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# The Insurance Institute of London

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# Learning objectives:

To highlight changes to  
D&O exposure over the  
coming year





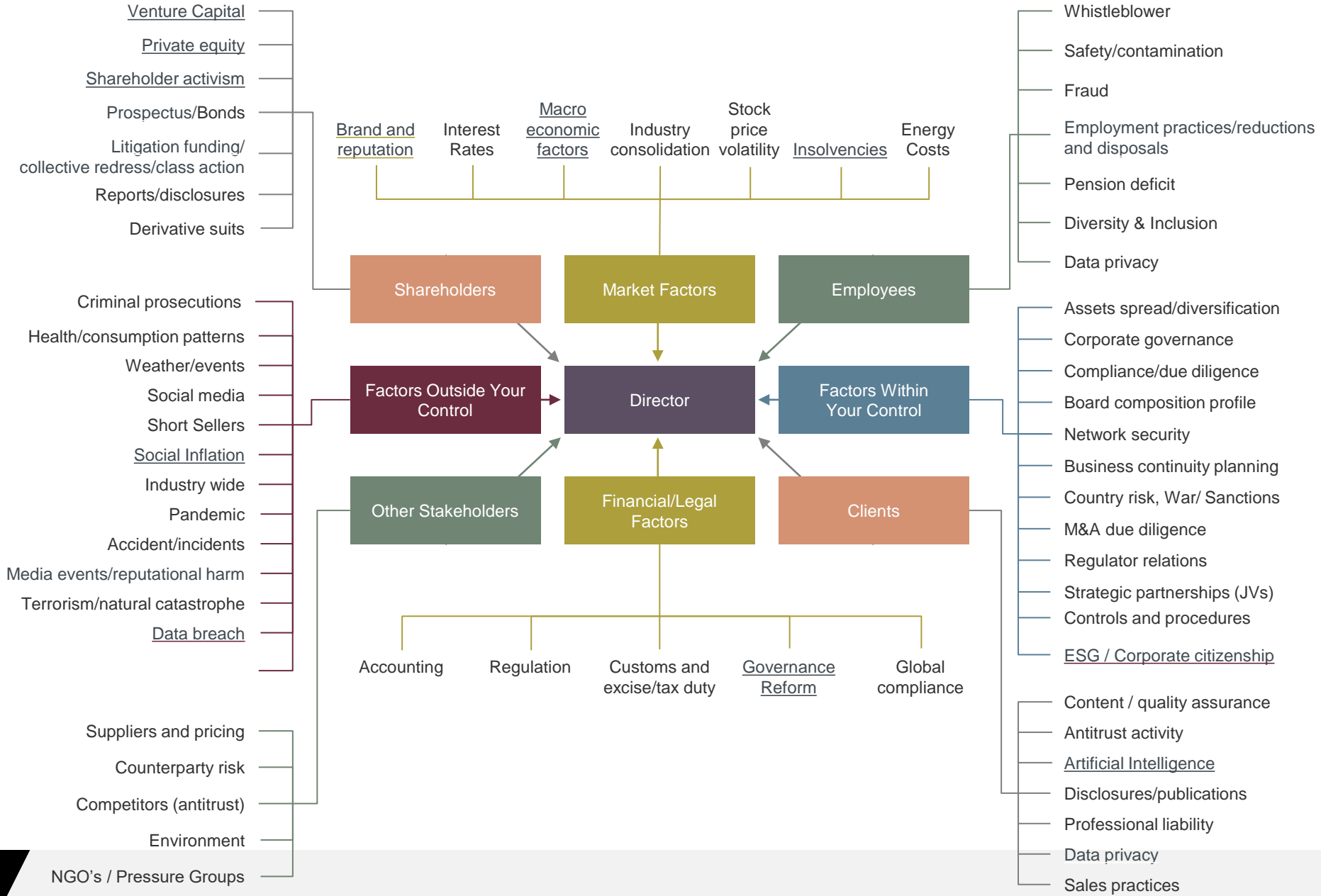
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# D&O Exposures – Horizon Scanning

