

Do Private Companies need to purchase Directors' & Officers' Liability (D&O) insurance?

The answer is 'Yes'. All directors and officers can be personally liable for claims made against them for any actual or alleged mismanagement of the company. This is the case whether the company is private or public. It is true that one of the most common sources of claims is from shareholders, which is why directors and officers of private companies feel less exposed to claims. However, there are several other sources of claimant:

- New Directors (following change in ownership)
- Creditors
- Liquidators
- Employees
- Regulatory Bodies, in particular Investigations e.g. ASIC investigation
- Clients/customers
- Competitors

In general terms directors and officers may be sued for matters such as:

- Breach of general duty to act honestly, with reasonable care and due diligence
- Breach of fiduciary duty
- Breach of contract
- Breach of Statutory duty

Specifically directors and officers may be sued for matter such as:

- Incorrect or misleading statements
- Failure to comply with Continuous Disclosure rules
- Conflicts of interest
- Restrictive trade practices
- Incurring debts with the knowledge that the company is not in a position to repay
- Employment-related actions (wrongful dismissal, discrimination, sexual harassment)

Whilst the likelihood of claim is low, the severity (not to mention the time cost) can be high, especially for a private company. Accordingly, there are a range of solutions to protect the directors and officers of private companies that provide appropriate cover cost effectively.

Posted August 13, www.bestfitdirectors.com