

Summary of Policy Changes: Financial Institutions PI Insurance

Below is a summary of the changes we have made to our Financial Institutions PI Policy Wording (09-03) to create our new Policy Wording version (04-09).

The entire wording has been overhauled using a new structure and concise non-legalistic language to ensure that it is easy to read and understand. As a result, every clause in the wording has been altered.

This document is NOT intended to identify all of the changes that have been made. It only provides a summary of some changes. If you would like to discuss any of the changes in more detail, please contact one of our underwriters listed at the end of this summary.

1.2 Advancement of Defence Costs

Insuring Clause 1.2 now provides for defence costs to be paid in advance for claims covered under the policy.

The 'claims-made' language from former clause 2.1 now appears in the definition of claim and the 'written consent' language from former clause 2.2 now appears in the definition of defence costs.

2.1 Loss of Documents

The previous requirement for a claim to be made against the insured has been removed (as this is intended to be a first party cover) and exclusions have been added for computer virus and the acts of certain third parties.

2.3 Misleading or Deceptive Conduct

This extension has been expanded so that it now provides cover for claims alleging misleading or deceptive conduct under the ASIC Act as well as under the Trade Practices Act and State Fair Trading legislation.

2.6 Intellectual Property Rights

This is a new extension which provides cover for claims alleging infringement of intellectual property rights, however, no cover is provided for intentional infringements or in respect of North America.

2.8 Interference with Privacy

This is a new extension which provides cover for claims alleging breach of confidentiality or privacy.

2.9 New Subsidiaries

This is a new extension which provides automatic cover for new subsidiaries which do not exceed certain threshold requirements. For those that do, there is a 45 day window to provide information about the new subsidiary and to agree to any additional terms and conditions Liberty may impose, including payment of additional premium.

2.10 Professional Inquiries

This extension now requires the professional inquiry to have the potential to lead to a claim covered under the policy.

2.11 Continuous Cover

This is a new extension which protects the insured in the event there has been an inadvertent failure to notify Liberty of facts known to the insured prior to the policy period commencing which later give rise to a claim covered under the policy, provided the insured has been continuously insured with Liberty since first becoming aware of those facts.

2.12 Extended Policy Period

This is a new extension which gives the insured the right to purchase up to 84 months of run-off cover in the event that the named insured undergoes a 'change in control' as defined in the policy.

3.1 Reinstatement

This is a new optional extension which provides one reinstatement of the limit of liability in the event that the limit of liability and any excess policies have been exhausted.

3.2 Loss Mitigation

This is a new optional extension which provides cover for direct costs and expenses incurred by the insured in taking action to rectify, or to mitigate the effects of, any act, error or omission that would otherwise result in a claim covered under the policy, provided certain notice requirements are satisfied and prior written consent is obtained from Liberty.

4.1 Contractual Liability & Commercial Risks

This exclusion combines the previous exclusions for:

- 4.1 Contractual Liability
- 4.16 Trading Debts
- 4.22 Insolvency
- 4.24 Fees
- 4.27 Maintenance of Insurance

and expands it to exclude debt guarantees given by the insured

4.5 Fraud & Dishonesty

This exclusion now only applies where there is an admission, finding or adjudication establishing that the fraudulent or dishonest conduct did in fact occur.

4.7 Related Parties

This exclusion has been expanded to exclude claims by any parent company of the insured but claims by entities in which the insured has a financial interest are now limited to entities which are owned, controlled or managed by the insured.

5.2 Defence & Settlement

This new claims condition gives the insured the option of appointing their own lawyers to defend a claim subject to Liberty's approval. Alternatively, the insured may request Liberty to defend the claim.

5.3 Allocation

This claims condition has been amended to ensure it aligns with recent Australian case law and minimises the potential for disputes over allocation.

5.4 Requirement to Contest a Claim

This claims condition clarifies what is to occur in the event that Liberty and the insured cannot agree whether a claim should be defended or settled.

5.5 Subrogation

This claims condition now recognises that the insured from time to time may enter into commercial agreements with other parties which may limit the liability of such parties and clarifies Liberty's intention that such agreements will not prejudice the insured's right to claim under the policy.

6.3 Severability of Proposal

This is a new general condition which protects innocent insureds in the event that a fellow insured fails to satisfy his or her duty of disclosure.

6.4 Non-Imputation

This is a new general condition which protects innocent insureds in the event that a fellow insured fails to comply with any terms and conditions of the policy.

7.7 Insured

This definition has been expanded to include past, present or future committee members of the named insured or its subsidiaries, in addition to directors, officers and employees.

7.10 Loss

This is a new definition which clarifies the cover provided by the policy. The previous exclusions of exemplary, aggravated, multiple and punitive damages are now contained within this definition.

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