



Professional indemnity section for ICAEW, ICAS or ICAI accountants

AXA Business Insurance

Important information about this cover 193

Meaning of defined terms 194

What is covered 196

What is not covered 200

Section conditions 202

Professional indemnity section for ICAEW, ICAS or ICAI accountants

Your schedule will show if this section is covered

Important information about this cover

This cover operates on a claims-made basis. This means that we will only provide cover for claims or claim circumstances made against you and notified to us during the period of insurance. We will not cover any claim or claim circumstances arising from an act, error or omission that occurred before the previous work date.

Conditions apply regarding when you must tell us about claims or claim circumstances and these can be found below. You should read these carefully.

Meanings of defined terms

These definitions apply to this section and are in addition to the policy definitions that have already been described in the Essential Information document. If a word or phrase has a defined meaning it will be underlined in bold print and will have the same meaning wherever it is used in this section.



Bodily injury

Any injury including death, illness, disease, sickness, psychological injury, emotional distress or nervous shock.



Claim(s)

Any verbal or written demand, notice or communication:

- 1) making an assertion for legal remedy or any other form of compensation or remedy
- 2) containing reference to, or serving notice of, intent to start legal proceedings
- 3) invoking any pre-action protocol as set under the Civil Procedure Rules
- 4) referring to arbitration, adjudication or complaint proceedings.



Claim circumstances

Any incident, occurrence, fact, matter or act that you were or are aware of that

- 1) may give rise to a claim.
- 2) may give rise to an ombudsman award.



Claim costs

All costs and expenses incurred by us or by you with our written permission relating to the investigation, defence or settlement of any claim against you, which this policy covers.



Claimant

A person or organisation that has made or may make a claim including a complainant to an ombudsman.



Court attendance compensation

Compensation that we will pay to you in the event that

- 1) any principal, partner, member or director
- 2) any employee

is required by legal advisers to attend court or any arbitration or adjudication hearing as a witness of fact and in connection with a claim that is covered by this policy, provided that we have first given our written consent.



Documents

Any documents, information or data, including computer records and electronic data, which are your property or are looked after by or deposited with you in the ordinary course of your professional business which you are responsible. This does not include bearer bonds, coupons, bank or currency notes and negotiable instruments.



Employee(s)

Any person working for you in connection with the professional business:

- 1) under a contract of service with you
- 2) who is hired or lent to you
- 3) who is self-employed
- 4) on a voluntary basis

and who is under your control or supervision.



Limit of indemnity

The amount shown in your schedule as the limit of indemnity.



Loss

The amount that you are legally and personally liable to pay due to a claim, including judgements, awards of damages, awards of claimant costs and amounts that are related to settlements.



Ombudsman award

Any amount to be paid or that is payable, or the costs of taking any steps that you are directed to take, following an award or recommendation made by any ombudsman appointed under the provisions of the Financial Services and Markets Act 2000, the Central Bank and Financial Services Authority of Ireland Act 2004 or any amendment or re-enactment of them.

Meaning of defined terms



Packaged software

Any computer software that is marketed for general distribution on a wholesale or retail basis but that is not produced by you.



Pollutant

Any contaminant, irritant or other substance including, but not limited to asbestos, lead, smoke, vapour, water, oil, oil products, dust, fibres, soot, fumes, acids, alkalis, chemicals, or waste (including materials that have been or are intended to be recycled, reconditioned or reclaimed).



Pollution

Actual, alleged or threatened discharge, seepage, treatment, removal, disposal, dispersal, emission, release or escape of any pollutant or any regulatory order, direction or request to test for, monitor, remove, contain, treat, detoxify, or neutralise any pollutant.



Professional business

- 1) Services or advice undertaken
 - a) by members of the Royal Institution of Chartered Surveyors; or
 - b) that have otherwise been declared to us;and that are performed by you or on behalf of the person, firm, company or organisation shown in your schedule as the insured and within the policy territories.
- 2) Services or advice performed within the policy territories by you whilst holding an individual appointment for work connected with the business of the person, firm, company or organisation shown in your schedule as the insured, provided that:
 - a) those services are undertaken by members of the Royal Institution of Chartered Surveyors or have otherwise been declared to us and
 - b) the fee that you charged for those services or advice (if a fee was charged) is included in the income that has been disclosed to us when applying for this insurance.



