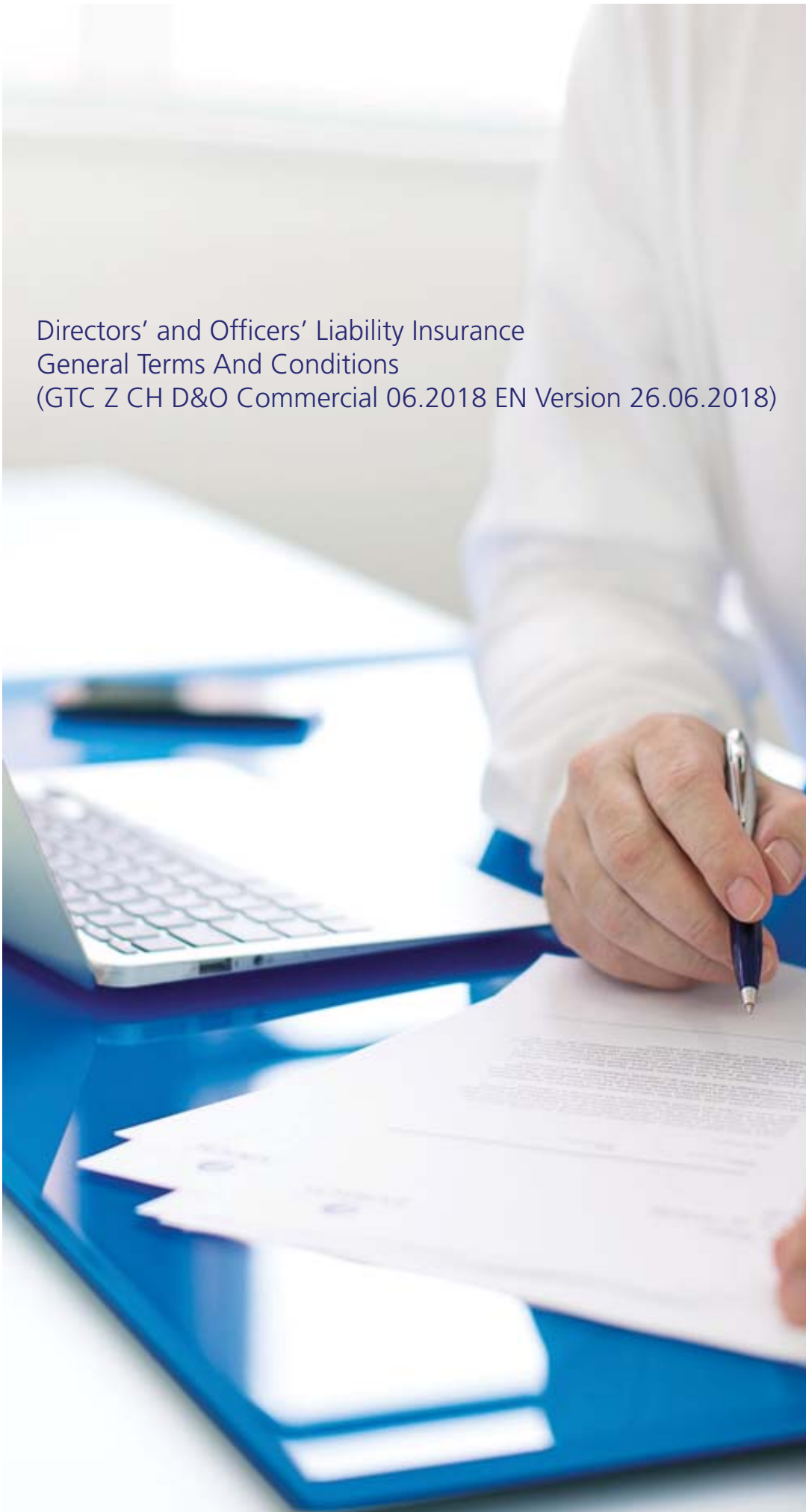




Directors' and Officers' Liability Insurance  
General Terms And Conditions  
(GTC Z CH D&O Commercial 06.2018 EN Version 26.06.2018)



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## General Terms & Conditions

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# General Terms & Conditions

## 1 Basis

This contract is based on the following:

1. the provisions contained in the policy including any endorsements;
2. these General Terms and Conditions (GTC) for Directors' & Officers' Liability Insurance;
3. any and all written declarations made by an **insured person** or a **company** or, if applicable, by the insurance broker in requesting an offer and/or in relevant documents associated with the conclusion and/or renewal of the contract.

## 2 Insurance coverage

### 2.1 Protection of private assets

Zurich indemnifies on behalf of the **insured person** pursuant to Section 5.1 in respect of a **claim** made against an **insured person** alleging a **wrongful act**.

### 2.2 Company reimbursement

If a **company** has fully or partially indemnified an **insured person** for a **claim** pursuant to Section 2.1, Zurich reimburses the **company** to the extent it has indemnified the **insured person**.

### 2.3 Company protection in case of securities claims

Zurich indemnifies on behalf of the **company** in respect of a **securities claim** made against a **company** alleging a **wrongful act**.

## 3 Coverage extensions

The following coverage extensions are granted up to a sublimit or additional limit, if included in the Policy Schedule.

