



**BERJAYA SOMPO INSURANCE**

**BERJAYA SOMPO INSURANCE BERHAD**

**DIRECTORS AND OFFICERS LIABILITY POLICY  
(Claims Made & Reported Policy)**

**Important Notice:** This is a claims made and reported policy. The **Policy** will only cover **Claims** which are first made during the **Policy Period** and reported to the Company during the **Policy Period** or the **Extended Reporting Period** (if exercised). The covered **Defence Costs** shall reduce and may exhaust the Limits of Liability available to pay **Loss**. The **Insured** is advised to read the entire **Policy** including all Endorsements attaching to it.



# BERJAYA SOMPO INSURANCE

## DIRECTORS AND OFFICERS LIABILITY POLICY

### SCHEDULE

1. **Policy Number:** <Please include>
2. **Insurance Company:** BERJAYA SOMPO INSURANCE BERHAD  
Level 36, Menara Bangkok Bank  
Laman Sentral Berjaya,  
No. 105, Jalan Ampang,  
50450 Kuala Lumpur,  
Malaysia.
3. **Policy Holder:** < Name>  
<Number>  
<Address>
4. **Inception Date of Cover:** Local Standard Time, 22/08/2021 at the **Insured's** principal place of business
5. **Expiry Date of Cover:** Local Standard Time, 21/08/2022 at the **Insured's** principal place of business
6. **Prior or Pending Date:** <DD Month Year>
7. **Extended Reporting Period:** (i) 12 months at an additional premium of 50%; OR  
(ii) 12 months at an additional premium of 50%
8. **Acquisition Threshold:** <insert % of the total assets or amount>
9. **Limit of Liability:** <[XX]> each and every **Claim** and in the aggregate
10. **Sub-Limits of Liability:**
  - Insuring Clause:**
  - 1.3 **Organisation Liability for Securities Claim** <insert>
  - 1.7 **Shareholder Derivative Demand Investigation Costs** <insert>
  - 1.8 **Extradition Costs** RM250,000
  - 1.9 **Emergency Defence Costs and Emergency Investigation Costs** 10% of Limit of Liability
  - 1.10 **Crisis Costs, Public Relations Expenses and Reputation Protection Expenses** <insert>
  - 1.11 **Prosecution Costs** RM100,000
  - 1.12 **Deprivation of Assets Expenses** RM100,000



Policy No.: <Please include>

**11. Additional Limits of Liability:**

**Insuring Clause:**

1.5	<i>Special Excess Protection for Non-Executive Directors</i>	Per Non-Executive Director Special Excess Limit	<insert>
		Non-Executive Director Special Excess Aggregate Limit	<insert>

**12. Excess:**

To apply each and every **Claim**, inclusive of costs and expenses

**Insuring Clause:**

1.1	Directors and Officers Liability	Nil
1.2	Organisation Reimbursement	<insert>
1.3	Organisation Liability for Securities Claims	<insert>
1.4	Outside Position Liability	Nil
1.5	Special Excess Protection for Non-Executive Directors	Nil
1.6	<b>Investigation Costs</b>	Nil
1.7	<b>Shareholder Derivative Demand Investigation Costs</b>	Nil
1.8	<b>Extradition Costs</b>	Nil
1.9	Emergency Defence Costs and Emergency Investigation Costs	Nil
1.10	<b>Crisis Costs, Public Relations Expenses and Reputation Protection Expenses</b>	Nil
1.11	<b>Prosecution Costs</b>	Nil
1.12	<b>Deprivation of Assets Expenses</b>	Nil, but thirty (30) day waiting period

**13. Governing Law:**

Malaysia

**14. Arbitration and Dispute Resolution:**

**Place of Mediation:** Malaysia

**Rules of Arbitration:** Asian International Arbitration Centre

**Seat of Arbitration:** Malaysia

**Appointor:** Asian International Arbitration Centre

**Jurisdiction:** Malaysia

**15. Currency:**

<RM> unless otherwise specified

**16. Premium:**

Discount, 15%	RM 0.00
Service Tax 6%:	RM 0.00
Stamp Duty:	RM 10.00
Total:	RM 0.00

**17. Premium Payment Period:**

60 days from the Inception Date of Cover



# BERJAYA SOMPO INSURANCE

**Policy No.:** <Please include>

18. **Endorsements:** 1) <Please include, if any>

19. **Date of Proposal:** DD/MM/YYYY

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**BERJAYA SOMPO INSURANCE BERHAD (62605-U)**

This is computer generated and no signature is required.

Date of Issue: DD/MM/YYYY

BSI D&O Wording (17.08) Mal



# BERJAYA SOMPO INSURANCE

## DIRECTORS AND OFFICERS LIABILITY POLICY

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## Preamble

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In consideration of payment of the Premium, subject to all the terms, Conditions, Definitions, Excess, Exclusions and Endorsements contained herein, and, in reliance upon the **Proposal** provided by the **Policy Holder** to the insurance company stated in the Schedule (hereinafter called "the Company"), the **Policy Holder** and the Company agree as follows:

## SECTION 1: INSURING AGREEMENTS

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The Company shall pay, on behalf of:

### Directors and Officers Liability

- 1.1 each of the **Insured Persons, Loss** for which the **Insured Person** is not indemnified by the **Insured Organisation** and which the **Insured Person** becomes legally obligated to pay as a result of a **Claim** first made against him/her individually or otherwise during the **Policy Period** for a **Wrongful Act** of such **Insured Person**.

### Organisation Reimbursement

- 1.2 the **Insured Organisation, Loss** for which the **Insured Organisation** grants indemnification to an **Insured Person** where such **Insured Person** would have been covered under Insuring Agreement 1.1 above but for such indemnification.

### Organisation Liability for Securities Claims

- 1.3 the **Insured Organisation, Loss** which the **Insured Organisation** becomes legally obligated to pay as a result of a **Securities Claim** first made against the **Insured Organisation** during the **Policy Period** for a **Wrongful Act** of the **Insured Organisation**.

### Outside Position Liability

- 1.4 each of the **Insured Persons, Loss** the **Insured Person** becomes liable to pay as a result of a **Claim** first made against the **Insured Person** during the **Policy Period** for any **Wrongful Act** of the **Insured Person** committed in an **Outside Position**.

PROVIDED ALWAYS THAT, the Company shall only pay such **Loss** to the extent that it is in excess of:

- a) the amount of **Loss** which the **Outside Entity** grants indemnification to the **Insured Person**; and
- b) any applicable insurance coverage arranged by the **Outside Entity**.

### Special Excess Protection for Non-Executive Directors

- 1.5 each of the **Non-Executive Directors, Loss** which the **Non-Executive Director** becomes legally obligated to pay as a result of a **Claim** first made against such **Non-Executive Director** during the **Policy Period** for a **Wrongful Act** of such **Non-Executive Director**.

PROVIDED ALWAYS THAT, the following has been exhausted:

- a) the Limit of Liability of this **Policy**; and
- b) all other applicable directors and officers liability or management liability insurance, whether specifically written as excess over the Limit of Liability of this **Policy** or otherwise; and
- c) all other indemnification available to any **Non-Executive Director**.

