LOCKTON®

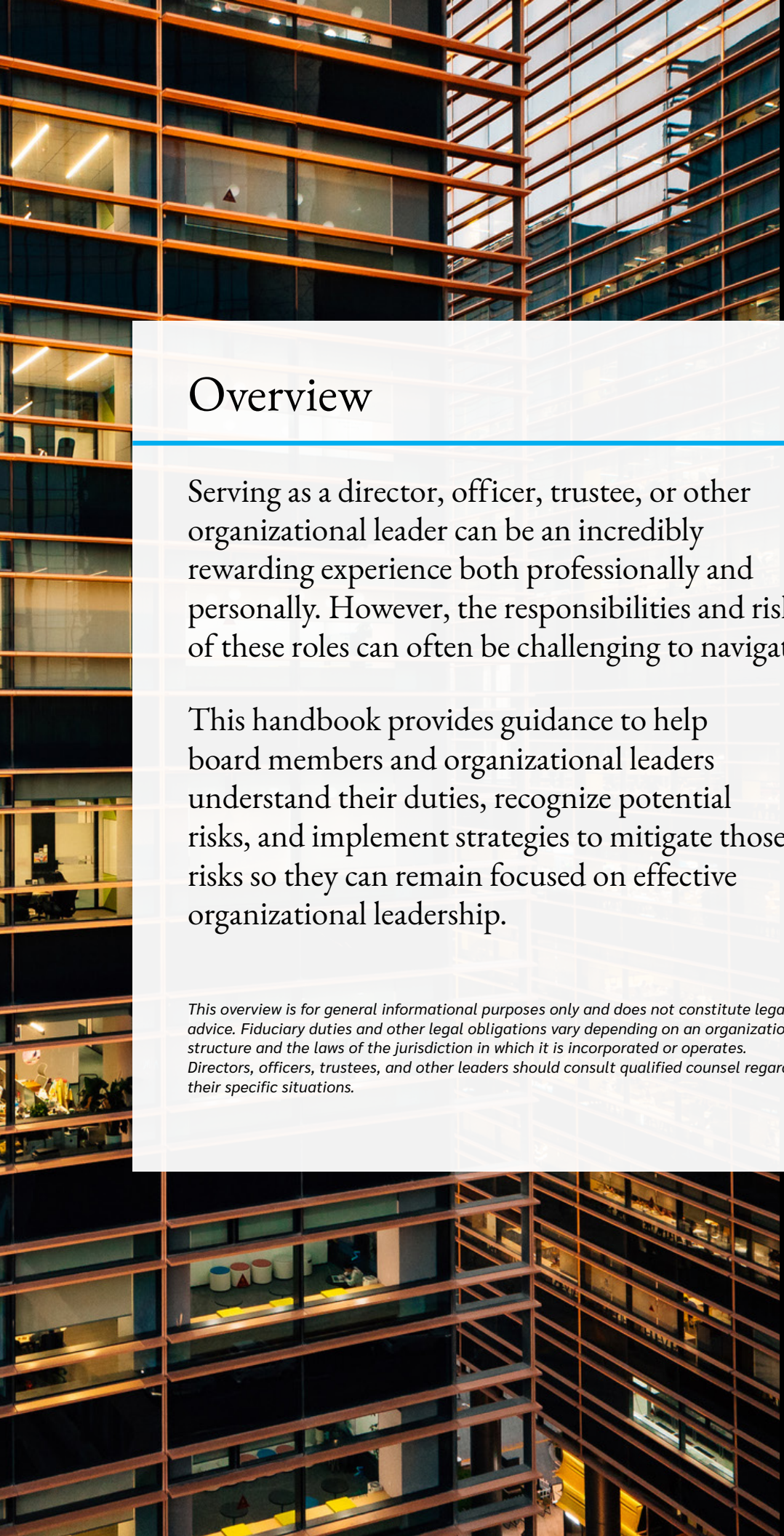
GOODWIN

Insurance buyer's handbook

DIRECTORS/OFFICERS & TRUSTEES

2026

Table of contents



Overview

Serving as a director, officer, trustee, or other organizational leader can be an incredibly rewarding experience both professionally and personally. However, the responsibilities and risks of these roles can often be challenging to navigate.

