

General Conditions (GC) 05.2020

Professional Indemnity for Financial service providers under the FINSA

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This is a translation of the German AVB 05/2020 for professional and public liability for Financial service providers under the FINSA. In the event of a claim, the German version shall be binding.

PROFESSIONAL INDEMNITY INSURANCE
General Conditions of Insurance (GC)
PI Com GenCond eng (05/2020) for Financial service providers under the FINSA
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I. SCOPE OF INSURANCE

1. Insured Activities

This Policy covers all activities and functions of the Insured Persons in connection with the exercise of their profession, including the usual associated activities (such as internal or client events), as well as activities and functions specifically set forth in the proposal form or in an endorsement to this Policy.

2. Liability for Financial Loss

This Policy provides coverage for Claims made against an Insured Person for Financial Loss based on their legal liability in connection with the insured activities or functions.

Financial Loss means losses that are neither bodily injury (death, bodily injury or psychological harm) nor property damage (damage to, loss or destruction of, or loss of use of tangible property), nor which arise from such bodily injury or property damage.

Financial Loss shall not include:

- a) wages, salaries or other remuneration or compensation of the Insured Persons;
- b) any payments or indemnification by an Insured Person before a Claim has been made.

A Claim means:

- (i) any written demand against an Insured Person for the payment of damages; or
- (ii) the commencement of civil or criminal proceedings which could give rise to a claim for liability covered by this Policy, including the filing of an action, a demand for legal aid, a third-party notice, an attachment, a preliminary injunction or the taking of evidence against an Insured Person; or
- (iii) the commencement of an official investigation or proceeding which could give rise to a claim for liability covered by this Policy.

3. Insured Persons

This Policy covers the liability of the following persons:

- a) the Policyholder and its subsidiaries insured hereunder (the "Insured Companies" herein);
- b) the members of the Board of Directors and the General Management of the Insured Companies, with the exception of liability arising out of their capacity or function as a director or officer;
- c) employees of the Insured Companies;
- d) other assistants ("Hilfspersonen") of the Insured Companies, including persons who only work temporarily for an Insured Company (freelancers and the like), with the exception of independent contractors.

This Policy shall also cover spouses, heirs and legal representatives of the Insured Persons, but only insofar as a Claim is made against them with respect to the liability of an Insured Person.

This Policy shall cover subsidiaries of the Policyholder, if in regard to such entity at the inception of the Policy Period the Policyholder directly or indirectly

- (i) held a majority of the voting rights; or
- (ii) had the right to appoint or remove the majority of the members of the executive bodies, including the Board of Directors or the General Management, and the Policyholder was also a shareholder; or
- (iii) had the right to exercise a dominating influence pursuant to a control agreement or a provision in the company's articles of association or other organisational documents.

Coverage under this Policy extends to such a subsidiary only for Claims first made during the period in which the company fulfilled the abovementioned conditions.

This Policy does not cover external auditors, liquidators, trustees in bankruptcy, or receivers of the Insured Companies, or similar officials appointed by a governmental body or regulator.

4. Insured Subsidiaries

Subsidiaries are also insured if, at the beginning of the insurance period, the policyholder directly or indirectly

- a) holds the majority of the voting rights; or
- b) has the right to appoint or remove the majority of the members of the administrative bodies, in particular the board of directors or the management, and in which he is also a shareholder; or

- c) has the right to exercise a controlling influence by virtue of a control agreement or a provision in the contract of partnership.

Insurance cover for a subsidiary is only granted for claims caused during the insurance period when the company fulfilled the above conditions.

II. **EXTENSIONS OF COVERAGE**

1. Gross Negligence

This Policy extends cover to gross negligence and the Insurer waives its right to reduce or limit its liability under this Policy based on Art. 14.2 of the Swiss Federal Act on Insurance Contracts of 1908 ("ICA").

2. Criminal Defence Costs

This Policy extends cover to the costs incurred by an Insured Person in the defence of criminal investigations or proceedings involving their activities and functions for the Insured Companies, if an act, omission or breach of duty is alleged which could lead to a Claim covered by this Policy. Only those defence costs incurred with the prior written consent of the Insurer shall be covered.

3. Dishonesty of Employees

This Policy extends cover to pay on behalf of the Insured Person all Claims which the Insured Person shall become legally liable to pay arising out of the performance of the Insured Person's information technology services, brought about or contributed to by any dishonest, fraudulent, malicious, or criminal act or omission of any employee who falls within the definition of Insured Person provided that this extension will not provide indemnity to the perpetrator of any such dishonest, fraudulent, malicious, or criminal act or omission. Exclusion V. 3. will not apply to any Claim made by the Insured Person for indemnity under this extension.

