

# 2020 BC Lawyers Business Innocent Covered Party Indemnification Policy

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<b>Indemnitor:</b>	<b>The LSBC Captive Insurance Company Ltd. (the “Company”)</b>
<b>Address for service:</b>	<b>8th Floor, 845 Cambie Street, Vancouver, BC V6B 4Z9</b>
<b>Administrator:</b>	<b>The Law Society of British Columbia (the “Law Society”)</b>
<b>Manager:</b>	<b>Lawyers Indemnity Fund</b>
<b>Master Policy number:</b>	<b>BIC 20-01-01</b>

## DECLARATIONS

**This policy governs claims and potential claims first made and reported in 2020 — please read the policy carefully.**

1. **Covered Firm:** Per **certificate**
2. **Policy period:** January 1, 2020 12:01 a.m. to January 1, 2021 12:01 a.m. (PST)
3. **Schedule of Related Coverage:** Part A only of the **Compulsory Policy** and any professional liability insurance or other coverage enuring to the benefit of any **business innocent Covered Party**
4. **BIC Indemnity Fee:** \$300 per lawyer or **MDP Partner** covered under Part A of the **Compulsory Policy** who is a member of the **Covered Firm** at the inception of the policy period
5. **Limits of Liability and Deductibles:**

Coverage	Limit of Liability	Limit of Liability – Annual Aggregate	Deductible
Professional Liability (E&O)	\$1,000,000 per <b>error</b>	\$2,000,000 for all persons covered under this policy for all <b>damages, claims expenses</b> and deductibles arising out of all <b>claims</b> and potential <b>claims</b> first reported during the policy period	10% of the total amount of <b>damages, claims expenses</b> or both with respect to each <b>error</b> that results in the payment of <b>damages, claims expenses</b> or both under this policy.

## DEFINITIONS

For convenience, all defined words are in bold print. We, us or our refers to the **Company**. Except as set out in this policy, the Definitions applicable to Part A of the **Compulsory Policy** apply to this policy. In this policy:

**Business-related professional liability claim** means: a **claim** for **damages** that would be covered under Part A of the **Compulsory Policy** but for the application of Exclusion 6.2 of the **Compulsory Policy**.

**Compulsory Policy** means: BC Lawyers Professional Liability Indemnification Policy 20-01-01 issued to **members** by the **Company** and in force at the same time as this policy.

**Business innocent Covered Parties** means: those **additional Covered Parties** against whom a **business-related professional liability claim** is or may be brought and who are excluded from coverage under Part A of the **Compulsory Policy** as a result of the application of Exclusion 6.2 and Part A 3.4 of the **Compulsory Policy** and who, at the time the **individual Covered Party** was performing the **professional services** giving rise to the **claim**:

- (a) were at the **Covered Firm**;
- (b) had paid the indemnity fee for the **Compulsory Policy**;
- (c) had no knowledge of the circumstances giving rise to the application of Exclusion 6.2 to the **individual Covered Party**; and
- (d) had exercised due diligence in accordance with Condition 3 of this policy.

**Covered Firm** means: the **business innocent Covered Parties'** firm named in Declaration 1.

This policy is a contract between each **Covered Party** and the **Company**.

In consideration of the payment of the BIC indemnity fee by the **Covered Firm** and in reliance upon the statements of any application(s) for this policy, and subject to the limits of liability, exclusions, conditions, endorsements and all other terms of this policy, the **Company** agrees:

### 1. INDEMNITY AGREEMENT

We shall pay all sums the **business innocent Covered Parties** become legally obligated to pay as **damages** because of any **business-related professional liability claim** provided that such **claim** is reported to us during the policy period and the **error** giving rise to such **claim** occurs during the policy period or during the policy period of any prior policy held by the **Covered Firm** providing coverage for **business-related professional liability claims**.

