


# Excess Directors' and Officers' Liability

## Policy document



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# Data protection statement

Zurich takes the privacy and security of your personal information seriously. We collect, use and share your personal information so that we can provide policies and services that meet your insurance needs, in accordance with applicable data protection laws.

The type of personal information we will collect includes: basic personal information (i.e. name, address and date of birth), occupation and financial details, health and family information, claims and convictions information and where you have requested other individuals be included in the arrangement, personal information about those individuals.

We and our selected third parties will only collect and use personal information (i) where the processing is necessary in connection with providing a quotation and/or contract of insurance; (ii) to meet our legal or regulatory obligations; (iii) where you have provided the appropriate consent; (iv) for our 'legitimate interests'.

It is in our legitimate interests to collect personal information as it provides us with the information that we need to provide our services more effectively including providing information about our products and services. We will always ensure that we keep the amount of information collected and the extent of any processing to the absolute minimum to meet this legitimate interest.

A full copy of our data protection statement can be viewed via [www.zurich.co.uk/dataprotection](http://www.zurich.co.uk/dataprotection)

## How you can contact us

If you have any questions or queries about how we use your data, or require a paper copy of the statement, you can contact us via [gbz.general.data.protection@uk.zurich.com](mailto:gbz.general.data.protection@uk.zurich.com) or alternatively contact our Data Protection Officer at Zurich Insurance, Unity Place, 1 Carfax Close, Swindon, SN1 1AP.

# Important notes

## Fraud prevention and detection

In order to prevent and detect fraud we may at any time:

- check your personal data against counter fraud systems
- use your information to search against various publicly available and third party resources
- use industry fraud tools including undertaking credit searches and to review your claims history
- share information about you with other organisations including but not limited to the police, the Insurance Fraud Bureau (IFB), other insurers and other interested parties.

If you provide false or inaccurate information and fraud is identified, the matter will be investigated and appropriate action taken. This may result in your case being referred to the Insurance Fraud Enforcement Department (IFED) or other police forces and fraud prevention agencies. You may face fines or criminal prosecution. In addition, Zurich may register your name on the Insurance Fraud Register, an industry-wide fraud database.

## Claims history

We may pass information relating to claims or potential claims to any relevant database.

We and other insurers may search these databases when you apply for insurance, when claims or potential claims are notified to us or at time of renewal to validate your claims history or that of any other person or property likely to be involved in the policy or claim.

This helps to check information provided and prevent fraudulent claims.

# Our complaints procedure

## **Our commitment to customer service**

We are committed to providing a high level of customer service. If you feel we have not delivered this, we would welcome the opportunity to put things right for you.

## **Who to contact in the first instance**

Many concerns can be resolved straight away. Therefore in the first instance, please get in touch with your usual contact at Zurich or your broker or insurance intermediary, as they will generally be able to provide you with a prompt response to your satisfaction.

Contact details will be provided on correspondence that we or our representatives have sent you.

## **Many complaints can be resolved within a few days of receipt**

If we can resolve your complaint to your satisfaction within the first few days of receipt, we will do so. Otherwise, we will keep you updated with progress and will provide you with our decision as quickly as possible.

## **Next steps if you are still unhappy**

If you are not happy with the outcome of your complaint, you may be able to ask the Financial Ombudsman Service to review your case.

We will let you know if we believe the ombudsman service can consider your complaint when we provide you with our decision. The service they provide is free and impartial, but you would need to contact them within 6 months of the date of our decision.

More information about the ombudsman and the type of complaints they can review is available via their website [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk).

You can also contact them as follows:

**Post:** Financial Ombudsman Service, Exchange Tower, London, E14 9SR

**Telephone:** 08000 234567 (free on mobile phones and landlines)

**Email:** [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk)

If the Financial Ombudsman Service is unable to consider your complaint, you may wish to obtain advice from the Citizens Advice Bureau or seek legal advice.

## **The Financial Services Compensation Scheme (FSCS)**

We are covered by the Financial Services Compensation Scheme (FSCS) which means that you may be entitled to compensation if we are unable to meet our obligations to you. Further information is available on [www.fscs.org.uk](http://www.fscs.org.uk) or by contacting the FSCS directly on 0800 678 1100.

# Your Excess Directors' and Officers' Liability policy

This policy is a contract between **you** and **us**.

This policy and any schedule and endorsement should be read as if they are one document.

**We** will insure **you** during any period of insurance for which **we** have accepted **your** premium. **Our** liability will in no case exceed the amount of any sum insured or limit of indemnity stated in this policy, the schedule or any endorsement to this policy.

Any reference to the singular will include the plural and vice versa.

Any reference to any statute or statutory instrument will include any amendments thereto or re-enactment thereof.

Any heading in this policy is for ease of reference only and does not affect its interpretation.

## Law applicable to this contract

In the UK the law allows both **you** and **us** to choose the law applicable to this contract. This contract will be subject to the relevant law of England and Wales, Scotland, Northern Ireland, the Isle of Man or the Channel Islands depending upon **your** address stated in the schedule. If there is any dispute as to which law applies it will be English law. The parties agree to submit to the exclusive jurisdiction of the English courts.

