

Policy document

Directors' and Officers' Liability for Residents' Associations

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A warm welcome to Zurich

Thank **you** for taking out **your** Directors' and Officers' Liability for Residents' Associations' Insurance policy with **us** – and welcome to Zurich Insurance Company.

As one of the largest general insurers in the UK, **we** have a wealth of expertise and experience backed up by the global strength of the Zurich Financial Services Group. Zurich is renowned for innovation and customer dedication – **our** experts are constantly reviewing how **we** can update and improve **our** products and services for **you**.

At Zurich Insurance **we** have **your** future in mind and look forward to working closely with **you**.

Directors' and Officers' Liability for Residents' Associations policy

The policy, schedule and any endorsements should be read as if they were one document.

The policy is a contract between **you** and **us**. **You** have made to **us** a proposal, which is the basis of and forms part of the contract.

We will insure **you** under those sections shown in the schedule during any Period of Insurance for which **we** have accepted your premium provided all the terms and conditions of the policy are kept.

Law applicable to the contract

UK law allows both **you** and **us** to choose the law applicable to the contract. The contract will be subject to the relevant law of the United Kingdom, the Isle of Man or the Channel Islands relating to **your** address as shown in the schedule. If there is any dispute as to which law applies it shall be English law.

The parties agree to submit to the exclusive jurisdiction of the English courts.

For and on behalf of Zurich Insurance Company.



Ian Stuart
Chief Executive

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

Please read the policy, insurance agreement and schedule carefully.

If they do not meet **your** needs return them to **us** or **your** broker or agent.

How we will use your data

Zurich Insurance Company holds data in accordance with the Data Protection Act 1998. It may be necessary for **us** to pass data to other organisations that supply products and services associated with this contract of insurance. In order to verify information, or to prevent and detect fraud, **we** may share information **you** give **us** with other organisations and public bodies, including the Police, accessing and updating various databases. If **you** give **us** false or inaccurate information and **we** suspect fraud, **we** will record this and the information will be available to other organisations that have access to the database(s). **We** can supply details of the databases **we** access or contribute to, on request.

Directors' and Officers' Liability for Residents' Associations

This is a claims made policy and covers only claims first made during the Period of Insurance. The contents and section headings are for ease of reference only and do not affect the interpretation of the policy.

Please read this policy carefully.

This policy consists of:

- the schedule
- policy form PI7/A
- the endorsements (if applicable).

Section 1

Cover

In consideration of the payment of the premium and subject to all the terms, conditions and limitations of this policy we agree with you and any **director or officer** that:

- a) we will pay on behalf of any **director or officer** such **financial loss** as arises from any claim first made against him or her jointly or severally during the **Period of Insurance** by reason of any **wrongful act**.
- b) payment of **defence costs** will be made in accordance with Section 3 of this policy.

Section 2

Extended reporting period

- 2.1** In the event of non-renewal of this policy **you** shall have the right upon payment of 50% of the premium stated in Item 4 of the schedule to an extension of the **Period of Insurance** in respect of any claim or claims made against any **director or officer** during the 365 days after the expiry date of the **Period of Insurance** but only in respect of any **wrongful act** committed prior to the expiry date.
- 2.2** The right contained in Section 2.1 shall terminate unless written notice of **your** intention to purchase the extended reporting period is given to **us** within 30 days of the expiry date. The additional premium shall be paid promptly.
- 2.3** The offer by **us** of terms, conditions, limits of liability or premiums at the expiry date of the policy different from those of the expiring policy shall not constitute a refusal to renew.

Section 3

Defence costs and settlements

It shall be the duty of any **director or officer** against whom a claim is made to take all reasonable steps to defend such claim and not to do anything to prejudice **our** position.

