

# **The Impact of Covid-19 on Directors & Officers Insurance Policies**

# Summary



**1- What is a D&O cover?**

**2- Impact of COVID-19 on Business operations**

**3- Impact of COVID-19 on D&O policies**

**4- Concrete Examples**

# What is a D&O cover?

Directors and officers (D&O) liability insurance protects the personal **assets** of corporate directors and officers, and their spouses, in the event they are personally **sued** by employees, vendors, competitors, investors, customers, or other parties, for actual or alleged wrongful acts in managing a company.

Organizations take out D&O insurance primarily to protect themselves on 3 fronts:



# What is a D&O cover?



	Side A	Side B	Side C
<i>Who is at risk?</i>	<b>Insured:</b> Directors and Officers	<b>Insured:</b> Directors and Officers	<b>Insured:</b> The company as a defendant in securities claims only
<i>What is at risk?</i>	Personal assets	Company assets	Company assets
<i>Cover?</i>	Non indemnifiable liability of directors and officers	Company reimbursement of director's costs	Company liability for securities claims

# Common Features of D&O

**Coverage:** D&O covers the **cost of defending** legal and regulatory actions. However, D&O insurance can (where allowed by law) pay fines and penalties .

**Exclusions:** certain types of risk are typically excluded; such as deliberate **fraud**, criminal acts, willful **misconduct** or damages for bodily injury and property damage.

**Extensions:** **internal investigations or insured vs insured claims.** However, it is often possible to purchase additional cover through extensions, such as employment practices liability insurance, public relations fees or extradition costs.

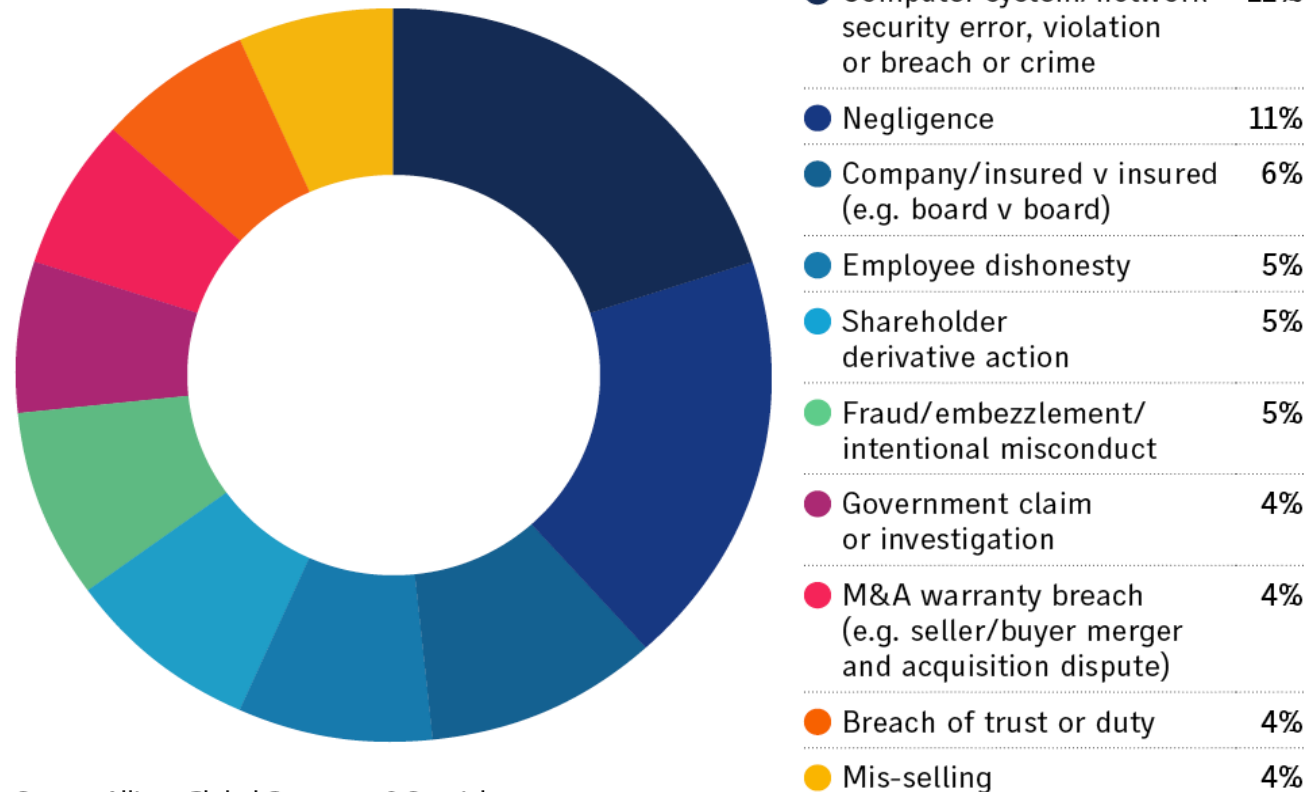
**Retentions** individual directors typically have a zero-deductible, although minimum deductibles are required by law in some countries, such as Germany

