

# COVERAGE INSIGHTS



## Side A DIC Coverage

In a business landscape that increasingly prioritizes corporate accountability, directors and officers face numerous risks in carrying out their corporate duties. Whether a public, private or nonprofit organization, no company is immune from litigation arising out of the management decisions of its boards.

Although directors and officers liability (D&O) insurance can provide coverage for “wrongful acts,” including alleged errors, omissions or breaches of duty, there are several circumstances in which it may not offer complete coverage for directors and officers. Fortunately, Side A difference in conditions (Side A DIC) insurance can help fill the coverage gaps of traditional D&O insurance policies, ensuring directors and officers are not personally liable for certain claims.

## D&O and Side A DIC Coverage Explained

A standard D&O insurance policy typically comprises three coverage parts, collectively referred to as ABC coverage:

1. **Side A** provides coverage for directors and officers if the company refuses or is unable to protect or indemnify them.
2. **Side B** reimburses a company for the costs it pays on behalf of a director or officer, including legal defense costs, judgments and settlements.
3. **Side C** covers the company itself if it is sued alongside its directors and officers.

Traditional ABC coverage can be rapidly exhausted by indemnifiable losses, such as securities claims. Side A DIC can provide excess Side A D&O insurance when a company’s traditional D&O policy is depleted or when a company is unwilling or financially unable to indemnify its directors and officers. In simple terms, Side A DIC is designed to protect the personal assets of an organization’s directors and officers when corporate indemnification is unavailable. Side A DIC typically also includes broader coverage terms and fewer exclusions, thereby filling the coverage gaps of a company’s underlying D&O policies.

## Key Features of Side A DIC Coverage

Consider these key features of Side A DIC coverage:

- **Broader protection**—Traditional D&O policies often contain multiple exclusions. These may include coverage restrictions for claims related to bodily or personal injury, property damage and pollution, the latter of which could have significant ramifications for companies facing increasing environmental, social and governance requirements. In contrast, Side A DIC usually only bars coverage for deliberate fraud or malicious acts. Moreover, the definition of “insureds” is typically broader within Side A DIC policies, and covered damages may include preclaim inquiry costs and coverage for certain fines and penalties, depending on policy wording, among other enhancements.
- **Drop-down provision**—In the event that a traditional D&O policy is unable to respond to a claim (e.g., the company is facing bankruptcy proceedings), a Side A DIC policy can “drop down” and pay the first dollar of the defense costs for individual directors and officers. Essentially, the policy will substitute for a company’s underlying D&O insurance in a range of scenarios that would otherwise be considered an “uncovered loss.”
- **No retention or deductible**—If a corporate entity doesn’t indemnify its directors and officers, these individuals could be left paying a large retention, incurring significant costs before insurance coverage can respond. Side A DIC policies typically provide first-dollar coverage, meaning no deductible or self-insured retention is required. Moreover, Side A DIC is generally nonrescindable. This means that a Side A DIC carrier can’t withdraw coverage once the policy has been issued, even if they later discover inaccuracies (e.g., oversights in the application process), providing additional assurance to organizations and their directors and officers.

# Why Side A DIC Coverage Is Important

Several factors make Side A DIC coverage essential:

- **Personal asset protection**—Traditional D&O policies typically cover both the directors and officers and the company. As such, if the limits are exhausted by covering the latter, there will be less available coverage to protect the interests of individual directors and officers. A Side A DIC policy provides dedicated limits for individual directors and officers, ensuring personal assets remain protected. Furthermore, D&O insurance can stipulate that the carrier recoup defense costs following a judgment of guilt; most Side A DIC policies do not require recoupment of defense costs following an adverse judgment, giving directors and officers an additional level of assurance.
- **Bankruptcy protection**—In the event of company bankruptcy, a D&O policy can be deemed the property of the bankruptcy estate, preventing directors and officers from accessing coverage. Side A DIC policies are uniquely designed to be free from such risk; coverage in the event of bankruptcy is usually explicitly included.
- **Coverage for nonindemnifiable claims**—Organizations may be legally prohibited from indemnifying directors and officers or unwilling to do so in certain scenarios, such as a hostile takeover. Side A DIC provides coverage in such scenarios, ensuring directors and officers are not personally liable.

Ultimately, a Side A DIC policy helps attract and retain talented executives by ensuring board members can make decisions without fear of personal financial exposure.

## Key Considerations When Purchasing Side A DIC Insurance

The scope of coverage provided under Side A DIC insurance depends on the terms and conditions of individual policies, and a company's required coverage limits vary based on its risk profile.

Regardless, purchasing Side A DIC coverage is essential in protecting officers and directors, allowing them to conduct their duties with valuable peace of mind. Contact Winters-Oliver Insurance Agency today to discuss integrating Side A DIC insurance with your existing D&O coverage.

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