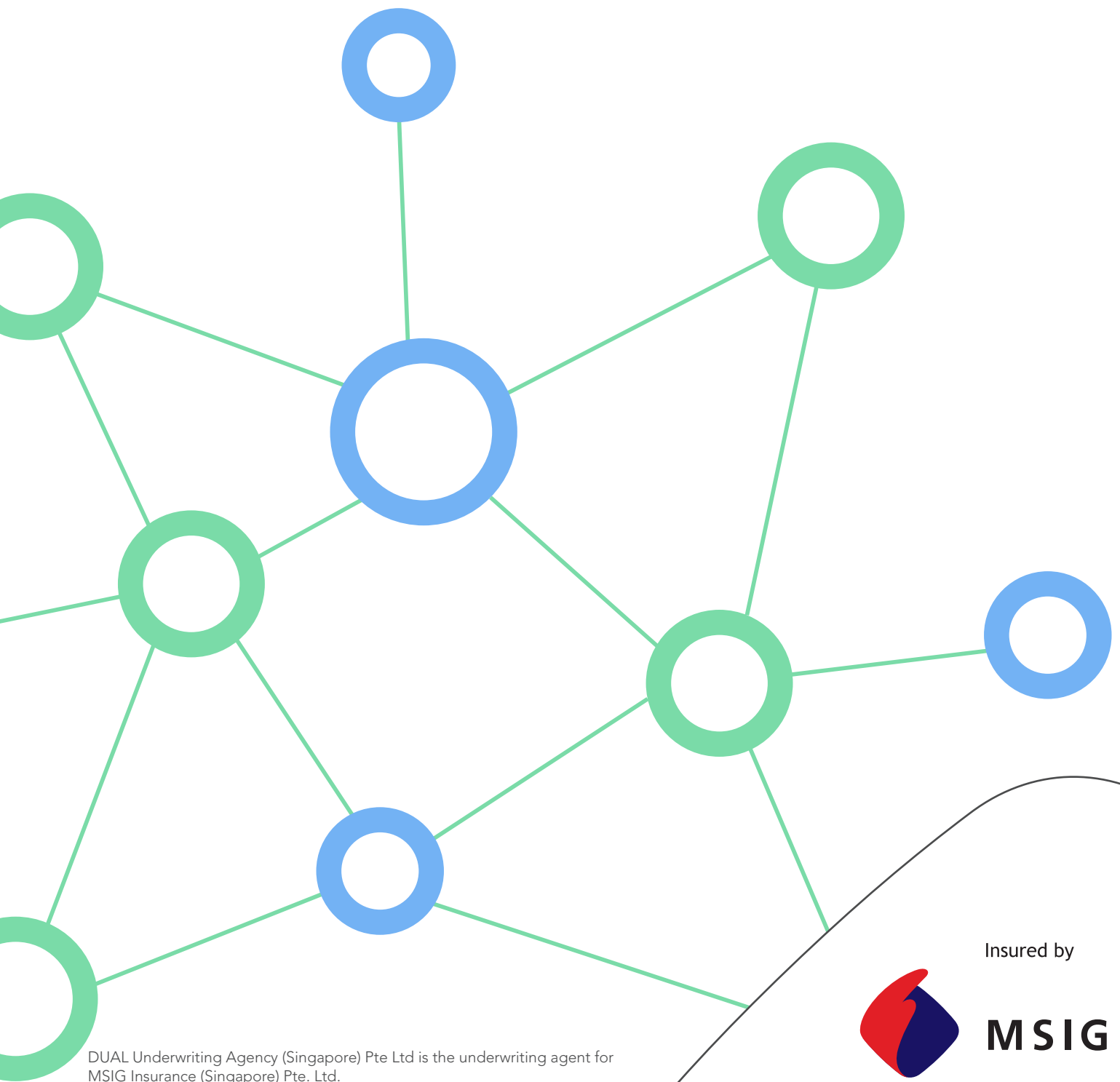




making relationships count

## DIRECTORS & OFFICERS LIABILITY POLICY WORDING



DUAL Underwriting Agency (Singapore) Pte Ltd is the underwriting agent for MSIG Insurance (Singapore) Pte. Ltd.

Insured by



**MSIG**



## DUAL Asia Directors and Officers Liability Insurance

### Policy Wording

#### TABLE OF CONTENTS

Section 1:	PREAMBLE .....	3
Section 2:	INSURING CLAUSES .....	3
Section 3:	EXTENSIONS .....	4
Section 4:	EXCLUSIONS .....	7
Section 5:	DEFINITIONS.....	9
Section 6:	CLAIM CONDITIONS .....	15
Section 7:	GENERAL CONDITIONS .....	17

# DUAL Asia Directors and Officers Liability Insurance

## Policy Wording

### Section 1: PREAMBLE

- 1.1 We will provide the cover described in the **policy**, subject to its terms and conditions, for the **insurance period**.
- 1.2 The cover under the **policy** commences upon the payment of the premium unless otherwise agreed in writing.
- 1.3 Except as otherwise provided herein, this **policy** only covers **claims** first made against the **insured** and reported to **us** in the **insurance period**.

### Section 2: INSURING CLAUSES

#### 2.1 Insured Person Liability Cover

We agree to pay on behalf of each **insured person** their **loss** arising from a **claim** first made against an **insured person** during the **insurance period**, for which the **policyholder** has not indemnified the **insured person**.

#### 2.2 Insured Person Investigation Cover

We agree to pay on behalf of each **insured person** their **loss** arising from an **investigation** commenced during the **insurance period**, for which the **policyholder** has not indemnified the **insured person**.

#### 2.3 Company Reimbursement - Insured Person Liability Cover

We agree to pay on behalf of the **policyholder** an **insured person's loss** arising from a **claim** first made against an **insured person** during the **insurance period**, for which the **policyholder** has indemnified the **insured person**.

#### 2.4 Company Reimbursement - Investigations Cover

We agree to pay on behalf of the **policyholder** an **insured person's loss** arising from an **investigation** commenced during the **insurance period**, for which the **policyholder** has indemnified the **insured person**.

#### 2.5 Securities Entity Cover

We agree to pay on behalf of the **policyholder** its **loss** on account of a **securities claim** first made against the **policyholder** during the **insurance period**.

#### 2.6 Employment Practices Liability Cover

We agree to pay on behalf of the **policyholder** its **loss** which results from a **claim** first made against the **policyholder** during the **insurance period** by an employee, based upon arising from or in consequence of an actual or alleged **employment practice breach**.