**Limits:** D&O policies will pay claims up to a total policy limit. In some circumstances insurers may apply a sub-limit, restricting cover for certain risks, such as certain types of investigation



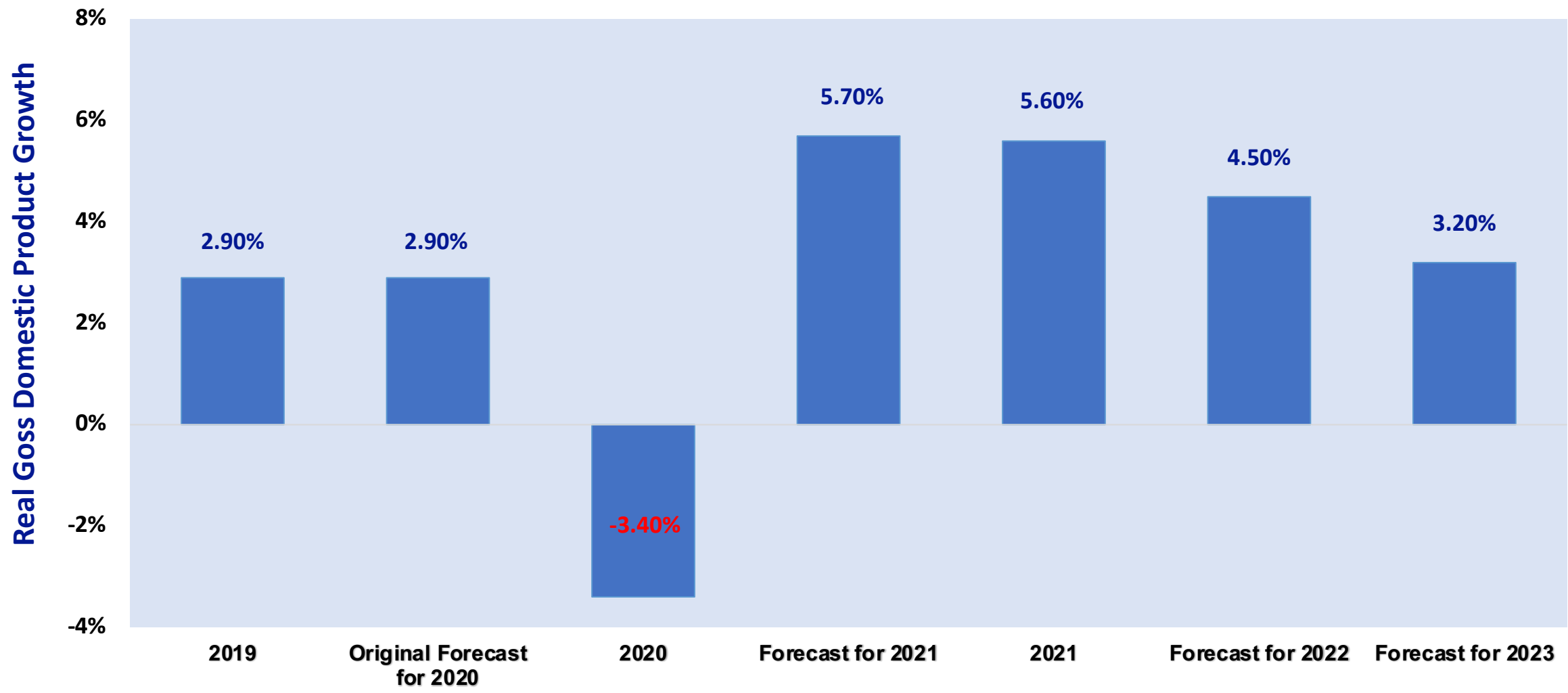
## General Causes of Losses for D&O cover?