### 3.1 Spouses, heirs and legal representatives

The following persons have the same status as the **insured person**:

- 3.1.1 The **insured person's** spouse, insofar as a **claim** is made against them as the **insured person's** spouse for the **insured person's wrongful acts**;
- 3.1.2 The **insured person's** registered partner as well as cohabiting partners, to the extent that a **claim** is made against them as the **insured person's** partner for **wrongful acts** committed by the **insured person**;
- 3.1.3 The heirs and legal representatives (guardians, estate administrators), to the extent that a **claim** is made against them for **wrongful acts** committed by the **insured person** before death, mental incompetence, insolvency or bankruptcy of the **insured person**.

No insurance coverage is provided for acts or omissions committed directly by the spouses, registered or cohabiting partners, heirs or legal representatives.

### 3.2 Employment related claims

The insurance covers **claims** made against an **insured person** based on actual or alleged employment-related wrongful acts or omissions of the **insured person**.

### 3.3 Outside entity executives

3.3.1 If an **insured person** or an employee of a **company** acts as a director or officer for an **outside entity** or acts as a *de facto* director or officer for an **outside entity** (outside entity executive) at the **company's** direction and request, the insurance also covers **wrongful acts** committed by this person in his or her capacity as a director or officer of the **outside entity**. The **continuity date** in each case is the date of acceptance of an outside entity executive position or the date stated in Item 2.1 of the Policy Schedule, whichever is later.

3.3.2 Zurich grants this extended coverage in excess of:

3.3.2.1 payments due or effectively made under other insurance policies held by the **outside entity**;  
as well as

3.3.2.2 any other indemnities made.

If the **outside entity** took out an insurance policy from another company of the Zurich Insurance Group to cover the persons insured pursuant to Section 3.3.1, the indemnity payments available under this policy are reduced by the indemnity paid by the insurance policy of the **outside entity**.

### 3.4 Pre-claim mitigation costs

Zurich indemnifies the **costs** of an **insured person** to prevent, mitigate or limit an anticipated **claim** if:

3.4.1 shareholders of the **company** announce in writing that they intend to raise a **claim**;

3.4.2 shareholders of the **company** refuse to discharge the **insured person** due to a **wrongful act**;

3.4.3 a special auditor for the **company** is appointed based on Art. 697a or 697b of the Swiss Code of Obligations (OR);

3.4.4 due to a **wrongful act**, an employment contract of an **insured person** with the **company** is terminated or the **insured person** is dismissed as director or officer of the **company**;

3.4.5 the benefits agreed in the **insured person's** employment contract with the **company** were not paid or only partially paid;

3.4.6 the **claim** against the **insured person** was announced in writing;

3.4.7 due to a **wrongful act**, a third party notice was served on the **insured person**;

3.4.8 due to a **wrongful act**, a regulatory body announces the commencement of investigation proceedings in writing; or

3.4.9 the **insured person**, the **company** or an **outside entity** submits a voluntary self-report to a competent authority indicating a **wrongful act** which might lead to a **claim**.

Zurich pays the **costs** from the time of the written notification of an event described in Section 3.4.1 to 3.4.9 pursuant to Section 9.7.

### 3.5 Costs of resolution of a psychological crisis

Zurich pays the **costs** incurred by an **insured person** for medical-psychological counselling of the **insured person** by a recognized professional to mitigate a psychological crisis following an insured **claim**, provided that these **costs** are not covered by another legal or contractual obligation to indemnify (e.g. health or accident insurance).

### 3.6 Taxes and social security contributions in case of involuntary liquidation and insolvency

3.6.1 **Financial Loss** shall also include unpaid taxes and social security contributions of the **company**, for which a **claim** is made against the **insured person**, provided that the **company** files for insolvency or is subject to involuntary liquidation.

3.6.2 This insurance coverage ceases if the non-payment of taxes and social security contributions are based upon a knowingly committed act or omission by an **insured person** or a **company**.

### 3.7 Fines and penalties

**Financial Loss** shall also include civil and administrative fines and penalties imposed on an **insured person** who is obliged to pay such fines or penalties based on a final judgment on a **claim**, provided that the insurance of such fines or penalties is permitted. This also includes civil fines under the "United States Foreign Corrupt Practices Act", 15 U.S.C. §78dd-2(g)(2)(B) or similar laws in other jurisdictions.

### 3.8 Costs related to claims for bodily injury or property damage

Zurich pays the **costs** of an **insured person** related to a **claim** for bodily injury or property damage, provided that:

3.8.1 it is not a **claim** made in the United States of America or to which the laws of the United States of America are applicable; and

3.8.2 these **costs** are not covered by a legal or contractual obligation to indemnify (e.g. by a general liability or professional liability insurance).

### 3.9 Extradition costs, penal prosecution costs and bail expenses

Zurich indemnifies the **insured person** for:

3.9.1 the **costs** directly related to extradition requests which are raised by competent authorities against the **insured person**. Zurich also indemnifies necessary and reasonable travel expenses, which are directly related to the extradition request, for spouses, common law spouses as well as minors of such **insured persons**;

3.9.2 the **costs** for contesting a judicial order which limits the freedom of cross-border travel of the **insured person**, confiscates his or her private assets or prohibits his or her from acting as director or officer of a **company**; or

3.9.3 the **costs** for posting bail for the **insured person** levied by a civil or criminal court; provided that these events are related to a **claim**.

### 3.10 Standard-of-living costs during prosecution

If the personal assets of an **insured person** are confiscated because of a **claim** in accordance with Section 3.9.2 and the **insured person** can no longer maintain his or her usual standard of living, Zurich pays the **costs** for up to six months from the date on which the relevant judicial order takes effect.

### 3.11 Costs in case of proceedings against the company

3.11.1 Zurich pays the **costs** incurred by an **insured person** to protect his or her interests in formal or informal criminal, administrative or investigation proceedings against the **company** first initiated by a competent authority during the period of insurance, but only if the competent authority requests or orders the participation of the **insured person** in such a proceeding, and as long as the proceeding is maintained against the **company**.