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Lockton Companies LLP



# Directors' duties landscape



# Macro-economic uncertainty

- 1 in 4 businesses see economic uncertainty towards the top of their minds in 2024\*
- Capital markets transaction volume very low (except Asia/ MENA)
- UK markets only raised 10% of the previous year's capital in 2023
- Debt instruments increasingly linked to sustainability targets



# Employer Risk

- Failure to support staff for return to work post COVID
- Mental Health concerns
- Facilitating safe operating conditions
- Likelihood of mass layoffs
- #metoo / Gender Pay
- Diversity & Inclusion
- Labour shortage in certain industries such as Hospitality
- Highlighted by 25% of businesses as their number one business risk in 2024



# Insolvencies

- Weaker Global demand, interest rates, energy costs, margins squeezed
- Companies changing their strategy due to running low on cash
- UK insolvencies up 23% at November 2023\* a 13 year high
- US bankruptcy filings up 21%\*\*
- US Commercial Chapter 11 filings up 141%\*\* highest since 2010
- Global insolvencies are set to increase by 10% in 2024\*\*\*

\* Source UK insolvency Service

\*\* Source American Bankruptcy Institute

\*\*\* Source Allianz Trade Credit

Consideration for D&O insurance – increase in Side A non-indemnifiable Claims



# Brand / Reputation

- Direct correlation between reputational events and movements in Share Price
- Social Media Echo chamber
- “Cancelled” or boycotted with no due process
- Rise of stakeholder capitalism – balancing all parties
- Over 20% of US business leaders are concerned with preserving their company’s reputation\*
- For many new economy companies brand is the biggest asset
- Boards need to be proactive in building brand resilience

\* Source Beazley business risk report 2023





# Activist Shareholders

- Seeking to
  - highlight weaknesses in board / management
  - promote changes to senior management
  - force the company to find improvements / efficiencies
  - gain control of the company
  - unlock value, return excess cash to shareholders
- Open letters to shareholders
- Single issue Activism e.g. Client Earth
- Short Sellers



# Private Equity Model

- Leveraged buy-outs reliant on availability of cheap debt
- Increased costs negate the potential for returns
- PE backers less likely to shore-up an ailing business
- Exit through sale or IPO less certain
- Contagion risk to numerous Portcos



