

## What does 'Claims Made' mean, and why is it important to know for a D&O policy (especially in the event of winding up/leaving/selling) the company?

D&O Insurance is arranged on a "Claims Made" basis. This means you have to have a policy in place the day a claim is made, not necessarily the day the wrongful act occurred. Often there can be a large time gap between when an actual or alleged wrongful act occurred, and when the claim is actually brought.

The policy responds to claims made during its policy period that relate to wrongful acts committed after a retroactive date. This retroactive date can be 'unlimited' –meaning it does not matter when the wrongful act occurred, or it can be the date that the D&O policy was first ever purchased.

If you become aware of a circumstance that could give rise to a claim, then that must be notified to the Insurer at the time. Any subsequent claim relating to that circumstance will then be locked in on the policy in place at time of notification of the circumstance. This is extremely important because each 12 month renewal is a brand new period/policy, and a new policy will exclude any prior known circumstances and claims. If you are aware of a matter, but fail to notify it, then you can prejudice your rights to cover.

Lastly, if you should wind up/sell your company or exit the company you need to continue to purchase D&O insurance (at least for the period of statute of limitations)! As a director you have on-going liability that extends beyond the life of the company. This form of D&O insurance is called 'run-off' cover, and provides on-going protection for any claims made against you that relate to any wrongful acts committed whilst the company was a going concern. Not every Insurer can do this, so if you think that that it may be needed, you need to ensure that it's within the capability of your insurer.

Would any other topics be of interest?