In such case the Insurer shall pay the amount of the Claim to which it had previously agreed in writing up to the amount of the Sublimit stated in the Schedule.

4. Attendance at Investigations

This Policy extends cover to the costs incurred by an Insured Person in respect of attendance at investigations which are not directed against the Insured Person but against an Insured Company, but only if and to the extent that the Insured Person is legally required to participate in such investigation. Only those costs of legal counsel appointed to represent the Insured Person as well as reasonable travel expenses incurred with the prior written consent of the Insurer shall be covered.

5. Outside Directorship Liability

This Policy extends cover to the Insured Persons for Financial Losses resulting from Claims made against them arising out of their capacity or function as a member of the Board of Directors or Board of Trustees or in a comparable supervisory position of a third company other than an Insured Company.

For purposes of this extension, with respect to the Board of Directors of a stock corporation only the following positions shall be covered:

- a) As a member of a Board of Directors having several members, with the exception of Chairman or an Executive Board Member to whom management functions are delegated; or
- b) As the sole member of a Board of Directors, but only if there is separate General Management; or
- c) As a fiduciary member of the Board of Directors of a domiciliary company, but only if the fiduciary mandate agreement states that the Insured Person is required to fulfil their duties in accordance with the instructions or written directives of the principal and provided that the principal is contractually obligated to hold the Insured Person harmless from all claims for liability arising from such fiduciary mandate.

The following restrictions apply to the extension of coverage under this Section:

- (i) It shall be a condition of the coverage that the compensation derived from all such mandates are paid to the Insured Person and that such mandates arise out of the exercise of the Insured Person's professional activities;
- (ii) The insurance coverage hereunder shall be subsidiary to and in excess of any other directors or officers liability insurance that inures to the benefit of the Insured Person or any indemnification available from the third company, and this Policy shall only provide cover up to the amount which the Insured Person is unable to obtain payment from such other insurance or indemnification from such third company.

- (iii) The Insurer's liability for all Claims and defence costs under this extension shall be limited to an aggregate sub-limit of CHF 500'000 unless otherwise stated in the Schedule to the Policy.
- (iv) The third company, the domiciliary company is at the inception of the Policy Period
 - a) not insolvent or over indebted; or
 - b) not bankrupt; or
 - c) in liquidation; or
 - d) not a financial institution (financial institutions contain all kind of banks, quasi-banking financial companies, mutual funds, asset managers, trusts, insurance and reinsurance companies, investment firms, real estate companies, private equity or venture capital companies as well as advisor and brokers of financial products and financial services); or
 - e) not listed at any stock exchange; or
 - f) not founded less than 24month before the inception date, or investment advisor/manager, investment fund; or
 - g) not domiciled in the USA or their territories.

Mandates fulfilling one of the above mentioned conditions are only insured if the Insurer has agreed to and the mandates are listed in an endorsement attached to this Policy.

If during the Policy Period new mandates have been taken over, which are not automatically covered, the Insurer has to include them in the Policy in written form. The Insurer may amend the terms and conditions of coverage and charge an additional premium if it decides to include these mandates.

- (v) This Policy shall not apply to any Claim, Financial Loss or Defence Cost based upon or in connection with losses which were known or should have been known to the Insured Person before taking over the mandate.

6. Damage or Loss of Third Party Documents

The Insurer shall pay all reasonable costs and expenses incurred by the Insured Person with the Insurer's written consent to replace and restore damaged or lost documents belonging to third parties, which for professional reasons were the possession of the Insured Person.

The amount payable by the Insurer for all costs and expenses within this coverage extension is limited to an aggregate sub-limit of CHF 50,000 unless otherwise stated in the Schedule to the Policy. The applicable retention for this extension of coverage is CHF 1,000 per loss event.

7. Libel and Slander

The Insurer hereby agrees to indemnify the Insured against all loss directly arising from any Claim first made against the Insured and notified to the Insurer during the Period of Insurance in respect of libel or slander committed in good faith by reason of words, written or spoken by the Insured in course of the Insured's Business.

8. Intellectual Property Rights & Data Privacy

This Policy extends cover to pay on behalf of the Insured Person all Claims which the Insured Person shall become legally liable to pay arising out of the performance of the Insured Person's information technology services for a breach or infringement of or unauthorised use of confidential information, trademarks (including trademarks protected by common law rights of passing off), copyrights, design rights (registered or unregistered), moral rights, data base rights, provided that such breach, infringement and/or unauthorised use was unintentional.

In such case the Insurer shall pay the amount of the Claim to which it had previously agreed in writing up to the amount of the Sublimit stated in the Schedule.