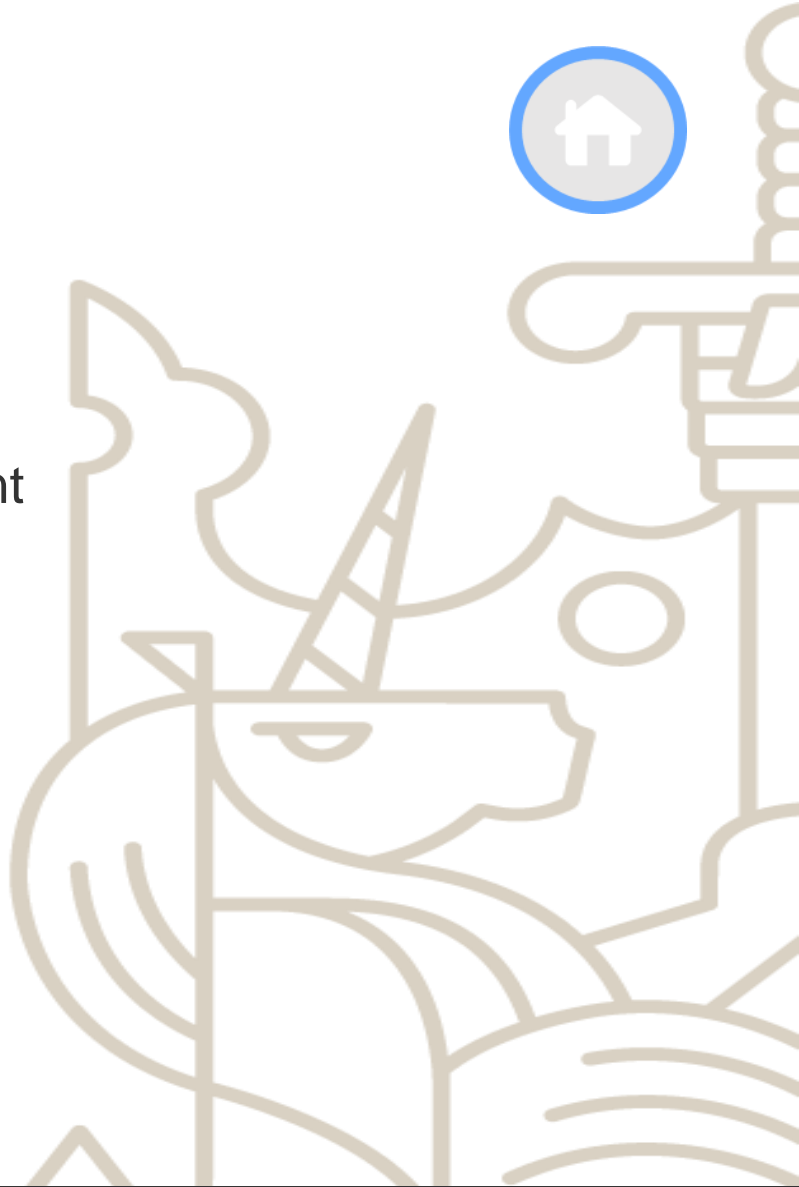
# Network Security / Data Privacy

- GDPR regulation and 72 hour self-report of cyber incidents to ICO
- US SEC regulation on mandatory disclosure to shareholders within 4 days
- Prosecution of individuals Solarwinds, Medibank
- Brings the Cyber Insurance and the D&O insurance closer together (panel counsel, notification triggers, self report)



# Artificial Intelligence

- Overstatement of the efficiencies / understate the risks
  - Deep fake fraud
  - New system vulnerability through additional entry points
  - US Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence
  - EU A.I. Act aiming to ensure that A.I. systems are safe, transparent, traceable, non-discriminatory, and environmentally friendly
  - Unacceptable risk (exceptions for law enforcement use)
    - Cognitive behavioural manipulation
    - Social scoring on behaviour, socio economic status, personal characteristics
    - Biometric identification and categorisation
    - Real-time biometric identification (e.g. facial recognition)
- Potential for up to €35m fines or 7% of global turnover



# Governance Reform

- Accounting Reform and Governance Authority (ARGA)
- Following high profile failures, accounting fraud, safety events, conduct issues
- Focus on particular industry sectors
  - Construction Materials
  - Food and Beverage Companies
  - Gas and Water Utilities
  - Industrial Metals and Mining
  - Retail Sector



# The role of Venture Capital funding

- Blitzscaling – prioritising growth over ethics, profitability, efficiency, rigour
- Young and inexperienced boards
- Mergers and Acquisitions due diligence
- Enterprise Valuations
- Severity in Securities Claims



# Social Inflation

- Nuclear Verdicts – severity of D&O settlements (long tail)
- Difficult to predict or model for
- Societal, emotive, public interest cases
- Plaintiffs less willing to mediate or discuss early settlement
- To manage this defendants need jury consultants and witness preparation resulting in Defence Costs inflation
- Challenges conventional approach to limit benchmarking



# Environmental Social & Governance

- TCFD (IFRS) and equivalent sustainability disclosure requirements worldwide
- 2024 will see new SEC climate disclosure regulations
- Energy Transition may transform some company's business models
- Greenwashing / Bluewashing / Greenhushing
- ESG backlash claims
- ESG benchmarking / Rating Agencies
- Competing stakeholder interests
- FCA reporting rules around inclusion, including inclusion targets for UK Financial Services companies
- Increase frequency and severity in US Derivate Claims driven by D&I





# Geopolitical Exposures

- War in Ukraine / Gaza
- Conflict in middle east disrupting maritime trade
- Sanctions and import controls
- Trade disputes USA & China impact wider economy
- Disruptions to supply chains (e.g. tech and semiconductor)
- 2024 a record year for elections and regime change



# Short Sellers



# Questions



## **Our Mission**

To be the worldwide value and service leader in insurance brokerage and risk management

## **Our Goal**

To be the best place to do business and to work



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# What we have covered:





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# Q&A session





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