

# Directors & Officers (D&O) Insurance

## What Every Director Needs to Know

**AON**

# **D&O Insurance Demystified**

Understanding Your  
Protection as a Director

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# The Aon Team



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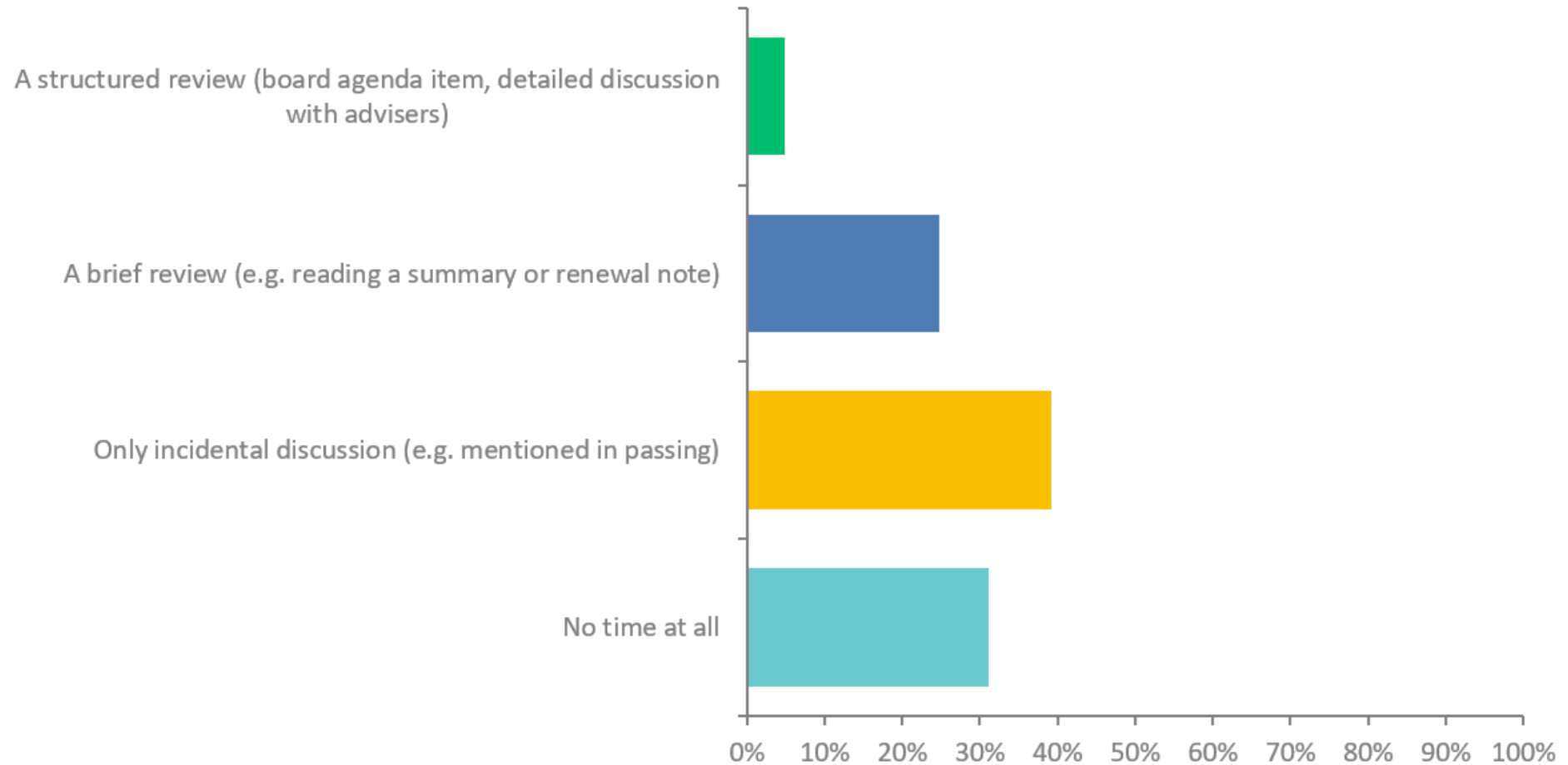
07

Q&A

# Event Survey

Over the last 12 months, how much time have you personally devoted to reviewing or discussing your D&O protection?

125 responses



# 1

## Directors Roles and Responsibilities



# What is the board and senior leaders responsible for?

## Core Duties under Companies Act

- Act in good faith in the interest of the company
- Comply with the company's constitution
- Avoid conflicts between duties and personal interests
- Exercise care, skill and diligence

## Additional Statutory Duties

- Maintain books and records
- Financial statements and disclosures
- Corporate Governance Codes
- Insolvency and capital maintenance (avoid wrongful or reckless trading)

## Roles and Responsibilities

## Evolving Regulatory Duties

- Health and Safety Governance
- Data protection and privacy (NIS 2)
- EU pay transparency
- The Corporate Sustainability Reporting Directive – ESG impacts
- AI Act
- GDPR

