

財團法人證券投資人及期貨交易人保護中心
105 年度委託研究計畫

「董監事及重要職員責任保險與投資人權益保護」

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第一章 前言

近年來公司治理議題日趨重視，主管機關致力於修正相關法令規定，以強化對企業董事(包括獨立董事)、監察人或其他重要職員在企業經營責任上之規範，確保企業之正常營運並保障投資人權益。一旦，企業經營涉及不法情事，投資人可依據公司法及證券投資人及期貨交易人保護法等相關規定，對企業之董事、監察人及經營階層提起訴訟與求償。

此立意雖良善，但卻間接造成企業之董事、監察人及經營階層因肩負公司企業營運績效成敗之責任，卻恐因決策上之疏失，衍生高額賠償責任，造成企業之董事、監察人及經營階層畏懼依其專業判斷而獨立做成公司經營之重大決策。如此一來，不僅對於企業營運毫無助益，更可能導致投資人投資意願降低，影響整體企業經營與產業發展。因此，企業與董事、監察人及經營階層有必要尋求適當的工具以有效移轉風險，於是董監事及重要職員責任保險因應而生。

董監事及重要職員責任保險最早起源自英美，當時正值美國華爾街金融風暴、股市崩盤，使得企業經營階層不得不面對法律訴訟。故以董監事及重要職員個人財產為保障標的的保險商品產生。甫上市初期，因價格高昂且核保嚴格，願意承保的公司不多，同時願意購買的企業亦屬少數。至 1970 年代，美國許多企業及其經營階層違反公司法、證券交易法等，股東集體訴訟案件急速增加，法院判決賠償金額上升，企業與經營階層紛紛尋求責任保險保障，於是董監事及重要職員責任保險逐漸普及。

董監事及重要職員責任保險在國外發展超過半世紀之後，於西元 1996 年正式由美商美國環球產物保險有限公司臺灣分公司引進國內。當時國內因政治解嚴後投資環境自由度大幅提高，許多中大型企業紛紛

赴海外募集資金與跨國投資，「董監事及重要職員責任保險」成為企業跨國發展之避險工具。發展至今，實務上尚有諸多問題亟待解決，例如：保險公司是否設定過多不保事項或除外條款等，而影響此險種移轉風險之實質功能。

希望透過本研究計畫，就目前董監事及重要職員責任保險之市場現況加以分析，並參考其他國家董監事及重要職員責任保險之運作模式，藉此檢視我國董監事及重要職員責任保險，以有效發揮此保險之風險轉嫁功能。

本研究報告概分為五章，除本章緒論之外，第二章為我國對於董監事及重要職員責任保險之規範與實踐，第三章為探討各國對於董監事及重要職員責任保險相關法規面與董監事及重要職員責任保險商品差異比較分析，第四章為我國董監事及重要職員責任保險相關問題評析，第五章為結論與建議。

第二章 我國對於董監事及重要職員責任保險之 規範與實踐

董監事及重要職員責任保險源於英國，於美國發光發熱。西元 1929 年美國社會正處於經濟大蕭條，股市崩盤造成經營不善的公司紛紛倒閉，投資人便而對公司負責人採取訴訟求償行動，因此西元 1930 年起便有保險公司提供董監事及重要職員責任保險的服務。西元 1934 年英國勞伊茲(Lloyd's)於美國賣出第一張董監事及重要職員責任保險保單起，至今美國高達 9 成以上之公開發行公司投保，屬成熟之保險商品。多數國家紛紛引進此制度，亦多以美國為仿效對象。

我國於民國 85 年 10 月經財政部核准，由美商美國環球產物保險有限公司臺灣分公司(現美亞產物保險公司)引進國內第一張董監事及重要職員責任保險商品，當時國內企業對此險種相當陌生且企業並無海外籌資之需求，故投保率並不高。爾後，隨著我國商業與資本市場逐漸蓬勃發展，接連發生「博達案」、「太電案」、「銳普案」、「英華達案」等董、監事遭投資人求償之訴訟案件，可見國內企業對於董監事及重要職員責任保險之需求殷切。

第一節 關於董監事及重要職員法律責任及其責任保險相關規定

企業負責人於執行業務時，違反忠實義務，須承擔法律責任。我國董監事及重要職員的法律責任係屬民事責任，其所可能遭受賠償請求主要法律包括：民法、公司法、保險法、證券交易法以及證券投資人及期

貨交易人保護法等。詳如圖 2-1 所示。

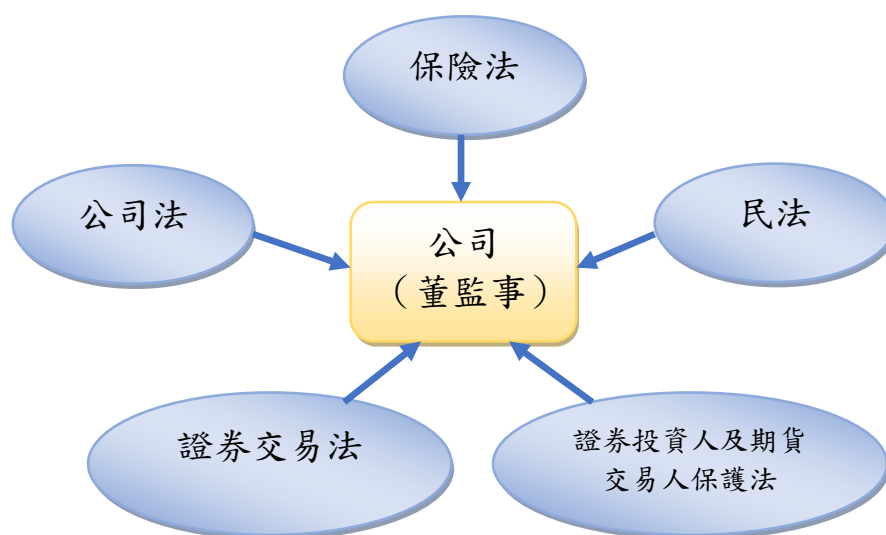


圖 2-1 公司及董監事可能遭受賠償請求之法令

謹將董監事及重要職員責任法律責任基礎與賠償範圍所涉及主要法律及相關責任保險分述如下：

第一項 董監事及重要職員之法律責任

一、民法相關規定：

(一) 民法針對法人有代表權職員及一般職員責任分別規定，前者依據

民法第 28 條規定，法人對於其董事或其他有代表權之人因執行職

務所加於他人之損害，與該行為人連帶負賠償之責任；後者則規

定於同法第 188 條¹，本研究涉及對象應以前者為主。

¹ 民法 188 條 受僱人因執行職務，不法侵害他人之權利者，由僱用人與行為人連帶負損害賠償責任。但選任受僱人及監督其職務之執行，已盡相當之注意或縱加以相當之注意而仍不免發生損害者，僱用人不負賠償責任。

- (二) 一般侵權行為責任：民法第 184 條第 1 項規定「因故意或過失，不法侵害他人之權利者，負損害賠償責任。故意以背於善良風俗之方法，加損害於他人者亦同」。同條第 2 項則規定「違反保護他人之法律，致生損害於他人者，負賠償之責。但能證明其行為無過失者，不在此限。」
- (三) 共同侵權行為責任：民法第 185 條第 1 項規定「數人共同不法侵害他人之權利者，連帶負損害賠償責任；不能知其中孰為加害人者，亦同。」依據 66 年最高法院例變一號判例規定，共同侵權行為人間不以有意思聯絡為必要，數人因過失不法侵害他人權利，苟各行為人之過失行為均為其所生損害共同原因，亦足成立共同侵權行為。該項判例，可資參考。
- (四) 違反委任義務：民法第 544 條規定「受任人因處理委任事務有過失，或因逾越權限之行為所生之損害，對於委任人應負賠償之責。」

二、公司法相關規定

- (一) 公司負責人定義：公司法第 8 條第 1 項規定「本法所稱公司負責人：在無限公司、兩合公司為執行業務或代表公司之股東；在有限公司、股份有限公司為董事。」
- 同條第 2 項規定，「公司之經理人或清算人，股份有限公司之發起

如被害人依前項但書之規定，不能受損害賠償時，法院因其聲請，得斟酌僱用人與被害人之經濟狀況，令僱用人為全部或一部之損害賠償。
僱用人賠償損害時，對於為侵權行為之受僱人，有求償權。

人、監察人、檢查人、重整人或重整監督人，在執行職務範圍內，亦為公司負責人。」

(二) 公司負責人業務上侵權行為：公司法第 23 條第 1 項規定「公司負責人應忠實執行業務並盡善良管理人之注意義務，如有違反致公司受有損害者，負損害賠償責任。」同條第 2 項規定「公司負責人對於公司業務之執行，如有違反法令致他人受有損害時，對他人應與公司負連帶賠償之責。」

(三) 公司董事責任：公司法第 193 條第 2 項規定「董事會之決議，違反前項規定(按為董事會執行業務，應依照法令章程及股東會之決議)，致公司受損害時，參與決議之董事，對於公司負賠償之責。但經表示異議之董事，有紀錄或書面聲明可證者，免其責任。」

(四) 少數股東請求對董事訴訟：公司法第 214 條第 1 項規定「繼續一年以上，持有已發行股份總數百分之三以上之股東，得以書面請求監察人為公司對董事提起訴訟。」同條第 2 項規定「監察人自有前項之請求日起，三十日內不提起訴訟時，前項之股東，得為公司提起訴訟；股東提起訴訟時，法院因被告之申請，得命起訴之股東，提供相當之擔保；如因敗訴，致公司受有損害，起訴之股東，對於公司負賠償之責。」

(五) 監察人之查核表冊權：公司法第 219 條第 1 項規定「監察人對於

董事會編造提出股東會之各種表冊，應予查核，並報告意見於股東會。」同條第 2 項規定「監察人辦理前項事務，得委託會計師審核之。」同條第 3 項規定「監察人違反第一項規定而為虛偽之報告者，各科新臺幣六萬元以下罰金。」

(六) 監察人之責任：公司法第 224 條規定「監察人執行職務違反法令、章程或怠忽職務，致公司受有損害者，對公司負賠償責任。」

三、證券交易法相關規定

(一) 公開說明書虛偽或隱匿之責任：

依據證券交易法第 32 條規定「前條之公開說明書，其應記載之主要內容有虛偽或隱匿之情事者，左列各款之人，對於善意之相對人，因而所受之損害，應就其所應負責部分與公司負連帶賠償責任：

一、 發行人及其負責人。

二、 發行人之職員，曾在公開說明書上簽章，以證實其所載內容之全部或一部者。

三、 該有價證券之證券承銷商。

四、 會計師、律師、工程師或其他專門職業或技術人員，曾在公開說明書上簽章，以證實其所載內容之全部或一部，或陳述意見者。

前項第一款至第三款之人，除發行人外，對於未經前項第 4 款之人

簽證部分，如能證明已盡相當之注意，並有正當理由確信其主要內容無虛偽、隱匿情事或對於簽證之意見有正當理由確信其為真實者，免負賠償責任；前項第四款之人，如能證明已經合理調查，並有正當理由確信其簽證或意見為真實者，亦同。」

(二) 歸入權之行使：

證券交易法第 157 條規定「發行股票公司董事、監察人、經理人或持有公司股份超過百分之十之股東，對公司之上市股票，於取得後六個月內再行賣出，或於賣出後六個月內再行買進，因而獲得利益者，公司應請求將其利益歸於公司。發行股票公司董事會或監察人不為公司行使前項請求權時，股東得以三十日之限期，請求董事或監察人行使之；逾期不行使時，請求之股東得為公司行使前項請求權。

董事或監察人不行使第一項之請求以致公司受損害時，對公司負連帶賠償之責。第一項之請求權，自獲得利益之日起二年間不行使而消滅。第二十二條之二第三項之規定，於第一項準用之。關於公司發行具有股權性質之其他有價證券，準用本條規定。」

(三) 不得為股票買入或賣出之人及其違反之效果：

證券交易法第 157 條之 1 第 1~4 項規定「下列各款之人，實際知悉發行股票公司有重大影響其股票價格之消息時，在該消息明確

後，未公開前或公開後十八小時內，不得對該公司之上市或在證券商營業處所買賣之股票或其他具有股權性質之有價證券，自行或以他人名義買入或賣出：

一、該公司之董事、監察人、經理人及依公司法第 27 條第 1 項規

定受指定代表行使職務之自然人。

二、持有該公司之股份超過百分之十之股東。

三、基於職業或控制關係獲悉消息之人。

四、喪失前三款身分後，未滿六個月者。

五、從前四款所列之人獲悉消息之人。

前項各款所定之人，實際知悉發行股票公司有重大影響其支付本息能力之消息時，在該消息明確後，未公開前或公開後十八小時內，不得對該公司之上市或在證券商營業處所買賣之非股權性質之公司債，自行或以他人名義賣出。

違反第一項或前項規定者，對於當日善意從事相反買賣之人買入或賣出該證券之價格，與消息公開後十個營業日收盤平均價格之差額，負損害賠償責任；其情節重大者，法院得依善意從事相反買賣之人之請求，將賠償額提高至三倍；其情節輕微者，法院得減輕賠償金額。

第一項第五款之人，對於前項損害賠償，應與第一項第一款至第

四款提供消息之人，負連帶賠償責任。但第一項第一款至第四款提供消息之人有正當理由相信消息已公開者，不負賠償責任。」

四、保險法

(一) 保險公司董監事負無限清償責任規定：

保險公司董監事除依據前揭公司法之規定，須對公司負損害賠償責任外，尚有可能須對公司之債權人負連帶無限清償責任。保險法第 153 條第 1 項規定「保險公司違反保險法令經營業務，致資產不足清償債務時，其董事長、董事、監察人、總經理及負責決定該項業務之經理，對公司之債權人應負連帶無限清償責任。」同條第 2 項規定「主管機關對前項應負連帶無限清償責任之負責人，得通知有關機關或機構禁止其財產為移轉、交付或設定他項權利，並得函請入出境許可之機關限制其出境。」同條第 3 項規定「第一項責任，於各該負責人卸職登記之日起滿三年解除。」是以，倘董事及監察人違反保險法令經營業務（例如銷售未經送審之保險商品、錯價放佣虛設帳目、違反保險業資金運用或關係人交易限制等）造成公司之資產不足清償債務，該公司之債權人亦得依法請求相關董事及監察人負無限清償責任。且主管機關對相關應負連帶無限清償責任之負責人，亦得依據保險法第 153 條第 2 項規定，通知有關機關或機構禁止其財產為移轉、交付或設

定他項權利，並得函請入出境許可之機關限制其出境。惟應注意者，前述董監事對公司債權人應負連帶無限清償之責任係於各該負責人卸職登記之日起滿3年方才解除。

- (二) 主管機關對保險業負責人其他處分規定：保險法第149條之6規定「保險業經主管機關依第一百四十九條第三項規定為監管、接管、勒令停業清理或命令解散之處分時，主管機關對該保險業及其負責人或有違法嫌疑之職員，得通知有關機關或機構禁止其財產為移轉、交付或設定他項權利，並得函請入出境許可之機關限制其出境。」

五、證券投資人及期貨交易人保護法

- (一) 保護機構訴訟或仲裁實施權：證券投資人及期貨交易人保護法第28條第1項規定「保護機構為保護公益，於本法及其捐助章程所定目的範圍內，對於造成多數證券投資人或期貨交易人受損害之同一原因所引起之證券、期貨事件，得由二十人以上證券投資人或期貨交易人授與仲裁或訴訟實施權後，以自己之名義，提付仲裁或起訴。證券投資人或期貨交易人得於言詞辯論終結前或詢問終結前，撤回仲裁或訴訟實施權之授與，並通知仲裁庭或法院。保護機構依前項規定提付仲裁或起訴後，得由其他因同一原因所引起之證券或期貨事件受損害之證券投資人或期貨交易人授與仲

裁或訴訟實施權，於第一審言詞辯論終結前或詢問終結前，擴張應受仲裁或判決事項之聲明。」

第二項 有關投保責任保險之規範

一、上市上櫃公司治理實務守則

- (一) 董事的責任保險：上市上櫃公司治理實務守則第 39 條規定「上市上櫃公司得依公司章程或股東會決議，於董事任期內就其執行業務範圍依法應負之賠償責任為其購買責任保險，以降低並分散董事因錯誤或疏失行為而造成公司及股東重大損害之風險。」
- (二) 監察人的責任保險：上市上櫃公司治理實務守則第 49 條規定「上市上櫃公司得依公司章程或股東會決議，於監察人任期內就其執行業務範圍依法應負之賠償責任為其購買責任保險，以降低並分散監察人因錯誤或疏忽行為而造成公司及股東重大損害之風險。」

二、金融控股公司治理實務守則

- (一) 金融控股公司董事的責任保險：金融控股公司治理實務守則第 48 條規定「金融控股公司宜為董事就其執行業務範圍內依法應負之賠償責任，與保險業訂立責任保險契約。」
- (二) 金融控股公司監察人的責任保險：金融控股公司治理實務守則第 60 條規定「金融控股公司設有監察人者，宜為監察人就其執行業

務範圍內依法應負之賠償責任，與保險業訂立責任保險契約。」

三、票券金融公司治理實務守則

(一) 票券金融公司董事的責任保險：票券金融公司治理實務守則第 48

條規定「票券金融公司宜為董事就其執行業務範圍內依法應負之賠償責任，與保險業訂立責任保險契約。」

(二) 票券金融公司監察人的責任保險：票券金融公司治理實務守則第

60 條「票券金融公司設有監察人者，宜為監察人就其執行業務範圍內依法應負之賠償責任，與保險業訂立責任保險契約。」

四、銀行業公司治理實務守則

(一) 銀行業董事的責任保險：銀行業公司治理實務守則第 48 條規定「銀

行業宜為董事就其執行業務範圍內依法應負之賠償責任，與保險業訂立責任保險契約。」

(二) 銀行業監察人的責任保險：銀行業公司治理實務守則第 60 條規定

「銀行業設有監察人者，宜為監察人就其執行業務範圍內依法應負之賠償責任，與保險業訂立責任保險契約。」

五、證券商公司治理實務守則

(一) 證券商董事的責任保險：證券商公司治理實務守則第 39 條規定

「證券商得依公司章程或股東會決議，於董事任期內就其執行業務範圍依法應負之賠償責任為其購買責任保險，以降低並分散董事因

錯誤或疏失行為而造成公司及股東重大損害之風險。」

(二) 證券公司監察人的責任保險：證券商公司治理實務守則第 49 條規

定「證券商得依公司章程或股東會決議，於監察人任期內就其執行業務範圍依法應負之賠償責任為其購買責任保險，以降低並分散監察人因錯誤或疏忽行為而造成公司及股東重大損害之風險。」

六、證券投資信託事業證券投資顧問事業公司治理實務守則

(一) 投信及投顧公司董事的責任保險：中華民國證券投資信託暨顧問

商業同業公會證券投資信託事業證券投資顧問事業公司治理實務守則第 46 條規定「公司得依公司章程或股東會決議，於董事任期內就其執行業務範圍依法應負之賠償責任為其購買責任保險，以降低並分散董事因錯誤或疏失行為而造成公司及股東重大損害之風險。」

(二) 投信及投顧公司監察人的責任保險：中華民國證券投資信託暨顧

問商業同業公會證券投資信託事業證券投資顧問事業公司治理實務守則第 56 條規定「公司得依公司章程或股東會決議，於監察人任期內就其執行業務範圍依法應負之賠償責任為其購買責任保險，以降低並分散監察人因錯誤或疏忽行為而造成公司及股東重大損害之風險。」

七、期貨商公司治理實務守則

(一) 期貨公司董事責任保險：期貨商公司治理實務守則第 39 條「期貨商得依公司章程或股東會決議，於董事任期內就其執行業務範圍依法應負之賠償責任為其購買責任保險，以降低並分散董事因錯誤或疏失行為而造成公司及股東重大損害之風險。」

(二) 期貨公司監察人責任保險：期貨商公司治理實務守則第 49 條規定「期貨商得依公司章程或股東會決議，於監察人任期內就其執行業務範圍依法應負之賠償責任為其購買責任保險，以降低並分散監察人因錯誤或疏忽行為而造成公司及股東重大損害之風險。」

八、保險業公司治理實務守則

(一) 保險業董事責任保險：保險業公司治理實務守則第 43 條規定「保險業得依公司章程或股東會決議，於董事任期內就其執行業務範圍依法應負之賠償責任為其購買責任保險，以降低並分散董事因錯誤或疏失行為而造成公司及股東重大損害之風險。」

(二) 保險業監察人責任保險：保險業公司治理實務守則第 53 條規定「保險業得依公司章程或股東會決議，於監察人任期內就其執行業務範圍依法應負之賠償責任為其購買責任保險，以降低並分散監察人因錯誤或疏忽行為而造成公司及股東重大損害之風險。」

企業董監事及重要職員可能遭受來自政府、顧客、競爭者、股東、員工及其他外部機構(例如：消費者保護機構或投資人保護

機構等)之賠償請求，主要可能之訴訟來源詳如圖 2-2 所示。

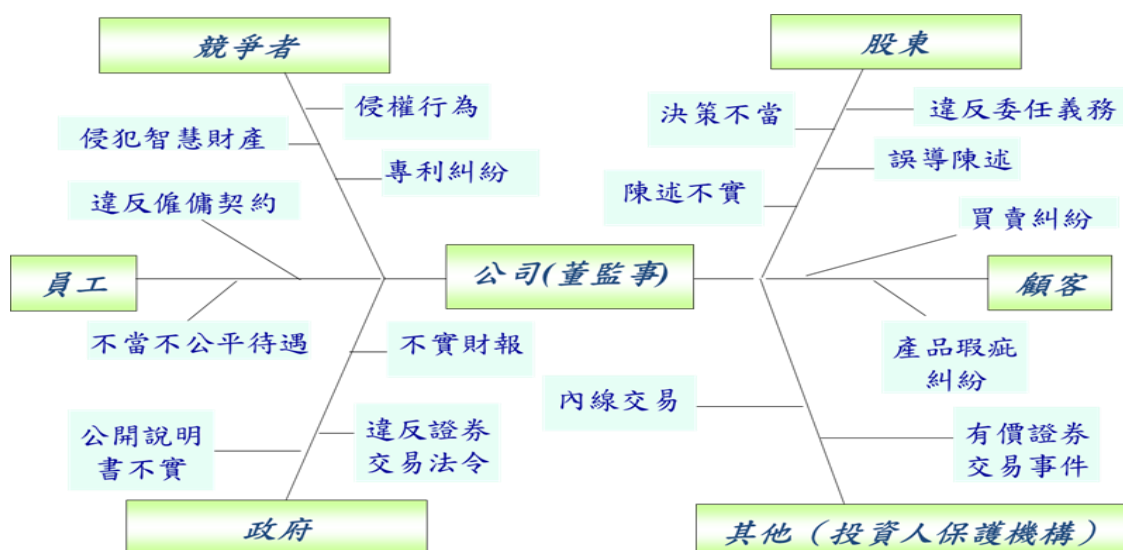


圖 2-2 公司及董監事可能遭受賠償請求之訟源

資料來源：行政院開發基金董監事及重要職員責任保險提案簡報

第二節 董監事及重要職員責任保險契約承保範圍以及除外條款與不保事項

董監事及重要職員責任保險於民國 85 年正式由美商美國環球產物保險有限公司臺灣分公司(現美亞產物保險公司)引進國內，初期有意願銷售此一險種的保險公司不多。民國 87 年政府積極推動公司治理觀念後有所改變。民國 91 年，配合上市上櫃公司治理實務守則的實施，才有多家國內、外保險公司銷售董監事及重要職員責任保險。歷經將近 20 年的發展，依據財團法人保險事業發展中心統計，民國 104 年董監事及重要職員責任保險保費收入約 7.2 億元，國內各保險公司皆銷售此一險種，其中以美商安達產物保險公司臺灣分公司、美亞產物保險公司、富邦產物保險公司等 3 家公司較為積極，市占率分別 30.9%、24.5%

