

# **Directors' and Officers' Liability Insurance (Sweden)**



**QBE**

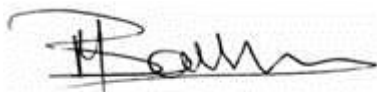
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## 1 Parties to this agreement

This Directors' and Officers' Liability Insurance policy is between the **company** and the **insurer** as declared in the schedule.

In evidence of the **insurer's** intention to be bound by this insurance, it prints the signature of its Chief Underwriting Officer, Property, Casualty & Motor, below.



## 2 Insured section A - Directors' and officers' cover

### 2.1 Directors' and officers' liability

The **insurer** agrees, subject to the terms, conditions, limitations and exclusions of this **policy**, to pay on behalf of an **insured person** in respect of his liability for:

- 2.1.1 compensatory damages and costs awarded against such **insured person** by a court or tribunal empowered to do so; or
- 2.1.2 exemplary or aggravated damages for libel and slander awarded against such **insured person** by a court or tribunal empowered to do so; or
- 2.1.3 multiple, exemplary, aggravated or punitive damages (provided these are in addition to compensatory damages) awarded by a court or tribunal, if indemnity for this is lawful under the laws of the territory of that court or tribunal; or
- 2.1.4 settlements compromising any actual or anticipated legal proceedings made with the **insurer's** prior written consent (such consent not to be unreasonably withheld or delayed);
- 2.1.5 **defence costs** incurred with the **insurer's** prior written consent (such consent not to be unreasonably withheld or delayed);  
arising solely from a **claim**, except to the extent that the **company** has indemnified the **insured person** in respect of that **claim**.

### 2.2 Outside company directors

The **insurer** agrees, subject to the terms, conditions, limitations and exclusions of this **policy**, to pay on behalf of each **insured person** in respect of his liability for damages, costs, and settlements as identified in clauses 2.1.1 to 2.1.5 incurred by him whilst acting in the capacity of director, officer, management committee member or member of the board of managers of any **outside company** and arising solely from a **claim** but only in excess of:

- a) any valid and collectible management liability insurance policy obtained by the **outside company**; or
- b) any indemnification provided by the **outside company**.

### 2.3 Company reimbursement

The **insurer** agrees, subject to the terms, conditions, limitations and exclusions of this **policy**, to indemnify the **company**, to the extent it has lawfully indemnified an **insured person** for a **claim** otherwise insured under clauses 2.1 or 2.2.

## 3 Insured section B - Extended cover

### 3.1 Additional limit for non-executive directors

3.1.1 For **claims** made against a **non-executive director** otherwise covered by this **policy** but for the limit of indemnity under this **policy** being exceeded or eroded, the **insurer** will provide an additional limit of indemnity up to the sum specified in the schedule to pay on behalf of such **non-executive director**. Such additional limit of indemnity will be payable provided that:

- a) the limit of indemnity, and
- b) all other applicable insurance whether written as excess over the limit of indemnity of this **policy** or otherwise, and
- c) all other indemnification for such **claim** available to such **non-executive director**, whether from the **company** or otherwise

have been exhausted.

3.1.2 The sum specified in the schedule in respect of this clause 3.1 is the maximum payable by the **insurer** and in the aggregate irrespective of the number of:

- a) **claims** made, or
- b) claims made under this **policy**, or
- c) **non-executive directors** entitled to indemnity under this **policy**, or
- d) **wrongful acts**.

### 3.2 Manslaughter defence costs

Notwithstanding Exclusion 4.1, the **insurer** will, with its prior consent (such consent not to be unreasonably withheld or delayed), indemnify an **insured person** in respect of **defence costs** incurred in defending a **claim** (whether under common law or statute) of manslaughter, corporate manslaughter or corporate homicide made against such **insured person**.

### 3.3 Extended reporting period

3.3.1 If the **insurer** or the **company** refuses to renew this **policy**:

- a) the **insured** shall have the right to the **extended reporting period** stated in the schedule if the **insured** gives written notice and pays the additional premium specified in the schedule, within thirty (30) calendar days immediately following expiry of the **period of insurance**.
- b) an **insured person** who voluntarily ceased to act as a **director or officer** prior to the expiry of the **period of insurance** shall have the automatic right to a six (6) year **extended reporting period**.

