

Directors and Officers Liability Insurance

Policy Wording



Important

Statutory Notice – Section 40 Insurance Contracts Act 1984 (Cth)

This notice is provided in connection with but does not form part of the policy. This is a 'claims made' liability insurance policy. It only provides cover if:

1. a *claim* is made against the *insured*, by some other person, during the *period of insurance*; and
2. the *claim* arises out of a *wrongful act* committed, attempted or alleged to have been committed or attempted after the *date of continuous cover* stipulated in the *schedule*.

Section 40(3) of the Insurance Contracts Act 1984 (Cth) applies to this type of policy. That sub-section provides that if the insured becomes aware, during the period of insurance, of any occurrence or fact which might give rise to a claim against them by some other person, then provided that the insured notifies the insurer of the matter as soon as reasonably practicable after the insured becomes aware of the occurrence or fact and before this policy expires, the insurer may not refuse to indemnify merely because a claim resulting from the matter is not made against the insured prior to the end of the period of insurance.

If the *insured*, inadvertently or otherwise, does not notify the relevant occurrence or facts to Zurich before the expiry of the policy, the *insured* will not have the benefit of Section 40(3) of the Insurance Contracts Act 1984 (Cth) and Zurich may refuse to pay any subsequent *claim*, notwithstanding that the events giving rise to it or the *wrongful acts* alleged in it may have taken place during the *period of insurance*.

If a *claim* is actually made against the *insured* by some other person during the *period of insurance* but is not notified to Zurich until after the policy has expired, Zurich may refuse to pay or may reduce its payment under the policy if it has suffered any financial prejudice as a result of the late notification.

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Zurich Directors and Officers Liability Insurance

About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ZAIL), ABN 13 000 296 640, AFS Licence Number 232507, a subsidiary of Zurich Financial Services Australia Limited (ZFSA). In this document, ZAIL may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZFSA provides wealth protection and wealth creation solutions, offering general insurance for commercial customers, and life risk, investments and superannuation solutions for corporates and personal customers. Zurich's solutions and services are primarily accessible through insurance brokers, financial advisers and other intermediaries.

ZFSA is part of the worldwide Zurich Financial Services Group, an insurance-based financial services provider with a global network of subsidiaries and offices in North America and Europe as well as in Asia Pacific, Latin America and other markets. Founded in 1872, the Group is headquartered in Zurich, Switzerland. It employs approximately 60,000 people serving customers in more than 170 countries.

How to apply for this insurance

Throughout this document when we are referring to your insurance broker or adviser, we simply refer to them as your intermediary.

If you are interested in buying this product or have any enquiries about it, you should contact your intermediary who should be able to provide you with all the information and assistance you require.

If you are not satisfied with the information provided by your intermediary you can contact us at the address or telephone number shown on the back cover of this document. However, we are only able to provide factual information or general advice about the product. We do not give advice on whether the product is appropriate for your personal objectives, needs or financial situation.

Duty of disclosure

Before you enter into a contract of general insurance with us, you have a duty under the Insurance Contracts Act 1984 (Cth) to disclose to us every matter you know, or could reasonably be expected to know, is relevant to our decision whether to insure you and, if so, on what terms. This applies to all persons to be covered under this contract of insurance.

You have the same duty to disclose those matters to us before you renew, extend, vary or reinstate a contract of general insurance. Your duty however, does not require disclosure of a matter:

- that diminishes the risk to be insured;
- that is of common knowledge;
- that we know or in the ordinary course of our business we ought to know; or
- that we indicate to you that we do not want to know.

Our contract with you

Your policy is a contract of insurance between you and Zurich and contains all the details of the cover that we provide.

Your policy is made up of:

- the policy wording. This is common to all customers who buy our Zurich Directors and Officers Liability Insurance policy. It tells you what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the *submission*, which is the information you provide to us when applying for insurance cover;
- your most current *schedule* issued by us. The *schedule* is a separate document unique to you, which shows the insurance details relevant to you. It includes any changes, exclusions, terms and conditions made to suit your individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as in an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in your *schedule* are insured.

This document is used for any offer of renewal we may make, unless we tell you otherwise. Please keep your policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.

Our Agreement

Subject to your agreement to pay the premium set out in the *schedule* we agree with the *insured persons* and the *company* to provide insurance in accordance with the terms, conditions and limitations of this policy.

Insuring Clauses

1. Directors and Officers liability

We will pay to or on behalf of any *insured person* the *financial loss* of such *insured person* which arises from or is a consequence of any *claim* first made against such *insured person* during the *period of insurance* or the *extended reporting period* (if applicable) save to the extent that such *insured person* is indemnified by the *company*.

2. Company reimbursement

We will pay on behalf of the *company* the *financial loss* of an *insured person* which arises from or is a consequence of any *claim* first made against such *insured person* during the *period of insurance* or the *extended reporting period* (if applicable) but only to the extent the *company* has indemnified the *insured person*.

3. Securities claims

We will pay on behalf of the *company* *financial loss* which arises from or is a consequence of any *securities claim* first made against the *company* during the *period of insurance* or the *extended reporting period* (if applicable).

4. Overseas entity liability

We will pay the *financial interest* of the *policyholder* in connection with the *financial loss* of any:

- (a) *subsidiary* located in a *restricted foreign jurisdiction* in respect of a *securities claim* first made against such *subsidiary* during the *period of insurance* or the *extended reporting period* (if applicable); and/or
- (b) *insured person* of such *subsidiary* in respect of any *claim* first made against such *insured person* during the *period of insurance* or the *extended reporting period* (if applicable);

but only if and to the extent that:

- (c) such *claim* would fall within the coverage provided under this policy but for the fact that this policy is not permitted to provide coverage for such *claim* due to the law of such *restricted foreign jurisdiction*; and
- (d)
 - (i) an *international program policy* for such *restricted foreign jurisdiction* has not been purchased; or
 - (ii) an *international program policy* for such *restricted foreign jurisdiction* has been purchased, but its conditions and the Limit of Liability of such *international program policy* do not cover the entire *financial loss* of such *claim*.

Each *insured* accepts that any payment by us to the *policyholder* pursuant to this Insuring Clause shall discharge any liability which we might have had to such *insured* in respect of the relevant liability.

Definitions

For the purposes of this policy:

Associated company

associated company means a company or legal entity in respect of which, at the inception of the *period of insurance*, the named *policyholder* owns, directly or indirectly, greater than 20% of the issued share capital or voting rights representing the present right to vote for the election of directors, but is not a *subsidiary company*.

Bodily Injury

bodily injury means bodily injury, sickness, disease or death of any person including any consequential loss resulting therefrom, and shall include mental or emotional distress.

Change in control

change of control means an event or events occur, with the result that:

- (a) any person, entity or group:
 - (i) acquires more than 50% of the *policyholder's* share capital;
 - (ii) acquires the majority of the voting rights in the *policyholder*;
 - (iii) assumes the right to appoint or remove the majority of the board of directors (or equivalent position) of the *policyholder*;

- (iv) assumes control pursuant to written agreement with other shareholders over the majority of the voting rights in the *policyholder*; or
- (v) merges with the *policyholder*, such that the *policyholder* is not the surviving entity; or
- (b) a trustee in bankruptcy, receiver, liquidator, conservator, rehabilitator, administrator or deed administrator (or similar official or person) is appointed for the *policyholder*.

Civil or bail bond expenses

civil or bail bond expenses means a fee or premium (and only those that are available at reasonable commercial rate) necessary to obtain a bond or other similar form of financial guarantee, in respect of obligations as to a specific security or collateral placed upon the *insured person* by a civil or criminal court in connection with any covered *claim*, and excluding any form of actual security or collateral itself.

Claim

claim means:

- (a) a written demand for monetary damages or non-monetary relief;
- (b) a civil proceeding, suit or counter-claim commenced by the service of a statement of claim, summons or similar pleading;
- (c) a criminal proceeding;
- (d) an arbitration, mediation proceeding or alternative dispute resolution proceeding;
- (e) any request to extend the operation of or waive any statute of limitations or contractual time-bar,

which alleges a *wrongful act*.

The term '*claim*' shall include a *securities claim*, *extradition claim*, *environmental mismanagement claim* or an *employment claim*.

Clean up costs

clean up costs means expenses (including but not limited to legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralising, detoxifying or assessing the effects of *pollutants*.

Company

company means:

- (a) the *policyholder*;
- (b) any past, present and future *subsidiary* of the *policyholder* (subject to the terms and conditions of the policy);
- (c) any foundation or charitable trust solely controlled or sponsored by the *policyholder* or any *subsidiary* of the *policyholder*, provided that this definition shall not include any pension or superannuation fund, trust or scheme; and
- (d) in the event a bankruptcy proceeding shall be instituted by or against the foregoing entities, the resulting debtor-in-possession (or equivalent status in any applicable jurisdiction), if any.

Corporate manslaughter proceeding

corporate manslaughter proceeding means a formal criminal proceeding against an *insured person* for involuntary manslaughter (including constructive manslaughter or gross negligence manslaughter) in their capacity as such for the *company* and directly related to the business of the *company*.

Date of continuous cover

date of continuous cover means:

- (a) for *insured persons* the date as specified in the *schedule*; and
- (b) for the *company* under Insuring Clauses 3. and 4., the date specified in the *schedule*.

Deductible

deductible means the amount stated in the *schedule* that shall be the responsibility of the *company*, as applicable, to pay in respect of each *claim* under Insuring Clauses 2. and/or 3. and/or 4. of the policy for *financial loss*.

Defence costs

defence costs means reasonable fees, costs, charges and expenses (other than remuneration payable to any *insured persons* or *employees* of any *company*, cost of their time or costs or overhead of any *company*), in the investigation, defence, settlement or appeal from any *claim* made or brought against an *insured*.