You / your / yourself

- 1) For professional indemnity insurance covers
 - a) The person, firm, company or organisation shown in the schedule as the insured.
 - b) Any person, firm, company or organisation shown in the schedule as an additional insured.
 - c) Any predecessor in business to any firm, company or organisation that is shown in the schedule.
 - d) Any person who is or has been or who becomes a director, partner, member, principal, employee or self employed person, but only for work undertaken for or on behalf of any person or organisation referred to in a, b, or c above.
 - e) Any consultant or former consultant appointed by the person, firm, company or organisation shown in the schedule as the insured, but only for work undertaken for or on behalf of any person or body referred to in a, b, c or d above.
 - f) Any retired partner, retired director or retired member of the firm, company or organisation shown in the schedule as the insured who remains as a consultant to any person, firm, company or organisation shown in the schedule as the insured.
 - g) The estate, heirs, executors, legal or personal representatives of any person referred to in a, b, c, d, e or f above in the event of their death or amounts that are related to settlements.

What is covered

What is covered

What is not covered

Civil liability and claim costs

We will cover you for any claim and claim costs that arise from the conduct of your professional business, where the claim is first made against you and notified to us during the period of insurance, for

- 1) any civil liability that you incur
- 2) any liability you incur as a result of a decision by an adjudicator appointed to resolve a dispute in line with the Scheme for Construction Contracts as contained in the Housing Grants Construction and Regeneration Act 1996, or an adjudication clause contained in a contract

The most we will pay for loss resulting from each claim is the limit of indemnity.

We will pay claim costs in addition to the loss. If the loss amount exceeds the limit of indemnity, the most we will pay for claim costs will be the same proportion that the amount that the limit of indemnity has to the loss amount.

Compensation for court attendance cover

In the event that any of your directors, partners, principals or employees or any other relevant parties (but not expert witnesses) are required to attend court in connection with a claim that is covered by this policy, provided that we have first given our written consent, we will pay compensation to you at £200 per day for each person required to attend.

The most we will pay for all court attendance costs in any one period of insurance is £10,000

What is covered

What is not covered

Dishonesty of employees

We will only cover claims arising out of any dishonest or fraudulent act or omission if they arise by reason of, and were solely and directly caused by, the actual or allegedly dishonest and/or fraudulent act(s) or omission(s) of any past or present partner, director, member, consultant, sub-contractor or employee of yours (whether committed alone or in collusion with others), provided that:

- 1) no cover shall be given for any claim arising out of dishonesty or fraud on the part of any person after you discover, in relation to that person, reasonable cause for suspicion of fraud or dishonesty
- 2) no cover shall be given to any person committing or condoning any dishonest or fraudulent act or omission
- 3) any dishonesty or fraud committed by persons acting together, will for the purposes of this policy, be treated as one claim.

At our request and expense, you will take all reasonable steps to obtain reimbursement from any person committing or condoning any dishonest or fraudulent act or omission or from their estates or legal representatives.

Any monies that, but for the dishonest or fraudulent act or omission, would be due to the persons committing or condoning any dishonest or fraudulent act or omission from you, or any monies of those persons held by you, shall be deducted from any amount payable under this policy.

Nothing in this clause will preclude us from exercising any right of subrogation against any person committing or condoning any dishonest or fraudulent act or omission.

The amount we will pay for claims arising out of any dishonest or fraudulent act or omission will be only for the balance of any civil liability over and above the amounts recovered from the person or persons committing or condoning dishonest or fraudulent acts or omissions or their estates or legal representatives.

Loss of documents

We will pay reasonable costs and expenses for replacing or restoring your own documents that have become lost or damaged in the conduct of the professional business provided that the loss or damage is discovered by you and notified to us during the period of insurance.

We will not pay for your own documents that are stored on a computer system unless those documents are duplicated on at least a daily basis, with the intention that the duplicate can be used to restore the documents in the event of loss or damage.

The most we will pay for replacement of your own documents during any one period of insurance is £100,000, but this will not affect the amount we will pay where a loss of or damage to documents leads to a claim under the heading 'Civil liability and claim costs'.

Non-disclosure and misrepresentation

The Insurance Act 2015 has introduced a duty on you that you must make a fair presentation of the risk before you enter into a contract of insurance. This clause varies the terms of that Act in relation to what we can do if you fail to comply with your duty of fair presentation.

- 1) Where you have failed to comply with your duty to make a fair presentation of the risk to us and where that failure would entitle us to treat your policy as void, we will only void your policy if
 - a) you have admitted that you intended to mislead or deceive us, or
 - b) we have established by way of a final adjudication in arbitration proceedings between us and you (including any appeal from that adjudication) that you intended to mislead or deceive us, those arbitration proceedings having been undertaken according to the Defence and settlement of claims section of your policy.

Until any such final adjudication (including any appeal from that adjudication) has been concluded, we will continue to honour our obligations, including making payment, under your policy.