3.11.2 If the parties agreed the application of insurance coverage pursuant to Section 2.3, the provisions of Section 2.3 instead of this Section will apply in the event of a **securities claim**.

3.11.3 Proceedings as defined in this Section do not include industry-wide or sector-wide proceedings or any routine or regular audits, examinations, inspections, investigations or reviews.

### 3.12 Emergency costs

If an **insured person** cannot obtain Zurich's consent pursuant to Section 9.2.3 in a timely manner before **costs** are incurred in relation to a **claim**, Zurich will review and consent to the **costs** retroactively.

### 3.13 Public relations costs of a company due to resolution of crisis

If the parties agreed to the application of insurance coverage pursuant to Section 2.3 and a **securities claim** is made against the **company**, Zurich pays the **costs** of an external *public relations* advisor to mitigate or limit the reputational damage to this **company**.

### 3.14 Reputational damage

In the event of reputational damage to an **insured person** caused by:

3.14.1 by a **claim** against this **insured person**; or

3.14.2 by media reports or an announcement by the **company** first published or made during the period of insurance concerning a **wrongful act** by this **insured person**;

Zurich pays all necessary and appropriate expenses of an external *public relations* advisor engaged to mitigate the reputational damage suffered by this **insured person**.

### 3.15 Excess limits for costs

3.15.1 If the limit of liability is exhausted by indemnity payments due to a **claim** during the period of insurance, Zurich only pays the **costs** for another **claim** during the same period of insurance if these **claims** are not joined and are not interrelated claims pursuant to Section 6.3.

3.15.2 The **costs** are only paid to the extent that they are not covered by any excess policies to this policy and all other available indemnity payments.

### 3.16 Excess limits of liability for non-executive directors

3.16.1 If the limit of liability is exhausted by indemnity payments during the period of insurance, Zurich grants an additional limit for further indemnities to non-executive directors and officers of the **company**.

3.16.2 The indemnities are only paid to the extent they are not covered by any excess policies to this policy and all other available indemnity payments.

3.16.3 Non-executive directors and officers include all natural persons who serve as members of the board of directors or supervisory board of the **company** and who at the same time do not serve as a member of the executive board or hold an internal management or operational position with the **company** or are employed by the **company**.

### 3.17 Costs of forensic services

Zurich pays the costs of a provider of forensic services related to a **claim**, to the extent these services are necessary to clarify the facts, collect, preserve and provide evidence or fulfil other evidence-related duties by the **insured person** facing the **claim**.

### 3.18 Costs of action for negative declaratory relief

If an **insured person** is the subject of a written allegation of a **wrongful act**, Zurich pays the **costs** of an action for negative declaratory relief brought against such an allegation.

### 3.19 Indemnities made by the company for shareholder derivative actions

Zurich pays the **costs** on behalf of the **company**, which, pursuant to a final judgement, the **company** is ordered to pay to the holder of securities of such a **company** acting as claimant in a **claim** in form of a **shareholder derivative action** against an **insured person**.

## 4 Exclusions

### 4.1 Knowingly committed wrongful acts

Zurich does not make any indemnity payments for **claims** resulting from or in connection with:

- 4.1.1 a knowingly committed **wrongful act** or violation of law;
- 4.1.2 the gaining of any profit, remuneration or financial benefit or advantage to which an **insured person**, or, for insurance coverage pursuant to Section 3.2, a **company**, was not legally entitled.

This exclusion only applies if 4.1.1 or 4.1.2 are legally established in a final judgment or adjudication or acknowledged in writing by the **insured person** or the **company**, respectively. Zurich provisionally advances the **costs** until such establishment or acknowledgement.

### 4.2 USA: ERISA and claims of the company or outside entity

Zurich does not make any indemnity payments for **claims** made wholly or partially in the United States of America or to which the laws of the United States of America are applicable, provided, that these **claims** are:

- 4.2.1 based on or related to any provisions of the "United States Employee Retirement Income Security Act of 1974" (ERISA), any amendments thereto and similar provisions regarding employee benefits schemes or insurance policies, retirement, profit sharing or health and welfare programs having emerged from federal, state or local legislation or incorporating the same in any way;
- 4.2.2 made at the instigation of the **company** or **outside entity**. This exclusion does, however, not apply to:
  - 4.2.2.1 the **costs** of an **insured person**;
  - 4.2.2.2 **shareholder derivative actions**;
  - 4.2.2.3 **claims** brought directly or on behalf of the **company** or **outside entity** by a liquidator, trustee in bankruptcy or administrator, without the solicitation of the **company**, **outside entity** or an **insured person** and without the participation or direction of the **company**, **outside entity** or an **insured person**;
  - 4.2.2.4 **claims** brought by an **insured person** against another **insured person**, without the solicitation of the **company** or **outside entity** and without the participation or direction of the **company** or **outside entity**.

### 4.3 Trade and economic sanctions

Zurich does not provide any coverage and is not obliged to make indemnity or any other payments if such coverage or payments would violate any applicable trade or economic sanctions law or regulation.



## 5 Scope of insurance coverage

### 5.1 Indemnity payments

Indemnity payments by Zurich consist of the payment of **costs**, the defense of unfounded insured **claims** and the payment of founded insured **claims**. Indemnity payments comprise **financial loss, costs** and other expenses insured under this policy.