Defence costs shall also include reasonable fees, costs, charges and expenses of any accredited expert retained through defence lawyers approved in writing by us on behalf of the *insureds* to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a *claim*.

Defence costs shall not include *investigation costs*.

Deprivation of assets expenses

deprivation of assets expenses means the payment of the following services, directly to the provider of such services, in the event of an interim or interlocutory order confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of an *insured person* or creating a charge over real property or personal assets of the *insured person* during the *period of insurance*:

- (a) housing;
- (b) utilities;
- (c) personal insurances; and
- (d) schooling.

Such expenses will only be payable provided that a personal allowance has been directed by the court to meet such payments and such personal allowance has been exhausted. Expenses will be payable after 30 days following the event above for a period of up to 12 months.

Director or officer

director or officer means:

- (a) any natural person who is a past, present or future director, officer, management committee member, member of the board of managers, supervisory board member, management board member, trustee or governor of the *company* and shall include any equivalent position in any other country;
- (b) any natural person who is a past, present or future *shadow director* of the *company*;
- (c) any natural person who is a past, present or future director of a corporate trustee of a superannuation fund established for the benefit of the *employees* of the *company*;
- (d) any *director or officer* defined in (a) to (c) above, who is or was a member of the *company's* internal audit committee, or any other internal committee of the company;
- (e) any *employee* of the *company* who is a past, present or future corporate general counsel (or equivalent position) of the *policyholder* or any *employee* acting in a management or supervisory capacity at the direction or request of a *director or officer* of the *company*; and
- (f) any natural person named as a prospective director in the listing particulars or prospectus for a public offering issued by the *company*.

Employee

employee means a natural person while in the regular service of the *company* in the ordinary course of the *company's* business and whom the *company* compensates by salary, wages and/or commissions and has the right to govern, instruct and direct in the performance of such service.

The definition of *employee* shall not include independent contractors or agents.

Employment claim

employment claim means:

- (a) a *claim* based on any actual or alleged act, error or omission with respect to employment or prospective employment of any past, present, future or prospective *employee* of the *company*; and/or
- (b) a proceeding, *investigation* or charge brought by or before the Australian Human Rights Commission (or similar body in any *foreign jurisdiction*).

Environmental event

environmental event means:

- (a) the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of *pollutants* or *greenhouse gases* into or on real or personal property, water or the atmosphere; or
- (b) any direction or request that the *company* or *insured persons* test for, monitor, clean up, remove, contain, treat, detoxify or neutralise *pollutants* or *greenhouse gases*, or any voluntary decision to do so,

whether or not such *greenhouse gases* are *pollutants*.

Environmental mismanagement claim

environmental mismanagement claim means any *claim* based upon, arising out of or attributable to an *environmental event* if and to the extent such *claim*:

- (a) is a *securities claim*;
- (b) is an *employment claim* against an *insured person*, including without limitation any such *claim* for retaliatory treatment;
- (c) is against an *insured person* for *wrongful acts* from an *environmental event* and/or in connection with misrepresenting or failing to disclose information related to *greenhouse gases* or actual or alleged global warming or climate changes; or
- (d) results in *financial loss* incurred by *insured persons* for which the *company* does not indemnify the *insured persons* either because the *company* is neither permitted nor required to grant such indemnification or because of *financial impairment*.

Extended reporting period

extended reporting period means the relevant period of cover arising or offered under Extension of Cover 10. 'Extended reporting period' and/or Extension of Cover 24. 'Retired directors and officers'.

Extradition claim

extradition claim means a formal request, claim, warrant for arrest or other proceedings pursuant to the provisions of the Extradition Act 1988 (Cth) or any replacement legislation in Australia or similar legislation in any other jurisdiction.

Extradition costs

extradition costs means reasonable legal fees, costs and expenses incurred by an *insured person* with our prior written consent to obtain legal advice or to bring or defend proceedings including by way of judicial review or other challenge to the political executive's decision to order an *insured person's* extradition and to pursue appeals.

Financial impairment

financial impairment means the status of the *company* resulting from:

- (a) the appointment by any governmental, provincial, federal or state official, agency or court of any receiver, conservator, liquidator, trustee, administrator, deed administrator or similar official to take control of, supervise, manage or liquidate the *company*;
- (b) the appointment by or on behalf of the company of administrators; or
- (c) the *company* being in receivership or liquidation.

Financial institution

financial institution means any bank including any merchant or investment bank, finance company, hedge fund, insurance or reinsurance company (other than a captive owned by the *policyholder*), mortgage bank, savings and loan association, building society, credit union, stockbroker, investment trust, asset management company, fund manager or any entity established principally for the purpose of carrying on commodities, futures or foreign exchange trading or any other similar entity.

Financial interest

financial interest means for the purpose of Insuring Clause 4. 'Overseas entity liability' the financial interest of the *policyholder*, which is deemed to be equivalent to the *financial loss* of any:

- (a) *subsidiary* located in a *restricted foreign jurisdiction* in respect of a *securities claim* made against such *subsidiary*; and/or
- (b) *insured person* of such *subsidiary* in respect of any *claim* made against such *insured person*, but only in the case and to the extent that either:
 - (i) such *policyholder*; or
 - (ii) the *subsidiary*;

is not legally prohibited from paying such *financial loss* to the *insured person*.

Financial loss

financial loss means:

- (a) damages, judgments (including pre and post judgment interest awarded on a covered judgment and plaintiff's legal fees awarded on a covered judgment and any statutory compensation orders whether made under Part 9.4B of the Corporations Act 2001 (Cth) or otherwise) that any *insured* becomes legally liable to pay;
- (b) sums payable for any settlement to which we have consented;
- (c) *defence costs*;
- (d) *investigation costs*;
- (e) *extradition costs*;
- (f) *prosecution costs*;
- (g) *public relation expenses*;
- (h) *civil or bail bond expenses*;
- (i) *deprivation of assets expenses*;
- (j) fines and pecuniary penalties which an *insured* is legally obligated to pay, provided we are not legally prohibited from paying such fine or penalty and excepting fines and pecuniary penalties referred to in paragraph (iii) below of this definition of *financial loss*; and
- (k) punitive, exemplary, aggravated and multiple damages where insurable by law, of which the enforceability is governed by such applicable law that most favours coverage for such penalties and punitive, exemplary, aggravated and multiple damages, provided that such applicable law has a connection or relationship to the relevant *insured*, to the *company* or to the *claim* giving rise to such damages.

Financial loss (other than *defence costs*) does not include;

- (i) taxes (other than those covered by Extension of Cover 27. 'Tax liability' and Condition 9. 'Goods and Services Tax');
- (ii) social security contributions;
- (iii) fines and pecuniary penalties imposed by law for a deliberate or intentional breach of law (other than those covered by Extension of Cover 12. 'Fines for corrupt practices') or any matter deemed uninsurable or prohibited under the law applicable to this policy;
- (iv) damages that are uninsurable under the law pursuant to which this policy shall be construed;
- (v) *clean up costs*; or
- (vi) any sum payable pursuant to a financial support direction or contribution notice issued by a superannuation or pension regulator such as the Australian Prudential Regulation Authority or similar.

Foreign jurisdiction

foreign jurisdiction means any jurisdiction other than Australia.

Foreign policy

foreign policy means, in relation to a *foreign jurisdiction*, the most recently revised standard form of wording for a directors and officers policy of insurance issued by Zurich's affiliate in such *foreign jurisdiction* that provides substantially similar coverage to the coverage provided by this policy and which is published on the Zurich Financial Services Group 'Global Corporate Financial Lines and D&O' Website.

Greenhouse gases

greenhouse gases means carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF₆), or any other emission or substance defined by applicable law as a Greenhouse gas.

Insured

insured means:

- (a) any *insured person(s)*; and
- (b) the *company*.

Insured person(s)

insured person(s) means:

- (a) *director or officer*;
- (b) *outside entity executive*;

- (c) *employee* of the *company* who is the risk manager (or equivalent position) of the *policyholder*;
- (d) *employee* of the *company* while acting in a managerial or supervisory capacity for the *company*;
- (e) *employee* of the *company*, other than a *director or officer*, in relation to:
 - (i) any *securities claim*;
 - (ii) *employment claim*; or
 - (iii) all other *claims*, but only if and as long as such *claim* is also made, against a *director or officer*.
- (f) for the purpose of Extension of Cover 17. 'Marital estates' only and no other, any lawful spouse or domestic partner of a person as defined in (a) to (e) immediately above; and
- (g) for the purpose of Extension of Cover 8. 'Estates, heirs, legal representatives' only and no other, any estate, heir or legal representative of a person as defined in Definitions of *insured person(s)* (a) to (e) immediately above.

Insured person(s) shall not include any agent, contractor, consultant, external auditor, or liquidator, deed administrator, administrator or receiver (or the equivalent in any other jurisdiction) of the *company*.

International program policies

international program policies means the policy(ies) listed in the *schedule*.

Investigation

investigation means a formal criminal, administrative or regulatory investigation, examination, hearing or enquiry, commenced by an *official body*.

Investigation costs

investigation costs means reasonable fees, costs, charges and expenses (other than remuneration payable to any *insured persons* or *employees* of any *company*, cost of their time or costs or overhead of any *company*) incurred with our written consent, such consent not to be unreasonably withheld or delayed, by or on behalf of an *insured person* directly in connection with such *insured person* preparing for and attending an *investigation*.

Investigation costs do not include any fines or penalties, or the equivalent, levied or imposed in connection with the *investigation*.

Joint venture

joint venture means any unincorporated enterprise undertaken jointly by the *company* with any *third party*.

