

Common D&O Questions

- What is Directors & Officers Insurance: it is coverage that protects against liability arising out of your status as a Director or Officer, including acts or omissions taken in such capacity
- Who is covered: the program automatically includes any past, present or future Director, Officer or equivalent, meaning coverage automatically starts upon start of service and continues once an individual ceases to be a Director or Officer so long as XXX continues to carry the insurance
- What is being covered: the program does *not* limit coverage to specific risk factors or to claims brought by specific parties, but instead broadly covers suits from anyone (customers, competitors, regulators, etc.) so long as such suit is brought in your capacity as a Director or Officer, subject to the terms and conditions of the policy
- Do we need to list individual positions or titles: no, the language is broad by design to include any duly appointed or elected director or officer, with the latter leaving wide latitude on who is included and it is *not* limited to senior executives – the key factor is to look at indemnification – if the Company has an indemnification obligation to any individual position then they would be deemed an officer and for further comfort “employees” are also included as Insured Persons
- Is coverage limited to the United States: no, coverage is provided anywhere in the World
- Who pays the deductible: an individual should not have to pay a deductible or retention on a covered claim, as they should be protected either by corporate indemnification or if the company is financially insolvent and cannot meet its indemnification obligation, the D&O policy treats that as a “non-indemnified loss” and will waive any deductible or retention
- What happens if a claim is filed: it is imperative that we notice the carrier(s) as soon as possible. After notice is made, an adjuster will be assigned and coverage position issued. XXX has the right to select defense counsel but the carrier must consent to the representation, which cannot be unreasonably withheld. Any costs incurred *prior to* notice and consent will not be recoverable or count towards satisfaction of the retention.