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Issuing a prospectus is a complex and challenging process for a company

# Offering of Securities insurance

## Technical specifications

Structural changes, significant regulatory scrutiny, and the demands of investors in volatile markets are all new exposures that company executives need to navigate when issuing a prospectus.

The Liberty 06-23 Offering of Securities insurance (OSI) policy wording provides bespoke coverage for offerings that ring-fence the transaction exposure for directors and officers, controlling or selling shareholders and for the company itself.

### Defence Select – providing freedom of choice to insureds

Liberty's 06-23 OSI policy wording offers two options in relation to the appointment of legal representation, in the event of a claim. The insured is required to select one of these options prior to policy inception.

If the insured chooses not to take up "Defence Select", this will be marked as "Not Included" in the policy schedule and the policy will provide access to a selection of panel law firms comprised of experienced defence lawyers with whom Liberty has pre-agreed discounted rates. As legal costs form part of the limit of liability, lower legal costs mean more limit available for indemnity. Liberty's current panel law firms can be found at <https://lmi.co/dopanelawfirms>. In the event that a claim is brought in a jurisdiction in which Liberty does not have a panel law firm, or if a material conflict of interest exists between insureds, a non-panel law firm may be appointed, at their market rates, to conduct the defence and settlement of a covered claim.

Liberty acknowledges that insureds may have a partnership with, or preference to retain, a non-panel law firm and has therefore introduced the "Defence Select" option to allow the insured a choice. If the insured chooses to take up "Defence Select", this will be marked as "Included" in the policy schedule and the insured will have the right to appoint any law firm of its choice, at their market rates, to conduct the defence and settlement of a covered claim.

### What is covered?

- **Prospectus and Prospectus Preparation** – provides cover for claims in respect of the offering process including discussions, negotiations, decisions, presentations, documents and any supplementary documents or amendments. The 06-23 OSI policy wording does not contain a retroactive or continuity date.
- **Company Prospectus Liability** – this insuring clause provides cover for the company for any wrongful act in connection with the prospectus.

- **Self-Report, Raid, and Inquiry Costs and Expenses Paid in Advance** – available for insured persons and the company itself, these insuring clauses provide cover for costs and expenses associated with a self-report, raid, internal inquiry or inquiry (including industry wide inquiries and without requiring an allegation of a wrongful act against the insured) and paid prior to final resolution of a self-report, raid, internal inquiry or inquiry.
- **Defence Costs Paid in Advance** – prior to final resolution of a valid claim.
- **Shareholder Derivative Investigation Costs** – this extension provides cover for costs and expenses incurred by the company in determining its response to a shareholder derivative demand or shareholder derivative suit.
- **Underwriters Liability (optional)** – this extension provides cover for proceedings brought by the underwriter pursuant to an indemnity or for a breach of warranty in the underwriting agreement.
- **Controlling or Selling Shareholders Liability (optional)** – this extension offers cover for the controlling of selling shareholder in the prospectus.

#### Other extensions include:

- Asset and Liberty Expenses
- Bail Bond and Civil Bond Expenses
- Cost of Living Expenses
- Court Attendance Costs
- Emergency Expenses
- Extradition Costs
- Fines and Penalties
- Public Relations Expenses and Reputation Protection

#### Other conditions and definitions

- **Notification of Claims, Self-Reports, Raids and Inquiries** – this claims condition provides that if an insured is legally prohibited from making a notification, this does not give rise to late notification, provided that the insured makes such notification to Liberty within 30 days of being legally able to do so.
- **Allocation** – this claims condition specifies the basis for allocation of partially covered matters or insureds and clarifies that, where defence costs also benefit a matter which is not covered or a non-insured party, Liberty will pay all common defence costs. If agreement cannot be reached on the allocation of the proportion of a claim, Liberty will pay for a senior counsel to determine a fair and reasonable allocation and these costs will not form part of the limit of liability.
- **Severability, Non Avoidance and Non Imputation** – this general condition offers protection to innocent insureds, in the event of another insured's non-disclosure or misrepresentation.
- **Preservation of Right to Indemnity** – this general condition provides that, if the company is legally required or permitted to indemnify an insured person but fails or refuses to do so, then Liberty will pay for the loss or other amounts insured under the policy on behalf of the insured person.
- **Subrogation** – this general condition provides that, if Liberty recovers amounts pursuant to its rights of subrogation, which exceed the costs incurred by Liberty in the recovery action, such amounts will be repaid by Liberty to replenish the limit of liability.

## What's excluded?

Liberty's OSI policy wording has common exclusions applicable to the insuring clauses and extensions. Please ensure that you review these exclusions in conjunction with the policy wording.

## Responsive and integrated claims management

Liberty's claims team takes a pragmatic, commercial approach to claims resolution.

Our claims team acts decisively and looks for ways to pay claims fairly and dependably. We work together as one team to build long-term relationships with our brokers and clients, making excellent customer service a priority.

## The Liberty Advantage

- Purchased in conjunction with our Directors & Officers policy ensures primary and secondary market exposures are seamlessly covered.
- Liberty is able to offer limits up to US\$50 million and policy terms up to seven years, making Liberty an attractive lead insurer.
- Our claims specialists have substantial experience with large and complex claims, including multinational litigation.
- Our experienced underwriters have local authority to tailor the policy to suit insured's needs. In practical terms, this means no waiting for overseas approval.
- Backed by our parent company, Liberty Mutual Group – a Fortune 100 company – Liberty has the financial strength and experience to proactively manage claims.
- Liberty has a proven history of stability throughout volatile market conditions.

### Global reach. Financial strength. Local authority.

Distinct, complex and constantly evolving – every business is as unique as their insurance needs. To confidently progress in the face of risk and uncertainty requires a level of security you can only achieve through working with specialists.

Liberty offers a breadth of world-class insurance and reinsurance services to brokers and insured clients. We bring value and solutions to business and government organisations across Australia – helping protect what they earn, build and own.