

# Financial Institutions Professional Indemnity Policy

## **THIS IS A CLAIMS MADE POLICY WORDING.**

**WHEREAS** the Insured has made to us, the Insurer, a Proposal, which is hereby agreed to be the basis of this Policy and has paid to the Insurer the premium specified in the Schedule.

**NOW THE INSURER** agrees, subject always to the following terms, exclusions, limitations and conditions, to indemnify the Insured in excess of the amount of the Deductible and subject to the Limit of liability, against such loss as is herein provided

## **INSURING CLAUSE**

This Policy subject to its terms, exclusions, limitations and conditions provides an indemnity to the Insured in respect of the Insured's legal liability for any Claims which meets the following requirements:

Any Claim must:

- i) be brought against the Insured by a third party; and
- ii) be for compensatory damages, such indemnity to include claimant costs and the Insured's approved defence costs and expenses; and
- iii) be first made against the Insured during the policy period; and
- iv) be reported to the Insurer in accordance with the requirements set out at Condition 7 of this Policy; and
- v) be for financial loss caused by a Wrongful Act on the part of an Officer or Employee of the Insured; and
- vi) arise out of the ordinary course of the provision by the Insured of the Financial Services described in the Proposal; and
- vii) be brought against the Insured for determination solely; and
- viii) arise from any Wrongful Act which was or may have been or is alleged to have been committed solely within the Country of Jurisdiction as specified in Item 9 of the Schedule; and
- ix) relate to a Wrongful Act which was or may have been or is alleged to have been committed after the Retroactive Date specified in the Schedule hereto.

## **CONDITIONS**

### **1. LIMIT OF LIABILITY**

- a) The total liability (inclusive of Damages, Defence Costs and Expenses, claimant costs and the Insured's approved defence expenses and regardless of the total number or amount of Claims made against the Insured) of the Insurers shall not exceed the sum stated in Item 6 of the Schedule for each and every claim and in the aggregate, for all Claims made against the Insured during the Policy Period.
- b) If it appears to the Insurers that the likely liability of the Insured in connection with any Claim or series of Claims is likely to exceed the Limit of liability, or if the Insured consents, then the Insurers may pay to the Insured the amount of the Limit of liability as shown in the Schedule (or the amount remaining after deduction of any sum or sums already paid by the Insurers whether as Damages, Defence Costs and Expenses) and upon such payment being made the Insurers shall be under no further liability in connection with the Claim or Claims in respect of which such payment has been made and shall (except with respect to any rights of subrogation) relinquish the conduct and control of such Claim or Claims.
- c) Regardless of the number of years this Insurance has been in force or may continue to be in force and of the premiums paid or payable in respect thereof the liability of the Insurers shall not be cumulative in amount from year to year or from period to period and in no case shall exceed the sum stated in Item 6 of the Schedule.

### **2. DEDUCTIBLE & CLAIMS SERIES**

Subject to the Limit of liability, the Insurers shall be liable only for that part of the Damages, Defence Costs and Expenses of each and every Claim which exceeds the Deductible stated in Item 7 of the Schedule.

The Deductible shall apply to each and every Claim and shall be subject to no aggregate limitation.

If a series of third party claims shall result from any single negligent act, negligent error or negligent omission (or related series of negligent acts, negligent errors or negligent omissions) then, irrespective of the total number of claims, all such third party claims shall be considered to be a single third party claim and only one Deductible shall apply.

### **3. RECOVERIES**

All recoveries from third parties for payments made under this Policy shall be applied (after first deducting the costs and expenses incurred in obtaining such recovery) in the following order of priority:

- i) The Insured shall first be reimbursed for the amount by which their legal liability exceeds the Limit of liability provided by this Policy.
- ii) The Insurers shall then be reimbursed for the amount of their liability under this Policy.
- iii) Any remaining sum shall be applied towards reimbursement of the Deductible borne by the Insured under this Policy.

### **4. SUBROGATION**

The Insurers agree to waive any rights of subrogation against any Officer or Employee of the Insured except where such Officer or Employee has the benefit of a separate relevant insurance.

