

FINANCIAL INSTITUTIONS // INVESTMENT MANAGERS INSURANCE //  
SUMMARY OF CHANGES // AUSTRALIA

## Summary of Policy Changes: Investment Managers Insurance

Below is a summary of the key changes we have made to our Investment Managers Insurance Policy Wording (05-11) to create our new Policy Wording version (08-17).

This document is not intended to identify all of the changes that have been made. If you would like to discuss any of the changes in more detail, please contact one of our offices listed below.

### Part A: Professional Liability

#### New Insuring Clause

**Insuring Clause 1.2 Self-Report, Internal Inquiry & Professional Inquiry Costs & Expenses** - this new Insuring Clause replaces the Professional Inquiries Extension. Cover has been expanded to include Self-Reports and Internal Inquiries and the definition of Professional Inquiry has been broadened, as detailed under Definitions below. As a consequence of this new Insuring Clause, Self-Report, Internal Inquiry and Professional Inquiry have also been incorporated throughout the policy wording, where required.

#### New Extensions

- ▶ ASIC Administrative Action – Appeal Costs & Expenses
- ▶ Contractual Liability
- ▶ Cost of Living Expenses
- ▶ **Advancement of Costs & Expenses** - this previous Insurance Clause is not included as an extension.
- ▶ **New Disclosure Documents** - this extension has been revised to more clearly reflect intent. The exceptions to automatic cover have been narrowed by removal of “Canada” and “absolute return fund” and the replacement of “property development fund” with “property development finance fund”. The window period applicable to the exceptions has increased from 45 days to 90 days.
- ▶ Court Attendance Costs
- ▶ Emergency Expenses
- ▶ Limitation of Liability Contracts
- ▶ Cyber (optional)
- ▶ Loss Mitigation & Rectification (optional)
- ▶ Proportionate Liability (optional)
- ▶ Reinstatement (optional)

- ▶ **New Funds** - this extension has been revised to more clearly reflect intent. The exceptions to automatic cover have been narrowed by removal of “Canada” and “absolute return fund” and the replacement of “property development fund” with “property development finance fund”. The window period applicable to the exceptions has increased from 45 days to 90 days.
- ▶ **New Subsidiaries** - this extension has been revised to more clearly reflect intent. “Insured Fund” has been removed by replacement of “subsidiary of the Insured Organisation” with “subsidiary of the Named Insured”. “Canada” has been removed from the exceptions to automatic cover at (b) and (c), while (d) in relation to prior claims has been deleted. The window period applicable to the exceptions has increased from 45 to 90 days.
- ▶ **Public Relations Expenses** - this extension has been broadened to include the reasonable costs and expenses incurred by the Insured in seeking advice from a public relations firm or consultant solely: (a) “for the benefit of protecting the Insured Organisation’s reputation as a provider of Professional Services, as a result of the departure (other than a voluntary resignation or planned retirement) of a key investment manager which occurs during the Policy Period and is reported to Liberty during the Policy Period” and (c) “for the purpose of disseminating the findings of a Final Adjudication in favour of an Insured arising from Professional Services performed by an Insured which have led to a Claim, Self-Report, Internal Inquiry or Professional Inquiry directly pertaining to an Insured”.
- ▶ **Deemed Employees** - this extension now includes “deemed workers” of an “Insured Fund”, given that “Named Insured or its Subsidiaries” has been replaced with “Insured Organisation”.
- ▶ **Period of Grace** - this extension has been incorporated into the Extended Reporting Period General Condition. The automatic extended reporting period has increased from 45 days to 90 days and an optional 12 month extended reporting period is now available.
- ▶ **Intellectual Property Rights** - this extension offers broader jurisdictional cover as the jurisdictional exception has been narrowed by removal of “Canada”.
- ▶ **Loss of Documents** - this extension has been revised to replace “any computer virus” with “Malicious Code” (now a defined term) in exception (b).
- ▶ **External Dispute Resolution** - this extension now incorporates the exception for “any amounts for or arising out of any fees payable to, or associated with membership of, an ASIC Approved External Dispute Resolution Scheme”, which was previously applied by endorsement.
- ▶ **ASIC Act Extension, Breach of Confidentiality Extension, Competition & Consumer Act Extension and Interference with Privacy Extension** - these extensions have been removed as cover is provided under the broad civil liability Insuring Clause.
- ▶ **Anti-Competitive Practices** - this exclusion has been revised by replacing “any contravention of the provisions in Part IV, IVA and IVB of the Competition & Consumer Act 2010 (Cth)” with “any contravention of the anti-competitive provisions of the Competition & Consumer Act 2010 (Cth)”.
- ▶ **Contractual Liability & Commercial Risks** - this exclusion has been revised to add “(f) any amount recoverable by a liquidator or receiver pursuant to the Corporations Act 2001 (Cth) with respect to an unfair preference or uncommercial transaction in relation to a loan or debt facility”.
- ▶ **Defamation** - this new exclusion is required for the correct operation of the Defamation Extension.

