

Companion Directors and Officers Defence Costs and Expenses Liability Insurance

Financial Institutions – Policy Wording



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Welcome to Zurich

About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ACN 000 296 640, an overseas registered company incorporated in Australia) (ZAIL), trading as Zurich New Zealand. In this policy wording, ZAIL may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurer that serves its customers in global and local markets. Zurich provides a wide range of general insurance and life insurance products and services in more than 210 countries and territories. Zurich's customers include individuals, small businesses, and mid-sized and large companies, including multinational corporations.

Important information

This is a 'Claims Made and Notified' insurance policy. It only provides cover if:

1. A *claim* is made against the *company*, by some other person and notified to us, during the period when the policy is in force; and
2. The *claim* arises out of an occurrence which takes place after the *continuity date* stipulated in the policy *schedule*.

Duty of Disclosure

Before you enter into a contract of general insurance with us, you have a duty to disclose to us every matter you know, or could reasonably be expected to know, that a prudent insurer would want to take into account in deciding whether to insure you and, if so, on what terms. This applies to all persons to be covered under this contract of insurance.

You have the same duty to disclose those matters to us before you renew, extend, vary or reinstate a contract of general insurance. Your duty however, does not require disclosure of a matter:

- that diminishes the risk to be insured;
- that is of common knowledge;
- that we know or in the ordinary course of our business we ought to know; or
- that we indicate to you that we do not want to know.

Non-disclosure or Misrepresentation

If you make a material misrepresentation to us, or if you do not comply with your duty of disclosure, we may treat your policy as if it never existed.

Our contract with you

This policy is a contract of insurance between the *policyholder* and Zurich and contains all the details of the cover that we provide.

The policy is made up of:

- the policy wording. It tells you what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the *submission*, which is the information provided to us when applying for insurance cover;
- the most current policy *schedule* issued by us. The policy *schedule* is a separate document unique to you, which shows the insurance details relevant to you. It includes any changes, exclusions, terms and conditions made to suit your individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in the policy *schedule* are insured.

This document is used for any offer of renewal we may make, unless we tell you otherwise. Please keep your policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.

Companion Directors and Officers Defence Costs and Expenses Insurance – Financial Institutions

Subject to your agreement to pay the premium set out in the *schedule*, we agree with the *insured* to provide insurance in accordance with the terms, conditions and limitations of this policy.

1. Insuring Clauses

- 1.1 Where we are satisfied there is a *claim* on the *traditional insurance policy* but have determined that a *statutory charge* prevents payment under the *traditional insurance policy*, we will pay to or on behalf of:
 - 1.1.1 any *insured person* the *defence costs* and *expenses* which arise from or are a consequence of the *claim*, unless such *insured person* is indemnified by the *company*. Cover is subject to the original terms, conditions, limitations and deductibles of the *traditional insurance policy*; or
 - 1.1.2 the *company* the *defence costs* and *expenses* of the *insured person* which arise from or are a consequence of the *claim*, but only to the extent the *company* has indemnified the *insured person*. Cover is subject to the original terms, conditions, limitations and deductibles of the *traditional insurance policy*; or
 - 1.1.3 any *outside entity executive* the *defence costs* and *expenses* which arise from or are a consequence of the *claim*. Cover is subject to the original terms, conditions, limitations and deductibles of the *traditional insurance policy*.
- 1.2 In the event we are satisfied that no *statutory charge* applies to the *traditional insurance policy*, any remaining *limit of liability* under this policy shall apply to pay to or on behalf of an *insured person* their *defence costs* and *expenses*, save to the extent that the *insured person* is indemnified by the *company*, in excess of the *traditional insurance policy*. Provided that:
 - 1.2.1 no other *claim* is recorded under this policy;
 - 1.2.2 the Limits of Liability of the *traditional insurance policy* and any *underlying insurance* have been fully exhausted by payment of claims;
 - 1.2.3 cover is subject to the terms, conditions, exclusions and endorsements of the *traditional insurance policy*, except as specifically set forth in the terms, conditions and endorsements of this policy; and
 - 1.2.4 this policy shall not provide broader coverage than would be provided by any of the reduced or exhausted *traditional insurance policy*.