## Evolving Sector-Specific Duties

- Financial Services – Fitness and Probity Regime (IAF )
- Consumer Protection and Competition Regulations
- Environmental and Planning Regulations

# just a normal work day?

A day in the life of a director – and the D&O exposures that come with it



**Every decision. Every hour. Every day.** Directors make good faith decisions – but hindsight, scrutiny and stakeholders can create exposure. **D&O insurance helps protect when those decisions are questioned.**

**Key takeaway** | It's not about whether you'll be challenged. **It's about being prepared if you are.** **D&O INSURANCE**

# Areas of heightened exposure and recent developments

AON's Global Risk Management Survey 2025 (2,941 respondents)

[Findings from Aon's Global Risk Management Survey | Tenth Edition](#)

## Global

#	Global top ten risks
1	Cyber Attacks/Data Breach
2	Business Interruption
3	Economic Slowdown/Slow Recovery
4	Regulatory/Legislative Changes
5	Increasing Competition
6	Commodity Price Risk/Scarcity of Materials
7	Supply Chain or Distribution Failure
8	Damage to Reputation/Brand
9	Geopolitical Volatility
10	Cash Flow/Liquidity Risk

## Ireland

#	Ireland's top ten risks
1	Cyber Attacks/Data Breach
2	Economic Slowdown/Slow Recovery
3	Regulatory/Legislative Changes
4	Business Interruption
5	Failure to Attract or Retain Top Talent
6	Failure to Innovate/Meet Customer Needs
7	Damage to Reputation/Brand
8	Geopolitical Volatility
9	Weather/Natural Disasters
10	Vendor Management/Third Party Risk

# 2

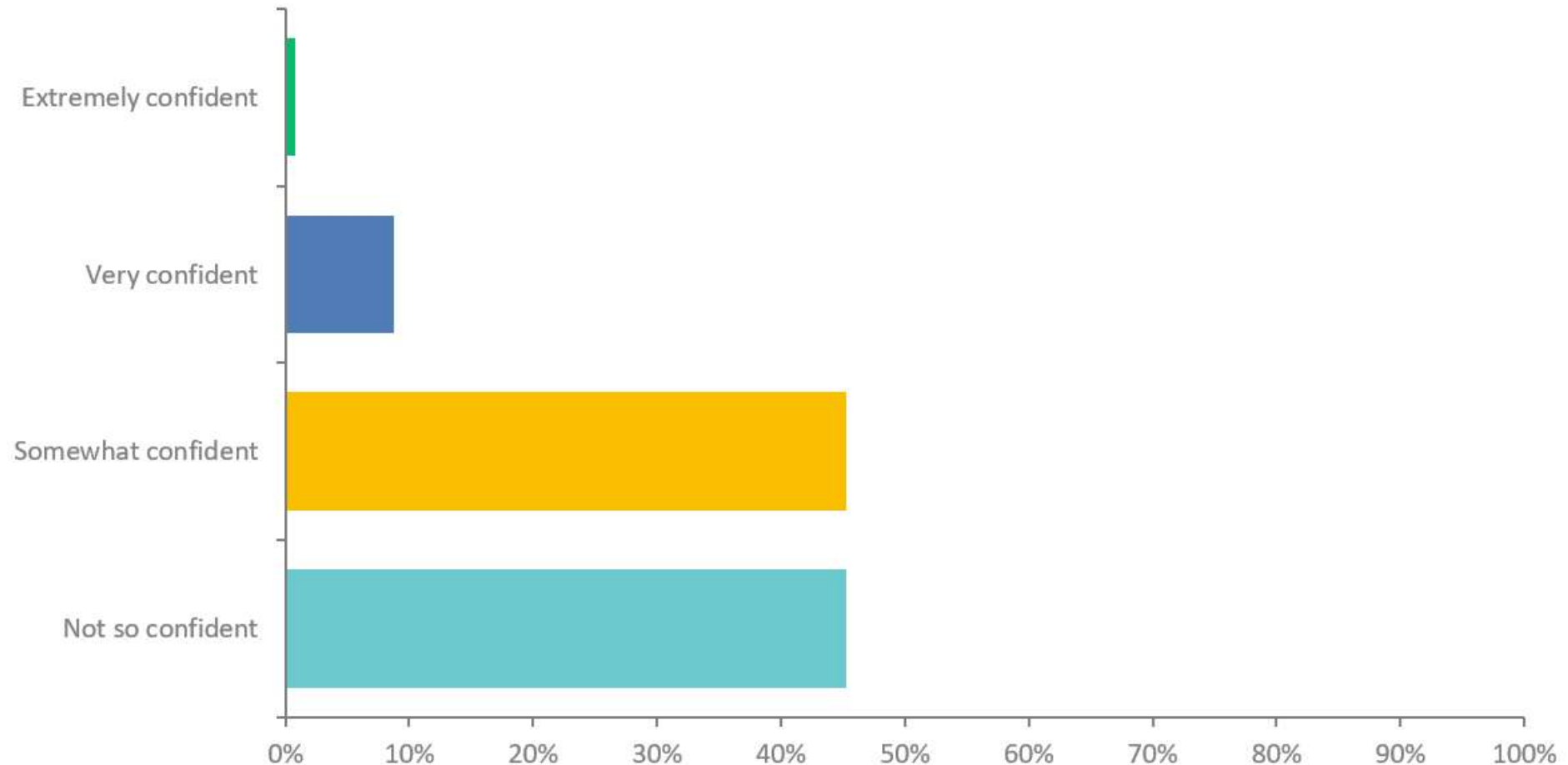
## Indemnification and the legal framework



# Event Survey

How confident are you that you understand the extent to which your organisation may lawfully indemnify you as a director under Irish company law?