Judicial order

judicial order means:

- (a) an interim or interlocutory judicial order; or
- (b) a judicial order with respect to any proceeding concerning the deportation of any *insured person*,

provided that any judicial order against an *insured person* shall be in connection with a *claim* against such *insured person* or *investigation* that is covered under this policy.

Limit of Liability

limit of liability means the amount specified in the *schedule* which shall be our maximum liability, in the aggregate, payable under this policy, subject to the terms and conditions of this policy.

Non-Executive Director Excess Aggregate Limit of Liability

non-executive director excess aggregate limit of liability means the Limit of Liability specified in the *schedule* in respect of all *non-executive directors' claims* and *investigations* in the aggregate under Extension of Cover 9. 'Excess limit of liability for non-executive directors'.

Non-Executive Director Excess Limit of Liability

non-executive director excess limit of liability means the Limit of Liability specified in the *schedule* in respect of each *non-executive director* under Extension of Cover 9. 'Excess limit of liability for non-executive directors'.

The 'Non-Executive Director Excess Limit of Liability' shall be a separate *limit of liability* for each *non-executive director* and applicable only to that *non-executive director*.

Non-Executive Director

non-executive director means any natural person serving as a *director* of the *company* at the inception of the *period of insurance* who is not also an *officer* or *employee* of the *company*.

The term *non-executive director* shall also include any natural person who begins serving as a non-executive director of the *company* during the *period of insurance*.

Non-profit organisation

non-profit organisation means any company or legal entity established for any charitable, community, social or industry purpose or for the provision of services or benefits to its members and not for the purpose of making profits.

Official body

official body means any regulator, government or administrative body or agency, official trade body or self-regulatory body legally empowered to investigate the affairs of the *company* or *outside entity* or the conduct of an *insured person* in such capacity.

For clarity, this includes a Royal Commission, judicial body, commission of inquiry or stock exchange.

Outside entity

outside entity means:

- (a) any *non-profit organisation*; or
- (b) any for-profit entity;

but excluding any *company* and any:

- (i) *financial institution*;
- (ii) entity whose *securities* are traded on a primary, secondary or other market in the United States of America or its territories and/or possessions; or
- (iii) other entity that had negative net assets or negative net worth at the inception date of this policy;

unless such *financial institution* or entity is specifically listed as an *outside entity* in an endorsement attached to this policy.

Outside entity executive

outside entity executive means any *director*, *officer* or *employee* of the *company* who:

- (a) did or will serve or act; or
- (b) during the *period of insurance* is serving or acting,

in his or her capacity as a director or officer (or equivalent executive or management position in any other country) of an *outside entity* at the *company's* specific direction and request.

Period of insurance

period of insurance means the period of time specified in the *schedule* to this policy including any Extension of Cover thereto agreed in writing by us.

Policyholder

policyholder means the legal entity as specified in the *schedule*.

Pollutants

pollutants means any solid, liquid, gaseous irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals, toxic mould or any thermal irritant or contaminant, ionising radiation or radioactivity from any nuclear fuel and waste (waste includes, but is not limited to, nuclear waste or materials which are intended to be or have been recycled, reconditioned or reclaimed) and any other similar substance of any kind or nature whatsoever including electromagnetic fields, asbestos, asbestos products and any noise.

Prior known fact

prior known fact means any fact or matter which:

- (a) an *insured person* first became aware of, after the *date of continuous cover*, but prior to the commencement of the *period of insurance*; and
- (b) knew, or a reasonable *insured* would have considered, at any time after the *date of continuous cover* but prior to the commencement of the *period of insurance*, might result in an allegation against the *insured* of a *wrongful act*.

Property damage

property damage means any damage to or destruction of any property or loss of use of such property, and any consequential loss resulting therefrom.

Prosecution costs

prosecution costs means the reasonable fees, costs, charges and expenses (other than remuneration payable to any *insured persons* or *employee* of any *company*, costs of their time or overhead of any *company*) incurred with our prior written consent, such consent not to be unreasonably withheld or delayed, in bringing or defending proceedings in an *insured's* national court or to appeal to seek to obtain the discharge or revocation of a *judicial order*.

Public relations expenses

public relations expenses means the reasonable fees and related expenses of a public relations firm or consultant, crisis management firm or law firm, which an *insured person* in the reasonable exercise of his/her discretion may engage with our written consent to prevent or limit adverse effects or negative publicity in respect of a *claim* or *investigation*.

Restricted foreign jurisdiction

restricted foreign jurisdiction means any *foreign jurisdiction* where local risks cannot be covered by an overseas insurer not licensed in the jurisdiction.

Schedule

schedule means the Schedule attached to this policy or any schedule subsequently substituted during the *period of insurance* and duly signed, stamped and dated by an authorised officer of Zurich.

Securities

securities means any bond, debenture, note, share, stock, ADR or other equity or security for debt which is issued or given by the *company*, and includes any certificate of interest or participation in, receipt for, warrant or other right to subscribe to or to purchase, voting trust certificate relating to, or other interest in any of the foregoing items.

Securities claim

securities claim means a *claim* that:

- (a) is brought by a past or present holder of *securities* of the *company*;
 - (i) in his, her or its capacity as a *security* holder of such *company*, with respect to his, her or its interest in *securities* issued by the *company*; or
 - (ii) on behalf of or in the name of the *company* (in the form of a shareholder 'derivative action' or its equivalent) against an *insured*; or
- (b) is brought by any government, federal, state, or provincial agency that regulates the purchase or sale or offer to purchase or sell *securities* and alleges that the *company* and/or any of its *insured persons* violated a government, federal, state, provincial, local or foreign securities law or a rule or regulation promulgated under such securities law, including but not limited to the Corporations Act 2001 (Cth), Securities Act 1978 (NZ), Securities Markets Act 1998 (NZ), Financial Services and Markets Act 2000 (UK), United States Securities Act of 1933 (as amended) and the United States Securities Exchange Act of 1934 (as amended), but only in connection with the purchase, sale or offer to purchase or sell *securities* issued by the *company*.

Shadow director

shadow director means any natural person who is deemed a director by paragraph (b) of the definition of Director (or any similar law, rule or regulation in any other jurisdiction) in section 9 of the Corporations Act 2001 (Cth).

Sub-limit

sub-limit means a limit of our liability under this policy, which is within, and forms part of, and is not in addition to, the *limit of liability*.

Submission

submission means:

- (a) any information and/or statements or materials;
- (b) any proposal form completed and signed by any *insured* (including any attachments thereto, information included therewith or incorporated therein); and/or
- (c) the financial statements and annual reports of any *insured*, requested by or supplied to us by or on behalf of the *policyholder* in connection with this policy.

Subsidiary

subsidiary means any entity in which the *policyholder*:

- (a) holds directly or indirectly more than 50% of the voting rights;
- (b) appoints a majority of the board of directors (or equivalent in any other country); or
- (c) has the right, pursuant to a written agreement with other shareholders, to appoint a majority of the board of directors (or equivalent in any other country),

and shall in any event include any company or legal entity whose financial accounts are required to be consolidated with those of the named *policyholder* pursuant to the Corporations Act 2001 (Cth) or the applicable Australian accounting standard.

Third party

third party means any person or entity other than an *insured*.

US claim

US claim means any *claim* brought or commenced, in whole or in part:

- (a) within the jurisdiction of; or
- (b) pursuant to the laws of, the United States of America or Canada or its territories and/or possessions.

US securities claim

US securities claim means any *securities claim* brought or commenced, in whole or in part:

- (a) within the jurisdiction of; or
- (b) pursuant to the laws of, the United States of America or Canada or its territories and/or possessions.

Wrongful act

wrongful act means any actual, alleged or attempted act or omission, including but not limited to (or with respect to a shareholder 'derivative action', any proposed) breach of duty, breach of statutory duty, breach of trust, breach of warranty of authority, neglect, error, misstatement, misleading statement, libel, slander or defamation or any other wrongful act or omission committed or attempted by or allegedly committed or attempted by:

- (a) any *insured person* whilst acting in his or her capacity as an *insured person* on behalf of the *company* or any matter claimed against such *insured person* solely by reason of his/her status as such;
- (b) any *insured person* whilst acting in the capacity as a director or officer (or in an equivalent executive or management position in any other country) of an *outside entity* at the *company's* specific direction and request; or
- (c) the *company*, but only with respect to a *securities claim*.

Extensions of Cover

Cover is automatically provided for the Extensions of Cover described below. Each Extension of Cover is subject to the terms, conditions and limitations of this policy. Each Extension of Cover does not increase our *limit of liability*, unless expressly stated otherwise.

1. Advancement of defence costs and other financial loss (including emergencies)

We agree, in respect of a *claim* or *investigation* and prior to final adjudication of the *claim* or finalisation of the *investigation*, to advance the following payments as they are incurred by an *insured*:

- (a) *defence costs*;
- (b) *investigation costs*;
- (c) *prosecution costs*;
- (d) *civil or bail bond expenses*;
- (e) *public relations expenses*; and
- (f) *extradition costs*.

We will not rely on Exclusion 2. 'Conduct' to deny indemnity or to refuse to advance *defence costs* under this extension of cover until the conduct in question has been finally established, by court judgment or other final adjudication (including by available appeals).

If, in the event of an emergency, our written consent cannot be reasonably obtained by the applicable *insured* before any of the above heads of *financial loss* are incurred, the *insured* shall have the right to incur such amounts without that consent for a period of 30 days immediately following the date on which the relevant head or heads of *financial loss* was or were first incurred.

In the event of an emergency, referred to above, the *sub-limit* is 10% of the *limit of liability* for all *claims* by all *insured* in the aggregate.

Any advance payments to an *insured* that have been made by us shall be repaid by that *insured* in the event that the *insured* shall not be entitled under this policy to the payment of such *financial loss*.

