

# Zurich Companion Directors and Officers Defence Costs and Expenses Insurance

## Factsheet

Zurich's Companion Directors and Officers Defence Costs and Expenses Insurance offers coverage designed to respond to today's risks.

This is critical because Directors want certainty that their policy will respond in today's highly litigious environment.



### The Bridgecorp decision

A Directors & Officers (D&O) liability policy is designed to provide defence costs (including expenses) cover for directors and officers. However, a recent New Zealand High Court decision has put the cover at risk.

The New Zealand High Court handed down its decision in September 2011 in the case of *Steigrad v BFSL 2007 Ltd & Others* (the Bridgecorp case) preventing a D&O insurer from advancing defence costs to insured directors to fund their defence of criminal and civil proceedings.

The decision was based on the operation of section 9 of the Law Reform Act 1936 (NZ) which was held to impose a statutory charge in favour of the third party claimants (in this case the receivers and liquidators) over the insurance monies. There are equivalent legislative provisions in Australia in New South Wales, the Australian Capital Territory and the Northern Territory.

Whilst there is an appeal pending in this matter, the Bridgecorp decision does cast considerable doubt on the ability of directors and officers to access defence costs and expenses that would otherwise be available under their traditional D&O policy.

### Give yourself the advantage of Zurich's Companion Directors and Officers Defence Costs and Expenses policy

The Zurich Companion Directors and Officers Defence Costs and Expenses policy (the Companion policy) is designed to address directors' and officers' concerns regarding whether, in view of the Bridgecorp case, their traditional D&O policy will provide defence costs and expenses cover.

The Companion policy offers dedicated defence costs and expenses cover for directors and officers, responding when the traditional D&O policy is precluded from advancing or paying costs and expenses by reason of a statutory charge under the Australian or New Zealand legislation or any other substantially similar legislation.

Apart from providing the abovementioned comfort to directors and officers, the Companion policy also provides the added benefit of converting to an excess Side A defence costs and expenses policy. This will occur where the traditional D&O policy is not subject to a statutory charge and where the limit of liability of the traditional D&O insurance (Zurich traditional D&O policy and any excess D&O policies) has been fully exhausted.

Zurich has developed this additional cover to acknowledge the difficulty caused by the Bridgecorp decision which may now require the purchase of further insurance. The premium required for the Companion policy automatically includes the conversion to Excess Side A cover feature as an added benefit.

provides follow form excess Side A cover over the traditional D&O insurance (Zurich traditional D&O policy and any excess D&O policies).

## Highlights of cover

- Zurich Companion Directors and Officers Defence Costs and Expenses policy sits independent of the traditional Zurich D&O policy.
- Non-aggregating capacity with Zurich's traditional D&O policy, up to \$10 million (equal to or less than the traditional Zurich D&O policy limit).
- Deductible levels bridge the Companion D&O Defence Costs and Expenses policy and the traditional Zurich D&O policy, ensuring the Insured is not penalised.
- Where defence costs or expenses are advanced or paid under the Companion policy and subsequently it is determined that no statutory charge applied to the traditional Zurich D&O policy, the amount of such payment will be reimbursed from the traditional Zurich D&O policy to the Companion policy. This is confirmed by an endorsement that will be added to the traditional Zurich D&O policy.
- If an enforceable statutory charge applies to the traditional Zurich D&O policy, the Companion policy provides comfort to the directors and officers that their:
  - Defence costs will not be subject to the statutory charge and thus precluded from advance payment. We have also included our advancement of defence costs language.
  - Expenses will not be subject to the statutory charge and thus precluded from advance payment. Our broad definition of expenses includes:
    - investigation costs
    - extradition costs
    - prosecution costs
    - civil or bail bond expenses
    - deprivation of assets expenses
    - public relations expenses.
- Where no statutory charge applies to the traditional Zurich D&O policy during the policy period, and the limit of liability is fully exhausted, the Companion policy

## Zurich's superior service and commitment

Service is a crucial component of our offering – we want to give you peace of mind and confidence when dealing with Zurich.

### Underwriting

Dedicated Financial lines underwriting professionals bring you industry experience and a broad knowledge in respect to Directors and Officers Liability, both in New Zealand and globally.

### Specialist in-house claims team

Zurich's global team of claims professionals helps our customers through their loss with prompt, fair and easy-to-understand assistance.

Financial Lines insurance is a complex area that requires specialised claims resources. A Financial Lines claim will often require detailed technical analysis in order for an insurer to respond with its position on indemnity.

Our experienced Financial Lines claims team provides Zurich with the resource to not only manage the complex coverage issues in-house, but also provide our Insureds with years of valuable experience in claims management. We can assist our Insureds to resolve their claim in a practical, cost-effective and satisfactory manner.

### A solid foundation

Zurich Financial Services is an insurance-based financial services provider with a global network. Founded in 1872, the company's headquarters are in Zurich, Switzerland. Zurich employs approximately 60,000 people serving customers in more than 170 countries. It is the second largest insurer of global corporate business.

In excess of 2,000 global programmes are handled for large corporate customers encompassing over 17,500 local policies issued by our extensive global network.

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