This is a legal document and should be kept in a safe place.

Please read this policy and any schedule and endorsement carefully and if they do not meet **your** needs contact **us** or **your** broker or insurance intermediary.

# Section 1 – Agreement with underlying policies

Other than in respect of:

- a) the premium
- b) the limits of liability
- c) the conditions and any Endorsements hereto.

This policy is subject to the same terms conditions limitations exclusions and all other provisions as the **primary policy**, and to all terms conditions limitations exclusions and provisions in any other of the **underlying policies**. No change in the **primary policy** or **underlying policies** shall be binding upon **us** unless specially endorsed hereon.

## Section 2 – Definitions

Certain words in this policy have special meanings. These meanings are given below or defined at the appropriate place in this policy. To help you identify these words in this policy we have printed them in **bold** throughout.

For the purpose of this policy:

- a) **Additional presentation of risk** shall mean any presentation of the risk that **you** make to **us** in addition to the presentation that **you** make to the **underlying insurers**.
- b) **Primary policy** shall mean the policy identified by Item 6 of the schedule.
- c) **Underlying policies** shall mean the **primary policy** and any policies identified by Item 7 of the schedule.
- d) **Underlying limit of liability** shall mean the combined limits of liability provided by the **underlying policies** identified by Items 6 and 7 of the schedule.
- e) **We, us or our** shall mean Zurich Insurance Company Ltd or pertaining to Zurich Insurance Company Ltd.
- f) **You, your** shall mean the legal entity designated in the schedule or pertaining to the legal entity designated in the schedule.

## Section 3 – Conditions

### 1. Maintenance of underlying policies

It is a condition precedent to the coverage afforded under this policy that **you** maintain in force the **underlying policies** in all respects as stated in Items 6 and 7 of the schedule subject only to reduction or exhaustion as a result of loss payments. This policy will not provide indemnity for any loss not covered by the **underlying policies** except and to the extent that such loss is not paid under the **underlying policies** solely by reason of the reduction or exhaustion of the **underlying limits of liability** as a result of payments of loss thereunder. In the event that the insurer of one or more of the **underlying policies** fails to pay loss in connection with any claim as a result of the insolvency, bankruptcy or liquidation of the said insurer then those insured hereunder shall be deemed to be self-insured for the amount of the limit of liability of the said insurer which is not paid as a result of such insolvency, bankruptcy or liquidation.

### 2. Limit of liability

- a) **We** will pay any loss in excess of the **underlying limit of liability** and the deductible or retention under the **primary policy** which is applicable to such loss up to the Limit of Liability under Item 5 in the schedule in respect of each claim admitted under the **underlying policies**. The amount shown under Item 5 shall however be the maximum aggregate Limit of Liability of **us** for losses resulting from all payments made under this policy during the Period of Insurance.
- b) **We** shall be liable under this policy only after the **underlying insurer(s)** have admitted liability and the full amount of **the underlying limit of indemnity** after making deductions for all recoveries and other valid and collectable insurances has been exhausted.
- c) Subject to a) in the event of the reduction or exhaustion of the **underlying limit of liability** by reason of payment of loss this policy will:
  - i) in the event of reduction pay in excess of the reduced limits; and
  - ii) in the event of exhaustion continue in force as a primary insurance subject to the other terms of this policy and to the terms of any other of the **underlying policies** and in excess of the deductible or retention applicable to the **primary policy** as shown in Item 6.4 of the schedule which will operate exactly as specified in the **primary policy**.

Notwithstanding clause b) above, where the **underlying insurers** have admitted liability in accordance with the terms and conditions of the **primary policy** but have paid or been found liable to pay an amount which is less than the applicable **underlying limits of indemnity** as a result of any breach of the duty to make a fair presentation of the risk which is or has been found to be neither deliberate nor reckless, **we** will, for the purpose of ascertaining attachment of this policy to the underlying limits of indemnity, recognise that the full amount of the **underlying limits of indemnity** has been exhausted by any combination of the payment by **underlying insurers** and **your** payment or payment on **your** behalf of the balance of the **underlying limits of indemnity**.

Provided always that:

- i) **we** will only ever be liable to pay that part of any loss which exceeds the **underlying limits of indemnity**; and
- ii) the terms of this policy will prevail in the event of any conflict with the **primary policy**.