2. Civil or bail bond expenses

We agree to pay to or on behalf of an *insured person* *civil or bail bond expenses* incurred in respect of a *claim* covered under this policy including but not limited to an extradition proceeding.

3. Continuous cover

Notwithstanding Exclusion 6. (c), 'Prior and pending' we will pay *financial loss* arising from any *claim* first made against an *insured* or *investigation* into the affairs of the *insured* during the *period of insurance* arising from a *prior known fact*.

Provided that:

- (a) the *insured* has maintained without interruption, Directors and Officers Liability insurance with an insurer from the *date of continuous cover* to the present date;
- (b) neither the *claim* nor the *prior known fact* has earlier been notified to us or at any time to any insurer under any policy; and
- (c) cover under this extension of cover will be pursuant to the terms, conditions, exclusions and limitations of the policy in force at the time the *insured* first became aware of the *prior known fact*, but only where such earlier policy affords no broader, greater or wider cover in respect of the *claim* than the provisions of this policy.

4. Crisis containment

We agree to pay *public relations expenses* to or on behalf of an *insured person* in respect of:

- (a) any *claim* against an *insured person* first made during the *period of insurance*;
- (b) any *investigation* for which the *insured person* is entitled to cover for *investigation costs*.

The *sub-limit* for this extension of cover is the amount specified in the *schedule* for all *public relations expenses* payable to an *insured person* and in the aggregate for all *insured persons*.

5. Deprivation of assets expenses

This policy extends to include *deprivation of assets expenses* arising from any *claim* covered under this policy or *investigation* for which an *insured* is entitled to cover under this policy for *investigation costs*.

6. Employment claims

This policy extends to cover *employment claims* against *insured persons* including in their capacity as *outside entity executives*.

7. Environmental mismanagement coverage

This policy extends to provide cover in respect of any:

- (a) *claim* made against any *insured person*; and
 - (b) *securities claims* against the *company*,
- for any *environmental mismanagement claim*.

8. Estates, heirs, legal representatives

This policy extends to cover *financial loss* arising from any *claim* made against the estates, heirs or legal representatives of any *insured person* with respect to *wrongful acts* by such *insured person* committed prior to the death, incapacity, insolvency or bankruptcy of the *insured person*; provided that such estates, heirs or legal representatives are subject to the terms, conditions and limitations of this policy in so far as they can apply.

This extension of cover does not cover any *claim* arising out of any act or omission of the estates, heirs or legal representatives.

9. Excess limit of liability for non-executive directors

In addition to the *limit of liability*, we will pay all *financial loss* on behalf of any *non-executive director* in accordance with Insuring Clause 1. and Extension of Cover 10.

'Extended reporting period' (a) and Extension of Cover 14. 'Investigations', on the following terms:

- (a) (i) the *financial loss* is otherwise covered by the policy; and
 - (ii) our obligation to indemnify is only to the extent that such *insured person* is not lawfully indemnified by the *company* or *outside entity* as applicable;
- (b) coverage provided by this extension of cover shall be specifically excess of, and shall only be available after the exhaustion of:
 - (i) the *limit of liability* of this policy;
 - (ii) the *limit of liability* of all other applicable Directors and Officers or Management Liability or indemnity insurance policies written as specific excess policies over this policy;
 - (iii) any other policy entered into by or effected on behalf of the *non-executive director* or under which the *non-executive director* is a beneficiary; and
 - (iv) all other indemnification for *financial loss* available to the *non-executive director*.
- (c) the coverage under this extension of cover shall only operate as primary insurance after exhaustion of the sources of indemnification under Extension of Cover 9. 'Excess limit of liability for non-executive directors' (b);
- (d) the *limit of liability* for cover under this extension of cover for each *non-executive director* for all *financial loss* arising from all *claims* and *investigations* shall be the *non-executive director excess limit of liability* specified in the *schedule*. The *non-executive director excess aggregate limit of liability* specified in the *schedule* is the maximum amount payable by us for the *financial loss* of all *non-executive directors' claims* and *investigations* in the aggregate under this extension of cover.

10. Extended reporting period

- (a) In the event of a non renewal, other than for non-payment of premium, or if a *change in control* occurs, the *policyholder* automatically has the right, without payment of any additional premium, to a single coverage extension under this policy for a period of 90 days after the expiry of the *period of insurance*, in relation to:

- (i) any *claim* made against any *insured* during such 90 day period; and
- (ii) any *investigation* where the legal requirement on the *insured person* to attend first arises during such 90 day period,

but only with respect to any *wrongful act* or conduct allegedly committed prior to the expiry date of the *period of insurance* or (if applicable) the effective date of the *change in control* (whichever is the earlier).

- (b) In the event of a non renewal, other than for non-payment of premium, or if a *change in control* occurs, the *policyholder* shall have the right to a single coverage extension under this policy for a period of:

- (i) 12 months;
- (ii) 24 months;
- (iii) 72 months; or
- (iv) 84 months,

after the expiry date of the *period of insurance* for:

1. any *claim* made against any *insured* during the selected *extended reporting period*; or
2. any *investigation* where the legal requirement on the *insured person* to attend first arises during such selected *extended reporting period*,

but only with respect to any *wrongful act* or conduct allegedly committed prior to the expiry date of the *period of insurance* or (if applicable) the effective date of the *change in control* (whichever is the earlier).

Extension of Cover 10. 'Extended reporting period' (b) is subject to such terms and conditions as we may reasonably impose. Further and subject to Extension of Cover 10. 'Extended reporting period' (c) below, cover is only available under this extension of cover if the applicable additional premium has been paid by the *policyholder*, as required by us.

If the *policyholder* selects an *extended reporting period* as described above, the *policyholder* and the *insured* shall not have a right to cover under Extension of Cover 10. 'Extended reporting period' (a) above.

- (c) The rights contained in Extension of Cover 10. 'Extended reporting period' (b) shall terminate:
- (i) unless written notice is given to us by the *policyholder* no later than 30 days after the effective date of the non-renewal of this policy or (if applicable) *change in control* (whichever is the earlier), of its intention to elect an *extended reporting period* described above; and
 - (ii) unless as a condition precedent to the extended cover under Extension of Cover 10. 'Extended reporting period' (b) above, the additional premium is paid promptly as required by us. Once elected, the entire premium for the *extended reporting period* shall be deemed fully earned at its commencement and non-refundable; and
 - (iii) immediately upon the effective date of any Directors and Officers or Management Liability contract of insurance or indemnity issued by Zurich or any other insurer, which effectively replaces or renews the coverage afforded by this policy, either in whole or in part, or otherwise affords such coverage. This clause also applies to the cover under Extension of Cover 10. 'Extended reporting period' (a).
- (d) The *insured* agrees that if we offer renewal terms that are different to this policy (including but not limited to premium, *limit of liability* or other terms, conditions or exclusions) this does not constitute a refusal by us to renew.
- (e) Nothing in this extension of cover increases the *limit of liability*.

11. Extradition costs

We agree to pay to or on behalf of:

- (a) an *insured person* *extradition costs* (to the extent permitted by law) in respect of an *extradition claim* covered under this policy;
- (b) an *insured person* the reasonable fees incurred by such *insured person*, with our prior written consent, of a counsellor or tax adviser in respect of a covered *extradition claim*; and

- (c) the lawful spouse or domestic partner of an *insured person* in Extension of Cover 11. 'Extradition costs' (a) the reasonable travel, accommodation and living-away-from-home expenses in attending any hearing of such *extradition claim* against that *insured person*.

12. Fines for corrupt practices

To the extent we are not legally prohibited from doing so, we agree to pay any fines and penalties assessed against any *insured person* pursuant to Divisions 70, 141 and 142 of the Criminal Code Act 1995 (Cth), Sections 105C and 105D of the New Zealand Crimes Act 1961, the Bribery Act 2010 (UK), Section 2(g)(2)(B) of the United States Foreign Corrupt Practices Act, 15 U.S.C. §78dd-2(g)(2)(B) or any similar law of any other jurisdiction.

13. Indemnity costs for shareholder derivative claims

If the *company* is ordered by a court to pay the costs of the claimants in pursuing a derivative action against *insured persons* (hereinafter '*indemnity costs for shareholder derivative claims*') this policy is extended to pay such costs provided that such derivative action constitutes a *claim* or *securities claim* otherwise covered under this policy.

14. Investigations

We will pay *investigation costs* on behalf of:

- (a) any *insured person* in respect of any *investigation* into the conduct of such *insured person* in their capacity as a *director or officer*, whether or not a *wrongful act* is alleged against such *insured person*;
- (b) the *company* or *outside entity* in respect of any *investigation* into the affairs of the *company* or *outside entity* whether or not a *wrongful act* is alleged. Provided such coverage shall not be afforded under 14 (b) for any *investigation* which is in whole or in part:
 - (i) within the jurisdiction of; or
 - (ii) pursuant to the laws of, the United States of America, or its territories or possessions, including but not limited to one conducted by the United States Securities and Exchange Commission (SEC).

Indemnity under this extension of cover arises only when, and is in relation only to *investigation costs* incurred after, such *insured person* is requested in writing by such *official body* to attend such *investigation*, provided that such request to attend first arises during the *period of insurance* and *the insured* notifies us in accordance with Condition 12. 'Notification'. This extension of cover shall not apply to general industry investigations or inquiries or routine regulatory inspections or inquiries.

This extension of cover shall not apply to a *claim* as defined in Definition 'Claim', but the terms, conditions and exclusions of this policy shall apply to this extension of cover as if it were a *claim* including but not limited to the payment of the *deductible* in the *schedule* where the *company* is permitted or required to indemnify the *insured person*.

15. Joint venture

This policy provides cover in respect of any *claim* made against an *insured person* arising from any *joint venture*, but such coverage does not extend to any *US claim* brought by or on behalf of any *joint venture* party(ies) or any vehicle established to conduct, control or manage such *joint venture*.