- ▶ **Fraud & Dishonesty** - this exclusion has been revised at (a) to remove “wilful” and “grossly reckless” and replace “conduct” with “act or omission”. Additional exclusion (b) “improper use of position or information by any Insured Person for the purpose of gaining any profit, benefit or advantage to which such Insured Person or an Agent is not legally entitled” has been added. Final Adjudication is now a defined term linked to legal, administrative or regulatory proceedings and is no longer established by admission.
- ▶ **Penalties & Punitive Damages** - this exclusion has been narrowed at (b) by removing “aggravated” and “multiple” and restricting application to exemplary or punitive damages pursuant to USA law.
- ▶ **Prior Matters** - this exclusion has been condensed to more clearly reflect intent.
- ▶ **Related Parties** - this exclusion has been revised to now also exclude any Claim made by or on behalf of “(b) any child, sibling, spouse, partner, parent or dependant of an Insured”. Furthermore, “any entity which is owned, controlled or managed by an Insured” has been replaced with “any entity or trustee of a trust which is owned, controlled or managed by any (i) Insured; (ii) child, sibling, spouse, partner, parent or dependant of an Insured; or (iii) parent company or other entity which owns, controls or manages any Insured.”
- ▶ **War, Terrorism & Nuclear** - this exclusion has been removed.

## Part B: Directors & Officers Liability

### New Insuring Clause

**Insuring Clause 5.3 Self-Report, Internal Inquiry & Management Inquiry Costs & Expenses** - this new Insuring Clause replaces the Management Inquiries Extension. Cover has been expanded to include Self-Reports and Internal Inquiries and the definition of Management Inquiry has been broadened, as detailed under Definitions below. As a consequence of this new Insuring Clause, Self-Report, Internal Inquiry and Management Inquiry have also been incorporated throughout the policy wording, where required.

### New Extensions

- |                                   |                           |                               |
|-----------------------------------|---------------------------|-------------------------------|
| ▶ Asset & Liberty Expenses        | ▶ Cost of Living Expenses | ▶ Personal Taxation Liability |
| ▶ Bail Bond & Civil Bond Expenses | ▶ Court Attendance Costs  |                               |
- ▶ **Advancement of Costs & Expenses** - this previous Insuring Clause is now included as an extension.
  - ▶ **New Disclosure Documents** - this extension has been revised to more clearly reflect intent. The exceptions to automatic cover have been narrowed by removal of “Canada” and “absolute return fund” and the replacement of “property development fund” with “property development finance fund”. The window period applicable to the exceptions has increased from 45 days to 90 days.
  - ▶ **New Funds** - this extension has been revised to more clearly reflect intent. The exceptions to automatic cover have been narrowed by removal of “Canada” and “absolute return fund” and the replacement of “property development fund” with “property development finance fund”. The window period applicable to the exceptions has increased from 45 days to 90 days.

- ▶ **New Subsidiaries** - this extension has been revised to more clearly reflect intent. "Insured Fund" has been removed by replacement of "subsidiary of the Insured Organisation" with "subsidiary of the Named Insured". "Canada" has been removed from the exceptions to automatic cover at (b) and (c), while (d) in relation to prior claims has been deleted. The window period applicable to the exceptions has increased from 45 to 90 days.
- ▶ **Public Relations Expenses** - this extension has been broadened to include the reasonable costs and expenses incurred by an Insured Person in seeking advice from a public relations firm or consultant solely for: (a) "the benefit of protecting the Insured Organisation's reputation as a result of the departure (other than a voluntary resignation or planned retirement) of a key investment manager which occurs during the Policy Period and is reported to Liberty during the Policy Period" or (c) "the purpose of disseminating the findings of a Final Adjudication in favour of an Insured Person arising from a Claim, Internal Inquiry or Management Inquiry directly pertaining to an Insured Person".
- ▶ **Emergency Expenses** - the 10% cap on costs and expenses under this extension has been removed and replaced with "reasonable" costs which can be incurred up to 30 days without consent.
- ▶ **Employment Practices Liability** - the territorial and jurisdictional cover under this this optional extension has been expanded from Australia and New Zealand only to worldwide, excluding USA.
- ▶ **Fines & Penalties** - this extension replaces the Pecuniary Penalties extension and has been substantially revised, given that the Penalties & Punitive Damages exclusion has been replaced with the United States of America: Penalties & Punitive Damages exclusion.
- ▶ **Lifetime Run-Off Cover for Former Insured Persons** - this extension replaces the Former Directors & Officers extension. The 84 month run-off cover in the event of a Change in Control is now replaced with an indefinite extended reporting period for former Insured Persons in the event of either a Change in Control or failure to renew or replace the policy.
- ▶ **Outside Directorships** - this extension has been substantially revised with fewer and narrower exclusions and restrictions.
- ▶ **Period of Grace** - this extension has been deleted and incorporated into the Extended Reporting Period General Condition. The automatic extended reporting period has increased from 45 days to 90 days and an optional 12 month extended reporting period is now available.
- ▶ **Additional Side A Limit** - this optional extension replaces the Additional Limit for Non-Executive Directors, with cover expanded to now apply to any Director. The \$5M additional limit has been removed from this extension and the quoted additional limit will be included in the Schedule.
- ▶ **Consensual Claims** - this exclusion has been removed.
- ▶ **Fraud & Dishonesty** - this exclusion has been revised at (a) to remove "wilful" and "grossly reckless" and replace "conduct" with "act or omission". Additional exclusions (b) "improper use of position or information by any Insured Person for the purpose of gaining any profit, benefit or advantage to which such Insured Person is not legally entitled" and (c) "any conduct of or contravention by such Insured with respect to which a prohibition in section 199B of the Corporations Act (Cth) applies" have been added. Final Adjudication is now a defined term linked to legal, administrative or regulatory proceedings and is no longer established by admission or declaratory proceedings.