及 22.7%，合計超過 78%。謹以前述 3 家保險公司於國內銷售董監事及重要職員責任保險之商品進行分析。

一、承保對象

鑑於金融機構所面臨之風險異於一般產業，故部分產險公司所銷售董監事及重要職員責任保險商品大致區分為適用金融機構與非金融機構(包括各中大企業及上市櫃公司)二大類。

主要承保對象為被保險公司之董事、監察人、重要主管及其他員工，其他部分商品亦包括被保險公司執行或非執行董事、經理人或監察人或有相同職責的高階主管、無董事頭銜卻實質上行使董事職權的自然人(包括影子董事)、被保險公司的受託人或法人董監事及被保險公司指派至外部機構的外派董事。

二、承保範圍

目前董監事及重要職員責任保險保單承保範圍包括以下二種基本承保範圍：

- (一) 董監事及重要職員責任保險(Directors' and Officers' Liability Insurance)。承保每一保險人於保單追溯日起至保險期間內因執行董監事或重要職員職務錯誤行為(wrongful act)導致第三人受有損失，而在保險期間受有賠償請求時，由承保之保險公司對被保險人負賠償之責，但保險公司已補償被保險人損失之金額不在此限。
- (二) 公司補償保險(Company Reimbursement)。當被保險人(董監事及重要職員)因不當行為而遭賠償請求所受之損失時，被保險公司依法或依約定對被保險人之損失予以補償，則由承保之保險公司償還被保險公司對被保險人已補償的損失金額。

除了上述二種基本承保範圍之外，被保險公司亦可選擇擴大的承保

範圍如下：

(一) 僱傭行為責任(Employment Practices Liability)。

承保被保險公司因不當僱傭行為而受到賠償請求時，由承保保險公司負賠償責任。

(二) 有價證券責任(Company Securities Liability)。

在保險期間內的不當行為首次提出有價證券賠償請求，依法應負賠償責任所致財務損失，由承保保險公司負賠償責任。

(三) 抗辯費用(Defense Costs)。

在保險期間內，對於任何賠償請求案件為調查、理算、抗辯或上訴所產生之合理必要費用，但不包括任何被保險人的薪資，由承保保險公司負擔。

三、除外不保事項

董監事及重要職員責任保險保單除一般保單之共同不保事項(例如戰爭、恐怖主義行為、核能幅射或放射性危險物質、天災所致之賠償責任或損失)外，尚有(但不限於)下列除外不保事項：

(一) 被保險人之不誠實行為。

(二) 被保險人個人獲得非法利益行為。

(三) 任何型態之污染事故所致之賠償責任。

(四) 任何與產品責任有關之賠償責任。

(五) 被保險人之間的請求。

(六) 因侵犯專利權、著作權或智慧財產權所致之賠償責任。

(七) 任何人之身體傷害、疾病或死亡。

(八) 任何有形財產之毀損滅失及其因而引起之附帶損失。

(九) 電腦系統故障引起之損失。

(十) 於保單生效日前已知或已發生之訴訟或賠償請求。

(十一) 任何由持有被保險公司 20% 以上有表決權股數之股東所提出的賠償請求。

四、擴大承保範圍

隨著法令規定變革，董事法律責任擴張，董監事及重要職員責任保險保單亦隨著企業需求進行調整，由企業視其需要增加保險費以擴大承保範圍，以填補保障不足之風險。主要(但不限於)擴大承保範圍項目包括：

(一) 超額保險金額。

(二) 從屬公司。

(三) 緊急處理費用。

(四) 退休董監事及重要職員。

(五) 接管及併購發現期間。

(六) 外部董監事。

(七) 管理階層收購。

(八) 稅賦。

(九) 保釋保證金費用、危機處理費用、公關費用及聲譽維護費用。

(十) 引渡程序。

(十一) 訴訟費用。

(十二) 民事罰款與罰金。

(十三) 職業安全衛生及業務過失致死。

(十四) 資產剝奪。

(十五) 預備調查費用。

(十六) 國外開放條款。

- (十七) 賠償被保險公司之股東費用。
- (十八) 衍生調查費用。
- (十九) 國際證券法令釋義費用。
- (二十) 環境污染事件。
- (二十一) 網路隱私與保密。
- (二十二) 損害防阻費用。
- (二十三) 追償後恢復責任限額。
- (二十四) 持續承保。
- (二十五) 預付費用。

第三節 投保情形分析

依據金融監督管理委員會證券期貨局統計，截至民國 104 年上市公司 874 家、上櫃公司 712 家、興櫃公司 284 家、其他公開發行公司 646 家，合計公開發行公司 2,516 家。民國 95 年至民國 104 年公開發行公司家數如表 2-1 所示。

表 2-1 公開發行公司家數

單位：家

年 度	上市公司 家數	上櫃公司 家數	興櫃公司 家數	其他公開 發行公司 家數	公開發行公司 家數合計(註)
95	688	531	230	673	2,122
96	698	547	246	601	2,092
97	718	539	233	535	2,025
98	741	546	223	497	2,007

年 度	上市公司 家數	上櫃公司 家數	興櫃公司 家數	其他公開 發行公司 家數	公開發行公司 家數合計(註)
99	758	564	285	512	2,119
100	790	607	277	516	2,190
101	809	638	285	540	2,272
102	838	658	261	584	2,341
103	854	685	284	621	2,444
104	874	712	284	646	2,516

註：公開發行公司家數合計為上市公司、上櫃公司、興櫃公司與其他公開發行公司家數合計
資料來源：金融監督管理委員會證券期貨局

依據財團法人保險事業發展中心統計，民國 104 年財產保險業承保董監事及重要職員責任保險之承保件數 1,674 件，投保率約達 67%。民國 95 至民國 104 年公開發行公司家數、董監事及重要職員責任保險之承保件數與投保比率詳如表 2-2。

表 2-2 董監事及重要職員責任保險之投保件數與投保率

單位：家、件

年度	公開發行公司家數合計 (註)	董監事及重要職員責任保險 投保件數	投保 比率
95	2,122	694	32.70%
96	2,092	838	40.06%
97	2,025	972	48.00%
98	2,007	1,006	50.12%

年度	公開發行公司家數合計 (註)	董監事及重要職員責任保險 投保件數	投保 比率
99	2,119	1,119	52.81%
100	2,190	1,278	58.36%
101	2,272	1,395	61.40%
102	2,341	1,467	62.67%
103	2,444	1,521	62.23%
104	2,516	1,674	66.53%

註：公開發行公司家數合計為上市公司、上櫃公司、興櫃公司與其他公開發行公司家數合計

資料來源：金融監督管理委員會證券期貨局、財團法人保險事業發展中心

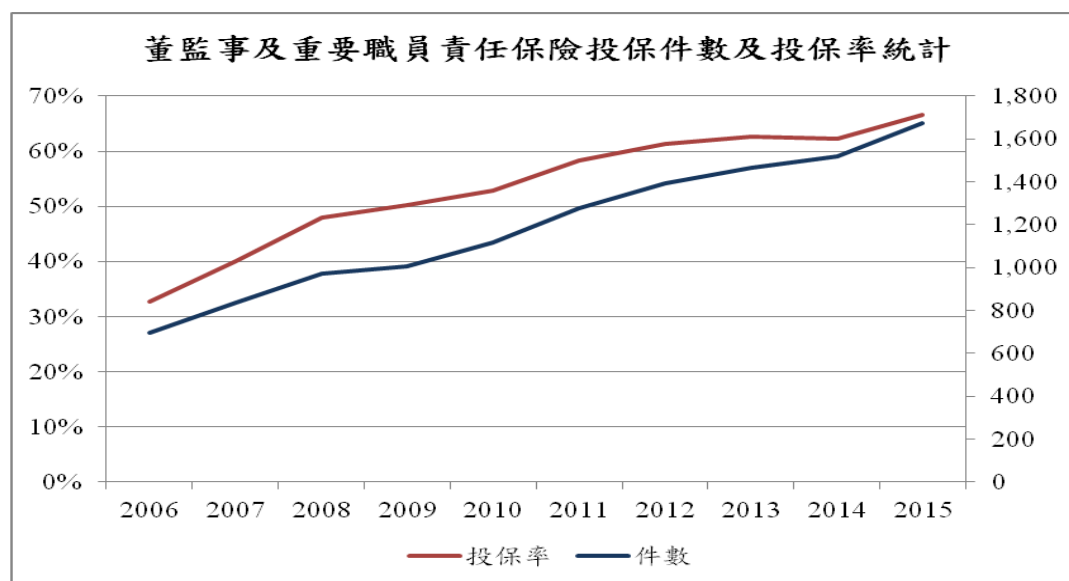


圖 2-3 董監事及重要職員責任保險投保件數及投保率統計

資料來源：財團法人保險事業發展中心

近十年來，我國董監事及重要職員責任保險投保件數逐年增加，民國 95 年投保件數約 700 件，民國 98 年突破 1,000 件，至民國 104 年達 1,674 件。以投保比率而言，民國 98 年投保比率突破 50%，民國 104

年投保比率約達 67%。

依據財團法人保險事業發展中心統計，民國 104 年財產保險業承保董監事及重要職員責任保險之承保件數 1,674 件，簽單保費規模約達新臺幣(下同)7.2 億元。民國 104 年滿期保費收入 7.5 億元、已發生賠款金額超過 4,300 萬元，損失率僅約 5.73%。民國 95 年至民國 104 年董監事及重要職員責任保險業績與損失率統計詳如表 2-3。

表 2-3 董監事及重要職員責任保險業績與損失率統計

單位：新臺幣元

年度	簽單保費收入	滿期保費收入	已發生賠款	損失率
95	599,767,907	525,722,691	217,493,880	41.37%
96	623,158,249	602,623,070	576,805,539	95.72%
97	595,938,701	617,535,236	435,810,375	70.57%
98	590,939,756	595,475,985	60,749,955	10.20%
99	626,730,322	622,949,222	73,925,003	11.87%
100	707,129,691	662,105,551	65,804,959	9.94%
101	679,098,054	689,778,544	68,998,055	10.00%
102	777,972,608	727,470,239	91,525,278	12.58%
103	752,698,630	724,063,720	57,684,725	7.97%
104	719,659,979	753,208,957	43,175,224	5.73%

資料來源：財團法人保險事業發展中心

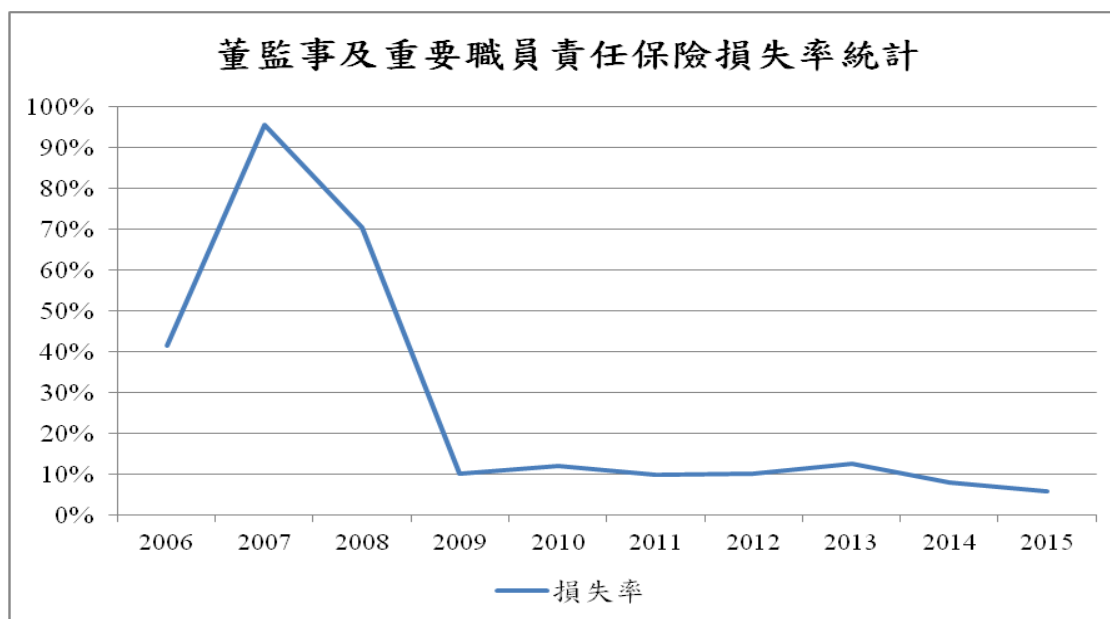


圖 2-4 董監事及重要職員責任保險損失率統計

資料來源：財團法人保險事業發展中心、本研究整理

民國 104 年董監事及重要職員責任保險簽單保費收入約 7.2 億元。其中，以美商安達產物保險公司臺灣分公司最為積極，簽單保費收入 2.2 億元；其次為美亞產物保險公司 1.8 億元。國內保險業以富邦產物保險公司較為積極，簽單保費收入 1.6 億元，國泰世紀產物保險公司 5 千萬元次之。

有關上市、上櫃、興櫃與其他公開發行公司投保董監事及重要職員責任保險情況與保險金額等相關資料，揭露於臺灣證券交易所公開資訊觀測站「董事及監察人投保責任險情形」²。以近十年統計資料顯示，董監事及重要職員責任保險損失率於民國 95 年起攀升，至 96、97 年金

² 公開資訊觀測站「董事及監察人投保責任險情形」(網址：
<http://mops.twse.com.tw/mops/web/t135sb03>)

融海嘯期間達相對高峰，分別為 95.7%、70.6%。自民國 98 年以後損失率大幅下降，維持 15% 以下，如圖 2-4 所示。

彙整臺灣證券交易所公開資訊觀測站「董事及監察人投保責任險情形」，民國 104 年上市公司及上櫃公司投保董監事及重要職員責任保險狀況³進行投保比率、投保金額、未投保原因分析：

一、整體投保比率分析

民國 104 年度上市公司共 874 家，其中，599 家公司已投保董監事及重要職員責任保險，投保比率 68.54%；上櫃公司共 712 家，467 家已投保，投保比率 65.59%。

表 2-4 上市、櫃公司投保比率分析

	公司家數	投保家數	未投保家數	投保比率
上市公司	874	599	275	68.54%
上櫃公司	712	467	245	65.59%

資料來源：本研究整理

³ 公開資訊觀測站「董事及監察人投保責任險情形」(網址：<http://mops.twse.com.tw/mops/web/t135sb03>)，搜尋日期：2016 年 10 月 25 日。

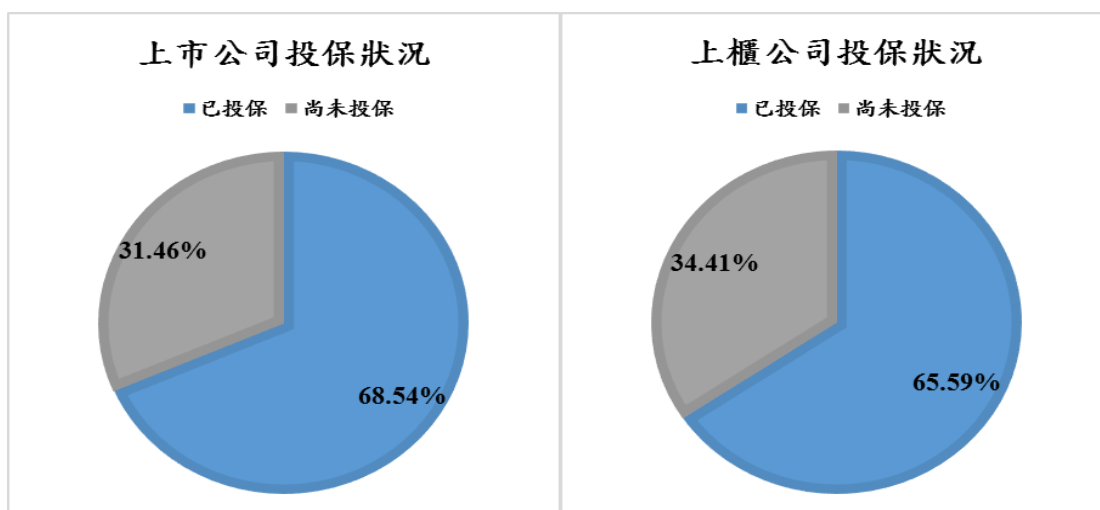


圖 2-5 上市、櫃公司投保比率分析圖

資料來源：本研究整理

二、各產業投保比率分析

民國 104 年度上市公司投保董監事及重要職員責任保險以通信網路業投保比率(87.18%)最高，其次為汽車工業(85.71%)、金融保險業(84.85%)、光電業(84.51%)、資訊服務業(83.33%)；投保比率較低之產業為紡織纖維(26.09%)、建材營造業(36.73%)、油電燃氣業(37.50%)、貿易百貨業(38.89%)及玻璃陶瓷(40.00%)。

上櫃公司以半導體業投保比率(83.10%)最高，其次為生技醫療業(82.09%)、電子通路業(80.00%)、資訊服務業(77.78%)、光電業(73.58%)；投保比率較低之產業為塑膠工業(0%)、電器電纜(0%)、航運業(14.29%)、油電燃氣業(25.00%)及紡織纖維(30.00%)。各產業投保董監事及重要職員責任保險之比率詳如下表。

表 2-5 各產業上市、櫃公司投保比率

產業別	上市公司投保比率	上櫃公司投保比率
水泥工業	42.86%	—
食品工業	68.18%	40.00%
塑膠工業	52.17%	0.00%
紡織纖維	26.09%	30.00%
電機機械	63.46%	45.95%
電器電纜	—	0.00%
玻璃陶瓷	40.00%	—
造紙工業	57.14%	—
鋼鐵工業	51.72%	46.15%
橡膠工業	54.55%	—
汽車工業	85.71%	—
建材營造業	36.73%	38.10%
航運業	80.00%	14.29%
觀光事業	42.86%	66.67%
金融保險業	84.85%	66.67%
貿易百貨業	38.89%	66.67%
其他業	71.43%	66.67%
化學工業	57.14%	57.14%
生技醫療業	78.57%	82.09%
油電燃氣業	37.50%	25.00%
半導體業	80.28%	83.10%
電腦及週邊設備業	81.03%	72.92%
光電業	84.51%	73.58%

產業別	上市公司投保比率	上櫃公司投保比率
通信網路業	87.18%	71.43%
電子零組件業	81.05%	63.06%
電子通路業	80.95%	80.00%
資訊服務業	83.33%	77.78%
其他電子業	82.86%	60.98%
文化創意業	—	50.00%

註：“—”表無公司歸屬該產業

資料來源：本研究整理

三、投保金額分析

民國 104 年度 599 家上市公司投保董監事及重要職員責任保險之中位數為 1.6 億元、平均保險金額約為 3.5 億元，因少數公司投保高額董監事及重要職員責任保險所致。上櫃公司 467 家已投保之中位數為 0.9 億元，平均保額 1.7 億元，其差異主要亦因少數公司投保高額董監事及重要職員責任保險所致。整體而言，上市公司保額高於上櫃公司，以平均保額而言，上市公司保額約為上櫃公司之 2.1 倍。

表 2-6 上市、櫃公司保額分析

單位：新臺幣元

	第一 四分位數	中位數	第三 四分位數	平均保額
上市公司	98,475,000	164,390,000	329,450,000	350,459,651
上櫃公司	65,650,000	98,610,000	165,815,000	167,511,052

資料來源：本研究整理

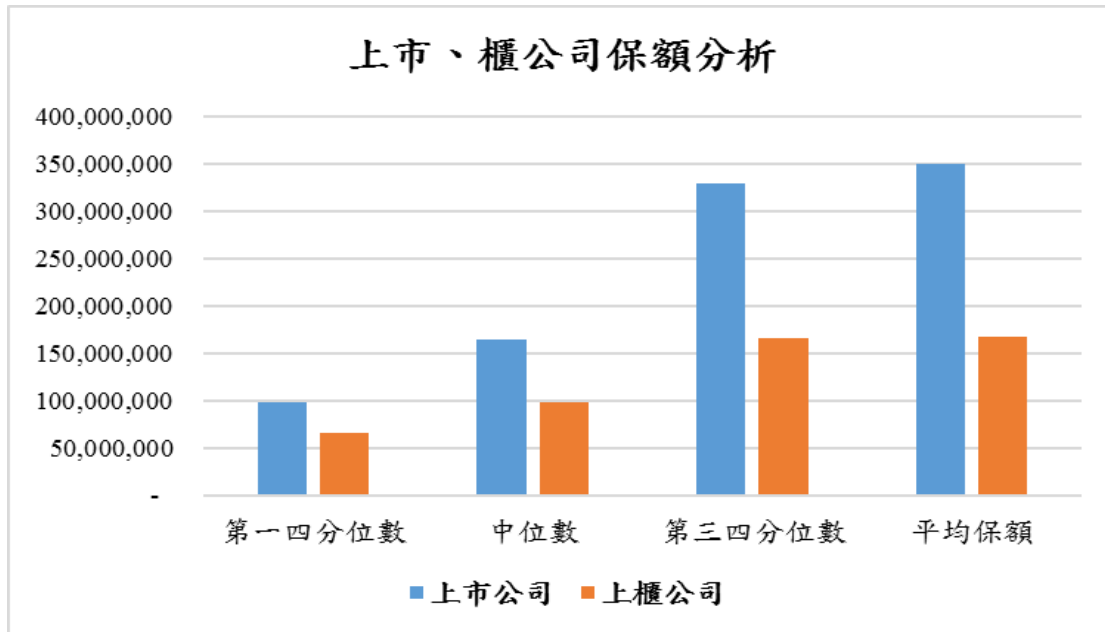


圖 2-6 上市、櫃公司保額分析圖

資料來源：本研究整理

上市公司投保董監事及重要職員責任保險之保額區間主要介於 1 億元~3 億元之間，比重占 27.05%，其次為 3 億元~5 億元，比重為 25.54%。保額介於 5,000 萬元~5 億元之上市公司占 75.63%。約 5.18% 之上市公司保額超過 10 億元，但仍有 1.17% 之上市公司保額低於 1,000 萬元。

約 38% 之上櫃公司保險金額介於 5,000 萬元~1 億元之間，為上櫃公司主要的保額區間，其次為 1 億元~3 億元區間，比重約占 30%。約 80% 上櫃公司保額介於 1,000 萬元~3 億元之間。極少數(0.42%)上櫃公司保額超過 10 億以上，但保險金額低於 1,000 萬元之上櫃公司仍占 4.28%。