### 5.2 Limit of liability and insurance coverage

5.2.1 Indemnity payments by Zurich shall not exceed the limit of liability, the sublimit and the additional limit, respectively.

5.2.2 The limit of liability shown in the Policy Schedule is the maximum amount that Zurich will pay for any **claim** and for all **claims** in aggregate, including all insured indemnities, during the period of insurance (including the extended reporting period).

5.2.3 The sublimits stated in the policy are part of the limit of liability and the additional limits are in addition to the limit of liability and are granted per **claim** and in aggregate per period of insurance.

5.2.4 Item 2.3 of the Policy Schedule indicates whether insurance coverage is granted pursuant to Sections 2.1, 2.2 and 2.3.

### 5.3 Retention

5.3.1 The limit of liability, sublimits and additional limits are available in excess of the applicable retention pursuant to Item 2.5 of the Policy Schedule. Zurich does not make any indemnity payments for amounts that fall within the applicable retention.

5.3.2 If an interrelated claim includes several **claims**, the retention applies only once.

### 5.4 Failure to indemnify the insured person

5.4.1 If the **company** fails to indemnify the **insured person** in the event of a **claim** although such indemnification is not prohibited, Zurich makes indemnity payments instead of the **company** without prior deduction of an applicable retention.

5.4.2 The **company** must then immediately reimburse Zurich for all payments made by Zurich, up to the amount of the retention applicable under Section 2.2.

### 5.5 Financial Interest Coverage

5.5.1 For risks in jurisdictions which prohibit insurance by an insurer without a local permit (restricted foreign jurisdiction), Zurich covers the financial interest of the policyholder in a **subsidiary** in case of:

5.5.1.1 a covered **securities claim** against a **subsidiary**; or

5.5.1.2 an indemnification of an **insured person** by the **subsidiary** or the policyholder due to a covered **claim**; or

5.5.1.3 a **claim** against an **insured person** by the policyholder or a **subsidiary** made before and upheld in a final adjudication by a court of law, in which case Zurich shall be obligated to compensate the policyholder for the **financial loss** of the policyholder or the **subsidiary** for which the **insured person** is found liable;

but only if the provisions and insurance coverage of this contract will be applied analogously. The insurance of the financial interest offers exclusively insurance coverage for the policyholder of this contract. The policyholder purchases insurance coverage for the financial interest at its own expense.

5.5.2 A financial interest is the amount that would have been payable by Zurich, if the insurance coverage for the **insured person** could have been agreed effectively under this contract.

5.5.3 In the event of a **claim**, the following acts require Zurich's prior consent: judicial or extrajudicial settlements, acknowledgement of **claims**, cession of rights. The policyholder is obliged to ensure that eventual claims against third parties will be subrogated fully and at own expense by the **subsidiaries**. Otherwise the non-subrogated part will be deemed to reduce the amount payable to the policyholder.

## 6 Temporal scope

### 6.1 Policy period

6.1.1 The policy is concluded for the period(s) of insurance stated in Item 1.4 of the Policy Schedule.

6.1.2 If tacit renewal of the policy is agreed as stated in Item 1.4.1 of the Policy Schedule, the following applies:

6.1.2.1 Both the policyholder and Zurich have the right to terminate the policy by giving at least three (3) months' written notice prior to the expiration of the period of insurance. Notice of termination is deemed to have been given in due time if the other party receives the notice of termination at the latest on the last day before the three (3) month notice period begins. If the policy is not terminated, it is tacitly renewed for one year at a time, unless:

6.1.2.1.1 a member of the executive board, the *insurance manager* or *risk manager* or the General Counsel of the policyholder was aware of a **claim** sixty (60) days before the end of the period of insurance;

6.1.2.1.2 sixty (60) days before the end of the period of insurance, circumstances were notified pursuant to Section 9.7; or

6.1.2.1.3 the policyholder reported a capital loss as defined by Art. 725 para. 1 Swiss Code of Obligations (OR) in the past financial year.

6.1.2.2 If one or more of the events pursuant to 6.1.2.1.1, 6.1.2.1.2 or 6.1.2.1.3 occur during the period of insurance, the policy will end upon the expiry of the period of insurance without the need for written notice of termination.

6.1.2.3 If a member of the executive board, the insurance manager or risk manager or the general counsel of the policyholder becomes aware of a **claim** or if a circumstance is notified to Zurich less than sixty (60) days before the end of the period of insurance, the policy is renewed for another period of insurance and will expire at the end of the following period of insurance without the need for a written notice of termination.

6.1.2.4 In order to renew the policy in the case of 6.1.2.2 and 6.1.2.3, a new written agreement is required. The delivery and/or payment of the renewal invoice is not considered a mutual agreement to renew the policy.

6.1.3 If no tacit renewal is agreed according to Item 1.4.1 of the Policy Schedule, a new written agreement is required for the renewal of the policy.

6.1.4 The policyholder has the right to terminate this policy up to sixty (60) days from the occurrence of an event pursuant to Section 8.2 (new subsidiaries) or Section 8.4 (Initial public offering) if the policyholder and Zurich do not reach an agreement with Zurich about the conditions or the premium.

## 6.2 Claims made and continuity date

- 6.2.1 Insurance coverage is provided for **claims** first made during the period of insurance or during the extended reporting period, if applicable (claims made principle).
- 6.2.2 Insurance coverage for a **claim** arising from a **wrongful act** committed before the **continuity date** is only provided for those **insured persons** or **companies** affected by this **claim** who did not know about the **wrongful act** at the **continuity date**.
- 6.2.3 No insurance coverage is provided for:
- 6.2.3.1 **claims** related to pending or settled legal disputes or investigations commenced against an **insured person, company** or **outside entity** before the **continuity date**;
  - 6.2.3.2 **claims** pursuant to Section 6.2.3.1 that are based upon or arising from the same cause as such legal disputes or investigations;
  - 6.2.3.3 **claims** or circumstances that were notified under another policy or during a previous period of insurance of this policy; and
  - 6.2.3.4 **claims** or circumstances that were reported in a proposal, proposal form, *warranty statement* or any other declaration.