16. Late arising extensions

If during the *period of insurance* we develop a standard endorsement providing enhancements of coverage to our base Directors and Officers Liability Insurance policy in the country where the *policyholder* is domiciled (as indicated in the *schedule*) and such endorsement is to be made available to our clients in such country for no additional premium, then the *policyholder* shall have the right to the benefit of, but not the obligation to accept, such new coverage enhancement endorsement, subject to all underwriting information or particulars as we may require, from the date of such availability.

This extension of cover shall not apply to any *policyholder*:

- (a) who is under *financial impairment*;
- (b) whose policy is operating within an *extended reporting period* as per Extension of Cover 10. 'Extended reporting period'; or
- (c) which has advised us of a *change in control* as per Condition 4. 'Change in control and public offering'.

17. Marital estates

This policy will cover such *financial loss* as arises from any *claim* made against the lawful spouse or domestic partner of any *insured person* arising solely out of a *wrongful act* by such *insured person* that is covered under this policy and made solely against such persons or the estate in his or her respective capacity as the spouse or domestic partner of any such *insured person*.

The cover provided by this extension of cover is limited to *financial loss* arising from actions or proceedings for the enforcement of judgments or damages against an *insured person* which relate to the ownership of property (including marital community property) jointly held by the *insured person* and his or her spouse or domestic partner. All cover provided by this extension is subject to such lawful spouse or domestic partner, or the estate in his or her respective capacity as the spouse or domestic partner observing and being subject to the terms, conditions and limitations of this policy in so far as they can apply.

This extension of cover does not cover any *claim* arising out of any act or omission of the spouse or domestic partner.

18. Non-Disclosure and Misrepresentation waiver

Where we have any rights in respect of non-disclosure or misrepresentation we agree not to rescind or avoid this policy. In respect of any non-disclosure or misrepresentation, we will be entitled to reduce our liability to indemnify for *financial loss* in respect of a *claim* or *investigation* by an amount equivalent to the financial prejudice we have suffered as a result of the non-disclosure or misrepresentation. Any such rights will only be exercised:

- (a) against an *insured person* who, before inception of this policy, knew the facts or matters not disclosed or misrepresented, and any *company* to the extent that it may indemnify such *insured person*;
- (b) against a *company* where any past, present or future Chairman, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, General Counsel or Chief Legal Counsel (or equivalent position) of the *company* or the holder of any equivalent position in a jurisdiction, knew the facts or matters not disclosed or misrepresented,

and only where the *claim* or *investigation* is based upon or arises from the facts or matters not disclosed or misrepresented.

For clarity, this extension of cover does not apply to any right we may have to cancel the policy. We are entitled to cancel the policy for non-payment of premium.

Nothing in this paragraph derogates from Condition 17. 'Severability and Non-Imputation'.

19. Occupational health and safety

We agree to pay *defence costs* to or on behalf of an *insured person* in respect of a *claim*, and *investigation costs* in respect of an *investigation*, in relation to any alleged breach of occupational health and safety law. This extension of cover applies notwithstanding Exclusion 1. 'Bodily injury / Property damage'.

This extension of cover includes *defence costs* in relation to any *corporate manslaughter proceedings*.

20. Outside entity executive

We will pay on behalf of any *outside entity executive* subject to the terms and conditions of this policy, *financial loss* arising from any *claim* first made against him or her during the *period of insurance* for a *wrongful act* committed or attempted by or allegedly committed or attempted whilst serving or acting in his or her capacity as an *outside entity executive*.

This cover automatically applies in respect of any *outside entity* the *company* seeks to have listed in the *schedule* for a period of 90 days from the date of the *outside entity executive's* appointment.

However, other than in the case of *non-profit organisations* and *associated companies*, cover shall cease after 90 days from the date of the *outside entity executive's* appointment, unless we agree to continue cover and list the *outside entity executive* in the *schedule*.

Without detracting from the operation of Condition 14. 'Other insurance and Non-Accumulation', this extension of cover is available only as specific excess cover over and after exhaustion of any other applicable, valid and collectible Directors and Officers or Management Liability policy of insurance and also any indemnification permitted or required to be paid by such *outside entity*.

21. Portable directors and officers insurance ongoing coverage

If during the *period of insurance* a *director or officer* ceases for any reason to be a present *director or officer* and either is or subsequently during the *period of insurance* becomes a director or officer (or equivalent positions in any other country) of an *outside entity*, then this policy (subject to its terms, conditions, limitations and exclusions) shall extend so as to provide cover for *financial loss* of such person in respect of any *claim* made against such person within 30 days from the date on which the *director or officer* ceased to be a present *director or officer* alleging a *wrongful act* in his or her capacity as a director or officer (or equivalent positions in any other country) of such *outside entity*, provided that:

- (a) such *claim* must be notified to us as required by the terms, conditions and limitations of this policy; and
- (b) this cover shall not apply if the *outside entity* has purchased or purchases Directors and Officers Liability insurance or Management Liability insurance or equivalent for its directors and officers as of or within 30 days after the date such *director or officer* was first hired, appointed or elected as a director or officer (or equivalent positions in any other country) of such *outside entity*; and
- (c) this cover shall only be excess of any indemnification provided by the *outside entity*; and
- (d) an *extended reporting period* shall not be applicable to this cover.

Our maximum payment of *financial loss* under this cover shall be limited to and shall not exceed, in the aggregate, for all *claims* against each such person, \$1,000,000 (hereinafter '*on going cover excess limit of liability*'), subject to a maximum *limit of liability* for all such persons combined and in the aggregate of \$3,000,000. This *on going cover excess limit of liability* shall be in addition to the *limit of liability* of this policy.

It is further understood and agreed that at our sole discretion, we may extend coverage to such person in his or her capacity as a *director or officer* (or equivalent positions in any other country) of such *outside entity* beyond such 30 days automatic coverage period, if, within such 30 days period such person shall:

- (i) notify us in writing of his or her desire to receive an indication of an extension of such coverage;

- (ii) provide us with full underwriting information as we may require; and
- (iii) agree to pay any additional premium and/or amendment of the provisions of this policy required by us relating to such extension of coverage.

Further, such additional coverage shall not be afforded under this policy but shall be afforded to such person either:

1. under a separate individual Directors and Officers Liability policy specifically designed for such person; or
2. under a separate group Directors and Officers Liability policy for all directors and officers of the *outside entity*.

Any coverage granted either under 1. or 2. above, shall be conditional upon such person or the *outside entity* paying, when due, any additional premium required by us for such additional coverage beyond the initial 30 day period.

22. Preservation / presumption of right to indemnity

In the event and to the extent that the *company* or an *outside entity* is permitted or required to indemnify any *insured persons* for *financial loss* covered by this policy, but for whatever reason fails or refuses to do so, then we shall pay the *financial loss* on behalf of the *insured persons*. In such event, the Insuring Clause 2. *deductible* specified in the *schedule* shall be borne by the *company*.

In the event of the *company* being placed in liquidation (other than voluntary liquidation), no *deductible* amount shall apply.

23. Prosecution costs

We agree to pay for or on behalf of an *insured person* *prosecution costs* of the *insured person* taking legal proceedings:

- (a) against an *official body* conducting an *investigation* wherein the *insured person* alleges that the *official body* is acting beyond power or in breach of the rules of natural justice directly in relation to matters affecting, or potentially affecting, the *insured person* in such *investigation*;
- (b) to obtain the discharge or revocation of:
 - (i) a temporary or permanent disqualification of such *insured person* from managing a corporation (including as a senior manager or responsible officer) during the *period of insurance*; or

- (ii) a *judicial order* entered during the *period of insurance* imposing:

1. confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such *insured person*;
2. a charge over real property or personal assets of such *insured person*;
3. a restriction of such *insured person's* liberty to a specified domestic residence or detention facility; or
4. deportation of an *insured person* following revocation of otherwise current and valid immigration status for any reason, other than such *insured person's* conviction of a crime.

For the avoidance of doubt, *prosecutions costs* are only available in the event that a *claim* has been made against an *insured person* that is covered by this policy.

24. Retired directors and officers

On the basis that:

- (a) this policy is neither renewed nor replaced with a Directors or Officers, Management Liability or similar contract of insurance; or
- (b) no *extended reporting period* arises or is effected under Extension of Cover 10. 'Extended reporting period',

then those *directors* and *officers* who retired from the *company* during the *period of insurance* shall automatically be entitled to a single *extended reporting period* under this policy of 84 months (being the maximum period for all *directors* and *officers* in the aggregate) at no additional premium, however, always subject to the terms, conditions and limitations of this policy.

25. Runoff cover for outside entity executives

In the event that an *insured person* ceases to act as an *outside entity executive* of an *outside entity* (as defined within this policy) at any time prior to or during the *period of insurance*, then this policy shall continue to apply with respect to any *claim* first made against such *insured person* during the *period of insurance* or the *extended reporting period* (if applicable), but only with respect to *wrongful acts* committed prior to the date such person ceased to be an *outside entity executive* of such *outside entity* and committed during the time such person was an *outside entity executive* of such *outside entity* and otherwise covered under the terms, conditions, exclusions and limitations of this policy.

26. Runoff cover for past subsidiaries

In the event that a *subsidiary* ceases to be a *subsidiary* (as defined within this policy) at any time prior to or during the *period of insurance*, then this policy shall continue to apply with respect to any *claim* made against such *subsidiary* and any *insured person* thereof first brought during the *period of insurance* or the *extended reporting period* (if applicable), but only with respect to *wrongful acts* committed prior to the date such entity ceased to be a *subsidiary* and committed during the time such entity was a *subsidiary*, and otherwise covered under the terms, conditions, exclusions and limitations of this policy.