9. Reputational Claims Costs

The Insurer also provides coverage to the Insured Persons in the event of demonstrable harm to the public reputation of an Insured Person due to a Claim which is covered under this Policy.

In such case the Insurer will pay those Costs incurred with its prior written consent for the public relation consultant to improve and restore the reputation, up to the amount of the Sublimit stated in the Schedule.

10. Emergency Costs

If the Insurer's written consent cannot reasonably be obtained before Defence Costs are incurred with respect to any Claim, the Insurer will give retrospective approval for such Defence Costs up to an amount not exceeding the Sublimit stated in the Schedule.

If the Insurer's prior written consent cannot be reasonably obtained due to urgency, Defence Costs incurred up to the amount of the Sublimit stated in the Schedule are covered even without the prior written consent of the Insurer.

11. Compensation for Witnesses

Insurance cover is provided under this article in the event that an insured natural person is summoned and examined as a witness in court in connection with an insured event reported and covered under this policy. In addition to the sum insured, the insurer shall pay the policyholder the following lump sum compensation:

- CHF 750 per day on which an insured natural person is questioned in court.

12. Fines and Penalties

Excluded from insurance coverage are Claims arising from or in connection with contractual penalties, fines, monetary penalties, or damages with punitive character (including punitive, exemplary or multiple damages) or taxes or social contributions.

The Insurer shall pay on behalf of the Insured civil or administrative fines and penalties (including punitive, exemplary or multiple damages) arising from a Claim, which they must pay based upon a final judgment up to the amount of the Sublimit stated in the Schedule, however, only if the payment is legally insurable and permissible under the law of the jurisdiction where such fine or penalty was imposed and is not related to employment-related Claims.

Insurance cover extends also to civil fines and penalties which are imposed pursuant to Section 78dd-2 (g) (2) or Section 78ff (c) of the United States Foreign Corrupt Practices Act or similar laws of any other jurisdiction. Coverage is also provided to the Insured Persons for Claims for damages due to unpaid taxes and/or social contributions of the Policyholder or a Subsidiary for which an Insured Person is personally liable in the event of the insolvency of the Policyholder or a Subsidiary, when the failure to pay such taxes and/or social contributions was not a conscious decision of an Insured Person as well as for Defence Costs in connection with Claims involving taxes or social contributions ("AHV" or "BVG").

13. Bodily Injury and Property Damage

It is hereby agreed that the General Conditions of Insurance are supplemented and amended as follows:

I. INSURED LIABILITY FOR BODILY INJURY AND PROPERTY DAMAGE

The Policy extends cover to Claims made against Insured Persons for legal liability in connection with their insured activity or function due to bodily injury (death, bodily injury or psychological harm to persons) or property damage (damage to, loss or destruction of, or loss of use of tangible property) or consequential loss resulting from such bodily injury or property damage.

II. ADDITIONAL EXCLUSIONS

The Exclusions in the General Conditions of Insurance are supplemented as follows.
This Policy shall not apply to any Claim or Defence Costs:

1. Contract Fulfilment

based upon or in connection with the fulfilment of contracts or compensation claimed for failure to perform or for improper performance of contracts (business risks), including

- a) with regard to defects or deficiencies in products made or delivered or work performed;
- b) for costs and expenses of investigation and rectification;
- c) for loss of income and other financial losses due to such defects or deficiencies.

Also excluded are extra-contractual claims made in place of or in the alternative to the above-mentioned contractual claims.

2. Care and Custody

based upon or in connection with damage to third party property while being used or processed by an Insured Person, or while in the care or custody of an Insured Person for some reason (e.g. on commission), or which the Insured Person has rented or leased, subject however to the special coverage extensions in Art. III, Paragraphs 2 and 3 of this Endorsement.

3. Processing, Loading and Unloading

based upon or in connection with damage to third party property while carrying out or refraining from an insured activity in regard to such property (e. g. processing, repair, loading or unloading of a vehicle), subject however to the special coverage extensions in Art. III, Paragraphs 2 and 3 of this Endorsement.

4. Land, Water and Air Craft

based upon or in connection with bodily injury or property damage arising from the use or ownership of any land vehicle, watercraft or aircraft for which liability insurance is legally obligatory in Switzerland or which is registered abroad.

5. Loss Prevention Costs

based upon or in connection with loss prevention costs.

III. SPECIAL COVERAGE EXTENSIONS

1. Property Owners Liability

Coverage also extends to the legal liability of Insured Persons for bodily injury or property damage arising in connection with land, buildings, offices and facilities that serve the purpose of the insured activities in whole or part.