PROVIDED ALWAYS THAT, this Insuring Agreement 1.5 shall be subject to (a) the Per Non-Executive Director Excess Limit for each **Non-Executive Director**; and (b) the Per Non-Executive Director Excess Aggregate Limit for all **Non-Executive Directors** combined, both as specified in Item 11 of the Schedule being in addition to, and not part of, the Limit of Liability specified in Item 9 of the Schedule.

#### **Investigation Costs**

- 1.6 the **Insured, Investigation Costs** incurred with the prior written consent of the Company (such consent not to be unreasonably withheld) as a result of an **Investigation** instigated against any **Insured** during the **Policy Period**.

#### **Shareholder Derivative Demand Investigation Costs**

- 1.7 the **Insured Organisation, the Shareholder Derivative Demand Investigation Costs** incurred by the **Insured Organisation**, as a result of a **Shareholder Derivative Demand** first made during the **Policy Period**.

PROVIDED ALWAYS THAT, the maximum limit of the Company under this Insuring Agreement 1.7 shall not exceed the amount stated in Item 10 of the Schedule.

#### **Extradition Costs**

- 1.8 an **Insured Person, Extradition Costs** incurred with the prior written consent of the Company (such consent not to be unreasonably withheld) arising from an **Extradition Claim** first made during the **Policy Period**.

PROVIDED ALWAYS THAT, the maximum limit of the Company under this Insuring Agreement 1.8 shall not exceed the amount stated in Item 10 of the Schedule.

#### **Emergency Defence Costs and Emergency Investigation Costs**

- 1.9 the **Insured, Defence Costs and Investigation Costs** incurred by the **Insured** in cases of emergency where it was not possible for the Insured to obtain the Company's prior written consent thereto, subject to the **Insured** obtaining Company's retrospective consent thereto within thirty (30) days of the first of such **Defence Costs, Investigation Costs** being incurred, such consent not to be unreasonably withheld.

PROVIDED ALWAYS THAT, the maximum limit of the Company under this Insuring Agreement 1.9 shall not exceed the percentage of the Limit of Liability stated in Item 10 of the Schedule.

#### **Crisis Costs, Public Relations Expenses and Reputation Protection Expenses**

- 1.10 the **Insured, Crisis Costs, Public Relations Expenses and Reputation Protection Expenses** incurred by the **Insured** during the **Policy Period** with the prior written consent of the Company (such consent not to be unreasonably withheld).

In cases of emergency where it was not possible for the **Insured** to obtain the Company's prior written consent thereto, the Company shall pay, on behalf of the **Insured, Crisis Costs, Public Relations Expenses and Reputation Protection Expenses** incurred by the **Insured**, subject to the **Insured** obtaining Company's retrospective consent thereto within thirty (30) days of the first of such **Crisis Costs, Public Relations Expenses and Reputation Protection Expenses** being incurred, such consent not to be unreasonably withheld.

PROVIDED ALWAYS THAT, the maximum limit of the Company under this Insuring Agreement 1.10 shall not exceed the amount stated in Item 10 of the Schedule.



### Prosecution Costs

- 1.11 the **Insured, Prosecution Costs** incurred by the **Insured** in connection with a covered **Claim** first made during the **Policy Period** with the prior written consent of the Company (such consent not to be unreasonably withheld).

PROVIDED ALWAYS THAT, the maximum limit of the Company under this Insuring Agreement 1.11 shall not exceed the amount stated in Item 10 of the Schedule.

### Deprivation of Assets Expenses

- 1.12 the **Insured Person, Deprivation of Assets Expenses** incurred by the **Insured Person** during the **Policy Period** for a maximum period of twelve (12) months.

PROVIDED ALWAYS THAT, this Insuring Agreement 1.12 shall be subject to the Sub-Limit specified in Item 10 of the Schedule.

## SECTION 2: EXTENSIONS

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### Continuous Cover

- 2.1 The Company shall pay, on behalf of the **Insured, Loss** resulting from any **Claim** made against an **Insured** before the start of the **Policy Period**, but which is notified to the Company during the **Policy Period** where:

- a) the **Insured** proves that there is an absence of fraudulent nondisclosure and/or fraudulent misrepresentation; and
- b) the **Insured** has held a Directors and Officers Liability insurance policy issued by the Company for the period in which the **Claim** should have been notified (the "Previous Policy") and has since maintained such policy continuously and without interruption with the Company.

PROVIDED ALWAYS THAT;

- a) the Company may reduce its liability to the extent of any prejudice the Company may suffer in connection with the **Insured's** failure to notify the **Claim** under the Previous Policy; and
- b) The cover available under this Extension shall be construed in accordance with the terms and conditions of the Previous Policy, but only where such Previous Policy affords no broader cover than the provisions of this Policy and with the exception of the Limit of Liability which shall be the lesser of the Limit of Liability available under this **Policy** and the limit of liability which would have been available under the Previous Policy; and
- c) the Limit of Liability, including any Sub-Limits of Liability specified in the Schedule, where applicable, shall be eroded by any payment made pursuant to this Extension.

### Extended Reporting Period

- 2.2 If this **Policy** is neither renewed nor replaced, the **Insured** shall be entitled, upon payment of the respective additional premium amount described below, to an **Extended Reporting Period**.

The additional premium amount for one year shall be the amount specified in:

- (a) Item 7 (i) of the Schedule, if the Company refuses to renew; or

(b) Item 7 (ii) of the Schedule, if the Policy Holder refuses to renew.

In the event of a **Transaction**, the **Policy Holder** shall have the right to request an offer from the Company of an **Extended Reporting Period** (with respect to **Wrongful Acts** occurring prior to the effective time of the **Transaction**). The Company shall offer such **Extended Reporting Period** pursuant to such terms, conditions, exclusions and subject to such additional premium as the Company may reasonably require. In the event of a **Transaction**, the right to an **Extended Reporting Period** shall not otherwise exist except as indicated pursuant to this paragraph.

The **Extended Reporting Period** is not cancellable. The rights contained in this **Extended Reporting Period** Section shall terminate unless written notice by any **Insured** of election of an **Extended Reporting Period**, together with the additional premium due, is received by the Company no later than thirty (30) days subsequent to the effective date of the cancellation, non-renewal or **Transaction**.

The exercise of the **Extended Reporting Period** shall not in any way increase the Limits of Liability of the Company.

#### **Run-Off Cover for Retired Directors**

2.3 The Company shall indemnify any **Director** who retires or resigns during the **Policy Period** for **Claims** made or **Investigation** instigated against such person during the period of 84 months immediately following expiring of this **Policy Period** but only in respect of **Wrongful Act** prior to such person ceasing to act in the capacity of a **Director**; provided that this **Policy** is not renewed or replaced with other director and officers liability or management liability cover; and **Extended Reporting Period** is not invoked or a **Transaction** has not taken place.

#### **Automatic Cover for New Subsidiaries**

2.4 If, during the **Policy Period**, the **Insured Organisation** acquires voting securities in another entity or creates another entity which as a result of such acquisition or creation becomes a **Subsidiary**, then, subject to the terms and conditions of this **Policy** including the following paragraphs of this Extension, such entity and its **Insured Persons** shall be covered under this **Policy** but only with respect to **Claims** for **Wrongful Acts** taking place after such acquisition or creation.