### **5. DEFENCE AND DEFENCE COSTS AND EXPENSES**

- a) The Insurers shall not be liable to pay any defence costs and expenses unless the express written consent of the Insurers is obtained prior to such costs and expenses being incurred, which consent shall not unreasonably be withheld.
- b) The Insurers shall not be required hereunder to assume the handling or control of the defence or settlement of any third party claim made against the Assured but shall have the right (but not the duty) to take over at any time the control of the defence or settlement or compromise of any third party claim which is or might be the subject of indemnity under this Policy if the Insurers in their discretion deem it appropriate to do so.
- c) Insofar as any third party claim or claims fall within the Limit of Indemnity provided hereunder, then the Insurers shall have discretion to negotiate a settlement thereof including the admission of liability if the Insurers in their sole and absolute discretion deem it appropriate to do so and the Deductible stated in Item 7 of the Schedule hereto shall apply to any such settlement whether made with the Insured's consent or otherwise provided always that prior to any settlement or admission of liability being made the Insurers shall consult with the Insured who shall not unreasonably withhold their consent to such settlement and/or admission of liability.
- d) If the Insurers appoint a representative to report to them upon any Claim then those costs so incurred by the Insurers (as distinguished from defence costs and expenses) shall not form part of the Limit of liability or the Deductible.

### **6. NON-ADMISSION OF LIABILITY**

It is a condition precedent to the Insurers' liability that the Insured shall not admit liability for or settle any Claim made against the Insured without the prior written consent of the Insurers. Nevertheless, the Insured shall not be required to contest any legal

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proceedings to trial unless Counsel, to be mutually agreed upon by the Insured and the Insurers (or if not so agreed, as determined in the manner set out in Clause 5 above in relation to the selection of Counsel), shall advise that such proceedings should be contested.

## 7. MEANING OF CLAIMS MADE AND NOTICE PROVISIONS

For the purposes of this Policy, a Claim is considered to be made when the Insured first:

- a) receives a written demand for damages of the type covered by this Policy, including the service of suit or institution of legal or arbitration proceedings; or
- b) becomes aware of the intention of any person to make such a demand against them; or
- c) becomes aware of any fact, circumstance or event which could reasonably be anticipated to give rise to such a demand at any future time.

It is a condition precedent to the Insurers' liability that written notice of any such Claims made shall be given by the Insured at the earliest practicable moment and in any event within 45 days of a Claim being made against the Insured.

Any subsequent legal proceedings for damages brought against the Insured as a direct result of any matter or matters for which written notice has been given under b) or c) above, whether such proceedings are brought during or after the expiration of the Policy Period, is considered to be a Claim first made against the Insured at the time the Insured first became aware of the said matter or matters. It is agreed, however, that the Insurers shall have no liability for any such matter or matters which do not result in legal proceedings being brought against the Insured within three (3) years of the date of said written notice.

Upon receipt of written notice of any Claim (as defined above) the Insurers shall be entitled to appoint a representative to investigate the claim on their behalf and it is a condition precedent to the Insurers' liability that the Insured shall co-operate fully with any Insurers' representative in the conduct of his enquiries, including but not limited to making available to him all necessary information and documentation as he may require together with facilities for the interviewing of all the Insured's personnel whom the representative may consider to be relevant to his enquiries.

## 8. WARRANTY

It is warranted that the statements and particulars in the Proposal referred to in Item 5 of the Schedule and any supplementary information pertaining thereto provided by or on behalf of the Insured are the basis of this Policy and shall be deemed incorporated herein.

The Insured agrees, by acceptance of this Policy :

- a) that the statements and particulars in the Proposal, and any supplementary information, are their representations and that this Policy is issued in reliance upon the truth of such representations; and
- b) that in the event of the Proposal, or any supplementary information, containing misrepresentations which materially affect the acceptance of risk hereunder by the Insurers this Policy shall be void in its entirety and be of no effect whatsoever.

## 9. FRAUDULENT CLAIMS

If the Insured shall make any claim for indemnity knowing the same to be false or fraudulent, as regards amount or otherwise, this Policy shall be void in its entirety and be of no effect whatsoever and all claims for indemnity hereunder shall be forfeited.