This handbook provides guidance to help board members and organizational leaders understand their duties, recognize potential risks, and implement strategies to mitigate those risks so they can remain focused on effective organizational leadership.

This overview is for general informational purposes only and does not constitute legal advice. Fiduciary duties and other legal obligations vary depending on an organization's structure and the laws of the jurisdiction in which it is incorporated or operates. Directors, officers, trustees, and other leaders should consult qualified counsel regarding their specific situations.

What are the primary duties required of organizational leaders?

Many directors, officers, and trustees are unaware of the full extent of their legal obligations. Although ethical and responsible leadership is generally expected, individuals can be surprised by the level of compliance required of board members and other executive leaders.

First and foremost, if you are an organizational leader, you will be considered a fiduciary. Fiduciaries are individuals or organizations that act on behalf of others and are required to put other parties' interests ahead of their own. Fiduciaries are, therefore, legally and ethically bound to act in the other parties' best interests.

The fiduciary duties owed by directors, officers, and trustees depend on the type of organization and the governing law.

For most corporations (public or private), fiduciary duties generally include the duty of care and the duty of loyalty.

In nonprofit organizations, some jurisdictions also recognize a duty of obedience, which requires adherence to the organization's mission and governing documents.

For limited liability companies and limited partnerships, fiduciary duties may differ — and in many cases may be modified, limited, or even waived under the terms of the operating or partnership agreement.

Fortunately, no matter what type of organization you represent, the standards of care remain relatively consistent. Having a clear understanding of these duties and how each operates in practice can help inform your actions and expectations for performance as a leader.

01

DUTY OF CARE

The duty of care applies to nearly all organizational leaders, regardless of entity type. The duty of care requires leaders to act and make decisions with the diligence, prudence, and informed judgment that a reasonably careful person would use in similar circumstances. It further requires fiduciaries to ensure they are adequately informed, including by seeking out the knowledge and expertise necessary to understand the matters entrusted to them.

Among other things, to satisfy their duty of care, directors, officers, and trustees should:

- Actively participate in meetings.
- Review internal and external materials.
- Ask thoughtful and probing questions.
- Understand the organization's operations, activities, and mission.
- Make intentional decisions about what risks are acceptable and which are not.
- Maintain clear records of deliberations and decisions.

Taken together, these practices help leaders recognize potential risks, ask informed questions, and demonstrate that they have met their duty of care obligations.

02

DUTY OF LOYALTY

The duty of loyalty requires directors, officers, and trustees to act in the best interests of the organization, meaning that they cannot place another cause, interest, or affiliation above their obligations to the organization and its stakeholders. It requires leaders to be mindful of situations that could result in personal gain or create potential conflicts of interest.

To uphold the duty of loyalty, leaders should follow any applicable conflict of interest policies, disclose any direct or indirect financial or other interests (including familial relationships and interests), and comply with all compensation, disclosure, and related legal requirements. They must also avoid using organizational opportunities, information, or assets for personal benefit. To maintain integrity and avoid even the appearance of impropriety or self-dealing, directors, officers, and trustees must set aside personal loyalties in favor of the organization's best interests and, if a conflict arises, should remove themselves from related discussions and decisions. In an LLC or partnership, the duty of loyalty may be modified by agreement, but doing so should be approached cautiously and with legal advice.

03

DUTY OF OBEDIENCE

(nonprofit organizations)

This duty primarily applies to nonprofit entities and their directors, officers, and trustees. It requires leaders to ensure that the organization operates in compliance with applicable laws, its articles, and its bylaws and that it remains faithful to its charitable or public purpose.

To fulfill the duty of obedience, leaders should understand the local, state, federal, and international laws and reporting requirements that may apply to the organization so it can remain legally compliant. It's also important to be familiar with key legal documents, such as the articles of incorporation, bylaws, and any exemption applications, to ensure the organization operates in accordance with them and stays true to its mission. Although external advisors are valuable, leaders should not rely exclusively on third parties for compliance or audit matters.

Corporate and LLC leaders have analogous obligations to comply with laws and governing documents but are not said to owe a "duty of obedience" in the fiduciary sense. For those entities, compliance obligations arise from statutes, regulations, and the organizational documents themselves rather than from a distinct fiduciary doctrine.