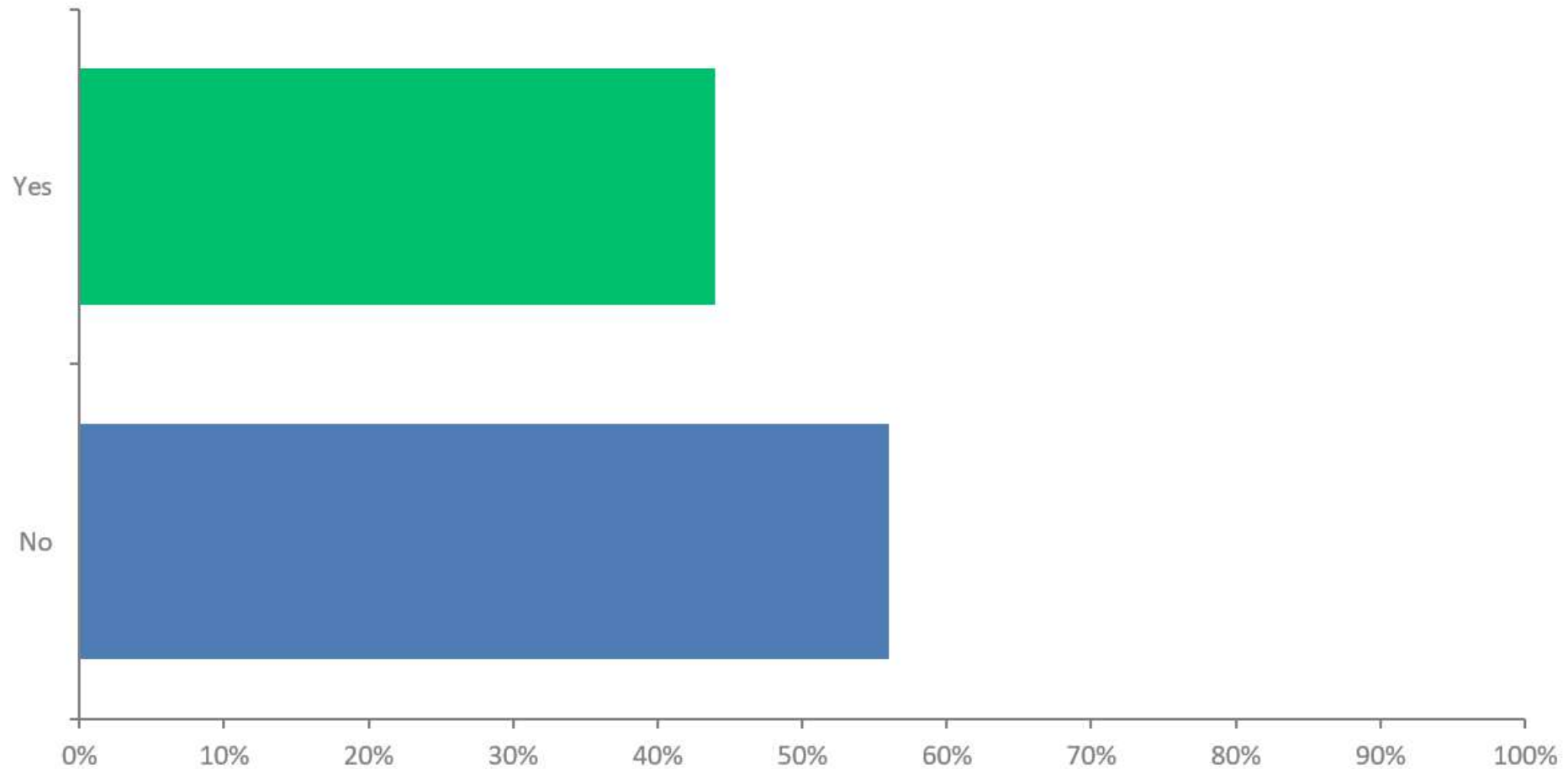
126 responses



# Event Survey

Do you have an indemnification agreement between yourself as a director and the company?

125 responses



# Indemnification Challenge in Ireland

## Legal Limitations

Directors' indemnification is limited due to s.235 of the Companies Act 2014.

## Void Provision

Any provision indemnifying directors and officers for liabilities related to negligence or breach of duty is void under Irish law, preventing companies from contractually protecting directors and officers against such liabilities

## D&O Insurance is Permitted

The Act permits companies to purchase and maintain insurance for directors and officers to cover liabilities instead of indemnification

**Exemptions:** 1) The company can indemnify if the D&O successfully defends themselves in a civil or criminal proceeding.