If the total assets of such acquired or created entity, as reflected in the most recent consolidated financial statements of the entity, exceed the Acquisition Threshold stated in Item 8 of the Schedule coverage shall be provided for such acquired or created entity for a period of ninety (90) days after the effective date of such acquisition or creation, or until the end of the **Policy Period**, whichever is earlier, so long as the **Policy Holder** gives written notice of such acquisition or creation to the Company prior to the end of the **Policy Period**. Coverage otherwise afforded under this paragraph for such acquired or created entity shall terminate ninety (90) days after the effective date of such acquisition or creation, or at the end of the **Policy Period**, whichever is earlier, unless the **Policy Holder** agrees to and pays any additional premium determined by the Company, and agrees to any additional terms and conditions of this **Policy** as determined by the Company.

#### **Transaction Run off Cover**

2.5 If, during the **Policy Period** there is a **Transaction**, then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims** for **Wrongful Acts** taking place before the effective date of the **Transaction**. Coverage under this **Policy** will cease as of the effective date the **Transaction** with respect to **Claims** for **Wrongful Acts** taking place after the effective date of the **Transaction**. For the avoidance of doubt, after the effective date of the **Transaction**, the entire premium for this **Policy** shall be deemed earned as of such time.

### SECTION 3: EXCLUSIONS

The Company shall not be liable to make any payment in relation to any **Claim** and **Investigation** made against an **Insured**:

#### Remuneration or Profit

- 3.1 alleging, based upon, arising out of, or attributable to any remuneration, profit or other advantage to which the Insured was not legally entitled as established through a final non-appealable adjudication or proceeding or judicial or arbitral tribunal.

For the purpose of determining the applicability of this Exclusion, the **Wrongful Acts** of, facts pertaining to, and knowledge possessed by one **Insured Person** shall not be imputed to any other **Insured Person**.

#### Deliberate Acts

- 3.2 alleging, based upon, arising out of, or attributable to any deliberate criminal or fraudulent act or omission by the **Insured**, as established by a final non-appealable adjudication or proceeding or judicial or arbitral tribunal.

For the purpose of determining the applicability of this exclusion, the **Wrongful Acts** of, facts pertaining to, and knowledge possessed by one **Insured Person** shall not be imputed to any other **Insured Person**.

#### Prior or Pending

- 3.3 alleging, based upon, arising out of, or attributable to any:
- a) **Wrongful Act**, matter, fact, circumstance, situation, **Transaction**, or event which has been the subject of any notice under any prior policy: or
  - b) pending or prior demand, suit or other proceeding; or administrative or regulatory proceeding or investigation of which any **Insured** had notice of before the Prior or Pending date specified in Item 6 of the Schedule; or
  - c) other **Claim** alleging or derived from the same or essentially the same facts as alleged in such prior or pending demand, suit or administrative or regulatory proceeding or investigation.

#### Claims Brought by Insured Organisation or Outside Entity in the United States of America

- 3.4 when such **Claim** is a **US Claim** brought by or maintained by, or on behalf of any **Insured Organisation** against any **Insured Person** or by any **Outside Entity** against any **Outside Position**, provided however, this exclusion shall not apply:
- a) to any **Claim** brought by a shareholder of the **Insured Organisation** or **Outside Entity**, whether directly or derivatively, where such **Claim** is instigated and continued totally independent of, and totally without the solicitation, assistance, or active intervention or participation of any **Insured**;
  - b) to **Defence Costs**;
  - c) in the event of any bankruptcy proceeding by or against an **Insured Organisation**, to any **Claim** brought by or on behalf of an insolvency or bankruptcy receiver, trustee, examiner,
  - d) conservator, liquidator, rehabilitator or creditors committee for the **Insured Organisation** or **Outside Entity**, the resulting debtor in possession (or foreign equivalent) of the debtor **Insured**

**Organisation** or **Outside Entity** or any **Director** thereof after such receiver, trustee, examiner, conservator, liquidator or rehabilitator has been appointed;

- e) to any **Claim** brought against an **Insured Person's** engaging in any protected activity specified in 18 U.S.C. 1514A(a) ("whistleblower" protection pursuant to the Sarbanes-Oxley Act of 2002) or any protected activity specified in any other "whistleblower" protection pursuant to any similar state, local or foreign securities laws.
- f) to any **Employment Practice Claim**.

#### **Bodily Injury and Property Damage**

3.5 for bodily injury, sickness, disease, emotional distress, mental anguish, or death of any person or damage to or destruction of any tangible property including loss of use.

However, this exclusion shall not apply to:

- a) **Corporate Manslaughter Act Defence Costs** or similar legislation in any jurisdiction in which this policy applies; or
- b) any **Employment Practice Claim** brought by an **Insured Person**, other than an **Insured Person** who is or was a member of the board of directors (or equivalent governing body) of an **Insured Organisation**; or

#### **ERISA**

3.6 alleging, based upon, arising out of, or attributable to any act or omission by an **Insured** as a trustee, fiduciary or administrator of the **Insured Organisation's** pension, profit sharing or employee benefits programme, including any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (USA).

#### **Insolvency**

3.7 If at the commencement of the Period of Insurance, the Insured Organisation is trading unprofitably or does not have a surplus of shareholders' funds.

#### **Prospectus Liability**

3.8 arising from or out of the issuing of any prospectus-type document (including information and data collected in the process of preparing same), the intention of which is to raise capital for the **Insured Organisation** either by way of public flotation, share offering or any other means; nor for the issuing of any offer document served on a takeover company (including response documents to such offer documents).

However, this exclusion will not apply to convertible notes issues, redeemable preference share issues, rights issues, dividend reinvestment plans, bonus share plans or employee share option plans.

#### **Major Shareholders**

3.9 by any shareholder in the **Insured Organisation** whether in the name of the shareholder or the **Insured Organisation** but only when such shareholder held, at the time the relevant **Wrongful Act** was alleged to have been committed or attempted, or now holds, or acquires during the currency of any Claim, more than 15% of the equity of the **Insured Organisation** whether directly or indirectly.

## Professional Services

- 3.10 alleging, based upon, arising out of, or attributable to any Insured rendering or failure to render professional services or professional advice or any act, error or omission related thereto.

However, this exclusion shall not apply to **Loss** for any **Claim** made by or on behalf of a shareholder of the **Insured Organisation** solely based on, arising from or attributable to any allegation of a failure to supervise any employee of the **Insured Organisation**.

## SECTION 4: CLAIMS CONDITIONS

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### Reporting and Notice

- 4.1 It is a condition precedent to cover under this **Policy** that the **Insured** shall give to the Company written notice of any **Claim** made against the **Insured** or **Investigation** as soon as practicable of the **Insured** becoming aware of any such **Claim** or **Investigation**, but in no event later than sixty (60) days after the end of the Policy Period or the **Extended Reporting Period** (if exercised).

All notices under this Policy shall include, but not be limited to, the following information:

- a) a detailed description of the **Wrongful Act**, being the subject matter of the **Claim** or **Investigation**; and
- b) details of all the parties involved; and
- c) a copy of the **Claim** or of any written demand and/or written notice of any **Investigation**.

Notice and all information shall be sent in writing to the Claims Manager, at the address specified in Item 2 of the Schedule.

The **Insured** and shall keep the Company fully informed as regards all developments relating such **Claims** or **Investigation** as soon as practicable.