Liability arising from land and buildings (including those owned for investment purposes only) that do not serve the purpose of the insured activities, as well as liability as a builder-owner ("Bauherr"), are not covered by this extension.

2. Rental or Leased Real Property

Coverage also extends to the legal liability of Insured Persons for damage to rented or leased land, buildings and offices that serve the purpose of the insured activities in whole or part.

Not insured under this extensions are

- a) damage caused by fire, natural hazards or water, as well as damage to glass;
- b) damage caused by the gradual ingress of water as well as damage that occurs with use over time (wear and tear);
- c) costs and expenses to reinstate property to its original condition following changes made intentionally by or at the behest of an Insured Person;
- d) damage to furniture, machines and apparatus.

3. Rented Telecommunications Systems

Coverage also extends to the legal liability of Insured Persons for damage to rented or leased telecommunication systems (e.g. telephones, telefax machines, video players, or central climate control systems).

Not insured under this extension is damage caused by fire, natural hazards or water.

4. Loss of Entrusted Keys

Coverage also extends to the legal liability of Insured Persons for the loss of keys to buildings and offices that are rented, leased, managed or entered by Insured Persons for the purpose of carrying out the insured activities. Also covered by this extension are the costs for making changes as a result thereof or the necessary replacement of locks (including computer-controlled locking systems) and the corresponding keys (including electronic badges).

5. Business Trips Abroad

Coverage also extends to the legal liability of Insured Persons for bodily injury or property damage caused during a temporary business trip outside of Switzerland. Coverage also extends to such liability arising from the rental of living quarters, hotel rooms and apartments.

14. Cyber Liability Extension

This Policy extends cover to claims resulting from any malware or malicious code (including virus, Trojan horse, etc) being disseminated to a third party network by the Insured Person.

It is a condition precedent to coverage under this endorsement that the Insured Person must put in place and upgrade on a permanent basis adequate IT security measures (antivirus, firewall, etc).

III. **POLICY PERIOD AND GEOGRAPHICAL SCOPE**

1. Claims Made Principle

This Policy covers Claims first made during the Policy Period or any Extended Reporting Period (claims made principle) for Financial Loss caused after the Retroactive Date.

2. Retroactive Coverage

If no Retroactive Date is stated in the Schedule to the Policy, this Policy covers acts and omissions committed prior to the Policy Period, provided that the Insured Person had no knowledge of such act or omission or of the Financial Loss before concluding this Policy.

3. Notice of Circumstances

The Insured Person may notify the Insurer of any circumstances likely to give rise to a Claim covered by this Policy.

Such notice must be made no later than 30 days after the termination of this Policy or within any Extended Reporting Period. The notice must include a description of the circumstances, the nature and amount of the possible Claim, as well as the identity of the Insured Person involved and the potential claimants.

All subsequent Claims based upon such circumstances shall be deemed to have been first made within the Policy Period in which such circumstances were first notified to the Insurer.

The Insured Persons shall have no right to notify such circumstances if this Policy has been cancelled, terminated or not renewed by the Insurer due to:

- a) late payment of premium; or
- b) non-disclosure or misrepresentation of a material fact prior to concluding this Policy.

4. Extended Reporting Period in Case in the Event of business termination

If the Insurance Policy expires due to cessation of profession or business or due to the death of the owner, the Insured are automatically entitled to a premium-free Extended Reporting Period, which lasts as long as the statutory limitation period for claims, but no longer than 10 years.

During the Extended Reporting Period, claims are also insured which are asserted for the first time after the end of the contract due to damage caused before the end of the contract. The insurance cover is based on the insurance conditions applicable to the last insurance period and only applies to the extent of the unused part of the sum insured of this insurance period.

5. Extended Reporting Period for former Insured Persons

If an insured person leaves the group of insured persons during the term of this insurance Policy (e.g. due to termination of employment), the insurance cover for him/her shall continue until the end of this insurance contract or the expiry of a subsequent notification period, insofar as the act or omission giving rise to liability was committed before the leaving.

6. Extended Reporting Period in other cases

Upon the termination of this Policy, including in case of non-renewal, the Policyholder shall have the right to purchase an Extended Reporting Period under the following conditions:

- a) The period for extended reporting and the additional premium are stated in the Schedule to the Policy;
- b) The Policyholder requests such additional cover no later than 30 days after termination of the Policy; and
- c) The Policyholder pays the additional premium to the Insurer within 60 days after termination of the Policy.

The Insured shall have no right to purchase such an Extended Reporting Period, if

- (i) The termination or non-renewal is due to the late payment of premium; or
- (ii) The termination or non-renewal is due to nondisclosure or misrepresentation of a material fact prior to concluding the Policy; or
- (iii) The Policyholder is in bankruptcy, receivership or liquidation proceedings; or
- (iv) The Policyholder has replaced this Policy with an insurance contract from another liability insurer.