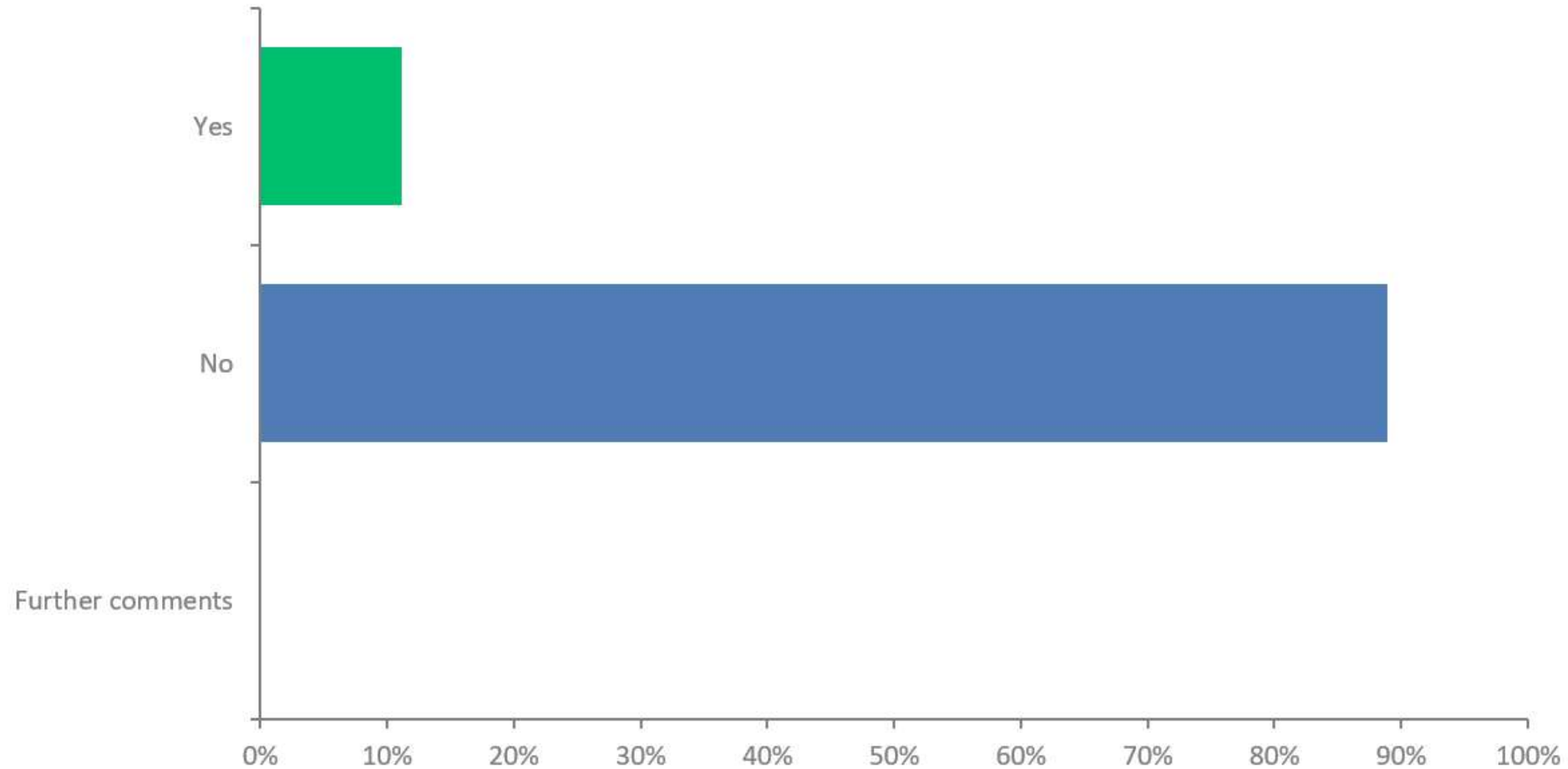


2) If a court grants relief to the D&O on the basis that the director or officer acted honestly and reasonably and ought to be excused from the wrongdoing, despite appearing liable for the wrongful act.

# Event Survey

Have you conducted due diligence on insurers participating on your D&O programme with assessment on insurers financial rating and claims?

126 responses



# Global Indemnification Context: Why Jurisdiction Matters

## Indemnification Complexity

- Indemnification laws are complex, ever-changing, and differ across jurisdictions, making consultation with local legal counsel essential.
- Global insurance brokers can provide valuable assistance in navigating the variations of indemnification laws to ensure a global insurance program is placed correctly with insurers that hold any required licenses.

