase	Flat	Tightening	Prudent	Restrictive
Construction	>50% increase	Flat	Tightening	Prudent	Restrictive
Power	20-30% increase	Flat	Tightening	Prudent	Restrictive
Financial Institutions	>50% increase	Flat	Tightening	Prudent	Restrictive
Marine	10-20% increase	Flat	Tightening	Prudent	Restrictive
Aviation & Aerospace	10-20% increase	Flat	Tightening	Prudent	Restrictive
Food, Agribusiness & Beverage	10-20% increase	Flat	Tightening	Prudent	Restrictive
Pharma & Life Science	10-20% increase	Flat	Tightening	Prudent	Restrictive
Communication, Technology & Media	10-20% increase	Flat	Tightening	Prudent	Restrictive
Healthcare	10-20% increase	Flat	Tightening	Prudent	Restrictive
Retail / Wholesale trade	10-20% increase	Flat	Tightening	Prudent	Restrictive

Puerto Rico

	Rate Change	Retentions	Capacity	Insurer Attitudes	Coverage
Energy	0-10% increase	Increasing	Tightening	Prudent	Restrictive
Construction	0-10% increase	Increasing	Tightening	Prudent	Restrictive
Power	10-20% increase	Increasing	Tightening	Flexible	Restrictive
Financial Institutions	20-30% increase	Increasing	Tightening	Prudent	Restrictive
Marine	Flat	Flat	Ample	Flexible	Stable
Aviation & Aerospace	0-10% increase	Increasing	Tightening	Prudent	Restrictive
Food, Agribusiness & Beverage	Flat	Flat	Ample	Flexible	Stable
Pharma & Life Science	Flat	Flat	Ample	Flexible	Stable
Communication, Technology & Media	10-20% increase	Increasing	Tightening	Prudent	Restrictive
Healthcare	0-10% increase	Increasing	Tightening	Prudent	Restrictive
Retail / Wholesale trade	0-10% increase	Increasing	Tightening	Prudent	Restrictive

Pacific

Price rises in the Pacific region have been significant, with an average primary premium rate increase of 53.8% for H1 2019 across the ASX200 portfolio. Insurers participating below $50 million have set minimum 'walk away' rates. The re-alignment of pricing recognises the changing claims landscape and the increased frequency at which low attachment excess layers are exposed to claims.

Overall, coverage remains stable however, where a change in primary insurer is being contemplated, there is often little incentive for the incoming insurer to agree to the broader coverage secured during softer market conditions. In particular, insurers are becoming less willing to commit to backdated continuity of cover.

Insurer appetite continues to deteriorate for participation on D&O programmes below A$100 million and insurers are seeking to ventilate their participation across programmes. Several London based markets have recently reviewed their appetite for participation on Australian listed D&O company risks with capacity being withdrawn, reduced, or with minimum attachment points being reset in a number of instances.

There are also demands from insurers for minimum securities entity deductibles (Side C) of between A$1 million and A$10 million depending on the selection of lead insurer and the size of the client. Some insurers are also exerting pressure on Side B deductibles with requirements of up to A$500,000 or A$1,000,000 being common for large ASX listed organisations.

From an insured's perspective, they are reviewing their limit of liability and the adequacy of current 'ring-fencing' of limits of liability for claims brought against the entity vs insured persons. Additional 'ring-fencing' is also being considered for the protection of the insured person's personal assets.

Claims

Claims in this region are being driven by securities class actions where the average settlement has been circa A$50 million. No securities class action had gone all the way to judgement however until the 24 October 2019 when the first judgement was handed down by the Federal Court of Australia. Another key driver of claims are investigations led by Australian Securities and Investments Commission (ASIC) and other regulatory actions.

Top three D&O trends

- Growth in securities class action activity and litigation funding market (a deterioration in Side C capacity from traditional capacity providers requires a need to investigate alternative capital sources)
- ASIC's 'litigate first' approach to enforcement after the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
- A growth in shareholder activism in areas such as executive remuneration and climate change

Looking ahead

In this environment, direct engagement between insured and insurer is essential in order to secure the best outcomes. With further retractions in Side C capacity expected, insureds will need to work closely with their broker to make sure their requirements are fully understood and that programme structures are fit for purpose.

