

Companion POSI Defence Costs and Expenses Insurance

Policy Wording



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Welcome to Zurich

About Zurich

The insurer of this product is Zurich Australian Insurance Limited, ABN 13 000 296 640 (ZAIL incorporated in Australia) trading as Zurich New Zealand. In this policy wording, Zurich New Zealand may also be expressed as 'Zurich', 'we', 'us' or 'our'.

Zurich provides wealth protection and wealth creation solutions, offering general insurance for commercial customers, and life risk, investments and superannuation solutions for corporate and personal customers. Zurich's solutions and services are primarily accessible through insurance brokers, financial advisers and other intermediaries.

Zurich is part of the worldwide Zurich Financial Services Group, an insurance-based financial services provider with a global network of subsidiaries and offices in North America and Europe as well as in Asia Pacific, Latin America and other markets. Founded in 1872, the Group is headquartered in Zurich, Switzerland. It employs approximately 60,000 people serving customers in more than 170 countries.

Important Information

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

1. A *claim* is made against the *insured*, 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 date of continuous cover 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.

Our contract with you

Your policy is a contract of insurance between you and Zurich and contains all the details of the cover that we provide.

Your 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 you provide to us when applying for insurance cover;
- your most current *schedule* issued by us. The *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 in an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in your *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 POSI Defence Costs and Expenses Insurance

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*.
- 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. Definitions

For the purposes of this policy:

2.1 Civil or bail bond expenses

civil or bail bond expenses means a fee or premium (and only those that are available at reasonable commercial rate) 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 *claim*, and excluding any form of actual security or collateral itself.

2.2 Claim

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

2.3 Company

company means:

- 2.3.1 the legal entity as specified in the *schedule*; or
- 2.3.2 any past, present and future *subsidiary* of the *company*.

2.4 Defence costs

defence costs means reasonable fees, costs, charges and expenses (other than remuneration payable to any *insured persons* or *employees* of any *company*, cost of their time or costs or overhead of any *company*), incurred with our written consent, such consent not to be unreasonably withheld or delayed, in the investigation, defence, settlement or appeal from any *claim* made or brought against an *insured person*.

Defence costs shall also include reasonable fees, costs, charges and expenses of any accredited expert retained through defence lawyers approved in writing by us on behalf of the *insured person* to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a *claim*.

Defence costs shall not include *investigation costs*.

2.5 Deprivation of assets expenses

deprivation of assets expenses means the payment of the following services, directly to the provider of such services, in the event of an interim or interlocutory order confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of an *insured person* or creating a charge over real property or personal assets of the *insured person* during the *period of insurance*:

- 2.5.1 housing;
- 2.5.2 utilities;
- 2.5.3 personal insurances; and
- 2.5.4 schooling.

Such expenses will only be payable provided that a personal allowance has been directed by the court to meet such payments and such personal allowance has been exhausted. Expenses will be payable after 30 days following the event above for a period of up to 12 months.

2.6 Director or officer

director or officer means:

- 2.6.1 any natural person who is a past, present or future director, officer, management committee member, member of the board of managers, supervisory board member, management board member, trustee or governor of the *company* and shall include any equivalent position in any other country;
- 2.6.2 any natural person who is a past, present or future *shadow director* of the *company*;
- 2.6.3 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*;
- 2.6.4 any *director or officer* defined in 2.6.1 to 2.6.3 above, who is or was a member of the *company's* internal audit committee, or any other internal committee of the *company*;
- 2.6.5 any *employee* of the *company* who is a past, present or future corporate general counsel (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*; and
- 2.6.6 any natural person named as a prospective director in the listing particulars or prospectus for a *public offering* issued by the *company*.

2.7 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.