- 2) Where you fail to comply with your duty to make a fair presentation of the risk to us and where clause 1 above does not apply:
 - a) in the case of a claim first made against you during the period of insurance where:
 - i) you had previous knowledge of the circumstances relating to that claim, and
 - ii) you should have notified that claim under any preceding policy but did not do so,

if the indemnity or cover under your policy is greater or wider in scope than the preceding policy (whether insured by us or not), we will only cover you to the amount and extent as would have been provided by the preceding policy

- b) regardless of whether or not clause 2a applies, where we can demonstrate that if you had complied with your duty to make a fair presentation of the risk to us
 - i) we would not have written your policy, or
 - ii) we would have written your policy but on different terms and conditions we will be entitled to charge a just and equitable additional premium in light of the prejudice caused to us by your failure to comply with that duty
 - c) except as set out in 2a and 2b above, we will only be entitled to any remedy where your failure to comply with your duty to make a fair presentation of the risk to us was deliberate or reckless.
- 3) If you breach or fail to comply with
 - a) the Admission of liability condition
 - b) the Claim control and co-operation condition
 - c) the Claim notification condition of your policy and that breach or failure adversely affects our ability to handle or settle any claim, we will be entitled to reduce the amount we will pay for that claim (including defence costs) to an amount that is just and equitable relative to the extent to which our ability to handle or settle the claim has been affected by your breach or failure.

What is covered

What is not covered

Ombudsman awards

We will cover you for any ombudsman award that arises from a claim or claim circumstances arising from the conduct of your professional business and first made against you and notified to us during the period of insurance. The most we will pay for all ombudsman award is an amount equal to the limit of indemnity.

Settlement and defence of claims

We will advance claim costs as and when they are incurred. This includes claim costs incurred on your behalf where you are alleged to have committed or condoned a dishonest or fraudulent act or omission, but we will not pay claim costs incurred on your behalf after the earlier of:

- 1) you admitting to us that you committed or condoned that dishonest or fraudulent act or
- 2) a court or other judicial body finding that you were in fact guilty omission.

Each of you who admit to us that they committed or condoned a dishonest or fraudulent act or omission, or against whom there is a finding by a court or other judicial body that such person was in fact guilty of that dishonest or fraudulent act or omission, must reimburse us any claim costs that we advanced on your behalf.

All claims that come from the same act, error or omission or series of acts, errors or omissions, as a result of, or arising directly or indirectly from, the same source or original cause, will be regarded as one claim.

If we cover more than one person, firm, company or organisation, our liability to all, as a result of one claim, will not be more than the limit of indemnity.

We have the right, but not the obligation, to take control of your claim and conduct the investigation, settlement or defence in your name. If we think it is necessary we will appoint our adjuster, solicitor or other appropriate person to deal with the claim. If you ask us, we may agree to appoint your solicitor, but only on a similar fee basis as our solicitor and only for work done with our prior written approval.

You will be entitled to any and all information and documentation regarding the defence, investigation or settlement of any claim and the investigation into any claim circumstances as you may reasonably request from us.

Proceedings will only be defended if there is a reasonable prospect of success and taking into account the commercial considerations of the costs of defence.

If you disagree with our proposed course of action for any legal proceedings (whether defence or prosecution), then you or we may refer the matter to a Queen's Counsel of the English Bar, or equivalent in Scotland or Ireland as applicable, to be mutually agreed between you and us. If you and we cannot agree on the Queen's Counsel to be appointed, then the Queen's Counsel will be appointed by the President of the Institute of Chartered Accountants in England and Wales/of Scotland/in Ireland as applicable. The Queen's Counsel's decision on how the legal proceedings should be handled will be binding on you and us. In resolving this dispute, the Queen's Counsel will have consideration for the interests of you and us.

Any amount payable by us under this policy in respect of your liability to a claimant will be paid only to the claimant, or to where the claimant tells us. We agree we will not set off any amounts that are payable under this policy against any payment due to us from you, including any payment of premium or any payment due to us by way of reimbursement. This does not apply to the excess, which we may set off against any payment.

What is not covered



Asbestos exclusion

We will not cover legal liability in any way arising from or contributed to by

- 1) inhalation or ingestion of asbestos
- 2) exposure to or fear of the consequences of exposure to asbestos
- 3) the presence of asbestos in any property or on land investigating, managing, removing, controlling or remediation of asbestos



Bodily injury exclusion

We will not cover

- 1) any claim arising out of bodily injury of any employee arising in the course of their employment by you
- 2) any claim arising out of bodily injury unless it was directly arising from a breach of duty through a negligent act, error or omission by you in the course of your professional business.



