



# Offshore Market Placements

**STATUTORY LIABILITY**

**POLICY WORDING**



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## INTRODUCTION

All parts of the printed Policy wording and the Schedule must be read as if they are one and the same document. The headings in this Policy are for reference only and do not form part of this Policy.

## INSURING CLAUSE

In consideration of payment of the premium and subject to the clauses of this Policy, the Insurer agrees as follows:

### Insured Liability

The Insurer will pay on behalf of the Insured any Fine under any Act of Parliament, any Order for Reparation under the HSE Act, and any Defence Costs arising out of a Claim made against the Insured provided that:

- a) the Insured first became aware of, or ought to have been aware of, the Claim during the period of insurance; and
- b) the Claim is notified to the Insurer during the period of insurance or within 30 days of expiry; and
- c) the Event giving rise to the Claim occurred on or after the retroactive date.

There is no indemnity under this Policy for Claims that do not comply with a), b) and c) of this clause.

### Limits of liability

- a) The limit of The Insurer's liability in respect of any one Claim, inclusive of Defence Costs, shall not exceed the limit of indemnity stated in the Schedule.
- b) The total aggregate liability of the Insurer during any one period of insurance for all Claims and Defence Costs shall not exceed the limit of indemnity stated in the Schedule.

### Excess

Where an excess is specified in the Schedule the Insured must pay this amount in respect of each and every Claim inclusive of Defence Costs

## THE SCHEDULE

### Named Insured

(As detailed in the Policy Schedule)

### Period of Insurance

(As detailed in the Policy Schedule and any subsequent period for which the *Insured* shall have paid or agreed to pay and the Company shall have accepted or agreed to accept a premium.)

### Premium

As agreed

### Limit Of Liability

\$500,000 any one claim or in the aggregate, unless otherwise stated in the Policy Schedule

### Retention (Excess)

(As detailed in the Policy schedule)

### Continuity Date

Policy Inception

### Retroactive Date

(As detailed in the Policy Schedule)

### Excluded Acts

Acts noted in Exclusion Clause 7



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## EXTENSIONS

These Extensions apply automatically unless otherwise stated in the Policy Schedule.

**1. Previous subsidiaries of the Named Entity**

The definition of Named Entity will include any entity that ceased to be a subsidiary before or during the period of insurance, but the Insurer will not pay on behalf of the Insured any Fine or Order for Reparation under the HSE Act arising from an Event occurring after it ceased to be a subsidiary, nor will the Insurer pay on behalf of the Insured any Fine or Order for Reparation under the HSE Act arising from an Event occurring before it became a subsidiary.

## EXCLUSIONS

**1. Known Claims and circumstances**

The Insurer shall not be liable to indemnify the Insured in respect of any liability arising out of any Claim:

- a) made against, or intimated to, the Insured prior to the commencement of the period of insurance; or
- b) notified under any previous Policy; or
- c) arising out of or connected with any facts or circumstances that:
  - i) the Insured was aware of prior to commencement of the period of insurance; and
  - ii) a reasonable person in the position of the Insured would have considered may give rise to a Claim.

**2. Intentional or deliberate disregard**

The Insurer shall not be liable to indemnify the Insured in respect of any Claim arising out of or based upon, attributable to, or in any way involving any Insured's intentional or reckless disregard of the provisions of any Act of Parliament.

**3. Other activities**

The Insurer shall not be liable to indemnify the Insured in respect of any Claim arising out of activities otherwise than in the course of or in connection with the Insured's Business.

**4. Retroactive Date**

The Insurer shall not be liable to indemnify the Insured in respect of any Claim that arose out of any Event that occurred prior to the retroactive date.

**5. War and Civil War Exclusion [NMA464]**

Notwithstanding anything to the contrary contained herein this Policy does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

**6. Radioactive Contamination and Explosive Nuclear Assemblies [NMA 1622 4/4/68 (amended)]**

This Policy does not cover loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss directly or indirectly caused by or contributed to by or arising from:

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



**7. Excluded Acts**

The Insurer shall not be liable to indemnify the Insured in respect of any Claim arising out of, based upon, attributable to, or in any way involving, directly or indirectly the following Acts of Parliament:

- a) Arms Act 1983
- b) Aviation Crimes Act 1972
- c) Crimes Act 1961
- d) Criminal Investigations (Blood Samples) Act 1995
- e) Misuse of Drugs Act 1975
- f) Proceeds of Crime Act 1991
- g) Summary Offences Act 1981
- h) Transport Act 1962
- i) Transport (Vehicle and Driver Registration and Licensing) Act 1986

and any other Act of Parliament specified in an endorsement to this Policy as an excluded Act of Parliament.