The maximum amount payable by **us** under this Insuring Clause is the applicable sub-limit of liability specified in Item 5 of the **schedule**. This sub-limit is part of and not in addition to the **indemnity limit**.

A separate **deductible** will apply to this Extension as specified in Item 5 of the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

#### 2.7 Employment Practices Liability – Investigations Cover

We agree to pay on behalf of the **policyholder** all **investigations costs** arising from or in consequence of an actual or alleged **employment practice breach** commenced during the **insurance period**.

The maximum amount payable by **us** under this Insuring Clause is the applicable sub-limit of liability specified in Item 5 of the **schedule**. This sub-limit is part of and not in addition to the **indemnity limit**.

A separate **deductible** will apply to this Extension as specified in Item 5 of the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

## 2.8 Retroactive Date

The **policy** will only provide cover in respect of any **claim** or **investigation** arising from a **wrongful act** committed or allegedly committed after the **retroactive date**.

## Section 3: EXTENSIONS

These Extensions to coverage apply automatically and are subject to the Insuring Clauses and all other terms and conditions of this **policy**.

The maximum amount payable by **us** under the Extensions below is the applicable sub-limit of liability specified in Item 5 of the **schedule**. This sub-limit is part of and not in addition to the **indemnity limit**.

A separate **deductible** will apply under these Extensions as specified in Item 5 of the **schedule**. The **deductible** is inclusive of **costs**, unless otherwise specified in the **schedule**.

### 3.1 Advancement of Defence Costs or Investigation Costs (includes Pre-Investigation Costs)

**We** agree to pay for **defence costs** or **investigation costs** reasonably incurred in respect of any **claim** or **investigation** covered under this **policy** as and when they are incurred prior to final resolution of the **claim** or **investigation**, and within 30 days of receipt by **us** of sufficiently detailed invoices for those costs.

However any **defence costs** or **investigation costs** that are paid will be repayable to **us** by the **insured** in the event and to the extent that it is determined under the **policy** that the **insured** was not entitled to the payment of the **defence costs** or **investigation costs**.

### 3.2 Automatic Run-Off Cover for Retired Insured Persons

**We** agree to provide 84 months **discovery period** to a **retired insured person** at no additional premium commencing at 00:00 local time on the date which they retire from office with the **policyholder** if the **policyholder** does not renew the **policy** and no **discovery period** is operable.

### 3.3 Bail Bond Expenses

**We** will pay the **bail bond expenses** of an **insured person**.

### 3.4 Civil Fines and Civil Penalties

**We** will pay the civil fines and/or civil penalties awarded against an **insured person** imposed by law, provided that we are not legally prohibited from paying the civil fines and/or civil penalties under the law applicable to this **policy**.

### 3.5 Continuous Cover

Notwithstanding Exclusion 4.6 (Prior Known Facts), **we** agree to provide cover in respect of any **claim** made against the **insured** in the **insurance period** where the **insured**:

- a) first became aware, prior to the **insurance period** and after the **retroactive date**, that a **claim** or **investigation** might or could arise from facts or circumstances known to it; and
- b) through error or oversight failed to notify the previous insurers(s) on risk of such facts or circumstances, under any similar policy existing prior to the **insurance period**.

Provided that:

- i) there has not been any fraudulent non-disclosure or fraudulent misrepresentation by an **insured** in respect of such facts or circumstances; and
- ii) if the fact or circumstance had been notified under the previous policy, the **insured** would have been entitled to indemnity under the previous policy; and

- iii) if **we** had been notified of the facts or circumstances when the **insured** first became aware of such facts, the **insured** would have been indemnified under the policy in force at that time, however is now not entitled to be indemnified by that policy, and the **insured** would, but for Exclusion 4.6 (Prior Known Facts) otherwise be indemnified by this **policy**; and
- iv) **we** have the discretion to apply either the terms and conditions of the policy in place when the **insured** first became aware of the facts and circumstances, including but not limited to the **indemnity limit** and **deductible**, or the terms and conditions of this **policy**; and
- v) the **insured** all agree only to make a **claim** under one directors and officers liability or management liability **policy** issued by **us**.

For the purpose of this Extension only the Definition of **we/us/our** (Definition 5.45) of this **policy** also includes the Insurer(s) for which **we** were the agent on any previous policy issued by **us** as such Insurer's agent to the **insured**. Subject to the terms of this Extension and the terms of the **policy**, the intention of this Extension is to provide continuous cover notwithstanding any change in the identity of the Insurers for which **we** presently act, or have previously acted, as agent.

### 3.6 Crisis Costs

**We** will pay the **crisis loss** of the **insured** following a **crisis event**.

### 3.7 Deprivation of Assets Expenses

**We** will pay the **deprivation of asset expenses** of an **insured person** in the event that an interim or interlocutory court order is made against an **insured person** which seeks to confiscate, control, suspend or freeze rights of ownership of real property or personal assets of an **insured person** or creates a charge over real property or personal assets of an **insured person**.

### 3.8 Discovery Period

In the event of non-renewal of this **policy**, for reasons other than for the non-payment of premium, the **insured** may give written notice to **us** of any **claim** or **investigation**, arising from or in consequence of any actual or alleged **wrongful act**, which occurred during the **insurance period** and during a **discovery period** immediately after the **insurance period**:

- a) 90 days, granted automatically with no additional premium payable; or
- b) 12 months, if the **policyholder** requests such period in writing within 30 days after the end of the **insurance period** and tenders an additional premium as stated in the **schedule**, commencing immediately after the end of the **insurance period**, with such premium payable within 30 days of the receipt by **us** of such written request; or
- c) 84 months, if a **transaction** takes place and the **policyholder** requests such period in writing within 30 days following the end of the **insurance period**, on such terms and conditions, if any, and for such additional premium as **we** may reasonably decide.

This Extension is not available if this **policy** is:

- (i) renewed or replaced with any other like directors and officers or management liability policy; or
- (ii) cancelled or avoided.

Any **discovery period** purchased under this Extension is non-cancellable, and the premium paid for the **discovery period** is fully earned by **us** and is non-refundable.

### 3.9 Emergency Defence Costs

If **our** written consent cannot reasonably be obtained before **defence costs** are incurred by an **insured**, **we** will pay those **defence costs** if the **insured** obtains **our** consent within 30 days of the date that the first of those **defence costs** were incurred.

If **we** subsequently determine that there is no entitlement under the **policy** for any **defence costs** that **we** have paid under this clause, the **insured** must repay those amounts to **us** immediately.

