

Is D&O Alone Sufficient?

Directors of an investment fund will regularly request quotations for Directors' & Officers' (D&O) indemnity insurance seeking to protect their exposures for the Board positions.

In many cases however, it is not just directors services which are being provided but also professional services often by one or more parties involved in the structure (e.g.; the investment manager and/or the General Partner). Therefore the need to consider Professional Indemnity (PI) will also exist.

It is not uncommon for the fund structure to have one or more closely associated entities, such as a General Partner or Investment Manager (frequently with common directors). The roles and responsibilities of the respective parties (including their inter-action) needs to be considered to ensure all risk exposures are fully protected.

Investment management is evidently the provision of a professional service for which a duty of care prevails - therefore potential liabilities exist for allegations of a breach of this duty. Professional services can also include the day-to-day management functions of an operation (e.g.; by the General Partner) as a result of which "errors and omissions" may occur exposing the entity to allegations of professional negligence.

The PPM or Prospectus will often make statements such as:-

- "The General Partner will have ultimate responsibility for the operation of the Fund and will have the ultimate decision-making authority to bind the Fund with respect to investment decisions....."

or

- "The General Partner will appoint the Investment Manager to provide management services....."

Professional Indemnity insurance will provide protection in such circumstances as the policy provides cover for the financial consequences of professional negligence following a breach of professional duty by way of neglect, error or omission. In addition, an indemnity is provided in respect of the legal costs and other expenses incurred in the defence of any claim.

Directors' & Officers' indemnity insurance offers protection to directors for the fiduciary duties of their positions. Actions may be brought personally against the director(s) with accusations of breaching these duties and the directors' personal liability is unlimited.

Within the insurance market, PI & D&O risks are distinct and entirely separate. You could find yourself exposed without the protection of insurance cover if one has been arranged, but not the other.

The Insurance Market has designed a "blended" product combining both PI and D&O to provide insurance protection for the various risks faced by a Fund, General Partner and/or Manager. The structure and inter-relationship of investment managers and funds can inject great complexity into potential claims scenarios. The different managerial and professional duties owed by directors or officers to shareholders, investors, employees and third parties can result in myriad of different actions – all perhaps emanating from the same event.

In addition to the PI and D&O risks described, fidelity exposures may also need consideration – eg; employees dishonesty or theft of assets from the funds structures.