### Notification of Circumstance

- 4.2 If during the **Policy Period**, the **Insured** becomes aware of any fact or circumstance that might give rise to a **Claim** or **Investigation** under this **Policy** and elects to give notice in writing to the Company of such fact or circumstance during the **Policy Period** or during the **Extended Reporting Period**, then any **Claim** or **Investigation** which may subsequently arise out of such fact or circumstance shall be deemed to be a **Claim** or **Investigation** made during the **Policy Period**.

### Defence and Settlement

- 4.3 It is a condition precedent to cover under this **Policy** that the **Insured** agrees not to settle any **Claim**, incur any costs and expenses, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any **Claim** without the Company's prior written consent, such consent not to be unreasonably withheld. The Company shall not be liable for any **Claim**, settlement, costs and expenses, admission, offer or payment, or assumed obligation to which it has not so consented.

The **Insureds** shall have the obligation to defend and contest any **Claim** made against them and arrange for representation in the event of an **Investigation**. The Company shall be entitled to associate with any **Insured** in the defence and negotiation of any settlement of any **Claim** or **Investigation**.

Any lawyers or other advisors the **Insured** proposes to appoint shall be approved by the Company

prior to their appointment. The Company will accept the retention of separate legal representation where necessary due to any conflicts of interest between the **Insured**, or between the **Insured** and the **Insured Organisation**.

The Company shall have no duty or obligation to communicate with any other **Insured Person** or the **Insured Organisation** if a **Claim** is made against an **Insured Person** by the **Insured Organisation**.

All Insureds shall render all reasonable assistance to and co-operate with the Company in the investigation, defence, settlement, or appeal of a **Claim** or circumstance or **Investigation**, and provide the Company with all relevant information pertaining to any **Claim** or circumstance or **Investigation**, as the Company may reasonably require. In the event of any **Claim**, each Insured shall take reasonable steps to minimize or reduce any **Loss**.

#### **Advancement of Defence Costs**

- 4.4 Once the Company has received written notice of a **Claim** or **Investigation** under this **Policy**, it shall advance **Defence Costs** or **Investigation Costs** as and when incurred, but no later than thirty (30) days after the Company has received itemised bills for those **Defence Costs** and **Investigation Costs**. Such advance payments by the Company shall be repaid to the Company by each and every **Insured Person** or **Insured Organisation**, severally according to their respective interests, in the event and to the extent that any such **Insured Person** or **Insured Organisation** shall not be entitled under this **Policy** to payment of such **Loss**.

#### **Allocation**

- 4.5 If a **Claim** includes both **Loss** that is covered under this **Policy** and loss that is not covered under this **Policy**, the **Insured** and the Company shall use their best efforts to allocate such amount between covered **Loss** and loss that is not covered based upon the relative legal and financial exposures and the relative benefits obtained by the parties.

If the Company and the **Insured** cannot agree on allocation within fourteen (14) days of any allocation issue first notified in writing to the **Insured** by the Company, then they agree to refer the determination to a **Senior Counsel**, whose decision shall be final and binding on all parties. The **Senior Counsel** is to determine the fair and equitable allocation as an expert not an arbitrator. The **Insured** and the Company shall be entitled to make written submissions to **Senior Counsel**. The **Senior Counsel** is to take account of the parties' submissions, but the **Senior Counsel** is not to be fettered by such submissions and is to determine the fair and equitable allocation in accordance with his or her own judgement and opinion. The **Senior Counsel's** expenses in providing such determination will be paid by the Company and any such payments will not erode the Limit of Liability.

### **SECTION 5: GENERAL TERMS AND CONDITIONS**

#### **Severability**

- 5.1 The **Proposal** shall be construed as a separate **Proposal** for coverage by each **Insured Person** and no statements made by or on behalf of an **Insured** nor any information or knowledge possessed by any **Insured**, nor any conduct of any **Insured**, shall be imputed to any other **Insured Person** for the purpose of determining whether any individual **Insured Person** is covered under this **Policy**.

With respect to an **Insured Organisation**, only the statements made by, and knowledge of any past, present, or future chief executive officer and/or chief financial officer and/or general counsel (or any equivalent executive or management position) of an **Insured Organisation** shall be imputed to that **Insured Organisation**; and the knowledge of the same officeholders of the **Policy Holder** shall be imputed to all **Insured Organisations**.

## Non-Rescission

- 5.2 Except with respect to coverage afforded to an **Insured Organisation**, the Company shall not avoid or rescind this policy in whole or in part on the grounds of innocent or negligent non-disclosure or innocent or negligent misrepresentation.

## Limits of Liability

- 5.3 The Company's total liability under this **Policy** for any one **Claim** and in the aggregate in respect of all **Claims** shall not exceed the Limit of Liability specified in Item 9 of the Schedule. Further, costs and expenses and any cover granted under any Insuring Clause, Extension or Endorsement are subject to the Limits or Sub-Limits of Liability specified in the Schedule or in any Endorsement. Such amounts shall form part of and do not increase the Limit of Liability unless otherwise specifically stated in this **Policy**.

In case of **Related Claims** the Company's total liability under this **Policy** for such **Related Claims** shall not exceed the **Limit of Liability** specified in Item 9 of the Schedule irrespective of the number of **Claims** constituting such **Related Claims** or the number of **Insureds** involved.

## Excess

- 5.4 The Company shall only be liable for the amount of **Loss** arising from a **Claim** in excess of the applicable Excess specified in Item 12 of the Schedule. The Excess shall remain uninsured.

If different parts of a single **Claim** are subject to different Excess, the applicable Excess will be applied separately to each part of such **Claim**, but the sum of such Excess shall not exceed the largest applicable Excess.

In case of **Related Claims** the highest Excess applicable to any of the **Claims** constituting a **Related Claim** shall be deemed the Excess applicable to all **Loss** arising from such **Related Claims** unless the **Policy** expressly provides otherwise.

## Refusal or Failure of the Insured Organisation to Indemnify

- 5.5 If the **Insured Organisation**:
- (a) refuses to indemnify, advance or pay covered **Loss** of an **Insured Person**; or
  - (b) fails to indemnify, advance or pay covered **Loss** of an **Insured Person**, within sixty (60) days after the **Insured Person** requests in writing such indemnification, advancement or payment, and such covered **Loss** is within the Excess, then the Company shall advance such amounts on behalf of the **Insured Person** until either:
    - (i) an **Insured Organisation** has made or been ordered to make such payments, or
    - (ii) the Excess has been satisfied.

In no event shall any such advancement by the Company relieve any **Insured Organisation** of any duty it may have to provide advancement, payment or indemnification to any **Insured Person**. Any payment or advancement by the Company within an applicable Excess shall apply towards the exhaustion of the Limit of Liability.

If the Company pays under this **Policy** any indemnification, advancement or payment owed to any **Insured Person** by any **Insured Organisation** within an applicable Excess, then that **Insured Organisation** shall reimburse the Company for such amounts and such amounts shall become immediately due and payable as a direct obligation of the **Insured Organisation** to the Company.

## Other Insurance

- 5.6 The Insurance provided by this **Policy** is excess over any other valid and collectible Directors and Officers liability insurance or any other insurance providing similar cover thereto, unless such other insurance is specifically written as excess insurance over the Limit of Liability provided by this **Policy**. This **Policy** shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this **Policy** may be obligated to pay **Loss**. The insurance provided by the **Policy** shall be primary to any personal "umbrella" excess liability insurance purchased by **Insured Persons**.