What is an organization's obligation to an individual surrounding their duties?

Organizations play a critical role in setting leaders up for success. To help individuals meet their fiduciary obligations, organizations should:

Educate board members: Provide current and prospective board members with clear, practical guidance about their legal responsibilities, ethical expectations, the scope of their authority, and what is expected of them. Regular onboarding sessions and periodic refresher trainings can help reinforce these obligations over time.

Ensure access to governing and key documents: Give leaders timely access to the organization's governing documents — including articles, bylaws, charters, policies, and committee mandates — as well as all materials necessary to make well-informed decisions. This includes providing meeting materials sufficiently in advance and in clear, digestible formats.

Orient leaders to organizational strategy and risks: Offer an overview of the organization's mission, strategic priorities, financial condition, and key risk areas so new leaders can engage effectively from the outset and make decisions grounded in context.

Maintain a strong conflict of interest policy and framework: Adopt and regularly review a robust conflict of interest policy and ensure it is consistently applied. Organizations should require periodic disclosures and have clear procedures for managing and documenting conflict issues as they arise.

Provide independent support for fiduciary and ethical concerns: Establishing access to an independent third-party advisor and/or reporting hotline can be invaluable for addressing fiduciary concerns, whistleblower reports, and allegations of wrongdoing. These resources help promote transparency, protect confidentiality, and support responsible governance.

Encourage thoughtful commitment from individuals: Prospective board or committee members should be encouraged to assess the role's requirements, expectations, and necessary expertise before accepting a position. If an organization cannot clearly articulate roles, responsibilities, or decision-making authority, that may signal the need for additional due diligence before joining.

What are the different types of corporate structures?

Corporate entities come in a wide variety of sizes and governance frameworks, and these structural differences can have broad and direct implications for an individual's duties as a fiduciary. While the principles of care, loyalty, and integrity apply across most organizational forms, the specific legal standards differ across nonprofits, corporations, LLCs, and partnerships. The following summaries highlight key distinctions.

NONPROFITS

Nonprofit entities are mission-driven and often serve charitable, educational, religious, or community-focused purposes. Their directors, officers, and trustees play a central leadership role, and the organization's mission and governing documents significantly influence fiduciary expectations. Although nonprofits exist for the public good, this does not exempt them from legal responsibilities, including state nonprofit statutes, federal tax-exemption requirements, and reporting obligations.

Importantly, individuals serving as directors, officers, or trustees of a nonprofit are not shielded by Good Samaritan laws for their governance decisions and may face both direct and indirect (vicarious) liability arising out of the organization's operations.

PRIVATE COMPANIES/LIMITED LIABILITY CORPORATIONS/ LIMITED PARTNERSHIPS

Privately held corporations, LLCs, and partnerships do not enjoy tax-exempt status like nonprofits, but they can still offer certain structural protections, such as limiting personal liability for owners, directors, and officers. That said, individuals serving in leadership capacities, including as directors or officers, are generally subject to legal and fiduciary standards. It is important that anyone in these roles aims to consistently uphold their legal obligations and act in accordance with both the law and best practices for governance.

In LLCs and limited partnerships, fiduciary duties may be expanded, restricted, or modified by contract through the operating or partnership agreement, subject to state law limits. (For example, Delaware law allows modification but not elimination of the implied covenant of good faith and fair dealing.) Because contractual flexibility is high, leaders should carefully review governing agreements to understand the scope of their obligations.

PUBLICLY HELD COMPANIES

Public company directors and officers must meet fiduciary standards similar to their private counterparts, but they also operate within a more complex regulatory environment. For example, the Securities and Exchange Commission (SEC) imposes disclosure and reporting requirements.

Public company leaders must also navigate additional obligations related to internal controls, audit committee requirements, financial reporting accuracy, shareholder communications, and market-integrity protections. These heightened requirements reflect the broader public impact of their decisions and the need to safeguard investors and maintain transparent, fair markets.

What is the role of indemnification?

State law typically provides a basis to allow a company to indemnify its leaders — as long as they acted in good faith, believed they were serving the company's best interests, and were unaware that their actions were unlawful.