### 3.10 Estates, Heirs, Legal Representatives and Spousal Cover

We will pay the **loss** of:

- a) the estate, heirs, legal representatives or assigns of any deceased or mentally incompetent, bankrupt or insolvent **insured person**; or
- b) a legal or de facto spouse of an **insured person**;

but only in respect of a **wrongful act** committed or allegedly committed by an **insured person**.

### 3.11 Extradition Costs

We will pay the **extradition costs** of an **insured person**.

### 3.12 Former Subsidiary Cover

We agree to provide coverage to any entity or **subsidiary** that ceases to be a **subsidiary** either before or during the **insurance period**, but only in relation to a **wrongful act** actually or allegedly committed whilst the entity was a **subsidiary**.

### 3.13 Insured Person Tax Liability

We will pay as **loss** an **insured person's** personal liability for the unpaid taxes of the **policyholder** in the event that the **policyholder** becomes insolvent and an **insured person** is ordered to pay the unpaid taxes of the **policyholder**, except to the extent that such liability arises from the wilful intent of the **insured person** to breach any duty governing the payment of taxes.

### 3.14 Mitigation Costs

We will reimburse the **insured** for **mitigation costs** incurred in taking action to limit or mitigate the **insured's** exposure to any actual covered **claim** or potential **claim**, for a **wrongful act** which would otherwise be covered under this **policy** with **our** prior written consent. The **policyholder** bears the burden of proving that the **claim** would otherwise have been covered.

This Extension does not apply to a potential **claim** by the **policyholder** against any **insured person**.

### 3.15 Newly Created or Acquired Entity or Subsidiary

We agree to provide coverage to any entity or **subsidiary** acquired or created by the **policyholder** during the **insurance period** from the date of such acquisition or creation provided that the entity or **subsidiary**:

- a) has total gross assets outside of the United States of America or Canada or their territories or possessions which are less than 25% of the total gross assets of the **policyholder**;
- b) has total gross assets within the United States of America or Canada or their territories or possessions which are less than 25% of the total gross assets of the **policyholder**;
- c) is incorporated outside of the United States of America or Canada or their territories or possessions; and
- d) does not undertake activities which attract one or more of the provisions of the Securities Act of 1933 (USA), the Securities Exchange Act of 1934 (USA), any rules or regulations of the Securities and Exchange Commission (USA), or any federal, country, state, or territory rules or regulations or local or provisional statute in the United States of America or any of its territories or possessions relating to securities, or the equivalent in Canada and any of its territories or possessions.

We may, at **our** discretion, agree to provide coverage where the **subsidiary** fails to meet any one of the above conditions if:

- e) the **policyholder** has notified **us** of the acquisition or creation of the entity or **subsidiary** and has provided all information requested by **us**; and
- f) any terms imposed by **us**, including the charging of any additional premium considered appropriate, have been agreed by the **policyholder**.

Provided always that any coverage provided in this **policy** will only apply in respect of a **wrongful act** occurring after the date of creation or acquisition, unless otherwise agreed in writing by **us**.

### 3.16 Outside Entity Executive Cover

We will pay the **loss** of an **outside entity executive** in the event that a **claim** is made against such **outside entity executive** or an **outside entity executive** is required to attend an **investigation** during the **insurance period** or any **discovery period**, in relation to the performance of their duties for an **outside entity**, in their capacity as an **outside entity executive**.

### 3.17 Pollution Defence Costs and Investigation Costs

Notwithstanding Exclusion 4.1 (Bodily Injury and Property Damage) or Exclusion 4.5. (Pollution), **we** will pay the **defence costs** or **investigation costs** of an **insured person** in relation to the actual, alleged or threatened discharge of **pollutants**.

### 3.18 Prosecution Costs

We will pay the **prosecution costs** of an **insured person**.

### 3.19 Public Relations Expenses

We will pay the **public relations expenses** of an **insured**.

### 3.20 Reinstatement of the Indemnity Limit – Insured Persons

In the event of a reduction (in whole or in part) of the **indemnity limit** due to payment by **us** of **loss** under this **policy**, it is agreed that the **indemnity limit** shall be reinstated by the amount by which the **indemnity limit** is reduced, provided that:

- a) the total amount payable by **us** with respect to any one **claim** or **investigation** shall not exceed the **indemnity limit**; and
- b) the total amount payable by **us** under this **policy** shall not exceed twice the **indemnity limit**; and
- c) if the **policyholder** has in effect any policy or policies providing coverage in excess of this **policy**, then the reinstated amount of the **indemnity limit** as allowed for by this clause will take effect after the total exhaustion of any amounts payable under any such other policies but before any similar reinstatement provisions as may be contained in any such other policies; and
- d) this provision shall only be available to **insured persons** who are, or were, at the time of the **wrongful act**, a director of the **policyholder**.

### 3.21 Shareholder Costs

We will pay as **loss** any adverse costs orders awarded against the **insured** in favour of a shareholder or group of shareholders of the **policyholder**.

### 3.22 Unincorporated Joint Venture Cover

We will pay the **loss** of an **insured person**, where the **insured person** was performing duties for or on behalf of an unincorporated joint venture of the **policyholder** and at the direction of the **policyholder**.

This Extension will only provide cover to the **policyholder**. No other participant of the joint venture and no other third party will have any rights under this **policy**, and neither will **we** be liable to pay a contribution to any insurer of any other participant in the joint venture.

### 3.23 Work Health & Safety Costs

Notwithstanding Exclusion 4.1 (Bodily Injury / Property Damage), **we** will pay the **defence costs** of an **insured person** in relation to any **claim** alleging a breach of occupational health and safety or work health and safety laws.

## Section 4: EXCLUSIONS

We will not cover the **insured** for **loss** including **defence costs**, **investigation costs** other amounts, in respect of:

#### 4.1 Bodily Injury / Property Damage

Any **claim** or **investigation** for bodily injury or property damage to or destruction of any tangible property, including loss of use thereof.

However, this Exclusion shall not apply to:

- a) a **claim** or **investigation** regarding an emotional hurt or mental anguish or distress occasioned by an **employment practice breach**;
- b) a **claim** or **investigation** covered under Extension 3.23 (Work Health & Safety Costs).

#### 4.2 Breach of Professional Duty

Any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of the provision of any professional services and/or advice, or the failure to provide professional services and/or advice, other than a failure to manage or supervise such professional services.

#### 4.3 Fraud and Dishonesty

Any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of the **insured**:

- a) gaining any personal profit or advantage to which the **insured** was not legally entitled;
- b) having improperly benefited from any **securities** transaction as a result of information that is/was not available to other sellers or purchasers of such **securities**;
- c) committing any dishonest, reckless, fraudulent, criminal or malicious act; or
- d) committing any wilful violation or wilful breach of any statute or regulation.

