

Prepare Now to Manage D&O Exposure to a Pandemic

By Michael Lea

The recent outbreak of swine flu in Mexico, which has spread to many other areas of the World, has created concern and uncertainty amongst many businesses and organisations.



Hopefully the widespread media coverage will encourage companies to consider not only the potential impact on their business as a whole, but directors and officers of these businesses also need to consider their own liability which may arise from such outbreaks.

By following a step by step approach of checking and planning company directors can mitigate the potential exposure of a pandemic occurrence in relationship to their liability. The list below indicates the 6 key areas that companies should actively consider in connection with their D&O insurance cover:

1. Business Continuity

The maintenance of adequate controls, procedures and contingency plans is a responsibility of directors and officers and should be minuted at a board level to demonstrate due diligence and an active business continuity plan. Consideration should also be given to the wider supply chain and the potential impact from affected customers and suppliers on business continuity, and vice versa.

2. Insurance Cover

The procurement and maintenance of adequate insurance to mitigate and cover a pandemic risk is the responsibility of company directors. It is important to check that current policies provide adequate cover and also that various policies are working together appropriately. It is worth also making sure that the brokers managing General Liability, Employer Liability, Business Interruption and D&O liability are working in a coordinated manner.



3. Disclosure of Risk Factors

All 'Risk Factors' must be disclosed to shareholders as part of financial reporting requirements for example as part of a 10K or an Annual Report., with directors checking these are up to date and relevant. Risk Factors can vary greatly according to industry sector and business activity and should be reviewed in light of the current outbreak of swine flu and other pandemic scenarios.

4. Protection of Employees

There will usually be some cover for bodily injury as part of wider General Liability and Employee Liability programmes; however it is important to check the scope and cover of these policies and how they relate to each other and to D&O cover. Making sure that the brokers are working together can ensure that employee protection is maintained in the most effective way across an organisation.

5. Guidelines/Regulations

Following guidelines and regulations relating to a pandemic or a similar occurrence is the responsibility of directors, even though it may not be a legal requirement. Whilst this may be managed by a risk manager or part of a similar department, directors should be fully aware of these activities as well as changes issued by organisations like the World Health Organisation (www.who.int) or local Government directives, how these are being communicated through the business and systems for checking their understanding and adoption by employees.

6. Communication

Finally, external communications and a level of transparency in regard to plans and policies can play a vital role in the management of D&O liability. This should support clear internal communication and guidelines, as well as the organisation's approach and process in relation to a potential situation.

Whilst the current outbreak of Swine Flu seems to be diminishing around the World, it is an important reminder that these outbreaks can appear anywhere, at anytime and have the potential to spread rapidly and widely. The importance of preparation and thorough organisation should not be underestimated in connection with the management and mitigation of D&O exposure to any pandemic.

If you are concerned that your D&O policy may generally need reviewing it is worth checking the JLT D&O Health Check - www.jltgroup.com/directors-officers-liability-insurance