27. Tax liability

We agree to pay the liability which an *insured person* incurs personally for the unpaid taxes of the *company* due to the *company's financial impairment*. Provided that we shall not include liability that arises due to an *insured person's* criminal, deliberate or wilful breach of any law or regulation.

Exclusions

We shall not be liable under this policy to make any payment for *financial loss* (including *defence costs*) in connection with any *claim* made against any *insured*, or *investigation costs* in respect of any *investigation*:

1. Bodily injury / Property damage

for *bodily injury* and/or *property damage* except that cover shall be provided for:

- (a) mental anguish or emotional distress in connection with any *employment claim*; or
- (b) *defence costs* and *investigation costs* specified under Extension of Cover 19. 'Occupational health and safety'.

2. Conduct

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

- (a) any *insured* having gained in fact any profit or advantage to which he, she or it had or has no legal entitlement; or
- (b) any criminal, fraudulent, dishonest or malicious act or omission committed by any *insured*;

provided that this exclusion shall not apply to *defence costs* incurred by an *insured person* in connection with a *corporate manslaughter proceeding* or occupational health and safety proceeding.

For the avoidance of doubt, this exclusion includes any conduct or contravention in respect of which a prohibition in section 199B of the Corporations Act 2001 (Cth) applies.

This exclusion only applies where the conduct in question has been finally established, by court judgment or other final adjudication (including all available appeals).

For the purpose of determining the applicability of this exclusion:

- (i) no conduct or knowledge of an *insured* shall be imputed to any other *insured person*; and
- (ii) to indemnity under Insuring Clause 3., only the conduct and knowledge of any past, present or future Chairman, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, General Counsel or Chief Legal Counsel (or equivalent) of the *company* shall be imputed to the *company*.

3. Environmental event

based upon, arising out of or attributable to an *environmental event*; except as provided under Extension of Cover 7. 'Environmental mismanagement coverage'.

4. Insured vs Insured for US claims

when such *claim* is a *US claim* and is brought by, on behalf of, or at the instigation of an *insured* or any *director or officer*, any *outside entity* or any director or officer (or equivalent in any other country) of an *outside entity*, provided this exclusion shall not apply to:

- (a) a *claim* brought or maintained by a liquidator, receiver administrator, deed administrator, bankruptcy trustee or administrative receiver (or the equivalent in any other country), either directly or derivatively on behalf of the *company* or the *outside entity* without the solicitation, voluntary assistance or active participation of any *director or officer of the company* or any director or officer (or equivalent in any other country) of the *outside entity*;
- (b) a *claim* or *securities claim* in the form of a derivative action brought in the name of the *company* or an *outside entity* by one or more persons who are not *directors or officers* and who bring and maintain the *claim* or *securities claim* without the solicitation, voluntary assistance or active participation of any *director or officer* of the *company* or any director or officer (or equivalent in any other country) of the *outside entity*;
- (c) an *employment claim* brought by an *insured person* or any director or officer (or equivalent in any other country) of an *outside entity*;
- (d) a *claim* brought by or at the instigation of any *insured person* or any director or officer (or equivalent in any other country) of an *outside entity* if such *claim* results from a covered *claim* brought by any *third party* against such claiming *insured person* and the *third party* could have brought the *claim* directly against an *insured person* or any director or officer (or equivalent in any other country) of the *outside entity* not named in the independent *claim* (including any cross claim / *third party claim* for indemnity);

- (e) a *claim* brought by any former *insured person* of the *company* or any director or officer (or equivalent in any other country) of an *outside entity*;
- (f) a *claim* brought by an *insured person* or any director or officer (or equivalent in any other country) of an *outside entity* in their capacity as a 'whistleblower' (as that term is defined by governmental, federal, state, local or foreign law) alleging a *wrongful act* by an *insured person* in connection with a protected activity categorised by any governmental, federal, state, local or foreign law as a 'whistleblower' activity; or
- (g) *defence costs* incurred by an *insured person*.

5. Outside entity executive – Prior and Pending

in respect of any *outside entity executive* if such *claim* is based upon, arises from or is a consequence of any:

- (a) litigation, suit, *claim*, arbitration or mediation initiated prior to or pending on the date such *outside entity executive* first became insured under this policy in such capacity; or litigation, suit, arbitration or mediation which alleges or is derived from the same or essentially the same facts as alleged in such prior or pending litigation, suit, *claim*, arbitration or mediation; or
- (b) circumstances known by such *outside entity executive* or the *company* prior to the date such *outside entity executive* first became insured under this policy in such capacity, which could reasonably have given rise to a *claim* under this policy.

6. Prior and pending

alleging, arising from, based upon, attributable to or as a consequence of any:

- (a) litigation, *claim*, *investigation* or circumstance existing prior to the *period of insurance* that has been reported under any Directors and Officers or Management Liability policy of which this policy is a renewal or replacement or which it may succeed in time;
- (b) fact, circumstance, act or omission or *claim* disclosed in the *submission* or which notice has been given to any other insurer before the commencement of the *period of insurance*; or
- (c) *prior known fact* that ought to have, but has not, been reported under any Directors and Officers or Management Liability policy of which this policy is a renewal or replacement or which it may succeed in time.

7. Prior notice

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

- (a) an *investigation* or other proceedings ordered or commissioned at the behest of a legally empowered body, initiated prior to the *date of continuous cover* specified in the *schedule*; or
- (b) any litigation, suit, *claim*, arbitration or mediation initiated prior to or pending on the *date of continuous cover* specified in the *schedule*; or litigation, suit, arbitration or mediation alleging or deriving from the same or essentially the same facts as alleged in such prior or pending litigation, suit, *claim*, arbitration or mediation.

8. Subsidiary

alleging or arising from the *wrongful act* of:

- (a) any *insured person* of any *subsidiary*; or
- (b) the *subsidiary*,

committed prior to such entity becoming a *subsidiary* or after such entity ceases to be a *subsidiary*.

This exclusion is subject to any cover granted by us under Extension of Cover 26. 'Runoff cover for past subsidiaries' and Condition 6. 'Creation and acquisition of subsidiaries'.

Conditions

1. Applicable law

In the event of any dispute relating to the construction, interpretation and/or meaning of the provisions of this policy, it is agreed that such disputes shall be exclusively governed by the law applicable in the Commonwealth of Australia and the relevant State in which this policy is issued by us.

2. Assignment

This policy and any rights thereunder shall not be assigned without our written consent.

3. Cancellation

Without derogating from our rights in Extension of Cover 18. 'Non-Disclosure and Misrepresentation waiver', this policy may not be cancelled by us, except for non-payment of premium. If the *policyholder* cancels the policy, a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *period of insurance*.

4. Change in control and public offering

(a) If during the *period of insurance* the *policyholder* undergoes a *change in control*, then the cover provided by this policy shall only apply in respect of *wrongful acts* or other conduct occurring prior to the effective date of such *change in control*. The *policyholder* shall give us written notice of such *change in control* as soon as reasonably practicable. Notwithstanding the effect on cover caused by such a *change in control*, if the *policyholder* cancels this policy, a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *period of insurance*.

(b) If during the *period of insurance* the *policyholder* or any *subsidiary* plans or makes, in whole or in part in the United States of America, a public offering of its *securities* of more than the percentage specified in the *schedule*, it shall inform us as soon as practicable. We shall not be liable to make any payment of *financial loss* arising from any *securities claim* associated with, relating to or arising from such offering or any related registration or reporting requirements, unless and until the *policyholder* agrees with us on any amendments to this policy and makes payment of any additional premium required, within 60 days following the public announcement of such offering, after which cover shall apply retroactively for the full *period of insurance*.

The payment of any additional premium (including insurance premium tax) shall be a condition precedent to our liability under this paragraph.

5. Confidentiality

The existence and terms of this policy shall be confidential as between the *insured* and us and shall not be published, disclosed or otherwise communicated except where:

- (a) the law requires disclosure in the financial statements or annual reports of payment by the *policyholder* of a premium in respect of a contract insuring persons against a liability; or
- (b) we consent in writing to disclosure of the existence and/or terms of this policy.

6. Creation and acquisition of subsidiaries

- (a) Subject to 'Creation and acquisition of subsidiaries' (b) below, any entity, whether created or acquired, that becomes a *subsidiary* during the *period of insurance* of this policy and any *directors* or *officers* (or equivalent executive or management position) thereof, shall be *insureds* under this policy with respect to:
 - (i) *claims* for *wrongful acts*; and
 - (ii) *investigations* in relation to conduct, occurring after the date such entity became a *subsidiary* and while such entity remains a *subsidiary*.
- (b) There is no cover under this policy for any newly acquired *subsidiary* (or any *insured person* thereof) described in 'Creation and acquisition of subsidiaries' (a) above:
 - (i) whose total consolidated assets are greater than 25% of the total consolidated assets of the *policyholder* (determined as of the date of the acquisition); or
 - (ii) whose *securities* are publicly traded in the United States; or
 - (iii) that is a *financial institution*, save for a period of 90 days from the date such entity first became a *subsidiary* or until the expiry date of the *period of insurance*, whichever period expires first, provided that the *policyholder* or any *insured* shall report such *subsidiary* to us, in writing, prior to renewal of this policy.

- (c) With regard to such *subsidiary* described in 'Creation and acquisition of subsidiaries' (b) above, we may, at our sole discretion, extend coverage to such *subsidiary* and any *insured person* thereof, beyond such 90 days, if during such 90 day period the *policyholder* shall:
 - (i) notify us in writing of the acquisition of such entity;
 - (ii) provide us with full underwriting information as we may require; and
 - (iii) agree to any additional premium and/or amendment of the provisions of this policy required by us relating to such *subsidiary*.