### 2. DEFENCE, EXPENSES and SETTLEMENT

2.1 With respect to any **claim** first made or suit first brought within Canada or the United States of America seeking **damages** for which the **business innocent Covered Parties** are entitled to indemnity under this policy, we shall have the right:

2.1.1 and the duty to defend any suit against the **business innocent Covered Parties**, even if any of the allegations of the suit are groundless, false or fraudulent; and

- 2.1.2 to select and instruct defence counsel and to investigate and settle any **claim** including the right to elicit, or instruct defence counsel to elicit, offers of settlement. If the **business innocent Covered Parties** object to any settlement recommended by us, we may:
- (a) settle the **claim** without the **business innocent Covered Parties'** consent and the **business innocent Covered Parties** will remain liable to pay the deductible stated in Declaration 5; or
  - (b) give the **business innocent Covered Parties** the right to negotiate or defend the claim or suit if the **business innocent Covered Parties** provide security for any damages for which they may be liable. The amount and form of security required will be determined by us, in our sole discretion. If we give the **business innocent Covered Parties** the right to negotiate or defend the claim or suit, any duty we may have had to defend the claim ceases and the damages and claims expenses in excess of the amount for which we could have settled will not be recoverable under this policy.
- 2.2 With respect to any **claim** that is made or suit that is brought elsewhere than within Canada or the United States of America seeking **damages** for which the **business innocent Covered Parties** are entitled to indemnity under this policy:
- 2.2.1 we shall have the right, but not the duty, to investigate, settle, defend or pay **claims expenses** in accordance with s. 2.1.2; and
- 2.2.2 if we elect not to investigate, settle or defend a **claim** or suit, the **business innocent Covered Parties** will, under our supervision, investigate and defend as is reasonably necessary and, if we deem prudent the **business innocent Covered Parties** will settle such **claim** or suit. We shall reimburse the **business innocent Covered Parties** for the reasonable cost of such investigation, settlement or defence.
- 2.3 Notwithstanding Exclusion 2 of the **Compulsory Policy**, we shall have the right and the duty to defend, in accordance with s. 2.1.2, any **claim** first made against the **business innocent Covered Parties** and reported to us during the policy period arising out of a **personal injury error** while the **business innocent Covered Parties** were performing or failing to perform **professional services** for others.

### 3. THE COMPULSORY POLICY

- 3.1 This policy is subject to all terms, agreements, limitations and endorsements of and shall follow Part A of the **Compulsory Policy** in all respects, except as to any provisions to the contrary contained in this policy. Where the terms of this policy provide indemnity coverage not otherwise provided by Part A of the **Compulsory Policy** then this policy shall respond, subject to its terms, agreements, limitations and exclusions, but only for the **damages** and **claims expenses** in excess of the deductible stated in Declaration 5.

Part A 3.3 of the **Compulsory Policy** is not incorporated by reference into this policy.

This policy does not modify or supplement coverage provided by Part B or Part C of the **Compulsory Policy**.

## EXCLUSIONS

All exclusions contained in the **Compulsory Policy** that exclude coverage under Part A of the **Compulsory Policy** are incorporated into this policy with the same force and effect, unless otherwise specified in this policy, and are in addition to the following exclusions.

This policy does not apply to:

1. **Errors** that occurred prior to January 1, 2002.
2. **Claims, errors** or any circumstances that the **business innocent Covered Parties** knew or could have reasonably foreseen might be the basis of a **claim** prior to the inception of this policy period (or if this policy is part of a series of consecutive renewals issued by the **Company**, prior to the inception of the original policy).

## CONDITIONS

### 1. LIMITS OF LIABILITY

#### 1.1 EACH ERROR

1.1.1 The limit of liability stated in Declaration 5 shall be the maximum amount payable under this policy for all **damages, claims expenses** and deductibles for all **claims** arising out of an **error**.

1.1.2 If a **claim** or potential **claim** is reported to us by or on behalf of any **Covered Party** during the policy period, all additional **claims** or potential **claims** reported subsequently that arise out of the same **error** shall be:

- (a) part of the **claim** or potential **claim** first made and reported to us; and
- (b) deemed to be reported within this policy period;

and all such **claims** or potential **claims** shall be subject to the terms of this policy and to the one limit of liability applicable to the **claim** or potential **claim** first reported.

#### 1.2 ANNUAL AGGREGATE

1.2.1 The limit of liability stated in Declaration 5 is the maximum amount payable under this policy on behalf of all persons covered under this policy for all **damages, claims expenses** and deductibles arising out of all **claims** and potential **claims** first reported during the policy period.