# 3

How your D&O policy  
should protect you

**AON**



# Claims Made Policy

- The insurer must be notified as soon practicable after the policyholders **first becomes aware of a claim or circumstances**
- The responding policy is when the claim is notified and **not when the wrongful act or conduct occurred**
- There must be an **'active policy'** in place when the claim or circumstance is notified
- **Good practice** to check internally prior to a renewal if there is anything to notify to the policy
- Note the importance of **continuity of cover**



# How your D&O policy should protect you

- Cover for **Loss** (financial loss and legal expenses) as a result of **Claims** in respect of **Wrongful Acts** committed in an **Insured Person's** capacity as a Director & Officer

## “Loss”

- Defence Costs
- Investigation & Pre-Investigation costs
- Pre-Claim Inquiry costs
- Claim & Circumstance mitigation
- Damages, settlements or judgements
- Claimants / Plaintiffs Costs
- Civil fines & Penalties (where insurable)

## “Claims”

- A Written Demand
- Civil or Regulatory Proceedings
- Criminal Proceedings
- Securities Law Violations
- Other more specific matters e.g., extradition

## “Wrongful Acts”

- Any actual or alleged act, error or omission
- Breach of duty, care, trust or responsibility
- Misstatement, misleading statement or mismanagement
- Employment Practice Violations

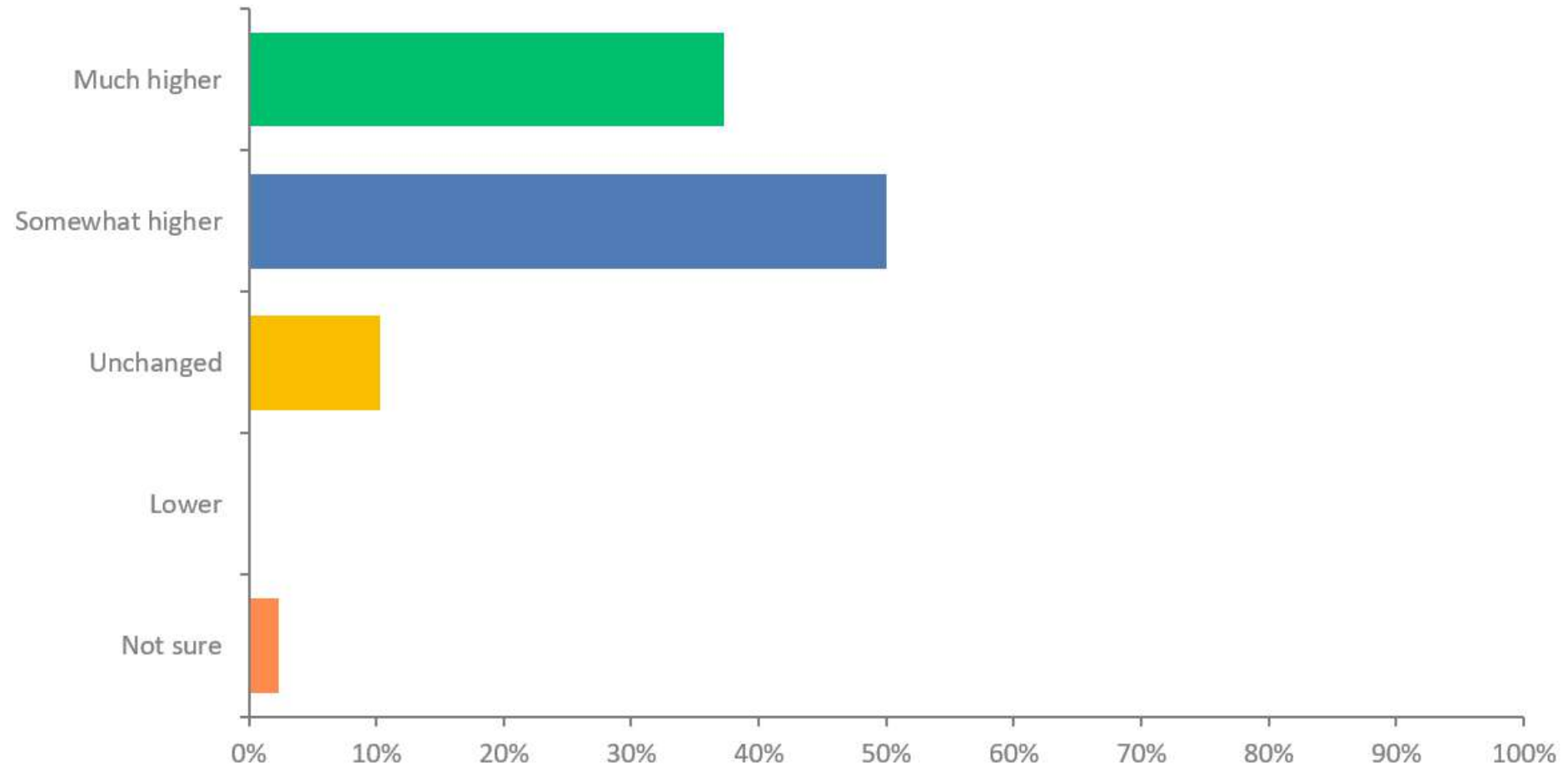


Companies purchase cover to protect their senior people (“natural persons”)

# Event Survey

How would you describe the level of legal and regulatory risk facing company directors compared with three years ago

126 responses



# How your D&O policy should protect you from regulatory actions



- Refer to the definition of **Claim**: to include a regulatory proceeding, investigation, inquiry, hearing, examination by an **Official Body** regarding the affairs of an insured person in his/her capacity as an insured.
- Definition of **Official Body**: regulator, government, governmental body, governmental agency, administrative agency, regulatory or statutory body, official trade body.
- Typically, the policy does not cover any routine or regularly scheduled review, inspection or audit in the normal review or compliance process against the company.