2. Extensions

We agree to extend cover in accordance with the following extensions, subject to the terms, conditions and exclusions of this policy, unless expressly stated otherwise. No Extension increases our *limit of liability*, unless expressly stated otherwise.

2.1 Emergency defence costs and other expenses

We agree, in respect of a *claim* and prior to final adjudication of the *claim* to advance the following payments as they are incurred:

- 2.1.1 *defence costs*;
- 2.1.2 *expenses*.

We will not rely on any Conduct Exclusion or Prior and Pending Exclusion contained within the *traditional insurance policy* to deny indemnity or to refuse to advance *defence costs* under this extension until the matter in question has been finally established by a court judgment or other or final non-appealable adjudication.

If our prior written consent to such costs and expenses cannot reasonably be obtained by the *insured*, the *insured* may incur *defence costs* or *expenses* without our prior written consent for a period of up to thirty (30) days from the date on which they were first incurred.

The maximum that we will pay in the aggregate for any such *defence costs* or *expenses* incurred without our prior written consent is the 'Emergency defence costs and other expenses' sub-limit of liability specified in the *schedule*.

Any such *defence costs* or *expenses* advanced by us to an *insured* shall be repaid by that *insured* in the event the *insured* shall not be entitled to the payment of such *defence costs* or *expenses*.

2.2 Extended reporting period

Where we have agreed to provide an extended reporting period under the *traditional insurance policy* this policy will be similarly extended and will be subject to the same conditions and restrictions imposed under the *traditional insurance policy*.

2.3 Retired directors and officers

On the basis that:

2.3.1 this policy is neither renewed nor replaced; or

2.3.2 no extended reporting period arises under Extension 2.2 'Extended reporting period',

then a *director or officer* who retired retire on account of any age limit or limit on length of service in any applicable service contract from the *company* during the *period of insurance* shall automatically be entitled to a single extended reporting period under this policy of eighty four (84) months (being the maximum period for any *director or officer* in the aggregate) at no additional premium, however, always subject to the terms, conditions and limitations of this policy.

3. Definitions

For the purposes of this policy:

3.1 Civil or bail bond expenses

civil or bail bond expenses means a reasonable fee or premium necessary to obtain a bond or other similar form of financial guarantee, in respect of obligations as to a specific security or collateral placed upon the *insured person* by a civil or criminal court in connection with any covered *claim*, and excluding any form of actual security or collateral itself.

3.2 Claim

claim means a claim we have confirmed is covered by the *traditional insurance policy*.

3.3 Company

company means:

3.3.1 the *policyholder* as specified in the *schedule*;

3.3.2 any past, present and future *subsidiary* of the *policyholder* (subject to the terms and conditions of the policy); and;

3.3.3 any foundation or charitable trust solely controlled or sponsored by the *company* or any *subsidiary* of the *company*, other than any pension or superannuation fund, trust or scheme.

Company does not mean an *investment fund* or an *investment entity*.

3.4 Defence costs

defence costs mean reasonable and necessary legal and other professional fees, costs, charges and expenses (other than remuneration payable to any *insured persons* or *employees* of the *company* or an *outside entity*, cost of their time or costs or overheads of the *company* or an *outside entity*), incurred with our prior written consent in the investigation, defence, settlement or appeal of any *claim* made against an *insured*.

Defence costs will also include reasonable fees, costs, charges and expenses of any accredited expert retained through defence lawyers approved with our prior written consent to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a *claim*.

Defence costs do not include *investigation costs*.