## Subrogation

- 5.7 In the event of any payment under this **Policy**, the Company shall be subrogated to the extent of such payment to all the **Insured's** rights of recovery, and the **Insured** shall do everything necessary to secure and preserve such rights, including but not limited to the execution of documents necessary to enable the Company to effectively commence any action in the name of the **Insured**.

The **Insured** must not do anything to prejudice the position of the Company in its actual or potential rights of recovery against another party.

Any amounts recovered by the Company in excess of the Company's total payment under the Policy (including costs and expenses but less the costs of such recovery) shall be repaid to the **Insured**.

The Company shall not exercise any subrogated rights against an **Insured Person** unless it is established that such **Insured Person** has committed a deliberate criminal act or obtained any profit or other advantage to which the **Insured Person** was not legally entitled.

## Cancellation

- 5.8 a) The Policy Holder or the Company may cancel this policy by giving 30 days notice in writing to the other party.
- b) If the policy is cancelled by the Company, the Company will arrange a refund of premium pro-rata to the unexpired period of insurance.
- c) If the policy is cancelled by the Policy Holder, the Company will allow a refund of premium for the unexpired period of insurance calculated at the customary short period scale after deduction of the Value of The Incurred Claims, if any.
- d) For the purpose of this clause, "Value of The Incurred Claims" shall mean the sum of:
- i) all the indemnity paid by the Company (including costs and expenses incurred) in all the Claims made against the Insured and reported to the Company during the period of insurance; and
  - ii) the total reserve for indemnity maintained by the Company as of a date three months after the date of cancellation of this policy in all the Claims made against the Insured and reported to the Company during the period of insurance.

## Assignment

- 5.9 No rights or interest with respect to this **Policy** can be assigned without the Company's prior written consent.



## Authorisation

- 5.10 By acceptance of this **Policy**, the **Policy Holder** agrees to act on behalf of each and every **Insured** with respect to any matters pertaining to this **Policy**, including but not limited to the giving of notice of a **Claim** or circumstance or **Investigation**, the giving and receiving of notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under this **Policy**, and the negotiation, agreement to and acceptance of any endorsements issued to form part of this **Policy** and the exercising or declining of any rights to an **Extended Reporting Period** (if exercised) and each of the other **Insured** agree that the **Policy Holder** shall so act on their behalf.

PROVIDED THAT the foregoing shall not limit the ability of any other **Insured** to provide notice of a **Claim** or circumstances or **Investigation** which may give rise to a **Claim**.

## Governing Law and Interpretation

- 5.11 The construction, interpretation and meaning of the provisions of this **Policy** shall be determined in accordance with the Governing Law specified in Item 13 the Schedule and, subject to General Condition 5.12 Arbitration and Dispute Resolution, any disputes relating thereto shall be submitted to the jurisdiction of the courts specified in Item 14 of the Schedule.

The marginal notes and titles of paragraphs in this **Policy** are included for descriptive purposes only and do not form part of this **Policy** for the purpose of its construction or interpretation.

Under this **Policy**, where appropriate, the masculine includes the feminine, and the singular includes the plural and vice versa.

## Arbitration and Dispute Resolution

- 5.12 If there is any dispute arising out of or relating to the formation, validity, construction or operation of this **Policy** the parties agree to try in good faith to settle such dispute by non-binding mediation, before resorting to arbitration in the manner set out below. Such mediation is to take place at the commonly recognized mediation centre or equivalent in the Place of Mediation as specified in Item 14 of the Schedule and in accordance with that centre's mediation rules.

If the dispute is not resolved through mediation, the dispute must be referred to arbitration in the Seat of Arbitration as specified in item 14 of the Schedule. Such arbitration shall be conducted in accordance with the Rules of Arbitration, both as specified in Item 14 of the Schedule. The arbitration shall be determined by the appointment of a single arbitrator to be agreed between the parties, or failing agreement within fourteen (14) days after either party has requested the other party to collaborate in the appointment of such arbitrator, by application of either party to the Appointor specified in Item 14 of the Schedule to appoint the sole arbitrator to be responsible to conduct proceedings. The decision of the arbitrator shall be final and binding on both the **Insured** and the Company.

All mediation and arbitration proceedings shall be conducted in English.

## Currency

- 5.13 All premiums, limits, Excess, **Loss** or other amounts under this **Policy** are expressed and payable in the Currency specified in Item 15 the Schedule. If a payment under this **Policy** is to be made in a currency other than that Currency specified in Item 15 of the Schedule, then such payment shall be made at a rate of exchange as published in the Asian Wall Street Journal on the date the obligation to pay **Loss** is established or, if not published on that date, on the date of the next publication of the Asian Wall Street Journal.

## Payment Priority

- 5.14 If the amount of any covered **Loss** due and owing by the Company under this **Policy** exceeds the remaining Limit of Liability of this **Policy**, the Company shall pay **Loss** (subject to the Limit of Liability) in the following priority:
- a) First, the Company shall pay any **Loss** covered under Insuring Agreement 1.1, Directors & Officers Liability;
  - b) Second, the Company shall pay any **Loss** covered under Insuring Agreement 1.2, Organisation Reimbursement,
  - c) Third, the Company shall pay any **Loss** covered under Insuring Agreement 1.4 Outside Position Liability;
  - d) Fourth, the Company shall pay any **Loss** covered under Insuring Agreement 1.3, Organisation Liability for Securities Claims.

All payments shall be subject to any applicable Excess.

If the Company receives a written request from the Chief Executive Officer of the **Policy Holder** to delay any payment of covered **Loss** otherwise due and owing to or on behalf of the **Insured Organisation** until such time as the **Policy Holder** requests, the Company shall do so, provided that the Company's liability with respect to such delayed **Loss** payment shall not be increased, and shall not include any interest.

## SECTION 6: DEFINITIONS

- 6.1 "**Civil Fines and Civil Penalties**" means civil money penalties directly assessed against any **Director** pursuant to a violation of any law, regulation or statute, not including punitive, exemplary or multiple damages; but only if:
- a) such violations described above, are not knowing, wilful or criminal; and
  - b) such penalties are insurable under the internal laws of the jurisdiction in which such penalties were assessed or levied.
- 6.2 "**Claim**" means:
- a) a written demand for monetary, non-monetary or injunctive relief, including but not limited to a written demand for mediation, arbitration or any other alternative dispute resolution procedure;
  - b) a civil, criminal, arbitration, administrative or regulatory proceeding for monetary, non-monetary or injunctive relief commenced by:
    - (i) the service of a complaint (or similar pleading); or
    - (ii) return of an indictment, information or similar document (in the case of criminal proceedings); or
    - (iii) the receipt or filing of a notice of charges.

