



---

# Insurance support for start-ups and scale-ups (Aus)





# Contents

1. Introduction	3
2. Incorporating the business	4
3. Fundraising	5
4. Regulatory application	5
5. Managing and monetising your data	5
6. Becoming operational	6
7. Scaling Up	7
8. Exiting	7
9. Insurance Glossary	8
10. Contact	9

## Every company faces risks, with many of these falling outside of your control and sometimes unforeseeable. But what if you could protect yourself?

Building a successful business takes a lot of time and energy and with so many things to focus on, it's easy to overlook insurance. Often seen as a time-consuming exercise and unwanted expense, the reality is that it can be a valuable tool to help you manage your business risks, delivering peace of mind by allowing you to take control and transfer many of them – even the ones you haven't considered. The result? You can focus your time and capital on growing your business, rather than having to spend precious funds on issues which would have been covered by an insurance policy.

This guide is intended to provide an overview of the key insurances to consider at each stage of your journey. The needs of each business will differ and depending on your activities, you may find that you need some of the insurance policies at an earlier stage than others.

PSC Paragon will help you prioritise by discussing your own exposures, and build you an insurance solution that provides tailored, affordable protection according to your individual requirements.





## Incorporating the business



Congratulations! You've registered with for your ABN and are now officially a Director of your own company. However, you also now carry a number of significant responsibilities and are subject to scrutiny from a wide array of stakeholders; all of whom could bring actions against you personally. The first step is to arrange some protection in the form of **Directors & Officers Liability insurance**.



You might not have employed any staff yet, but if your company has employees, then **workers compensation** is a legal requirement in each state you have employees. Failure to have this in place could result in you being fined.



Now to protect your IP! For many businesses, much of their value lies in what makes them different. It is therefore important to protect any patents, trademarks, copyrights, and other intellectual property that makes your business unique. **Intellectual Property insurance** covers the defence of intellectual property infringement claims, as well the costs associated with enforcing rights if someone infringes a valid right of yours.



## Fundraising

Most investors include your insurance policies as part of their wider due diligence process. Whilst requirements differ between investors, the majority will insist on you having **Directors & Officers Liability insurance**, **Professional Indemnity** and **Public & Product Liability** in place.

So, if you don't have these already, you will most likely find that the terms of the deal will mean that it cannot be closed until you do have these insurance policies in place. It is always better to be prepared and secure coverage in advance so that you **avoid any delays in securing your investment**.

## Regulatory application

If your business activities require you to be regulated by the ASIC, depending on what permissions you are applying for, you may find that you are required to at least have a quotation for **Professional Indemnity insurance** as part of your application.

## Managing and monetising your data

You are responsible for all of the data that you collect and hold, so it is vital that you take measures to protect it. **Cyber Liability insurance** can help you to manage your cyber risk, as well as minimising the impact of any data breaches. Smaller companies are often the target of cyber criminals as they are seen as more vulnerable than larger corporations. Without insurance, any malicious attack or data breach could have catastrophic consequences for your business – both financially and reputationally. It is also becoming more commonplace for clients and vendors to insist upon **Cyber Liability insurance** as a contractual term.





## Becoming operational

Now that you're an operational business, you might be moving into an office or a shared working space. You can protect any assets that the company owns by arranging a package insurance policy which also includes **Public Liability insurance**. If you haven't already arranged **Workers Compensation** and now have staff, you can include this within the same policy.

If you weren't required to have **Professional Indemnity insurance** as part of any ASIC application, then now is the time to put this cover into place, regardless of your regulatory status. This will give you protection for your liability if you make a mistake which leads to your clients suffering from a financial loss.

As you take on more employees and it becomes difficult to monitor them as closely, **Crime insurance** provides protection for your losses if an employee is dishonest, as well as fraud committed by third parties, such as fraudulent payment instructions and social engineering.

You should also consider **Employment Practices Liability insurance** to protect you against employee litigation.



## Scaling Up

So, you've managed to successfully navigate the rocky landscape of launching a start-up and you're now ready to scale things up. This is the time to take stock of any insurance policies that you have in place already and ensure that you remain protected for this exciting next phase in your journey.

You may have arranged your insurance directly with an insurer previously, but as you grow it is important to use an independent insurance broker to give specialist advice and support.

Perhaps you're going global. Many insurance policies will exclude any claims arising out of contracts in the USA/ Canada as standard. There are also other territories which can cause concern for insurers, so it is vital that you review any insurance policies that are already in place to establish what your jurisdictional limits are.

Insurance contracts work on the basis that you comply with your "Duty of Disclosure", meaning that you are required not to withhold any information that could affect an insurer's decision to offer you insurance cover. In addition, the vast majority of insurance contracts contain additional conditions which mean that you are required to advise them of any information which is a "material fact" on an ongoing basis throughout the policy period in order for cover to be operational.

A material fact is defined as "anything that may influence the judgement of a prudent insurance underwriter in deciding whether to accept a risk and if so at what premium and terms".

If in doubt - declare it! It might lead to further questions, revised policy terms or even an additional premium, but if you fail to disclose information at any stage, it could result in you being unable to make a claim on the policy.

### TYPICAL MATTERS WHICH WOULD CLASS AS A MATERIAL FACT:

- A change in business activities, or additional service being offered.
- A change in territories traded in.
- A significant change in financial position or headcount.
- A complaint from a customer which could lead to a claim

## Exiting

Once you've built your business, you may decide that it's time to sell.

