

DIRECTORS & OFFICERS INSURANCE

Take a moment to answer the following questions. If this questionnaire indicates exposure in two or more risk areas, the financial well being of your company **may be at risk**...Serious consideration should be given to purchasing Directors & Officers Insurance.

QUESTION	RESPONSE	EXPOSURE
Do some of your D&Os think that your company can indemnify them in all situations?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>Most companies are not permitted to indemnify D&Os</p> <ul style="list-style-type: none"> - For any settlement of judgment in shareholder derivative suits - For intentional violation of federal securities laws - Where the D&O does not act honestly, in good faith and with the reasonable belief that his/her conduct is in the best interest of the company <p>If your company becomes financially insolvent, or is financially distressed, it is unlikely it will be capable of funding any D&O indemnification.</p>
Do your company's senior officers have occasional disagreements with customers, creditors, competitors or regulators?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>A company's exposure to these types of third party claims is the same whether the company is privately held or publicly held. In Canada, claims against D&O's brought by these types of non-shareholders are more or as frequent as claims by shareholders</p>
Do directors of your company regularly ensure that all wage payments and tax remittances are kept current and that appropriate amounts have been set aside to cover vacation pay obligations?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>In Canada, directors can be held personally liable for unpaid wages, vacation pay and taxes that become payable while they are in office. This liability is imposed without fault (strict liability), in circumstances when a company becomes financially insolvent or is otherwise unable to make the payments, and can be imposed up to 2 years after a director ceases to be a director.</p>
Might at least one former, current, or future shareholder of your company be dissatisfied with the company's performance or management decisions?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>A shareholder with a minority interest can commence an oppression action against the D&Os, or can bring a derivative action on behalf of the company.</p> <p>Even if all current shareholders are unlikely to bring a claim, new shareholders with different expectations can suddenly appear as a result of a death, divorce, insolvency of a shareholder, or a transfer of shares by an existing shareholder.</p>
Is your company contemplating an IPO within the next five years?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>Purchasing D&O insurance for the first time immediately prior to an IPO can be problematic and potentially quite expensive because D&O insurers will not have any prior relationship or comfort with your company.</p> <p>Creating a relationship and mutual trust long before the IPO is an advisable risk management practice.</p>
Do directors of your company have close personal relationships with or strong allegiance to the controlling shareholder(s)?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>If a majority of directors are unwilling to oppose the wishes of the controlling shareholders when appropriate, the interests of minority shareholders and other company constituents may be ignored, which increases exposures to suits by minority shareholders.</p>

QUESTION	RESPONSE	EXPOSURE
Are your company's directors and senior officers fully aware of their own legal duties and responsibilities and all legal obligations imposed upon your company?	<input type="checkbox"/> Yes <input type="checkbox"/> No	It has been estimated that Canadian D&Os face more than 100 provincial and federal laws creating potential personal liability. D&Os cannot comply with their personal duties and assure the company's full compliance with its vast requirements if they are unfamiliar with those duties and requirements.
Have your company's directors and officers taken all reasonable care to prevent the company from causing or permitting unlawful deposits, emissions or discharges of contaminants into the environment?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Legislation has been adopted in Canada to clearly recognize broad D&O liability exposure arising from pollution. The laws require D&Os to take all reasonable care to prevent the company from causing or permitting unlawful pollution conduct. This imposes a stringent liability standard on D&Os and at a minimum requires D&Os to be actively involved in pollution prevention and control.
Might your officers be serving on outside boards because they think your company is requesting or at least consenting to such services?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>Most indemnification statutes and bylaw provisions permit or require a company to indemnify its employees for liabilities arising from their serving on the boards of outside companies at their company's request.</p> <p>The "request" that triggers this liability typically does not need to be in writing or be made by any specific person within your company. Rather, any oral statement by anyone with apparent authority to act on behalf of your company may constitute a sufficient "request" in order to expose your company to the D&O liability risks of another company. Because one officer can frequently be liable for 100% of a claimant's loss even though other directors and officers were equally or even more at fault, this outside directorship indemnification can expose your company to potentially enormous exposure, particularly if your company is the only "deep pocket" available for the claimant.</p>

CONTACT US TO INQUIRE ON DIRECTORS & OFFICERS INSURANCE
Ogilvy & Ogilvy (514) 932-8660 or visit us at www.ogilvy.ca