3.5 Director or officer

director or officer means:

- 3.5.1 any natural person who is a past, present or future director, officer, management committee member, supervisory board member, management board member, trustee or governor of the *company* and shall include any equivalent position in a *foreign jurisdiction*;
- 3.5.2 any natural person who is a past, present or future *shadow director* of the *company*;
- 3.5.3 any natural person who is a past, present or future director of a corporate trustee of a superannuation fund established for the benefit of the *employees* of the *company*;
- 3.5.4 any *director or officer* defined in 3.5.1 to 3.5.3 above, who is, was or becomes a member of the *company's* internal audit committee, or any other internal committee of the *company*;
- 3.5.5 any *employee* of the *company* who is a past, present or future corporate general counsel or risk manager (or equivalent position) of the *company* or any *employee* acting in a management or supervisory capacity at the direction or request of a *director or officer* of the *company* defined in 3.5.1 to 3.5.4 above; and
- 3.5.6 any natural person named as a prospective director in the listing particulars or prospectus for a public offering issued by the *company*.

3.6 Employee

employee means a natural person while in the regular service of the *company* in the ordinary course of the *company's* business and whom the *company* compensates by salary, wages and/or commissions and has the right to govern, instruct and direct in the performance of such service. The definition of *employee* shall not include independent contractors or agents.

3.7 Expenses

expenses mean:

- 3.7.1 *investigation costs*;
- 3.7.2 *extradition costs*;
- 3.7.3 *prosecution costs*;
- 3.7.4 *civil or bail bond expenses*;
- 3.7.5 *personal expenses*; and
- 3.7.6 *personal reputation protection expenses*.

3.8 Extradition

extradition means any formal process by which an *insured person* located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation resulting directly from another *claim* (other than an *extradition claim*) that is covered under this policy.

3.9 Extradition claim

extradition claim means a formal request, claim, warrant for arrest or other proceedings pursuant to the provisions of the Extradition Act 1999 or any replacement legislation in New Zealand or similar legislation in any *foreign jurisdiction*.

3.10 Extradition costs

extradition costs mean the reasonable and necessary professional fees, costs, charges and expenses incurred, with our prior written consent resulting solely from:

3.10.1 an *insured person* lawfully:

- (a) opposing, challenging, resisting or defending any *extradition claim*;
- (b) appealing any order or other grant of *extradition* of that *insured person*; or
- (c) seeking a judicial review to challenge the designation of any territory for the purpose of extradition law;

3.10.2 the appointment of an accredited crisis counsellor and/or tax advisor and/or a public relations consultant retained by the *insured person* exclusively and directly in connection with the extradition of that *insured person*. Provided that the 'appointment of an accredited crisis counsellor and/or tax advisor and/or a public relations consultant' *sub-limit of liability* specified in the *schedule* shall be our maximum liability in the aggregate for all such costs and expenses under this policy for all *insured persons*, spouses/partners and children, combined; or

3.10.3 travel and accommodation costs and living away from home expenses incurred by the *insured person*, his/her lawful spouse or domestic partner and any children under the age of eighteen, directly in connection with the *extradition* of such *insured person*. Provided that the 'travel and accommodation costs and living away from home expenses' *sub-limit of liability* specified in the *schedule* shall be our maximum liability in the aggregate for all such costs and expenses under this policy for all *insured persons*, spouses/partners and children, combined.

3.11 Foreign jurisdiction

foreign jurisdiction means any jurisdiction other than New Zealand.

3.12 Insured

insured means:

3.12.1 any *insured person(s)*; and

3.12.2 the *company*, but only with respect to a *securities claim*.

3.13 Insured person(s)

insured person means any:

3.13.1 *director or officer*;

3.13.2 *outside entity executive*;

3.13.3 *employee* of the *company*, other than a *director or officer*, in relation to:

- (a) any *securities claim*;
- (b) *employment practices wrongful act*; or
- (c) all other *claims*, provided that such *claim* is also made concurrently, against a *director or officer*.

Insured person also means any lawful spouse or domestic partner (including same sex relationships) of any *insured person* listed in 3.13.1 to 3.13.3 above, and estates, heirs or legal representatives of any *insured person* listed in 3.13.1 to 3.13.3 above with respect to *wrongful acts* by such *insured person* committed prior to the death, incapacity, insolvency or bankruptcy of the *insured person*, provided that such estates, heirs or legal representatives are subject to the terms, conditions and exclusions of this policy in so far as they can apply.