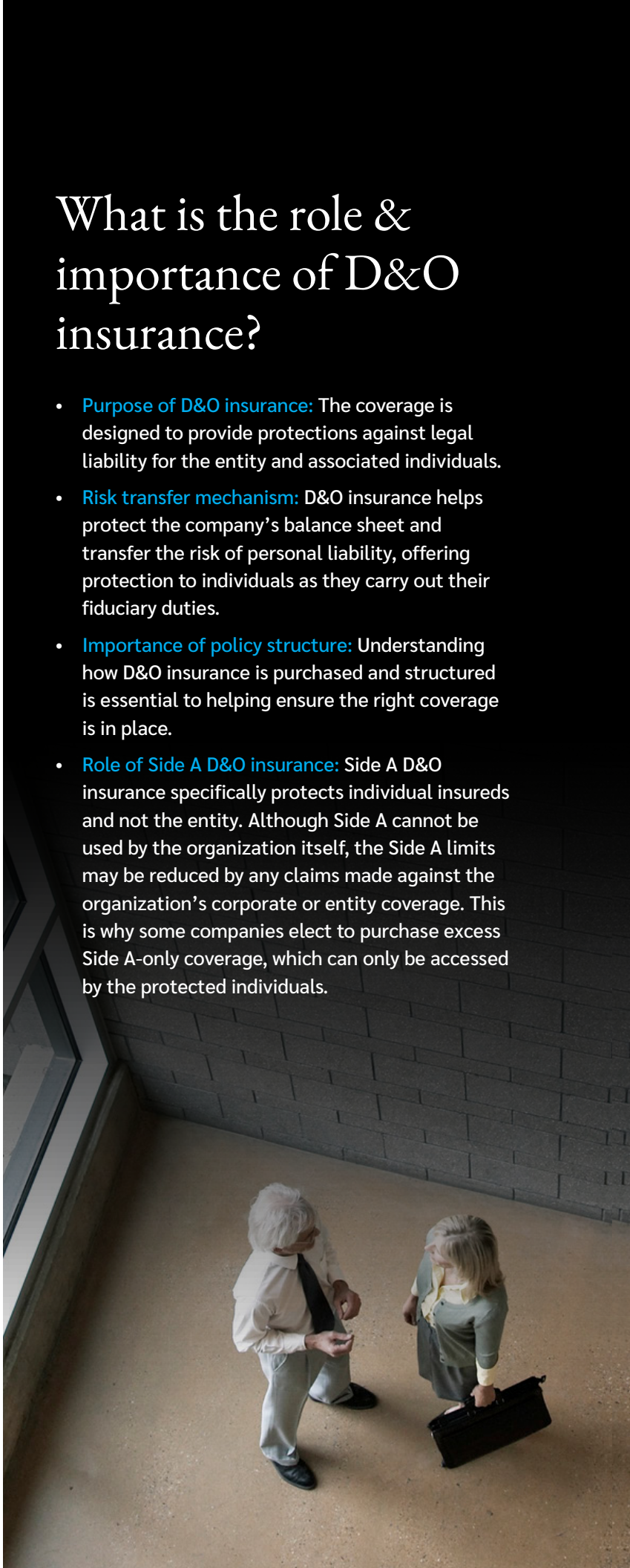
A company's bylaws usually outline the scope and procedures for indemnification. There are, however, reasons why a corporation may be unable or unwilling to indemnify, including:

- Intentional misconduct
- Transactions where the director derived an improper personal profit or benefit
- Bankruptcy, insolvency, or lack of organizational funds
- Derivative claim: A claim brought derivatively by a shareholder on behalf of the corporation
- Where there is a change in control
- Unlawful payment of dividends

It is important to note that D&O insurance should not be viewed as a replacement for an organization's obligation to indemnify its leaders.

What is the role & importance of D&O insurance?

- Purpose of D&O insurance: The coverage is designed to provide protections against legal liability for the entity and associated individuals.
- Risk transfer mechanism: D&O insurance helps protect the company's balance sheet and transfer the risk of personal liability, offering protection to individuals as they carry out their fiduciary duties.
- Importance of policy structure: Understanding how D&O insurance is purchased and structured is essential to helping ensure the right coverage is in place.
- Role of Side A D&O insurance: Side A D&O insurance specifically protects individual insureds and not the entity. Although Side A cannot be used by the organization itself, the Side A limits may be reduced by any claims made against the organization's corporate or entity coverage. This is why some companies elect to purchase excess Side A-only coverage, which can only be accessed by the protected individuals.