2.8 Expenses

expenses means:

- 2.8.1 *investigation costs;*
- 2.8.2 *extradition costs;*
- 2.8.3 *prosecution costs;*
- 2.8.4 *civil or bail bond expenses;*
- 2.8.5 *deprivation of assets expenses;* and
- 2.8.6 *public relations expenses.*

2.9 Extradition claim

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

2.10 Extradition costs

extradition costs means reasonable legal fees, costs and expenses incurred by an *insured person* with our prior written consent to obtain legal advice or to bring or defend proceedings including by way of judicial review or other challenge to the political executive's decision to order an *insured person's* extradition and to pursue appeals.

2.11 Force majeure event

force majeure event means a sudden, unforeseeable event wholly outside the control of any *insured* which first occurs after the inception date of this policy and which is notified to us as soon as practicable.

2.12 Insured

insured means:

- 2.12.1 any *insured person(s)* ; and
- 2.12.2 the *company*.

2.13 Insured person(s)

insured person(s) means:

- 2.13.1 *director or officer;*
- 2.13.2 *employee* of the *company* who is the risk manager (or equivalent position) of the *company*; and
- 2.13.3 *employee* of the *company* while acting in a managerial or supervisory capacity for the *company*.

Insured person(s) shall not include any agent, contractor, consultant, external auditor, liquidator, deed administrator, administrator or receiver (or the equivalent in any other jurisdiction) of the *company*.

2.14 Investigation

Investigation means a formal criminal, administrative or regulatory investigation, examination, hearing or enquiry, commenced by an *official body*, arising from the *public offering*.

2.15 Investigation costs

Investigation costs means reasonable fees, costs, charges and expenses (other than remuneration payable to any *insured persons* or *employees* of any *company*, costs of their time or costs or overhead of any *company*) incurred with our 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* preparing for and attending an *investigation*.

Investigation costs do not include any fines or penalties, or the equivalent, levied or imposed in connection with the *investigation*.

2.16 Judicial order

judicial order means:

2.16.1 an interim or interlocutory judicial order; or

2.16.2 a judicial order with respect to any proceeding concerning the deportation of any *insured person*, provided that any judicial order against an *insured* shall be in connection with a *claim*.

2.17 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.

2.18 Official body

official body means any regulator, government or administrative body or agency, official or trade body or self-regulatory body legally empowered to investigate the affairs of the *insured person* in such capacity.

For clarity this includes a Royal Commission, judicial body, commission of inquiry or stock exchange.

2.18 Period of insurance

period of insurance means the period of time specified in the *schedule* to this policy including any Extension of Cover thereto agreed in writing by us.

2.20 Prosecution costs

prosecution costs means the reasonable 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*.

2.21 Public offering

public offering means for the purpose of this policy the definition of 'Public Offering' contained in the *traditional insurance policy*.

2.22 Public relations expenses

public relations expenses means the reasonable fees and related expenses of a public relations firm or consultants, crisis management firm or law firm, which an *insured person* in the reasonable exercise of his or her discretion may engage with our written consent to prevent or limit adverse effects or negative publicity in respect of the cancellation or postponement of the *public offering* or sale of securities due solely to a *force majeure event*.

2.23 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.

2.24 Shadow director

shadow director means any natural person who is deemed a director by paragraph (b) of the definition of Director (or any similar law, rule or regulation in any other jurisdiction) by definition of Director in Section 126 1 (c) of the Companies Act 1993 (NZ).

2.25 Statutory charge

statutory charge means a charge under the Law Reform Act 1936 (NZ), the 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*.

2.26 Submission

submission means:

- 2.26.1 any information and/or statements or materials;
- 2.26.2 any proposal form completed and signed by any *insured* (including any attachments thereto, information included therewith or incorporated therein); and/or
- 2.26.3 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.

2.27 Subsidiary

subsidiary means any entity in which the *company*:

- 2.27.1 holds directly or indirectly more than 50% of the voting rights;
- 2.27.2 appoints a majority of the board of directors (or equivalent in any other country); or
- 2.27.3 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 shall in any event include any company or legal entity whose financial accounts are required to be consolidated with those of the named *company* pursuant to the Companies Act 1993 (NZ) or the applicable New Zealand accounting standard.