For the avoidance of doubt, this policy will not cover any *claim* arising out of any act, error or omission of any spouse, domestic partner, estate, heir or legal representatives.

Insured person will not include any agent, contractor, consultant, external auditor, trustee in bankruptcy, receiver, liquidator, conservator, rehabilitator, deed administrator, administrator or receiver and manager (or similar official or person appointed for the *policyholder* or the equivalent in any other jurisdiction) of the *company*.

3.14 Investigation

investigation means a formal or official criminal, administrative or regulatory investigation, examination, hearing or inquiry:

- 3.14.1 of an *insured person* commenced by the arrest and detainment or incarceration for more than twenty-four (24) hours of such *insured person* by any law enforcement authority, including within a *foreign jurisdiction*.
- 3.14.2 into the affairs of the *company* or an *insured person*, commenced by or brought by an *official body*, once an *insured person* is required in writing (including by the service of a target letter or Wells Notice) by the *official body* to:
 - (a) attend an interview; or
 - (b) provide information but only where there are reasonable grounds to anticipate that a *claim* may be made against that *insured person* by such *official body* in connection with the subject matter of the information request.

Investigation does not include industry-wide or sector investigations, examinations, hearings, enquiries or any routine regulatory audit, examination, inspection or review.

An *investigation* is deemed to be 'first made' when the *insured person* is first so required or requested to attend in writing, first so served or first so arrested and detained.

3.15 Investigation costs

investigation costs mean reasonable and necessary professional fees, costs, charges and expenses incurred with our prior written consent, such consent not to be unreasonably withheld or delayed, by or on behalf of an *insured person* directly in connection with such *insured person* required participation an *investigation* including reasonable preparation for any required interview or provision of information.

Investigation costs do not include remuneration payable to any *insured persons* or *employee* of any *company* or any *outside entity*, cost of their time, costs or overheads of any *company* or *outside entity*, or any criminal fines or penalties (or the equivalent) levied or imposed in connection with the *investigation*.

3.16 Investment entity

investment entity means any entity whose equity securities are not registered to trade and have not traded in a public market, in which one or more *investment funds* holds or held a debt or equity interest or has performed or is performing due diligence in anticipation of making an investment of its capital in such entity.

3.17 Investment fund

investment fund means any trust, investment trust, investment fund, fund of fund, investment management company (open or closed ended), special purpose vehicle, managed investment scheme, partnership, undertaking for collective investment, private equity or venture capital fund, real estate fund, sub-fund, compartment, mandate or other similar fund or entity sponsored, created, promoted or managed by the *policyholder* or a *subsidiary* provided that this definition shall not include any pension or superannuation fund, pension trust or scheme or employees benefit plan.

3.18 Judicial order

judicial order means:

- 3.18.1 an interim or interlocutory judicial order; or
- 3.18.2 a judicial order with respect to any proceeding concerning the deportation of any *insured person*, provided that any judicial order against an *insured person* shall be in connection with a *claim*.

3.19 Limit of liability

limit of liability means the amount specified in the *schedule* which shall be our maximum liability, in the aggregate, payable under this policy, subject to the terms and conditions of this policy.

3.20 Non-profit organisation

non-profit organisation means any company or legal entity established for any charitable, community, social or industry purpose or for the provision of services or benefits to its members and not for the purpose of making profits.

3.21 Official body

official body means:

- 3.21.1 any regulator, government or administrative body or agency, official trade body, self-regulatory body or *external administrator* legally empowered to conduct an *investigation* into the affairs of the *company* or *outside entity*, or the conduct of an *insured person* in such capacity. For clarity, this includes a Royal Commission, judicial body, commission of inquiry or stock exchange; and
- 3.21.2 any government, federal, state, or provincial agency that regulates the purchase or sale or offer to purchase or sell *securities*.