# What a robust, comprehensive D&O policy would (and would not) cover!

Typically Covered by a Robust, Comprehensive D&O Policy	Typically, NOT Covered Under a D&O Policy
Regulatory Investigation Defence Costs	CEO's Own Lost Income
Court / High Court Defence Costs	Value of CEO's Own Time –
Asset & Liberty Protection	Company's Business Interruption / Trading Losses
Pre-Claim / Inquiry Costs	Internal Overheads
Reputation Expenses	Uninsurable Fines & Penalties
Certain Civil Fines / Penalties	Loss from Proven Deliberate Wrongdoing
Costs Fronted Then Recovered	General "Reputational Damage" or Career Impact

# Who is covered by D&O Insurance

Any past, present or future Directors, Officers, Non-Executives of the company & all its subsidiaries

## “Employees”

- All employees joined as co defendants in an action
- Employees in a managerial or supervisory capacity

## “Other Individuals”

- Senior Accounting Officer
- Risk Manager
- General Counsel
- Shadow Director
- Prospective Director
- Spouse or Domestic Partner of an Insured
- Administrator, heir of insured

## “Subsidiaries”

- Any entity which the policy holder holds more than 50% of the voting rights
- Appoints a majority of the board of directors
- Has the right to appoint a majority of the board of directors

## “Joint Ventures”

- Insured Persons of the policyholder only
- Joint Venture, partnership other than a subsidiary

## “Outside Entities”

- Insured Persons of the policyholder only
- D&O's serving at the request of the company on the board of outside entities

# The Structure of a D&O Policy



# The Structure of a D&O Policy – Side A/DIC

## Side A/DIC “Difference in Conditions”

- The A/DIC policy will drop-down to infill if the underlying D&O program does not pay or is unable to pay on behalf of the directors and officers (“Insured Persons”)
- Examples of potential drop down if an underlying insurer:
  - Is insolvent / bankrupt
  - Fails or refuses to pay
  - Rescinds / voids coverage

### Side A

- Non-indemnifiable loss coverage for directors and officers (“Insured Persons”)

**No Retention Applies**

“Personal Asset Protection”

### Side B

- Indemnifiable loss coverage for directors and officers (“Insured Persons”)
- Reimbursement coverage for the entity’s indemnification of directors and officers (“Insured Persons”)

**Retention Applies for Indemnifiable Loss**

“Balance Sheet Protection”

### Side C

- Entity coverage
- Entity is only covered for securities claims

**Retention Applies for Securities Claims**

# 4

Important wording considerations



# Exclusions – watch out!

- Not all D&O policies offer the same protection
- Understanding the exclusions section is critical and should be reviewed with your experienced D&O broker
- Main Exclusions in a D&O policy:
  - Fraud/Criminal Conduct (but final, non-appealable adjudication)
  - Company vs Insured (US)
  - Prior or Pending Claims and Circumstances
  - Sanctions
  - Public offerings (debt/equity)
  - Professional Services exclusion (“for language”)
  - Bodily Injury and Property Damage (“for language”)
  - Matters more properly covered under other policies



Narrow vs broad exclusions – how exclusions are worded is key



# Conditions

- Clients must be aware of any conditions that may affect the policy, including:
  - Initial Public Offerings/secondary offerings
  - Change of ownership/transactions
  - Acquisitions/divestments
  - Premium Payment Warranties
  - Duty to notify claims/circumstance
  - Co-operate with insurer on the defence and settlement