3.3.2 The right of the **insured** under clauses 3.3.1 a) and 3.3.1 b) above is not available after, or alternatively as the case may be, the **extended reporting period** shall lapse upon:

- a) a **take-over or merger** of the company named in the schedule; or
- b) the **insured** effecting directors' and officers' liability insurance, or similar insurance, with any other insurer or underwriter or other similar entity.

### 3.4 Emergency costs

Notwithstanding clause 5.5, if the **insurer's** prior written consent cannot be reasonably obtained before **defence costs** are incurred with respect to any **claim**, the **insurer** will give retrospective consent to the incurring of **defence costs** up to, in the aggregate, ten (10) per cent of the limit of indemnity as specified in the schedule. Payment of such costs will be part of and not in addition to the limit of indemnity as shown in the schedule.

### 3.5 Prosecution costs

The **insurer** will pay, where permitted by law, the reasonable legal costs, charges, fees, expenses and advances in respect of the same (other than salaries, commissions, expenses or other benefits of **insured persons**) incurred by an **insured person** in their capacity as a **director or officer** with the prior written consent of the **insurer** (such consent not to be unreasonably withheld or delayed) to oppose the grant of, or the appeal against or seek the discharge or revocation of:

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

entered against an **insured person** in connection with a **claim** (but not to include a final order made in the disposition or adjudication of such **claim**)

or imposing:

- a) confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such **insured person**;
- b) a charge over real property or personal assets of such **insured person**;
- c) temporary or permanent prohibition on such **insured person** from holding the office of or performing the function of a **director or officer**;
- d) restriction of such **insured person's** liberty to a specified domestic residence or an confinement of an **insured person** in secure custodial premises, operated by or on behalf of a governmental or judicial agency and either without charge or without a judicial finding of culpability or liability in that **claim**; or
- e) deportation of an **insured person** following revocation of otherwise proper, current and valid immigration status for any reason other than such **insured person's** conviction of a crime.

### 3.6 Public relations expenses

The **insurer** will pay the reasonable fees and related expenses of a public relations firm or consultant, crisis management firm or law firm, which an **insured person** may, in the reasonable exercise of its discretion, engage with the written consent of the **insurer**, (such consent not to be unreasonably withheld or delayed), in order to prevent or limit adverse effects or negative publicity which it is anticipated may arise from a **claim** during the **period of insurance**. The **insurer's** liability under this public relations expenses clause shall not exceed the sub-limit of indemnity shown in the schedule.

### 3.7 Tax extension

This **policy** shall extend to include any **claim** against an **insured person** for unpaid taxes or national insurance contributions of the **company** where the **company** has become insolvent except to the extent that such liability arises from the wilful intent of the **insured person** to breach any statutory duty governing the payment of taxes provided that such cover shall apply up to the sub-limit of indemnity as stated in the schedule; and shall only apply to unpaid tax liabilities of the **company**.

The **policy** is also extended to include any claim against an **insured person** for taxes determined to be owed by such **insured person**, in respect of his liability according to Skattebetalningslagen (SFS 1997:483) 12<sup>th</sup> Chapter, paragraph 6 or the equivalent liability according to Skatteförfarandelagen (2011:1244), arising from a **claim** made against such **insured person** alleging, either:

- (i) a **wrongful act** of such **insured person** in his or her capacity as such; or
- (ii) a **wrongful act** committed by an **employee** of the **company** with regard to the failure to pay such taxes;

provided, however, that this coverage shall not include:

- (i) taxes determined to be owed by a **insured person** in connection with any intentional, criminal or fraudulent acts committed by such **insured person**; or
- (ii) taxes which the **company** is financially able to pay; or
- (iii) taxes considered uninsurable under the law.