### TOP 10 CAUSES OF LOSS — BY VALUE



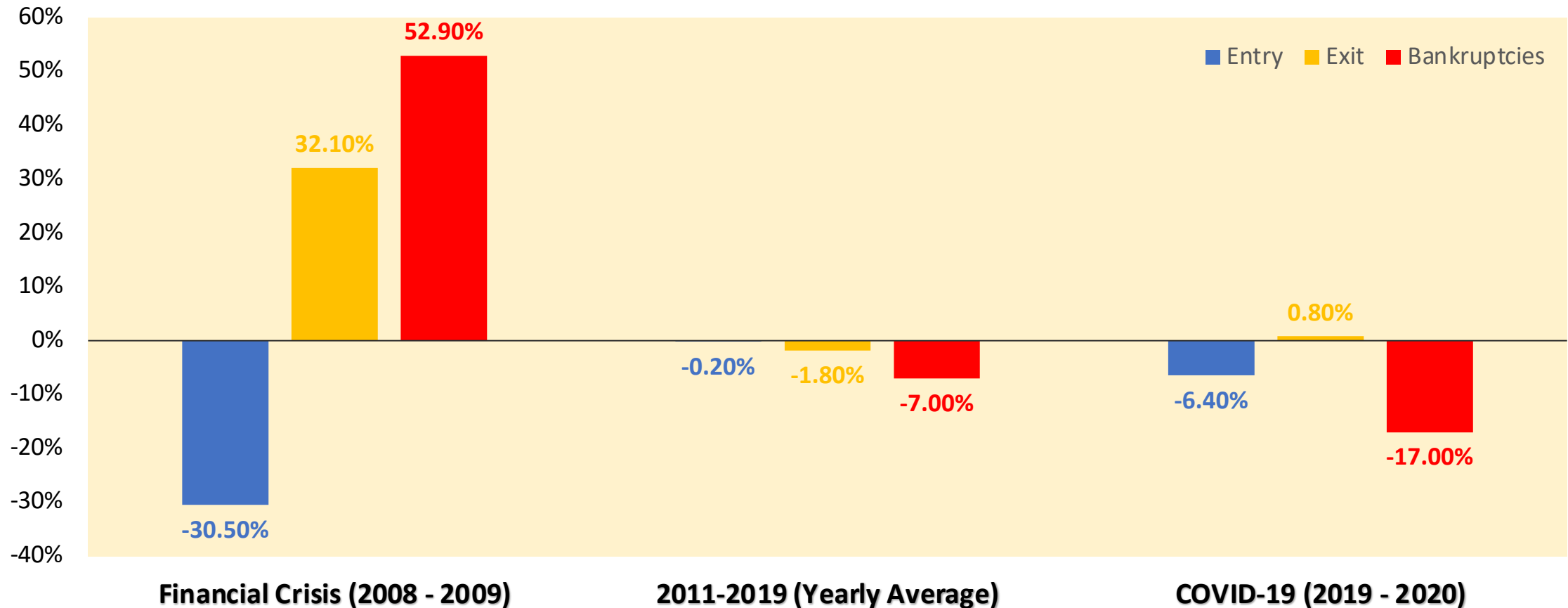
Source: Allianz Global Corporate & Specialty