### 3. Additional presentation of the risk

- a) At inception and renewal of this policy and also whenever changes are made to it at **your** request, in respect of any **additional presentation of the risk you** must:
  - i) disclose to **us** all material facts in a clear and accessible manner; and
  - ii) not misrepresent any material facts.
- b) If **you** do not comply with clause a) of this condition and the non-disclosure or misrepresentation by **you** is proven by **us** to be deliberate or reckless **we** may from the relevant date specified in clause d):
  - i) treat this policy as if it had not existed; and
  - ii) not return the premium paid by **you**.
- c) If **you** do not comply with clause a) of this condition and the non-disclosure or misrepresentation is not deliberate or reckless the cover, meaning this policy or the changes made to it, may be affected from the relevant date in clause d) in one or more of the following ways depending on what **we** would have done if **we** had known about the facts which **you** failed to disclose or misrepresented:
  - i) if **we** would not have provided **you** with the cover **we** will have the option to treat the cover as if it had not existed and repay the premium paid for such cover; or
  - ii) if **we** would have applied different terms to the cover **we** will have the option to treat this policy as if those different terms apply; and/or
  - iii) if **we** would have charged **you** a higher premium for providing the cover **we** will charge **you** the additional premium which **you** must pay in full.
- d) Clauses b) and c) apply with effect from inception, renewal or the date of the changes, depending on when the non-compliance occurred. **We** may also recover any claims payments which have already been made to the extent that the cover under which such payments were made is being treated as if it did not exist or as if it had been subject to different terms under which the claim would not have been payable.
- e) This condition applies only to the **additional presentation of the risk**. In respect of the presentation of risk **you** make to the **underlying insurer(s)** and **us** jointly the applicable law or any relevant clause set out in the **underlying insurer(s)** policy shall apply.

### 4. Claim notification

**You** as a condition precedent to payment under this policy shall provide written notice to **us** as soon as reasonably practicable of:

- a) any claim made against a director or officer
- b) notice from any person or entity of an intention to make such a claim
- c) circumstances of which **you** become aware which could reasonably give rise to a claim at a later date.

The date of notification to **you** will be deemed to be the date upon which the resultant claim is first made.

Written notice shall include but not be limited to a description of the claim circumstances, the nature of the alleged or potential damage, the names of the actual or potential claimants and the date and manner in which **you** or director or officer as the case may be first became aware of the claim.

### 5. Prior and pending litigation

**We** shall not be liable under this policy to make any payment in respect of any claim arising from, based upon, attributable to or as a consequence of any litigation initiated prior to or pending at the date specified in Item 8 of the schedule or alleging or deriving from the same or essentially the same facts as alleged in such prior or pending litigation.



## 6. Arbitration clause

All disputes and differences arising under or in connection with this contract must be referred to arbitration under ARIAS Arbitration Rules. The Arbitration Tribunal will consist of three arbitrators, one to be appointed by the claimant, one to be appointed by the respondent and the third to be appointed by the two appointed arbitrators.

The third member of the Tribunal must be appointed as soon as practicable (and no later than 28 days) after the appointment of the two party-appointed arbitrators. The Tribunal will be constituted upon the appointment of the third arbitrator.

The arbitrators must be people (including those who have retired) with not less than ten years experience of insurance or reinsurance within the insurance industry or as lawyers or other professional advisers servicing the insurance industry.

Where a party fails to appoint an arbitrator within 14 days of being called upon to do so or where the two party-appointed arbitrators fail to appoint a third within 28 days of their appointment, then upon application ARIAS (UK) will appoint an arbitrator to fill the vacancy.

At any time before their appointment by ARIAS (UK) the party or arbitrators in default may make such appointment.

The Tribunal has sole discretion to make such orders and directions that it considers necessary for the final determination of the matters in dispute. The Tribunal has the widest discretion permitted under the law governing arbitration when making such orders or directions.

## 7. Contracts (Rights of Third Parties) Act 1999

A person or company (including an insured person) who was not a party to this policy has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this policy but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## 8. Change in circumstances

**You** must notify **us** as soon as possible during the period of insurance if there is any change in circumstances which materially increases the risk of accident, injury, loss, damage or liability.

Upon notification of any such change **we** will be entitled to vary the premium and terms for the rest of the period of insurance. If the changes make the risk unacceptable to **us** then **we** may no longer be able to provide **you** with cover.

If **you** do not notify **us** of any such change this policy may be affected in one or more of the following ways depending on what **we** would have done had **we** known about the change in circumstances:

- a) if **we** would not have continued to provide **you** with any cover **we** may treat this policy as if it did not exist from the date of the change in circumstances; or
- b) if **we** would have applied different terms to the cover **we** may treat this policy as if those different terms applied from the date of the change in circumstances; and/or
- c) if **we** would have charged **you** a higher premium for providing the cover **we** will charge **you** the additional premium which **you** must pay in full.

## 9. Payment by instalments

Reference to the payment of premium includes payment by monthly instalments. If **you** pay by this method this policy remains an annual contract.

## 10. Contractual right of renewal (tacit)

If **you** pay the premium to **us** using **our** Direct Debit instalment scheme **we** will have the right (which **we** may choose not to exercise) to renew this policy each year and continue to collect premiums using this method. **We** may vary the terms of this policy (including the premium) at renewal. If **you** decide that **you** do not want **us** to renew this policy provided **you** tell **us** or **your** broker or insurance intermediary before the next renewal date **we** will not renew it.

## 11. Sanctions

Notwithstanding any other terms of this policy **we** will be deemed not to provide cover nor will **we** make any payment or provide any service or benefit to **you** or any other party to the extent that such cover, payment, service or benefit would violate any applicable trade or economic sanctions law or regulation.

**Zurich Insurance Company Ltd**

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