表 2-7 上市、櫃公司保額分布

	上市公司	上櫃公司
0~1,000 萬	1.17%	4.28%
1,000 萬~5,000 萬	8.68%	10.92%
5000 萬~1 億	23.04%	38.33%
1 億~3 億	27.05%	29.98%
3 億~5 億	25.54%	13.28%
5 億~10 億	9.35%	2.78%
10 億~30 億	3.84%	0.21%
30 億以上	1.34%	0.21%

資料來源：本研究整理

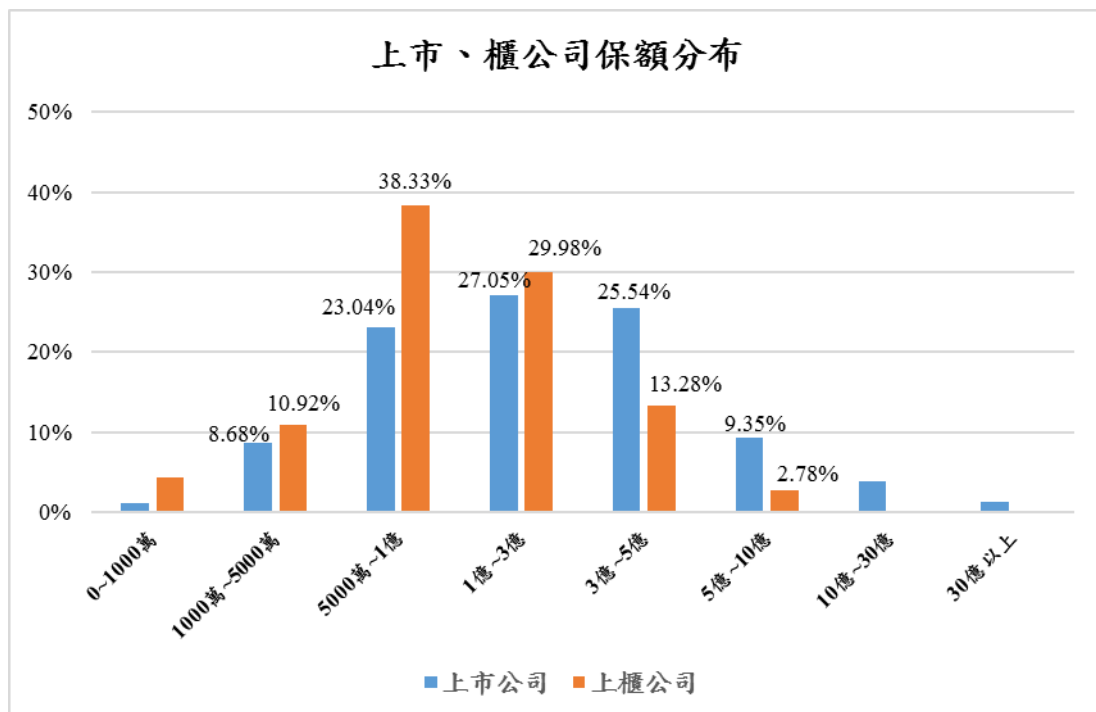


圖 2-7 上市、櫃公司保額分布圖

資料來源：本研究整理

四、未投保原因分析

民國 104 年度上市公司共 874 家，其中，275 家公司尚未投保董監事及重要職員責任保險，未投保比率 31.46%；上櫃公司共 712 家，245 家尚未投保，未投保比率 34.41%。

表 2-8 上市、櫃公司未投保比率分析

	公司家數	投保家數	未投保家數	未投保比率
上市公司	874	599	275	31.46%
上櫃公司	712	467	245	34.41%

資料來源：本研究整理

由於臺灣證券交易所公開資訊觀測站「董事及監察人投保責任險情形」之未投保董監事及重要職員責任保險之原因係屬開放式填寫，為求清楚呈現，茲將上市、櫃公司未投保董監事及重要職員責任保險之原因分為規劃評估中、無規劃或不需要(含經評估風險由公司全數承擔)、成本考量(保費太高)及其他原因(主要包括：法令未強制要求投保、董事會未通過、無相關預算、目前公司有訴訟案無法投保等)四大類。尚未投保董監事及重要職員責任保險之上市公司中，48.36%上市公司表示目前尚在規劃評估中，為尚未投保之主要原因。其次為無規劃或不需要者比重占 44.36%、成本考量占 1.82%、其他原因則占 5.45%。上櫃公司則以無規劃或不需要者為尚未投保董監事及重要職員責任保險之主要原

因，比重占 47.28%。其次為目前尚在規劃評估中，比重為 42.68%。成本考量占 3.77%、其他原因則占 6.28%。

表 2-9 上市、櫃公司未投保原因分析

原因	上市公司	上櫃公司
評估規劃中	48.36%	42.68%
無規劃或不需要	44.36%	47.28%
成本考量(保費太高)	1.82%	3.77%
其他	5.45%	6.28%

資料來源：本研究整理

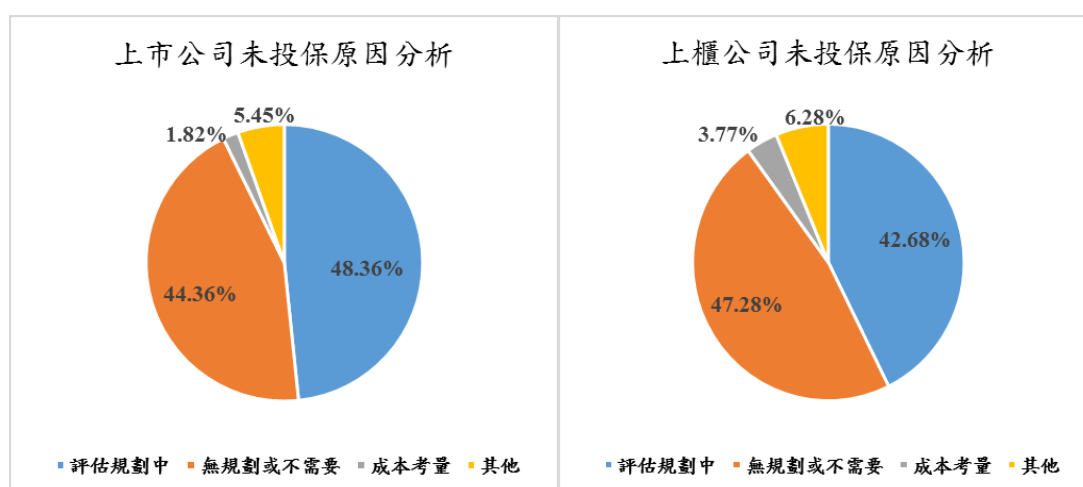


圖 2-8 上市、櫃公司未投保原因分析圖

資料來源：本研究整理

另研究團隊整理顧問公司 Towers Watson 於西元 2013 年針對北美市場(含美國及加拿大)董監事及重要職員責任保險之調查結果，詳如附

錄二，謹供參考。

第四節 責任保險對投資人保護影響或限制

伴隨著名的美國安隆案（Enron）、世界通訊案（WorldCom）等重大弊案爆發，公司治理逐漸成為社會大眾所關注之重要議題，而我國博達案、力霸案等公司也相繼爆發財務問題後，除加速我國證券交易法等相關法規之改革外，也促使證券投資人及期貨交易人保護中心所受理之團體訴訟案件增加不少，對此，受企業弊案消息頻傳之影響，董監事及重要職員責任保險之保險理賠率及投保率等因而大幅增加。

而依上市上櫃公司治理實務守則第 39 條規定「上市上櫃公司得依公司章程或股東會決議，於董事任期內就其執行業務範圍依法應負之賠償責任為其購買責任保險，以降低並分散董事因錯誤或疏失行為而造成公司及股東重大損害之風險。」可知，公司以章程或股東會決議為其董事等購買責任保險，並不違反公司法等相關規定，且係屬公司治理之重要環節。對此，董監事及重要職員責任保險對於投資人可能造成之影響，以下分析說明之：

一、董監事及重要職員責任保險之優點⁴

（一）保險公司對於投保公司及該公司之董監事等核保過程，即風險之

⁴ 參陳彩稚、彭嘉慧，台大管理論叢，2008 年 6 月，第 18 卷第 2 期，第 172 頁。

評估與保險費之收取等，可以作為投資人對於公司及董監事適任與否等重要參考依據。

(二) 公司為董監事或重要職員購買責任保險可以促使董事間相互監督，因前開責任保險係以全體董事為承保對象，倘若董事會成員中一人違反相關法令規定，勢必影響到其他董事會成員之權利及名譽，對此，將促使董事會成員間彼此互相監督。

(三) 保險公司為降低董監事及重要職員責任保險理賠之風險，將會謹慎執行核保程序及相關防阻行為，以有效避免損害之發生，因此，可以間接達到監督公司治理之效果。

(四) 藉由公司為董監事及重要職員購買董監事及重要職員責任保險，得以避免董事、監察人及重要職員於因執行職務之錯誤或疏失衍生出法律責任的損失負擔，尤其可免於董事、監察人及重要職員因他董事、監察人或重要職員之錯誤或疏忽行為而牽累的法律責任風險，得以有效分散公司經營者風險，為公司延攬優秀人才，並維護投資人之利益。

(五) 公司涉及舞弊及掏空等行為，其受害人往往為數眾多且金額龐大，對此加害人即董監事是否有足夠資力賠償，恐有疑慮，是以，若加害人無此負擔能力，縱使受害人最終取得法院勝訴判決，亦僅取得對於加害人之債權，並無任何經濟上實質意義。而公司為

董監事及重要職員購買董監事及重要職員責任保險之方式，得以有效提高投資人將來獲得賠償之可能性，避免因董監事及重要職員個人資產不足，致投資人無法獲得賠償之情形。

二、董監事及重要職員責任保險之缺點

- (一) 雖然董監事及重要職員責任保險得以避免董事、監察人及重要職員於因執行職務之錯誤或疏失衍生出法律責任的損失負擔，抑或董事、監察人及重要職員因他董事、監察人或重要職員之錯誤或疏忽行為而牽累的法律責任風險等，惟對此可能降低董事、監察人及重要職員處理公司事務之注意程度，反而增加投資人向董事、監察人及重要職員求償之可能性⁵。
- (二) 董監事及重要職員責任保險雖得以提高投資人將來向董事、監察人及重要職員實際獲得賠償之可能性，惟相對也降低董事、監察人及重要職員依法所應負之賠償責任，對此，可能抑制法律課予董事、監察人及重要職員之責任，而無法達到原本法律規定所欲達到警告及抑制違法行為之目的⁶。

第五節 責任保險於證券詐欺案件之適用與執行

⁵ 參劉若蘭、劉政淮、簡溥銘，董監事暨重要職員責任保險與資訊揭露品質及企業舞弊關係之研究，中華會計學刊，第11卷第1期，第80頁。

⁶ 參盧世寧，現行D&O（公司董監事重要職員）責任保險之評析兼評析公司法修正後之影響，台灣本土法學雜誌，2003年6月，第43期，第163頁。

一、我國證券詐欺相關法令規定

按我國公司法第 192 條規定：「公司董事會，設置董事不得少於三人，由股東會就有行為能力之人選任之。」對此，公司董事係經由股東會選舉，於當事人同意簽署願任同意書後，此時董事、監察人之責任及義務隨即產生。我國董事、監察人與公司間之法律關係為民法上之委任關係，惟原則上應優先適用公司法中有關董事、監察人之規定，例如董事、監察人之報酬、解任、董事之代理及競業禁止等相關規定，而於公司法等未規定下，方有民法委任關係規定之適用。而關於我國證券詐欺相關法令，主要規定於證券交易法中，以下針對證券交易法中有關董事、監察人之民事、刑事相關責任，整理如下：

（一）民事責任

1. 公開說明書未依規定交付之責任

按證券交易法第 31 條規定：「募集有價證券，應先向認股人或應募人交付公開說明書。（第一項）違反前項之規定者，對於善意之相對人因而所受之損害，應負賠償責任。（第二項）」

2. 公開說明書內容不實之責任

按證券交易法第 31 條第 1 項規定：「募集有價證券，應先向認股人或應募人交付公開說明書。」另按同法第 32 條規定：「前條之公開說明書，其應記載之主要內容有虛偽或隱匿之情事

者，左列各款之人，對於善意之相對人，因而所受之損害，應就其所應負責部分與公司負連帶賠償責任：一、發行人及其負責人。二、發行人之職員，曾在公開說明書上簽章，以證實其所載內容之全部或一部者。三、該有價證券之證券承銷商。四、會計師、律師、工程師或其他專門職業或技術人員，曾在公開說明書上簽章，以證實其所載內容之全部或一部，或陳述意見者。（第一項）前項第一款至第三款之人，除發行人外，對於未經前項第四款之人簽證部分，如能證明已盡相當之注意，並有正當理由確信其主要內容無虛偽、隱匿情事或對於簽證之意見有正當理由確信其為真實者，免負賠償責任；前項第四款之人，如能證明已經合理調查，並有正當理由確信其簽證或意見為真實者，亦同。（第二項）」

3. 證券詐欺之責任

按證券交易法第 20 條規定：「有價證券之募集、發行、私募或買賣，不得有虛偽、詐欺或其他足致他人誤信之行為。（第一項）發行人依本法規定申報或公告之財務報告及財務業務文件，其內容不得有虛偽或隱匿之情事。（第二項）違反第一項規定者，對於該有價證券之善意取得人或出賣人因而所受之損害，應負賠償責任。（第三項）委託證券經紀商以行紀名義買

入或賣出之人，視為前項之取得人或出賣人。（第四項）」

4. 財務報告不實之責任

按證券交易法第 20 之 1 條規定：「前條第二項之財務報告及財務業務文件或依第三十六條第一項公告申報之財務報告，其主要內容有虛偽或隱匿之情事，下列各款之人，對於發行人所發行有價證券之善意取得人、出賣人或持有人因而所受之損害，應負賠償責任：一、發行人及其負責人。二、發行人之職員，曾在財務報告或財務業務文件上簽名或蓋章者。（第一項）前項各款之人，除發行人外，如能證明已盡相當注意，且有正當理由可合理確信其內容無虛偽或隱匿之情事者，免負賠償責任。（第二項）…第一項各款及第三項之人，除發行人外，因其過失致第一項損害之發生者，應依其責任比例，負賠償責任。（第五項）」

5. 短線交易之責任

按證券交易法第 157 條第 1 項規定：「發行股票公司董事、監察人、經理人或持有公司股份超過百分之十之股東，對公司之上市股票，於取得後六個月內再行賣出，或於賣出後六個月內再行買進，因而獲得利益者，公司應請求將其利益歸於公司。」對於公司之董事、監察人等公司內部人因短線交易而獲利者，

公司得行使歸入權，以使公司內部人無法因短線交易而獲利，以減少其經濟上之誘因，並達到嚇阻內線交易之目的。同條第三項規定：「董事或監察人不行使第一項之請求以致公司受損害時，對公司負連帶賠償之責。」對於董事或監察人怠於行使公司前開權利，致公司受有損害者，並須對公司負連帶賠償之責。

6. 內線交易之責任

按證券交易法第 157 條之 1 規定：「下列各款之人，實際知悉發行股票公司有重大影響其股票價格之消息時，在該消息明確後，未公開前或公開後十八小時內，不得對該公司之上市或在證券商營業處所買賣之股票或其他具有股權性質之有價證券，自行或以他人名義買入或賣出：一、該公司之董事、監察人、經理人及依公司法第二十七條第一項規定受指定代表行使職務之自然人。二、持有該公司之股份超過百分之十之股東。三、基於職業或控制關係獲悉消息之人。四、喪失前三款身分後，未滿六個月者。五、從前四款所列之人獲悉消息之人。（第一項）前項各款所定之人，實際知悉發行股票公司有重大影響其支付本息能力之消息時，在該消息明確後，未公開前或公開後十八小時內，不得對該公司之上市或在證券商營業處所買賣之非股權性質之公司債，自行或以他人名義賣出。（第二項）違反第一

項或前項規定者，對於當日善意從事相反買賣之人買入或賣出該證券之價格，與消息公開後十個營業日收盤平均價格之差額，負損害賠償責任；其情節重大者，法院得依善意從事相反買賣之人之請求，將賠償額提高至三倍；其情節輕微者，法院得減輕賠償金額。(第三項)第一項第五款之人，對於前項損害賠償，應與第一項第一款至第四款提供消息之人，負連帶賠償責任。但第一項第一款至第四款提供消息之人有正當理由相信消息已公開者，不負賠償責任。(第四項)…」

7. 操縱市場之責任

按證券交易法第 155 條規定：「對於在證券交易所上市之有價證券，不得有下列各款之行為：一、在集中交易市場委託買賣或申報買賣，業經成交而不履行交割，足以影響市場秩序。二、(刪除)三、意圖抬高或壓低集中交易市場某種有價證券之交易價格，與他人通謀，以約定價格於自己出售，或購買有價證券時，使約定人同時為購買或出售之相對行為。四、意圖抬高或壓低集中交易市場某種有價證券之交易價格，自行或以他人名義，對該有價證券，連續以高價買入或以低價賣出，而有影響市場價格或市場秩序之虞。五、意圖造成集中交易市場某種有價證券交易活絡之表象，自行或以他人名義，連續委託買賣或申報

買賣而相對成交。六、意圖影響集中交易市場有價證券交易價格，而散布流言或不實資料。七、直接或間接從事其他影響集中交易市場有價證券交易價格之操縱行為。(第一項)前項規定，於證券商營業處所買賣有價證券準用之。(第二項)違反前二項規定者，對於善意買入或賣出有價證券之人所受之損害，應負賠償責任。(第三項)」

(二) 刑事責任

1. 違反證券詐欺、操縱股票價格、非常規交易、特殊背信侵占罪

按證券交易法第 171 條規定：「有下列情事之一者，處三年以上十年以下有期徒刑，得併科新臺幣一千萬元以上二億元以下罰金：一、違反第二十條第一項、第二項、第一百五十五條第一項、第二項、第一百五十七條之一第一項或第二項規定。二、已依本法發行有價證券公司之董事、監察人、經理人或受僱人，以直接或間接方式，使公司為不利益之交易，且不合營業常規，致公司遭受重大損害。三、已依本法發行有價證券公司之董事、監察人或經理人，意圖為自己或第三人之利益，而為違背其職務之行為或侵占公司資產，致公司遭受損害達新臺幣五百萬元。(第一項)犯前項之罪，其犯罪所得金額達新臺幣一億元以上者，處七年以上有期徒刑，得併科新臺幣二千五百萬元以上

五億元以下罰金。(第二項)有第一項第三款之行為，致公司遭受損害未達新臺幣五百萬元者，依刑法第三百三十六條及第三百四十二條規定處罰。(第三項)…」另同條第6項規定，倘若行為人違反第一項或第二項之罪，其犯罪所得利益超過前開罰金最高額時，並得於其所得利益範圍內，加重罰金，且如損及證券市場穩定者，並得加重其刑至二分之一。

2. 證券交易所董事、監察人等不違背及違背職務賄賂罪

按證券交易法第172條規定：「證券交易所之董事、監察人或受僱人，對於職務上之行為，要求期約或收受不正利益者，處五年以下有期徒刑、拘役或科或併科新臺幣二百四十萬元以下罰金。(第一項)前項人員對於違背職務之行為，要求期約或收受不正利益者，處七年以上有期徒刑，得併科新臺幣三百萬元以下罰金。(第二項)犯前二項之罪者，所收受之財物沒收之；如全部或一部不能沒收時，追徵其價額。(第三項)」

另按證券交易法第173條規定：「對於前條人員關於違背職務之行為，行求期約或交付不正利益者，處三年以上有期徒刑、拘役或科或併科新臺幣一百八十萬元以下罰金。(第一項)犯前項之罪而自首者，得免除其刑。(第二項)」

3. 虛偽、隱匿公開說明書、違法貸款、提供擔保罪

按證券交易法第 174 條規定：「有下列情事之一者，處一年以上七年以下有期徒刑，得併科新臺幣二千萬元以下罰金：…三、發行人或其負責人、職員有第三十二條第一項之情事，而無同條第二項免責事由。…八、發行人之董事、經理人或受僱人違反法令、章程或逾越董事會授權之範圍，將公司資金貸與他人、或為他人以公司資產提供擔保、保證或為票據之背書，致公司遭受重大損害。」

二、我國證券詐欺案例介紹

有鑑於我國證券投資人以散戶為主，於自身權利受損時，往往欠缺相關資訊，且提起訴訟將耗費相當之金錢與時機，因此多裹足不前。對此，證券投資人及期貨交易人保護中心係依證券投資人及期貨交易人保護法所設立之財團法人保護機構，除負責提供投資人證券及期貨相關法令之諮詢及申訴服務、買賣有價證券或期貨交易因民事爭議之調處外，亦得依同法第 28 條規定，對於造成多數證券投資人或期貨交易人受損害之同一原因所引起之證券、期貨事件，得由 20 位以上證券投資人或期貨交易人授與仲裁或訴訟實施權後，由證券投資人及期貨交易人保護中心以自身之名義，提付團體訴訟或仲裁。

有關董事、監察人等被起訴之情形，主要以涉案公司財報不實為大宗，截至民國 105 年 12 月 10 日為止，目前證券投資人及期貨交易人保

護中心尚在進行中之訴訟，整理如下表 2-10 所示：

表 2-10 董事、監察人被訴類型彙總表

編 號	公 司 名 稱	不 法 行 為 期 日	類 型				請 求 金 額 單 位：新 台 幣 仟 元	目 前 訴 訟 上 授 權（或委 任）人 數
			財 報 不 實 類 型	公 開 明 書 不 實 類 型	操 縱 股 價 類 型	內 線 交 易 類 型		
1	台 鳳	86-87			✓	✓	185,169	204
2	博達二	88-93	✓	✓			5,402,929	10,008
3	久 津	91-92	✓	✓			542,110	484
4	太 電	88-91	✓				7,870,375	25,092
5	欣煜二	92-93	✓	✓			1,167,479	2,398
6	宏達科	91-93	✓		✓		542,671	1,134
7	宏 傳	93	✓	✓			111,776	236
8	銳 普	94	✓				162,510	217
9	協和國際	89	✓	✓			179,495	418
10	茂 矽	92				✓	35,797	535
11	中 華 銀	91-95	✓				909,683	2,577
12	嘉食化	88-95	✓				64,472	482
13	力霸(財)	88-95	✓				46,170	420
14	南港一	92、94			✓		3,249	30