During the Extended Reporting Period, Claims first made after the termination of this Policy are covered, but only for Financial Losses caused before termination. The insurance coverage is subject to the terms and conditions in effect during the last Policy Period and shall only be available to the extent of the remaining unpaid Policy Limits for the last Policy Period.

If purchased, any Extended Reporting Period purchased may not be cancelled.

7. Policy Period

This Policy is effective for the Policy Period stated in the Schedule to the Policy.

8. Geographical Scope

This Policy Covers Claims made worldwide with the exception of those Claims made before the courts or under the laws of the United States of America, including its territories or possessions.

IV. EXTENT OF COVERED LIABILITY

1. Defence Costs and Loss

Coverage under this Policy shall include the cost to investigate and defend founded and unfounded Claims and the indemnification of founded Claims.

The Insurer shall be authorized and empowered, but not obligated, to defend or settle Claims and make all statements necessary thereto in the name of the Insured Person and the Insured Person is obligated to authorize and empower the Insurer accordingly.

The Insured Person shall select and instruct defence counsel, subject to the Insurer's consent.

In case a legal proceeding is filed after a Claim has been made, the Insurer may, but is not obligated, to defend such legal proceeding at its own expense in the name of the Insured Person.

The Insurer shall pay the defence costs incurred until a final judgment or settlement concerning the Claim.

Defence Costs mean the reasonable and necessary attorney's fees, court costs, expert fees, witness costs, loss prevention and mitigation expenses, investigation costs and travel expenses relating to the defence and settlement of covered Claims made against the Insured Persons. Defence Costs shall not include fees, costs or expenses incurred before a Claim was made.

2. Limits of Liability

The Policy Limit stated in the Schedule to the Policy is the maximum amount payable by the Insurer for each and every Claim and in the aggregate for the Policy Period. Defence Costs are part of and included within the Policy Limit.

The Sub-limits stated in the Schedule to the Policy or in the General Conditions are part of and included within the Policy Limit. Payments by the Insurer within a Sub-limit shall reduce the Policy Limit.

3. Retention

The Retention stated in the Schedule to the Policy shall be borne by the Insured Persons for each and every Claim and shall remain uninsured. In case several Retentions apply to a Claim, only the highest such Retention shall be applicable.

4. Loss Series

A Loss Series is defined as:

- a) several Claims made by one or more claimants resulting from a single act or omission of one or more Insured Persons;
- b) several Claims made by one or more claimants arising from several acts or omissions of one or more Insured Persons that are the same or similar, or which arise from the same facts and are legally and economically related to each other.

All Claims within a Loss Series shall be deemed to be a single Claim under this Policy. Such a Claim shall be allocated solely to the Policy Period in which the first Claim of the Loss Series was made. If the first such Claim was made prior to the Retroactive Date, the entire Loss Series shall not be covered by this Policy.

A single Retention shall apply to a Loss Series.

V. EXCLUSIONS

This Policy shall not apply to any Claim, Financial Loss or Defence Costs:

1. Own Loss

for any loss or damage sustained by the Insured Persons themselves.

2. Intentional or Criminal Acts

- a) based upon or in connection with an intentionally caused loss or an intentional act or omission, including an intentional violation of law, regulation, articles of association, company rules, employment contracts or directives or instructions;
- b) based upon or in connection with criminal acts of an Insured Person, without prejudice however to the provisions of Art. II Section 2.

In case such an intentional or a criminal act is alleged, coverage shall be granted only on the condition that such intentional or criminal act is not determined by way of a settlement, admission, or decision of a court, arbitration tribunal or regulatory authority. With such declaration the coverage of this Policy will be retroactively omitted and all payments by the Insurer have to be refunded.

3. Prior or Pending Matters

based upon or in connection with

- a) losses which were known to the Insured Person before the inception date of this Policy;
- b) circumstances already notified to and fully or partially covered by another insurance contract or other Policy Period of this Policy, including where the applicable policy limits are insufficient in amount or exhausted; or
- c) a Legal Dispute in which a Claim was pending on or made before the Continuity Date stated in the Schedule to this Policy; Legal Disputes means demands, claims, disputes, actions, suits, administrative actions, criminal or other official investigations, civil or criminal proceedings, judgments or enforcement measures as well as the facts upon which such a Legal Dispute is based; if no Continuity Date is stated in the Schedule to the Policy, the Continuity Date shall be the date from which the Insured Person had uninterrupted coverage from the Insurer.

4. Contractual Liability

based upon or in connection with any liability assumed under a contract which exceeds the liability imposed by law or regulation.