# Impact of COVID-19 on Worldwide GDP



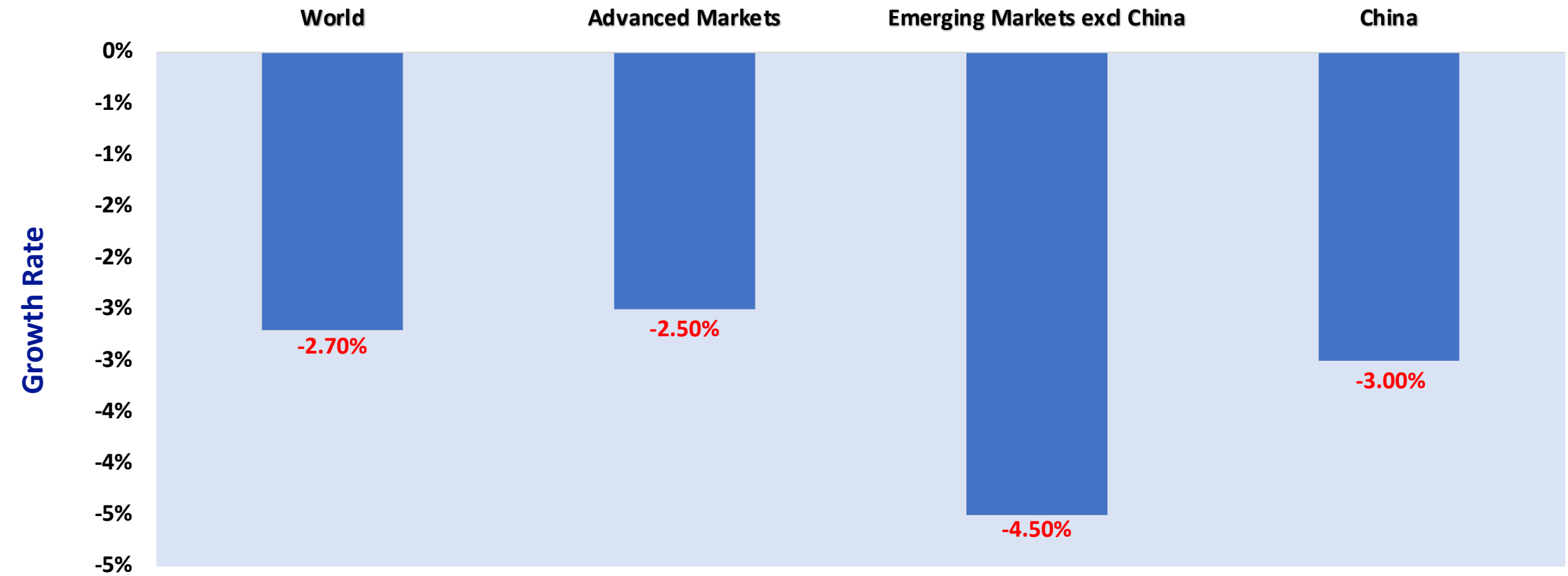
# Impact of COVID-19 on Business Operations

Change in the Business Dynamic (Year on Year %)





# Impact of COVID-19 on the Growth of Insurance Markets



## Impact of COVID-19 Insurance by Lines of business



**GENERAL  
INSURANCE**

**LIFE &  
PENSION**

**HEALTH  
INSURANCE**

## Risks of D&O Claims during this Pandemic

Organizations around the world have been dealing with a myriad of COVID-19-related issues and resulting financial and operational hardships. **Risks associated with directors and officers (D&O) liability are usually amongst an organization's top concerns.** In the context of this pandemic, the risks may include:

**Misrepresentation of  
Company assets**

**Fiduciary Duties**

**Balancing  
Needs & Priorities**

**Unanticipated Risks  
in the workplace  
laws**

**Reputation Risks**

**Regulatory &  
Compliance  
Uncertainties**

## COVID-19 D&O Claims Categories

The companies sued have fallen into one of **3 categories**:

**1- Companies that experienced coronavirus outbreaks in their facilities**

- **Example:** cruise ships lines, Factories, Warehouses.

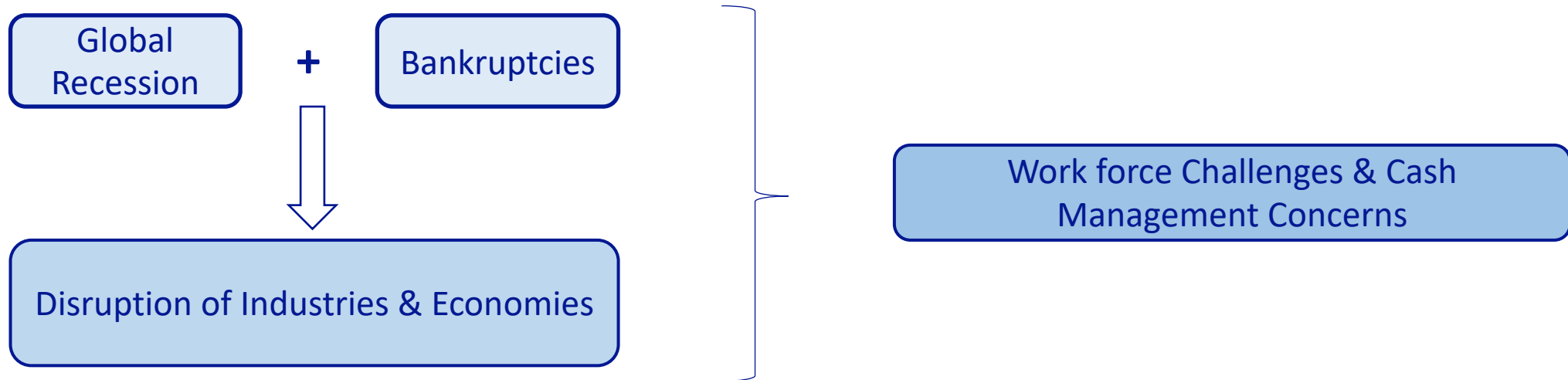
**2- Companies that hoped to profit from the coronavirus outbreak**

- **Example:** vaccine development companies; diagnostic testing companies; and personal protective equipment manufacturers

**3- Companies whose operations or financial performance were disrupted by the outbreak**

- **Example:** hospital systems; real estate developers

## Foreseeable D&O Losses due to COVID-19



- **Main impact on D&O cover:** Directors and officers become **liable** for trading whilst insolvent.
- Several governments around the world have recognized this **challenge** and have brought in measures to **temporarily relieve** directors of personal liability for **wrongful trading**.

