

The Challenges of D&O Risk in Private Equity

Private equity (PE) ownership reshapes the governance profile of a business, and with it, the directors & officers (D&O) risk. Mergers and acquisitions, debt financing and board appointments all increase the likelihood of claims, particularly when deals sour or minority shareholders feel disadvantaged.

Here are key insights into the risks, pitfalls and opportunities in this evolving market and why wholesalers play a critical role in securing the right coverage.





The unique risks of private equity ownership

The unique structure and transactional nature of private equity deals create exposure patterns that don't fit neatly within a standard private company D&O policy.

Private equity firms almost always take control positions. They own most of the equity, appoint individuals to the portfolio company's board and bring debt into the equation. All of that creates boardroom risk, transactional risk and insolvency risk.

Unlike traditional private companies, PE firms operate in a constant cycle of raising capital, acquiring portfolio companies and planning eventual exits. This dynamic creates several layers of D&O exposure.

Because PE professionals are directly appointed to boards, coverage should protect both the firm's investment and the personal liability of individuals. Overlapping exposures between the PE parent and its portfolio companies further complicate matters, and often a single claim may trigger both policies.

Unlike a traditional private company that might plan to operate indefinitely, PE firms are always thinking about an exit. So, policies for portfolio companies often include provisions that anticipate a future sale.

Despite a slowdown in M&A last year, claims around failed deals or roll-up strategies have been on the rise. In some cases, sellers allege misrepresentation or claim the PE firm never intended to close, only to gather competitive intelligence.

A lot of these claims mirror those seen at traditional private companies, but they're elevated in PE-backed firms because of the transactional nature of the business.



Why standard D&O policies miss the mark

These are a few reasons why off-the-shelf private company D&O forms don't accurately address PE ownership dynamics.



Exclusions – Typical private forms can carry antitrust/unfair trade exclusions and harsher breach-of-contract language. Those can be material in consolidation plays or commercial disputes that often surround roll-ups and add-ons.



Poor sponsor-portco alignment – Without explicit coordination language, defense and indemnity can be delayed or disputed when both policies are implicated. You need coverage that dovetails cleanly between sponsor and portfolio company's programs so there's no finger-pointing in a joint claim.



Endorsement sprawl – Trying to retrofit a standard form with 40 to 60 endorsements raises the potential of conflicts, gaps or administrative errors, especially under deal pressure.

Over the last eight to 10 years, PE firms have recognized how different policy forms can be, and they want quality control. Even with a slowdown in M&A, there's more focus on coverage terms and limits. A \$1M off-the-shelf policy doesn't cut it anymore. Firms are buying higher limits and other products they might not have considered in the past.

The answer to the evolving needs of PE firms can often be found in an exclusive manuscript D&O form purpose-built for portfolio companies. Some of the key benefits for insureds are consistent terms across carriers, easier customization and fewer conflicts.

Amwins offers scale, speed and specialization

A bespoke form is only as good as the market support behind it. As the largest U.S. wholesaler, Amwins can aggregate enough deal flow to persuade multiple carriers to back a common manuscript framework and keep terms aligned.

Today's PE clients expect broader coverage, higher limits and seamless coordination between sponsor and portfolio company. For retail insurance brokers, that means understanding the pitfalls of standard forms, recognizing when manuscript coverage is necessary and leaning on wholesalers who can deliver specialized expertise and market access.

Learn more about Amwins' exclusive D&O solution for private equity portfolio companies [here](#).

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To learn more about how Amwins can help you place coverage for your clients, reach out to your local Amwins broker.

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