**8. Damages and non-criminal penalties**

The Insurer shall not be liable to indemnify the Insured in respect of any Claim for payment of money arising from a breach of a legal obligation (including an obligation owed pursuant to an Act) other than consequent upon the Insured's conviction for an offence. In particular (but without limitation) this Policy does not cover any proceeding seeking:

- a) damages, including punitive, aggravated, liquidated, multiple or exemplary damages;
- b) compensation for injury suffered, including physical or mental injury, humiliation, distress or damage to reputation; or
- c) penalties provided by an Act.

**9. Reparation**

The Insurer shall not be liable to indemnify the Insured in respect of any Claim for any monetary amount ordered to be paid by the Named Entity and/or Insured Persons by way of an order for reparation imposed by a Court following conviction under any Act of Parliament, except an Order for Reparation under the HSE Act.

**10. Legal jurisdiction**

The Insurer shall not be liable to indemnify the Insured in respect of any Claim:

- a) in respect of any Claim where the threatened or actual prosecution, the investigation or inquiry is brought or may be brought in a court outside New Zealand; or
- b) in respect of any Claim which is brought or may be brought in a court within New Zealand to enforce a Fine ordered in a court outside New Zealand whether by way of a reciprocal agreement or otherwise; or
- c) in respect of any Claim in which the proper law to be applied is that of a country other than New Zealand.

**11. Date recognition**

The Insurer shall not be liable to indemnify the Insured in respect of any liability arising out of any Claim arising directly or indirectly out of or in connection with the failure or inability of:

- a) any electronic circuit, microchip, integrated circuit, microprocessor, embedded system, BIOS or other instruction set, hardware, software, firmware, program, computer, data processing equipment, telecommunication equipment or systems, or any similar device; or
- b) any similar device, or media or systems used in connection with any of them;

whether the Insured's property or not, at any time to achieve fully and successfully any or all of the purposes and consequential effects intended by the use of any number, symbol or word to denote, represent or express a date including but without being limited to any failure or inability to recognise, capture, save, retain or restore and/or correctly to manipulate, interpret, transmit, return, calculate or process any date, data, information, command, logic or instruction as a result of or in connection with:

- i) anything referred to in a) or b) above recognising, using or adopting any date, day of the week or period of time, otherwise than as, or other than, the true or correct date, day of the week or period of time; or
- ii) the operation of any command or logic that has been programmed or incorporated into anything referred to in a) or b) above.

**12. Commerce Act**

The Insurer shall not be liable to indemnify the Insured in respect of any Claim for any pecuniary penalty, restitution, compensation or order for payment imposed by a court upon the Named Entity or Insured Person pursuant to Part 6 of the Commerce Act 1986.



**13. Health and Safety in Employment Act**

The Insurer shall not be liable to indemnify the Insured in respect of any Claim for any fine or infringement fee (other than Reparation) ordered to be paid by the Named Entity and/or the Insured Persons following conviction under the Health and Safety in Employment Act 1992.

**14. Monetary Amounts Paid or Offered before Sentence**

The Insurer shall not be liable to indemnify the Insured in respect of any Claim for any sum paid, or offered to be paid, by the Named Entity and/or Insured Persons, without the prior written consent of the Insurer, to or for a complainant prior to imposition of sentence by the Court, as reparation or otherwise, following an occurrence under any Act of Parliament.

**15. Dishonesty and fraud**

The Insurer shall not be liable to indemnify the Insured in respect of any Claim resulting from or contributed to by any dishonest, fraudulent, criminal or malicious act or omission of any Insured Person. Provided that this exclusion shall not apply to any Insured who has not committed or condoned the dishonest, fraudulent, criminal or malicious act or omission.

**16. Taxes**

The Insurer shall not be liable to indemnify the Insured in respect of any Claim for the payment of any tax, including any Fine or penalty resulting from the failure to pay any tax.

**17. Continuing Fine**

The Insurer shall not be liable to indemnify the Insured in respect of any Claim for payment of any Fine (or part of a Fine) which is imposed in relation to a period of time after the Named Entity or Insured Person first received notice from the prosecuting body of the intention to commence a prosecution in relation to the offence.

**18. Compliance costs**

The Insurer shall not be liable to indemnify the Insured in respect of any Claim:

- a) for payment of any Fine (or part of a Fine) which is a penalty imposed for failing to comply with any enforcement order or remedial order;
- b) for the cost incurred by the Insured in complying with any enforcement or remedial order.

