

# Claims Made Policies

This section provides guidance on the procedure for notifying a claim or circumstances that might give rise to a claim under “Claims Made” policies.

The following policies are generally underwritten on a “Claims Made” basis:

- Directors’ and Officers’ Liability/Company Reimbursement Insurance,
- Professional Indemnity Insurance,
- Crime/Fidelity Insurance,
- Trustees’ Liability Insurance,
- Employment Practices Liability Insurance.

The trigger of “claims made” policies is the date an Insured or its representative first becomes aware that a potential claim may be made as a result of an alleged breach or an alleged error or omission.

This is different from other policies (e.g. General Liability, Property) which operate on an “occurrence” basis where the trigger is the date on which the incident giving rise to the claim occurred.

“Claims Made” policies typically contain an exclusion which provides that the policy will not cover claims where the claim or circumstance was known to the Insured prior to the inception of the policy.

Such policies also require that the claim or circumstances which may give rise to a claim in the future, be notified to the underwriter within the currency of the policy, as a pre-condition to indemnity.

In effect (and subject to Section 54 of the Insurance Contracts Act), there is no cover for anything known before the policy period or for anything which is known to the Insured during the policy period but not notified to underwriter during the policy period.

Countrywide strongly recommends that all facts and/or known circumstances that may have the potential to give rise to a claim in the future be notified within the current period of insurance.

## **Notifiable Matters**

The following provides a practical guide as to notifiable matters:

### 1. Claims:

- Civil proceedings or written demand against the Company and/or individual insured seeking damages e.g. letter of demand alleging breach of employment practices duty

- criminal proceedings against the Company and/or an individual insured e.g. charge of breach of Occupational Health & Safety Act,
- administrative or regulatory proceedings e.g. notice of proceedings for breach of Corporations Law regulations

#### 2. Circumstance:

- awareness of conduct which may give rise to civil proceedings e.g. through allegations of breach of employment practices,
- awareness of conduct which may have breached laws and which may result in criminal proceedings against an Insured and its representatives,
- awareness of a breach of regulations which may give rise to administrative or regulatory proceedings.

#### 3. Securities Claim:

- written demand against the Insured seeking damages, e.g. alleging inadequate disclosure in a company document.

#### 4. Representation at investigations and examinations:

- receipt of notice (written or oral) that a representative of the Company and/or individual Insured is required to attend or appear at an official investigation, examination or inquiry into the affairs of the Company.

### **Notification Procedure**

When an employee or officer becomes aware of a potential Claim or Circumstances:

1. Immediately advise the responsible staff member or department so that appropriate notification can be given to Countrywide.

#### 2. Information forming part of the initial notification:

- brief synopsis or overview of the facts
- intended course of action contemplated by the Insured in establishing the exposure of any Insured Person and/or the Company in terms of liability and quantum
- any additional information available in support of notification

3. When dealing with an initial complaint or potential claim, it is imperative that the Insured and/or its Representatives does not admit liability and does not make any offer of settlement nor incur defence costs without seeking prior approval and consent from underwriter(s). To do so could be construed as a failure to comply with policy conditions and has the potential to prejudice Insured's position under the relevant policies.

4. Complete underwriter's Claim Forms where required and return to Countrywide immediately.

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