3.22 Outside entity

outside entity means any:

- 3.22.1 *non-profit organisation*;
- 3.22.2 for profit entity;
- 3.22.3 *investment entity*; or
- 3.22.4 *investment fund*,

but excluding any:

- (i) entity whose *securities* are traded on a primary, secondary or other market in the United States of America or its territories and/or possessions; or
- (ii) other entity (other than a *non-profit organisation*) that had negative net worth at the commencement date of this policy,

unless such *financial institution* or entity is specified as an *outside entity* in an endorsement to this policy.

3.23 Outside entity executive

outside entity executive means any *director, officer* or *employee* of the *company* who:

- 3.23.1 did or will serve or act; or
- 3.23.2 during the *period of insurance* is serving or acting,

in his or her capacity as a director or officer, shadow director or de facto director (or equivalent executive or management position in any other country) of an *outside entity* at the *company's* specific direction and request.

3.24 Period of insurance

period of insurance means the period of time specified as the Period of Insurance in the *schedule* including any extension thereto agreed in writing by us.

3.25 Personal reputation crisis

personal reputation crisis means any negative statement specifically regarding and mentioning an *insured person* made by any individual authorised to speak on behalf of an *official body* that is included in any press release or published in any print or electronic media outlet. The *personal reputation crisis* must first arise during the *period of insurance* and must relate to a *claim* or an *investigation*. A *personal reputation crisis* shall be deemed to first arise when such press release or publication was first released.

3.26 Personal expenses

personal expenses mean housing, utilities, personal insurances and schooling expenses paid on behalf of an *insured person* directly to the provider of such services in the event of an interim or interlocutory order during the *period of insurance* for:

3.26.1 the confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such *insured person*; or

3.26.2 a charge over real property or personal assets of such *insured person*,

resulting directly from or as part of a covered *claim* and provided that a personal allowance has been directed by the court to meet such payments and such personal allowance has been exhausted.

Such expenses will be payable from thirty (30) days following the order described above for a period of twelve (12) months from the date of order.

3.27 Personal reputation protection expenses

personal reputation protection expenses mean the reasonable and necessary professional fees, costs and expenses incurred by such *insured person*, with our prior written consent in connection with the services of a public relations / crisis management consultant (who shall not be a law firm) retained solely, and independently from the *company*, by the *insured person* within thirty (30) days of the *personal reputation crisis* to specifically mitigate the adverse publicity to such *insured person's* professional reputation as a direct result of the *personal reputation crisis*.

3.28 Prosecution costs

prosecution costs mean the reasonable professional fees, costs, charges and expenses (other than remuneration payable to any *insured persons* or *employee* of any *company*, costs of their time or overhead of any *company*) incurred with our prior written consent, such consent not to be unreasonably withheld or delayed, in bringing or defending proceedings in an *insured's* national court or to appeal to seek to obtain the discharge or revocation of a *judicial order*.

3.29 Schedule

schedule means the Schedule attached to this policy or any schedule subsequently substituted during the *period of insurance* and duly signed, stamped and dated by an authorised officer of Zurich.

3.30 Shadow director

shadow director means any person who has not been validly appointed as a director, if:

3.30.1 they act in the position of a director; or

3.30.2 the directors of the company are accustomed to act in accordance with the person's instructions or wishes.

However, a person is not a shadow director pursuant to paragraph 3.29.2 above, merely because the directors act on advice given by the person in the proper performance of functions attaching to the person's professional capacity, or the person's business relationship with the directors or the company or body.

3.31 Statutory charge

statutory charge means a charge under the Law Reform Act 1936 (NZ), Law Reform (Miscellaneous Provisions) Act 1946 (NSW), the Civil Law (Wrongs) Act 2002 (ACT), the Law Reform (Miscellaneous Provisions) Act 1956 (NT) or any other substantially similar legislation on the *traditional insurance policy*, where the value of the charge may be greater than the Limit of Liability of the *traditional insurance policy*.