Contractual liability exclusion

We will not cover contractual liability.



Controlling interest exclusion

We will not cover any claim arising from or brought by a firm, company or organisation:

- 1) with a financial interest in you
- 2) in which any of your partners, directors or principals have a controlling interest, unless the claim is brought against you by a source independent of that firm, company or organisation.



Employment exclusion

We will not cover any claim arising out of any kind of employment related dispute or any kind of defamation, discrimination, harassment or unfair treatment relating to any current, former or prospective employees.



Excess exclusion

We will not pay the excess shown in your schedule.

Regardless of what excess amount is shown in your schedule, the maximum excess amount will not exceed the maximum amount calculated in line with the relevant provisions of the Professional Indemnity Insurance Regulations of the Institute of Chartered Accountants in England and Wales/of Scotland/in Ireland as applicable in force at the start of the period of insurance.

The excess does not apply to claim costs, unless the claim arises from the conduct of professional business that required authorisation by the Financial Services Authority.

You will only pay one excess for claims from the same act, error or omission (or series of acts, errors or omissions) that arise directly or indirectly from the same source or original cause.



Failure of investments exclusion

We will not cover any claim arising out of the provision of any express or implied warranty or guarantee relating to the financial return of any investment or portfolio of investments.



Fines and penalties exclusion

We will not cover any fines, penalties, punitive, multiple, aggravated or exemplary damages where these can be identified separately within any award of any court or tribunal.

This exclusion will not apply to any claim relating to actual or alleged defamation committed by you in the course of your professional business. This exclusion will not apply in respect of any ombudsman award.



Goods supplied exclusion

We will not cover any claim arising out of the supply of any goods by you, or products manufactured, constructed, altered, repaired, treated, sold, supplied or distributed by you.

This exclusion will not apply to:

- 1) any computer software that is not packaged software
- 2) any amendments or adaptations of packaged software made by you or on your behalf.

What is not covered



North American jurisdiction exclusion

We will not cover any claim instituted or pursued:

- 1) within the United States of America or Canada or any territories which come within the jurisdiction of the United States of America or Canada or in which it is contended that the laws of the United States of America or Canada should apply.
- 2) to enforce a judgment obtained in any Court of the United States of America or Canada or any territories which come within the jurisdiction of the United States of America or Canada.



Pollution exclusion

We will not cover any claim directly or indirectly involving pollution.



Previous claims exclusion

We will not cover any claim or any claim circumstances:

- 1) that has been notified under any other policy before the start of this policy
- 2) that you were aware of or should have been aware of before the start of this policy.



Previous work exclusion

We will not cover any claim arising from an act, error or omission that occurred before the previous work date.



Property damage exclusion

We will not cover any claim for loss of or damage to property unless directly arising from a breach of duty through a negligent act, error or omission by you in the course of your professional business.



Property ownership exclusion

We will not cover any claim arising from the ownership, possession, leasing or use of any land or building structure or any other property or goods whether mobile or immobile.



Radioactive contamination exclusion

We will not cover you for loss of or damage or consequential loss resulting or arising from

- 1) ionising radiation or contamination by radioactivity from any irradiated 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 its nuclear component.



Territorial limits exclusion

We will not cover any claim arising from any professional business activity performed outside the policy territories.



Trading losses exclusion

We will not cover any claim arising out of trading losses or trading liabilities incurred by you or any of your businesses. This exclusion will not apply to any claim made against you for negligence in the normal course of your conduct of any receivership or procedures under:

- 1) the Insolvency Act 1986, or
- 2) the Insolvency (Northern Ireland) Order 1989, or
- 3) in the Republic of Ireland any receivership or insolvency procedures under the Companies Acts 1963 to 2005 or the Bankruptcy Act 1988 or any amendment or re-enactment of them.



War risk exclusion

We will not cover

- 1) any claims caused by or happening through war, invasion, act of foreign enemy hostilities (whether war is declared or not) civil war, rebellion, revolution, insurrection or military or usurped power or Canada should apply.
- 2) confiscation, nationalisation, requisition or destruction of or damage to property by or under the order of any government or public or local authority.

Section conditions

These conditions of cover apply only to this section

You must comply with the following conditions to have the full protection of your policy.

Conditions may specify circumstances whereby non-compliance will mean that you will not receive payment for a claim. However you will be covered and we will pay your claim if you are able to prove that the non-compliance with these conditions could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

If you are unsure about any of these conditions, please contact us



Admission of liability condition

In the event of a claim or discovery of claim circumstances, you must not:

- 1) admit liability
- 2) incur any claim costs
- 3) make any offers of settlement
- 4) otherwise prejudice the conduct of defence or settlement of that claim or claim circumstances without first obtaining our written approval. This applies regardless of any complaints handling procedure or if the amount in dispute is less than your excess.