## 10. JURISDICTION

- a) The indemnity provided by this Policy shall apply only to final judgements against the Insured in UAE and not to judgements obtained elsewhere nor to judgements or orders obtained elsewhere for enforcement in Insurer whether by way of reciprocal agreements or otherwise.
- b) It is agreed between the Insurers and the Insured that the premium for this Policy has been calculated accordingly and no consideration has been paid in respect of liabilities arising under any other law or the jurisdiction of any other Courts.

## 11. MATERIAL CHANGES

- a) Change of Control of the Insured

In the event of there being any change in the effective ownership or control of the Insured whether financial or otherwise and whether occurring by operation of law, voluntary act on the part of the Insured or by merger, purchase or sale of assets or shares or in any other way then cover under this Policy shall thenceforth cease in respect of all and any Claims first made thereafter unless the Insurers agree in writing to the continuation of the Policy and then only upon such terms as may be stipulated by Insurers and after the payment of any additional premium that may fall due.

- b) Merger, Purchase or Acquisition

In the event that the Insured shall merge with or purchase or otherwise acquire all or any of the undertaking, assets or liabilities of another business this Policy shall not afford any coverage of any kind for any Claim which involves any Wrongful Act which arises or occurs directly or indirectly out of or in relation to all and any of such undertaking, assets or liabilities or their acquisition unless and until the Insured shall have obtained the Insurers agreement in writing to the extension of cover under the Policy in relation to the same and then only upon such terms as may be stipulated by Insurers after full disclosure of all material facts by the Insured and after the payment of any additional premium that may fall due.

- c) Other Material Changes

In the event of any other material change in the facts and circumstances disclosed to the Insurers in the Proposal Form and supplementary information which may increase the risk accepted by the Insurers hereunder the Insured shall as soon as practicable and in any event within 15 days give written notice to the Insurers of any such change until such time as Insurers offer the Insured a continuation of cover as provided for under Condition

## 12. TERMINATION PROVISIONS

This Policy shall terminate:

- a) immediately in the event of the occurrence of any of the events providing for termination set forth in Condition 11;
- b) immediately as to any subsidiary of the Insured in the event of the occurrence of any of the events set forth in Condition 11 in relation to such subsidiary;

unless in any such case the Insurers, after having been furnished with all relevant particulars relating to the event, have offered revised terms and conditions as to the continuation of cover and such terms and conditions have been accepted by the Insured and after the payment of any additional premium that may fall due;

- c) upon receipt by the Insurers of a written request by the Insured to terminate the Policy in which event the Insurers will retain premium at the customary short period scale, provided that

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there has been no Claim under the Policy during the Policy Period in which case no refund of premium shall be allowed.

## 13. OTHER INSURANCE

This Policy does not cover any loss which is insured by or would but for the existence of this Policy be insured by, any other existing Policy or Policies, except in respect of any excess (not exceeding the Limit of liability stated in Item 6 of the Schedule) beyond the amount which would have been payable under such other Policy or Policies, including any deductible applicable thereunder, had this Policy not been effected.

## 14. INTERPRETATION

The construction, interpretation and meaning of the provisions of this Policy shall be determined in accordance with Insurern law.

## 15. ARBITRATION

- a) Any and all disputes or differences which may arise under, out of, in connection with or in relation to this Policy, or to its existence, validity or termination, or to the determination of the amount or any amounts payable under this Policy, shall be referred to a sole arbitrator to be appointed by the parties to the dispute within 30 days of any party giving notice of arbitration to the other(s).
- b) In the event that the parties are unable to agree upon the identity of a sole arbitrator, the disputes or differences shall be referred to the decision of 3 arbitrators of whom one shall be appointed in writing by each of the parties within a period of 30 days after the failure to appoint a sole arbitrator and the third (who shall serve as Chairman) shall be appointed by the nominated arbitrators. In case either party shall refuse or fail to appoint an arbitrator within the aforesaid 30 days after receipt of notice in writing requiring an appointment, the other party shall be at liberty to appoint a sole arbitrator who shall thereafter be empowered to conduct the arbitration and determine the disputes or differences referred to him as if he had been appointed a sole arbitrator with the consent of both parties.
- c) The parties shall share the expenses of the arbitrator or arbitral tribunal equally and such expenses, along with the reasonable costs of the parties in the arbitration, shall be awarded by the arbitrator or arbitral tribunal in favour of the successful party in the arbitration or, where no party can be said to have been wholly successful, to the party who has substantially succeeded.
- d) The place of arbitration shall be Insurer, the language of the arbitration shall be English, the law applicable to and in the arbitration shall be Insurern law and the arbitration process will be in accordance with the provisions of the Arbitration & Conciliation Act 1996, as amended from time to time.
- e) It is a condition precedent to any right of action or suit upon this Policy that the award by such arbitrator or arbitrators shall be first obtained.
- f) In the event that these arbitration provisions shall be held to be invalid then all such disputes shall be referred to the exclusive jurisdiction of the Insurern courts.