## 4 Exclusions and limitations

This **policy** does not cover and excludes **claims**:

### 4.1 Bodily injury or property damage

for actual or alleged bodily or psychological injury, sickness, disease or death of any person or damage to or destruction of any tangible property, including loss of use thereof, except that this exclusion does not apply to emotional distress or mental anguish brought as part of a **claim** arising out of any **employment practice** nor any **non-indemnifiable loss**;

### 4.2 Dishonesty

directly or indirectly arising out of any actual dishonest, fraudulent or malicious act of the **insured person** except that this exclusion only applies if it is established through a final adjudication or formal written admission in the relevant **claim** that such conduct did in fact occur;

### 4.3 Insured vs. insured

brought under the law or jurisdiction of the United States of America or their territories or possessions and made by or on behalf of the **company** or by or on behalf of any **insured person**;

except that this exclusion does not apply to any **claim** against an **insured person**:

- 4.3.1 brought by or at the direction of any liquidator, provisional liquidator, administrator or receiver of the **company**;
- 4.3.2 made by a former **director or officer**;

- 4.3.3 for indemnity in respect of a **claim** made by an independent third party without the procurement or instigation of any **insured person** or agent of the **company**;
- 4.3.4 in the form of a derivative action;
- 4.3.5 where the **insured person** is a former **director or officer**; or
- 4.3.6 in respect of **defence costs**;

#### **4.4 Non-covered acts**

directly or indirectly arising out of **wrongful acts**, or conduct described in clause 7.1.3:

- 4.4.1 after the date of commencement of the winding up of, or the appointment of a receiver, administrative receiver, liquidator or administrator to the **company**;
- 4.4.2 after the date of a **take-over or merger**; or
- 4.4.3 of **directors or officers** of any **subsidiary company** prior to the date it was acquired by the **company**; or
- 4.4.4 unless otherwise agreed in writing by the **insurer**.

#### **4.5 Pension schemes**

for any actual or alleged breach of duty by any **insured person** as a trustee of any pension or superannuation scheme, health and welfare plan, share option scheme or plan, or other employee benefit programme, social benefits system or trust programme established or maintained for the benefit of the **company's** employees including, for the avoidance of any doubt, any claims under the UK Pensions Act 1995, the USA Employee Retirement Income Security Act of 1974 or similar legislative, common or civil law provisions in the same or other jurisdictions;

#### **4.6 Personal profit**

directly or indirectly arising out of the **insured person** gaining any actual profit or advantage or receiving any remuneration to which they are not legally entitled except that this exclusion only applies if it is established through a final adjudication or formal written admission in the relevant **claim** that such conduct did in fact occur;

#### **4.7 Pollution**

directly or indirectly arising out of any **pollution** except that this exclusion shall not apply to **non-indemnifiable loss** or **defence costs** incurred in defending a claim brought outside the USA up to the sub-limit of indemnity specified in the schedule;

#### **4.8 Prior / pending litigation**

directly or indirectly arising out of the circumstances underlying any **claim** or any legal, administrative or regulatory proceedings against the **insured** first made or commenced prior to the **continuous cover date**;

#### **4.9 Stock offerings during period of insurance**

directly or indirectly arising out of a **stock offering** unless the **insurer** had expressly agreed in writing to extend this **policy** to include coverage on certain terms for such **stock offering** and been paid the agreed additional premium.

#### 4.10 Sanctions Clause

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##### Exclusion - Sanction limitation and exclusion clause

The **insurer** shall not provide cover nor be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the **insurer** or any member of the **insurer's** group to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

## 5 Duties in the event of a claim or potential claim

The due observance and fulfilment of the provisions of clause 5.1.1 and 5.4 is a condition precedent to cover for any **claim** under this **policy**. If the **insured** does not comply with such conditions precedent, the **insurer** may refuse payment of each and every **claim** affected in whole or in part, as applicable, and, if any payment on account of any such **claim** has already been made, the **insured** shall repay immediately all such payments to the **insurer**.

### 5.1 When to notify

The **company** or the **insured person** shall give the **insurer** written notice as soon as practicable, but no later than six months, after the Chief Executive Officer, Chief Financial Officer or Chief Legal Counsel of the **insured** or the **insured person** becomes aware of any **claim**.

The **insured** may at any time during the **period of insurance** give the **insurer** written notice of any circumstances that might reasonably be expected to give rise to a **claim**.