**19. Terrorism [NMA2951]**

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes liability for loss, injury, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this endorsement an act of Terrorism means any act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, injury, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of Terrorism.

If the Underwriters allege that by reason of this exclusion, and loss, injury, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

**20. Asbestos**

It is hereby understood and agreed that this Policy shall not indemnify the Insured for any loss, cost or expense directly or indirectly arising out of, resulting as a consequence of, or related to the manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to Asbestos or materials or products containing Asbestos whether or not there is another cause of loss which may have contributed concurrently or in any sequence to a loss.

It is hereby understood and agreed that this Policy shall not indemnify the Insured for any claim arising in connection with the recall of any Products due to an asbestos health hazard.



**21. Silica**

It is hereby understood and agreed that this Policy shall not indemnify the Insured for any loss, cost or expense directly or indirectly arising out of, resulting as a consequence of, or related to the manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to Silica or materials or products containing Silica whether or not there is another cause of loss which may have contributed concurrently or in any sequence to a loss.

**CONDITIONS**

**1. Reporting of Claims**

Irrespective of the quantum, the Insured must give the Insurer immediate notice in writing of:

- a) any Claim made against them; or
- b) the receipt of notice from, or information as to any intention by, any party to make a Claim against them; or
- c) any Event that a reasonable insured in the position of the Insured would have considered may give rise to a Claim. Where such notice is given to the Insurer by the Insured, any Claim that may subsequently be made against the Insured shall be deemed to be a Claim made during the period of insurance.

Provided that in order to qualify as a Claim capable of being covered by this Policy the Insured's notice in writing must:

- i) relate to a Claim that occurred during the period of insurance; and
- ii) be given during the period of insurance or within 30 days after its expiry.

**2. Conduct of Claims**

The Insured must not make any admission or any decision that affects the Conduct of a Claim, or incur any costs or expenses in connection therewith without the prior written consent of the Insurer.

The Insurer is entitled at any time to nominate a solicitor to act as the Insured's solicitor and shall have total discretion as to the Conduct of the Claim, in the name of the Insured. The solicitor shall at all times be at liberty to disclose to the Insurer any information obtained in the course of so acting, whether from the Insured or howsoever. The Insured hereby waives all claims to legal professional privilege that it might otherwise have as between itself and the Insurer in respect of such information.

If the Insurer believes that the Claim will not exceed the excess, the Insurer may instruct the Insured to assume responsibility for the Conduct of a Claim at the Insured's expense. Should the Claim subsequently exceed the excess, the Insurer agrees to reimburse the reasonable costs and expenses incurred by the Insured that exceed the excess. The Insured must advise the Insurer as soon as the total costs of the Claim exceed the excess or it becomes apparent that they are likely to do so.

**3. Defence of Prosecutions**

The Insurer shall not require the Insured to defend any prosecution in respect of any Claim against the Insured, nor shall the Insured require the Insurer to defend, on its behalf, any prosecution in respect of any such Claim unless a legal counsel (to be mutually agreed upon by the Insured and the Insurer) shall advise that such prosecution should be defended.

In formulating such advice, counsel shall take into consideration whether the defence of the prosecution has a reasonable prospect of success. The cost of counsel's opinion shall be regarded as part of the Defence Costs of any Claim.

In the event that counsel advises that, having regard to all the circumstances, the matter should not be defended, then the Insured can elect to defend the prosecution at its own expense but the liability of the Insurer will not exceed the amount of the Fine (or Order for Reparation under the HSE Act, if applicable) and Defence Costs that would have been payable had the Insured elected not to defend.

**4. Allocation of costs**

If costs or expenses are incurred both in respect of a Claim insured under this Policy and a matter that is not insured under this Policy then the Insurer shall be liable to pay only a fair proportion of such costs or expenses. In the event that the Insured and the Insurer are unable to agree as to a fair proportion, then counsel, mutually agreed upon by both parties and whose decision shall be final, shall determine what is a fair proportion.

**5. Reasonable precautions**

The Named Entity and Insured Persons shall take all reasonable precautions to:

- a) avoid or prevent the happening of any circumstances that may give rise to an Event; and
- b) comply, and ensure that the Named Entity's employees, servants and agents comply, with all statutory obligations, by-laws or regulations imposed by a public authority for the safety of persons or property.



**6. Change of facts or circumstances**

Notice in writing shall be given to the Insurer as soon as possible of every change materially varying any of the facts or circumstances existing at the commencement of this Policy that shall come to the knowledge of the Insured.

**7. Other insurance**

Upon giving notice of any Claim, the Insured agrees to provide to the Insurer written details of any other insurance that may cover or partially cover that Claim.