## DEFINITIONS

1. "Insured" shall mean the entity first named in Item 1 of the Schedule and shall include any majority owned and controlled banking subsidiary companies which are named therein and which are also named and included in the written Proposal.
2. "Officers and Employees" shall mean:

- a) the Insured's officers also any full time and part time employees (including a Director of the Insured who is employed as an officer or other salaried employee) while acting in the ordinary course of their employment by the Insured; and
- b) a Director of the Insured (other than one who is employed as an officer or other salaried employee) but only while performing acts coming within the scope of the usual duties of an officer or employee and not while acting in any other capacity.

and for the avoidance of doubt shall not include agents or consultants or sub-contractors or independent professional advisers.

3. "Affiliate" shall mean any entity in which the Insured holds, directly or indirectly, less than 51% but more than 10% of the outstanding shares.
4. "Proposal" shall mean the application for insurance completed by the Insured and any supplementary information provided in respect thereof by or on behalf of the Insured.
5. "Wrongful Act" means any actual or alleged negligent act, error or omission including any breach of duty, misstatement, misleading statement, misrepresentation or omission by an Insured on or after the Retroactive Date and solely in the performance of the Financial Services detailed by the Insured in the Proposal.

## EXCLUSIONS

This Policy shall not indemnify the Insured in respect of :

1. Any legal liability assumed by the Insured
  - a) under the terms, conditions or warranties of any contract or agreement,
  - or
  - b) by virtue of any waiver or release from liability of any third party, except to the extent that liability would have attached to the Insured in the absence thereof.
2. Any legal liability arising from or contributed to by any actual or attempted dishonest, fraudulent, criminal or malicious act or omission of the Insured or of any Director or of any Officer or Employee or of any sub-contractor, consultant or agent of the Insured.
3. Any legal liability arising from or contributed to by
  - a) any bodily, mental or emotional injury, sickness or disease, or by death,
  - or
  - b) any loss of or damage to property, of any third party.
4. Any legal liability arising from or contributed to by any loss of or damage to any goods or other property, including securities, documents and written instruments of every kind, whether owned by the Insured, held by the Insured in any capacity or for which the Insured may be liable.
5. Any legal liability arising from or contributed to by any actual or attempted breach of any laws, enactments or regulations relating to all and any of the constitution, operation and conduct of the Insured and/or the business or operations of the Insured in all and any jurisdictions directly or indirectly relevant to any of the same.
6. Any legal liability arising from or contributed to by the Insured having refused to provide any financing or refused to fulfill any actual or alleged commitment to make any loan or transaction in the nature of a loan or a lease or an extension of credit, whether such commitment was authorised or unauthorised.
7. Any legal liability arising from any fact, circumstance or event wherein any Claim against the Insured would be compensable

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under a Bankers Blanket Bond or equivalent policy irrespective of the amount thereof and whether or not such a policy is actually maintained by the Insured.

8. Any claim by or on behalf of or at the behest of the Insured's parent company, or any Subsidiary or Affiliate of the Insured or of the Insured's parent company, or any company or other entity in which the Insured, or Officers or Employees of the Insured, have an executive or controlling interest.
9. Any Claim arising out of the insolvency of the Insured.
10. Any Claim involving or arising out of a fact, circumstance or event which occurred prior to the Retroactive Date hereof and/or which was notified to any insurer(s) prior to the inception of this Policy.
11. Any Claim involving or arising out of a fact, circumstance or event the awareness of which would cause a reasonable person to believe that it could give rise to a Claim against the Insured and of which fact, circumstance or event the Insured was actually aware or should reasonably have been aware prior to the inception date of this Policy.