編號	公司名稱	不法行為期日	類型				請求金額 單位:新台幣 仟元	目前訴訟上授權(或委任)人數
			財報 不實 類型	公開明 書不實 類型	操 縱 股 價 類 型	內線交 易類型		
15	東森國際 (財)	89~96	✓				22,664	233
16	雅新(財+內)	94.12~96.04	✓			✓	3,281,483	6,143
17	東森媒體	95					106,300	51
18	鼎太	94~95	✓				10,222	59
19	力特光電	94.12~95.01				✓	36,464	137
20	捷力	92~94	✓				64,192	187
21	金雨	94	✓				15,212	52
22	綠點	95				✓	577,255	237
23	友昱	95.02~96.10	✓				26,967	52
24	東森國際 (內)	95.03~95.07				✓	4,066	88
25	新竹商銀	95				✓	212,422	399
26	宏億	96.11~97.03	✓				50,520	279
27	歌林	90~97	✓	✓			2,461,692	5,933
28	旺宏	94.11~94.12				✓	4,752	297
29	佳鼎	95.12~96.01				✓	7,513	63
30	仕欽	95~96	✓				1,390,053	4,328

編號	公司名稱	不法行為期日	類型				請求金額 單位:新台幣 仟元	目前訴訟上授權(或委任)人數
			財報 不實 類型	公開明 書不實 類型	操 縱 股 價 類 型	內線交 易類型		
31	遠航	94.04~96.12	✓				297,060	331
32	名鐘(財報)	97	✓				4,247	151
33	名鐘(內線)	97				✓	55,861	78
34	聯豪	96.03~97.03	✓				147,653	147
35	金鼎 (內)	94				✓	3,757	33
36	飛雅	92.02~94.03	✓				5,874	21
37	勤美	96~97	✓				137,326	105
38	邨港	95.07~97.08	✓	✓			131,117	242
39	合邦	95.03~96.08	✓				69,164	243
40	南港二	96.07~97.02			✓		8,655	67
41	飛寶動能	95.06~96.06	✓				61,228	73
42	陞泰、四維、 勤美、豐藝、 東貿、宏遠證	95.09~96.12			✓		381,825	284
43	新泰伸(財)	95.04~96.08	✓				376,305	563
44	新泰伸(內)	96.07				✓	134,762	219

編 號	公 司 名 稱	不 法 行 為 期 日	類 型				請 求 金 額 單 位:新 台 幣 仟 元	目 前 訴 訟 上 授 權 (或委 任) 人 數
			財 報 不 實 類 型	公 開 明 書 不 實 類 型	操 縱 股 價 類 型	內 線 交 易 類 型		
45	日揚	96~97	✓				34,400	226
46	唐鋒	99.07~99.08			✓		983,715	962
47	川飛	97~99	✓				178,079	552
48	吉祥全 佳必琪	95.11.99.05			✓		1,199,050	1,892
49	吉祥全	97.04~100.06	✓				72,030	319
50	聯明（財）	97-99	✓				62,400	216
51	碩天	100.03~100.08			✓		54,707	121
52	眾星	98~100			✓		68,281	78
53	美嘉電	99.03~100.08	✓				266,071	514
54	聯明（操二）	97.02~97.06			✓		3,728	23
55	科風 （財）	98~100	✓				592,648	1,750
56	恩德	99~100			✓		10,536	57
57	普格	101.1~101.10	✓		✓	✓	100,467	184
58	漢唐	90.1~101.4	✓				243,858	1076
59	綠能 （內）	100.06~100.08				✓	298,738	403

編 號	公 司 名 稱	不 法 行 為 期 日	類 型				請 求 金 額 單 位:新 台 幣 仟 元	目 前 訴 訟 上 授 權 (或 委 任) 人 數
			財 報 不 實 類 型	公 開 明 書 不 實 類 型	操 縱 股 價 類 型	內 線 交 易 類 型		
60	康富生技	101	✓	✓			97,412	139
61	富味鄉(一)	102.10.22~24			✓	✓	15,504	88
62	基因	102.04~102.08				✓	17,930	146
63	昇貿	98.7.6~98.8.24			✓		6,949	65
64	宏碁(一)	102.11.4~11.5				✓	10,018	340
65	奧斯特(一)	101.10.1~102.2.27			✓		55,369	268
	奧斯特 (二)				✓			
66	松懋	101.08~103.03	✓				28,629	79
67	智盛 (財)	100.1~102.2	✓				204,057	119
68	漢康	100	✓				83,769	165
69	福懋油(二)	102.10.30				✓	1,910	29
70	佳總、萬潤、 佶優	100.4-101.4			✓		5,313	70
71	綠能(財測)	100.06~100.08					194,460	913

編號	公司名稱	不法行為期日	類型				請求金額 單位:新台幣 千元	目前訴訟上授權(或委任)人數
			財報 不實 類型	公開明 書不實 類型	操縱 股價 類型	內線交 易類型		
72	邦泰	95.8~101.10	✓				62,248	219
73	明輝 TDR	99.10~100.2~3			✓		6,706	53
	特藝 TDR						27,416	41
74	富味鄉(二)	102.10.24				✓	2,523	24
75	F-康聯	100.10.11~101.3.14			✓		54,333	28
76	裕國	103.1-103.2			✓		728	21
77	偉盟	100.7.1-104.7.16			✓		518,472	1,344
78	鉅橡(二)	102.9.2-103.5.20			✓		315,747	493
79	長虹、永信 建、彬台	101.10.1~102.12.17			✓		44,015	133
80	宏碁(二)	102.11.4				✓	5,920	177
81	三陽工業	101.12.25~102.3.7			✓		98,981	31
82	樂陞	106					4,469,282	19,526
83	宇加	101.8~103	✓				26,227	49

資料來源：財團法人證券投資人及期貨交易人保護中心網站資料整理

(網址：<http://www.sfipc.org.tw/WebLoadFileUse.ashx?L=1&SNO=hgIgrINrGhGslM60x3he2g==>，

最後瀏覽日：民國 105 年 12 月 10 日)

註：有關投保中心所辦理之證券詐欺民團體訴訟案件，其起訴對象除刑事不法行為人外，於財報不實、公開說明書不實等案件尚包括相關財報任期之董事、監察人，至就內線交易及操縱股價案件類型，則以涉及該等不法行為之董事或監察人為求償對象。

以下另就司法實務上公司董事、監察人遭民事求償之案例，簡述分析相關事實及法院判決：

壹、案例一：博達公司案

民國 93 年 10 月博達科技股份有限公司之董事長、副董事長及多位董事及經理人，遭檢察官提起公訴，另於同年 12 月財團法人證券投資人及期貨交易人保護中心受理投資人委託提起團體訴訟，登記求償者有一萬多人，求償金額高達新台幣 54 億元。

1. 案例事實

博達科技股份有限公司董事及經理人等為美化公司財務報告，以利於公司申請上市，遂於海外虛設人頭公司，並與國內廠商配合進行虛偽循環交易⁷，以窗飾博達科技股份有限公司之財務報告，進而順利上市。而於公司順利上市後，為使其財務報告文件合理化，即以公司資金供前揭虛偽交易循環周轉，以掩飾公司之鉅額應收帳款。其財報不實之相關手段，整理如下所示：

博達科技股份有限公司之負責人及經理人等，為取得供虛偽循環交易所需之資金，即以博達科技股份有限公司之銀行存款為擔保，供海外虛設之人頭公司向銀行借款，而以該筆借款作為假交易之周轉使用。並將前開博達科技股份有限公司提供擔保之存款，於歷次財務報告中虛偽

⁷ 由博達公司向海外人頭公司進行假銷貨，然後裝船出貨至香港，貨櫃提存至倉庫數月後，再由台灣的原物料廠商報關，將貨櫃原封不動運回台灣賣給博達公司，以此反覆循環進行交易。

記載為銀行存款科目，使投資人誤以為公司尚有資金可供使用。

另外為製造假銷貨所生應收帳款已收回之情況，即與銀行合謀，謊稱前開假交易之應收帳款已收現並存入博達科技股份有限公司海外銀行帳戶內，而為掩飾公司海外銀行帳戶並無現金之情況，遂以虛偽之海外銀行存款購買信用聯結債券，並與銀行約定前開交易之款項及信用聯結債券皆不得任意更動，銀行則配合博達科技股份有限公司開具不實之對帳單，最後博達科技股份有限公司則將該虛偽應收帳款轉列為公司銀行存款科目內。

最後，博達科技股份有限公司並為海外虛設之人頭公司擔任擔保人，以利海外人頭公司向銀行借款，而以該筆借款認購博達科技股份有限公司於民國 92 年底發行之海外可轉換公司股權之公司債，博達科技股份有限公司所得之款項並須存入於銀行帳戶內為前揭借款提供擔保，惟博達科技股份有限公司卻仍將該筆存款列為公司可動支現金，欺騙投資人。嗣後，海外人頭公司將前開可轉換公司股權之公司債轉換為博達科技股份有限公司之股票並出售后，其所得款項並未償還借款，而遭使用於虛偽循環交易中或侵占。

2. 法院判決分析⁸

⁸ 參臺灣高等法院 97 年度金上字第 6 號民事判決、臺灣士林地方法院 93 年金字第 3 號民事判決。

(1) 發行人

按證券交易法第 5 條規定：「本法所稱發行人，謂募集及發行有價證券之公司，或募集有價證券之發起人。」對此，博達科技股份有限公司為發行有價證券之公司，而博達科技股份有限公司於民國 88 年度至 93 年第一季財務報告中，涉有財務報告虛偽不實等，致投資人受有損害，自應對投資人負損害賠償責任。

(2) 不法行為人

博達科技股份有限公司之董事長及經理人等明知博達科技股份有限公司於民國 88 年度至 93 年度第一季財務報告虛偽不實，卻仍簽署於前開財務報告中，而於各該次董事會通過該不實財務報告，故意製造虛偽不實之財務報告，致投資人誤信該不實財務報告，而於市場上買賣博達科技股份有限公司之股票，自應對投資人負損害賠償責任。

(3) 董事及監察人

董事依公司法規定有執行業務等職權，並應盡善良管理人注意義務及忠實義務。對此，縱使董事未親自為本件不法行為，亦應盡其善良管理人之注意義務，以保障公司及股東之權益，而卻怠於行使其職權，致博達科技股份有限公司於民國 88 年度至 93 年度第一季財務報告有虛偽隱匿之行為，自屬有過失，而應對投資人負損害賠償責任。

監察人依公司法規定應監督公司業務之執行，並得隨時調查公司業務及

財務狀況，查核簿冊文件，並得請求董事會或經理人提出報告等，渠等雖未參與不法行為，惟卻未發揮監察人監督功能據實查核簿冊文件及表冊等，致使投資大眾陷於錯誤，顯係故意廢弛其監察人職責，對於博達科技股份有限公司於民國 88 年度至 93 年第 1 季財務報告虛偽不實行為自應負責。

綜上，本案應負賠償責任之人⁹，總計有博達公司、董事長葉○、董事兼光電事業處總經理彭○、董事兼財務長謝○、董事兼財務協理徐○、董事兼金融資源中心主管賴○、監察人夏○、副董事長葉○屏、董事林○等人。

貳、案例二：訊碟公司案

民國 93 年訊碟科技股份有限公司之董事長涉嫌內線交易及財報不實案，嗣經投資人向財團法人證券投資人及期貨交易人保護中心登記求償，當時登記人數達四千多人，求償金額高達新台幣 26 億多元，而經臺灣高等法院更一審判決被告等連帶賠償金額達 22 億元。

1. 案例事實

訊碟科技股份有限公司於民國 91 年間發行海外可轉換公司債，訊

⁹ 參財團法人證券投資人及期貨交易人保護中心博達案簡介資料，網址：<http://www.sfipc.org.tw/MainWeb/Article.aspx?L=1&SNO=GyEQGctt5pwAdYqHxQ76SQ==>，最後瀏覽日：2016 年 12 月 10 日。

訊碟科技股份有限公司董事長及經理人等人並為海外人頭公司擔保借款，並以前開借款由海外人頭公司認購前開可轉換公司債，惟未實際繳納款項，利用取得之貸款，連續出具銀行定期存款確認單，作為供會計師查核已收取款項之憑證，並編製不實財務報告，隱匿公司資產不足之情事。至於前開可轉換公司債轉換成訊碟科技股份有限公司股票後，即於股票交易市場中出售，無償套取高額資金。另為美化訊碟科技股份有限公司營收狀況、創造業績成長亮麗假象，遂與其他公司人員共謀，藉由外部公司所虛設之公司行號，製作不實憑證，形成虛增營業額之交易循環，進而虛增訊碟科技股份有限公司營業額，並將不實交易登載於財務報表中，誤導投資人之判斷。

2. 法院判決¹⁰

(1) 不法行為人

訊碟科技股份有限公司董事長、總經理、財務經理等不法行為人，於執行製作財務報告之業務時，理應確保訊碟科技股份有限公司財務報告內容之真實，卻基於共同犯意之聯絡，將虛偽不實情事登載於會計帳冊並公開揭露於財務報告中，致影響投資人判斷之行為，顯然渠等對於訊碟科技股份有限公司業務之執行，明顯有違反法令致投資人受有損害

¹⁰ 參臺灣新北地方法院 94 年金字第 12 號民事判決、臺灣高等法院 97 年金上字第 3 號民事判決、最高法院 99 年台上字第 521 號民事判決、臺灣高等法院 99 年金上更（一）字第 1 號民事判決、最高法院 102 年台上字第 1294 號民事判決。

之情事，自應依法賠償投資人所受之損害。

(2) 董事及監察人

公司之董事及監察人，本即負有執行公司業務，抑或監督公司業務之執行與查核董事會編造表冊等職權，卻未能善盡其職責，致訊碟科技股份有限公司對外公告之財務報告內容有虛偽及隱匿之情事發生，造成公司之投資人誤信前開不實財務報告，進而買進訊碟科技股份有限公司股票，致受有股價交易價格價差或價值減損之損害，自應依法賠償投資人所受之損害。

參、我國董監責任保險具體賠償案例介紹

我國司法實務上，對於董監事及重要職員責任保險所衍生之爭議案件數目有限，對此，試就以下案例介紹說明之：

案例一：遠東航空股份有限公司之董監事及重要職員責任保險

1. 案例事實

遠東航空股份有限公司於民國 96 年 8 月 21 日向美商美國環球產物保險有限公司(該公司於民國 96 年 10 月 1 日與友邦產物保險股份有限公司合併，並於民國 98 年 11 月 23 日起更名為美亞產物保險股份有限公司)購買「美國環球產物董事及重要職員責任保險」，並與美亞產物保險股份有限公司簽訂「美國環球產物董事及重要職員責任保險保險

單」(即系爭保險單)，保險期間約定為民國 96 年 7 月 1 日零時起至民國 97 年 7 月 1 日起，嗣於民國 97 年 6 月 30 日遠東航空股份有限公司與美亞產物保險股份有限公司約定將系爭保險期間展延至民國 97 年 9 月 1 日止，且同意由富邦產物保險股份有限公司與美亞產物保險股份有限公司共同承保系爭保險，各共保人按其承保比例對被保險人或被保險公司之損失負責，其中美亞產物保險股份有限公司承保比例為 80%，富邦產物保險股份有限公司承保比例為 20%。

嗣後遠東航空股份有限公司前董事長等人遭臺灣臺北地方法院檢察署以涉嫌侵占、背信及違反證券交易法等不法而進行偵查，並於民國 97 年 8 月 14 日提起公訴；財團法人證券投資人及期貨交易人保護中心並以遠東航空股份有限公司前董事長等人主張以虛偽合約及不實交易之方式，虛增遠東航空股份有限公司營業收入、應收款項及預付款項等，致遠東航空股份有限公司對外公告民國 94 年第 2 季至 96 年第 3 季財務報告內容有虛偽隱匿之情，使投資人誤信該等財務報告而購買遠航公司股票，致蒙受股價下跌之價差損害，故對遠東航空股份有限公司前任董事及監察人等相關人員提起民事損害賠償訴訟。

當時遠東航空股份有限公司之 3 位董事及 4 位監察人，分別依公司法第 27 條第 2 項規定，以中華航空股份有限公司、中華開發工業銀行股份有限公司、楓丹白露股份有限公司之代表人身分，當選為遠東航空

股份有限公司之董事與監察人。

財團法人證券投資人及期貨交易人保護中心於前開民事求償事件中，針對上述 7 位董事、監察人，主張渠等因未盡董事與監察人職責，或有未盡善良管理人注意義務使遠航公司得以進行虛偽交易、虛增營收，及或有重大過失致未詳予查核財務報告，致善意信賴遠東航空股份有限公司財報之人買入遠東航空股份有限公司股票而遭受損失等情，而中華航空股份有限公司、中華開發工業銀行股份有限公司、楓丹白露股份有限公司則係依據民法第 28 條及公司法第 23 條規定，對於遠東航空股份有限公司之投資人，應負連帶損害賠償責任。

中華航空股份有限公司、中華開發工業銀行股份有限公司、楓丹白露股份有限公司及上述遠東航空股份有限公司 7 位董事、監察人則依據系爭保險單第 5 條第 6 項之約定，請求美亞產物保險股份有限公司及富邦產物保險股份有限公司預付相關抗辯費用，致衍生本件爭議。

2. 法院判決¹¹

(1) 被保險人範圍之爭議

依系爭保險單第 4 號批單約定：「…『董事或重要職員』：指任何被合法指派或選任為被保險公司董事（包括執行董事及非執行董事）、監

¹¹ 臺灣臺北地方法院 99 年度保險字第 90 號民事判決。

察人或重要職員之『自然人』。於本保險單下，被保險公司之『法人股東或其代表人』，於過去、現在或未來當選為被保險公司之董事（包括執行董事及非執行董事）或監察人者，亦為本保險單所指之董事或重要職員。受前述法人股東指定或指派行使董事或監察人職務之自然人，亦同。」；及依系爭保險單第5號批單約定：「…『被保險人』係指任何過去、現在或未來成為被保險公司董事或重要職員之『自然人』，或是針對被保險公司受僱人利益成立之年金、退休金或福利金基金之受託人…於本保險單下，被保險公司之『法人股東或其代表人』，於過去、現在或未來當選為被保險公司之董事（包括執行董事及非執行董事）或監察人者，亦為本保險單所指之董事或重要職員。受前述法人股東指定或指派行使董事或監察人職務之自然人，亦同…。」是以，倘若係法人股東之情形下，需為法人股東或其代表人當選為被保險公司之董事或監察人，或前述法人股東指定或指派行使董事或監察人職務之自然人，始為系爭保險之被保險人，若法人股東係由其代表人當選為被保險公司之董事或監察人，該法人股東本身未當選為董事或監察人者，則該法人股東自非系爭保險之被保險人。

惟遠東航空股份有限公司之董事魏○雄及鍾○君、董事龔○佑及監察人王○玲、徐○琳及黃○意、以及監察人陳○遠，係分別依公司法第27條第2項規定，以中華航空股份有限公司、中華開發工業銀行股份

有限公司、楓丹白露股份有限公司之代表人身分當選為遠東航空股份有限公司之董事與監察人，對此，中華航空股份有限公司、中華開發工業銀行股份有限公司、楓丹白露股份有限公司並非系爭保險之被保險人。況且中華航空股份有限公司、中華開發工業銀行股份有限公司、楓丹白露股份有限公司係因民法第28條及公司法第23條規定遭財團法人證券投資人及期貨交易人保護中心求償，並非係因前開公司執行被保險公司（即遠東航空股份有限公司）之董事及監察人職務所致，故中華航空股份有限公司、中華開發工業銀行股份有限公司、楓丹白露股份有限公司自不得依系爭保單向富邦產物保險股份有限公司與美亞產物保險股份有限公司請求理賠。

(2) 抗辯費用之爭議

另據龔○佑、黃○易、王○玲、徐○琳、魏○雄、鍾○君等人之相關抗辯費用，均係由中華航空股份有限公司、中華開發工業銀行股份有限公司、楓丹白露股份有限公司所支出，渠等並未實際支出抗辯費用，自無由向富邦產物保險股份有限公司與美亞產物保險股份有限公司求給付相關抗辯費用。

案例二：遠東航空股份有限公司之董監事及重要職員責任保險

1. 案例事實

遠東航空股份有限公司於民國 96 年 8 月 21 日向美商美國環球產物保險有限公司(該公司於民國 96 年 10 月 1 日與友邦產物保險股份有限公司合併，並於民國 98 年 11 月 23 日起更名為美亞產物保險股份有限公司)購買「美國環球產物董事及重要職員責任保險」，並與美亞產物保險股份有限公司簽訂「美國環球產物董事及重要職員責任保險保險單」(即系爭保險單)，保險期間約定為民國 96 年 7 月 1 日零時起至 97 年 7 月 1 日起，嗣於民國 97 年 6 月 30 日遠東航空股份有限公司與美亞產物保險股份有限公司約定將系爭保險期間展延至民國 97 年 9 月 1 日止，且同意由富邦產物保險股份有限公司與美亞產物保險股份有限公司共同承保系爭保險，各共保人按其承保比例對被保險人或被保險公司之損失負責，其中美亞產物保險股份有限公司承保比例為 80%，富邦產物保險股份有限公司承保比例為 20%。另遠東航空股份有限公司與富邦產物保險股份有限公司及美亞產物保險股份有限公司，約定倘若遠東航空股份有限公司失卻清償能力所生之賠償責任除外不保，即系爭保險單中之第 9 號批單。

嗣後遠東航空股份有限公司前董事長崔○等人遭臺灣臺北地方法院檢察署以涉嫌侵占、背信及違反證券交易法等不法而進行偵查，並於民國 97 年 8 月 14 日提起公訴；財團法人證券投資人及期貨交易人保護中心並以遠東航空股份有限公司前董事長崔○等人主張以虛偽合約及

不實交易之方式，虛增遠東航空股份有限公司營業收入、應收款項及預付款項等，致遠東航空股份有限公司對外公告之民國 94 年第 2 季至 96 年第 3 季財務報告內容有虛偽隱匿之情，使投資人誤信該等財務報告而購買遠航公司股票，致蒙受股價下跌等價差損害，故對遠東航空股份有限公司前任董事及監察人等相關人員提起民事損害賠償訴訟。

王○山於民國 96 年 12 月 4 日起受泉鴻投資股份有限公司指派擔任遠航公司之監察人，其擔任職務之期間 83 日；樂○信則於民國 96 年 6 月 13 日起至同年 12 月 4 日受富寓投資股份有限公司指派擔任遠航公司之董事。對此，王○山及樂○信依據系爭保單約定，而向富邦產物保險股份有限公司與美亞產物保險股份有限公司請求給付相關抗辯費用。

2. 法院判決¹²

首先，所謂除外條款，係指將保險契約原屬包括在內之危險，予以明文除外之條款，此種條款旨在縮小危險範圍，通常係針對某些「原因」所致之危險明文約定予以排除，於其成就時，得免除保險人在該除外項下之危險責任。

再者，系爭保險單之第 9 號批單約定：「茲考量本保險契約所收取之保險費，雙方瞭解並同意，對於被保險公司或重要職員所遭受之下列賠償請求所致之損失，本公司不負賠償責任：(1) 主張直接或間接因下