This Exclusion shall only apply if it is established through a judgment or any other final adjudication adverse to the **insured**, or any admission by an **insured** that the relevant conduct did in fact occur.

#### 4.4 Major Shareholder

Any **claim** brought by, or on behalf or for the benefit of, any shareholder owning or controlling directly or indirectly, more than or equal to 25% of the voting share capital of the **policyholder** or **outside entity** at the time of the **wrongful act**.

#### 4.5 Pollution

Any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of the actual, alleged or threatened discharge of **pollutants**.

#### 4.6 Prior Known Facts

Any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of:

- a) actual or alleged facts or circumstances that the **insured** knew, or ought reasonably to have known prior to the **insurance period**, might or could give rise to a **claim**; or
- b) actual or alleged facts which could have been, or which can be notified under any previous insurance policy existing prior to the commencement of the **insurance period**; or
- c) pending or prior litigation, or derived from the same or essentially the same facts as are or might be alleged in such pending or prior litigation, as at the commencement of the **insurance period**; or
- d) any fact or matter referred to in the **proposal** or notified under any previous like policy existing prior to the commencement of the **insurance period**.

#### 4.7 Sanctions Limitation

Any **claim** or **investigation** or provision of any benefit hereunder to the extent that the provision of such cover, payment of such **claim** or provision of such benefit would expose **us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.



#### 4.8 USA / Canada Insured vs. Insured

Any **claim** or **investigation** arising from or directly or indirectly attributable to or brought within the United States of America or Canada or their territories or possessions or under any laws thereof, by or on behalf of any **insured**, provided however that this Exclusion shall not apply to:

- a) **defence costs**;
- b) any **claim** made by an **insured person** alleging an **employment practice breach** against an **insured person**;
- c) any **claim** made by a **retired insured person**;
- d) any **claim** brought or maintained by any **insured** for contribution or indemnity if the **claim** directly results from another **claim** otherwise covered under this **policy**;
- e) any **claim** brought or maintained by any external administrator to the **insured** (including but not limited to a liquidator, receiver, administrator or other external administrator);
- f) any **claim** against an **insured** which is a derivative action brought in the name of the **policyholder** by someone who is not an **insured person**.

#### 4.9 Warranties and Indemnities

**We** will not cover the **policyholder** for **loss** in connection with a **securities claim** directly or indirectly based upon or attributable to any:

- a) express representations, contracts, agreements, warranties or guarantees made by the **policyholder**, provided, however, that this Exclusion shall not apply if the **policyholder** would have had such liability in the absence of such representations, contracts, agreements, warranties or guarantees; or
- b) allegation that the consideration for the acquisition or completion of the acquisition of all or substantially all the ownership, interest or assets of a **subsidiary**, business or other enterprise is inadequate. **Loss** does not include any amount of any judgement or settlement representing the amount by which such price or consideration is effectively increased nor any amount for the claimant's costs and expenses, which relate to such allegations.

This Exclusion only applies to Insuring Clause 2.5 (Securities Claim).

### Section 5: DEFINITIONS

In the **policy**:

**5.1 Bail bond expenses** means the reasonable premium (but not collateral) for a bond or other financial instrument to guarantee an **insured person's** contingent obligation for bail required by a court hearing a **claim** in relation to a **wrongful act** committed or allegedly committed by such **insured person**.

**5.2 Claim** means:

- a) a written demand for monetary damages or non-pecuniary relief;
- b) a civil proceeding or counter-claim commenced by the service of a writ, complaint, summons, statement of claim, or similar originating process;
- c) an alternative dispute resolution proceeding, a formal administrative or regulatory proceeding including any arbitration, mediation, conciliation or other alternative dispute resolution proceeding commenced in writing; or
- d) a criminal proceeding;

alleging a **wrongful act**.

**5.3 Crisis event** means any of the following unforeseen events where, in the reasonable opinion of the chief executive officer (or equivalent) of the **policyholder**, the event has the potential to cause an imminent decrease of greater than 25% of the total consolidated annual revenues of the **policyholder** if left unmanaged:

- a) the sudden, unexpected death or disability of any Executive;
- b) the loss of a major customer or contract;
- c) workplace violence concerning an **employee**;
- d) the first apparent unauthorised intrusion into any **policyholder's** computer facilities;
- e) a recall or boycott of any product;
- f) a man-made disaster;
- g) any criminal investigation in respect of an **insured person**.

**Crisis event** does not include an event that affects the **policyholder's** industry in general rather than the **policyholder** specifically.

**5.4 Crisis loss** means the reasonable and necessary fees, costs and expenses for external crisis management services provided in response to a **crisis event** within the first 30 days after the event.

**5.5 Deductible** means the amount specified in Item 5 of the **schedule** in respect of each Insuring Clause.

**5.6 Defence costs** means that part of **loss** consisting of the costs, charges, fees (including but not limited to legal fees) and expenses reasonably and necessarily incurred by an **insured**, with **our** prior written consent in investigating or defending a **claim** but does not include regular or overtime wages, salaries or fees of the directors, **officers** or **employees** of the **policyholder** incurred in attending, defending, investigating or monitoring **claims**.

**5.7 Deprivation of assets expenses** means the payment of the following services directly to the provider of such services:

- a) schooling;
- b) housing;
- c) utilities;
- d) personal Insurance.

Such expenses will only be payable after the exhaustion of any personal allowance which has been directed by a Court to meet such payments. Expenses will be payable 30 days after the triggering of Extension 3.7 (Deprivation of Assets Expenses) and for a period of up to 12 months.

**5.8 Discovery period** means the period of time specified in Extension 3.8 (Discovery Period) during which time written notice may be given to **us** of a **claim** which is first made against the **insured** for a **wrongful act** committed or allegedly committed prior to the end of the **insurance period** or **transaction**, or an **investigation** into conduct which occurred prior to the end of the **insurance period** or **transaction**.

**5.9 Employee** means any natural person who is a past, present or future employee of the **policyholder**, regardless of whether they are employed on a full-time, part-time or casual basis. **Employee** does not include independent contractors.

**5.10 Employment practices breach** means any of the following employment-related matters:

- a) actual or alleged unfair or wrongful dismissal;
- b) termination or discharge of employment (either actual or constructive, including breach of an implied contract);
- c) wrongful failure to employ or promote;
- d) wrongful deprivation of career opportunity or demotion;
- e) negligent employee evaluation (including the provision of negative or defamatory statements in connection with an employee reference);
- f) failure to grant tenure;
- g) misrepresentation, discrimination, harassment, retaliation (including lockouts), humiliation, defamation or invasion of privacy;

which relate solely to the **policyholder** and its past, present or prospective **employees**.