For the avoidance of doubt it is declared and agreed that this provision is without prejudice to any rights of the Insurers to treat the said fact, circumstance or event as a non-disclosure or misrepresentation of a material fact entitling the Insurers to elect to treat this Policy as void from its inception.

12. Any fines, penalties, punitive or exemplary damages and any multiple damages except for the single compensatory amount of damages prior to such multiplication
13. Any claim made against the Insured by or on behalf of or at the behest of any central or state government, governmental body, quasi-governmental body or governmental agency, except when acting solely in the capacity of a client of the Insured.
14. Any suit or legal proceeding brought by or on behalf of or at the behest of a shareholder or shareholders of the Insured in their capacity as such.
15. Any Claim arising from or contributed to by depreciation (or failure to appreciate) in value of any investments, including but not limited to securities, commodities, currencies, options and futures transactions, or as a result of any actual or alleged representation, guarantee or warranty provided by or on behalf of the Insured as to the performance of any such investments.

It is agreed however that this Exclusion 15 shall not apply to any loss due solely to negligence on the part of an Officer or Employee of the Insured in failing to effect a specific investment transaction in accordance with the specific prior instructions of a client of the Insured.

16. Any legal liability arising from or contributed to by loss of value, surrender value or cancellation value of any leased product or service as a result of fluctuations in value of such product or service.
17. Any Claim for the reimbursement of fees, commissions, costs or other charges paid or payable to the Insured, or, any Claim based upon allegations against the Insured of excessive fees, commissions, costs or other charges.
18. Any legal liability arising from or contributed to by any failure to provide insurance of any kind, whether such failure concerns the amount, existence or adequacy of such insurance or otherwise.

It is agreed however that this Exclusion 18 shall not apply to any loss due solely to negligence on the part of an Officer or Employee of the Insured in failing to effect or maintain a specific insurance in accordance with the specific prior instructions of a client of the Insured.

19. Any legal liability of whatsoever nature directly or indirectly caused by or arising from :

- a) Ionising radiations or contaminations by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.
- b) The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

20. Any Claim emanating from any actual or attempted

- a) merger, purchase or acquisition of another business by the Insured, or
- b) purchase or sale transactions in the shares of the Insured, the Insured's parent company or any Subsidiary or Affiliate.

except however when the Insured is acting upon the specific instructions of a client of the Insured.

21. Any legal liability arising from or contributed to by any actual or alleged seepage, pollution or contamination of any kind.
22. Any legal liability which arises directly or indirectly by reason of or in connection with war, invasion, act of foreign enemy, hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, martial law, or the act of any lawfully constituted Authority.
23. Any legal liability as a result of loss sustained by a third party arising from or contributed to by advice given by the Insured in connection with Hedging transactions.

It is agreed however that this Exclusion 23 shall not apply to any loss due solely to negligence on the part of an Officer or Employee of the Insured in failing to effect a specific Hedging contract in accordance with the specific prior instructions of a client of the Insured.

For the purposes of this exclusion "Hedging" means the arranging of one or more contracts specifically to protect against movement in prices or values, including but not limited to foreign exchange, commodities and securities of every description.

## Grievance Lodgment Stage

The Company is committed to extend the best possible services to its customers. However, if you are not satisfied with our services and wish to lodge a complaint, please feel free to contact us through below channels:

### Nodal Officer

Please visit our website to know the contact details of the Nodal Officer for your servicing branch.

After investigating the grievance internally and subsequent closure, we will send our response within a period of 10 days from the date of receipt of the complaint by the Company or its office in Mumbai. In case the resolution is likely to take longer time, we will inform you of the same through an interim reply.

### Escalation Level 1

For lack of a response or if the resolution still does not meet your expectations, you can write to manager. After investigating the matter internally and subsequent closure, we will send our response within a period of 8 days from the date of receipt of your complaint.

## **Escalation Level 2**

For lack of a response or if the resolution still does not meet your expectations, you can write to the Head-Customer Services. After examining the matter, we will send you our response within a period of 7 days from the date of receipt of your complaint. Within 30 days of lodging a complaint with us, if you do not get a satisfactory response from us and you wish to pursue other avenues for redressal of grievances. Given below are details of the Insurance Ombudsman located at various centers.