### 5.2 Whom to notify

Notice to the **insurer** shall be given to the claims notification address specified in the schedule.

### 5.3 What to notify

Notice given under clause 5.1 shall include the reasons for the anticipation of a **claim**, with full particulars as to the circumstances, dates and persons involved. Any subsequent **claim** arising out of such circumstances shall be deemed to have been made during the **period of insurance**.

### 5.4 Admission & settlement

The **insured** shall not admit liability, or attempt to settle or make any admission with respect to any **claim** without the **insurer's** written consent, such consent not to be unreasonably withheld or delayed.

### 5.5 Advancement of defence costs

In respect of any **claim** covered by this **policy**, the **insurer** will advance **defence costs** prior to the final settlement of a **claim**. Such advance payments of **defence costs** shall be:

5.5.1 subject to the application of the retention, if any;

5.5.2 part of and not exceed the limit of indemnity; and

5.5.3 repayable to the **insurer** by the **insured persons** or the **company** severally according to their respective interests in the event and to the extent that it is determined that they were not entitled under this **policy** to payment of such **defence costs**.



## 5.6 Allocation

If a **claim** is made against a party entitled to cover under this **policy** in respect of loss covered by this **policy** together with other loss that is not covered by this **policy** or a **claim** is made against both a party entitled to cover and a party who is not so entitled, then the following sub-paragraphs will apply:

- 5.6.1 the **insurer** shall pay only such amount as is just and equitable having regard to established judicial allocation principles of the loss covered by this **policy** compared to other loss which is not covered by this **policy** and of the party entitled to cover compared to the party not so entitled;
- 5.6.2 the **insured persons** or where applicable, the **company** and the **insurer** shall use their best efforts to agree this amount; and
- 5.6.3 in default of an agreement, this amount shall be determined by an **independent lawyer** in accordance with the principles set out in clause 5.6.1 above.

## 5.7 Conduct of defence

- 5.7.1 Except as provided by clause 5.7.2, it shall be solely the **insured's** obligation to investigate any **claim**, or circumstance notified under clause 5.1, and to undertake the conduct of any proceedings in connection with any **claim**.
- 5.7.2 In the event of a **claim** by the **company** outside the United States of America the **insurer** shall have the right, but not the obligation, to take over the investigation, defence, mitigation or settlement of such **claim** on behalf of the **insured person**.

## 5.8 Incurring defence costs

Subject to clause 3.4 the **insurer** shall only be liable to pay **defence costs** to which it has given its prior written consent, such consent not to be unreasonably withheld or delayed. Where the same or a similar **claim** is made against more than one **insured person** or against the **company** and any **insured person**, the same lawyers shall be appointed to defend all of them unless there is conflict of interest between them.

## 5.9 Information and assistance

The **insured** shall disclose at its own expense to the **insurer** all relevant information and, in addition, shall provide such assistance to the **insurer** as it may reasonably require to enable the **insurer** or its agents to investigate any **claim**, or circumstance notified under clause 5.1.2, and shall allow the **insurer** to effectively associate in the defence, mitigation or settlement of any **claim**.

## 5.10 Legal opinion

The **insurer** shall not require the **insured** to contest any **claim** unless the legal opinion of an **independent lawyer**, to be paid for by the **insurer**, advises that such **claim** should be contested having given full consideration as to:

- 5.10.1 the financial implications, damages and costs likely to be recovered by the claimant;
- 5.10.2 the likely **defence costs**;
- 5.10.3 the prospects of the **insured persons** successfully defending the **claim**; and
- 5.10.4 in respect of a criminal or regulatory **claim**, the reputation of the **insured person** or the **company**.

## 5.11 Subrogation

The **insured** shall not waive any rights of recourse or recovery against any other person relating to a covered **claim** under this insurance and shall assist the **insurer** in all

respects in exercising such rights if requested to do so by the **insurer**. In the event of any payment under this **policy**, the **insurer** shall be subrogated to the extent of such payment to all the **insured's** rights of recovery, and the **insured** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of documents necessary to enable the **insurer** effectively to bring proceedings in the name of the **insured**.