¹² 臺灣台北地方法院 100 年北保險簡字第 9 號民事判決。

列事項所致，或以之為基礎，或可歸因於，或以任何方式與之有關之賠償請求：(i) 被主張係直接或間接，全部或一部，導致下列情況之不當行為：(a) 被保險公司破產或無力償付債務，或 (b) 被保險公司或他人依聯邦破產法或類似法規提出被保險公司之破產聲請，或 (c) 被保險公司基於債權人之權益將其資產轉讓者；或 (ii) 全部或一部因董事或重要職員之不當行為而導致被保險公司遭受財務損失者，但以賠償請求係在下列情況發生之後提出者為限：(a) 被保險公司已無力償付債務，或 (b) 被保險公司已提出破產聲請，或 (c) 有他人提出被保險公司之破產聲請，或 (d) 被保險公司已基於債權人之權益將其資產轉讓者；或…」是以，系爭第 9 號批單將系爭保險契約原屬包括在內之危險，予以明文除外，故屬除外條款，而保險公司得以該批單主張不負賠償責任之要件如下：(1) 被保險公司董事或重要職員「被主張」有直接或間接，全部或一部，導致被保險公司破產或無力償付債務之不當行為。(2) 被保險公司董事或重要職員「被主張」直接或間接因前揭不當行為所致，或以之為基礎，或可歸因於，或以任何方式與之有關之賠償請求。

最後，財團法人證券投資人及期貨交易人保護中心所提起之民事求償事件，財團法人證券投資人及期貨交易人保護中心係主張王○山、樂○信之不當行為間接導致遠東航空股份有限公司無償付能力，或遠東航空股份有限公司無償付能力可歸因於王○山、樂○信之不當行為，並因

遠東航空股份有限公司無償付能力造成股票下跌，致系爭投資人受有損害，因此，前開財團法人證券投資人及期貨交易人保護中心所提起之民事求償事件屬與前揭王○山、樂○信不當行為導致遠東航空股份有限公司陷入無償付能力之相關賠償請求，係屬系爭保險單第 9 號批單中之除外不保事項。是以，王○山、樂○信自無由依系爭保險契約第 1 條與第 5 條第 6 項之約定，向富邦產物保險股份有限公司與美亞產物保險股份有限公司請求理賠。

案例三：銳普電子股份有限公司之董監事及重要職員責任保險

1. 案例事實

銳普電子股份有限公司於民國 77 年 6 月成立，以電腦軟體設計維護及零組件加工買賣為業，而於民國 79 年間陳○全擔任銳普電子股份有限公司董事長後，隨即進行改組，並轉為變壓器製造商。嗣後於民國 92 年上櫃，並於同年上市交易。

於本案中，主要涉及泰暘集團、三稽國際股份有限公司等廠商共同配合銳普電子股份有限公司從事虛偽交易，並製作不實之訂購單及發票等，而以應收帳款及預付貨款之方式，虛增銳普電子股份有限公司之營業收入，並登載於銳普電子股份有限公司之營收報告及財務報告上。是以，銳普電子股份有限公司之營收報告及財務報告涉嫌不實記載，而遭投資人授權財團法人證券投資人及期貨交易人保護中心向相關涉案人

員依法請求損害賠償。

2. 法院判決¹³

本案陳○全、陸○正、蔡○錄、林○青為銳普電子股份有限公司之董事；賴○宗、陳○蓮、陳○廷則為該公司之監察人；其等之任期本均應自 91 年 5 月 8 日至 95 年 5 月 17 日止；嗣因銳普電子股份有限公司於 94 年 4 月間召開股東會改選董事、監察人，除董事林○青、監察人陳○蓮、陳○廷等三人於 94 年 4 月 19 日卸任外，陳○全、陸○正、蔡○錄續任董事，賴○宗則續任監察人，並另由詹○邦、廖○榕為銳普電子股份有限公司之董事；巫○正、許○曄則為該公司之監察人。

嗣因本案陳○全等部分行為人於本案全部終局確定前，已部分先行確定，如銳普電子股份有限公司之董事長陳○全即須賠償投資人總共新臺幣三億兩千萬元左右。另因銳普電子股份有限公司當時已向美亞產物保險股份有限公司投保「美國環球董事重要職員責任保險」¹⁴，保險金額為美金 500 萬元，是以，財團法人證券投資人及期貨交易人保護中心遂即向美亞產物保險股份有限公司請求給付保險金。

¹³ 參最高法院 104 年度台上字第 2503 號民事判決、臺灣高等法院 102 年度金上更（一）字第 1 號民事判決、最高法院 101 年度台上字第 2037 號民事判決、臺灣高等法院 98 年度金上字第 9 號民事判決及臺灣板橋地方法院 95 年度金字第 3 號民事判決。本文為聚焦於董監事及重要職員責任保險，故僅就有關前開保險部分為說明討論。

¹⁴ 當時銳普電子股份有限公司於民國 94 年 3 月 22 日向美商美國環球產物保險有限公司臺灣分公司投保「美國環球董事重要職員責任保險」，嗣因於 96 年間，美國環球產險臺灣分公司與中央產物保險股份有限公司合併成立美亞產物保險股份有限公司，故美國環球產險臺灣分公司就前開責任保險契約之相關權利義務關係，即由美亞產物保險股份有限公司所承受。

惟當時財團法人證券投資人及期貨交易人保護中心向美亞產物保險股份有限公司依保險法第 94 條第 2 項請求保險金時，因本案部分董監事尚未判決確定，倘若前開保險金皆由投資人所取得者，恐影響其自身權益等，遂向法院聲請定暫時狀態假處分。嗣經法院¹⁵以本件陳○全確係於該保險之保險期間內，擔任銳普電子股份有限公司董事長，並因銳普電子股份有限公司之財務業務資訊不實等事件，業經法院判決確定其應賠償投資人新臺幣三億兩千萬元，而並依本保險條款約定，自己構成本件保險之出險事由；是以，本件財團法人證券投資人及期貨交易人保護中心，於前開保險之被保險人陳貴全應負之損害賠償責任範圍內，依保險法第 94 條第 2 項規定，直接向保險人請求給付美金 500 萬內之賠償金額。

另因財團法人證券投資人及期貨交易人保護中心業以透過前開保險向美亞產物保險股份有限公司取得部分損害賠償，惟前開保險之被保險人，除銳普電子股份有限公司之董事陳○全等外，尚有其他董事及監察人等仍在訴訟中，且賠償責任範圍不同¹⁶，遂經最高法院¹⁷以財團法

¹⁵ 參臺灣高等法院民事裁定 102 年度抗字第 1553 號。

¹⁶ 參臺灣高等法院 102 年金上更（一）字第 1 號民事判決：「...惟蔡○祿、賴○宗及許○暉對於系爭營收及財務報告固有未盡注意義務之過失，然渠等未於系爭刑事案件列為被告，對於該財務報告不實內容之參與程度，自無從與其他參與行為之董事詹○邦，或擔任公司代表人之陳○全，及綜理公司一切業務執行之總經理陸○正等量其觀，爰考量蔡○祿、賴○宗及許○暉之過失各自對系爭營收及財務報告不實之發生原因，及許○暉自 94 年 4 月 20 日起始擔任監察人，暨銳普公司上開預付款及虛偽交易之發生時間分布，及董事及監察人均應同負監督公司是否合法經營之責，董事係基於董事會以決議訂定公司最高業務執行方針（公司法第 202 條規定參照），自需監督公司業務執行之績效及適法性，監察人則係本於其職權監督公司業務執行等情，應認對於附表一「姓名」欄之訴訟實施權授與人，蔡○祿及賴○宗各負 4% 之賠償責任，許○暉應負 3% 之賠償責任；又其各自應負擔賠

人證券投資人及期貨交易人保護中心既已自美亞產物保險股份有限公司取得部分賠償金額，是以，財團法人證券投資人及期貨交易人保護中心向其他董監事所得請求之損害賠償金額，自應扣除已取得之損害賠償。惟前開扣除之方式，究應先計算每一被保險人（董監事）應受董監事及重要職員責任保險之保障範圍後，再依個別董監事責任比例計算之賠償金額扣除；抑或，該保險金應先自損害賠償總額中扣除後，再依董監事應負比例計算其賠償金額等為由，而發回臺灣高等法院從新審理。嗣經臺灣高等法院重新審理後¹⁸，認定倘若依董監事人數平均分配保險金，恐使部分責任比例低之董監事獲致高額理賠金，而有不公平現象，是以，董監事責任保險保險金既屬董監事賠償金額之一部分，其保險金分配自應按董監事之責任比例計算，以求公允，而非按人數比例或由某些董監事優先扣抵。

第六節 我國兆豐商銀及樂陞案案例介紹

民國 105 年起我國接連發生兆豐商銀紐約分行裁罰案及樂陞公開收購違約交割案等，引起社會之極大震撼，本文先就前開兩案例相關事實略作整理，以利後續分析討論之。

償之行為，各與陸○正、詹○邦等 5 人、謝○莉、陳○全之侵權行為，均為附表一「姓名」欄之訴訟實施權授與人因財報不實受有股價下跌損害之共同原因，並為公司法第 8 條第 1 項、第 2 項規定之負責人執行職務之行為，各依民法第 185 條第 1 項前段及公司法第 23 條第 2 項規定，與銳普公司、陳○全、詹○邦等 5 人及謝○莉負連帶給付責任。」

¹⁷ 參最高法院 104 年度臺上字第 2503 號民事判決。

¹⁸ 參臺灣高等法院民事判決 105 年度金上更(二)字第 1 號。

一、兆豐商銀紐約分行裁罰案

(一) 大事記

時間	事件
民國 105 年 1 至 3 月	美國紐約州紐約州金融服務署 (DFS, New York Department of Financial Service) 對兆豐國際商業銀行股份有限公司紐約分行辦理一般業務檢查。
民國 105 年 2 月 9 日	美國紐約州紐約州金融服務署 (DFS) 對兆豐國際商業銀行股份有限公司之紐約分行檢查報告中指出該行西元 2012 年之匯款交易，在法遵機制、防制洗錢及可疑交易申報上，涉及違反美國銀行保密法 (Bank Secrecy Act, BSA) 及洗錢防制法 (Anti-Money Laundering, AML) 相關規定。
民國 105 年 3 月	兆豐國際商業銀行股份有限公司針對美國紐約州紐約州金融服務署之檢查報告提出答覆。
民國 105 年 3 月 29 日	兆豐國際商業銀行股份有限公司董事長蔡○才請辭兆豐國際商業銀行股份有限公司之董事及董事長職務。

時間	事件
民國 105 年 3 月 29 日	吳○卿暫任兆豐國際商業銀行股份有限公司之董事長。
民國 105 年 5 月 18 日	兆豐國際商業銀行股份有限公司將美國紐約州紐約州金融服務署（DFS）之檢查報告向金管會呈報。
民國 105 年 7 月底	兆豐國際商業銀行股份有限公司接獲美國紐約州紐約州金融服務署通知，將對兆豐國際商業銀行股份有限公司紐約分行之缺失進行開罰。
民國 105 年 8 月 1 日	兆豐國際商業銀行股份有限公司派員至金融監督管理委員會口頭說明有關美國紐約州紐約州金融服務署將對兆豐國際商業銀行股份有限公司紐約分行之缺失進行開罰乙節。
民國 105 年 8 月 4 日	金融監督管理委員會丁主委於 8 月 4 日請桂副主委拜會中央銀行彭總裁，彭總裁同意指派紐約辦事處劉主任與金管會駐紐約辦事處陳秘書拜會美國紐約州紐約州金融服務署，以了解兆豐國際商業銀行股份有限公司紐約分行案

時間	事件
	真正原因及處分內容。
民國 105 年 8 月 19 日	兆豐國際商業銀行股份有限公司遭美國紐約州紐約州金融服務署（DFS）以該銀行紐約分行所建立之防制洗錢遵循計畫未能有效執行，雙方簽署合意處罰令（Consent Order），而裁罰一億八千萬美元。
民國 105 年 8 月 19 日	金融監督管理委員會發布新聞稿，對於兆豐國際商業銀行遭美國紐約州金融監理機關裁罰一事之說明
民國 105 年 8 月 22 日	金融監督管理委員會成立「兆豐銀行遭美國裁罰案跨部會因應專案小組」
民國 105 年 8 月 23 日	臺北地檢署及法務部調查局臺北市調查處至兆豐國際商業銀行股份有限公司調閱兆豐國際商業銀行股份有限公司與美國紐約州紐約州金融服務署 Consent Order 案資料。
民國 105 年 8 月 26 至 29 日	金融監督管理委員會約詢兆豐銀行前董事長、總經理、業務督導副總經理、總稽核、法遵長、紐約分行經理及法遵主管、董事及監察

時間	事件
	人等共計 28 位人員。
民國 105 年 9 月 2 日	金融監督管理委員會依據約詢結果及目前蒐集之資料，初步發現六項缺失。
民國 105 年 9 月 14 日	金融監督管理委員會發布新聞稿，針對兆豐國際商業銀行遭美國紐約州金融署(DFS)裁罰美金 1.8 億元一案，金管會對該行及相關人員行政處分。
民國 105 年 9 月 23 日	兆豐國際商業銀行股份有限公司依 105 年 9 月 23 日董事會決議，決定對於兆豐國際商業銀行股份有限公司遭美國紐約州紐約州金融服務署裁罰所受之損失，對有責任之公股董事求償（前董事蔡○才及吳○卿）。

（二） 案例事實

兆豐國際商業銀行係由中國商銀及交通銀行合併所組成，當初為擴大經營規模及強化市場占有率等，中國商銀與交通銀行於民國 95 年 8 月 21 日合併並更名為兆豐國際商業銀行（Mega International Commercial Bank）。目前國內分行家數達 107 家，海外分行 22 家，支

行 5 家等，合計海外據點共有 39 處¹⁹。

本案緣起於美國紐約州金融服務署（DFS, New York Department of Financial Service）派員於民國 104 年 1 月至 3 月檢查兆豐國際商業銀行之紐約分行截至民國 103 年 9 月底之業務，同時，評估管理階層對於民國 102 年檢查所發現之缺失改善情形。惟於民國 104 年 2 月向兆豐國際商業銀行提出檢查報告後，經兆豐國際商業銀行及紐約分行於同年 3 月向美國紐約州金融服務署所提出回覆後，雙方嗣後於民國 105 年 8 月 19 日簽屬合意處罰令（Consent Order），裁罰兆豐國際商業銀行 1 億 8 千萬元美元，並指出美國紐約州金融服務署調查後所發現之 6 項缺失²⁰：1.紐約分行內控不佳，且部分人員同時擔負相互衝突之責任，而有明顯利益衝突之虞；2.兆豐國際商業銀行紐約分行與巴拿馬分行間交易規模龐大，惟巴拿馬係涉及洗錢之高風險地區，對此，兆豐銀行未對紐約分行及巴拿馬分行交易給予高度注意，顯然未盡督導之責任；3.兆豐國際商業銀行紐約分行之人員未依照銀行已訂定客戶盡職審查政策（Due Diligence）及程序執行；4.兆豐國際商業銀行紐約分行風險評估政策及程序失當；5.兆豐國際商業銀行對於其紐約分行未盡其監督之責；6.兆豐國際商業銀行紐約分行對於美國紐約州金融服務署之檢查，

¹⁹ 參兆豐國際商業銀行官方網站，網址：<https://www.megabank.com.tw/about/about01.asp>，最後瀏覽日 2016 年 10 月 14 日。

²⁰ 參紐約州金融局發布之 Consent order 全文，譯者馬秀如、許順雄，台灣舞弊防治與鑑識學會，網址：http://www.acfetaiwan.com.tw/6353/dfsmeigabankconsentorder_full，最後瀏覽日：2016 年 10 月 14 日。

提出令人不安及輕視之回應。

我國金融監督管理委員會於知悉本案後，隨即採取相應措施，並於民國 105 年 8 月 22 日成立「兆豐銀行遭美國裁罰案跨部會因應專案小組」。嗣後，經金融監督管理委員會分析兆豐國際商業銀行所提出資料及約詢 30 名涉案相關人員，並派員實地檢查結果後，發現兆豐國際商業銀行經營管理及處理過程未落實建立及未確實執行內部控制制度，有礙健全經營之虞，而就兆豐國際商業銀行及相關人員為相應之行政處分

21。

另就本案兆豐國際商業銀行遭美國紐約州金融署裁罰乙節，有媒體報導指稱兆豐國際商業銀行前董事長蔡○才知悉本件洗錢事宜，且不理會美國紐約州金融署警告，而於事件惡化後，並利用兆豐股價將重挫訊息套利，被疑為內線交易²²。而本案亦已進入司法調查，並已對相關涉嫌人、證人及相關人等，分別偵查中。並且兆豐國際商業銀行民國 105 年 9 月 23 日董事會決議，對該行遭美國紐約州金融服務署裁罰所受損失，亦已決定對前董事蔡○才及吳○卿等求償²³。

²¹ 參金融監督管理委員會 2016 年 9 月 14 日新聞稿，網址：http://www.fsc.gov.tw/ch/home.jsp?id=96&parentpath=0,2&mcustomize=news_view.jsp&dataserno=201609140003&aplistdn=ou=news,ou=multisite,ou=chinese,ou=ap_root,o=fsc,c=tw&dtable=News，最後瀏覽日：2016 年 10 月 14 日。

²² 參自由時報 2016 年 9 月 12 日報導，兆豐案檢調疑蔡友才：知洗錢還可能是禿鷹 涉內線交易，網址：<http://news.ltn.com.tw/news/business/breakingnews/1823534>，最後瀏覽日：2016 年 10 月 14 日。

²³ 參公開資訊觀測站，2016 年 9 月 23 日兆豐金控代兆豐國際商業銀行公告之重大訊息：「主旨：兆豐金融控股股份有限公司代子公司兆豐國際商業銀行公告該行依 105 年 9 月 23 日董事會決議，已決定對前董事蔡友才及吳漢卿求償。」

二、樂陞公開收購違約交割案

(一) 大事記

時間	事件
民國 105 年 5 月 31 日	百尺竿頭數位娛樂欲以每股 128 元公開收購樂陞科技股份有限公司 3 萬 8 千張股票，收購期間為民國 105 年 6 月 1 日至同年 7 月 20 日。
民國 105 年 6 月 1 日	樂陞科技股份有限公司臨時董事會決議成立審議委員會，並由獨立董事尹○銘先生、李○萍、陳○茜擔任審議委員會委員，就公開收購事項進行審議及公告審議結果。
民國 105 年 6 月 8 日	樂陞科技股份有限公司審議委員會之審議結果，經委託安侯建業聯合會計師事務所出具價格合理性意見書所示，百尺竿頭對樂陞科技股份有限公司普通股之公開收購價格每股 128 元，尚屬合理。
民國 105 年 7 月 14 日	收購人百尺竿頭數位娛樂以尚未取得投資審議委員會核准為由，申報及公告延長公開收購期間至民國 105 年 8 月 19 日。

時間	事件
民國 105 年 7 月 22 日	投資審議委員會核准百尺竿頭數位娛樂以每股現金 128 元對價，公開收購上櫃公司樂陞科技股份有限公司 3,800 萬股。
民國 105 年 8 月 12 日	金融監督管理委員會接獲檢舉，然因本公開收購案仍在進行中且公開收購條件尚未成就，金融監督管理委員會立即透過受委任機構中國信託商業銀行瞭解收購進度，並請櫃檯買賣中心依監視制度辦法對該股票加強監視查核。
民國 105 年 8 月 17 日	百尺竿頭數位娛樂公開收購樂陞科技股份有限公司已達預定收購數量，公開收購條件成就。
民國 105 年 8 月 22 日	百尺竿頭數位娛樂公告支付收購對價時間延至民國 105 年 8 月 31 日。
民國 105 年 8 月 30 日	中國信託商業銀行告知金融監督管理委員會表示百尺竿頭數位娛樂確定無法完成本次公開收購之交割。
民國 105 年 8 月 31 日	應賣人之樂陞科技股份有限公司股票退還於原集保證券戶內。

時間	事件
民國 105 年 9 月 2 日	樂陞科技股份有限公司民國 105 年 9 月 2 日董事會決議擬以庫藏股方式買回股份轉讓予員工，以因應百尺竿頭危機案。
民國 105 年 9 月 8 日	樂陞科技股份有限公司董事長許○龍遭檢調單位列為被告並限制出境。
民國 105 年 9 月 23 日	新北地檢署至樂陞科技股份有限公司進行資料蒐集及查核。
民國 105 年 9 月 26 日	樂陞科技股份有限公司董事長許○龍以 2,000 萬元准予交保。
民國 105 年 9 月 30 日	樂陞科技股份有限公司董事長許○龍遭新北地方法院裁定羈押及禁見。

（二） 案例事實

樂陞科技股份有限公司成立於民國 89 年 8 月，經營業務包含資訊軟體服務業、資訊處理服務業、電子資訊供應服務業、會議及展覽服務業等，樂陞科技股份有限公司以集團型式進行產業佈局，於臺北、高雄、蘇州、北京等處均有開發據點，各據點分別負責不同遊戲類型開發，樂陞科技股份有限公司並於民國 100 年 8 月 3 日上櫃。

本案緣於民國 105 年 5 月 31 日百尺竿頭數位娛樂委託中國信託商業銀行擔任受託機構，欲以每股 128 元公開收購樂陞科技股份有限公司 3 萬 8 千張股票，並致當日樂陞科技股份有限公司股票漲幅達 21.90%，翌日股價更爆量上漲至近期高點最高達每股 115.5 元。而對於百尺竿頭數位娛樂公開收購樂陞科技股份有限公司乙案，樂陞科技股份有限公司並於百尺竿頭數位娛樂公開收購翌日，隨即由獨立董事尹○銘先生、李○萍、陳○茜等組成審議委員會，就公開收購事項進行審議及公告審議結果。

嗣後經審議委員會委託安侯建業聯合會計師事務所出具價格合理性意見書所示，百尺竿頭對樂陞科技股份有限公司普通股之公開收購價格每股 128 元，尚屬合理，並公告於公開資訊觀測站上。於民國 105 年 7 月 22 日投資審議委員會核准百尺竿頭數位娛樂公開收購樂陞科技股份有限公司案，並於同年 8 月 17 日已達預定公開收購數量，百尺竿頭數位娛樂公開收購條件成就。惟同年 8 月 22 日百尺竿頭數位娛樂公告支付收購對價時間延至民國 105 年 8 月 31 日，且嗣後於同年 8 月 30 日確定百尺竿頭數位娛樂確定無法完成本次公開收購之交割，而於翌日將原本應賣股份退還原集保證券帳戶內。

據媒體報導民國 105 年 3 月以來樂陞科技股份有限公司總共發行三檔可轉換公司債，即「樂陞四」、「樂陞五」、「樂陞六」，總計發行 20

億元，轉換價格約於 73 元至 75 元間，且多數可轉換公司債主要於 100 元以上之股價高檔區即被轉換成股票出售，而遭質疑本案恐有內線交易或炒作股價之虞²⁴。

而對於本案是否涉及內線及炒作股價等，經查樂陞科技股份有限公司於 104 年度總共申報發行 3 檔可轉換公司債，總計新台幣 20 億元，並於民國 105 年第二季止已全數執行完畢，對此，證券櫃檯買賣中心已就可轉換公司債之配售及轉換等查有異常情事，併將內線及炒作股價移送檢調機關處理²⁵。

第七節 小結

隨著我國商業與資本市場逐漸蓬勃發展及陸續爆發企業舞弊案件，致董、監事等遭投資人求償之訴訟案件屢見不鮮，董監事面臨損害賠償請求之頻率及損害賠償金額日漸龐大，我國對於董監事及重要職員責任保險之發展，愈加重視。