Watch out for Condition Precedent Language



# 5

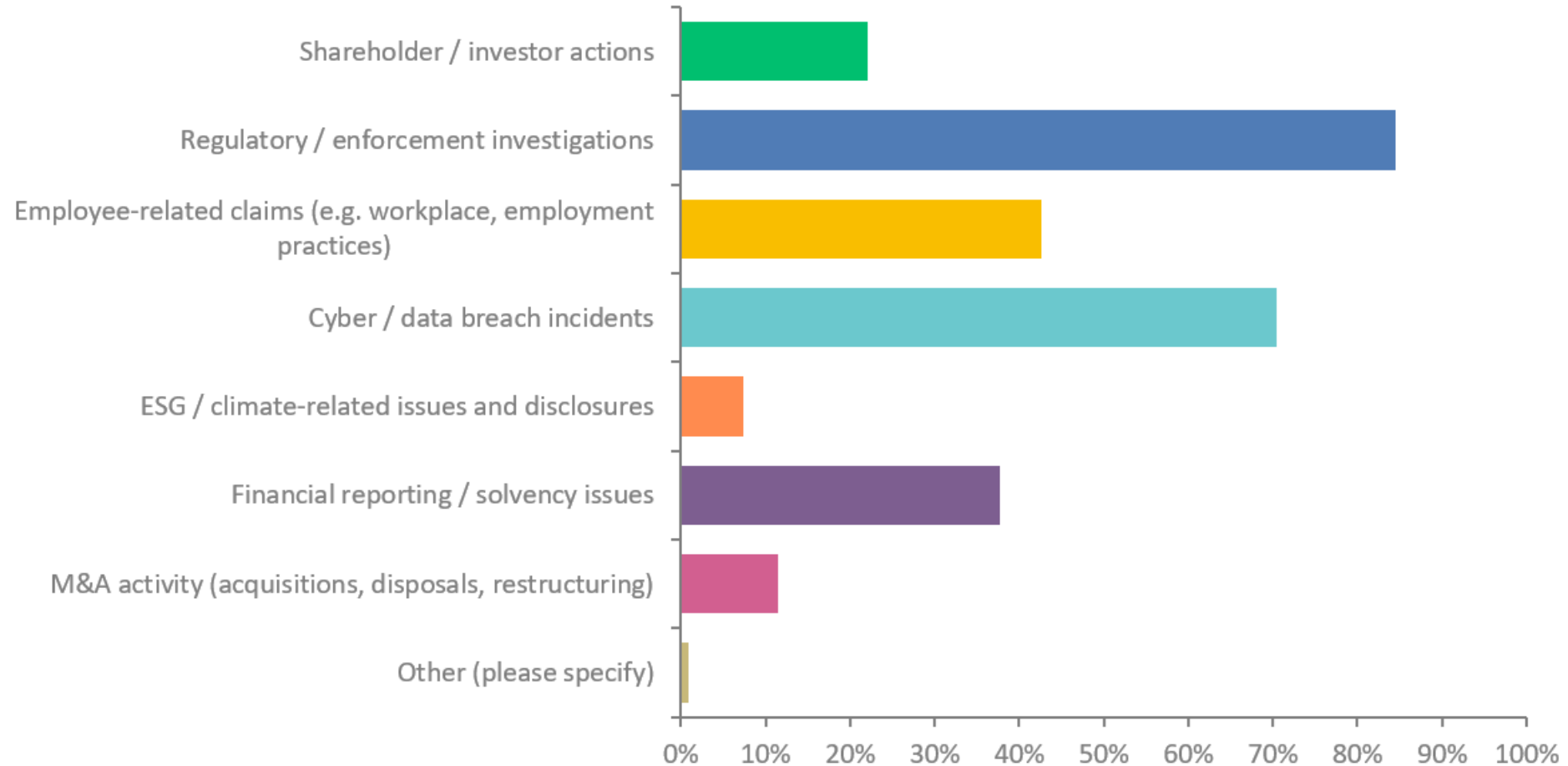
## Claims in Practice



# Event Survey

Which of the following potential sources of D&O claims do you consider most relevant to your role?  
(Select up to three)

122 responses



# Where do claims come from?

<b>1</b> Actual or Alleged Breach of Duty / Neglect	<b>2</b> Regulatory Authorities	<b>3</b> Insolvency	<b>4</b> Mergers & Acquisitions	<b>5</b> Shareholder / Investor Disputes	<b>6</b> Unfair Trade/Competition Practices
<b>7</b> Employee Claims	<b>8</b> Fellow Directors	<b>9</b> Criminal Proceedings	<b>10</b> The Company	<b>11</b> Third Parties / Suppliers / Customers	<b>12</b> Competitors

# Claims in Practice – Notifications Top Tips



- Nominate an individual who, after reasonable enquiry, must be made aware of any claims or circumstances
- Develop an internal procedure to ensure compliance with the prescribed conditions contained in your policy
- Work in partnership with your broker and insurer from the outset on any/all developments
- Where you have more than one policy (e.g., PI, Crime, Cyber) consider whether your claim or circumstance should be notified to one of more policy