2.28 Traditional insurance policy

traditional insurance policy means the primary Zurich Public Offering of Securities Directors, Officers and Company Liability Insurance policy designated in the *schedule*.

2.29 Underlying insurance

underlying insurance means all of those policies set out in the *schedule*, excess of the primary Zurich Public Offering of Securities Directors, Officers and Company Liability Insurance policy and any policies replacing them.

2.30 Wrongful act

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

3. Extensions of Cover

Cover is automatically provided for the Extensions of Cover described below. Each Extension of Cover is subject to the terms, conditions and limitations of this policy. Each Extension of Cover does not increase our *limit of liability*, unless expressly stated otherwise.

3.1 Advancement of 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:

3.1.1 *defence costs*;

3.1.2 *expenses*.

We will not rely on any Conduct Exclusion contained within the *traditional insurance policy* to deny indemnity or to refuse to advance *defence costs* under this extension of cover until the conduct in question has been finally established, by court judgment or other final adjudication (including by available appeals).

If, in the event of an emergency, our written consent cannot be reasonably obtained by the applicable *insured* before any of the above *defence costs* or *expenses* are incurred, the *insured* shall have the right to incur such amounts without that consent for a period of 30 days immediately following the date on which the relevant *defence costs* or *expenses* were first incurred.

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

3.2 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*.

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 Applicable law

In the event of any dispute relating to the construction, interpretation and/or meaning of the provisions of this policy, it is agreed that such disputes shall be exclusively governed by the law applicable in the New Zealand.

5.2 Confidentiality

The existence and terms of this policy shall be confidential as between the *insured* and us and shall 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; or

5.2.2 we consent in writing to disclosure of the existence and/or terms of this policy.

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 shall 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 shall be the duty of the *insured* to take all reasonable steps to defend the *claim* and not to do anything to prejudice our position. We shall have no duty to defend any *claim*.

5.5.2 With respect to any *claim* as may potentially be covered by this policy, we shall:

5.5.2.1 have the right to be provided with all such information as we shall reasonably require, at the insured's own cost; and

5.5.2.2 have the right to associate effectively with the *insureds* 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 Senior Counsel (to be mutually agreed or in default of agreement, to be selected by the then President of the Bar Association). The costs of such determination by Senior 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* shall 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 shall 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 shall be recoverable under the terms of this policy (other than as covered under Extension of Cover 3.1 'Advancement of defence costs and expenses').

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

5.5.5.1 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 shall 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

5.5.5.2 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 Senior Counsel (to be mutually agreed or, in default of agreement, to be selected by the then President of the Bar Association).

The parties will be bound by Senior 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.

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 Limit of Liability

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

5.7.1.1 covered *defence costs* or *expenses* arising from all *claims* during the *period of insurance* and any extended reporting period (if applicable); and

5.7.1.2 insofar as not encompassed within 5.7.1.1 above, all sums payable under any of the Extensions of Cover.

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

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

5.7.4 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 shall 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.

5.8 Notification

The *company* shall, 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 days after the expiry of the *period of insurance* or the extended reporting period (if applicable).

Written notice shall 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*.

Written notice hereunder shall be provided in writing to:

Zurich New Zealand Insurance Limited
Attention: Financial Lines, Claims Manager
Zurich House: Level 16, 21 Queen Street Auckland Central 1010

Any notification, sent by post or email, will be effective from the date received by Zurich.

5.9 Plurals and titles

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

- 5.9.1 headings are descriptive only, not an aid to interpretation;
- 5.9.2 singular includes the plural and vice versa;
- 5.9.3 the male includes the female and neuter;
- 5.9.4 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; and
- 5.9.5 references to positions, offices or titles shall include their equivalents in any jurisdiction in which a *claim* is made.

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 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.

5.13 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 claim, including in relation to indemnity, and you waive any privilege to the extent necessary to give full effect to our entitlement in this respect.

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