對此，我國對於董監事及重要職員責任保險，針對部分產業別及上市櫃公司，於相關公司治理實務守則中，即建議公司為其董、監事投保董監事及重要職員責任保險，以降低並分散董事、監察人因錯誤或疏忽

²⁴ 參經濟日報 2016 年 9 月 24 日報導，樂陞可轉債疑雲 約談三主力，網址：<http://money.udn.com/money/story/5648/1980764>，最後瀏覽日：2016 年 10 月 14 日。

²⁵ 參金融監督管理委員會 2016 年 9 月 9 日新聞稿，網址：http://www.fsc.gov.tw/ch/home.jsp?id=96&parentpath=0,2&mcustomize=news_view.jsp&dataserno=201609090003&aplistdn=ou=news,ou=multisite,ou=chinese,ou=ap_root,o=fsc,c=tw&dtable=News，最後瀏覽日：2016 年 10 月 14 日。

行為而造成公司及股東重大損害之風險。且隨著相關法令的完善，董監事及重要職員責任保險之投保件數逐年增加，截至民國 104 年止，投保件數達 1,674 件，同時投保率約已達 67%，顯然董監事及重要職員責任保險亦逐漸普及。

由我國董監事及重要職員責任保險相關條款規定可知，我國目前董監事及重要職員責任保險仍有諸多法律爭議尚待釐清，諸如：於我國公司法第 27 條規定下，法人得擔任公司董事，而目前董監事及重要職員責任保險承保範圍是否足以滿足被保險公司之需求？我國董監事及重要職員責任保險排除被保險人故意責任，此是否包括重大過失？另故意行為是否屬法定不可保危險，即保險法第 29 條第二項是否為絕對強制規定？如被保險公司欲擴大董監事及重要職員責任保險承保範圍時，有無窒礙難行之處？而就上開法律爭議，本文將參酌外國實務經驗後，加以釐清並提出具體建議。

第三章 各國董監事與重要職員責任保險差異之比較分析

企業的經營相當複雜，企業董監事及重要職員在工作中受限於自身能力、經驗或其他因素難免出現過失行為，進而造成企業經濟上的損失，例如：企業股票市值下跌、投資機會錯失、或傷害第三方利益等，可能導致針對企業或個人進行索賠。

隨著經濟環境發展，董監事及重要職員責任保險在企業經營中所扮演的角色愈來愈重要，各國法律對於董監事及重要職員責任保險皆有所規範。企業內部紛紛建置對董監事及重要職員補償機制，但因資源有限且風險集中，故補償範圍小、條件多，對象亦僅限於董監事及重要職員因業務執行所造成之損失。二十世紀以來，政府對於企業經營的監管力道愈來愈強，投資人對董監事及重要職員提出民事賠償的法律依據日趨完善，迫使企業對於建立董監事及重要職員責任保障機制需求殷切，進而刺激董監事及重要職員責任保險商品之需求。

本章將針對美國、英國、日本、中國大陸、香港、新加坡等國家(地區)之董監事及重要職員責任相關法令與董監事及重要職員責任保險商品進行分析。

第一節 美國

第一項 法規面

西元 1929 年美國經濟大恐慌，造成股市崩盤，許多企業經營不善倒閉，企業經營者面臨法律訴訟。為此，英國勞伊茲(Lloyd's)為美國設

計並於西元 1934 年在美國銷售第一張董監事及重要職員責任保險保單，以因應股市崩盤後引發對企業董監事及重要職員的訴訟案件。當時願意承保董監事及重要職員責任保險的保險人有限，且核保嚴格複雜、保費高昂，導致購買董監事及重要職員責任保險的企業非常少。

1960 年代起，美國聯邦政府與各州政府對於證券交易相關法規及公司法規建置完備，賦予企業經營者更嚴格的要求，有助活絡美國董監事及重要職員責任保險市場。西元 1964 年美國 St. Paul Insurance 簽發第一張董監事及重要職員責任保險保單，成為美國第一家承保此項業務的保險公司，西元 1966 年 American Home Assurance 跟進。西元 1970 年代美國許多企業及其經營者違反公司與證券相關法規，遭到訴訟情形增加，於是，董監事及重要職員責任保險受到重視。1980 年代起至 1990 年代初期，金融產業過度放款，周轉不靈，引發第三人對經營者的訴訟，造成承保的保險公司發生鉅額虧損，使得美國董監事及重要職員責任保險市場承保能量緊縮，進而對董監事及重要職員責任保險商品進行修正，包括提高保費、限制承保條件、增加除外責任或不保事項等，以降低理賠金額，所幸至 1990 年代中期承保能量緊縮問題舒緩。至直今日，美國多數上市公司為其董監事投保，藉由董監事及重要職員責任保險移轉決策過程與執行職務時的不當行為，受到第三人求償的責任風險。西元 2000 年之後，陸續發生國際知名企業弊案，例如：安隆(Enron)、世界通訊(World Com)、環球電訊(Global Crossing)等，重創股匯市，董監事及重要職員責任保險的訴訟與賠償金額隨之增加，也引發對公司治理的重視。

美國公司法令係屬各州立法，大部分州均明文規定企業得為其經營者購買董監事及重要職員責任保險。西元 1970 年美國德拉瓦州公司法

修正，明定企業有權為其董監事及重要職員購買責任保險²⁶，其他州亦效法，例如：紐約州商業公司法²⁷(Business Corporation Law)。另 1984 年修正通過「美國模範商業公司法」²⁸(Model Business Corporation Act)亦有相關之規範。雖於 1980 年代發生美國董監事及重要職員責任保險市場承保能量緊縮危機，現今已成為企業經營者不可或缺的保障。

目前美國董監事及重要職員責任保險屬財務保險(Financial Line)商品，依據 NAIC 2013 Director & Officer Insurance Report 統計，西元 2013 年美國直接簽單保費收入已逾 60 億美元，主要承保的保險集團為 American International Group、XL Group、Chubb Insurance Group、HCC

²⁶ Delaware Code Title 8. Corporations §145. *Indemnification of officers, directors, employees and agents; insurance* (g) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under this section.

²⁷ New York Business Corporation Law §726. *Insurance for indemnification of directors and officers*
(a) Subject to paragraph (b), a corporation shall have power to purchase and maintain insurance:
(1) To indemnify the corporation for any obligation which it incurs as a result of the indemnification of directors and officers under the provisions of this article, and
(2) To indemnify directors and officers in instances in which they may be indemnified by the corporation under the provisions of this article, and
(3) To indemnify directors and officers in instances in which they may not otherwise be indemnified by the corporation under the provisions of this article provided the contract of insurance covering such directors and officers provides, in a manner acceptable to the superintendent of financial services, for a retention amount and for co-insurance.

²⁸ MODEL BUSINESS CORPORATION ACT § 8.57. *INSURANCE* A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by him in that capacity or arising from his status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to him against the same liability under this subchapter.

Insurance Holding Group 及 St. Paul Travelers Group。因法律賦予企業經營者的責任日趨嚴格，依據 Towers Watson 於西元 2013 年針對北美市場(含美國及加拿大)董監事及重要職員責任保險趨勢調查，除了公開發行公司之外，私人企業與非營利事業亦投保董監事及重要職員責任保險使得董監事及重要職員責任保險需求增加。

第二項 保單內容

以美國國際集團 AIG (American International Group)於美國銷售之董監事及重要職員責任保險商品 Public Company Directors & Officers Liability 商品為例，分析該保險商品之被保險人、承保範圍、擴大承保範圍與除外不保事項等。保單條款如附錄三。

(一) 被保險人董監事及重要職員責任保險之被保險人為企業(或稱被保險企業)，被保險企業之董監事及重要職員為被保險個人。

(二) 主要承保範圍

1. 被保險個人保障範圍(通稱 Side A Coverage)。在保險期間內，被保險個人執行職務時，因第三人以其不當行為請求損害賠償，依法應負賠償責任所致之財務損失且未能自公司獲得補償部分，包括理賠前調查(Pre-Claim Inquiry)成本。
2. 對被保險個人損害賠償(通稱 Side B Coverage)。在保險期間內，被保險企業之董監事及重要職員執行職務因不當行為而受第三人賠償請求，導致被保險企業依法令、章程或契約對董監事及重要職員補償時，填補此部分損失，包括理賠前調查(Pre-Claim Inquiry)成本。
3. 企業保障範圍(Entity Coverage 或稱 Side C Coverage)。承保被保險企業在保險期間內因第三人之證券賠償請求，依法應負賠償

責任所致財務損失，由承保保險公司負賠償責任。

(三) 擴大承保事項

1. 依據 Sarbanes-Oxley Act 2002 第 304 節(a)之相關成本。
2. 引渡程序有關費用。
3. 違反 UK The Corporate Manslaughter and Corporate Homicide Act 2007 或其他地區類似法令之抗辯費用。
4. 個人商譽費用
5. 資產保護費用
6. 針對有價證券賠償採用 E-Discovery Consultant Services 之抗辯費用不需適用自負額之規定。
7. 全球自由化條款。

(四) 除外不保事項

1. 不法行為。
2. 於保險期間前所發生的任何賠償請求或情況。
3. 任何精神或人權傷害的賠償請求。
4. 任何財產損失或人身傷害的賠償請求。
5. 被保險企業對被保險人之請求。
6. 違反美國員工退休所得保障法。
7. 違反賠償與員工責任之相關法令。
8. 已知悉的賠償請求。

第二節 英國

第一項 法規面

董監事及重要職員責任保險由英國勞伊茲(Lloyd's)於西元 1934 年

在美國銷售第一張保單，但當時願意承保的保險人有限，且核保嚴格、保費相對高昂，購買董監事及重要職員責任保險的企業並不多，故英國董監事及重要職員責任保險之發展較美國緩慢。

西元 1980 年起，英國政府制定商業方面的成文法令，其重點包括公司法令、資料保護、破產或失卻清償能力、金融服務等。隨著國際化趨勢與各國貿易往來頻繁，英國原有公司法制已不適用。為提升競爭力，英國政府著手研擬現代化公司法制加以因應，新的公司法(Companies Act 2006)於西元 2006 年由英國國會通過。該法令主要特色之一是將董事義務明確化，由於過去英國公司法對於董事義務並無明確之規定，僅可依據眾多判例法，衍生企業董事對於相關規定並不瞭解。有鑑於此，英國新公司法提出一套完整的規範，以取代普通法(Common Law Rules)及衡平法(Equitable Principles)之規定。

市場瞬息萬變，董事於執行職務時，因故意或過失行為，造成股東或第三人之損害依法應負損害賠償責任的金額往往十分龐大。董事個人財力有限，受害人求償不易，且董事於執行職務時，通常未考量個人利益，竟要求其承擔如此嚴重的後果，勢必影響優秀人才出任董事之意願，或使董事於執行職務時，為免衍生不利之後果，改以極度保守策略因應。為適度減輕企業董事之責任，並使受害人得到適度補償，英國公司法採取董事責任保險制度。依據西元 2006 年公司法第 232 條及第 233 條之規定²⁹，無論公司章程、任何契約或以其他方式訂定免除公司董事

²⁹ Companies Act 2006 *Provision protecting directors from liability*

232 Provisions protecting directors from liability

(1) Any provision that purports to exempt a director of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void.

(2) Any provision by which a company directly or indirectly provides an indemnity (to any extent) for a director of the company, or of an associated company, against any liability attaching to him

之責任或補償其依法因過失、債務不履行、違反義務或違反信託時應對企業負責之條款原則上無效，但企業可為董事購買責任保險。

第二項 保單內容

茲以美國國際集團 AIG Europe Limited (American International Group)於英國銷售之董監事及重要職員責任保險商品 CorporateGuard 2013 SEC Directors and Officers Liability Insurance 商品為例，分析該保險商品之被保險人、承保範圍、擴大承保範圍、除外不保事項與附屬限額等。保單條款與保單內容詳如附錄四。

(一) 被保險人董監事及重要職員責任保險之被保險人為企業(或稱被保險企業)，被保險企業之董監事及重要職員為被保險個人。

(二) 主要承保範圍

1. 管理責任(Management Liability)。

(1) 在保險期間內，被保險個人因執行職務依法應負賠償責任所致之財務損失，被保險企業已對被保險個人補償者外，

in connection with any negligence, default, breach of duty or breach of trust in relation to the company of which he is a director is void, except as permitted by—

(a)section 233 (provision of insurance),

(b)section 234 (qualifying third party indemnity provision), or

(c)section 235 (qualifying pension scheme indemnity provision).

(3)This section applies to any provision, whether contained in a company's articles or in any contract with the company or otherwise.

(4)Nothing in this section prevents a company's articles from making such provision as has previously been lawful for dealing with conflicts of interest.

233 Provision of insurance

Section 232(2) (voidness of provisions for indemnifying directors) does not prevent a company from purchasing and maintaining for a director of the company, or of an associated company, insurance against any such liability as is mentioned in that subsection.

保險公司對被保險個人進行補償。

(2) 在保險期間內，被保險個人因執行職務依法應負賠償責任所致之財務損失，若被保險企業已對被保險個人進行補償者，由保險公司對被保險企業進行補償。

2. 理賠前調查(Pre-Claim Inquiry)。被保險個人對於任何賠償請求案件於理賠前調查過程中所衍生之成本，由保險公司負擔。
3. 非執行董事之特別超額保障(Special Excess Protection for Non-Executive Directors)。當執行董事依法應負賠償責任時，在單一賠案之責任限額、超過前述管理責任的其他責任保險及對非執行董事其他損害補償限額皆已耗盡時，保險公司提供額外保障。
4. 有價證券責任(Company Securities Liability)。在保險期間內被保險企業因有價證券賠償請求，依法應負賠償責任所致財務損失，由承保保險公司負賠償責任。

(三) 其他附屬保障

1. 資產與人身自由引渡程序有關費用(包括：抗辯費用、引渡費用、人事費用)。
2. 衍生求償調查費用。
3. 破產審訊費用。
4. 違反美國 Dodd-Frank 954 與 Sarbanes-Oxley Act 2002 第 304 節規定之賠案所衍生之費用。
5. 商譽費用。
6. 民事罰款或罰金與納稅責任。
7. 業務過失致死。損失減輕費用。

8. 全球自由化條款。釋義律師-國際證券法令。

(四) 擴大承保事項

1. 新取得從屬公司自動承保。
2. 發現期間。
3. 退休被保險個人的終身發現期間。
4. 緊急抗辯費用。
5. 衍生調查費用。
6. 針對有價證券賠償採用 E-Discovery Consultant Services 之抗辯費用不需適用自負額之規定。
7. 國際有價證券訴訟求償清算費用。
8. 保單持有人或從屬公司危機損失。

(五) 除外不保事項

1. 不法行為。
2. 於保險期間開始前所發生的任何賠償請求情形。
3. 任何財產損失或人身傷害的賠償請求。
4. 任何公司對保險人或外部機構互告的賠償請求所衍生來自美國地區的賠案，但對於來自美國地區對被保險個人的索賠案件與被保險個人抗辯費用不在此限。

(六) 各項保障項目之限額(Limit)或附屬限額(Sub-limit)

保障項目	限額或附屬限額
非執行董事之特別超額保障	1. 每一非執行董事限額為責任額 10%，上限為 100 萬英鎊 2. 所有非執行董事限額為責任額 60%，上限為 600 萬英鎊
資產與人身自由引渡費用 (危機處理顧問與稅務顧問費用)	合計 5 萬英鎊
資產與人身自由引渡費用 (公關顧問費用)	合計 25 萬英鎊
資產與人身自由引渡費用 (人事費用)	合計 25 萬英鎊
破產審訊費用	合計 5 萬英鎊
商譽費用	合計 25 萬英鎊
損失減輕費用	責任額 10%，上限為 100 萬英鎊
緊急抗辯費用	責任額 20%
衍生調查費用	25 萬英鎊
國際有價證券訴訟求償清算費用	合計 5 萬英鎊
保單持有人或從屬公司危機損失	合計 10 萬英鎊

第三節 日本

第一項 法規面

早期日本對於企業董事、監察人責任相關的規範甚少。在 1990 年代初期，「財務揭露法」(Financial Disclosure Laws)立法通過，賦予股東明確的請求權基礎，可向企業經營階層提出賠償請求。西元 1993 年公司法(Companies Act)修正後，股東更可提出團體訴訟。

西元 1993 年因日本法律環境丕變，使得企業董事、監察人所擔負的責任愈來愈重，同年，允許國內及外商保險公司銷售董監事及重要職員責任保險商品(即「会社役員賠償責任保險」)，至今投資人向企業高階經營管理階層之求償案件仍持續發生。西元 2015 年，為強化公司治理，東京證券交易所(Tokyo Stock Exchange, Inc.)頒布「日本公司治理守則」(Japan's Corporate Governance Code)，做為日本上市公司公司治理基本原則，希望透過企業自主行動，創造企業中長期價值與永續經營，建構成功的企業，並有利投資人與經濟成長。

依據日本公司法第 423 條第 1 項規定，董事、會計顧問、監察人、主管人員或財務審計人員等重要幹部，怠於任務對公司造成損害時，負損害賠償責任。責任內容認為董事如違反經營者通常之注意義務時，則產生任務懈怠之責任。所謂經營者通常之注意義務，則依據企業規模與業務範圍有所不同，除違反法令、章程等規定之外，違反善良管理人注意義務、忠實義務與監督義務等亦包含在內。

除了對企業的責任之外，可能因此對股東及債權人造成損害，規範於日本公司法第 429 條第 1、2 項，董事、會計顧問、監察人、主管人員或財務審計人員等重要幹部，於執行業務時因惡意或重大過失造成第三人損害時，須負損害賠償責任。日本公司法第 430 條規定，倘如須負責之人為多人時，該等應負責之人應負連帶責任。

為避免對董監事及重要職員課予過重之責任，造成企業營運策略不夠積極與經營階層績效不彰，並確保人才不致畏於擔任董監事，因此透過法令(日本公司法第 425 ~ 427 條)將董監事及重要職員之責任予以減輕，或由企業為其董監事及重要職員投保責任保險。

日本企業購買董監事及重要職員責任保險的情況相當普遍，尤其公開發行公司多為其董監事及重要職員投保責任保險。許多財產保險公司銷售董監事及重要職員責任保險商品或將該商品與其他商品併同銷售，以美國國際集團(American Insurance Group)旗下之 AIU Insurance Company, Ltd. 將其董監事及重要職員責任保險加以包裝並擴大為經營風險保障保險(Management Risk Protection Insurance, 簡稱 MRP Insurance)。目前，日本董監事及重要職員責任保險商品並無標準化，各公司所銷售的商品內容依被保險企業之需求有所不同。

第二項 保單內容

日本財產保險業銷售之董監事及重要職員責任保險商品相關資訊皆未公開於網路，研究團隊推測應以日本之董監事及重要職員責任保險無標準化商品有關。本部分內容茲以日本三井住友海上火災保險公司(Mitsui Sumitomo Insurance Company, Ltd.)針對公開發行公司所銷售之董監事及重要職員責任保險商品條款與其他文獻資料內容，分析該日本董監事及重要職員責任保險商品之被保險人、承保範圍、擴大承保範圍與除外不保事項等。保單條款詳如附錄五。

(一) 被保險人董監事及重要職員責任保險之被保險人為企業董監事及重要職員，有時亦包括該企業子公司董監事及重要職員。

(二) 主要承保範圍損害賠償。

1. 損害賠償。在保險期間內，被保險個人因執行職務依法應負賠償責任所致之財務損失，由保險公司承擔。
2. 訴訟費用。對於損害賠償請求過程所衍生之訴訟費用，由保險公司負擔。
3. 其他各種費用保險。詳如擴大承保範圍所示。

(三) 擴大承保事項

1. 董監事及重要職員責任保險附加保障。
2. 股東代表訴訟賠償。
3. 企業賠償責任。
4. 擴大承保與保險契約有關的弊案。
5. 有關專屬保險公司的風險賠償。
6. 北美特殊風險之損害賠償責任(例如：美國員工退休所得保障法、有價證券相關、證券交易法等)。
7. 有關核能風險所致之賠償。
8. 免責金額適用之特約條款。
9. 追溯期間之賠償責任。
10. 破產風險之賠償責任。
11. 石棉風險之賠償責任。
12. 勝訴時免責金額不適用之特約條款。
13. 勝訴時縮小支払割合不適用に関する特約
14. 股東代表訴訟費用補償。
15. 初始及訴訟費用補償。
16. 公告及通知費用補償。
17. 對被保險人範圍特別約定。

- 18.僱傭行為承保範圍特別約定。
- 19.智慧財產權相關賠償請求補償對象特別約定。
- 20.特殊業務風險賠償請求特別約定。
- 21.股東代表訴訟補償對象特別約定。
- 22.被保險人之間訴訟費用部分補償特別約定。
- 23.特殊業務風險賠償請求補償對象特別約定。
- 24.共保特別約定。
- 25.大額保險費分期付款特約條款。
- 26.首期保費轉帳特別約定。
- 27.首次增加保費轉帳特別約定。

(四) 除外不保事項

1. 非法利益。
2. 犯罪行為。
3. 違反法令規定所致之損害賠償請求。
4. 違法支付被保險人報酬或獎金所致之損害賠償請求。
5. 被保險人違法利用非公開資訊買賣公司股票、債券所致之損害賠償請求。
6. 政府官員(官股指派董監事)所致損害賠償。
7. 於首張保單保險期間開始前所發生之賠償請求。
8. 已依先前保險單為通報者。
9. 環境污染責任賠償請求。
- 10.核能與放射性污染責任賠償請求。
- 11.任何精神或人權傷害的賠償請求。
- 12.侵犯專利權、著作權或智慧財產權所致之賠償責任。

13.任何財產損失或人身傷害的賠償請求。

14.被保險人、母公司、子公司或主要股東之損害賠償請求。

第四節 中國大陸

第一項 法規面

隨著美國、歐洲及亞洲等知名企業陸續爆發財務醜聞，全球司法在公司治理上，對於公司董事及重要職員提出更嚴格、更廣泛的管理標準，將董事及重要職員之責任提升到更高之高度。而中國大陸相關立法及監管的加強，對於中國大陸公司董事及重要職員之求償機率亦不斷上升。

就中國大陸公司之董事及重要職員可能須負擔法律責任之規定主要有《公司法》第 21 條³⁰、第 147 條³¹、第 149 條³²及第 152 條³³等規定；《證券法》第 63 條³⁴、第 68 條³⁵及第 69 條³⁶等規定；《上市公司治理準

30 中國大陸《公司法》第 21 條：「公司的控股股东、实际控制人、董事、监事、高级管理人员不得利用其关联关系损害公司利益。违反前款规定，给公司造成损失的，应当承担赔偿责任。」

31 中國大陸《公司法》第 147 條：「董事、监事、高级管理人员应当遵守法律、行政法规和公司章程，对公司负有忠实义务和勤勉义务。董事、监事、高级管理人员不得利用职权收受贿赂或者其他非法收入，不得侵占公司的财产。」