## 6.3 Serial loss

- 6.3.1 Serial loss is one or more **claims** or **financial losses** arising out of one or more **wrongful acts** of one or more **insured persons** (or, for the coverage pursuant to Section 2.3, of a **company** or **companies**) which are legally or economically interrelated or attributable to the same facts.
- 6.3.2 All **claims** in a serial loss are deemed a single **claim**. Such a serial loss will be allocated only to the period of insurance during which the first **claim** of the serial loss was made. If the first **claim** of a serial loss is made before the **continuity date**, the entire serial loss is deemed uninsured.

## 6.4 Subsidiaries and outside entity executives

- 6.4.1 Insurance coverage is only provided for **claims** arising from **wrongful acts** committed during the period when the entity was a **subsidiary** or a person insured pursuant to Section 3.3.1 was mandated to act as a director or officer of an **outside entity**, but only if the **claim** is notified during the period of insurance or during the extended reporting period, if applicable.
- 6.4.2 Alternatively, the policyholder or the former **subsidiary** may request from Zurich a quote for a separate run-off policy for **wrongful acts** committed during the time when the entity was still a **subsidiary**. Zurich reserves its right to determine the provisions of the run-off policy and set the premium accordingly. Insurance coverage for the former **subsidiary** under this policy will cease to the extent of the coverage provided by the run-off policy.
- 6.4.3 The request for a quote for a run-off policy must be made in writing to Zurich before the end of the period of insurance during which the entity ceased to be a **subsidiary**.
- 6.4.4 The policyholder may also request from Zurich a quote for a newly acquired **subsidiary** insured under this policy for **wrongful acts** committed during the period before this entity became a **subsidiary**. Such a coverage can be granted from the **continuity date** of this policy. Zurich reserves its right to determine the provisions and set the premium accordingly. The request must be submitted to Zurich no later than thirty (30) days after the new **subsidiary** is deemed insured under this policy.

## 6.5 Extended reporting period

6.5.1 If this policy is not renewed, the policyholder has the right to extend the insurance coverage according to Item 2.6 of the Policy Schedule or upon request for up to ten years, but only:

6.5.1.1 for **claims** arising from **wrongful acts** committed before the end of the last period of insurance;  
and

6.5.1.2 for the remaining amount of the unexhausted limit of liability available for the last period of insurance.

6.5.2 To exercise this right, the policyholder must notify Zurich no later than thirty (30) days after the end of the last period of insurance.

6.5.3 If the policyholder takes out other directors' and officers' liability insurance during the extended reporting period, Zurich provides difference-in-conditions coverage and, within the scope of Section 6.5.1, difference-in-limits coverage during the extended reporting period, provided that this policy has a wider scope of coverage than the other directors' and officers' liability insurance.

6.5.4 If the policyholder does not exercise its right to an extended reporting period pursuant to this Section, each and every **insured person** has the right to request an extended reporting period, provided that they inform Zurich of this request no later than sixty (60) days after the end of the last period of insurance. In addition to Section 6.5.1.1 and 6.5.1.2, the following applies: The remaining amount of the unexhausted limit of liability is only available once for the agreed extended reporting periods for all **insured persons**.

## 6.6 Lifelong extended reporting period for retired directors and officers

6.6.1 If this policy is not renewed, the **insured persons** who left or retired for age- or health-related reasons or who were dismissed due to a restructuring (after which their position ceased to exist) after the **continuity date**, are entitled to an unlimited extended reporting period under this policy at no additional premium, but only:

6.6.1.1 for **claims** arising from **wrongful acts** committed as **insured persons** before leaving or retiring;  
and

6.6.1.2 for the remaining amount of the limit of liability that is still available for the last period of insurance.

6.6.2 The relevant date of leaving is the date on which the employment or mandate relationship ends.

6.6.3 This insurance coverage lapses if another insurance policy covers the same **wrongful acts** committed by these former or retired **insured persons**.

## 7 Territorial scope

### 7.1 Worldwide insurance coverage

To the extent permitted by law, this policy provides worldwide insurance coverage.

## 8 Changes in risk and policyholder's obligations

### 8.1 Policyholder's obligation to notify changes in risk

Notwithstanding the provisions of the VVG, the policyholder's obligation to notify material changes in risk is limited to the following events during the period of insurance:

- 
- 8.1.1 Formation or acquisition of an entity pursuant to Section 8.2;
- 8.1.2 Commencement of liquidation proceedings, bankruptcy proceedings or debt moratorium of the policyholder or a merger or takeover of the policyholder pursuant to Section 8.3;
- 8.1.3 Initial public offering of the **company's** shares pursuant to Section 8.4;
- If the tacit renewal of the policy was agreed in accordance with Item 1.4.1 of the Policy Schedule, the events listed in Sections 6.1.2.1 to 6.1.2.3 also qualify as material changes in risk that have to be notified.
- 8.2 **New subsidiaries**
- 8.2.1 If during the period of insurance or the term of this policy the policyholder forms or acquires a new entity that meets the conditions of the definition "Subsidiary", such an entity becomes a **subsidiary** provided that:
- 8.2.1.1 the securities of such an entity are not traded on a stock exchange in the United States of America;
- 8.2.1.2 the total assets of such an entity (according to its most recent annual report) do not exceed the amount given in Item 2.7 of the Policy Schedule; and
- 8.2.1.3 such an entity is not a bank, an insurance company or another financial services company (with the exception of a captive insurance company of a **company**).
- 8.2.2 If one or more of these conditions are not fulfilled, such newly formed or acquired entity is deemed a **subsidiary** for a period of 90 (ninety) days starting from the date of acquisition or formation, but no longer than the end of the current period of insurance. After expiry of this period, the insurance coverage will extend to such a new **subsidiary** only with Zurich's written consent. Zurich reserves its right to amend the terms and conditions of the policy in respect of such a new **subsidiary**, including charging an additional premium.
- 8.3 **Liquidation, merger or takeover of the policyholder**
- 8.3.1 In the event of the voluntary or compulsory liquidation of the policyholder, the opening of bankruptcy proceedings against the policyholder, a merger (resulting in the loss of the policyholder's legal status) or the acquisition of a majority of the policyholder's voting rights by one or several persons, insurance coverage extends until the end of the period of insurance but only for **claims** arising from **wrongful acts** committed before the end of voluntary liquidation, the beginning of compulsory liquidation, the opening of bankruptcy proceedings or the closing date of a merger or acquisition.
- 8.3.2 A debt moratorium concerning the policyholder does not affect the insurance coverage.
- 8.3.3 If one of the events pursuant to Section 8.3.1 occurs, the policyholder may request an offer for a run-off policy of up to ten (10) years for **claims** arising from **wrongful acts** committed before the event occurred. Zurich reserves its right to set a premium, which can be paid by the policyholder or any other person. During the extended reporting period, insurance coverage in the scope of the extended reporting period exists to the extent of the remaining unexhausted limit of liability, sublimit or additional limit for the last period of insurance, and begins on the first day following the end of the period of insurance.
- 8.3.4 Zurich must be notified in writing of the policyholder's request to be granted an extended reporting period no later than thirty (30) days after the end of the voluntary liquidation, the beginning of the compulsory liquidation, the opening of bankruptcy proceedings, or the *closing date* of a merger or takeover. Section 6.5 does not apply in the case of the liquidation, bankruptcy, takeover or merger of the policyholder.
- 8.3.5 The provisions of the Section 8.3 do not apply if the majority of the policyholder's voting rights are transferred to the heirs or to a foundation as part of the succession process and its corporate purpose does not change.

## 8.4 Initial public offering

If the **company** publicly offers its shares, equity titles or participation certificates during the period of insurance and the issue volume exceeds the amount stated in Item 2.8 of the Policy Schedule, the insurance coverage will only extend to **wrongful acts** related to such offerings with Zurich's written consent. Zurich reserves the right to amend the terms and conditions of this policy in respect of such an event, including charging an additional premium.

## 9 Claims handling

### 9.1 Notification of a claim

9.1.1 If a member of the executive board, the *insurance manager* or *risk manager* or the General Counsel of the policyholder becomes aware of a **claim**, the **claim** must be notified to Zurich in writing as soon as possible but no later than ninety (90) days after the expiration of the insurance contract or the extended reporting period, if applicable. **Claims** notified on a later date are not covered.

9.1.2 The **claim** notification must contain information about the actual or expected **financial loss**, the alleged or actual **wrongful act**, the time of the **wrongful act** and the **insured persons** involved.

### 9.2 Handling of a claim

9.2.1 If a **claim** is made against an **insured person** or a **securities claim** is brought against a **company**, the **insured person** and the **company**, respectively, are obliged to defend themselves by all means at their disposal.

9.2.2 The amount of the damages to be paid by Zurich is based on a final decision by a court or an arbitration tribunal, or a final order by an authority wherein the **insured person** or the **company** is sentenced to pay compensatory damages. Subject to the written consent of Zurich, settlements approved by the court or out of court are deemed equivalent.

9.2.3 The **insured person** and the **company** may neither admit nor assume nor settle liability **claims** in whole or in part, nor incur **costs** without Zurich's prior written consent. They are obliged to support Zurich in the investigation of the facts and not to do or omit anything to prejudice the rights of Zurich. A culpable breach of these duties by the **company** or the **insured person** will release Zurich from its obligation to indemnify to the extent of the consequences attributable to such a breach. The **company** or the **insured person** will not be affected if they can prove that under the circumstances they are not responsible for the breach. The breach of these obligations by an **insured person** or a **company** will not be imputed to any other **insured person** or any other **company**.

9.2.4 If Zurich wishes to settle with the claimant whereas the **company** or the **insured person** is opposed to such a settlement, Zurich's total aggregate payments under this policy will be limited to the amount by which the claim could have been settled by compromise.

9.2.5 Zurich will be entitled to any payments awarded to the **insured person** or the **company** in legal proceedings up to the amount of the indemnities paid by Zurich.

9.2.6 Subject to Zurich's written approval, the **insured person** and the **company** may elect and retain a lawyer of their choice.

9.2.7 Should it subsequently emerge that a **claim** is partly or entirely uncovered under this policy, the **insured person** or the **company** will reimburse Zurich for the uncovered part of the advanced costs.

### 9.3 Allocation of mixed claims

The following applies if a **claim** is brought against both the **insured person** and the **company** or an uninsured person or company, or if facts that are covered as well as facts that are not covered by this policy are asserted:

9.3.1 the **company**, the **insured person** and Zurich will determine the allocation of the **costs** and the **financial loss** in consideration of the likelihood of success and relative financial advantage of the parties;

9.3.2 any confirmation or payment of **costs** will not bind Zurich in respect of liability or insurance coverage.