Pacific

	Overall Trends				
	Rate Change	Retentions	Capacity	Insurer Attitudes	Coverage
Australia and New Zealand - Listed Companies					
Energy	>50% increase	Increasing	Tightening	Prudent	Stable
Construction	>50% increase	Increasing	Tightening	Prudent	Stable
Power	>50% increase	Increasing	Tightening	Prudent	Stable
Financial Institutions	>50% increase	Increasing	Tightening	Prudent	Stable
Marine	>50% increase	Increasing	Tightening	Prudent	Stable
Aviation & Aerospace	>50% increase	Increasing	Tightening	Prudent	Stable
Food, Agribusiness & Beverage	>50% increase	Increasing	Tightening	Prudent	Stable
Pharma & Life Science	>50% increase	Increasing	Tightening	Prudent	Stable
Communication, Technology & Media	>50% increase	Increasing	Tightening	Prudent	Stable
Healthcare	>50% increase	Increasing	Tightening	Prudent	Stable
Retail / Wholesale trade	>50% increase	Increasing	Tightening	Prudent	Stable
Australia and New Zealand - Non Listed Companies					
Energy	40-50% increase	Increasing	Tightening	Prudent	Stable
Construction	40-50% increase	Increasing	Ample	Prudent	Stable
Power	40-50% increase	Increasing	Tightening	Prudent	Stable
Financial Institutions	30-40% increase	Increasing	Ample	Prudent	Stable
Marine	20-30% increase	Flat	Ample	Flexible	Stable
Aviation & Aerospace	20-30% increase	Flat	Ample	Flexible	Stable
Food, Agribusiness & Beverage	20-30% increase	Flat	Ample	Flexible	Stable
Pharma & Life Science	40-50% increase	Increasing	Tightening	Prudent	Stable
Communication, Technology & Media	20-30% increase	Flat	Ample	Flexible	Stable
Healthcare	40-50% increase	Increasing	Tightening	Prudent	Stable
Retail / Wholesale trade	20-30% increase	Flat	Ample	Flexible	Stable

United States

In the US, current D&O market trends are tightening, with upward pressure on rates and retentions in certain segments. Aon's preliminary Q3 2019 data shows public company D&O renewals are experiencing +20% and +36% rate increases on primary and first excess layers, respectively.

A closer look at segments such as IPO candidates, any company with exposure to opioids, financially-distressed insureds, 'unicorn' private companies, and insureds with significant claims activity reveals, in some cases, a 'hard' market with restricted capacity and coverage. Nearly every insurer is seeking to manage their overall limits exposure; decreasing renewal limits in many instances.

In terms of industry sector, 20-30% increases are being seen across the board in construction, consumer discretionary, power, pharma and life science, and healthcare. Increases are more modest (0-10%) in financial institutions and consumer staples, while sectors like energy (10-20%) sit somewhere in between.

Claims

D&O claims activity is being led by an upwards trend in securities class actions (SCAs). There have been over 400 SCAs in 2017 and 2018, which is approximately double the long-term average. Over US$5 billion was paid out in 2018, with the average settlement tripling to US$64.9 million[2].

Derivative actions have also increased in severity as illustrated by large settlements recently involving Wells Fargo and a large medical products distributor. Regulatory actions also continue to be a main driver behind D&O claims.

Top three D&O trends

- Claims activity in certain areas (IPOs, product liability including opioids) and significant claims backlog
- Price increases
- Capacity reductions

Looking ahead

With upward pricing pressures expected to continue in 2020 for US D&O business, capacity restrictions could cause issues for insureds as carriers look to reduce exposure by both reducing limits and, in some case, exiting the class altogether. Increased restrictions in areas like opioid exclusions are likely, as well as scarcity of Side B and Side C limits in some cases. The growing impact of litigation around cybersecurity is also going to impact the D&O market with evidence that cyber breaches are proving increasingly popular for the plaintiff bar, as well as a driver for increasing regulatory fines.