- 3.1** We shall have no duty to defend any claim made against any **director or officer** but shall have the right to be provided with all such information concerning such claim as **we** shall reasonably require and shall be kept fully informed as to all matters relating to or concerning the investigation, defence and settlement of any such claim as may potentially be covered by this policy and shall have the right to receive copies of all relevant documentation relating thereto whensoever created.
- 3.2** No **director or officer** shall be required by **us** to contest any legal proceedings which may be brought against him or her unless a suitable legal advisor, mutually agreed upon by the director or officer and **us**, shall advise that the claim should be contested in which event the **director or officer** shall provide all such assistance to those persons representing them in the course of such legal proceedings or as may reasonably be necessary to contest such legal proceedings.
- 3.3** We will make payments of defence costs as and when such defence costs fall due. Any payments of defence costs which have been made by **us** shall be repaid to **us** by the person on whose behalf such payments have been made in the event and to the extent that it is established that such person had no entitlement to payment of **financial loss** under the terms and conditions of this policy. No defence costs shall be incurred and no legal representative shall be retained to defend any **director or officer** or to take any step in connection with any legal proceedings as may potentially be covered by this policy and no settlement of any such claim shall be made without **our** consent, such consent not to be unreasonably withheld.
- 3.4** In the event that a claim is made against the **residents' association** and any **director or officer** and/or any uninsured defendants and/or includes both **financial loss** which is covered and **financial loss** (including defence costs) which is not covered **we**, the **residents' association** and the **director or officer** shall use all reasonable endeavours to determine a fair allocation between **financial loss** which is covered and **financial loss** (including defence costs) which is not covered and between the **residents' association**, the **director or officer** and any uninsured defendants.

Section 4

Acquisition of subsidiaries

- 4.1** You shall notify **us** in writing as soon as possible of the creation or acquisition of any **subsidiary**. **We** reserve the right to vary the terms of this policy following such notification.
- 4.2** This policy shall not apply in respect of claims arising from **wrongful acts** of any **director or officer** of any **subsidiary** committed prior to its acquisition by the **residents' association** unless agreed by endorsement hereon.

Section 5

Definitions

For the purposes of this policy:

5.1 Residents' association

Residents' association shall mean:

- 1 you; and
- 2 any subsidiary of you.

5.2 Defence costs

Defence costs are part of **financial loss** and shall mean fees, costs, charges and expenses, other than remuneration payable to any **director or officer** or employees of the **residents' association**, incurred with **our** written consent (such consent not to be unreasonably withheld) in the investigation, defence, adjustment, settlement or appeal of any claim or civil or criminal proceedings made or brought against any **director or officer**, and in the representation of any **director or officer** at any official examination, enquiry, investigation or other proceedings ordered or commissioned at the behest of a body legally empowered to investigate the affairs of the **residents' association**.

5.3 Director or officer

Director or officer shall mean:

- 1 any natural person presently or previously appointed or elected by the **residents' association** as a director or officer or subsequently appointed or elected during the **Period of Insurance** whilst acting in such capacity on behalf of the **residents' association** and
- 2 the legal heirs or representatives of any **director or officer** with respect to **wrongful acts** committed prior to the death, incapacity, insolvency or bankruptcy of the **director or officer** provided that such legal heirs or representatives shall observe and be subject to the terms and conditions of this policy in so far as they can apply and
- 3 any employee of the **residents' association** who is named as a co-defendant with any **director or officer**.
- 4 **director or officer** shall not include any auditor, liquidator, administrator or receiver appointed to the **residents' association**.

5.4 Financial loss

Financial loss shall mean:

damages, judgments or settlements that any **director or officer** or the **residents' association** becomes legally liable to pay

Defence costs in connection with any claim under this policy.

5.5 Limit of liability

Limit of liability as stated in the schedule shall mean **our** maximum liability in the aggregate payable under this Policy in any one **Period of Insurance** for all **financial loss** arising from all claims made against any **directors or officers** and the **residents' association**.

5.6 Period of Insurance

Period of Insurance is that period of time shown in the schedule to this policy including any extension thereto agreed in writing by **us** or extended reporting period provided by Section 2.1 if purchased by **you**.

5.7 You, your

You, your shall mean the legal entity designated in the schedule.

5.8 Proposal

Proposal shall mean the proposal form and any attachments thereto and any supplements, statements or material supplied to **us**.

In the event that this policy replaces a previous policy issued by **us** proposal shall mean the proposal form and any attachments thereto and any supplements, statements or material supplied to **us** at the commencement of the first period of insurance from which cover has been provided continuously by **us**, and any renewal declaration and attachments thereto and any supplements, statements or material supplied to **us** in connection with a renewal.

5.9 Subsidiary

Subsidiary shall mean:

- 1 any entity in which **you**:
 - 1.1 hold directly or indirectly more than 50% of the voting rights, or
 - 1.2 appoint a majority of the Board of Directors.
- 2 any previously owned entity which would at the time of the **wrongful act** have complied with the requirements of paragraph 5.9.1 and is not at the time of notification of any claim insured by any other valid and collectable policy.