## 9.4 Order of payments by Zurich

In the event of an insured **financial loss**, Zurich will first indemnify pursuant to Section 2.1 (protection of private assets) and Section 3.3 (outside entity executives) and thereafter indemnify to the extent of the remaining available amount of the limit of liability, sublimit or additional limit pursuant to the other provisions of the policy.

## 9.5 Eligibility for payments from Zurich

The **insured person** and, in accordance with Sections 2.2 and 2.3, the **company**, are exclusively eligible for payments under this policy. Zurich is authorized to make indemnity payments directly to the injured party.

## 9.6 Recovery against third parties

The **insured person's** or the **company's** rights of recovery against third parties will be assigned to Zurich to the extent of Zurich's payments under this policy. If the cession does not occur by law, the **insured person** or the **company** must cede the recovery rights to Zurich. The **insured person** and the **company** are liable for any act or omission that may prejudice these rights of recovery. All rights to payments under this policy will be forfeited to the extent that third parties are relieved of liability without Zurich's written consent.

## 9.7 Notification of circumstances

9.7.1 If an **insured person** or a **company** becomes aware of any circumstance which may reasonably give rise to a **claim**, they may notify Zurich of these circumstances in writing during the period of insurance. As a result of such a notification, **claims** arising from these circumstances will be deemed to have been first made at the time such a notification was first received by Zurich.

9.7.2 The notification of circumstances is only valid if it contains at least the following information: the reasons for the assumption that a **claim** may be made; the identity of the potential claimants; the nature of the potential **financial loss**; a description of the **wrongful act**; the identity of the **insured person** and the **company** allegedly involved.

# 10 General conditions

## 10.1 Rights under the VVG

10.1.1 Zurich waives the following rights to which it is entitled under the Federal Act on Insurance Contracts (VVG):

Art. 14 para. 2 VVG: the right to reduce payments under this policy in case of gross negligence;

Art. 42 VVG: the right to cancel this policy in the event of a partial loss.

10.1.2 In deviation from the following articles of the VVG, special provisions apply to this policy:

Art. 28 VVG: only the changes in risk listed in Section 8.1 of this policy are considered material;

Art. 46 VVG: claims under this policy expire five years after the occurrence of the insured event for which compensation is due;

Art. 54 and 55 VVG: in the event of a change in ownership or bankruptcy of the policyholder, the legal consequences pursuant to this policy apply if they are more favorable to the policyholder or the beneficiaries than the statutory provisions.

## 10.2 Severability

10.2.1 In granting insurance coverage, Zurich has relied upon the declarations mentioned in Section 1 para. 3 as well as the proposal forms or other statements, which constitute the basis of this contract (proposal). In respect of the proposal, it is agreed that:

10.2.1.1 statements made and knowledge possessed by an **insured person** are not imputed to another **insured person**;

10.2.1.2 for the granting of insurance coverage pursuant to Section 2.3, statements made and knowledge possessed by the policyholder's Chief Executive Officer, Chief Financial Officer, the *insurance manager or risk manager* and General Counsel are imputed to all **companies**.

10.2.2 The following applies to the exclusions pursuant to Sections 4.1.1 and 4.1.2:

10.2.2.1 **wrongful acts**, acts or omissions of an **insured person** are not imputed to another **insured person**.

10.2.2.2 for **securities claims** pursuant to Section 2.3, the **wrongful acts**, acts or omissions of the policyholder's Chief Executive Officer, Chief Financial Officer, *insurance manager or risk manager* and General Counsel are attributed to all **companies**, and the **wrongful acts**, acts or omissions of persons in the same positions at a **subsidiary** are imputed only to this **subsidiary**.

## 10.3 Premium

Unless otherwise agreed, the premium (plus taxes, charges and duties) is determined per period of insurance and is due and payable at the inception of the period of insurance.

## 10.4 Brokers

If a third party, e.g. a broker, represents the interests of the policyholder with regard to the conclusion of or management of this insurance contract, Zurich may remunerate this third party for its activities on the basis of an agreement. The policyholder may contact the third party for further information.

## 10.5 Other insurance policies

10.5.1 This policy covers **claims** that are also insured under another insurance policy at the time they are made in excess of the amount that is covered under the other insurance policy, subject to the retentions agreed in this policy.

10.5.2 If the other insurance company denies its obligation to provide insurance coverage fully or partially, Zurich will advance the **costs** of the **insured person** if the other policy was not taken out from an entity of the Zurich Insurance Group.

## 10.6 Jurisdiction and applicable law

10.6.1 The place of jurisdiction shall be Zurich or the policyholder's domicile in Switzerland or Liechtenstein.

10.6.2 This contract shall be governed exclusively by Swiss law. The liability of an **insured person** or a **company** is not affected by this choice of law.



## 10.7 Notifications to Zurich

All notifications must be sent to Zurich Insurance Company Ltd, Commercial Insurance Switzerland, P.O. Box, CH-8085 Zurich.

## 11 Definitions

The terms printed in **bold** in this policy, whether in the singular or the plural, are defined as follows:

### Claim

**Claim** means:

- 1a) a written demand for the payment of damages or a third-party notice against an **insured person** concerning a **financial loss**;
- 1b) a criminal, administrative or investigation proceeding against an **insured person**, which may lead to a demand for the payment of damages concerning a **financial loss**;
- 2) a **securities claim** made against a **company** or an **insured person**;

based on a **wrongful act** and first made during the period of insurance or the extended reporting period.