**5.11 Employment related benefits** includes but is not limited to:

- a) non-monetary benefits including but not limited to the allocation of a company car, travel allowance, mobile or landline telephone, medical or life insurance expenses, education and training allowances, and equipment allowances;
- b) shares, share options or any entitlement or right under any employee plan of any description;
- c) participation in any share option or share option plan, or participation in any employee plan of any description;
- d) severance or redundancy payments or entitlements;
- e) any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;
- f) bonus or incentive payments, or any entitlement or right under a bonus or incentive plan (which, for the avoidance of doubt, does not include any payments, entitlement or right under any commission scheme);
- g) payments or contributions in respect of any provident, benefit, superannuation, pension or retirement fund, or any other account, fund, scheme or plan intended to provide benefits, in whole or in part, at retirement or a particular age, or on the happening of a particular event;
- h) any paid or unpaid entitlements in relation to a notice period; or
- i) remuneration for services rendered.

**5.12 Extradition costs** means:

- a) the reasonable fees, costs and expenses (except remuneration of any **insured**, costs of their time or overheads of the **policyholder**) incurred by or on behalf of an **insured person** in challenging, resisting and/or defending a **claim** seeking the extradition of such **insured person**, including any appeal from such **claim**; and
- b) the reasonable fees, costs and expenses of any accredited:
  - (i) counsellor; or
  - (ii) accountant;

retained by an **insured person** in connection with an extradition proceeding, during the **insurance period**, with **our** prior written consent (which will not be unreasonably withheld or delayed).

**5.13 Fund** means any single employer superannuation fund established for the benefit of **employees**. **Fund** does not include any self-managed, industry or master superannuation funds.

**5.14 Indemnity limit** means the amounts specified in Item 4 of the **schedule**.

**5.15 Industrial Instrument** means an award, collective or individual agreement, minimum wage order or any other instrument entered into by agreement or authorised under statute, which regulates the terms and conditions of an **employee's** employment.

**5.16 Insurance period** means the period specified in Item 3 of the **schedule**.

**5.17 Insured** means:

- a) the **policyholder**; and/or
- b) any **insured person**.

**5.18 Insured person** means:

- a) any past, present or future director, shadow director, **officer**, **employee** whilst acting in a managerial function, of the **policyholder**, **trustee**, or a natural person whom, by virtue of any applicable law is deemed to be a director or **officer** of the **policyholder**;

- b) the estate, heirs, legal representatives or assigns of any deceased or mentally incompetent, bankrupt or insolvent **insured person** in (a) above, but only in respect of a **wrongful act** committed by an **insured person**;
- c) a legal or de facto spouse, domestic partner of an **insured person** in (a) above, but only in respect of a **wrongful act** committed by an **insured person**;
- d) any natural person who was, is or may become, at the request of the **policyholder**, a director, officer or employee acting in a managerial capacity in an **outside entity**.
- e) an **employee** of the **policyholder** but only whilst acting in the capacity as a member of a committee convened by the **policyholder** and at the **policyholder's** specific request, but only in relation to **wrongful acts** committed in the course of the **employee's** performance of their duties on behalf of the committee, where the Committee has the specific purpose of advising the board of directors of the **policyholder**.

**Insured person** does not include:

- (i) a receiver, receiver and manager, official manager, liquidator, administrator, trustee or other person administering a compromise or scheme of arrangement made for **policyholder**;
- (ii) a company or other body corporate.

**5.19 Investigation** means a formal criminal, administrative or regulatory investigation, examination, hearing or inquiry, into the **policyholder**, **outside entity**, or an **insured person** in their capacity as such, commenced in writing by an **official body** during the **insurance period** or any **discovery period** which may be operable.

**5.20 Investigation costs** means the necessary and reasonable fees, costs and expenses incurred with **our** prior written consent, which will not be unreasonably withheld or delayed, by or on behalf of an **insured person** in:

- a) preparing for, attending or producing documents to an **investigation**; or
- b) responding to a raid on, or on-site visit to, any **policyholder** by an **official body** that involves the actual or possible production, review copying or confiscation of files or interviews of any **insured**.

**Investigation costs** do not include the remuneration of any **insured**, the cost of their time or costs or overheads of any **policyholder**.

**5.21 Loss** means the total amount which an **insured** becomes legally obliged to pay on account of a **claim** or **investigation**. **Loss** includes, but is not limited to:

- a) damages, judgments, settlements and adverse costs orders;
- b) **defence costs**;
- c) **extradition costs**;
- d) **public relations expenses**;
- e) **bail bond expenses**;
- f) **deprivation of assets expenses**;
- g) **prosecution costs**;
- h) **investigation costs**;
- i) Court attendance costs of any **insured person** who is legally required to attend Court as a witness in a **claim** covered by the **policy**, to an amount not exceeding SGD\$1,000 per day for all **insured persons**. No **deductible** applies.

However, **loss** does not include:

- (i) fines or penalties (whether civil or criminal) which are uninsurable at law in the jurisdiction in which the **claim** was brought or the laws which govern this **policy**;
- (ii) taxes, except those payable under Extension 3.13 (Insured Person Tax Liability);

- (iii) the past and future economic loss of an **employee**;
- (iv) any costs of reinstating an **employee**;
- (v) any employee benefits, which the **policyholder** is legally obligated pay under an **industrial instrument.**; or
- (vi) the remuneration of any **insured**, the cost of their time or costs or overheads of any **policyholder**.

**5.22 Mitigation costs** means the reasonable and necessary costs and expenses incurred by the **policyholder** in taking such action to mitigate an **insured's** exposure to any actual covered **claim** or potential **claim** which would otherwise be covered under this **policy**.

**Mitigation costs** does not include:

- a) internal and overhead expenses of the **policyholder** or a **fund**, including wages and time costs;
- b) **employment related benefits**;
- c) an increase in liability against an **insured**, which is caused as a direct result of an **insured** attempting to mitigate a **claim** or potential **claim**; or
- d) any costs not authorised by **us**.

**5.23 Not-for-profit entity** means any entity with a written constitution which prohibits the distribution of profits or assets amongst its members during the lifetime of the entity or upon its winding up.

**5.24 Officer** means any company secretary, general counsel or an **employee** who is concerned in, or takes part in, the management of the **policyholder** regardless of the name that is given to their position.