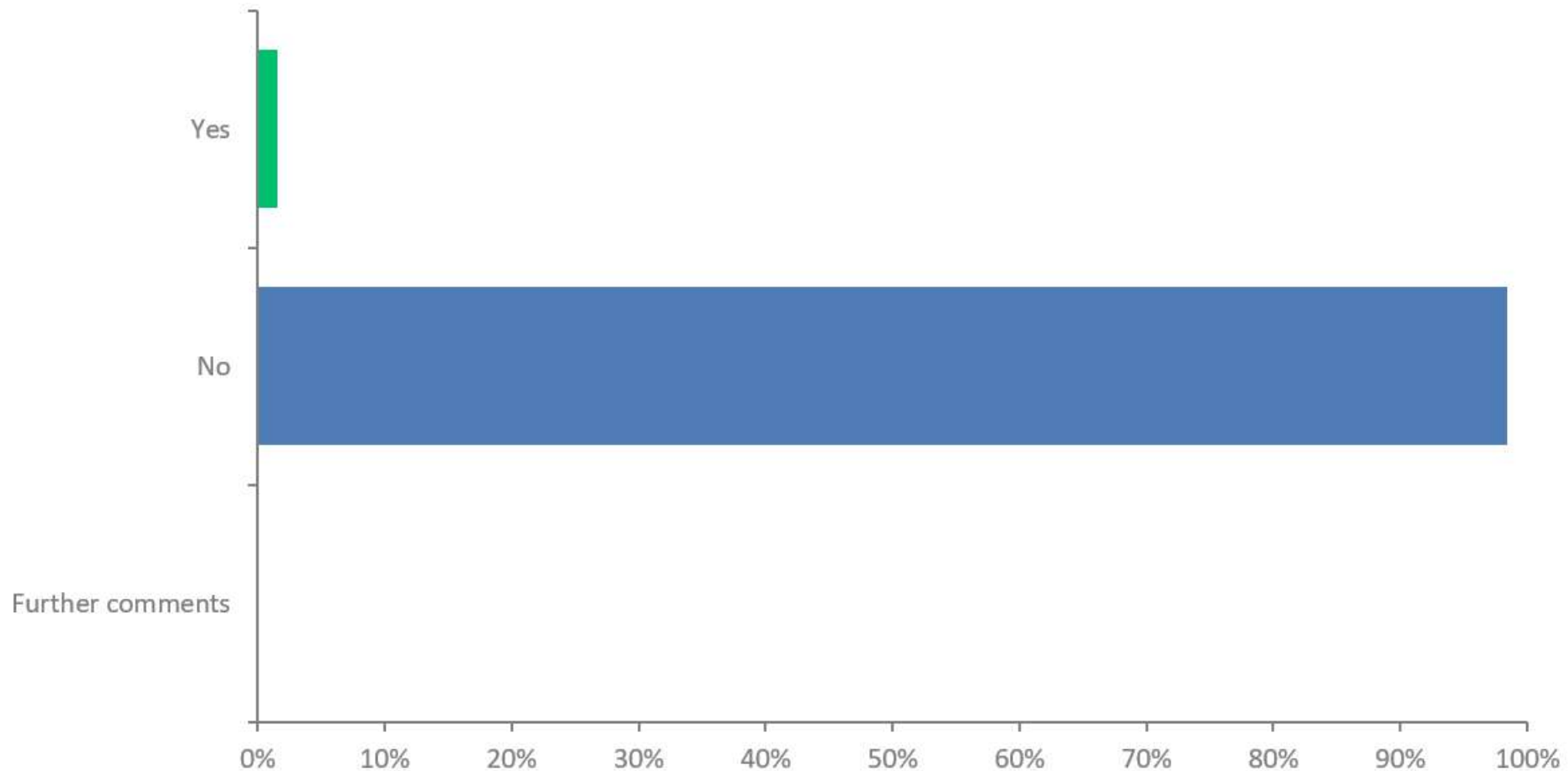
- Act which might prejudice you and/or your insurer's position and ability to defend the claim or circumstance
- Admit liability
- Make any settlement offer or attempt to resolve the problem without insurers consent
- Disclose details of your D&O policy to the claimant, their representative and/or any other third party



# Event Survey

Have you ever participated in a board simulation or tabletop exercise, focused specifically on D&O incidents?

126 responses



# 6

The D&O market and underwriting cost drivers



# The D&O Current Market

D&O currently experiencing a **‘soft market cycle’** – abundant capacity and insurers

## Positives

- Competitive terms due to market competition, supply/demand
- Broadening of coverage, reduction of exclusions

## Negatives

- Due to premium reductions, some insurers can take a difficult stance on claims
- New, untested insurers/MGA’s entering the market with a lack of claims handling history dealing with complex D&O losses
- Insurers may exit the market due to the lack of premium to pay claims

Directors should be aware of who their insurers are, their ability to manage and pay claims, and insurers who will remain in active in the long-term



# D&O Underwriting Process

For private companies, underwriters will rely on:

- D&O application
- Most recent set of financial statements
- Directors and Officers bio's / experience
- Claims experience

For public companies, underwriters will rely on:

- All publicly available information
- Share price / financial performance
- Directors and Officers bio's / experience
- Claims experience

How to get ahead / present most favourably:

- Communicate good corporate governance procedures
- The board agenda includes actions to protect the business, e.g., BCP, cyber, regulatory changes, DEI, ESG, AI
- Inform your broker to use this information to achieve better outcomes
- Build a relationship with your underwriters / leverage existing relationships





# Key Takeaways

- Review your D&O policy with your experienced D&O broker – are the definitions, exclusions and conditions understood?
- Challenge brokers/insurers. We are in a buyer friendly market with ample capacity, insurers and coverage terms
- Understand the procedure in the event of a claim or circumstance – before the claim arises
- Review limit adequacy – consider a ringfenced Side A Difference in conditions policy
- Remember a robust D&O policy can help attract and retain top talent to a position within your company
- Know who your insurers are and their ability to remain in business during the current soft market cycle

# Q&A

Submit an enquiry: <https://aon.io/4mTfcxO>

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