5. Fees and Commissions

based upon or in connection with disputes concerning fees, charges, commissions and other compensation for services rendered by the Insured Persons to third parties.

6. Fines, Penalties and Taxes

based upon or in connection with fines, penalties, contractual penalties, or other compensation of a punitive character (including punitive, exemplary or multiple damages), or taxes or social security contributions.

7. Environmental Impairment

based upon or in connection with Environmental Impairment. Environmental Impairment means the actual, alleged or threatened discharge, dispersal, release, escape or disposal of Environmental Perils upon land, movable or real property, any water-course or body of water, the air and the atmosphere as well as every demand or made of the Insured Person or Insured Company or of their own volition to test, supervise, clean, remove, treat, detoxicate, neutralize or contain Environmental Perils.

Environmental Perils are all dangerous substances which can damage or impair the environment, including solid, liquid, or thermal irritants, gases, vibrations, impurities, fog, vapours, smoke, soot, fumes, acids, alkalis, chemicals, waste materials, any other emissions, waste water, heat, radiation, pressure, oil or products containing oil, infectious or medical waste, asbestos or products containing asbestos, noise, radioactive and ionising materials.

8. Insolvency

as a result of the bankruptcy, insolvency, or receivership of an Insured Person or of a company which an Insured Person sub-contracted to provide services for a third party.

9. Directors and Officers Liability

against an Insured Person in their capacity or function as a director or officer of a company or other legal entity, unless covered under the extension in Art. II Section 4.

10. Market Fluctuation and Loss in Value

based upon or in connection with:

- a) depreciation of investments including securities, cash, currencies, options, futures, objects or other valuables; or
- b) the actual or alleged failure of an investment to perform as described or promised by an Insured Person;

unless such depreciation or failed performance was caused by a breach of duty by an Insured Person in the course of providing insured financial services.

11. Cash and Assets

for losses due to missing cash and the destruction or disappearance of cash or cash-like valuables (e.g. securities, checks, precious metals, gems, credit and customer cards and the like).

12. Intellectual Property

arising from granting or providing patents, licenses, research results, formulas, prescriptions, software, computer data, or plans for construction, fabrication or building.

13. Money Laundering

resulting from or in connection with or in any way involving Money Laundering.

Money Laundering means a criminal act, by which funds obtained illegally are transferred via legitimate persons and accounts in order to evade discovery of the illegal source of the funds.

14. Market Abuse

Arising out of, based upon or attributable to:

- a) any use or procurement by an insured, or any assistance or aiding by an insured in the procurement of, or participation after the fact by any insured in the procurement (whether acting alone or in collusion with others), and/or use of, non-public information in a manner prohibited by laws (common or statutory), any rule or regulation, including but not limited to any act in violation of, in breach of and/or which constitutes an offence under:
 - (i) the European Council Directive or any amendment(s) thereof (or any similar directive) on the insider dealing and market manipulations or abuses; or
 - (ii) any legislation which approves, implements or is designed to implement, or is similar to point a) above including Article 161 et seq. of the Swiss Criminal Code; or
 - (iii) the provisions of the UK Financial Services and Markets Act 2000;
- b) requiring or encouraging a third party to engage in actions which, if engaged in by the first person, would amount to prohibited actions.

15. Technology Failure

Arising out of, based upon or attributable to:

- a) any mechanical, electronic or software failure, faulty construction, error in design, latent defect, wear or tear, gradual deterioration, electrical disturbance, electronic data processing media failure or breakdown or any malfunction or error in programming or errors or omissions in processing; or
- b) an insured's failure to take reasonable steps to maintain and upgrade the insured's computer system; or
- c) breakdown or malfunction of any machine or system of machines including any electrical power interruption, surge, brown out or black out; or failure of telephone lines, data transmission line, satellites or other infrastructure compromising or supporting the internet.

Notwithstanding exclusion a) above shall not apply to any claim resulting solely from an error committed by an employee in using the system of the insured and which has caused a third party to sustain a loss.

16. performance and warranty claims

for performance of contracts or claims for non-performance or improper performance (to identify and remedy defects and faults in software or hardware manufactured or supplied or work performed by or on behalf of an insured person; for subsequent delivery; for rescission of the contract; or price reductions). Claims for consequential losses of non-performance or improper performance of contracts remain insured; excluded from this are claims for pecuniary losses as a result of non-performance or improper delivery of hardware.

17. Damage to property in care

loss or damage to items that an insured or a designated third party has taken over for use, processing, safekeeping or carriage or for other reasons (e.g. on a sale or return basis, for exhibition purposes) or that it has hired, leased or rented. The special extensions of cover "Tenant's damage" and "Rented telecommunications equipment" under Clause II Art. 13 Extensions of cover of this policy remain reserved.