What is D&O insurance?

D&O insurance is designed to provide financial protection to a company's directors and officers, and the organization itself, by covering losses related to allegations of covered wrongful acts.

This coverage includes judgments, settlements, and legal defense costs, all subject to the policy's retention, terms, and conditions.

Who is covered as an insured under a D&O policy?

Coverage can extend to the following, depending on the policy:

- Directors
- Officers
- Trustees
- Employees
- Independent contractors
- Staff members
- Committee members
- Volunteers
- The entity itself
- Subsidiaries (with ownership greater than 50%)
- Spouses and domestic partners
- Estates/heirs

How is D&O insurance typically structured?

Traditional D&O insurance is made up of three key components, known as Sides A, B, and C.

SIDE A COVERAGE

The insurer provides direct coverage to individuals when the organization is either unable or unwilling to indemnify them for a covered claim.

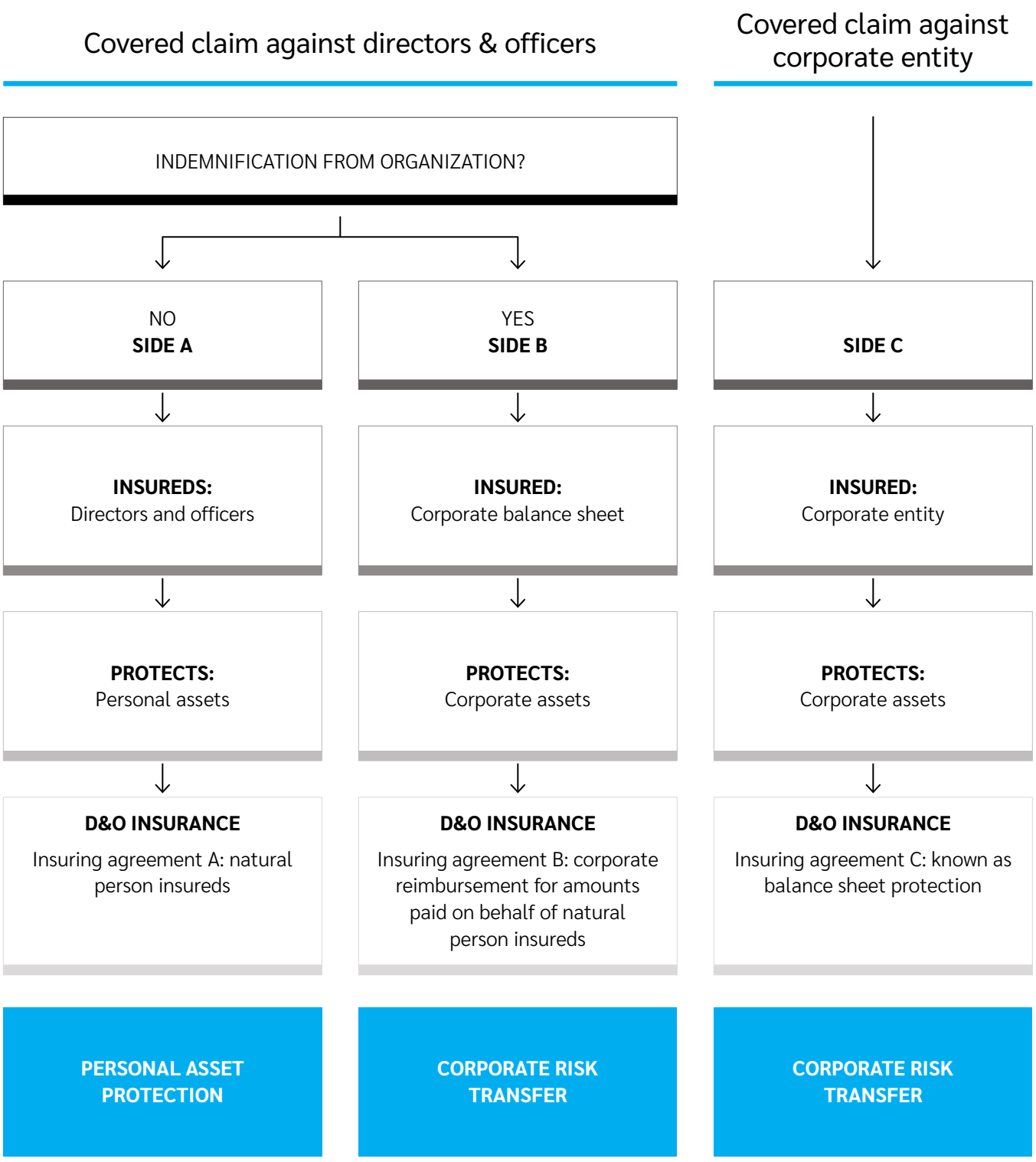
SIDE B COVERAGE

The insurer reimburses the organization for costs it pays to indemnify individuals when they face claims for actions taken in their official capacity.

SIDE C COVERAGE

The insurer reimburses the organization against losses resulting from claims made directly against it for alleged wrongful acts it has committed.

The following illustrates how each of these coverage parts works and how they interact with your organization's indemnification obligations.



What are Side A D&O & DIC coverages?

As mentioned earlier, Side A coverage offers personal asset protection for individuals, including directors and officers, when the organization cannot or will not provide indemnification. This can occur when the law or corporate formation documents prohibit the organization from indemnifying, or when indemnification is not available due to bankruptcy or insolvency or refusal of the organization to indemnify.

Coverage considerations for a Side A-only D&O policy

- Coverage is considered an additional (and often final) line of defense for directors and officers.
- Side A-only limits are in addition to any traditional D&O policy Side A limits in place, or in the event that a Side B or Side C entity claim has exhausted the limits of the ABC tower.
- In less common situations, an organization may buy only Side A coverage for its directors and officers and decline to buy coverage for the entity itself.
- A Side A-only policy will respond with coverage available solely to directors and officers and cannot be shared with the organization.
- During bankruptcy proceedings, Side A-only limits are typically protected from being frozen or seized as an asset of the company because this type of policy is not considered a corporate asset.