**5.25 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 **policyholder** or **outside entity** or the conduct of an **insured person** in their insured capacity.

**5.26 Official detention** means the confinement of an **insured person** in secure custodial premises, operated by or on behalf of a government or judicial agency in connection with a **claim** against such **insured person** where final adjudication of the **claim** has not yet been determined.

**5.27 Outside entity** means any **not-for-profit entity** and any entity which is not a **subsidiary** of the **policyholder**, which has been listed in the **proposal**. However, **outside entity** does not include entities that are incorporated in the United States of America or Canada or their territories or possessions.

**5.28 Outside entity executive** means a natural person who is an **employee**, director or **officer** of the **policyholder**, who serves at the specific request of the **policyholder** as a director, officer, trustee, governor or equivalent of an **outside entity**.

**5.29 Policy** means this **policy** wording, the **schedule**, the **proposal** and any Endorsement attaching to and forming part of the **policy** either at commencement or during the **insurance period**.

**5.30 Policyholder** means the organisation or natural person specified in Item 2 of the **schedule**, and any **subsidiary**.

**5.31 Pollutants** means any contaminant whether solid, liquid or gas including but not limited to chemicals, smoke, vapours and fumes.

**5.32 Principal Organisation** means the entity or entities specified in Item 2 of the **schedule**. **Principal organisation** does not include any **subsidiaries** or **outside entities**.

**5.33 Proposal** means the **proposal** form, submission and all other supporting documentation and attachments provided to **us** in the application for this **policy**.

**5.34 Prosecution costs** means any reasonable fees, costs and expenses incurred by an **insured person** with **our** prior written consent (which will not be unreasonably withheld or delayed), to bring legal proceedings:

- a) in respect of a **claim**, 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 **insurance period**; or

- (ii) a judicial order entered during the **insurance period** 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. restriction of such **insured person's** liberty to a specified domestic residence or **official detention**; 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.
- b) in respect of an **investigation**, to obtain injunctive relief where an **insured person** alleges an **official body** is acting or proposes to act beyond power or in breach of the rules of natural justice during the course of an **investigation**.

**5.35 Public relations expenses** means the necessary and reasonable fees, costs and expenses of a public relations firm or consultant, or crisis management firm, or law firm retained by an **insured** with our prior written consent (which shall not be unreasonably withheld or delayed) to prevent or limit adverse effects or negative publicity in respect of:

- a) a **claim**; or
- b) an **investigation**; or
- c) a **crisis event**.

**5.36 Retired insured person** means any **insured person** who retires from all employment or office with the **policyholder** prior to the expiry of the **insurance period** or any **discovery period**

**5.37 Retroactive date** means the date specified in Item 6 of the **schedule**.

**5.38 Schedule** means the **schedule** attached to this **policy** or any **schedule** subsequently substituted for it during the **insurance period** and duly signed, stamped and dated by an authorised representative of **us**.

**5.39 Securities** means a bond, debenture, note, share, preference share, warrant, option, promissory note or other equity, debt or hybrid security which is issued or given by the **policyholder**.

**5.40 Securities claim** means a:

- a) a written demand for monetary damages or non-pecuniary relief;
- b) a civil proceeding or counter-claim commenced by the service of a writ, complaint, summons, statement of claim, or similar originating process;
- c) an alternative dispute resolution proceeding, a formal administrative or regulatory proceeding including any arbitration, mediation, conciliation or other alternative dispute resolution proceeding commenced in writing; or
- d) a criminal proceeding.

alleging a **wrongful act** in connection with the purchase or sale of, or offer to purchase or sell, **securities**.

**5.41 Subsidiary** means:

- a) any legal entity in which the **principal organisation** owns or controls, directly or indirectly, more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors; or any entity which is deemed to be the **principal organisation's** subsidiary under any applicable legislation, law or International Accounting Standard.
- b) any legal entity that ceases to be a **subsidiary** of the **principal organisation** during the **insurance period** or prior to commencement of the **insurance period**, provided that the cover provided will only apply in respect of a **wrongful act** that occurred whilst the entity was a **subsidiary** of the **principal organisation**.
- c) any legal entity which is created or acquired by the **policyholder** during the **insurance period** as per outlined in Extension 3.15 (Newly Created or Acquired Entity or Subsidiary).

The cover provided in this **policy** will only apply in respect of a **wrongful act** occurring after the date of creation or acquisition.

**5.42** **Transaction** means any one of the following events:

- a) the **policyholder** consolidates with or merges into or sells all or a controlling interest in its assets to any other person or entity or group of persons and/or entities acting in concert;
- b) any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the **policyholder** or control the appointment of directors who are able to exercise a majority of votes at Board Meetings of the **policyholder**;
- c) the insolvency of the **policyholder**;
- d) the appointment of an administrator, liquidator, receiver, receiver and manager or court appointed manager to the **policyholder**.

**5.43** **Trustee** means an **insured** if validly appointed to act, and while acting in the capacity, as a trustee of a **fund**.

**5.44** **Trustee breach** means a **wrongful act** committed or allegedly committed:

- a) by an **insured person** in their capacity as a **trustee**, or as a director or **officer** of the **policyholder** acting as corporate **trustee**;
- b) by any other person for which an **insured person** referred to in (a) above is legally liable;

but only in respect of the administration of a **fund**.

**5.45** **We/Us/Our** means MSIG Insurance (Singapore) Pte Ltd.

**5.46** **Wrongful act** means any actual or alleged breach of duty, breach of trust, breach of fiduciary duty, neglect, error, omission, misstatement, misleading statement, or other act, error or omission, committed or attempted by:

- a) for the purposes of Insuring Clauses 2.1 to 2.4, an **insured person**, individually or otherwise, in their insured capacity as an **insured person** of the **policyholder** and includes an **employment practices breach** or a **trustee breach**; or
- b) for the purposes of Insuring Clause 2.5 only, a **policyholder**, in connection with the purchase or sale of, or offer to purchase or sell, **securities**.

## **Section 6: CLAIM CONDITIONS**

### **6.1 Notification**

To the extent that a policy is a claims made and notified policy the **policyholder** and/or any **insured** must notify **us** in writing of any **claim** or **investigation**, or other relevant circumstance which may trigger this **policy** as soon as is reasonably practicable after they first become aware of such **claim**, **investigation** or circumstance and within the **insurance period**.

The written notice should include, so far as is reasonably practicable and so far as the relevant **insured** is aware:

- a) the identity of the claimant if relevant; and
- b) an outline of the factual matrix; and
- c) an estimate of the likely quantum of any **loss**.