18. Processing, loading and unloading damage

loss or damage occurring to items as a result of carrying out or failing to carry out an activity of an insured or of a designated third party on or using said items (e.g. processing, repair, loading or unloading of a vehicle). The special

extensions of cover "Tenant's damage" and "Rented telecommunications equipment" under Clause II Art. 13 Extensions of cover of this policy remain reserved.

19. Land Vehicles, Aircraft and Vessels

from damage resulting from the use or as the owner of land vehicles, watercraft and aircraft for which liability insurance is required by law in Switzerland or which are registered abroad

20. Not Insured Activities

an activity or function as:

- a) Auditor under the laws on banks, collective investment schemes, stock exchange and securities trading and for employee benefit schemes under the BVG;
- b) Interim management;
- c) Insurance broker;
- d) Real estate broker/broker and appraiser;
- e) Liquidator;

21. Regulators

by reason of or in connection with any claim by or on behalf of, or caused or carried on with the solicitation, assistance, participation or influence of, any Regulatory Authority, whether directly or indirectly and whether in the capacity of executor, administrator, liquidator, security holder, agent or assignee of the Insured Company, except:

- (i) where the authority is acting solely in its capacity as a customer or client of the insured Company; or
- (ii) where the Authority is acting in accordance with law on behalf of or for the benefit of a customer or client of the Insured Company or on behalf of an insured company.

Or client of the Insured or on behalf of a group of clients or customers of the Insured; provided that such claim would have been insured under this Policy if made by such client or customer or group of clients or customers; provided further that the claim was commenced and proceeded with wholly independently and without the solicitation, assistance, active participation or influence of any Insured.

22. Impairment

due to, alleged to be caused by or in connection with or in any way directly or indirectly related to:

- (i) a decline in the value (or lack of appreciation) of any investment, including any securities, money, currencies, options, futures, property or other valuables; or items of value; or
- (ii) an actual or alleged representation, advice, warranty or guarantee made by or on behalf of or for the benefit of an Insured Person in respect of the performance of any such investment; or
- (iii) a decrease in the value of a leased product or service;

unless such diminution in value or loss of value is caused by a breach of duty by an Insured Person in the execution or implementation of Financial Services.

VI. CHANGE OF RISK

1. Coverage for New Subsidiaries

If an Insured Company acquires or establishes a new subsidiary during the Policy Period, insurance coverage extends to the new Insured Persons insofar as the acquisition or establishment does not lead to an increased risk pursuant to Art. VI Section 2. However, such coverage only extends to Claims relating to acts, omissions or breaches of duty committed after the acquisition or establishment and which are not part of a Loss Series which commenced before the date of such acquisition or establishment. For this purpose, an acquisition is deemed to occur when the acquisition agreement is legally effective; an establishment is deemed to occur when the new subsidiary's acquires the legal capacity to act.

2. Cessation of Subsidiaries

In the event an organisation ceases to be a subsidiary before or after the inception date of this Policy, coverage with respect of such subsidiary and its Insured Persons shall continue until termination of this Policy but only with

respect to claims for Financial Losses based on Legal Liability committed, attempted or allegedly committed or attempted prior to the date such organisation ceased to be a subsidiary.

3. Increased Risk

Increased Risks shall be notified to the Insurer immediately and shall only be insured if the Insurer includes them in the Policy in written form.

An Increased Risk is defined as:

- a) the acquisition or the establishment of a subsidiary with a balance sheet sum of more than 20% of the consolidated balance sheet sum of the Insured Company, or of any balance sheet sum stated in the Schedule to the Policy; or
- b) the acquisition or establishment of a subsidiary having its domicile in the United States of America.

The Insurer may amend the terms and conditions of coverage and charge an additional premium if it decides to include the Increased Risk.

4. Automatic Run-off

- a) Insolvency

In the event of a legal duty to commence insolvency, bankruptcy or receivership proceedings in regard to the assets of an Insured Company, coverage only applies to Claims for acts or omissions committed before such point in time. If such point in time cannot be ascertained, the date of the application to commence such proceedings will be deemed applicable.

- b) Liquidation

In case an Insured Company is liquidated voluntarily, coverage only extends to Claims for breaches of duty committed before the resolution or other decision to commence liquidation.

- c) Merger

If an Insured Company merges with another company by way of absorption, coverage only extends to Claims for acts or omissions which took place before the date of such merger.