Further, such coverage as shall be afforded to any such *subsidiary* and any *insured person* thereof beyond the initial 90 day period shall be conditional upon the *policyholder* paying, when due, any additional premium (including insurance premium tax) required by us for such *subsidiary*.

- (d) We may, at our sole discretion, also agree, in writing, after the presentation of all appropriate information to provide cover for such new *subsidiary* for *wrongful acts* and other conduct occurring prior to the date of acquisition.

With regard to such cover for prior *wrongful acts* and other conduct we reserve the right to vary the terms of this policy and the prior acceptance of and subsequent compliance with each and every varied term by the *insureds*, shall be a condition precedent to indemnity under this paragraph.

7. Deductible and coinsurance

- (a) Separate applicable *deductibles* are set out in the *schedule* for *financial loss* that arises out of each of:
 - (i) a *securities claim* (other than *US securities claim*);
 - (ii) a *US securities claim*;
 - (iii) any *US claim* (other than a *securities claim* or *US securities claim*);
 - (iv) any other *claim* (other than a *securities claim*, *US claim* or *US securities claim*);
 - (v) an *investigation*.

We shall be liable only for the amount of *financial loss* that exceeds the applicable *deductible* as specified in the *schedule*. The *deductible* is not part of our liability for *financial loss*. The *deductible* is to be borne by the *company* and shall remain uninsured.

Irrespective of the number of *insureds* claimed against, a single *deductible* shall apply to all *financial loss* in respect of any one *claim*, or two or more *claims* arising from one *wrongful act* or from a series of *wrongful acts* which are in any way connected causally with another.

- (b) The *company* shall bear uninsured at its own risk the percentage listed in the *schedule* of all *financial loss* payable under Insuring Clause 3., up to the *limit of liability*. This is in addition to the applicable *deductible* in the *schedule*.
- (c) No *deductible* will apply to any *claim*, and we will reimburse those *defence costs* incurred by the *insured* to the extent not already paid by us, if:
 - (i) the *claim* is dismissed and without any payment by or on behalf of the *insured*;
 - (ii) there is a final judgment of no liability in favour of the *insured*, whether by settlement to which we have consented or by summary judgment, and without any payment by or on behalf of the *insured*; or
 - (iii) there is a final judgment of no liability obtained after trial, in favour of the *insured*, after the exhaustion of all appeals.

Any reimbursement under this clause will only occur if, 60 days after the date of dismissal or final judgment of no liability is obtained, there is no further *claim* brought based on the same or related *wrongful acts* or any matters relating to the facts and matters alleged in the relevant *claim*.

8. Defence costs, settlements and allocation

- (a) It shall be the duty of the *insureds* against whom a *claim* is made to take all reasonable steps to defend such *claim* and not to do anything to prejudice our position. We shall have no duty to defend any *claim* made against any *insured*. The *insured persons* shall have the duty to arrange representation at any *investigation* which is the subject of a claim for indemnity under Extension of Cover 14. 'Investigations'.
- (b) With respect to any *claim* or *investigation* as may potentially be covered by this policy, we shall:
 - (i) have the right to be provided with all such information as we shall reasonably require, at the *insured's* own cost;
 - (ii) be kept fully informed as to all matters relating to or concerning the *investigation*, defence, settlement or appeal and shall have the right to receive copies of all relevant documentation relating thereto; and
 - (iii) have the right to associate effectively with the *insureds* in the defence, investigation and the negotiation of any settlement of any *claim* or *investigation*.
- (c) In the event of any dispute regarding whether or not to contest any *claim* against any *insured*, the matter will be referred for determination by a Senior Counsel (to be mutually agreed or in default of agreement, to be selected by the then President of the Bar Association, or equivalent organisation, for the State or Territory out of which the policy was issued). The costs of such determination by Senior Counsel are to be paid by us and will not form part of the *limit of liability*.

If the *claim* is to be contested, then the *insured* agrees to provide all such information and assistance as is reasonably required to those persons representing the *insured*.
- (d) The *insured* shall not admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any *defence costs* or *investigation costs*, and no legal representative shall be retained to defend any *insured*, without our prior written consent, such consent not to be unreasonably withheld or delayed.

Only those settlements, consent judgments, *defence costs* and *investigation costs* that have been consented to by us in writing shall be recoverable as *financial loss* under the terms of this policy (other than as covered under Extension of Cover 1. 'Advancement of defence costs and other financial loss').

We shall not settle any *claim* against any *insured* without the consent of the relevant *insured*, such consent not to be unreasonably withheld or delayed.

In addition and notwithstanding any of the foregoing paragraphs in this condition, if all *insured* defendants are able to dispose of all *claims* which are subject to one *deductible* (inclusive of all *financial loss*) for an amount not exceeding the applicable *deductible*, then our consent shall not be required for such disposition.

- (e) Our liability under this policy is limited to the proportion of *financial loss* which is a fair and equitable allocation:
- (i) between the *insured persons* and any other uninsured person or entity (including the *company*) where the *financial loss* has been jointly or jointly and severally incurred by them. Such allocation shall be determined having regard to the relative legal and financial exposures of, and relative benefits obtained by, the *insured persons* and those other persons or entities; and/or
 - (ii) between the *insured persons*, the *company* and us, having regard to the covered and uncovered matters and the relative legal and financial exposures attributable to those matters.

Where we and the *insured* are unable to agree upon a fair and equitable allocation then such allocation will be determined by Senior Counsel (to be mutually agreed or, in default of agreement, to be selected by the then President of the Bar Association, or equivalent organisation, for the State or Territory out of which the policy was issued).

The parties will be bound by Senior Counsel's determination as to the fair and equitable allocation. The costs of obtaining this determination will be paid by us and will not form part of the *limit of liability*.

While no fair and equitable allocation has been agreed or determined in respect of any *claim* or *investigation costs*, we will advance *defence costs* or *investigation costs* in the proportion which we contend should be allocated to *financial loss* under this condition. Any such allocation negotiated or determined will be applied retrospectively to all *defence costs* and *investigation costs* incurred prior to the date of such negotiation or determination.

9. Goods and Services Tax

When we make a payment to the *insured*, or on behalf of the *insured*, under this policy for the acquisition of goods, services or other supplies, we will reduce the amount of the payment by the amount of any input tax credit that the *insured* is, or will be, or would have been entitled to under A New Tax System (Goods & Services Tax) Act 1999 (Cth), in relation to that acquisition, whether or not that acquisition is actually made.

When we make a payment to the *insured*, or on behalf of the *insured*, under this policy as compensation instead of payment for the acquisition of goods, services or other supplies, we will reduce the amount of the payment by the amount of any input tax credit that the *insured* is, or will be, or would have been entitled to under A New Tax System (Goods & Services Tax) Act 1999 (Cth) had the payment been applied to acquire such goods, services or supply.

10. International program policies

(a) Non-Aggregation of Limits of Liability Clause

It is hereby understood and agreed that corresponding to the liability of the *policyholder* and all *subsidiaries* to pay the aggregate premium for this policy and all *international program policies*, all contractual parties to this policy and all *international program policies* agree that for the purpose of the calculation of the *limits of liability* of this policy and all *international program policies* (combined), all payments of *financial loss* under:

- (i) this policy; and
 - (ii) all *international program policies*;
- (or any combination of the above mentioned policies)

are added up and are limited to the amount of the *limit of liability* of this policy as indicated in the *schedule* (hereinafter called '*aggregate limit of liability*'). The *aggregate limit of liability* shall

be our maximum *limit of liability* and payment, in the aggregate, for all *financial loss* payable under this policy and all *international program policies* combined. It is further understood and agreed that nothing in this Clause shall be construed to increase:

1. the *limit of liability* set forth in the *schedule* of any *international program policies*, which shall remain the maximum liability of the insurer under such policy; or
2. Our *limit of liability* under this policy as set forth in the *schedule* of this policy which shall remain our maximum liability under this policy.

(b) Hold Harmless Agreement – Special Conditions regarding Aggregation

In the event that the *aggregate limit of liability* defined above in 10 (a) is exceeded by any and all payments under this policy and/or any or all *international program policies*, the *policyholder* of this policy shall reimburse Zurich and/or any partners of Zurich that issued any International Program Policy in respect of any *financial loss* paid by any of the insurers of the *international program policies* in excess of the *aggregate limit of liability*.

Any amount due to the terms of this Clause shall be paid by the party within 30 days of notice from the other party.

(c) Notice and Authority for International Programs

It is agreed that the *policyholder* shall act on behalf of its *subsidiaries* and each and every *insured* with respect to the issuance and development of all *international program policies*, including all terms, conditions, exclusions and limitations of such *international program policies*, including, but not limited to section 10 (a) above. It is further understood and agreed that the *policyholder* will inform its *subsidiary* of any *international program policy* to be issued for such *subsidiary*.

(d) Cancellation and Non-renewal of *international program policies*

All *international program policies* are conterminous, accordingly if this policy is cancelled, rescinded or non-renewed then all other *international program policies* shall be deemed cancelled, rescinded or non-renewed with effect from the same date as this policy.

11. Limit of Liability

- (a) Subject to the Insuring Clauses and Extension of Covers, the *limit of liability* as specified in the *schedule* shall be our maximum liability, in the aggregate, payable under this policy for all:
- (i) covered *financial loss* (including but not limited to *defence costs*) arising from all *claims* made against all *insureds* during the *period of insurance* and any *extended reporting period* (if applicable); and
 - (ii) *investigations costs* incurred by all *insured persons* in connection with all *investigations*; and
 - (iii) insofar as not encompassed within (i) and (ii) above, all sums payable under any of the Extensions of Cover.

The *limit of liability* shall apply over and above the applicable *deductible*.