32 中國大陸《公司法》第 149 條：「董事、监事、高级管理人员执行公司职务时违反法律、行政法规或者公司章程的规定，给公司造成损失的，应当承担赔偿责任」

33 中國大陸《公司法》第 152 條：「董事、高级管理人员违反法律、行政法规或者公司章程的规定，损害股东利益的，股东可以向人民法院提起诉讼」

34 中國大陸《證券法》第 63 條：「发行人、上市公司依法披露的信息，必须真实、准确、完整，不得有虚假记载、误导性陈述或者重大遗漏。」

35 中國大陸《證券法》第 68 條：「上市公司董事、高级管理人员应当对公司定期报告签署书面确认意见。上市公司监事会应当对董事会编制的公司定期报告进行审核并提出书面审核意见。上市公司董事、监事、高级管理人员应当保证上市公司所披露的信息真实、准确、完整。」

36 中國大陸《證券法》第 69 條：「发行人、上市公司公告的招股说明书、公司债券募集办法、财务会计报告、上市报告文件、年度报告、中期报告、临时报告以及其他信息披露资料，有虚假记载、误导性陈述或者重大遗漏，致使投资者在证券交易中遭受损失的，发行人、上市公司应当承担赔偿责任；发行人、上市公司的董事、监事、高级管理人员和其他直接责任人员以及保荐人、

則》第 4 條³⁷等規定；《最高人民法院關於審理證券市場因虛假陳述引發的民事賠償案件的若干規定》第 4 條³⁸、第 17 條³⁹、第 18 條⁴⁰及第 21 條⁴¹等規定。

而依中國大陸《上市公司治理準則》第 39 條規定：「經股東大會批准，上市公司可以為董事購買責任保險。但董事因違反法律法規和公司章程規定而導致的責任除外。」另外於《關於在上市公司建立獨立董事制度的指導意見》第 7 條第 6 款：「上市公司可以建立必要的獨立董事責任保險制度，以降低獨立董事正常履行職責可能引致的風險。」由上開規定可知，雖然並未強制要求為公司董事等投保責任保險，惟對於為公司董事及重要職員保險的需求及認識均有所知悉。

承銷的證券公司，應當與發行人、上市公司承擔連帶賠償責任，但是能夠證明自己沒有過錯的除外；發行人、上市公司的控股股東、實際控制人有過錯的，應當與發行人、上市公司承擔連帶賠償責任。」

³⁷ 《上市公司治理準則》第 4 條：「股東有權按照法律、行政法規的規定，通過民事訴訟或其他法律手段保護其合法權利。股東大會、董事會的決議違反法律、行政法規的規定，侵犯股東合法權益，股東有權依法提起要求停止上述違法行為或侵害行為的訴訟。董事、監事、經理執行職務時違反法律、行政法規或者公司章程的規定，給公司造成損害的，應承擔賠償責任。股東有權要求公司依法提起要求賠償的訴訟。」

³⁸ 《最高人民法院關於審理證券市場因虛假陳述引發的民事賠償案件的若干規定》第 4 條：「人民法院審理虛假陳述證券民事賠償案件，應當著重調解，鼓勵當事人和解」

³⁹ 《最高人民法院關於審理證券市場因虛假陳述引發的民事賠償案件的若干規定》第 17 條：「證券市場虛假陳述，是指信息披露義務人違反證券法律規定，在證券發行或者交易過程中，對重大事件作出違背事實真相的虛假記載、誤導性陳述，或者在披露信息時發生重大遺漏、不正當披露信息的行為。對於重大事件，應當結合證券法第五十九條、第六十條、第六十一條、第六十二條、第七十二條及相關規定的內容認定。虛假記載，是指信息披露義務人在披露信息時，將不存在的事實在信息披露文件中予以記載的行為。誤導性陳述，是指虛假陳述行為人在信息披露文件中或者通過媒體，作出使投資人對其投資行為發生錯誤判斷並產生重大影響的陳述。重大遺漏，是指信息披露義務人在信息披露文件中，未將應當記載的事項完全或者部分予以記載。不正當披露，是指信息披露義務人未在適當期限內或者未以法定方式公開披露應當披露的信息。」

⁴⁰ 《最高人民法院關於審理證券市場因虛假陳述引發的民事賠償案件的若干規定》第 18 條：「投資人具有以下情形的，人民法院應當認定虛假陳述與損害結果之間存在因果關係：（一）投資人所投資的是與虛假陳述直接關聯的證券；（二）投資人在虛假陳述實施日及以後，至揭露日或者更正日之前買入該證券；（三）投資人在虛假陳述揭露日或者更正日及以後，因賣出該證券發生虧損，或者因持續持有該證券而產生虧損。」

⁴¹ 《最高人民法院關於審理證券市場因虛假陳述引發的民事賠償案件的若干規定》第 21 條：「發起人、發行人或者上市公司對其虛假陳述給投資人造成的損失承擔民事賠償責任。發行人、上市公司負有責任的董事、監事和經理等高級管理人員對前款的損失承擔連帶賠償責任。但有證據證明無過錯的，應予免責。」

第二項 保單內容

中國大陸第一張董監事及重要職員責任保險商品係由美國美亞保險公司上海分公司於西元 1996 年所出具，時至今日，目前中國大陸市場中，尚有華泰財產保險股份有限公司、中國人民財產保險股份有限公司及中國平安財產保險股份有限公司等。以下僅就華泰財產保險股份有限公司於中國大陸銷售之董(監)事及高級職員責任保險(DIRECTORS & OFFICERS LIABILITY INSURANCE POLICY WORDING)商品為例⁴²，分析該保險商品之被保險人、承保範圍、擴大承保範圍、除外不保事項與附屬限額等。保單條款詳如附錄六。

(一) 被保險人

本保單所指被保險人係指任何過去、現在或未來是被保險公司的董(監)事、高級職員、董事會秘書或其他職員(但僅以該職員為履行其公司管理職責為限)的自然人。及本保險合同所承保的被保險公司及其任何子公司。

(二) 保險承保範圍

1. 預付抗辯費用。
2. 全球範圍承保區域及全球司法管轄。
3. 無限追溯期。
4. 僱傭行為責任保障。
5. 子公司董事、監事及高級職員保障。
6. 外部組織職務保障。
7. 繼續承保條款。

⁴² 華泰財產保險股份有限公司之董(監)事及高級職員責任保險(DIRECTORS & OFFICERS LIABILITY INSURANCE POLICY WORDING)，網址：
<http://www.ehuataisz.com/bigtype.asp?big=3>，最後瀏覽日：2016 年 7 月 9 日。

8. 公司證券賠償請求和公司僱傭行為責任的可選性保障。

(三) 除外不保事項

保險人對於任何針對被保險人因可歸於下述原因所產生之賠償請求或調查不負賠償責任：

1. (1) 被保險人欺詐、不誠實或犯罪行為；對該行為的認定如有異議，以法院或行政機關的判決、認定為準。
(2) 被保險人實際獲得的不當得利。
2. 本件保險契約承保明細表第(七)項所載的賠償請求起算日以前已發生的任何訴訟、仲裁或行政程式或與以前已發生的任何訴訟、仲裁或行政程式事實相同或實質上相同的主張。
3. 本件保險契約生效日之前已向其它保險契約提出賠償請求的事實、情形、行為或疏忽。
4. 被保險公司或被保險人在本保險合同生效日前已知悉的可能導致賠償請求的事實、情形、行為或疏忽。
5. 由被保險人或被保險公司或其代表所提出的賠償請求，但下列賠償請求保險人仍應予以賠付：
 - (1) 僱傭行為責任；
 - (2) 由被保險公司的單一股東或股東集體以被保險公司和/或被保險人的名義提出的賠償請求，但以被保險公司或被保險人未參與、要求或協助為限；
 - (3) 由破產接管人、清算人提出的賠償請求，但以被保險公司或被保險人未參與、要求或協助為限；
 - (4) 對共同責任的分擔或補償的賠償請求，但以該對共同責任的分擔或補償的賠償請求直接產生於本保險合同項下的賠

償請求為限。

6. 針對任何擔任下列職務的個人所提出的任何賠償請求：
 - (1) 退休金計畫或員工福利金計畫的受託人或管理人；
 - (2) 外部審計人員。
7. (1) 以任何方式與無論由於何種原因造成的與污染有關的任何傷害、損害、支出、費用、責任或法律義務，包括由股東提出或衍生性的可歸因於污染或由其產生的賠償請求。污染包括事實的、被指控的或潛在存在於環境或排放到環境中的任何物質，若該等物質具有或被指控具有使環境變得不純淨、有害或危險的效果。環境包括任何空氣、土地、建築物及建築物內部的空氣、水道或水(包含地下水)；
 - (2) 核輻射或放射性危險物質。
8. 任何針對下列事項的賠償請求：
 - (1) 任何人的身心傷害、疾病、死亡或精神損害，但事實的或被指控的僱傭行為責任的精神損害賠償請求不在此限；
 - (2) 任何有形財產的損害或毀損，包括財產使用價值的損失。

第五節 香港

第一項 法規面

香港之金融交易市場於國際金融交易市場中，一直佔有舉足輕重之地位，而香港聯合交易所一向是全球五大上市市場之一。於香港聯合交易所內的上市公司在西元 2012 年底的總市值超過 2.8 萬億美元，居亞洲第二位，並為全球之第六位。在西元 2009、2010 及 2011 三年間，香港是全球首次公開募股集資最活躍的市場。另於西元 2013 年 12 月止，

共有 1,643 家公司在香港聯合交易所上市，對此，來自中國及海外的上市公司的數目越來越多。也形成其獨特之監管問題，即超過百分之八十在香港聯合交易所上市之公司係屬「非香港公司」，而非依香港《公司條例》所組成及註冊。

有關香港早期公司法條例主要參考英國公司法修訂而來，於西元 1865、1911 及 1932 年之香港公司條例亦緊隨英國之公司法例修正作出相同之修訂。另於西元 1973 年當時公司法修訂委員會於其第二號報告書中，就英國《1948 年公司法》作出一些主要改革建議，隨後該公司法在香港實施，成為《1984 年公司(修訂)條例》，對此，香港政府亦同時設立公司法改革常務委員會，使香港《公司條例》能與時並進。

而就香港公司之董事及重要職員可能須負擔法律責任之規定主要有《證券及期貨條例》第 108⁴³、281⁴⁴及 390⁴⁵等條規定、《主板上市規則》第 11、12 條⁴⁶等規定、及依《公司條例》負有「有責任真誠地以公司的整體利益為前提行事」、「有責任為公司成員的整體利益並為適當目的使用權力」、「有責任不轉授權力(經正式授權者除外)，並有責任作出獨立判斷」、「有責任以應有的謹慎、技巧及努力行事」、「有責任避免個人利益與公司利益發生衝突」、「有責任不進行有利益關係的交易，但符合法律規定者除外」、「有責任不利用董事職位謀取利益」等一般原則規定。

近期法律和監管的變動也大大增加了香港公司董事面對的風險和責任，對此，依香港《公司條例》第 468 條第 4 項規定：「…(4)第(3)

⁴³ 《證券及期貨條例》第 108 條：在某些情況下誘使他人投資金錢的民事法律責任。

⁴⁴ 《證券及期貨條例》第 281 條：就市場失當行為須負的民事法律責任。

⁴⁵ 《證券及期貨條例》第 390 條：法團高級人員對法團所犯罪行的法律責任，及合夥人對其他合夥人所犯罪行的法律責任。

⁴⁶ 《主板上市規則》第 11.12 條：「發行人應注意，發行人每名董事（包括上市文件所述任何擬擔任董事的人士）均須對上市文件所載的資料負責，而上市文件亦須刊載此項聲明，但如果此項規定憑藉《上市規則》第 11.09 條得以免除，則作別論。」

款不阻止公司就以下的法律責任，為該公司的董事或該公司的有聯繫公司的董事投購保險並保持該保險有效—(a)該董事因在與關乎該公司或有聯繫公司(視屬何情況而定)的疏忽、失責、失職或違反信託行為(欺詐行為除外)有關連的情況下對任何人承擔的法律責任；或(b)該董事在針對該董事提出的民事或刑事法律程序中進行辯護而招致的法律責任，而該法律程序是針對該董事犯的關乎該公司或有聯繫公司(視屬何情況而定)的疏忽、失責、失職或違反信託行為(包括欺詐行為)而提出的。」及《企業管治守則》第 A.1.8 條規定：「發行人應就其董事可能會面對的法律行動作適當的投保安排。」隨著香港監理機構要求主板上市公司給董事及高級人員提供保險保障以作為履行守則條文的最佳實務，顯然香港公司對董事及重要職員保險的需求及認識均有所提升。

第二項 保單內容

以下即以美國國際集團 AIG (American International Group)於香港銷售之董監事及重要職員責任保險商品 Corporate Liability Insurance–Non U.S. Securities 商品為例(本件保單同時於香港及新加坡販售)，分析該保險商品之被保險人、承保範圍、擴大承保範圍、除外不保事項與附屬限額等。保單條款詳如附錄七。

(一) 被保險人

本保險契約被保險人係指任何過去、現在或未來之被保險公司的董事、重要職員、影子董事及委員會成員等自然人，與本保險契約之被保險公司及其子公司等。

(二) 主要承保範圍

1. 管理責任(Management Liability)。

- (1) 於保險期間內，賠償被保險個人的任何損失，但不包含被保險公司已補償被保險個人的部分。
- (2) 於保險期間內，賠償被保險公司已補償被保險個人的任何損失。
2. 公司有價證券賠償請求(Company Securities Liability)。於保險期間內，被保險公司因有價證券賠償請求，依法應負賠償責任所致損失，應由承保保險公司負賠償責任。
3. 公司不當僱傭行為賠償請求。對於被保險公司因公司僱傭行為而遭受之賠償請求，本保險提供損害賠償及抗辯費用之保障。

(三) 其他附屬保障

1. 調查及監管危機事件費用。
2. 超額保險金額。
3. 身體傷害或財物損失的抗辯費用。
4. 緊急抗辯費用的保障。
5. 資產與人身自由費用保障：
 - (1) 釋金及保證金費用；
 - (2) 訴訟費用；
 - (3) 資產及人身自由保障；
 - (4) 資產及人身自由費用。
6. 公關費用。
7. 引渡程序費用。
8. 危機管理費用。
9. 違反環境保護義務。
10. 衍生求償調查費用。

11. 納稅責任。
12. 民事罰款或罰金。
13. 損失減輕費用。
14. 專業顧問費用。

(四) 擴大承保事項

1. 新取得從屬公司自動承保。
2. 可選擇的重製保險金額。
3. 條款的差異。
4. 全球自由化的保障。
5. 發現期間。
6. 退休被保險個人的終身發現期間。
7. 保單續約保障。

(五) 除外不保事項

保險人對於任何針對被保險人因可歸於下述原因所產生之損失不負賠償責任：

1. 經終局判決或仲裁判斷確定之不誠實或詐欺行為。
2. 於保險期間前，已知悉的賠償請求及危險情事。
3. 任何財產損失或人身傷害的賠償請求。
4. 任何公司對被保險人或外部機構互告的賠償請求所衍生來自美國地區的賠案，但對於來自美國地區對被保險個人的索賠案件與被保險個人抗辯費用不在此限。
5. 主張違反 1974 年美國員工退休所得保障法(Employee Retirement Income Security Act of 1974)之相關賠償請求。

6. 主張違反美國證券法、證券交易法或任何美國證券交易委員會所頒布的法規命令之相關賠償請求。但對於美國地區之櫃檯交易市場買賣或銷售、受美國證券交易委員會頒布之 Rule 144A 有關私募或 Regulation S 有關未依 1933 年證券交易法申請而於美國境外發行及銷售所規範者，及為美國存託憑證第一級 (American Depositary Receipts Level I) 者，不在此限。
7. 首次公開發行股票。

第六節 新加坡

第一項 法規面

新加坡公司法之規定，主要沿襲英國公司法等相關規定，對於董事及重要職員等之相關責任，主要規範於公司法(Companies Act)、新加坡交易所上市規則(SGX Listing Rules)、2012 年新加坡公司治理守則(Singapore Code of Corporate Governance 2012)、證券及期貨法(Securities and Futures Act；SFA)等相關規範中，另依前開規範，董事並應負有受任人義務(Fiduciary duties)及注意義務(Duty of care and skill)等責任。

而依新加坡公司法第 172 條⁴⁷之規定，對於任何免除董事依法應負賠償責任之約定，對於公司並不生效力。惟依同法第 172 條 A 規定⁴⁸中，

⁴⁷ Company Act 172

(1) Any provision that purports to exempt an officer of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void.

(2) Any provision by which a company directly or indirectly provides an indemnity (to any extent) for an officer of the company against any liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void, except as permitted by section 172A or 172B.

(3) This section shall apply to any provision, whether contained in a company's constitution or in any contract with the company or otherwise.

⁴⁸ Company Act 172A.

Section 172(2) shall not prevent a company from purchasing and maintaining for an officer of the

公司係被允許為其公司之職員(包含董事等)購買保險契約，以保障該公司職員所可能面臨之相關責任。是以，新加坡雖未強制公司為其員工投保董監事及重要職員責任保險，惟於新加坡公司法中明文規範公司得為其員工等投保董監事及重要職員責任保險。

第二項 保單內容

於新加坡承保董監事及重要職員責任保險者，目前有安達保險集團(新加坡)、美國國際集團 AIG(American International Group)、LIU(Liberty International Underwriters)、DAUL 等公司，本文則以美國國際集團 AIG(American International Group)目前於香港及新加坡銷售之董監事及重要職員責任保險商品 Corporate Liability Insurance – Non U.S. Securities 商品為例，分析該保險商品之被保險人、承保範圍、擴大承保範圍、除外不保事項與附屬限額等。

詳細說明，即如本章第五節第二項所述，於此不另贅述。

第七節 小結

第一項 法規面

茲將美國、英國、日本、中國大陸、香港、新加坡等國家(或地區)之董監事及重要職員責任保險相關法令彙整比較如表 3-1。原則上，前述國家(或地區)皆未強制要求公司為其董監事與重要職員等投保董監事及重要職員責任保險，但於相關法令或規範中載明公司得為其董監事與重要職員等投保董監事及重要職員責任保險。

表 3-1 各國董監事及重要職員責任保險相關法令比較表

國家	相關法規
美國	各州公司法令明文規定企業得為其經營者購買董監事及重要職員責任保險。
英國	依據公司法規定，無論公司章程、任何契約或以其他方式訂定免除公司董事之責任或補償其依法因過失、債務不履行、違反義務或違反信託時應對企業負責之條款，原則上無效，但企業可為董事購買責任保險。
日本	公司法減輕董監事及重要職員之責任，或由企業為其董監事及重要職員投保責任保險。
中國大陸	董事及重要職員可能須負擔法律責任之規定於公司法、證券法、上市公司治理準則、最高人民法院關於審理證券市場因虛假陳述引發的民事賠償案件的若干規定，並未強制要求為公司董事等投保責任保險。
香港	董事及重要職員可能須負擔法律責任主要規範於公司條例、證券及期貨條例、主板上市規則、企業管治守則等，香港監理機構要求主板上市公司給董事及高級人員提供保險保障以作為履行守則條文的最佳實務。
新加坡	公司法、新加坡交易所上市規則、2012 年新加坡公司治理守則、證券及期貨法，雖未強制公司為其員工投保董監事及重要職員責任保險，惟於公司法中明文規範公司得為其員工等投保董監事及重要職員責任保險。

資料來源：本研究整理

第二項 保單內容

整體而言，就董監事及重要職員責任保險商品之承保範圍與除外不

保事項比較，各國家(或地區)之保單內容差異不大。另因本保險商品係為一高度客製化之商品，尚可透過擴大承保範圍與附屬保障之約定調整，以符合公司實際需求。本研究茲將美國、英國、日本、中國大陸、香港、新加坡等國家(或地區)之董監事及重要職員責任保險商品承保範圍與除外不保事項彙整比較如表 3-2 及表 3-3。

一、承保範圍

表 3-2 各國董監事及重要職員責任保險商品承保範圍比較表

國家	承保範圍
美國	<p>1.被保險個人保障範圍(通稱 Side A Coverage)。在保險期間內，被保險個人執行職務時，因第三人以其不當行為請求損害賠償，依法應負賠償責任所致之財務損失且未能自公司獲得補償部分，包括理賠前調查(Pre-Claim Inquiry)成本。</p> <p>2.對被保險個人損害賠償(通稱 Side B Coverage)。在保險期間內，被保險企業之董監事及重要職員執行職務因不當行為而受第三人賠償請求，導致被保險企業依法令、章程或契約對董監事及重要職員補償時，填補此部分損失，包括理賠前調查(Pre-Claim Inquiry)成本。</p> <p>3.企業保障範圍(Entity Coverage 或稱 Side C Coverage)。承保被保險企業在保險期間內因第三人之證券賠償請求，依法應負賠償責任所致財務損失，由承保保險公司負賠償責任。</p>
英國	<p>1.管理責任(Management Liability)。</p> <p>2.理賠前調查(Pre-Claim Inquiry)。</p> <p>3.非執行董事之特別超額保障(Special Excess Protection</p>

國家	承保範圍
	for Non-Executive Directors)。 4.有價證券責任(Company Securities Liability)。
日本	1.損害賠償。 2.訴訟費用。 3.其他各種費用保險與擴大承保範圍。
中國大陸	1.預付抗辯費用。 2.全球範圍承保區域及全球司法管轄。 3.無限追溯期。 4.僱傭行為責任保障。 5.子公司董事、監事及高級職員保障。 6.外部組織職務保障。 7.繼續承保條款。 8.公司證券賠償請求和公司僱傭行為責任的可選性保障。
香港/ 新加坡	1.管理責任(Management Liability)。 2.公司有價證券賠償請求(Company Securities Liability)。 3.公司不當僱傭行為賠償請求。

二、除外不保事項

表 3-3 各國董監事責任保險商品除外不保事項比較表

國家	除外不保事項
美國	1.不法行為。 2.於保險期間前所發生的任何賠償請求或情況。 3.任何精神或人權傷害的賠償請求。

國家	除外不保事項
	<p>4.任何財產損失或人身傷害的賠償請求。</p> <p>5.被保險企業對被保險人之請求。</p> <p>6.違反美國員工退休所得保障法。</p> <p>7.違反賠償與員工責任之相關法令。</p> <p>8.已知悉的賠償請求。</p>
英國	<p>1.不法行為。</p> <p>2.於保險期間開始前所發生的任何賠償請求情形。</p> <p>3.任何財產損失或人身傷害的賠償請求。</p> <p>4.任何公司對被保險人或外部機構互告的賠償請求所衍生來自美國地區的賠案，但對於來自美國地區對被保險個人的索賠案件與被保險個人抗辯費用不在此限。</p>
日本	<p>1.非法利益。</p> <p>2.犯罪行為。</p> <p>3.違反法令規定所致之損害賠償請求。</p> <p>4.違法支付被保險人報酬或獎金所致之損害賠償請求。</p> <p>5.被保險人違法利用非公開資訊買賣公司股票、債券所致之損害賠償請求。</p> <p>6.政府官員(官股指派董監事)所致損害賠償。</p> <p>7.於首張保單保險期間開始前所發生之賠償請求。</p> <p>8.已依先前保險單為通報者。</p> <p>9.環境污染責任賠償請求。</p> <p>10.核能與放射性污染責任賠償請求。</p> <p>11.任何精神或人權傷害的賠償請求。</p>

