

What to Expect During Your Next D&O Renewal

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WHAT TO EXPECT DURING YOUR NEXT D&O RENEWAL

On the Directors and Officers side of insurance, AHT continues to receive underwriting questions related to the COVID-19 pandemic. Based on what we've heard, the following list was compiled to offer insight into some of the common questions you may receive.

GENERAL

1. Please discuss the impact to operations from COVID-19. Specifically, what impact will the virus have on forward business projections?
2. Do you have a business continuity plan in place for COVID-19?
3. How are you communicating with your shareholders, stakeholders and employees over the coming months?
4. Do you have a plan to reduce operations in the event of a continuing economic decline negatively impacting the company, including a wind-down plan, which has been vetted by wind-down experts and legal advisors?
5. Has your company been impacted by delays in your supply chain that would impact your go-forward business operations? If so, what measures have you taken to mitigate your exposure?

FINANCIALS/LIQUIDITY

1. Please confirm that your company has capital and access to capital to fund ongoing operations for the next 12-18 months.
2. Please confirm your current cash position? If operations are ceased for a period of time, what are the monthly cash burn projections?
3. Are there any investments in breach of your debt covenants as a function of the COVID-19 Crisis? Do you foresee any potential debt defaults by any investments in the next 18 months?
4. Is your company considering material developments with respect to its interest in adding debt, either in the form of loans or debt securities, to address prospective liquidity issues?
5. Is your company considering any changes to its existing programs relating to share dividends, stock buybacks or cash management?
6. Does your company anticipate raising further capital in the next 6 months? If so, has an agreement been signed? If not, has the client spoken with your potential investors/lenders (and what was the outcome)?
7. Please state whether you anticipate the need to restructure, reorganize or consider an arrangement with creditors under federal or state law?

EMPLOYMENT MATTERS

1. Are any layoffs or furloughs anticipated? If so, please explain. What are plans to rehire or restart operations if halted?
2. What are you doing to be accommodating and flexible to employees during any state-required government quarantine?
3. What changes in travel policies or intra-company personnel engagement has your company made?
4. How does your company plan to balance its HIPAA obligations to its employees with notice obligations to other employees regarding positive COVID-19 employee tests or the onsite presence of an individual who has been exposed to other COVID-19-positive individuals?
5. If you have employees working within a company office, how are you ensuring a safe work environment?
6. How are you ensuring that you are up to date with the state/federal changes relating to employer/employee relations as a result of COVID-19? Who is responsible for ensuring that this is carried out and maintained?

COMPLIANCE/GOVERNANCE

1. In terms of contracts being undertaken - do you have cancellation and/or delay provisions written in?
2. Is your company considering changes to its disclosures regarding internal controls and external audit functions, given the potential for reduced access to your company's premises while COVID-19 pandemic movement restrictions are in place?
3. Are there prior disclosures, including those relating to supply chain logistics, or customer demand, that your company will be changing in light of current market conditions?

CYBER/TECHNOLOGY

1. What are your plans for addressing the potential for increased cybercrime due to a remote access workforce (if applicable), including data breaches through employees' remote access devices?
2. Is your company undertaking any efforts to reconsider its system's capacity and integrity to be able to operate under a new working model?

BOARD/MANAGEMENT

1. Is your board changing the frequency and manner of its full board and committee meetings? Has it formed any new committees to promote rapid-response decision-making as external developments warrant?
2. How does your board define "informed decision-making" in this new environment, and what internal or external resources are being brought in to help keep the board informed?
3. What protocols does your company (including the board) have in place with respect to continuity planning? What plans has your company made for the possibility that senior members of management, including the CEO, COO and CFO, become ill and are unable to function effectively? What arrangements, if any, are being taken to insulate more medically-vulnerable members of the board or senior management, including based on age or underlying medical condition, from the risk of viral infection? What disclosure obligations does your company believe it has with respect to these continuity planning issues?
4. How do the board members communicate with each other, especially when individuals are working remotely? Private email? Text? Is the company's general counsel advising board members about the discoverability of privately-sourced communications relating to board business?
5. Is your company changing any aspect of its executive compensation, including the timing or amount of equity-based grants, in light of ongoing market uncertainty about the continuing accuracy of historical earnings guidance? A related question could go to possible changes to permissible trading of company stock by insiders.

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