- (b) The *limit of liability* for any applicable *extended reporting period* shall not increase the *limit of liability*. All *sub-limits* of liability are part of and not in addition to the *limit of liability*.

- (c) The *non-executive director excess limit of liability* is in addition to the *limit of liability*.

The *non-executive director excess limit of liability* is inclusive of all covered *financial loss* including but not limited to *defence costs* and *investigation costs*.

- (d) Where more than one *claim* arises from a *wrongful act*, or arise from a series of *wrongful acts* which are in any way connected causally with another or which are by any means related or connected, or in the case of one or more *investigations* (whether linked to a *claim* or otherwise) which have a common or related cause or source they shall be deemed to be a single *claim* or a single *investigation* and such single *claim* or single *investigation* shall (irrespective of the *period of insurance* in which it in fact arises) be attributed solely to the *period of insurance* or the *extended reporting periods* (if applicable) during which the first *claim* of such *claims* was first made or the first *investigation* of such *investigation* series was first commenced.

12. Notification

The *policyholder* shall, as a condition precedent to our liability under this policy, give written notice to us of:

- (a) any *claim* made against an *insured*; or
- (b) any written requirements that the *director or officer* attend an *investigation*,

as soon as is reasonably practicable after the *company's* risk manager, General Counsel, Company Secretary, Chief Legal Counsel or equivalent position first becomes aware of such *claim*, or such *investigation*, but in all events no later than 90 days after the expiry of the *period of insurance* or the *extended reporting period* (if applicable).

Written notice shall include but not be limited to a description of the:

- (a) *claim*, the nature of the alleged or potential damage, the names of the actual or potential claimants and the date and manner in which the *company or insured persons*, as the case may be, first became aware of the *claim*; or
- (b) *investigation*, the nature of the *investigation*, the name of the *official body* conducting the *investigation* and the date and manner in which the *company or insured persons*, as the case may be, first become aware of the *investigation*.

Written notice hereunder shall be provided in writing to:

The Financial Lines Claims Manager
Zurich Australian Insurance Limited
PO Box 677 North Sydney 2059

Or by email to:

The Financial Lines Claims Manager
fl.claims@zurich.com.au

Any notification, sent by post or email, will be effective from the date received by Zurich.

13. Order of payments

In the event of *financial loss* arising from a *claim* or an *investigation* for which payment is due under the provisions of this policy, then we shall in all events:

- (a) first, pay *financial loss* for which coverage is provided under Insuring Clause 1. and Extension of Cover 14. 'Investigations'; then
- (b) only after payment of *financial loss* has been made pursuant to Condition 13. 'Order of payments' (a) above, with respect to whatever remaining amount of the *limit of liability* is available after such payment, pay such other *financial loss* for which coverage is provided under Insuring Clauses 2., 3. and 4. of this policy.

The *company* agrees that we are entitled to withhold payment under Insuring Clause 2., 3. and 4. until our obligations under Insuring Clause 1. and Extension of Cover 14. 'Investigations' are met.

The bankruptcy or insolvency of any *company* shall not relieve us of our obligations to prioritise payment of covered *financial loss* under this policy pursuant to this condition.

14. Other insurance and Non-Accumulation

- (a) To the extent permitted by the Insurance Contracts Act 1984 (Cth), this policy will only cover *financial loss* to the extent that the amount of such *financial loss* is in excess of any indemnity or cover available to the *insured* in respect of that *financial loss* under any other policy of insurance entered into by the *insured persons* or the *company*.
- (b) To the extent permitted by the Insurance Contracts Act 1984 (Cth), this policy will only cover *financial loss* to the extent that the amount of such *financial loss* is in excess of any indemnity or cover available to the *insured* in respect of that *financial loss* under any other policy of insurance effected on behalf of the *insured* or under which any *insured person* or the *company* is a beneficiary (but not a policy to which the preceding paragraph applies).
- (c) Neither Condition 14. (a) or (b) above, applies to such other insurance that is written only as specific excess insurance over the *limit of liability* provided in this policy.
- (d) If the other insurance referred to in Condition 14. (a) or (b) above, is provided by us, or any other member company, associate or affiliate of the Zurich Financial Services Group of companies, and it covers *financial loss* covered by this policy in respect of a *claim* or *investigation*, the *limit of liability* under this policy in respect of that *claim* or *investigation* shall be reduced by any amount paid by us (or member company, associate or affiliate of the Zurich Financial Services Group of companies) under such other insurance.

15. Plurals and titles

The *submission*, this policy, its *schedule* and any endorsements are one contract in which, unless the context otherwise requires:

- (a) headings are descriptive only, not an aid to interpretation;
- (b) singular includes the plural, and vice versa;
- (c) the male includes the female and neuter;
- (d) all references to specific legislation include amendments to and re-enactments of such legislation and similar legislation in any jurisdiction in respect of which a *claim* is made or an *investigation* is commenced; and
- (e) references to positions, offices or titles shall include their equivalents in any jurisdiction in which a *claim* is made or an *investigation* is commenced.

16. Privacy

Zurich is bound by the National Privacy Principles and the Privacy Act 1988 (Cth).

We may need to collect personal information ('Information') from you for the primary purpose of providing you with insurance products, services, processing and assessing claim(s).

If you do not provide us with the Information, we may not be able to process your application or assess your claim(s).

By providing us with your Information, you consent to us disclosing your Information to other insurers, our service providers, our business partners or as required by law.

For further information about Zurich's Privacy Policy, a list of service providers and business partners that we may disclose your Information to, or details of how you can access the Information we hold about you, please refer to the Privacy link on our homepage – www.zurich.com.au, contact us by telephone on 132 687 or email us at Privacy.Officer@zurich.com.au.

17. Severability and Non-Imputation

In granting cover under this policy we have relied upon the *submission* which forms the basis of this contract of insurance and shall be considered as incorporated in and constituting part of this policy.

In respect of the declarations, statements and financial information of the *submission*:

- (a) no statement in the *submission*, made by any *insured* or knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *submission*) possessed by any *insured* shall be imputed to any other *insured persons* for the purpose of determining the availability of cover under this policy;
- (b) the statements in the *submission* made by and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *submission*) possessed by an *insured person* shall be imputed to the *company* for the sole purpose of determining if coverage is available under Insuring Clause 2. of this policy with respect to *claims* against such *insured person*, but shall not be imputed to the *company* with respect to *claims* against other *insured persons* for the purpose of coverage under Insuring Clause 2. and/or Insuring Clause 4. in relation to the *financial loss* of that other *insured person*; and
- (c) only the statements in the *submission* made by, and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *submission*), possessed by any past, present or future Chairman, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, General Counsel or Chief Legal Counsel (or equivalent position)) of the *company* shall be imputed to the *company* for the purposes of indemnity under Insuring Clause 3. and/or Insuring Clause 4. in relation to the *financial loss* of any *subsidiary*.

18. Subrogation

Upon any payment of or towards any *claim* we shall be entitled to assume conduct of all rights of recovery available to any *insured* and all reasonable assistance shall be rendered to us in the prosecution of such rights by such *insured persons* or the *company*, at their own cost. The *insured* shall execute all papers reasonably required and shall take all reasonable action that may be necessary to secure any and all subrogation rights of Zurich including but not limited to an action against the *company* for non-payment of indemnity to the *insureds* by the *company*.

In no event, however, shall we exercise our rights of subrogation against an *insured person* under this policy unless it is determined by a written admission, a final judgment or other adjudication in the underlying action or in a separate action or proceeding that such *insured person* had obtained an illegal profit or advantage or committed an intentionally dishonest act or omission or intentional fraudulent act or a criminal act.

19. Territorial scope

Coverage under this policy shall apply to *financial loss* incurred, resulting from *claims* made and *wrongful acts* occurring anywhere in the world, where legally permissible.

Solely in the event that a:

- (a) *securities claim* is brought in a *foreign jurisdiction* against a *subsidiary* domiciled in such foreign territory (other than a *restricted foreign jurisdiction*) and/or a *claim* is brought in a *foreign jurisdiction* against any *insured person* of such *subsidiary*; or
- (b) *securities claim* is brought in a *foreign jurisdiction* against the *policyholder* or a *subsidiary* domiciled outside such *foreign jurisdiction* and/or a *claim* is brought in a *foreign jurisdiction* against any *insured person* of such entities,

and we offer standard coverage in such *foreign jurisdiction* in the ordinary course of business for a *foreign policy* in such *foreign jurisdiction*, then coverage under this policy for such *claim* brought in such *foreign jurisdiction* shall follow and be in accordance with those terms and conditions in such *foreign jurisdiction* that are more favourable to the *insured*, than the terms and conditions of this policy; notwithstanding the foregoing, in all events this clause shall not apply to the Definitions of *insured*, *insured person*, *financial loss*, Insuring Clauses 1. to 4., the *limit of liability*, the cancellation or non-renewal procedures, claim made provisions, premium, and the *extended reporting periods* of this policy or similar provision in such *foreign jurisdiction*. If there is a *sub-limit* within the cover of the *foreign jurisdiction* such *sub-limit* shall be no more than \$1,000,000 for the purposes of this Clause.

20. Valuation and foreign currency

All premiums, *limits of liability*, *sub limits*, *deductibles*, *retentions*, *financial loss* and other amounts under this policy are expressed and payable in Australian currency. Except as otherwise provided, if judgment is rendered, settlement is denominated or another element of loss under this policy is stated in a currency other than Australian dollars, payment under this policy shall be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars in accordance with the Reserve Bank of Australia on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of *financial loss* is due, respectively.

21. Waiver of contribution

We will not pay any *financial loss* to the extent that it has been caused or contributed to by the *insured* giving up any right or contribution or indemnity without our prior written consent.

Zurich is proud to support
football as an Official Partner
of the Hyundai A-League



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