- c) any **Investigation** alleging a **Wrongful Act** (including the service of a Wells Notice upon an **Insured Person**);
  - d) an **Extradition Claim** solely with respect to Insuring Agreement 1.8;
  - e) an **Employment Practice Claim** against an **Insured Person**;
  - f) a **Securities Claim** solely with respect to Insuring Agreement 1.3.
- 6.3 **"Clean-up Costs"** means expenses (including but not limited to legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralising, detoxifying or assessing the effects of **Pollutants**.
- 6.4 **"Corporate Manslaughter Act Defence Costs"** means:
- a) **Investigation Costs**; or
  - b) **Crisis Costs, Defence Costs, Prosecution Costs, Public Relations Expenses or Reputation Protection Expenses**
- incurred by an **Insured Person** that result solely from the investigation, adjustment, defence and/or appeal of a **Claim** against an **Insured Organisation** for violation or breach of an occupational health and safety law, including but not limited to, any workplace death, corporate manslaughter or industrial manslaughter law in any jurisdiction.
- 6.5 **"Crisis Costs"** means any reasonable professional fees, costs or expenses of any professionally qualified:
- a) counsellor; or
  - b) tax advisor retained by an **Insured**,
- in respect of any **Claim**, not constituting **Defence Costs**.
- 6.6 **"Defence Costs"** means reasonable and necessary fees, costs, charges and expenses (including the reasonable premium (but not collateral) for any bond or other financial instrument to guarantee an **Insured Person's** contingent obligation for a specified amount required by a court of competent jurisdiction hearing a **Claim**) incurred:
- a) by or on behalf of an **Insured** in the defence, adjustment, settlement or appeal of any covered **Claim** against the **Insured**; or
  - b) by any accredited expert retained through defence lawyers, approved in writing by the Company, on behalf of the **Insureds**, to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a covered **Claim**.
- Defence Costs** shall not include wages, salaries, fees or other compensation of any **Insured Persons** or **Insured Organisation** employee or **Shareholder Derivative Demand Investigation Costs**.
- 6.7 **"Deprivation of Assets Expenses"** shall mean the payment of the following services directly to the provider of such services in the event of an interim or interlocutory order confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of an **Insured Person** or creating a charge over real property or personal assets of the **Insured Person** for a period in excess of thirty (30) days:
- a) schooling;
  - b) housing;
  - c) utilities; or
  - d) personal insurances;

PROVIDED ALWAYS THAT, a personal allowance has been directed by the court to meet such payments and such personal allowance has been exhausted.

6.8 **"Director"** means any natural person who was, is or during the **Policy Period** becomes:

- a) a director, officer, management committee member, member of the board of managers, supervisory board member or management board member of the **Insured Organisation**, duly elected or appointed as such;
- b) the risk manager or general/chief counsel (or equivalent position) of the **Insured Organisation**;
- c) employee while acting in a managerial or supervisory capacity of the **Insured Organisation**;
- d) member of the **Insured Organisation's** internal audit committee, internal compensation committee, or any other internal board committee of and for the **Insured Organisation**;
- e) a de-facto director or officer or a **Shadow Director** of the **Insured Organisation**;
- f) named as a prospective director in the listing particulars or prospectus for a public offering of **Securities** issued by the **Insured Organisation**;

but, with regard to all of the foregoing, only when and to the extent that such **Director** is acting or has acted in his capacity as such.

6.9 **"Employment Practice Claim"** means a **Claim** alleging any **Employment Practice Wrongful Act** by an **Insured Person**.

6.10 **"Employment Practice Wrongful Act"** means any actual or alleged:

- (i) unfair, harsh, unreasonable, unjust or unlawful dismissal or termination of employment, either actual or constructive, for which a statutory remedy exists or allegedly exists;
- (ii) breach of contract of employment;
- (iii) misleading or deceptive representation or advertising relating to employment;
- (iv) failure to employ or promote, unfair deprivation of a career opportunity, unfair discipline, failure to grant tenure or negligent employee evaluation;
- (v) sexual harassment in the workplace including unwelcome sexual advances, requests for sexual favours or other verbal or physical conduct of a sexual nature that is made a condition of employment or used as a basis for an employment decision or creates a hostile work environment that interferes with performance;
- (vi) workplace harassment of any kind including the alleged creation or condemnation of a harassing workplace environment; or
- (vii) employment related:
  - (a) denial of natural justice;
  - (b) unlawful interference with privacy;
  - (c) defamation;
  - (d) emotional distress, mental anguish or humiliation;
  - (e) discrimination on any unlawful basis;
  - (f) victimisation on any unlawful basis;
  - (g) retaliation;

committed or allegedly committed against an employee or **Insured Person** in respect of the past, present, or prospective employment of that employee or **Insured Person** with the **Insured Organisation**.

- 6.11 "**Extended Reporting Period**" means the period specified as such in Item 7 of the Schedule immediately following the effective date of cancellation, non-renewal or **Transaction** in which to give to the Company written notice of any circumstance or **Investigation** or **Claims** first made against an **Insured** during the **Extended Reporting Period** and solely with respect to a **Wrongful Act** occurring prior to the end of the **Policy Period** and otherwise covered by this **Policy**.
- 6.12 "**Extradition**" means any formal process by which an **Insured Person** located in any country is surrendered to another country to answer criminal accusations.
- 6.13 "**Extradition Claim**" means an official request for **Extradition**, or the execution of a warrant for arrest where such execution is an element of the **Extradition**.
- 6.14 "**Extradition Costs**" means reasonable and necessary fees, costs, charges and expenses resulting solely from:
- a) an **Insured Person** lawfully:
    - (i) opposing, challenging, resisting or defending any **Extradition Claim**;
    - (ii) appealing any order or other grant of **Extradition** of that **Insured Person**;
  - b) an accredited crises counsellor and/or tax adviser and/or a public relations consultant retained by the **Insured Person** exclusively and directly in connection with the **Extradition** of that **Insured Person**, PROVIDED THAT the maximum aggregate limit of the Company for all such fees, costs, charges and expenses under this **Policy** for all **Insured Persons** combined shall not exceed the amount stated in Item 10 of the Schedule; or
  - c) overseas travelling costs (one round trip) and accommodation for the **Insured Person**, his/her lawful spouse or domestic partner and any children under the age of eighteen, directly in connection with the **Extradition** of such **Insured Person**. PROVIDED THAT the maximum aggregate limit of the Company for all such fees, costs, charges and expenses under this **Policy** for all **Insured Persons**, spouses/partners and children, combined, shall not exceed the amount stated in Item 10 of the Schedule.
- 6.15 "**Insured**" means:
- a) any **Insured Person**; or
  - b) the **Insured Organisation**.
- 6.16 "**Insured Person**" means:
- a) any **Director**;
  - b) any one or more natural persons who are past, present or future employees of the **Insured Organisation**, including such persons who are or were full-time, part-time, seasonal and temporary employees, but solely with respect to:
    - (i) any **Employment Practice Claim**; and,
    - (ii) any other **Claim** or **Investigation**, that is, and only so long as such other **Claim** or **Investigation** is, brought and maintained concurrently against a **Director**;
  - c) any **Non-Executive Director**.
  - d) the lawful spouse or legally recognised domestic partner of any person specified in a), b) or c) above where a **Claim** arises from any actual or alleged **Wrongful Act** of such person.  
  
PROVIDED THAT such **Loss** does not arise from a **Claim** for any actual or alleged act, error or omission of such spouse or domestic partner.
  - e) the estates, heirs, legal representatives of any deceased **Insured Person** specified in a), b) or c) above, and the legal representatives of such **Insured Person** in the event of incompetency,

insolvency or bankruptcy, who was an **Insured Person** at the time the **Wrongful Acts** upon which a **Claim** is based were made.

f) any **Trustee**.

6.17 "**Investigation**" means a formal or official criminal, administrative, or regulatory investigation, hearing, examination or inquiry into the **Insured Organisation** or an **Insured Person** in their capacity as such, commenced by or brought by:

a) an **Official Body** (except the U.S. SEC); or

b) by the US S.E.C. after the service of a subpoena or Wells Notice upon such **Insured Person**,

at which the attendance of the **Insured Person** is first required or requested in writing during the **Policy Period** or **Extended Reporting Period** (if exercised).