What is Side A DIC (difference in conditions) coverage?

This coverage provides even broader protection for losses of directors and officers that are not indemnifiable. Typically, a Side A DIC policy sits excess of a traditional D&O program, but it will “drop down” to provide coverage if the underlying coverage cannot or will not respond. It typically includes fewer, less onerous exclusions and cannot be rescinded or canceled by the insurance company. As a result, a Side A DIC policy often offers the broadest coverage available and acts as a “first-dollar” defense for claims that might be excluded under traditional Side A D&O policies.

Principal D&O coverage provisions

DEFINITION OF CLAIM	PRINCIPAL D&O COVERAGE PROVISIONS
Severability	No knowledge or information possessed by any insured person will be imputed to any other insured person except those who sign applications for the D&O policy. This protects nonsigners with a coverage commitment.
Outside liability	Coverage should automatically protect any director or officer serving on a nonprofit 501(c)(3) board at the request of the organization.
Insured persons	Coverage should automatically include all past, present, and future individual directors, officers, and trustees (as applicable). They do not need to be scheduled on (or off) the policy, and no tail coverage is required.
Retroactive date	Where possible, coverage should not include a retroactive date, so that coverage extends back to the incorporation date of the organization, thus providing full prior acts coverage.
Conduct	No conduct of any insured person should be imputed to any other insured person to determine the application of any of the exclusions. This prevents bad actors from impacting coverage for innocent actors.
Outside directorship liability (ODL)	When ODL coverage is added, typically by endorsement, the organization's D&O policy can extend to cover service on the board of another organization, such as a nonprofit or a portfolio company, as long as the individual is serving in a capacity at the direction of the organization. Coverage can be triggered if the outside organization does not carry D&O coverage, its limits are exhausted, or it cannot or will not provide indemnification.

Risk management guidance for directors, officers, trustees, & board members

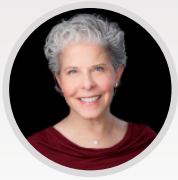
Lockton and Goodwin have prepared the following to serve as helpful but not definitive guidelines for consideration and discussion with any board you may choose to serve on. This is not a complete or exhaustive list, and individuals should consult with legal counsel regarding their specific circumstances.