## 6 General terms and conditions

### 6.1 Applicable Law

This **policy** will be governed by and interpreted in accordance with the laws of Sweden.

### 6.2 The Insurance Contract Act

The **policy** is subject in general to the provisions of the Swedish Insurance Contracts Act (2005:104).

### 6.3 Arbitration

All disputes which may arise under or in relation to this **policy**, or to its existence, validity or termination shall be finally determined by arbitration in accordance with the rules of the Stockholm Chamber of Commerce Court of Arbitration. The law applicable to and in the arbitration and governing all disputes shall be Swedish law. The determination of the arbitrator will be binding on both parties.

The making of a final unappealed arbitration award will be a condition precedent to any right of action, suit or other legal proceeding against the **insurer**. The sole obligation of the **insurer** in such circumstances shall be to pay such sums as may be directed by a final unappealed award.

### 6.4 Assignment

Assignment of interest under this **policy** will not bind the **insurer** unless and until the **insurer's** written consent is endorsed on this **policy**.

### 6.5 Disclosure Under the Personal Data Act (1998:204)

The **insurer** records and holds data in accordance with the Personal Data Act (1998:204) and follows strict security procedures in the storage and disclosure of information provided to prevent unauthorised access or loss of such information. The **insurer** may find it necessary to pass data to other firms or businesses that supply products and services associated with this **policy**.

### 6.6 Document Management

The **insurer** may hold documents relating to this insurance and any **claims** under it in electronic form and may destroy the originals. It is hereby agreed that an electronic copy of any such document will be admissible in evidence to the same extent as, and carry the same weight as, the original.

### 6.7 Limit of indemnity

6.7.1 The amount stated in the schedule as the limit of indemnity is, subject to the additional limit available under clause 3.1, the maximum payable by the **insurer** under the **policy** in respect of any one **claim** and in the aggregate during the **period of insurance** irrespective of the number of:

- a) **claims** payable under this **policy**, or
- b) **insureds** entitled to indemnity, or
- c) **wrongful acts**, or
- d) insured sections or covers within the insured sections under which **claims** are made under this **policy**.

6.7.2 The limit of indemnity shall be inclusive of all **defence costs** and other cover payable under this **policy**.

6.7.3 The limit of indemnity will not be increased by purchase of an **extended reporting period** under clause 3.3. Any sub-limit of indemnity stated in the schedule, except the additional limit for **non-executive directors** provided under clause 3.1, shall be part of and not in addition to the limit of indemnity.

## 6.8 Multiple claims

6.8.1 All causally connected or interrelated **wrongful acts**, or conduct (as described in clause 7.1.3), jointly constitute a single **wrongful act**, or conduct, under this **policy**, which shall be deemed to have occurred upon the date of the earliest **wrongful act**, or conduct.

6.8.2 Where a single **wrongful act**, or conduct, or series of causally connected or interrelated **wrongful acts** or conduct (as in clause 6.7.1 above), gives rise to more than one **claim**, all such **claims** shall jointly constitute one **claim**, which shall be deemed to have been made at the time the first **claim** was made.

## 6.9 Non-disclosure

The **insurer** waives any right it may have to avoid this **policy** except on the grounds of deliberate non-disclosure or misrepresentation by the **insured**.

## 6.10 Notice

The company named in the schedule shall act on behalf of all **insured** in all matters with respect to this **policy** except in the case of a **claim** in which it has a material conflict of interest with an **insured** whereupon it shall have no such authority and the **insured** shall be entitled to communicate directly with the **insurer**. In the event of a conflict of interest between **insured**, the **insurer** shall be under no obligation to communicate to any **insured** its position with regard to any other **insured**.

## 6.11 Order of payments

In the event of **claims** which are reasonably likely to exceed the limit of indemnity, the **insurer** shall:

- (a) first pay loss under insured section A clause 2.1 and 2.2; and
- (b) then pay loss under insured section A clause 2.3 paid by the **company** on behalf of an **insured person**; and
- (c) if additional cover is provided to the **company** by endorsement to this **policy**, other loss incurred by the **company**.

The insolvency of any **company** shall not relieve the **insurer** of any of its obligations to prioritise payment under this **policy**.