6.18 "**Investigation Costs**" means reasonable and necessary fees, costs, charges and expenses incurred by the **Insured Person** or the **Insured Organisation** on behalf of the **Insured Person** directly in connection with such **Insured Person** preparing for and attending an **Investigation**.

**Investigation Costs** do not include remuneration payable to any **Insured Persons** or **Employee** of the **Insured Organisation** or any **Outside Entity**, cost of their time, costs or overheads of the **Insured Organisation** or **Outside Entity**, or any fines or penalties (or the equivalent) levied or imposed in connection with the **Investigation**.

6.19 "**Loss**" means the damages, judgments, any award of pre-judgment interest and post judgment interest, settlements and **Defence Costs** which the **Insured** becomes legally obligated to pay on account of any covered **Claim**. **Loss** shall also include **Civil Fines and Civil Penalties, SOX 304 Costs, Investigation Costs, Shareholder Derivative Demand Investigation Costs, Extradition Costs, Crisis Costs, Public Relations Expenses, Reputation Protection Expenses, Prosecution Costs** and **Deprivation of Assets Expenses**. **Loss** shall not include:

a) any amount for which the **Insured** is not financially liable or which is without legal recourse to an **Insured**;

b) taxes or remuneration of any **Insured Person**, except where and to the extent that personal liability of a director or officer under Insuring Agreements 1.1 and 1.4 for non-payment of corporate taxes is established by law in the jurisdiction in which the **Claim** is made and such liability constitutes **Non-Indemnifiable Loss**;

c) **Clean-up Costs**;

d) criminal fines or penalties imposed by law;

e) any amount constituting the amount by which the price of or consideration paid or proposed to be paid by an **Insured** for the acquisition or completion of the acquisition of all or substantially all of the ownership interest in, or assets of, an entity was inadequate;

f) punitive or exemplary damages or the multiplied portion of multiplied damages

g) matters which may be deemed uninsurable under the law governing this **Policy** or the jurisdiction in which a **Claim** is brought;

h) social security contributions;

i) employment related benefits;

- j) any sum payable pursuant to a financial support direction or contribution notice issued by a pensions regulator; and
- k) remuneration payable to any **Insured**, cost of any **Insured's** time or costs of overhead of the **Insured Organisation** or any **Outside Entity**.

Notwithstanding the foregoing, solely with respect to claims other than **Employment Practices Claims**, **Loss** shall specifically include punitive, exemplary or multiplied damages to the extent such damages are insurable under the law pursuant to which this **Policy** shall be construed.

- 6.20 "**Policy Holder**" means the entity specified in Item 3 of the Schedule.
- 6.21 "**Non-Executive Director**" means any natural person who at the inception of the **Policy Period** serves or has previously served, or during the **Policy Period** begins serving as a director of the **Insured Organisation** and who is not an employee of the **Insured**.
- 6.22 "**Non-Indemnifiable Loss**" means **Loss** for which the **Insured Organisation** has neither indemnified nor is permitted or required to indemnify an **Insured Person** pursuant to law or contract or the charter, byelaws, operating agreement or similar documents of the **Insured Organisation**.
- 6.23 "**Official Body**" means any regulator, government body, government agency or official trade body (or the enforcement arm of such body) that is empowered by statute or statutory regulation to investigate the affairs of any **Insured**.
- 6.24 "**Insured Organisation**" means:
  - a) the **Policy Holder**;
  - b) each **Subsidiary**; and
  - c) in the event of a bankruptcy proceeding by or against the **Policy Holder** or any **Subsidiary**, the resulting debtor in possession or its equivalent in any other jurisdiction.
- 6.25 "**Outside Entity**" means any entity that is not a **Subsidiary** provided that:
  - a) it has no **Securities** traded on any exchange in the United States of America; or
  - b) it is not a financial institution.
- 6.26 "**Outside Position**" means any **Insured Person's** service as a director, officer, trustee or equivalent position in an **Outside Entity** at the specific request of the **Insured Organisation**.
- 6.27 "**Policy**" means, collectively, the Schedule, the **Proposal**, this **Policy** form and any endorsements.
- 6.28 "**Policy Period**" means the period from Inception Date of Cover to Expiry Date of Cover as set forth in Items 4 and 5 respectively of the Schedule or to any earlier cancellation date.
- 6.29 "**Pollutants**" shall mean any air emission, odour, waste, oil or oil product, infectious or medical waste, asbestos or asbestos product, noise, fungus (including mould or mildew and any mycotoxins, spores, scents or by-products produced or released by fungi, but does not include any fungi intended by the **Insured** for consumption), and electric or magnetic or electromagnetic field. Such matters shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminations or smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste materials.

- 6.30 **"Proposal"** means any proposal form completed and signed for this **Policy** or for any previous policy issued by the Company for which this **Policy** is a replacement or renewal (including any attachments thereto) and any information and/or statements or materials requested by the Company or supplied to the Company by or on behalf of the **Insured Organisation** or any **Insured Person** included therewith or incorporated therein.
- 6.31 **"Prosecution"** means any legal proceedings to obtain the discharge or revocation of: (i) an order disqualifying an **Insured Person** from holding office as a director; or (ii) an interim or interlocutory order: (a) confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of such **Insured Person**; or (b) a charge over real property or personal assets of the **Insured Person**; or (iii) an order of a court imposing a restriction of the **Insured Person's** liberty; or (iv) the deportation of an **Insured Person** following revocation of otherwise proper, current and valid immigration status for any reason other than the **Insured Person's** conviction for a crime.
- 6.32 **"Prosecution Costs"** means the legal and other professional fees, costs and expenses, incurred by an **Insured Person** to bring a **Prosecution**.
- 6.33 **"Public Relations Expenses"** means the reasonable fees and related expenses of a public relations firm or consultant, crisis management firm or law firm which an **Insured** may in the reasonable exercise of its discretion, engage in order to prevent or limit adverse effects or negative publicity which it is anticipated may arise from any **Claim** or **Investigation**.
- 6.34 **"Related Claims"** means a **Claim** alleging, arising out of, based upon or attributable to any facts or **Wrongful Acts** that are the same as or related to those that were alleged in another **Claim** made against any **Insured**.
- 6.35 **"Reputation Protection Expenses"** means the reasonable fees and related expenses of a public relations firm or consultant which an **Insured** may engage in order to disseminate the findings of a final adjudication in favour of the **Insured**, arising from a **Claim**.
- 6.36 **"Securities"** mean any security representing debt or equity interests issued by the **Insured Organisation**.
- 6.37 **"Securities Claim"** means a **Claim** alleging a violation of any laws (statutory or common), rules or regulations regulating **Securities**, the purchase or sale or offer or solicitation of an offer to purchase or sell **Securities**, or any registration statement relating to such **Securities** which is:
- a) brought by any person, entity or **Official Body** arising out of, based upon or attributable to the purchase or sale, or offer or solicitation of an offer to purchase or sell any **Securities** issued by the **Insured Organisation**; or
  - b) brought by one or more **Securities** holders of the **Insured Organisation** in their capacity as a **Securities** holder of the **Insured Organisation** with respect to their respective interest in **Securities** issued by the **Insured Organisation**; or
  - c) brought derivatively on behalf of or in the name of the **Insured Organisation** by a **Securities** holder of the **Insured Organisation**.