3.32 Submission

submission means:

- 3.32.1 any information and/or statements or materials;
- 3.32.2 any proposal form signed, dated and completed by any *insured* (including any attachments thereto, information included therewith or incorporated therein); and/or
- 3.32.3 the financial statements and annual reports of any *insured*, requested by or supplied to us by or on behalf of the *company* in connection with this policy.

3.33 Subsidiary

subsidiary means any entity in which the *company*:

- 3.33.1 holds directly or indirectly more than 50% of the voting rights;
- 3.33.2 appoints a majority of the board of directors (or equivalent in any other country); or
- 3.33.3 has the right, pursuant to a written agreement with other shareholders, to appoint a majority of the board of directors (or equivalent in any other country),

and any company or legal entity whose financial accounts are required to be consolidated with those of the named *company* pursuant to the Financial Reporting Act 2013 or the applicable New Zealand accounting standard (or equivalent legislation and accounting standards in a *foreign jurisdiction*).

Cover in respect of:

- (i) any *insured person* of any *subsidiary*; or
- (ii) any *subsidiary*,

only applies to *wrongful acts* or conduct committed after such entity first becomes a *subsidiary* and prior to such entity ceasing to be a *subsidiary*.

3.34 Traditional insurance policy

traditional insurance policy means the primary Zurich's Directors and Officers Liability Insurance – Financial Institutions policy designated in the *schedule*.

3.35 Underlying insurance

underlying insurance means all of those policies set out in the *schedule*, excess of the primary Zurich's Directors and Officers Liability Insurance – Financial Institutions policy and any policies replacing them.

3.36 Wrongful act

wrongful act means for the purpose of this policy the definition of 'Wrongful Act' contained in the *traditional insurance policy*.

4. Exclusions

We shall not be liable under this policy to make any payment for *defence costs* and *expenses*:

4.1 Prior payment

which have already been paid by us under the *traditional insurance policy*.

4.2 Traditional policy

which would otherwise be excluded under the *traditional insurance policy*.

5. Conditions

The policy Conditions contained within the *traditional insurance policy* apply equally to this policy. The following Conditions apply to this policy and take precedence over the Conditions contained within the *traditional insurance policy*.

5.1 Assignment

Any rights under this policy will not be assigned without our prior written consent.

5.2 Confidentiality

The existence and terms of this policy will be confidential as between the *insured* and us and will not be published, disclosed or otherwise communicated except where:

- 5.2.1 the law requires disclosure in the financial statements or annual reports of payment by the *company* of a premium in respect of a contract insuring persons against a liability;
- 5.2.2 we consent in writing to disclosure of the existence and/or terms of this policy; or
- 5.2.3 the *insured* is compelled by order of a court to do so.

5.3 Connectivity with traditional insurance policy

Where we have paid *defence costs* or *expenses* under this policy in respect of a *claim* and it is subsequently determined (at our sole and absolute discretion) that a *statutory charge* does not prevent payment under the *traditional insurance policy*, we will be entitled to seek reimbursement of any *defence costs* or *expenses* from the *traditional insurance policy*. Any amount reimbursed will reinstate the *limit of liability* by the amount so reimbursed.

5.4 Deductible

Where a *claim* would have been subject to a deductible under the *traditional insurance policy* and we have agreed to pay *defence costs* and *expenses* in respect of that *claim* under this policy, we will only be liable for *defence costs* and *expenses* that exceed the deductible specified in the *traditional insurance policy*.

Where we have agreed to pay *defence costs* and *expenses* under this policy and later determine that a *statutory charge* does not prevent payment under the *traditional insurance policy*, we will only apply a single deductible, being the deductible specified in the *traditional insurance policy*.

