
New Regulation for D & O Insurance

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Abstract:

The Superintendence of Private Insurance ("SUSEP") publishes Rule No 553 on rules applicable to Civil Liability Insurance for Directors and Administrators of Legal Entities (the "D & O Insurance").

D & O Insurance - Directors & Officers Liability - is intended to cover the eventual liability of directors and managers of large companies arising from the acts of their ordinary corporate management. Historically, this insurance was treated as a form of insurance on civil liability, and has only been regulated since 2016 with the issuance of Rule No 541, which established the general guidelines applicable to the insurance covering civil liability of directors and administrators of legal entities.

However, in light of the large number of criticisms on Rule No 541, the market responded in a way that required the responsible authorities to adopt an updated and flexible regulation responding to the needs of such managers and corporate contractors.

Among the modifications brought about by the new D & O Insurance regulations, the following rules stand out:

I. An individual who benefits from it or i.e., the directors and administrators of companies may directly contract the insurance. However, the insurance plans that allow direct contracting should be recorded separately from the plans for the legal entity, with different process numbers.

II. The coverage of insurance may include the costs of defense and attorneys' fees of the insured persons. The contract must expressly

mention the insurer's right of return in cases where damages caused to third parties are the result of intentional illicit acts, or the insured person acknowledges his or her responsibility.

III. The new contracts cannot cover the damages caused to third parties as a result of negligence by administrators or executives, unless specific additional coverage is contracted. If the company's liability for management acts is part of the basic coverage, the plan must be registered as General Civil Liability.

IV. The basic coverage of the insurance may be extended to a legal entity, in cases where it advances the value or assumes the commitment to indemnify administrators or executives, as defined in its own corporate policy.

V. The insurance may cover the fines and penalties imposed on the insured persons. Such fines and penalties include fines of non-criminal or punitive nature, such as those defined by the regulatory and prosecutorial bodies, such as the Public Prosecutor's Office in civil investigations, market regulators, regulatory agencies, and other fiscal administrators.

Rule No 553, introducing, inter alia, all these new rules discussed *supra*, is already in force. The interested parties – insured persons and insurance companies – must adapt the D & O

insurance plans in accordance with the new regulations before November 20, 2017.

Finally, new D & O insurance contracts that are not in compliance with the new regulations may not be marketed after 180 (one hundred and eighty) days from May 24, 2017.

Almeida Advogados has a team specialized in corporate law and qualified to clarify any doubts that may arise from this text. We will be here at your disposal should you have any questions.