1.2.2 All payments of **damages, claims expenses** and deductibles reduce the applicable limit of our liability.

#### 1.3 MULTIPLE COVERED PARTIES, CLAIMS OR CLAIMANTS

Notwithstanding any other provision of this policy, one or more **claims** resulting from an **error** shall be subject to one limit of liability and shall not increase our limits of liability regardless of whether the **error** is made by more than one **Covered Party** or by **Covered Parties** acting in

more than one capacity and regardless of whether the **claims** are made against more than one **Covered Parties** or made by more than one **Claimant**.

#### 1.4 PRIORITY OF PAYMENTS

All **claims expenses** will be subtracted first from the applicable limit of our liability, with the remainder being the amount available to pay **damages**.

#### 1.5 EXHAUSTION OF LIMITS

We shall not be obliged to pay any **damages** or **claims expenses**, or to undertake or continue the defence of any proceeding after the applicable limit of our liability has been exhausted by payment of **damages, claims expenses** and deductibles or after deposit of the balance of the applicable limit of our liability in a court of competent jurisdiction. In such a case, we shall have the right to withdraw from the further defence by tendering control of the defence to the **business innocent Covered Parties**.

#### 1.6 REDUCTION OF LIMITS BY PAYMENTS UNDER RELATED COVERAGE

Payments of **damages** or **claim expenses** made under the related coverage referred to in Declaration 3 reduce the limits of coverage under this policy.

### 2. BIC INDEMNITY FEE PROVISIONS

The BIC indemnity fee for this policy is payable at the beginning of the policy period. Any additions or deletions from the lawyers or MDP Partners at the **Covered Firm** during the policy period shall not affect the validity of this policy. The BIC indemnity fee will be calculated by multiplying the rate shown in Declaration 3 by the number of lawyers and **MDP Partners** covered under the **Compulsory Policy** and expected to be with the **Covered Firm** at the inception of the policy period.

### 3. DUE DILIGENCE

Coverage provided under this policy shall be limited to those **business innocent Covered Parties** who exercised due diligence in making reasonable and regular inquiries of the **individual Covered Party** that would have disclosed the circumstances giving rise to the application of Exclusion 6.2 under the **Compulsory Policy**.

### 4. REPRESENTATIONS

By accepting this policy, the **business innocent Covered Parties** agree:

- (a) the statements in the application and the Declarations are accurate and complete;
- (b) those statements are based upon representations made by all persons covered under this policy;
- (c) this policy has been issued in reliance upon such representations;

but coverage is nevertheless extended under this policy to a **business innocent Covered Party** who did not make or who did not knowingly permit to be made any false statement in the application.

## 5. DEDUCTIBLES

- 5.1 If any **claims expenses** are paid by us, the **business innocent Covered Parties** will pay the deductible stated in Declaration 5.
- 5.2 If **damages** are payable, the **business innocent Covered Parties** will pay the deductible stated in Declaration 5.
- 5.3 Our obligation to pay **damages** or **claims expenses** applies only to **damages** and **claims expenses** in excess of the deductible and we shall be liable only for the difference between the deductible and the limits of liability.
- 5.4 If we request, the **business innocent Covered Parties** will make direct payments for **damages** or **claims expenses** within the deductible to us or to other parties.

## 6. REIMBURSEMENT

- 6.1 **Damages** or **claims expenses** may be paid in excess of the limit of liability or within the deductible and the **business innocent Covered Parties** will repay such amounts to us on demand.
- 6.2 If a **business innocent Covered Party** is not entitled to coverage for a **claim** because of any exclusion, breach of a condition, or any other term of this policy and **damages** or **claims expenses** are paid on behalf of that or any other **business innocent Covered Party** pursuant to this policy, that **business innocent Covered Party** will reimburse us for all such amounts on demand.
- 6.3 In relation to Conditions 6.1 and 6.2:
  - 6.3.1 if payments are made on behalf of two or more **business innocent Covered Parties**, such **business innocent Covered Parties'** liability to us will be joint and several; and
  - 6.3.2 the timing of any demand made shall be in our sole discretion.