## 6.12 Other insurance

If there is any other more specific valid and collectible insurance that is available to an **insured** in respect of a **claim**, other than insurance that is specifically stated to be in excess of this **policy**, then the insurance afforded by this **policy** will be in excess of and will not contribute to such other insurance.

## 6.13 Policy period and premium

6.13.1 The **policy** will provide insurance as described in this **policy** for the **period of insurance** provided the **premium** and other charges are paid to and accepted by the **insurer**. Taxes, levies and other relevant fiscal charges are payable in addition to the premium.

- 6.13.2 The premium is deemed paid and accepted on receipt by the **insurer** or the intermediary appointed to place this insurance with the **insurer**.
- 6.13.3 If the premium is not paid and accepted by the payment date the **insurer** may elect to cancel the **policy** and in so doing shall have no liability to indemnify any **claim**, or circumstance notified under clause 5.1.2, already notified to the **policy**.
- 6.13.4 The payment to the company named in the schedule of any return premium that may be payable under or in respect of this **policy** will satisfy the **insurer's** obligation to return such premium.

## **6.14 Retention**

- 6.14.1 Where a claim is made under this **policy** by the **company** under insured section A clause 2.3, the **insurer** shall only indemnify the **company** for payments in excess of the amount stated in the schedule as the retention. The retention shall be applied once to each and every **claim**.
- 6.14.2 Where a claim is made under this **policy** by an **insured person** under insured section A clause 2.1 or 2.2 and the **company** could have indemnified the **insured person** under the applicable general law, but does not do so, the **company** shall reimburse the **insurer** for any indemnity paid by the **insurer** up to the amount of the retention stated in the schedule. However, the **company** shall have no such obligation where its failure to indemnify the **insured person** is due solely to its insolvency.

## **6.15 Severability**

- 6.15.1 The proposal shall be construed as a separate application for insurance under this **policy** by each **insured**. No statements in the proposal or knowledge possessed by an **insured person** shall be imputed to any other **insured person**.
- 6.15.2 For the purpose of determining the applicability of the exclusions and limitations in section 4 above, the act or knowledge of an **insured person** shall not be imputed to any other **insured person**.

## **6.16 Territory & legal actions**

This **policy** applies to **claims** wherever made, based upon acts occurring anywhere in the world.

## 7 General definitions and interpretation

The following words will have the same meaning attached each time they appear in this **policy** in **bold** type face, whether with a capital first letter or not.

Where the context so admits or requires, words importing the singular will include the plural and vice versa and words importing the masculine will import the feminine and the neuter. References to 'a person' will be construed so as to include any individual, company, partnership, or any other legal entity. References to a statute will be construed to include all its amendments or replacements and the equivalent in any other jurisdiction. All headings within the **policy** are included for convenience only and will not form part of this **policy**.

### 7.1 Claim

Claim means any of the following first made during the **period of insurance**:

- 7.1.1 any legal, administrative or regulatory proceeding, whether civil or criminal, commenced against an **insured person** for a **wrongful act**; or
- 7.1.2 any written communication received by an **insured person, company** or **outside company** alleging an **insured person** has committed a **wrongful act** indicating an intention to claim against such **insured person** or to complain about him in respect of such **wrongful act** to a legal, administrative or regulatory authority; or
- 7.1.3 any written notice served on an **insured person** requiring the **insured person** to attend an interview or provide documentation or otherwise co-operate in an administrative or regulatory investigation, where the investigation directly concerns the conduct of the **insured person** (acting in his capacity as an **insured person**) or of the affairs of the **company** or **outside company**;
- 7.1.4 any **pre-investigation**; or
- 7.1.5 any **extradition proceedings**.

### 7.2 Company

Company means the company stated in the schedule and shall include all **subsidiary companies**.

### 7.3 Continuous cover date

Continuous cover date means the date stated as such in the schedule.

### 7.4 Defence costs

Defence costs means all reasonable legal costs, charges, fees, expenses and advances in respect of the same (other than salaries, commissions, expenses or other benefits of **insured persons**) including costs directly attributable to witness attendance and any premiums paid for insurance instruments or for bonds which are required in order to defend proceedings, institute an appeal or be released on bail but without any obligation to furnish or procure such insurance instruments or bonds. **Defence costs** shall also include **pre-investigation costs**.