VII. DUTIES IN CASE OF CLAIM

1. Notification

The Insured Person against whom a Claim has been made shall give immediate written notice to the Insurer, in any event no later than thirty (30) days after the end of the Policy Period or until the end of any additional Extended Reporting Period. In case a criminal investigation or proceeding is commenced or a decision is rendered which results or could result in a payment of damages, the Insured Person shall notify the Insurer immediately in writing regardless of whether the Claim has been previously notified.

2. Cooperation, Loss Avoidance and Minimization

The Insured Persons are obligated to do everything possible to avoid and minimise losses and to assist in their clarification. The Insured Persons shall assist the Insurer in its defence, investigation and settlement of Claims and shall provide the Insurer with detailed and accurate reports concerning the Claim and all related facts, and shall provide the Insurer with all documents the Insurer deems necessary to evaluate the Claim.

3. Consent to Settlement

The Insured Persons shall not admit any liability nor settle or pay all or any part of a Claim without the prior written consent of the Insurer. If the resolution of a Claim by way of admission, payment or settlement fails due to lack of cooperation or consent by an Insured Person, the Insurer shall not be obligated to cover any additional amounts which arise after such failure by the Insured Person to cooperate or consent.

4. No Cancellation in Case of Claim

The Insurer waives the statutory right of cancellation in case of a partial loss (Art. 42 ICA).

VIII. GENERAL CONDITIONS

1. Non-Termination in Case of Bankruptcy

The Insurer waives the statutory automatic termination of this Policy in case of the Policyholder's bankruptcy (Art. 55.1 ICA), without prejudice to Art. VI Section 3.

2. Severability

To the extent that the conduct or knowledge of an Insured Person is relevant under the terms and conditions of this Policy, these rules shall apply:

- a) The Insured Companies shall only be imputed with the conduct or knowledge of their representatives as follows: Chief Executive Officer, Chief Financial Officer, Chairman of the Board of Directors, Head of the Legal Department, Head of the Insurance Department or Risk Management, and any other persons holding comparable positions;
- b) The conduct or knowledge of one Insured Person shall not be imputed to any other Insured Person.

3. Breach of Obligations

In case of a breach of any obligation owed to the Insurer under Sections 1 – 3 of this Art. VII, the Insurer shall have no liability under this Policy, unless such breach was without fault under the circumstances. In case of a negligent breach of such obligations, the Insurer remains liable to the extent that the breach did not affect the establishment of the facts or the extent of the Insurer's liability under the Policy.

4. Subrogation

The Insurer shall be subrogated to of all the Insured Person's rights of recovery in respect of any Claim to the extent that the Insurer has made payments under this Policy. The Insured Persons shall be liable for any act or omission which could prejudice such potential subrogation rights. If third parties are released from their liability without the Insurer's consent, the Insurer's liability under this Policy shall be reduced in the amount of such release.

5. Other Insurance

This Policy shall apply in excess of any other liability insurance policy or other kind of insurance covering the Claim, unless such other insurance was specifically purchased to be excess of this Policy. The Insurer is only obligated to make payments if the Claim is not covered by such other insurance. If such other insurance was also concluded with the Insurer or with an affiliated company of the Insurer, the total payments of the Insurer and its affiliate together shall be limited to the highest policy limit per claim and policy period.

6. Assignment of Rights

No rights under this Policy may be assigned or pledged prior to a final and binding decision as to coverage without the express prior written consent of the Insurer.

7. Notification to the Insurer

All notices required under this Policy shall be made in writing to the Insurer and addressed to:

Liberty Mutual Insurance Europe SE
Branch Zurich
Lintheschergasse 19
CH-8001 Zurich
Tel: + 41 (0) 44 285 10 00
Fax: + 41 (0) 44 285 10 09

8. Applicable Law and Jurisdiction

This Policy shall be governed solely by the laws of Switzerland.

Exclusive jurisdiction for any legal proceedings arising under or in connection with this Policy shall be the ordinary courts at the Swiss domicile of either the Insurer or the Policyholder.

9. Allocation

Where a claim or its defence costs relate to both an insured part under this policy and an uninsured part, the insurer and the insured persons will seek a fair and reasonable allocation of that claim and defence costs according to their respective liabilities and prospects of success.

This may involve the following cases:

- (a) A claim relates to different matters, some of which are insured and some of which are uninsured; or
- (b) A claim is made against persons insured under this policy and other persons not insured under this policy.

10. Insurance Cover Confirmation

If the insurer has confirmed the insurance cover under this policy to any authority or regulatory body, the policyholder agrees that the insurer has the right to notify that authority or regulatory body of the change or termination of the insurance.

11. Non-Assignment and pledge prohibition

Claims for insurance cover may not be assigned or pledged prior to their legally binding determination without the express written consent of the insurer.