5.10 Wrongful act

Wrongful act shall mean actual, alleged or attempted breach of duty, breach of trust, breach of contract, breach of warranty of authority, neglect, error misstatement, misleading statement, wrongful trading or any other wrongful acts or omissions committed or attempted by or allegedly committed or attempted by the **residents' association** or any **director or officer** whilst acting in this capacity on behalf of the **residents' association** or solely by reason of holding such office on behalf of the **residents' association** but not whilst acting as a director or officer of an entity other than the **residents' association**.

5.11 We, us our

We, us, our shall mean Zurich Insurance Company or pertaining to Zurich Insurance Company.

Section 6

Exclusions

We shall not be liable under this policy to make any payment for **financial loss** in respect of any claim made against any **director or officer**:

6.1 Arising from, based upon, attributable to or as a consequence of:

- 1 any **director or officer** having gained in fact profit or advantage to which he, she or they had no legal entitlement
- 2 any intentionally dishonest or fraudulent act or omission or any wilful violation of any statute, regulation or law by any **director or officer** if a judgment or other final decision establishes such an intentionally dishonest or fraudulent act or omission.

In respect of Exclusion 6.1 the **wrongful act** of any **director or officer** shall not be imputed to any other **director or officer** for the purposes of determining the availability of cover under this policy

6.2 Arising from, based upon, attributable to or as a consequence of any litigation or any official examination, enquiry, investigation or other proceedings ordered or commissioned at the behest of a body legally empowered to investigate the affairs of the **residents' association** initiated prior to or pending at the date specified in Item 6 of the schedule or alleging or deriving from the same or essentially the same facts as alleged in such prior or pending litigation, official examination, enquiry, investigation or other proceedings

6.3 Arising from, based upon, attributable to or as a consequence of circumstances prior to the **Period of Insurance** and which have been reported to any previous insurer

6.4 Arising from, based upon, attributable to or as a consequence of any **wrongful act** committed outside the United Kingdom or in respect of any action brought outside the United Kingdom jurisdiction

6.5 Arising from the infringement of obligations imposed by any statute, regulation or common law including but not limited to the Pensions Act, 1995 whilst acting in the capacity of trustee of any pension or superannuation scheme established or maintained by the **residents' association** for the benefit of its employees

6.6 For bodily injury, sickness, disease, death or emotional distress or other impairment of health of any person or for loss of or damage to or destruction of material property or loss of its use. Material property shall include information stored on computer.

6.7 For:

- 1 taxes, fines or penalties imposed by law
- 2 punitive or exemplary damages or the multiplied portion of any damage award other than exemplary damages awarded in an action for libel or slander

6.8 Arising from, based upon, attributable to or as a consequence of:

- 1 the actual, alleged or threatened generation, transportation, discharge, emission, dispersal, release, escape, treatment, storage or disposal of pollutants or
- 2 any governmental regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise pollutants or any action taken in contemplation or anticipation of any such regulation, order, direction or request.

'Pollutants' means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste and any other similar substance of any kind or nature whatsoever including electromagnetic fields. 'Waste' includes materials which are intended to be or have been recycled, reconditioned or reclaimed

6.9 Arising from, based upon, attributable to or as a consequence of:

- 1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- 2 the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

6.10 Any act of war or terrorism

For the purposes of this exclusion, **war** shall mean:

war, whether declared or not, or any warlike activities including use of military force by any sovereign nation to achieve economic, geographic, nationalistic, political, racial, religious or other ends; any act of war, civil war, invasion, insurrection, revolution, use of military power or usurpation of government or military power; or the intentional use of military force to intercept, prevent or mitigate any known or suspected act of terrorism.

For the purposes of this exclusion, **terrorism** shall mean:

Actual or threatened use of force or violence directed at or causing damage, injury, harm or disruption, or commission of an act of force or violence dangerous to human life or property, against any individual, property or government, with the stated or unstated objective of pursuing economic, ethnic, nationalistic, political, racial or religious interests, whether such interests are declared or not. Terrorism shall also include any act which is verified or recognised by the UK Government, or the Government of the country in which a **claim** is made against any **insured person**, as an act of terrorism.