The notice must be delivered to:

Claims Manager  
MSIG Insurance (Singapore) Pte Ltd  
4 Shenton Way #21-01 SGX Centre 2  
Singapore 068807

Or by email to [claims@dualasia.com](mailto:claims@dualasia.com)

Any written notice will be considered effective from the date such notice is first received by **us**.

## 6.2 Co-operation

- a) The **insured** must, at the **insured's** own cost, frankly and honestly provide **us** with all information, documentation, evidence and assistance reasonably required by **us** and/or any lawyers, investigators or other professionals, who may be appointed by **us**.
- b) The **insured** must, at their own cost, do all things reasonably practicable to minimise any **loss**, including but not limited to the **insured's** liability in respect of any **claim**.
- c) Each **insured** must provide **us**, at their own cost, with all information, assistance and co-operation which **we** reasonably require, and in the event of a **claim** or potential **claim**, each **insured** agrees that they will not do anything that could potentially prejudice **our** position or **our** potential or actual rights of recovery.
- d) No **insured** may settle any **claim** or incur any **defence costs** or assume any contractual obligation or admit any liability with respect to any **claim** without **our** prior written consent.

## 6.3 Allocation

**Our** liability under this **policy** is limited to the proportion of **loss** and **defence costs** which is a fair and equitable allocation as between:

- a) covered and uncovered parties; and/or
- b) covered and uncovered matters;

having regard to the relative legal and financial exposures attributed to the covered and uncovered matters and/or parties. Only **loss** and **defence costs** incurred by covered parties in relation to covered matters will be covered by this **policy**, and is subject always to the terms and conditions of this **policy**.

**We** will use **our** best endeavours to agree upon a fair and equitable allocation of the proportion covered under this **policy**, having regard to the relative legal and financial exposures attributable to covered and uncovered matters and/or parties.

If an allocation cannot be agreed then it will be determined by a suitably qualified Senior Counsel to be mutually agreed upon or, in default of agreement, to be nominated by the then President of the Bar Association of the jurisdiction in which the **policy** was underwritten. The Senior Counsel will make a determination as an expert based on the relative legal and financial exposures attributable to covered and uncovered matters and/or parties. Submissions made to the Senior Counsel will be in writing.

Pending Senior Counsel's determination **we** will meet the **loss** and **defence costs** on an interim basis at the percentage at which **we** contend they should be fairly and equitably allocated. After the allocation has been determined or agreed, such allocation will be applied retrospectively. The parties agree to be bound by the Senior Counsel's determination. The costs of any referral for determination to a Senior Counsel under this clause will be borne by **us**.

## 6.4 Legal Representation and Settlement

Unless otherwise specified in a **policy**, it will be the duty of the **insured** and not **our** duty to defend **claims** and arrange for legal representation at **investigations**.

The **insured** will not admit liability, settle any **claim**, make any admission, offer any payment or assume any obligation in connection with any **claim** or investigation, incur any **defence costs** or other **loss** covered by this **policy**, without **our** prior written consent, which will not be unreasonably withheld or delayed.

**We** will not be liable for any settlement, **defence costs** or other form of **loss**, admission, offer, payment or assumed obligation to which **we** have not given **our** prior written consent.

**We** will have the right and will be given the opportunity to associate with each **insured** and participate in the defence of any **claim** or **investigation** including the negotiation and settlement of a covered **claim**.

With respect to any **claim** or **investigation** involving more than one **insured**, the **insureds** agree that **we** have the right to require such **insureds** to retain separate legal representation.



## 6.5 Order of Payments

If the payment of **loss** and **defence costs** in respect of a covered **claim** under a **policy** where such **loss** in the aggregate exceeds the remaining available **indemnity limit**, **we** will:

- a) first pay such **loss** for which the **principal organisation** does not indemnify an **insured person**; then
- b) to the extent of any remaining amount of the **indemnity limit** available after payment under 6.5(a) above, pay such **loss** for which coverage is provided under any other provision of this **policy**.

**We** will otherwise pay **loss** covered under this **policy** in the order in which such **loss** is presented to **us** for payment.

## 6.6 Subrogation & Recoveries

Where **we** have paid any amount of **loss** and **defence costs** under the **policy**, **we** become entitled to assume any rights available to the **insured** against any party to the extent of **our** payment. On **our** request, the **insured** must assign all rights of recovery against any person or entity, but only to the extent that payment has been made under the **policy**.

The **insured** must, at its own cost, assist **us** and provide information as **we** may reasonably require, to exercise **our** rights of recovery and/or subrogation. This may include providing and signing statements and other documents and the giving of evidence.

Where a recovery is made, the proceeds of such a recovery will be applied as follows:

- a) firstly, to the satisfaction of all costs incurred in effecting the recovery
- b) secondly, to the **insured** for the amount of **loss** and **defence costs** in excess of the **indemnity limit** specified in the **schedule** which is also in excess of any excess insurance purchased over this **policy**
- c) thirdly, to **us** and any excess insurers amounts paid under the **policy** and such excess policies
- d) finally, to the **insured** for the amount paid in respect of the **deductible**.

## Section 7: GENERAL CONDITIONS

The following General Conditions apply to all **policies** purchased and shown as having been purchased in the **schedule**.

Each **policy** purchased is to be read and interpreted as a separate contract of insurance with its own separate **indemnity limit**, unless specified otherwise in the **schedule**.

### 7.1 Interpretation

Words and phrases appearing in bold text and where used in a **policy**, have the meaning defined in that **policy** or **policies** purchased by the **policyholder** as shown in the **schedule**.

To the extent that there are any inconsistencies between the **policy** and this General Conditions Section, the terms and conditions contained in the **policy** will prevail.

In the **policy**:

- a) the singular includes the plural and the masculine includes the feminine; and
- b) the headings are for descriptive purposes only; and
- c) in the event that any portion of the **policy** is found to be invalid or unenforceable, the remainder will remain in full force and effect.

## 7.2 Alteration to Risk

If during the **insurance period** a **transaction** occurs then the cover under the **policy** will only apply to any act, error or omission committed prior to the effective date of the **transaction**.

If, during the **insurance period**, the **policyholder** decides to make a public offering of its securities in any jurisdiction the **policyholder** must provide **us** with any prospectus or offering statement for **our** review and assessment. **We** will be entitled to amend the terms and conditions of any **policy** and/or charge an additional premium reflecting any potential increase in exposure, which **we** deem reasonable.

## 7.3 Assignment

The **insured** must not assign the **policy** or any rights under the **policy** without **our** prior written consent by way of Endorsement to the **policy**.