### Companies

**Companies** mean the policyholder and its **subsidiaries**.

### Continuity date

**Continuity date** means the date defined as such in Item 2.1 of the Policy Schedule or elsewhere in the policy.

### Costs

**Costs** mean all necessary and reasonable expenses related to a **claim**, in particular: expert opinions, legal costs, mediation costs, arbitration and court costs, interest on damages and arrears, mitigation costs related to a **claim** as defined in Section 1a and 2 of the definition "Claim", compensation paid to the opposing party and the costs for translating foreign legal documents. **Costs** do not include wages for the **insured person** or employees, or the **company's** internal costs.

### Financial loss

**Financial loss** means a loss that results neither directly nor indirectly from death, injury or other impairment of health (bodily injury) nor from the destruction of, damage to or loss of tangible property (property damage).

**Financial loss** also means:

1. a diminution in assets in conjunction with bodily injury or property damage but only to the extent that the **wrongful act** of an **insured person** did not cause the bodily injury or property damage but only the diminution in assets itself;
2. a diminution in value of the policyholder's shares due to bodily injury or property damage;
3. damage pursuant to the "Corporate Manslaughter and Corporate Homicide Act 2007" of the United Kingdom; and
4. *punitive, exemplary or multiplied damages* if insurable in the applicable jurisdiction, but only if they are not subject of a **claim** pursuant to Section 3.2;
5. a diminution in assets caused by bodily injury or property damage that is asserted in the form of a shareholder action, **shareholder derivative action** or *securities class action*;
6. *emotional distress* inflicted during employment.

**Financial loss** does not include

- a. taxes, social insurance contributions (such as AHV or BVG contributions), duties, fines or penalties and costs of decontamination of environmental damages ("clean up costs"), except as explicitly covered pursuant to Sections 3.6 and 3.7.

- b. the expenses of a **company** related to the difference between the originally offered or agreed and the finally paid price in connection with the purchase or sale of a company, its shares or assets.

## Insured persons

**Insured persons** mean the following natural persons:

1. Members of boards of directors and supervisory boards;
2. Members of executive or management boards;
3. Members of internal control bodies, internal auditors and controllers, compliance officers and other persons appointed by law to ensure compliance, e.g. as data protection, money laundering, employment safety or security officer *insurance managers or risk managers*, heads of insurance department and General Counsels;
4. *De facto* directors and officers;
5. Members of the internal pension fund committee;
6. Lawyers who are permanently employed by the **company**;
7. *Shadow Directors, approved persons* pursuant to "UK Financial Services and Market Act 2000";
8. *Company secretaries*, officers as defined for common law jurisdictions, *senior accounting officers* according to schedule 46, para. 16 of the "UK Finance Act 2009";
9. General representatives, authorized proxy holders and other members of management;
10. Ad interim managers;
11. Appointed liquidators in this capacity during a voluntary liquidation of a **company**;

in their capacity or function as a director and officer of a **company**,

as well as other employees of the **company**, provided that a **claim** is simultaneously brought and maintained against a person listed in 1 to 11 of this definition, or the **claim** brought against them is based on Section 3.2 (employment practices liability).

The following are also **insured persons**:

12. Natural persons representing a legal entity that was appointed a director and officer of the **company**;
13. Employees of a **company** involved in the formation of the **company**, but only within the scope of their legal-liability pursuant to Art. 753 OR or similar liability provisions in other jurisdictions.

## Outside entities

**Outside entities** mean all legal entities: that are not **companies**; whose securities are not listed on a stock exchange in the US; that are not banks, insurance companies or other financial institutions.

## Securities claim

**Securities claim** means a written demand for damages first made during the period of insurance in respect of a **financial loss** arising from a **wrongful act** in connection with the purchase, hold, sale or issue of securities of the **company**.

**Securities claim** also means an investigation of a **wrongful act** related to the securities of the **company** first brought or commenced against the **company** during the period of insurance by a competent authority, in particular the Securities and Exchange Commission (SEC), SIX Swiss Exchange or FINMA, but only if and as long as the investigation is simultaneously commenced and maintained against an **insured person**.

Investigations targeting an entire business sector or carried out as routine or regular control measures are not considered **securities claims**.

## Shareholder derivative action

**Shareholder derivative action** means a **claim** made and maintained in the name or on behalf of a **company** or an **outside entity** by one or more of its shareholders without the solicitation, participation or direction of the **company**,

**outside entity** or an **insured person**, unless the **insured person** acted in good faith as a *whistleblower* (as interpreted by the applicable law).

### Subsidiaries

**Subsidiaries** mean any entities in which the policyholder directly or indirectly:

1. holds more than 50% of the voting rights; or
2. appoints a majority of the board of directors (or equivalent in any other country); or
3. exerts a controlling influence over the executive board pursuant to a written agreement.

This shall not affect the provision of Section 5.5 (financial interest coverage).

**Subsidiaries** also include charities and charitable foundations that are fully controlled and financed by a **company**, but exclude pension trusts or schemes.

### Wrongful act

**Wrongful act** means any alleged or actual act or omission of an **insured person**, which results in a legal liability or responsibility in the capacity or function as a director or officer of a **company** or an **outside entity**.

Liability or responsibility established by case law in common law countries is also deemed a legal liability or responsibility.

The following applies exclusively to insurance coverage pursuant to Section 2.3: **Wrongful act** means any alleged or actual act or omission of a **company**, which results in a legal liability or responsibility of the **company**.

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