## 7. NOTICE OF CLAIM OR SUIT

- 7.1 If any **business innocent Covered Party** becomes aware of an **error** or any circumstance which could reasonably be expected to be the basis of a **claim**, however unmeritorious, that may involve this policy, that **business innocent Covered Party** or the **Covered Firm** will give written notice immediately, along with the fullest information obtainable, during the policy period to:

Lawyers Indemnity Fund  
8th Floor, 845 Cambie Street  
Vancouver, BC V6B 4Z9  
Attention: Claims Manager

Fax: 604-682-5842  
Email: [LIFclaims@lsbc.org](mailto:LIFclaims@lsbc.org)

Such notice is necessary to settle, or defend, any **claim** or anticipated **claim** against you which may be covered under this policy.

- 7.2 If a **claim** is made or suit is brought against the **business innocent Covered Parties**, they will forward immediately to us every demand, notice of civil claim or other process with the fullest information obtainable.

- 7.3 We shall deem notice of an **error** or **claim** given by an **individual Covered Party** who is or was a member of the **Covered Firm** under Part A of the **Compulsory Policy** to be notice given on behalf of the **business innocent Covered Parties** and the **Covered Firm**.

## 8. CONFLICTS

Any duty that we may have to defend or indemnify you shall not give rise to an obligation on our part to pay any cost you may incur in relation to:

- 8.1 a dispute arising out of or in connection with this policy or the breach thereof; or
- 8.2 any other actual or potential conflict between us.

You agree that you are solely responsible for any such cost without recourse to us.

## 9. OTHER COVERAGE OR RECOURSE

- 9.1 This policy is reduced by any payment under the policies referred to in Declaration 3.
- 9.2 This policy is excess over any other valid and collectible insurance, or right of indemnity, other than those policies referred to in Declaration 3, whether primary, contributing, contingent or otherwise, and we will not pay any loss or **claim** until such insurance or recourse is exhausted.
- 9.3 Condition 9.2 does not apply to insurance that is specifically arranged to pay amounts in excess of the limits of liability provided by this policy.
- 9.4 If the **business innocent Covered Parties**, any lawyer or any non-lawyer partner practising in the **Covered Firm** has lawyers professional liability insurance or indemnity coverage (other than insurance specifically arranged to pay amounts in excess of the limits of liability provided by this or any other Canadian jurisdiction's policy) under another Canadian jurisdiction's policy (or Canadian jurisdictions' policies) that applies to a **claim** covered by this policy, the total amount of insurance provided under these policies, together, will not exceed the total value of the **claim** or the most that is available under either (any one) of these policies alone, whichever is less. The decision as to which of these policies shall respond, or as to any allocation between (or amongst) the policies, shall be made by us together with the other Canadian jurisdiction, and the **business innocent Covered Parties** agree to be bound by the decision. For clarity, a **Reciprocal Jurisdiction** is also a Canadian jurisdiction.

## 10. SOLE AGENT

The **Covered Firm** is authorized to act on behalf of all **business innocent Covered Parties** with respect to giving or receiving notice of cancellation, and agreeing to any changes in this policy.

## 11. SUBROGATION

In the event of any payment under this policy, we shall be subrogated to all the **business innocent Covered Parties'** rights of recovery against any person or **organization** and the **business innocent Covered Parties** will do whatever is necessary to secure such rights. The **business innocent Covered Parties** will do nothing after loss to prejudice such rights.



## 12. CANCELLATION OF POLICY

This policy may be cancelled by the **Company** for non-payment of premium by providing 15 days prior written notice to the **Covered Firm**. This policy may be cancelled by the **Covered Firm** by surrender thereof to the **Company** or by written notice to the **Company** stating when thereafter the cancellation shall be effective. The mailing of notice by regular mail shall be sufficient proof of notice by the **Company** or the **Covered Firm**. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. In the event of this policy being cancelled by the **Company** or the **Covered Firm**, the earned premium shall be computed for the period in force on a *pro rata* basis. Notice of cancellation by the **Company** to the **Covered Firm** shall be deemed notice to all persons covered under this policy and payment of an unearned premium to such **Covered Firm** shall be for the account of all persons covered under this policy. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

IN WITNESS WHEREOF, we have caused this policy to be executed.

LSBC Captive Insurance Company Ltd.



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Susan I. Forbes, QC, Secretary