## 7.4 Cancellation

The **policyholder** has the right to cancel this **policy** at any time by giving **us** written notice to that effect. Upon cancellation, **we** will refund that part of the premium which relates to the unexpired part of the **insurance period**.

If a **claim** and/or circumstance has been notified to **us** under this **policy**, **we** will be entitled to the entire premium and no refund of premium will be made. If the **policyholder** withdraws such **claim** and/or circumstance then the **policy** may be cancelled and **we** will refund that part of the premium which relates to the unexpired part of the **insurance period**.

**We** have the right to cancel the **policy** if the premium has not been paid within 60 days.

## 7.5 Several Liability

The subscribing Insurers' obligations under Contracts of Insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Insurers are not responsible for the subscription of any co-subscribing Insurer who for any reason does not satisfy all or part of its obligations.

## 7.6 Territorial Scope

Unless otherwise stated in the **schedule** and subject to General Condition 7.7 (Jurisdictional Limitation), cover provided under this **policy** extends to anywhere in the world.

## 7.7 Jurisdictional Limitation

Unless otherwise stated in the **schedule**, cover provided under this **policy** extends to **loss** with respect to a **claim** or **investigation** brought and maintained anywhere in the world.

## 7.8 Governing Law

The **policy** is governed by the laws of Singapore where the **policy** was issued.

Any dispute or difference arising from this **policy** which cannot be resolved by negotiation shall first be referred to mediation at the Singapore Mediation Centre (SMC) and dealt with in accordance with its Mediation Procedures. If the mediation is abandoned by the mediator or otherwise ends without the dispute or difference having been resolved, the dispute or difference shall be referred to arbitration at the Singapore International Arbitration Centre (SIAC) under the SIAC's Rules. Each of the parties to the mediation or arbitration shall bear their own costs of the mediation or arbitration.

## 7.9 Indemnity Limit

- a) Subject to any Extension of coverage which states otherwise, **our** total liability under the **policy** in respect of any one **claim** or **investigation**, and in the aggregate for all **claims** and **investigations** for all **insureds**, will not exceed the **indemnity limit** inclusive of all **loss**.
- b) The **schedule** will indicate the **indemnity limit** applicable to each **policy**. If more than one **policy** has been purchased, the **schedule** will also indicate the aggregate **indemnity limit** for all policies which have been purchased by the **policyholder**.
- c) **We** will have no liability in excess of the sub-limits specified in the **schedule** in the aggregate for the applicable Extension of cover, irrespective of the number of **policy** sections, which respond to the **claim** or **investigation**. In such circumstances, **we** will apply the higher of the sub-limits or **indemnity limit** available.

- d) For the purposes of determining the **indemnity limit** available for each **claim** covered by the **policy**, all **claims** arising out of, based upon or attributable to the same cause, error or omission, or related acts, errors or omissions, shall be regarded as one **claim**.

#### 7.10 Deductible

- a) Our liability under this **policy** for **loss** will only apply to that part of each **loss** and **defence costs** which is in excess of the **deductible** specified in the **schedule**. Such **deductible** will be borne by the **insured**, except where otherwise provided.
- b) Unless otherwise expressed in the **schedule**, all **deductibles** are inclusive of **defence costs** and/or **investigation costs** and/or **loss** to the amount of the **deductible**.
- c) Except as otherwise stated in the **policy**, costs and expenses incurred by **us** in determining whether we are liable to indemnify the **insured** under the **policy** will not erode the **indemnity limit** and will be met by **us**.
- d) For the purposes of determining the **deductible(s)** applicable to any **claim(s)** covered by the **policy**, all **claims** arising from the same act, error or omission, or related acts, errors or omissions, shall be regarded as one **claim**.

#### 7.11 Severability, Non-Imputation and Non-Avoidance

No state of mind or knowledge possessed by any one **insured person** will be imputed to any other **insured person** for the purpose of determining whether any provision in this **policy** applies. However, any state of mind or knowledge possessed by any past or present chairman of the board, chief executive officer, chief operating officer or chief financial officer of the **policyholder** or any **subsidiary** will be imputed to the **policyholder**.

**We** agree not to rescind or avoid this **policy** in whole or in part, for any misrepresentation in the **proposal** or for any non disclosure (whether such misrepresentation is innocent, negligent, fraudulent or otherwise).

In the event of fraudulent misrepresentation or fraudulent non disclosure which would otherwise entitle **us** to avoid or rescind the **policy**, **we** will only reduce **our** liability under the **policy** in respect of such **insureds** who were involved in or were aware of the fraudulent non disclosure or fraudulent misrepresentation.

#### 7.12 Preservation of Right to Indemnity

In the event and to the extent that the **policyholder** has not indemnified an **insured person** but is legally permitted or required to do so in respect of a **claim** or **investigation**, but for whatever reason, refuses to do so, then **we** will pay on behalf of the **insured person** any **loss** arising from the **claim** or **defence costs** within the **deductible** and, the applicable **deductible** will be paid by the **policyholder** to **us**.

#### 7.13 Other Insurance

This **policy** will only cover **loss** to the extent that the amount of such **loss** is in excess of any indemnity or cover available to the **insured** in respect of that **loss** under any other insurance policy/policies. The **insured** must advise **us** of the other insurance policy/policies at the time of making a **claim** under the **policy** and provide **us** with details of other insurance.

#### 7.14 Currency

Any reference to premium, **indemnity limits**, **deductibles**, **loss**, **defence costs** or any other amounts payable by **us** under this **policy** are expressed and are payable in the currency as referenced in the **schedule** of the **policy**. Where any payment is to be made into an admitted foreign jurisdiction, such payment is to be made and denominated in the currency referenced in the **schedule** of the **policy** at the cash rate for the purchase of the currency referenced in the **schedule** of the **policy** set by the currency conversion website, Oanda.com or if it has ceased to be current, a currency conversion website selected by **us** as at 4.00 pm on the date which the foreign payment becomes due.

#### 7.15 Rights of Third Parties

A person who is not a party to this policy shall have no right under the Contracts (Rights of Third Parties) Act (Chapter 53B) of Singapore to enforce any of its terms.

## 7.16

### Confidentiality

The **insured** must not disclose, either personally or through any person or entity acting on the **insured's** behalf or at the **insured's** direction, to any third party:

- a) the existence of this **policy**; or
- b) the nature of the indemnity provided; or
- c) the **indemnity limit**; or
- d) the amount of premium paid.

However, the **insured** may disclose the above matters to the extent that:

- i) the **insured** is required to do so by the law; or
- ii) **we** consent to the disclosure in writing.