For the purposes of this definition, **Securities Claim** shall not include

- a) an administrative or regulatory proceeding commenced or brought against, or an investigation of, the **Insured Organisation**; provided, however, the term shall include a formal administrative or regulatory proceeding commenced or brought against the **Insured Organisation** if such proceeding is also made, and is continuously maintained, against a **Director** of the **Insured Organisation**;



- b) a **Claim** brought by or on behalf of any director, officer or employee of the **Insured Organisation** alleging, arising out of, based upon or attributable to the loss of, or the failure to receive or obtain, the benefit of any **Securities** including warrants or options.
- 6.38 **"Senior Counsel"** means a senior lawyer to be mutually agreed upon by the parties, or in the absence of agreement, to be appointed by the Chairman of the Bar Association/Law Society (or equivalent organisation) in the jurisdiction in which the **Loss** occurred.
- 6.39 **"Shadow Director"** means any natural person, who, as a consequence of being a director, officer or employee of the **Insured Organisation**, is deemed a **Shadow Director**, as defined in Companies Act (Cap. 50) of Singapore or equivalent in any jurisdiction in which this **Policy** applies, of any other company or an **Outside Entity**.
- 6.40 **"Shareholder Derivative Demand"** means a written demand on the **Insured Organisation's** board of directors (or equivalent management body) by one or more shareholders of the **Insured Organisation** to bring a civil proceeding against any **Insured Person** for a **Wrongful Act**.
- 6.41 **"Shareholder Derivative Demand Investigation Costs"** means reasonable costs, fees and expenses (other than regular or overtime wages, salaries, fees, or benefits of the directors, officers or employees of the **Insured Organisation**) incurred by the **Insured Organisation** (including its board of directors or any committee of its board of directors) prior to a **Claim** solely with respect to any evaluation required to determine whether it is in the best interest of the **Insured Organisation** to prosecute the claims alleged in a **Shareholder Derivative Demand**, but in no event shall **Shareholder Derivative Demand Investigation Costs** include any costs, fees or expenses incurred in a **Securities Claim**.
- 6.42 **"SOX 304 Costs"** means the reasonable and necessary fees, costs and expenses consented to by the **Insured Organisation** (including the premium or origination fee for a loan or bond) and incurred by the Chief Executive Officer or Chief Financial Officer of the **Insured Organisation** solely to facilitate the return of amounts required to be repaid by such **Director** pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002. **SOX 304 Costs** do not include the payment, return, reimbursement, disgorgement or restitution of any such amounts requested or required to be repaid by such **Director** pursuant to Section 304(a).
- 6.43 **"Subsidiary"** means any entity in which the **Policy Holder**, on or before the inception of the **Policy Period**, either directly or indirectly through one or more of its other **Subsidiaries**:
- a) has control of the composition of the board of directors; or
  - b) has control of more than half of the shareholder or equity voting power; or
  - c) holds more than half of the issued share capital or equity; or
  - d) exercises effective control of management, including of any joint venture.
- 6.44 **"Transaction"** means:
- a) the **Policy Holder** consolidating with or merging into another entity such that the **Policy Holder** is not the surviving entity, or selling all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or
  - b) any person or entity or group of persons or entities acting in concert (other than a **Subsidiary** or **Subsidiaries**) becoming entitled to cast, or control the casting of, more than fifty per cent (50%) of the rights to vote at general meetings of the **Policy Holder** or control the appointment of **Directors** who are able to exercise a majority of votes at meetings of the board of directors of the **Policy Holder**.

- 6.45 **"Trustee"** means any natural person named as a trustee of a pension, retirement, or provident fund established for the benefit of the employees of the **Insured Organisation**.
- 6.46 **"US Claim"** means a claim brought or maintained within the jurisdiction of, or based upon any laws of the United States of America, its states, localities, territories or possessions.
- 6.47 **"US SEC Exposure"** means where an **Insured Organisation**:
- a) has any of its securities listed on a securities exchange or market within the United States of America; or
  - b) is or has securities that are legally required to be the subject of any registration statement filed with the SEC; or
  - c) is subject to any obligation to file reports with the SEC in accordance with Section 13 of the Securities Exchange Act of 1934.
- 6.48 **"Wrongful Act"** means any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, defamation, omission or act or any actual or alleged **Employment Practice Wrongful Act** committed prior to the end of the **Policy Period**:
- a) with respect to any **Director** of an **Insured Organisation**, by such **Director** in his or her capacity as such or any matter claimed against such **Director** solely by reason of his or her status as such;
  - b) with respect to any **Employee** of an **Insured Organisation**, by such **Employee** in his or her capacity as such, but solely in regard to any: (a) **Securities Claim**; or (b) other **Claim** so long as such other **Claim** is also made and continuously maintained against an **Director** of an **Insured Organisation**;
  - c) with respect to any **Outside Position**, by such **Insured Person** in his or her service in an **Outside Position** or any matter claimed in against such **Insured Person** in respect of his or her service in an **Outside Position**; or
  - d) with respect to an **Insured Organisation**, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by such **Insured Organisation**, but solely in regard to a **Securities Claim**.

## **NOTICE TO ALL POLICYHOLDERS / NOTIS KEPADA SEMUA PEMEGANG POLISI**

If you have any complaints relating to this insurance policy, please contact our local branch manager or our complaints unit officer at:

*jika anda mempunyai aduan berhubung dengan polisi insurans ini, sila hubungi pengurus cawangan kami atau pegawai unit aduan di:*

**COMPLAINTS UNIT/UNIT ADUAN  
CUSTOMER SERVICE CENTRE  
BERJAYA SOMPO INSURANCE BERHAD**  
Level 36, Menara Bangkok Bank  
105, Jalan Ampang  
50450 Kuala Lumpur  
Tel. / *Tel.* : 03-2170 7300  
Fax/ *Faks* : 03-2170 4800  
E-mail / *E-mel* : info@berjaysompo.com.my

OR/ atau

The following bodies who are authorised to oversee public enquiries and complaints on insurance related matters:

*Pihak-pihak yang diberi kuasa untuk mengendalikan soalan-soalan umum dan pengaduan mengenai perkara-perkara berkenaan insurans:*

- 1. OMBUDSMAN FOR FINANCIAL SERVICES  
OMBUDSMAN PERKHIDMATAN KEWANGAN**  
Level 14, Main Block  
Menara Takaful Malaysia  
No. 4, Jalan Sultan Sulaiman  
50000 Kuala Lumpur  
Tel. / *Tel.* : 03-2272 2811  
Fax / *Faks* : 03-2272 1577  
E-mail / *E-mel* : enquiry@ofs.org.my  
Website / *Laman Web* : www.ofs.org.my
  
- 2. LAMAN INFORMASI NASIHAT DAN KHIDMAT (LINK)**  
Pengarah  
Jabatan LINK & Pejabat Wilayah  
Bank Negara Malaysia  
P.O. Box 10922  
50929 Kuala Lumpur  
Tel. / *Tel.* : 1-300-88-5465  
Fax/ *Faks* : 03-2174 1515  
E-mail / *E-mel* : bnmtelelink@bnm.gov.my