	Overall Trends				
United States	Rate Change	Retentions	Capacity	Insurer Attitudes	Coverage
Energy	10-20% increase	Increasing	Tightening	Prudent	Stable
Construction[3]	20-30% increase	Increasing	Tightening	Prudent	Stable
Power[3]	20-30% increase	Increasing	Tightening	Prudent	Stable
Financial Institutions	0-10% increase	Increasing	Tightening	Prudent	Stable
Marine[1]					
Industrials	10-20% increase	Increasing	Tightening	Prudent	Stable
Consumer Staples	0-10% increase	Increasing	Tightening	Prudent	Stable
Pharma & Life Science[3]	20-30% increase	Increasing	Tightening	Prudent	Restrictive
Communication, Technology & Media	10-20% increase	Increasing	Tightening	Prudent	Stable
Healthcare	20-30% increase	Increasing	Tightening	Prudent	Restrictive
Consumer Discretionary	20-30% increase	Increasing	Tightening	Prudent	Stable

[1] *Not a meaningful class of business for D&O trends*

[2] *Cornerstone Research – Class actions Settlements – 2018 Review and Analysis*

[3] *Denotes industry classes where Rate Change is estimated based on overall or similar industry D&O trends*

Conclusion – get 'D&O ready'

The evidence shows a clear trend: the D&O market is changing and the pace of change is gathering momentum. While initially patchy, with rate increases limited to specific clients and industries through the 2019 renewals, the market is now seeing widespread premium rises with very few exceptions and this is only expected to continue.

With losses now arising from new areas, insurers are reviewing wordings, pricing models and risk appetites to ensure the relevance and adequacy of their products. Individual claims are also growing in severity due to the increased size of settlements and activity levels of regulators, class-action type litigation in countries outside of the US, the international nature of claims and the need to increasingly use internationally recognized law-firms to defend themselves.

How to respond?

D&O buyers cannot ignore the evidence and will need to readdress how they approach their renewals and markets to get the best possible outcome. To get D&O ready, Aon recommends a proactive approach with the following providing a useful guide:

- **Start early**
  The renewal process will take considerably more time than in previous renewals and insureds must be in the best possible position to secure the coverage they need, so the renewal process should begin much earlier than in previous years.

- **Preparation is everything**
  A common theme from all the geographies surveyed for this report was the importance of good preparation. That means making sure that submissions include everything that underwriters might require to understand and correctly price the business; including financials, business plan/strategy with areas of particular focus being expansion to new territories, M&A, and how the business is addressing issues around the environment, diversity and inclusion, and cyber.

- **Familiarity breeds contentment**
  Give insurers the best opportunity to get know the business – this might be through insurer roadshows for example or by invitation to attend investor days. The broker and insurer (or insurers) are strategic partners and it is important there is a relationship built on trust and understanding between all involved. The broker who is working towards getting the best outcome for their client should make sure they are identifying insurers to partner with who share the same philosophy and approach to allow that relationship to flourish.

- **Challenge the status quo**
  Insureds should work with their broker to identify potential issues that might arise based on the current panel of insurers. For example, how have their appetites changed? Will they be looking to reduce capacity? Buyers should also not be afraid to revisit areas like program structure.

- **Insurer choice is key**
  Especially when thinking about a program leader, buyers will need to decide where they focus in this highly litigious and unstable environment, and how they balance pricing with an insurer's capabilities. Aon´s Data & Analytics can help insureds make this decision based on objective market analysis on both underwriting and claims capabilities (available on a country and regional basis).

Don't ignore the dynamics of the market

As with previous periods of upheaval in the insurance market, those businesses who work closely with their broker and insurer(s) will be best placed to manage the uncertainty. Ignore the dynamics of the market and many buyers will find themselves facing some uncomfortable decisions as they struggle to secure affordable terms that offer the level of protection they've become used to over recent years. This is no market blip and businesses must realise that getting 'D&O ready' is a mindset needed not just for the next renewal but for well into the long-term.

Contacts

Hugo Wegbrans
Global Chief Broking Officer &
Chief Broking Officer EMEA
+31104487516
hugo.wegbrans@aon.com

Brent Clawson
Chief Broking Officer Asia
+6563137075
brent.clawson@aon.com

Jose Luis Plana
Chief Broking Officer Latam
+5716381701
jose.luis.plana@aon.com

Russell B Quilley
Chief Broking Officer Canada
+14032677767
russ.quilley@aon.ca

Brian Wanat
Chief Broking Officer U.S.
+12124411282
brian.wanat@aon.com

Helene Madell
Chief Broking Officer Pacific
+61292538411
helene.madell@aon.com

About Aon

Aon plc (NYSE:AON) is a leading global professional services firm providing a broad range of risk, retirement and health solutions. Our 50,000 colleagues in 120 countries empower results for clients by using proprietary data and analytics to deliver insights that reduce volatility and improve performance.

www.aon.com

Empower Results®