## Potential First-Party Cases often Overlooked

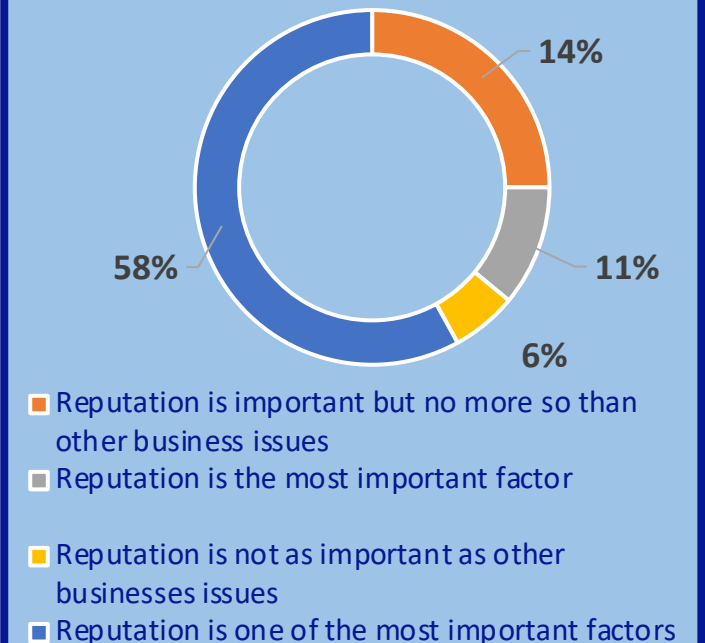
### Crisis management:

- Negative earnings announcements,
- Key executive resignations, employee layoffs,
- Product recalls,
- Elimination or suspension of dividends,...
- The coverage is customarily subject to a sublimit of liability.

### Reputational risk: (to resume)

- The coverage may be applicable to individuals to the extent their reputations are adversely impacted by certain developments arising from a COVID-19 crisis.
- The triggers may be narrow and could require the act of an enforcement authority.

### Reputation as factor affecting board level decision making in the Covid-19 response



## Potential First-Party Cases often Overlooked



Increase in regulatory investigations

Increase in claims  
against directors for  
breach of their duties to  
companies.

Claims against directors will arise where a director has either been complicit in, or instigated the fraud

Claims where directors have been **negligent**, including for administrative errors, failing to self-report, or to put in place remedial action



## Underwriting Segment performance Trends



## Zoom COVID-Related Securities Suit

April 2020

*securities class action lawsuit against*



**Plaint: overstating its privacy standards** and failing to disclose that its service was not end-to-end encrypted

The plaintiff alleged that the defendants had made **15** false and misleading statements. The company allegedly stated that “We offer robust security capabilities, including end-to-end encryption, secure login, administrative controls and role-based access controls.”

This Example shows how questions about privacy and Security issues can lead to D&O claims.

## Carnival COVID-Related Securities Suit

May 2020

*securities class action lawsuit against*



**Plaint:** the defendants made **false statements** and concealed material information relating to the Company's **adherence to its health and safety protocols** during COVID-19 pandemic, its role in facilitating the transmission of the virus as well as the **violations of port-of-call regulations**.

Several cruise ship lines were hit with securities class action lawsuits, but at this point, it does seem that, though the results are mixed, the plaintiffs' complaints are not faring particularly well.

## NRX COVID-Related Securities Suit



**Plaint:** between June 1 2021 and November 4 2021 , the defendants made **false statements** and/or **failed to disclose** that:

- (i) the Application presented to the FDA contained **insufficient data** regarding the potential benefits and risks;
- (ii) accordingly, the FDA was **unlikely to approve** the vaccine Application its present form;
- (iii) as a result, the Company's **public statements were materially false** and misleading at all relevant times.

The company hoped to **capture the opportunity** to commercialize its proposed COVID-19 respiratory therapy.

In this Example, the companies wanted to seek to develop and commercialize products designed to address COVID-19, they face numerous challenges that can lead to securities litigation.

## Everbridge COVID-Related Securities Suit

April 2022

*securities class action lawsuit against*



**Plaint:** the company “misled investors” with respect to the “significant problems” the company was encountering due to the acquisitions to the extent that the revenues obtained from those acquired companies were being used to mask increasingly stagnant organic growth.

The “eventual result” was that a “drop off in organic sales could no longer be camouflaged with revenues from revenues from additional acquisitions.”

The **impact of COVID on revenues** was at least a part of the reason the company was lowering its earning guidance, which in turn led to at least part of the decline in the company’s share price.

## Conclusion