- ▶ **Pollution** - as the Pollution exclusion has been removed, the Pollution Defence Costs extension and the Shareholder Pollution Claims extension are no longer required and have both been removed.
- ▶ **Prior Matters** - this exclusion has been condensed to more clearly reflect intent.
- ▶ **United States of America Insured Organisation versus Insured** - this exclusion replaces the North America Insured versus Insured exclusion and now applies only to claims brought by or on behalf of an Insured Organisation within USA or subject to USA law.
- ▶ **War, Terrorism & Nuclear** - this exclusion has been removed.

## Part C: Crime

### New Extensions

- ▶ Court Attendance Costs.
- ▶ **Kidnap Expenses** - this extension has been updated with the addition of Iran, Mindanao, Syria & Yemen as excluded countries.
- ▶ **New Funds** - this extension has been revised to more clearly reflect intent. The exceptions to automatic cover have been narrowed by removal of “Canada” and “absolute return fund” and the replacement of “property development fund” with “property development finance fund”. The window period applicable to the exceptions has increased from 45 days to 90 days.
- ▶ **New Subsidiaries** - this extension has been revised to more clearly reflect intent. “Insured Fund” has been removed by the replacement of “subsidiary of the Insured Organisation” with “subsidiary of the Named Insured”. “Canada” has been removed from the exception to automatic cover at (b), while (c) in relation to prior claims has been deleted. The window period applicable to the exceptions has increased from 45 to 90 days.
- ▶ **Public Relations Expenses** - this extension has been broadened to include the reasonable costs and expenses incurred by the Insured Organisation in seeking advice from a public relations firm or consultant solely for (b) “the purpose of disseminating the findings of a Final Adjudication in favour of an Insured arising from a Direct Financial Loss covered under Part C of this Policy”.
- ▶ **Period of Grace** - this extension has been deleted and incorporated into the Extended Reporting Period General Condition. The automatic extended reporting period has increased from 45 days to 90 days.
- ▶ **War, Terrorism & Nuclear** - this exclusion has been removed.

### New Definitions

- |                            |                             |                                       |
|----------------------------|-----------------------------|---------------------------------------|
| ▶ Co-insurance Percentage  | ▶ Extended Reporting Period | ▶ Insured’s Network                   |
| ▶ Cost of Living Expenses  | ▶ Extortion Demand          | ▶ Malicious Code                      |
| ▶ Denial of Service Attack | ▶ Extortion Monies          | ▶ Proportionate Liability Legislation |
|                            | ▶ Extradition Proceeding    | ▶ Self-Report                         |
|                            | ▶ Final Adjudication        | ▶ Tangible Property                   |
|                            |                             | ▶ Third Party Network                 |
- ▶ **Claim** - expanded with more consistent language used in respect of Parts A & B. Aggregation language has been moved into the Limit of Liability General Condition.
  - ▶ **Direct Financial Loss** - aggregation language has been moved into the Limit of Liability General Condition.

- ▶ **Management Inquiry** - expanded to encompass industry-wide inquiries. It is no longer a requirement that the Insured must be legally required to attend or that the findings could lead to a covered Claim.
- ▶ **Professional Inquiry** - expanded to encompass industry-wide inquiries. It is no longer a requirement that the Insured must be legally required to attend or that the findings could lead to a covered Claim.
- ▶ **Professional Services** - expanded to include "marketing and fund raising" and "administration, custodial or registry services".
- ▶ **Pollutant** - this definition has been removed.
- ▶ **Property** - expanded to include "Tangible Property".
- ▶ **Securities Claim** - expanded to include "criminal proceeding".
- ▶ **Wrongful Act** - expanded language at (a).

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