5.5 Defence costs, settlements and allocation

- 5.5.1 It will be the duty of the *insured* against whom a *claim* is made to take all reasonable steps to defend such *claim* and not to do anything to prejudice our position. We will have no duty to defend any *claim* made against any *insured*.
- 5.5.2 With respect to any *claim* as may potentially be covered by this policy, we shall have the right to:
 - (a) be provided with all such information as we shall reasonably require, at the *insured's* own cost;
 - (b) be kept fully informed as to all matters relating to or concerning the investigation, defence, settlement or appeal of any *claim* and will have the right to receive copies of all relevant documentation relating thereto; and
 - (c) associate effectively with the *insured* in the defence, investigation and the negotiation of any settlement of any *claim*.
- 5.5.3 In the event of any dispute regarding whether or not to contest any *claim* against any *insured*, the matter will be referred for determination by a Queen's Counsel (to be mutually agreed or in default of agreement, to be selected by the then President of the New Zealand Bar Association, or equivalent organisation). The costs of such determination by Queen's Counsel are to be paid by us and will not form part of the *limit of liability*.

If the *claim* is to be contested, then the *insured* agrees to provide all such information and assistance as is reasonably required to those persons representing the *insured*.

5.5.4 The *insured* will not admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any *defence costs* or *expenses* and no legal representative will be retained to defend any *insured*, without our prior written consent, such consent not to be unreasonably withheld or delayed.

Only those *defence costs* or *expenses* that have been consented to by us in writing will be recoverable under the terms of this policy (other than as covered under Extension 2.1 'Emergency defence costs and expenses'). Where our consent is required under this policy (including for the incurring of reasonable and necessary fees, costs and expenses under an applicable Extension) such consent will not be unreasonably withheld or delayed.

We shall not settle any *claim* without the consent of the relevant *insured*, such consent not to be unreasonably withheld or delayed.

5.5.5 We will not settle any *claim* against any *insured* without the consent of the relevant *insured*, such consent not to be unreasonably withheld or delayed. In addition and notwithstanding any of the foregoing paragraphs in this condition, if all *insured* defendants are able to dispose of all *claims* which are subject to one *deductible* (inclusive of all *defence costs* or *expenses*) for an amount not exceeding the applicable *deductible*, then our consent shall not be required for such disposition.

5.5.6 Our liability under this policy is limited to the proportion of *defence costs* or *expenses* which is a fair and equitable allocation:

- (a) between the *insured persons* and any other uninsured person or entity (including the *company*) where the *defence costs* or *expenses* have been jointly or jointly and severally incurred by them. Such allocation will be determined having regard to the relative legal and financial exposures of, and relative benefits obtained by, the *insured persons* and those other persons or entities; and/or
- (b) between the *insured persons*, the *company* and us, having regard to the covered and uncovered matters and the relative legal and financial exposures attributable to those matters.

Where we and the *insured* are unable to agree upon a fair and equitable allocation then such allocation will be determined by Queen's Counsel (to be mutually agreed or, in default of agreement, to be selected by the then President of the New Zealand Bar Association, or equivalent organisation).

The parties will be bound by Queen's Counsel's determination as to the fair and equitable allocation. The costs of obtaining this determination will be paid by us and will not form part of the *limit of liability*.

While no fair and equitable allocation has been agreed or determined in respect of any *defence costs* or *expenses*, we will advance *defence costs* or *expenses* in the proportion which we contend should be allocated under this condition. Any such allocation negotiated or determined will be applied retrospectively to all *defence costs* and *expenses* incurred prior to the date of such negotiation or determination.

Any payments of *defence costs* (or other *financial loss*) to any *insured* that we have been made, shall be repaid to us by the person and/or entity (jointly or severally) to whom or on whose behalf such payments have been made in the event that any such payments are ultimately determined not to be covered by this policy or such person or entity shall not be entitled under this policy to the payment of such *financial loss*.

5.6 Goods and Services Tax

All *limits of liability* in this policy (except for the *deductible*) exclude GST where that GST is recoverable by us under the Goods and Services Tax Act 1985. We add GST, where applicable, to claim payments. However, this does not apply to the *deductible* which is GST inclusive.

5.7 Law and jurisdiction

The construction, interpretation and meaning of the provisions of this policy shall be determined in accordance with New Zealand law.

In the event of any dispute arising under this policy including, but not limited, to its construction and/or validity and/or performance and/or interpretation, the *insured* will submit to the exclusive jurisdiction of any competent Court in New Zealand.