### 7.5 Director or officer

Director or officer means any director or officer, management committee member or member of the board of managers of a **company**.

## 7.6 Employment practice

Employment practice means:

- 7.6.1 discrimination with respect to the terms or conditions of employment on the basis of an individual's race, colour, religion, age, sex, national origin, disability, pregnancy, sexual orientation or preference or other status protected under applicable law; or
- 7.6.2 sexual harassment, including unwelcome sexual advances, requests for sexual favours, and any unwelcome verbal, visual or physical contact of a sexual nature which:
  - a) is explicitly or implicitly made a term or condition of employment; and
  - b) creates a hostile or offensive working environment; and
  - c) when rejected or opposed by a person becomes a basis for decisions regarding that person's employment; or
- 7.6.3 defamation relating to a person's job skill, job performance, qualifications for employment, professional reputation, disciplinary history, or termination of employment; or
- 7.6.4 unfair or wrongful termination of employment or refusal to hire; or
- 7.6.5 adverse change in the terms and conditions of a person's employment in retaliation for that person's exercise of his or her rights under law, or support of the rights of another.

## 7.7 Extended reporting period

Extended reporting period means a period immediately following expiry of the **period of insurance** in which notice may be given to the **insurer** of a **claim** first made during such period in respect of **wrongful acts** or conduct (as described in clause 7.1.3) which occurred prior to the expiry of the **period of insurance**.

## 7.8 Extradition proceedings

Extradition proceedings means a request for extradition of an **insured person**, a warrant for arrest in respect of an **insured person** or other proceedings under the provisions of the Extradition Act 2003 in the United Kingdom or similar legislation in any other jurisdiction.

## 7.9 Independent lawyer

Independent lawyer means:

- 7.9.1 where the **claim** is in England, a Queen's Counsel agreed upon by the **insured person** or the **company** and the **insurer** or failing such agreement to be nominated by the chairman for the time being of the Bar Council of England and Wales; or
- 7.9.2 where the **claim** is in another jurisdiction, a lawyer of more than ten (10) years experience agreed upon by the **insured person** or the **company** and the **insurer** or failing such agreement to be nominated by the chairman of the local law society.

## 7.10 Insured

Insured means the **company** and the **insured person**.

## 7.11 Insured person

Insured person means:

- 7.11.1 any natural person who is, was or during the **period of insurance** becomes a **director** or **officer** including any **non-executive director**;

- 7.11.2 the **director's or officer's** estate, heirs, legal representatives or assigns, in the event of his death or incompetence or bankruptcy, but only for a **wrongful act** or conduct performed by that **director or officer** in their capacity as such;
- 7.11.3 the lawful spouse or domestic partner of any **director or officer** provided that the **claim** is to enforce a judgment against that **director or officer** for a **wrongful act** or conduct performed in their capacity as such;
- 7.11.4 any employee of the **company** not appointed by a receiver, administrative receiver, liquidator or administrator to the **company**
- a) whilst acting in a managerial or supervisory capacity;
  - b) named as a co-defendant with a **director or officer** of a **company** in a **claim** in which the employee is alleged to have participated or assisted in the commission of a **wrongful act**;
- 7.11.5 any natural person acting as a shadow director of the **company** as defined in Section 741 of the Companies Act 1985 or the equivalent in another jurisdiction.

## 7.12 **Insurer**

Insurer means the party specified as insurer in the schedule and any other subscribing insurer.

## 7.13 **Non-executive director**

Non-executive director means any natural person who serves as a non-executive **director or officer**.

## 7.14 **Non-indemnifiable loss**

Any amounts which the **company** is not permitted to indemnify according to the applicable general law.

## 7.15 **Outside company**

Any company or non-profit entity to which the **director or officer** was or is appointed as a **director or officer** at the request, order or direction of the **company** provided that such outside company is not incorporated, domiciled or has its securities listed on a security exchange or market within the United States of America unless listed by endorsement as an outside company.