- ☐ **Role expectations:** Are responsibilities defined and clear?
- ☐ **Background check:** Does the organization conduct criminal, civil, and/or reputational background screenings?
- ☐ **Description of duties:** Are the formal expectations and fiduciary obligations outlined in writing?
- ☐ **Financial requirements:** Are board members expected to make donations? Are there financial disclosure requirements, and will this information be public?
- ☐ **Time commitment:** What is the actual and expected commitment overall, including committee work or volunteering requirements?
- ☐ **Required involvement:** What is the actual and expected commitment overall, including internal and external events or engagements?
- ☐ **Formal agreement:** Is there a formal contract or appointment letter? What protections or obligations does it include? Should you have counsel review?
- ☐ **Governing documents:** What obligations and legal protections do the governing documents for the organization (operating agreement, certificate of incorporation, bylaws, articles, etc.) provide?
- ☐ **Indemnification:** What indemnification rights are offered? Are they documented, and do they meet statutory requirements?
- ☐ **D&O coverage:** Will the organization provide copies of all D&O policies annually? Will they provide an annual review of coverage to you?
- ☐ **Term expectations:** What is the length expected? Is there a cap in length? Are there classes that dictate and outline the tenure of service?
- ☐ **Board composition and dynamics:** Who are the other members, and what will interactions look like?
- ☐ **Disclosures/publicity:** Is a release required? Photos and press releases included?
- ☐ **Leadership roles:** Are you expected to assume officer roles or committee leadership?
- ☐ **Committee work:** What committees exist, and is service on them expected?
- ☐ **Attestations:** What recurring disclosures or certifications are required (990 example/SEC K&Q filing examples/annual report)?
- ☐ **Conflicts of interest procedures:** Are disclosures required annually? How are conflicts managed and documented?
- ☐ **Emeritus:** Does the organization have an emeritus category, and what are the implications?
- ☐ **Crisis management:** Is there an established crisis response plan, and how does it allocate responsibilities among or otherwise impact board members?
- ☐ **Organizational culture and whistleblower framework:** Does the organization promote a culture that supports transparency and internal reporting?
- ☐ **Exit and tail:** Upon departure, does the organization provide continued indemnification and insurance tail coverage matching the statute of limitations? Is this guaranteed in writing?
- ☐ **Communication:** How does the board interact with key stakeholders (employees, shareholders, regulatory bodies, governmental representatives, vendors, and customers)? Who can speak for the organization publicly?
- ☐ **Litigation:** Are there pending, threatened, or reasonably foreseeable legal or regulatory issues?

Are you ready to overcome your executive risk challenges?

If you have any questions or would like to learn more about any of the topics addressed in this document, please feel free to contact a member of Lockton's Professional & Executive Risk team or Goodwin's Risk Management & Insurance Group, including Jacquelyn Burke, or its securities and corporate governance team, including John Barker.

Kelly Thoerig
Managing Director
U.S. D&O/EPL Product Leader
Professional & Executive Risk
Lockton
kelly.thoerig@lockton.com



Andrea Lieberman
Managing Director
U.S. Claims Leader
Professional & Executive Risk
Lockton
andrea.lieberman@lockton.com

Kevin Hewgley
Senior Vice President
Professional & Executive Risk
Lockton
khewgley@lockton.com

Jacquelyn Burke
Partner
Risk Management & Insurance
Goodwin
jburke@goodwinlaw.com
Click here to access my bio

John A. Barker
Partner
Securities & Corporate Governance
Goodwin
jbarker@goodwinlaw.com
Click here to access my bio

Teresa Milano
SVP, Senior Client Manager
Lockton
914.474.6351
teresa.milano@lockton.com

Machua Millett
Alternative Investment and Corporate
Transitions Advisory Leader
Lockton
508.717.1062
mach.millett@lockton.com

To visit the Lockton D&O insurance page, please click the button or scan below.

Visit our website

To connect directly with a member of the Lockton D&O team, please click the button or scan below and complete the form.

Connect now

UNCOMMONLY INDEPENDENT

C | 5136272 0226