5.8 Limit of Liability

5.8.1 Subject to the Insuring Clauses and Extensions, the *limit of liability* as specified in the *schedule* will be our maximum liability, in the aggregate, payable under this policy for all:

- (a) covered *defence costs* or *expenses* arising from all *claims* during the *period of insurance* and any extended reporting period (if applicable); and
- (b) insofar as not encompassed within (a) above, all sums payable under any of the Extensions.

5.8.2 The *limit of liability* for any applicable extended reporting period shall not increase the *limit of liability*.

5.8.3 All sub-limits of liability are part of and not in addition to the *limit of liability*.

5.8.4 Where more than one *claim* arises from a *wrongful act*, or arise from a series of *wrongful acts* which are in any way connected causally with another or which are by any means related or connected, or in the case of one or more *investigations* (whether linked to a *claim* or otherwise) which have a common or related cause or source they will be deemed to be a single *claim* and such single *claim* (irrespective of the *period of insurance* in which it in fact arises) be attributed solely to the *period of insurance* or the extended reporting period (if applicable) during which the first *claim* of such *claims* was first made.

5.9 Notification

The *company* will, as a condition precedent to our liability under this policy, give written notice to us of any *claim* made against an *insured* as soon as is reasonably practicable after the *company's* risk manager, general counsel, company secretary, chief legal counsel or equivalent position first becomes aware of such *claim*, but in all events no later than 90 (ninety) days after the expiry of the *period of insurance* or the extended reporting period (if applicable).

Written notice will include but not be limited to a description of the *claim*, the nature of the alleged or potential damage, the names of the actual or potential claimants and the date and manner in which the *company* or *insured persons*, as the case may be, first became aware of the *claim*.

All notices under condition 5.9 will be provided in writing to the Notification address specified in the *schedule*. Any notification, sent by post or email, will be effective from the date received by us.

Once a circumstance referred to above is notified to us during the *period of insurance*, any subsequent *claim* arising from that circumstance is covered under this policy even if it occurs after the *period of insurance*.

5.10 Plurals and headings

The *submission*, this policy, its *schedule* and any endorsements are one contract in which, unless the context otherwise requires:

- 5.10.1 headings are descriptive only, not an aid to interpretation;
- 5.10.2 singular includes the plural, and vice versa;
- 5.10.3 the male includes the female and neuter;
- 5.10.4 all references to specific legislation include amendments to and re-enactments of such legislation and similar legislation in any jurisdiction in respect of which a *claim* is made or an *investigation* is commenced; and
- 5.10.5 references to positions, offices or titles will include their equivalents in any jurisdiction in which a *claim* is made or an *investigation* is commenced.

5.11 Territorial scope

Coverage under this policy shall apply to *defence costs* or *expenses* incurred, resulting from *claims* made and *wrongful acts* occurring anywhere in the world, where legally permissible.

5.12 Valuation and foreign currency

All premiums, *limits of liability*, sub-limits of liability, *deductibles*, retentions, *defence costs* or *expenses* and other amounts under this policy are expressed and payable in New Zealand currency. Except as otherwise provided, if judgment is rendered, settlement is denominated or another element of loss under this policy is stated in a currency other than New Zealand dollars, payment under this policy will be made in New Zealand dollars at the cash rate of exchange for the purchase of New Zealand dollars as reported in the National Business Review on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of *defence costs* or *expenses* is due, respectively.

5.13 Waiver of contribution

We will not pay any *defence costs* or *expenses* to the extent that they have been caused or contributed to by the *insured* giving up any right or contribution or indemnity without our prior written consent.

5.14 Waiver of privilege

If we instruct any lawyer to investigate or defend any *claim* against any *insured*, you authorise the lawyer to provide us any documents, information or advice in respect of the *defence costs* or *expenses*, including in relation to indemnity, and you waive any privilege to the extent necessary to give full effect to our entitlement in this respect. We agree to keep any documents, information or advice in respect of the *defence costs* or *expenses* confidential, and not to take steps to waive privilege over them.

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