## 7.16 **Period of insurance**

Period of insurance means the period shown as such on the original schedule attaching to this **policy** or any replacement schedule.

## 7.17 **Policy**

Policy means this document, the schedule (including any schedules issued in substitution) and any endorsements attaching to this document or the schedule that will be considered part of the legal contract and any word or expression in bold type face on any of these documents will bear the specific meaning stated in these definitions.

## 7.18 **Pollutant**

Pollutant means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste. Waste is deemed to include materials to be recycled, reconditioned or reclaimed. Legionella bacteria are deemed not to be pollutants for the purpose of this insurance.



## 7.19 Pollution

Pollution means:

- 7.19.1 the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of **pollutants** at any time;
- 7.19.2 any cost, expense, claim or suit arising out of any request, demand or order as a result of actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of **pollutants** at any time that the **insured** test for, monitor, clean up, remove, contain, treat, detoxify, or neutralise or in any way respond to, or assess the effects of **pollutants**.

## 7.20 Pre-investigation

Pre-investigation means:

- 7.20.1 A raid or on-site visit to any **company** by an official body that involves the production, review, copying or confiscation of records, or the interview of any **insured person**; or
- 7.20.2 An internal enquiry by the **company** into the affairs of the **company** or an **insured person** requested by a regulator or official body (except for employment practices related bodies), following a formal written notification by the **company** informing the regulator of an actual or potential material breach of an **insured's** legal or regulatory duties, in which an **insured person** in his capacity as such is requested in writing to participate.

Pre-investigation shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulated entity, conducted in a **company's** and/or regulator's normal review or compliance process.

## 7.21 Pre-Investigation costs

Pre-investigation costs means the reasonable legal fees, costs and expenses of each **insured person** (but not including any remuneration of any **insured person** or employee of the company) incurred directly with respect to preparing any written notice or reports to any official body in connection with any **pre-investigation**, up to the aggregate sub-limit of indemnity amount specified in the schedule. These will be part of, and not in addition to, the limit of indemnity.

## 7.22 Stock offering

Stock offering means the initial public offer of any of the **company's** own securities, or if in the United States of America any offering of securities by the **company** except pursuant to Rule 144A of the Securities and Exchange Commission.

## 7.23 Subsidiary company

7.23.1 Subsidiary company means:

- 7.23.2 any company in respect of which the **company** (either directly or indirectly through one or more of its subsidiary companies):

- a) controls or controlled the composition of the board of directors; or
- b) controls or controlled more than half the voting power at a general meeting of shareholders; or
- c) holds or held more than half of the issued share capital (regardless of class of share) on or before the inception date of this **policy**;

- 7.23.3 any company as defined above (other than any company part of whose issued share capital is offered to the public or otherwise traded on a recognised exchange in the United States of America) which is acquired or created on or subsequent to the inception date of this **policy** and of which the total assets do not exceed the amount stated on the schedule;
- 7.23.4 any other company that the **insurer** has given prior written consent to for its inclusion as a subsidiary company under this **policy**.

## **7.24 Take-over or merger**

Take-over or merger means:

- 8.21.1 any sale of the majority of the issued share capital of the **company**; or
- 8.21.2 the **company's** merger with or acquisition by another entity such that the **company** is not the surviving entity and no longer:
- a) controls the composition of the board of directors; or
  - b) controls more than half the voting power; or
  - c) holds more than half of the issued share capital.

Except that this definition shall not apply if any sale of shares in the **company** solely alters the status of the **company** from that of a private company to that of a public company or vice versa;

## **7.25 Wrongful act**

Wrongful act means any actual or alleged wrongful act or omission committed by the **insured person** solely in his capacity as an **insured person** including any **employment practice**.

## Complaints

The insurer aims to provide a high standard at all times but if the policyholder is not satisfied with the services provided it should contact the General Manager at:

QBE Insurance (Europe) Ltd, filial Sverige  
Sveavägen 9  
Hitechbuilding 61  
101 52 Stockholm  
Tel: +46 8 587 514 00

Please quote the policy number or claim number as appropriate in any correspondence.

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