Arbitration condition

In the event of any dispute between you and us relating to this policy section, the matter will be referred to arbitration before a sole arbitrator, who is to be mutually agreed upon by you and us, or, failing agreement, to be appointed by the President of the Institute of Chartered Accounts in England and Wales/of Scotland/in Ireland, as applicable. The decision of that arbitrator will be final and binding on you and us.

In the event of any dispute concerning what we will cover (including a dispute about which policy period a claim or claim circumstances might fall to be dealt with) between us and any other insurer(s) who insured you in a previous period, you and we agree that we will advance claim costs and cover you in accordance with “What is covered” above pending resolution of that dispute.



Cancellation condition

This professional indemnity section may not be cancelled other than in accordance with the Payment of premium condition or the Fraud condition in your Essential information document unless you and we mutually agree in writing to do so. In the event that you and we agree to cancel, we will write within 7 days of the date that the agreement was reached, to:

- 1) you at the address shown in your schedule, notifying you that the policy will be cancelled with effect from a date not less than 30 days after the date of that agreement;
- 2) the relevant Institute, being the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland or the Institute of Chartered Accountants in Ireland, notifying it of your name, the agreement to cancel and the effective date of cancellation.

This Cancellation condition replaces the Cancellation condition shown in your Essential information document.



Claims notification condition

You must tell us as soon as possible within the period of insurance about any claim against you irrespective of your views as to the validity of that claim.

We will not pay your claim where you have not complied with this condition.



Claim circumstances condition

You must tell us as soon as possible within the period of insurance of claim circumstances. If claim circumstances that relate to work you performed after the previous work date lead to a claim after the period of insurance has ended, that claim will be deemed to have been made against you during the period of insurance, provided that you told us about those claim circumstances within the period of insurance.



Claim control and co-operation condition

You must give us all information and assistance that we reasonably require and that is in your power to provide. You must co-operate with us and anyone appointed on our behalf by:

- 1) providing any information, assistance, signed statements or depositions as we may require to comply with any Civil Procedure Rules, Practice directions and Pre-Action Protocols as may be issued
- 2) assisting to present the best possible defence to a claim
- 3) ensuring access to any information that we or our representatives may require in the defence of a claim or the investigation of any claim circumstances, whether or no that information may be privileged
- 4) making payment on demand of your excess in order to comply with the terms of any settlement we have agreed
- 5) providing any information, assistance, signed statements or depositions as we may require to exercise our rights of subrogation
- 6) ensuring that all documents of any description relevant to any claim or claim circumstances are preserved and complete.



Loss of documents notification condition

You must tell us as soon as possible within the period of insurance when you discover any loss or damage to documents.



ICAEW, ICAS and/or ICAI Difference in conditions

It is required by the Institute of Chartered Accountants (ICA) that professional indemnity insurance that we provide to ICA members includes the following clause. It uses language that we would normally simplify for your benefit and clearer understanding, but we must issue it exactly as provided by the ICA to meet their requirements.

The insurance provided by this Professional indemnity section shall, notwithstanding any policy wording to the contrary, be, in each and every respect and in respect of each and every claim and in the aggregate, no less favourable and provide no less protection to the insured than the Approved Minimum Wording (as defined in the Regulations in force at the inception of the policy and on any renewal of the policy at the date of such renewal).

If the insurance offered by this policy exceeds that provided by the Approved Minimum Wording then, notwithstanding any policy wording to the contrary, the sum insured in respect of that additional indemnity shall be in addition to the sum insured in respect of the indemnity provided by the Approved Minimum Wording. However the additional indemnity will only operate when any insurance excess of the primary insurance has been exhausted by reason of claims.

In any dispute as to whether the insurance under this policy is in any respect or in the aggregate less favourable or gives less protection to the insured than the Approved Minimum Wording would do, a sole arbitrator (irrespective of the number of parties to the dispute) who shall be agreed between the insurer and the insured or failing such agreement shall be selected at the request of either the insurer or the insured by the President for the time being of the Institute of Chartered Accountants in England and Wales/of Scotland/in Ireland (as applicable) shall be appointed to resolve the dispute in accordance with the Arbitration Act 1996. The Arbitrator's decision (which will be based on English law unless the relevant Member's principal place of business is in Scotland, Northern Ireland or the Republic of Ireland, in which case the law of Scotland, Northern Ireland or the Republic of Ireland as the case may be will apply), shall be binding on both insurer and insured.