You should consider **Warranty and Indemnity insurance** to help minimise your liability on exit, by offering protection for representations, warranties and indemnities, contingent tax, and other M&A liabilities.

Paragon provide guidance at all phases of your transaction, from an early stage where we provide up-to-date market data, benchmarks and pricing, through to policy placement at transaction execution, or any phase in between.





# Insurance Glossary

**Directors & Officers Liability insurance** provides financial protection where you are held to be personally liable and face allegations of breach of duty, neglect, misstatements or errors and omissions in your capacity as a director/officer. Policies provide cover for the costs to defend such allegations, as well as damages and settlements that may be awarded, up to the policy limits. Far from covering just directors, policies typically extend to include management, shadow directors and non-executive directors. As a director, you carry significant responsibilities and are subject to scrutiny from investors, employees, authorities, regulators and even customers, all of whom could bring actions against you.

### TYPICAL CLAIMS SCENARIOS INCLUDE:

- Claims by investors and shareholders who blame directors personally for their losses.
- Criminal investigations where fraud is suspected.
- Data breaches or other data protection failures, as GDPR means that directors can be held personally liable.
- Actions brought by liquidators, where they suspect wrongful trading or incorrect payments to creditors.
- Actions brought by ASIC where insolvent trading is suspected.
- WH&S investigations where negligence is suspected.

**Keyperson insurance** is a life and critical illness insurance policy for which the company is a beneficiary, to protect itself against financial loss in the event that a "key person" passes away or receives a critical illness diagnosis. Investors may insist on this insurance as companies at start up and scale-up stage tend to have individuals who play vital roles in the financial success of a company.

**Professional Indemnity insurance** covers you in the event that you make a mistake that leads to your client suffering from a financial loss. Policies cover the costs involved in defending allegations of professional negligence, as well as damages or settlements that may be awarded against you.

**Warranty & Indemnity (W&I) insurance** policies provide cover for loss incurred in relation to valid breaches of warranty pursuant to an acquisition agreement (SPA) or a claim under the tax indemnity. Sellers use W&I insurance to help achieve a clean exit, while buyers often consider using it if seller liability caps are considered to be insufficient.

**Cyber Liability insurance** provides cover for the costs associated with a data breach or a malicious cyber-attack. Policies act as your emergency response, providing you with access to a panel of experts who provide:

- ✓ Legal support to help you notify your customers, the regulator and any other relevant parties.
- ✓ IT forensics to investigate, help you recover your data and restore your systems.
- ✓ Public relations to help minimise any damage to your reputation.

Policies also cover:

- ✓ Costs incurred as a result of an interruption to the business following an attack.
- ✓ Costs associated with extortion, including amounts paid in the event of a ransomware attack.
- ✓ Legal defence costs and damages awarded against you in the event that you are accused of being negligent by those who have had their data compromised.

**Crime insurance** provides cover for your own direct financial loss in the event of fraud. Most policies cover both employee dishonesty and fraud carried out by third parties, including acting on fraudulent instructions and erroneous transfers.

**Employment Practices Liability insurance** provides cover for the costs involved in defending allegations of employment related claims, such as unfair dismissal, misconduct, discrimination and harassment.

**Workers Compensation insurance** provides cover for your employees as a result of a work-related injury or illness. It is also a statutory requirement in each state in Australia.

**Public/Product Liability insurance** provides cover for your legal liability to third parties in the event that they suffer bodily injury or damage to their property as a result of your negligence.

**Intellectual Property insurance** covers the defence of intellectual property infringement claims, as well the costs associated with enforcing rights if someone infringes a valid right of yours.

# Contact

Paragon have extensive experience working with both investors and entrepreneurs throughout the investment process. We can help you with your overall risk management by creating bespoke insurance programmes, providing crucial protection and peace of mind as you build your business, and provide continued support as you grow and scale.

### Eloise Morgan

Director of UK FI

T +44 (0) 20 452 5697

M +44 (0) 779 871 5538

E emorgan@paragonbrokers.com

### Rhys James

Mangaging Principal, PSC Paragon (Australia)

M 0498 356 377

E rjames@pscinsurance.com.au

## ABOUT PSC PARAGON

We are a specialist global insurance broker.

PSC Paragon is a joint initiative by PSC Insurance Brokers ("PSC") and Paragon International Insurance Brokers ("Paragon"). Both PSC and Paragon are wholly owned by PSC Insurance Group, an ASX listed and Australian-owned multinational insurance broker.

Together, we deliver tailored services and resources for Australian clients through offices in 16 locations and over 100 colleagues in London specialising in management, legal, cyber and M&A transactional risks.

We work with growth stage and ASX listed companies as well as M&A legal advisors and financial sponsors. Our experiencesolving complex risks enables us to bring innovation and insight to our clients' insurance placement.



PSC Insurance Brokers  
ASFL 342385  
[pscinsurance.com.au](http://pscinsurance.com.au)

Paragon International Insurance Brokers  
FCA 310157  
[paragonbrokers.com](http://paragonbrokers.com)

Paragon International Insurance Brokers Ltd, 140 Leadenhall Street, London, EC3V 4QT. Authorized and regulated by the Financial Conduct Authority, FRN 310157. Accredited Lloyd's Broker. Registered in England & Wales, Company No. 03215272. Paragon Brokers (Bermuda) Ltd, LOM Building, 27 Reid Street, Hamilton HM 11, Bermuda. Authorized and regulated by the Bermuda Monetary Authority. Registered in Bermuda, Company Registration No.33838.