In the event that the Insured holds other insurance cover with another insurer in respect of any Claim then the indemnity under this Policy shall not be available until the limit of indemnity under any other policy has been exhausted.

**8. Cancellation**

a) Method of cancellation:

i) The Insured may cancel this Policy at any time by notifying the Insurer in writing.

ii) The Insurer may cancel this Policy at any time by giving 30 days' notice in writing to the Insured of the date from which cancellation is to take effect. Such notification is to be delivered personally or posted by registered mail to the Insured at the address last notified to The Insurer. Proof of mailing is sufficient proof of notification.

b) Adjustment of premium:

i) After cancellation by the Insured, the Insurer will retain or be entitled to the premium for the period during which this Policy has been in force based on the Insurer's cancellation rates.

ii) After cancellation by the Insurer, the Insured is entitled to a pro-rata refund of the premium.

**9. GST**

Where the Insured is liable to pay tax under section 5(13) of the Goods and Services Tax Act 1985 (or any statutory amendment or reenactment of the section or Act) upon receiving any indemnity payment under this Policy, the Insurer will indemnify the Insured for the costs of that tax. The indemnity under this clause is payable by the Insurer in addition to the limit of indemnity.

**10. Policy disputes**

This Policy shall be governed by the laws of New Zealand whose courts shall have exclusive jurisdiction in any dispute arising herein.

**11. Insured's warranty**

It is agreed between the Insured and the Insurer that the written Proposal provided by the Insured forms the basis of the Policy and the Insured warrants the truth of all statements made therein.

**12. Overseas Jurisdiction Clause**

It is hereby agreed that:

a) The insurance shall be governed by the law of New Zealand whose courts shall have jurisdiction in any dispute arising hereunder; and

b) Any summons, notices or process to be served upon the Underwriters for the purpose of instituting any legal proceedings against them in connection with this Insurance may be served upon

Scott Galloway  
Lloyd's General Representative in New Zealand  
Hazelton Law  
Level 3, Molesworth House  
101 Molesworth St  
PO Box 5639  
Wellington, New Zealand

who has the authority to accept service on their behalf.





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## DEFINITIONS

Any word or expression that this Policy defines as having a particular meaning will have that meaning everywhere it appears.

### Act of Parliament

'Act of Parliament' means any Act of the New Zealand Parliament, including any amendments, enactments or Statutory Regulations of such Act.

### Claim

'Claim' means:

- a) any threatened or actual prosecution or investigations or inquiry regarding an Event; or
- b) any circumstances which indicate to the reasonable insured in the position of the Insured that a prosecution, investigation or inquiry regarding an Event may occur, which is connected with the business of the Named Entity and which may give rise to the imposition of a Fine.

### Conduct of the Claim

'Conduct of a/the Claim' means the investigation, defence, compromise or handling of the Claim in any manner whatsoever on behalf of the Insured.

### Defence Costs

'Defence Costs' means reasonable costs, charges, fees and expenses (including but not limited to lawyers' fees, investigators' fees and experts' fees) incurred with the prior written consent of the Insurer which relate directly to the Conduct of the Claim. 'Defence Costs' does not include charges for time spent by sole traders, partners, directors, officers or employees of the Named Entity or reimbursement of any form of remuneration for such people.

### Event

'Event' means any act or omission done or omitted to be done by the Insured in connection with the Insured's Business that may result in an allegation that the Insured has committed an offence under an Act of Parliament punishable by conviction.

### Fine

'Fine' means any monetary penalty or costs for which the Named Entity and/or Insured Persons are liable on conviction of any offence under an Act of Parliament.

### Insured

'Insured' means the Named Entity and the Insured Persons.

### Insured's Business

'Insured's Business' means the business and undertakings of the Named Entity, as defined in the Schedule.

### Insured Person

'Insured Person' means any person who is currently, or was at the date of any Event, or becomes during the period of insurance, a sole trader, partner, director, officer or employee of the Named Entity.

### Insurer

'Insurer' means administered by Offshore Market Placements Limited on behalf of Certain Underwriters at Lloyd's

### Named Entity

'Named Entity' means the entity specified in the Schedule and includes any subsidiary.

### Order for Reparation under the HSE Act

'Order for Reparation under the HSE Act' means an order for reparation imposed by the Court on sentencing following conviction of the Named Entity and/or Insured Persons for an offence under the Health and Safety in Employment Act 1992.

### Schedule

'Schedule' means the most recent Policy Schedule, Revised Policy Schedule or insurance certificate issued by the Insurer.

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## END OF DOCUMENT