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## D&O-insurance: not viable without quality

Hardly any other topic in the insurance market polarizes more than D&O insurance. All market participants seem to be dissatisfied, in one way or another, with the current form of D&O insurance. In order to keep the product marketable, insurers, clients and their advisors have to reform it.

Many controversial contributions at this point in the past year have shown that the D&O insurance provides cause for continuing discussion. Aspects such discussed here as the juridification of manager decisions, the controversial assignment of the indemnification claim or disputes about defense costs only represent the tip of the iceberg.

The many – not only legal – discussions are an expression of a general dissatisfaction with D&O insurance. Approximately 25 years after its establishment on the German market, D&O insurance is still an immature product.

Insurers are dissatisfied because it is difficult to earn money with the product considering the heavy competitive pressure with respect to premiums and high loss amounts. In case of a claim, policy holding companies trudge through lengthy coverage disputes. The relationship between the policy holding industry and the insurance industry suffers.

The insured managers are in turn worried because they feel let down by their insurers in case of a claim when it comes to defense and cover. Simultaneously they feel permanently obligated to secure own decisions and to review decisions of their predecessors and colleagues. A climate of mistrust and despondency raises. Bold management decisions – a driver of innovation – are less frequent.

It is unlikely that something will change this situation due to new laws – in contrast: increasingly strict compliance provisions for managers might lead to more liability cases in the future. Also courts will further continue on the path they chose beginning from the Arag/Garmenbeck decision with ever stricter of requirements for management.

The best way out of the D&O insurance's dilemma leads through a – at this place regularly demanded – new quality awareness on the purchasers' side – and as well on the sellers' side. If policy holders are willing to pay more for good policies, the product D&O insurance might also become profitable for providers again. And companies would be able to offer their managers appropriate insurance cover and thereby retain competent executives.

The rapprochement process of insurers and clients within the D&O insurance will be complex and lengthy. Providers have to make the first step with clearly improved policies, and policy holders have to be prepared to accept price increases. This process is, however, unavoidable because a poor product will, according to the rules of the market, not be able to endure permanently on the market.

Therefore it is high time to reform the product D&O insurance and to make it sustainable. We, as lawyers, do not need to benefit from the currently complicated situation for all times. We prefer to participate constructively in this process to make the D&O insurance for all participants sensible, transparent and as expected in the future.

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