Section 7

Conditions

7.1 Claim notification

You or any **director or officer** or the **residents' association** as a condition precedent to payment under this Policy shall provide written notice to us as soon as is reasonably practicable of:

- 1 any claim made against any **director or officer**
- 2 notice from any person or entity of an intention to make such a claim

The date of notification to us will be deemed to be the date upon which the resultant claim is first made under this policy.

Should a **director or officer** or the **residents' association** become aware of any circumstances which could give rise to a claim at a later date then written notice to us of such circumstances will be accepted as the date of notification of a claim. Such circumstances shall make reference to the **wrongful act** which may give rise to a claim and the material facts which give rise to the belief that a claim may be made.

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

7.2 Claims series

When more than one claim arises from one **wrongful act** or a series of **wrongful acts** each connected causally with another or which shall be by any means interrelated or interconnected there shall be deemed to have arisen one claim alone notwithstanding the number of claims which may be asserted (a 'Claims series') and each such claim shall be attributed to the **Period of Insurance** during which the first claim of any Claims series has been asserted or made.

7.3 Subrogation

Upon payment of any claim we shall assume all rights of recovery available to any **director or officer** or the **residents' association** and all reasonable assistance shall be rendered to us in the prosecution of such rights by such **director or officer** or the **residents' association**.

7.4 Representations

In granting cover under this policy to any **director or officer** we have relied upon the declarations, statements and attachments to the **proposal** for cover which shall be considered as incorporated in and constituting part of this policy.

The **proposal** for cover shall be construed to be a separate application for cover for each **director or officer**. In respect of the declarations and statements contained in the proposal form, no statement in the proposal form or knowledge possessed by any **director or officer**, other than knowledge or information possessed by the **director or officer** actually signing the proposal form, shall be imputed to any other **director or officer** for the purpose of determining the availability of cover under this policy.

7.5 Applicable law

The interpretation of this policy is governed by and shall be construed in accordance with the laws of England.

7.6 Payment by instalments

Reference to the payment of premium includes payment by monthly instalments. If **you** pay by this method the policy remains an annual contract and the date of the payment and the amount of instalments are governed by the terms of the credit agreement. If an instalment is not received by the due date then subject to the Consumer Credit Act 1974 (if applicable) the credit agreement and the policy will be cancelled immediately.

7.7 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 the policy each year and continue to collect premiums using this method. **We** may vary the terms of the policy (including the premium) at renewal. If **you** decide that **you** do not want **us** to renew the policy, provided **you** tell **us** (or your insurance intermediary) before the next renewal date, **we** will not renew it.

Section 8

Arbitration

In the event that there shall arise any dispute or difference between **us**, the **director or officer** and/or the **residents' association** with respect to any of the matters referred to in this policy then such dispute or difference shall be referred to the final and binding resolution of a suitably qualified independent legal adviser (for example a member of Her Majesty's Counsel in England and Wales) who shall be provided with all such information as he or she may request in order to achieve a resolution of such difference or dispute.

Such legal expert shall have sole discretion as to the conduct of any reference to him or her and as to the awarding of any costs or expenses incurred in connection therewith.

Complaints procedure

We want to provide a first class service. If **you** have any cause for complaint **you** should, in the first instance, contact either the intermediary who arranged the policy for **you**, or the branch that issued the policy. Please quote the details of **your** policy (surname and initials, policy number, departmental reference, etc).

If the matter is not resolved to **your** satisfaction, please write to the Manager of the branch concerned. If **you** are still not satisfied with the action taken, please write to the Chief Executive at:

The Grange
Bishop's Cleeve
Cheltenham
Gloucestershire
GL52 8XX

Tel: 01242 263875

Email: chiefexecutive@uk.zurich.com

If **you** are a small business **you** may have a right of referral to the Financial Ombudsman Service at:

Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London
E14 9SR

Tel: 0845 080 1800

Email: complaint.info@financial-ombudsman.org.uk

We are covered by the Financial Services Compensation Scheme (FSCS). **You** may be entitled to compensation should **we** be unable to meet **our** obligations. Further information is available on www.fscs.org.uk or **you** may contact the FSCS on 020 7892 7300.

Notes

Zurich Insurance Company

A limited company incorporated in Switzerland. Registered in the canton of Zurich no. CH-020.3.929.583-0.

UK branch registered in England no. BR 105. UK Head Office: Zurich House, Stanhope Road, Portsmouth, Hampshire PO1 1DU.

Authorised and regulated by the Financial Services Authority.