國家	除外不保事項
	<p>12. 侵犯專利權、著作權或智慧財產權所致之賠償責任。</p> <p>13. 任何財產損失或人身傷害的賠償請求。</p> <p>14. 被保險人、母公司、子公司或主要股東之損害賠償請求。</p>
中國大陸	<p>1. (1) 被保險人欺詐、不誠實或犯罪行為。(2) 被保險人實際獲得的不當得利。</p> <p>2. 本件保險合同賠償請求起算日以前已發生的任何訴訟、仲裁或行政程式或與以前已發生的任何訴訟、仲裁或行政程式事實相同或實質上相同的主張。</p> <p>3. 本件保險合同生效日之前已向其它保險合同提出賠償請求的事實、情形、行為或疏忽。</p> <p>4. 被保險公司或被保險人在本保險合同生效日前已知悉的可能導致賠償請求的事實、情形、行為或疏忽。</p> <p>5. 由被保險人或被保險公司或其代表所提出的賠償請求，但下列賠償請求保險人仍應予以賠付：</p> <p>(1) 僱傭行為責任；(2) 由被保險公司的單一股東或股東集體以被保險公司和/或被保險人的名義提出的賠償請求，但以被保險公司或被保險人未參與、要求或協助為限；(3) 由破產接管人、清算人提出的賠償請求，但以被保險公司或被保險人未參與、要求或協助為限；(4) 對共同責任的分擔或補償的賠償請求，但以該對共同責任的分擔或補償的賠償請求直接產生於本保險合同項下的賠償請求為限。</p> <p>6. 針對任何擔任下列職務的個人所提出的任何賠償請</p>

國家	除外不保事項
	<p>求：(1)退休金計畫或員工福利金計畫的受託人或管理人；(2)外部審計人員。</p> <p>7.(1)以任何方式與無論由於何種原因造成的與污染有關的任何傷害、損害、支出、費用、責任或法律義務，包括由股東提出或衍生性的可歸因於污染或由其產生的賠償請求。污染包括事實的、被指控的或潛在存在於環境或排放到環境中的任何物質，若該等物質具有或被指控具有使環境變得不純淨、有害或危險的效果。環境包括任何空氣、土地、建築物及建築物內部的空氣、水道或水(包含地下水)；(2)核輻射或放射性危險物質。</p> <p>8.任何針對下列事項的賠償請求：(1)任何人的身心傷害、疾病、死亡或精神損害，但事實的或被指控的僱傭行為責任的精神損害賠償請求不在此限；(2)任何有形財產的損害或毀損，包括財產使用價值的損失。</p>
香港/ 新加坡	<p>1.經終局判決或仲裁判斷確定之不誠實或詐欺行為。</p> <p>2.於保險期間前，已知悉的賠償請求及危險情事。</p> <p>3.任何財產損失或人身傷害的賠償請求。</p> <p>4.任何公司對被保險人或外部機構互告的賠償請求所衍生來自美國地區的賠案，但對於來自美國地區對被保險個人的索賠案件與被保險個人抗辯費用不在此限。</p> <p>5.主張違反 1974 年美國員工退休所得保障法(Employee Retirement Income Security Act of 1974)之相關賠償請求。</p>

國家	除外不保事項
	<p>6.主張違反美國證券法、證券交易法或任何美國證券交易委員會所頒布的法規命令之相關賠償請求。</p> <p>7.首次公開發行股票。</p>

第四章 我國董監事及重要職員責任保險相關問題之評析

第一節 主觀承保範圍

第一項 證券交易法對相關人員之主觀責任

對於董事、監察人及重要職員等，所可能涉及證券交易法之相關民事責任，主要有證券交易法第 31 條公開說明書未依規定交付、證券交易法第 32 條公開說明書內容不實、證券交易法第 20 條證券詐欺、證券交易法第 20 條之 1 財務報告不實、證券交易法第 157 條第 1 項短線交易及證券交易法第 157 條之 1 內線交易等民事責任。

前開相關民事責任，其主觀要件，約略可分成無過失責任、推定過失責任、一般過失責任、重大過失責任及故意責任，本文整理如下：

1. 公開說明書未依規定交付：無過失責任。
2. 公開說明書內容不實：依行為主體不同（發行人、負責人、職員、專門職業技術人員等），可分成無過失責任及推定過失責任兩者。
3. 證券詐欺：有學者認為應僅限於故意責任⁴⁹；另有學者認為應包含重大過失者⁵⁰。亦有認為應包含過失責任者⁵¹。
4. 財務報告不實：依行為主體不同（發行人、負責人、職員及會計師等），可分成無過失責任、推定過失責任及一般過失責任。
5. 短線交易：不以行為人主觀上有無故意或過失，抑或不法之意

⁴⁹ 參賴源河，證券管理法規，1997 年 9 月版，第 397 至 398 頁。

⁵⁰ 參余雪明，證券交易法，2000 年，第 527 頁。

⁵¹ 參曾宛如，論證券交易法第二十條及第二十條之一之民事責任-以主觀要件與信賴為核心，收錄於「公司管理與資本市場法制專論（二）」，2008 年 1 版，元照，第 91 至 94 頁。

圖等，僅須客觀上公司內部人於 6 個月內，於集中交易市場等買賣股票者，即構成短線交易⁵²。

6. 內線交易：內部人於知悉消息後，並買賣股票者，即構成內線交易，並不以利用該交易獲利或避免損失之主觀意圖為必要。

第二項 保險契約之主觀承保範圍

當事故發生並符合保險契約所約定之客觀承保範圍者，保險人即負有給付保險金之責任。按保險法第 1 條規定：「本法所稱保險，謂當事人約定，一方交付保險費於他方，他方對於因不可預料，或不可抗力之事故所致之損害，負擔賠償財物之行為。根據前項所訂之契約，稱為保險契約。」次按同法第 29 條第 1 項規定：「保險人對於由不可預料或不可抗力之事故所致之損害，負賠償責任。但保險契約內有明文限制者，不在此限。」可知，保險契約係指保險人基於雙方約定之承保範圍，依約承擔危險，並於特定事故發生後，保險人即負有給付保險金之責，以填補被保險人之損害。至於，保險人之承保範圍，可分為客觀承保範圍及主觀承保範圍。而保險人對於由不可預料或不可抗力之事故所造成被保險人之損害，應負賠償責任，惟保險人客觀承保範圍為何，則依保險契約之約定內容不同，而有差異。

另就所謂主觀承保範圍，則係指因被保險人之心理狀態，所可能產生之危險，即係主觀危險，而由保險法或保險契約之規定，加以除外不保之主觀危險⁵³。而依其危險程度之高低，約略可分成故意行為、重大過失行為及輕過失行為。

一、故意行為

對於保險事故發生與否，影響最直接有效者，即為故意行為，是以，我國保險法針對故意所生之主觀危險，多設有排除規定，例如保險法第

⁵² 參王志誠、邵慶平、洪秀芬、陳俊仁，實用證券交易法，修訂三版，新學林，第 477 頁。

⁵³ 參葉啟洲，保險法實例研習，修訂四版，元照，第 204 頁。

29 條第 2 項但書規定：「保險人對於由要保人或被保險人之過失所致之損害，負賠償責任。但出於要保人或被保險人之故意者，不在此限。」；同法第 109 條第 1 項規定：「被保險人故意自殺者，保險人不負給付保險金額之責任。但應將保險之保單價值準備金返還於應得之人。」；同法第 121 條第 1 項規定：「受益人故意致被保險人於死或雖未致死者，喪失其受益權。」等。

二、重大過失行為

依保險法第 29 條第 2 項規定，保險人對於被保險人故意所致之損害，保險人無須負給付保險金之責，惟被保險人因嚴重疏忽，欠缺一般人應有之注意，接近於故意下，所致生之損害，保險人是否應負給付保險金之責，對此，涉及保險法第 29 條第 2 項所稱之過失，是否包含重大過失在內，詳如後述。

三、輕過失行為、無過失行為或通常事變責任

按保險法第 29 條第 2 項規定：「保險人對於由要保人或被保險人之過失所致之損害，負賠償責任。但出於要保人或被保險人之故意者，不在此限。」可知，對於被保險人之輕過失行為等所致之損害，係屬保險人之主觀承保範圍內，且無論於學說上或實務上並無爭議⁵⁴。

至於無過失責任者，不以行為人對於損害之發生具有過失為要件，均須負損害賠償責任。對此，保險契約之承保責任係過失責任，保險人對於被保險人之過失責任既須負責，則於無過失責任時，被保險人所承擔之風險更高，更需要保險契約之保障，基於舉輕以明重，自當屬於保險契約所保障之範圍⁵⁵。

第三項 故意責任與重大過失責任可保性之分析

對於證券交易法相關人員之民事賠償責任，可分為無過失責任、推

⁵⁴ 參葉啟洲，保險法實例研習，修訂四版，元照，第 212 頁。

⁵⁵ 參江朝國，保險法逐條釋義-第三卷財產保險，初版，元照，第 681 頁。

定過失責任、一般過失責任、重大過失責任及故意責任，其中故意及重大過失行為所致之損害，是否屬於保險契約之主觀承保範圍，即有疑義。按保險法第 29 條第 2 項與董監事及重要職員責任保險中「被保險人欺詐、不誠實或犯罪行為」除外不保事項，其範圍是否包括「重大過失」？至於被保險人之故意行為，是否得加以納入承保，實有深論之必要。茲列舉說明我國學說與實務見解以及日本立法例與學說見解，以供後續討論之用。

第一款 我國學說與實務見解

1. 學說見解

首先，就有關我國保險法第 29 條第 2 項本文所稱之過失是否包括重大過失而言，換言之，保險人對保險契約被保險人之重大過失行為是否應負給付保險金之責，學說見解不一。

(1) 採否定見解者⁵⁶，其認為被保險人之重大過失行為不屬承保範圍，理由如下：第一，重大過失之情形，已嚴重違反一般人注意義務之最低要求，其惡性應與故意相同。；第二，海商法第 131 條規定「因要保人或被保險人或其代理人之故意或重大過失所致之損失，保險人不負賠償責任。」；第三，重大過失幾近故意，且民法第 222 條規定「故意與重大過失不得預先免除。」；第四，採肯定說之見解違反社會公平原則。

(2) 採肯定見解者⁵⁷，其理由分別有：第一，海商法之規範對象以及承保範圍與保險法有所不同，前者海上保險係屬商人保險，雙方議約能力相當，且其客觀承保範圍為一切事變

⁵⁶ 參劉宗榮，新保險法，三民書局，2007 年 1 月，148 頁。

⁵⁷ 參江朝國，保險法基礎理論，瑞興圖書，2009 年 4 月，5 版，365 頁。林群弼，保險法論，三民書局，2003 年 11 月，2 版，248-251 頁。

所致之損害(all risk)，故對於保險契約中之主觀承保範圍加以限縮，以茲平衡。至於後者保險契約，則多屬消費者保險，其承保範圍多僅以特定事故為限(single risk)，故對一般保險契約中之主觀承保範圍並無限縮之必要。；第二，有關民法第 222 條規定「故意與重大過失不得預先免除。」係指債務人於債之履行行為上所應盡之注意標準。此與保險法第 29 條第 2 項所用來界定保險契約中之主觀承保範圍，係屬不同事務⁵⁸。第三，另從保險法修正歷程觀之，民國 18 年保險法制定之初，有關保險契約中之主觀承保範圍係規定於第 12 條中「保險人對於由要保人或被保險人之過失所致之滅失或損害，仍負責任。但出於要保人或被保險人之故意或重大過失者，不在此限。」然而，於民國 25 年保險法全文修正時，將上開條文改列第 40 條第 2 項「保險人對於由要保人或被保險人之過失所致之損害或責任，負賠償責任。但出於要保人或被保險人之故意者，不在此限⁵⁹。」從而可知，立法者有意將要保人或被保險人之重大過失所至之損害列入保險契約中之主觀承保範圍。

至於，有關要保人或被保險人之故意行為是否得納入保險契約之主觀承保範圍，對此，國內學者多認為要保人為保險契約之當事人，如其故意致保險事故發生，則其訂約之目的或其故意行為已違反誠信原則並有違公序良俗，故保險人應不得承保要保人之故意行為⁶⁰。換言之，保險法第 29 條第 2 項為強行

⁵⁸ 參葉啟洲，從過失相抵抗辯論故意、過失概念在保險法上之功能，財產法暨經濟法，第 18 期，2009 年 6 月，60-61 頁。

⁵⁹ 有關保險法之制定與修正過程，參立法院網頁，<http://www.ly.gov.tw/>，搜尋日期：2011 年 11 月 12 日。

⁶⁰ 參汪信君，保險法理論與實務，元照出版，2006 年，149-149 頁。

規定，故保險人與要保人不得於保險契約約定排除該條之規範⁶¹。惟有學者持不同見解者⁶²。另值得注意的是，被保險人之故意行為因損害保險與人壽保險之屬性不同，故對被保險人之故意行為有不同之規範。如人壽保險中被保險人之故意行為(如自殺)因被保險人無受領保險金之可能，故於規範上，對被保險人之故意行為，於特定條件下(如契約訂立後2年)，保險人仍負給付保險金之責。換言之，保險人亦有將被保險人之故意行為納入人壽保險契約中之主觀承保範圍，而予以承保。

2. 實務見解

我國司法實務對此議題之見解也呈現正反兩種判決，採肯定見解者主張保險人對要保人或被保險人重大過失行為所致之損害，應負賠償之責。如最高法院86年臺上字第2141號：「保險人所得免責者，僅限於要保人、被保險人或其代理人之故意行為，至過失行為則不在免責範圍。重大過失行為雖近乎故意，但與故意行為仍屬有別。保險法既以明文規定保險人僅於要保人、被保險人或其代理人因故意致保險事故發生，始可免其給付保險之責任，則如因要保人等之過失或重大過失而生之保險事故，保險人即不得指為幾近故意而免責。」另如最高法院90年臺上字第1257號：「OOO騎乘機車上高速公路被追撞致死係出於意外，其保險事故之發生應屬偶發性，而非因其故意行為所致，上訴人自應負賠償責任。次查保險人對於由被保險人過失所致之損害，負賠償責任，此觀保險法第29條第2項之規定

⁶¹ 參江朝國，保險法基礎理論，瑞興圖書，2009年4月，5版，358頁。林群弼，保險法論，三民書局，2003年11月，2版，245頁。

⁶² 如葉啟洲教授認為保險法第29條非強行規定。參葉啟洲，從過失相抵抗辯論故意、過失概念在保險法上之功能，財產法暨經濟法，第18期，2009年6月，60-61頁。

自明。」又如最高法院 94 臺上字第 1913 號，認為「又依保險法第 29 條第 1、2 項規定，及兩造所定「國華安心住院醫療給付終身保險附約條款」第 22 條「除外責任」第一項第一款僅規定，保險人對被保險人之故意行為不負賠償責任，並未包括被保險人之重大過失行為，即不能認苟被上訴人有重大過失時，上訴人即可不負賠償責任。故上訴人謂被保險人故意或重大過失行為造成之損失，均應排除於保險範圍外云云，即非可取。」另司法院第 3 期司法業務研究會議亦採肯定見解⁶³。

至於採否定見解者有，臺灣臺北地方法院 88 年度保險字第 74 號判決同樣針對闖越平交道一事認為「保險契約之被保人於平交道號誌操作一切正常照明良好情況下，執意超越前面暫停等待穿越平交道之車群，系屬嚴重違反交通規則，並涉及刑事之行為。按照一般觀念，此結果並非不可預見，實與自殺無異。保險法所稱之危險承保範圍乃指「不可抗力」及「不可預料」之事故，然本案事故人因闖越平交道之故意行為導致身故之事實，顯非保險法之承保事故。另司法院司法業務研究會第 3 期之會議結論，所討論之對象為人壽保險，非傷害險，與本案並非相關。」

第二款 日本立法例與學說見解

按責任保險的目的乃於保護第三人等之權益，則責任保險之被保險人故意行為或重大過失行為是否在其承保範圍之內，關係到保險人的免責事項以及保險理論的實務操作等議題，故日本學界中對此議題亦有相當多之論述。茲略述如下。

⁶³ 其餘採肯定見解之法院判決者，花蓮高分院 99 年度保險上更(一)可字第 1 號，宜蘭地院 91 年度保險字第 9 號，高雄地院 99 年度保險字第 25 號，高雄地院 99 年度保險字第 27 號等。

1. 日本保險法之規定

按日本原保險契約之相關規範，係於明治 32 年(西元 1899 年)規定於該國商法第二篇商行為第十章保險中(以下簡稱日本商法)。實施百年後，為因應社會經濟情勢之變化⁶⁴，於平成 20 年 6 月 6 日(西元 2008 年)公布制定單行法「保險法」(以下簡稱日本保險法)，並於西元 2010 年 4 月 1 日施行。

新修之日本保險法共有條文 96 條，比起原先於《商法》中的相關條文增加數倍，其文體也改為消費者所理解之現代文。相較之前商法中保險內容，本次新定之保險法其特徵之一便是導入了「違反某條之規定，約定有不利於要保人、被保險人或保險金受益人內容之特約無效」⁶⁵之規定，由於該無效只是針對不利於要保人、被保險人等而言，因此被稱為「片面強行規定」(即相對強行規定)。

關於財產保險的保險人免責事由，保險法第 17 條⁶⁶規定「對

⁶⁴ 日本保險法，2008，法律第 56 号。

⁶⁵ 日本保險法第 7 條原文：「(強行規定)第七條 第四條の規定に反する特約で保險契約者又は被保險者に不利なもの及び第五條第二項の規定に反する特約で保險契約者に不利なものは、無効とする。」

日本保險法第 26 條原文：「(強行規定)第二十六條 第十五條、第二十一條第一項若しくは第三項又は前二條の規定に反する特約で被保險者に不利なものは、無効とする。」

日本保險法第 41 條原文：「(強行規定)第四十一條 第三十七條の規定に反する特約で保險契約者又は被保險者に不利なもの及び第三十九條第二項の規定に反する特約で保險契約者に不利なものは、無効とする。」

日本保險法第 70 條原文：「(強行規定)第七十條 第六十六條の規定に反する特約で保險契約者又は被保險者に不利なもの及び第六十八條第二項の規定に反する特約で保險契約者に不利なものは、無効とする。」

⁶⁶ 日本保險法第 17 條原文：「(保險者の免責)

第十七條 保險者は、保險契約者又は被保險者の故意又は重大な過失によって生じた損害をてん補する責任を負わない。戦争その他の変乱によって生じた損害についても、同様とする。

2 責任保險契約(損害保險契約のうち、被保險者が損害賠償の責任を負うことによって生ずることのある損害をてん補するものをいう。以下同じ。)に関する前項の規定の適用については、同項中「故意又は重大な過失」とあるのは、「故意」とする。」

因要保人或被保險人的故意或重大過失所造成的損害，保險人不負損害填補責任。戰爭及其他動亂所造成之損害亦如此。惟前項規定適用責任保險契約時，將該項中之「故意或重大過失」更換為「故意」。」換言之，日本保險法已經明定責任保險契約中有關要保人或被保險人之主觀不保範圍僅以故意為限，基此，要保人或被保險人之重大過失行為應屬責任保險之主觀承保範圍。

又查日本保險法第 17 條位處於保險法第 2 章財產保險第 3 節保險給付當中，而規範此節「片面強行規定」的第 26 條，僅明文規定對於以特約方式約定違反第 15 條、第 21 條第 1 項或第 3 項、抑或前 2 條不利於被保險人之規定者無效。因此從法規上的邏輯來看，以特約方式約定排除責任保險中被保險人之故意行為免責者，由於被保險人將較易獲得保險給付，似乎有利於被保險人，應不在第 26 條片面強行規定內。基此，有關要保人或被保險人之故意行為是否得以特約方式將其納如主觀承保範圍，實有討論之必要。

惟查閱由日本法務省民事局參事官室所提供之「保險法修正相關之補充說明」，第 17 條第 2 項之立法緣由在於責任保險契約之締結，係因欲負擔被保險人不法行為所致之損害賠償債務，參照責任保險之性質，並未將被保險人之重大過失列為保險人之免責事由⁶⁷。而責任保險實務上，也通常不將被保險人之重大過失列為免責事由。但該項雖為任意規定，如約定對於被保險人之故意所致之損害給付保險金者，該約定之效力將可能因違反公序良俗而被否定，此處允許約定變更者，係指法所

⁶⁷ 參萩本修，保險法立案關係資料：新法の概説・新旧旧新対照表，（株）商事法務，2008 年 7 月，初版，130 頁。

未明定之免責事由⁶⁸。

2. 學說見解及實務作法

關於責任保險中被保險人故意所致之損害，保險人不負保險金給付責任之規定，學者多認為除了確定的故意無爭議外，端視「故意」之概念擴大至何等範圍⁶⁹。不宜單純以「故意與否」為機械式的判斷標準，而應從保險人負擔填補責任是否違反信義原則或違反公序良俗等實質狀況做為判斷依據⁷⁰。

至於實務上之作法，可以參考其他專業責任保險商品，例如日本 Allianz 火災海上保險公司提供保險代理人公會以團體保險方式所加入的「保險招攬人賠償責任保險」之內容。該保單對於故意行為所引起之保險金不支付情形，僅限於「被保險人之犯罪行為所引起之損害賠償請求」，以及「該被保險人已認識其行為會違反法令或會對他人產生損害，該行為所致之損害賠償請求」等情況⁷¹。保單條款上雖未出現「故意」的文字，但以被保險人已知其行為將對他人產生損害，作為保險人不負保險金給付責任之要件。因此姑且不論「故意」之概念定義，日本實務上多未將專業責任保險中要保人或被保險人之故意行為為納於承保範圍內。

第四項 小結

本文認為保險法第 29 條第 2 項要保人、被保險人之重大過失行為應屬承保範圍，其理由除如學說見解外，另值得補充說明者是，西元

⁶⁸ 參萩本修，保險法立案關係資料：新法の概説・新旧旧新対照表，（株）商事法務，2008 年 7 月，初版，115-116 頁

⁶⁹ 參山下友信，保險法，有斐閣，2005 年 3 月，初版，375 頁。

⁷⁰ 參坂口光男，保險法，文真堂，2000 年 4 月，初版，274 頁。

⁷¹ 日本保險代理人公會，<http://www.nihondaikyo.or.jp/foragent/70.aspx>，搜尋日期：2011 年 11 月 10 日。

2008 年日本保險法制定後，該法已經將被保險人之重大過失行為所致之損害納入責任保險契約之主觀承保範圍，此可供我國未來修法時參酌之用。

至於要保人或被保險人之故意行為是否具可保性，應從該保險契約之設計目的觀之，不可片面以「保險法第 29 條第 2 項屬強行規定」或「故意行為已違反誠信原則並有違公序良俗」，進而認為保險人不得於保險契約中將要保人或被保險人之故意行為納入承保範圍。是以，本文認為保險法第 29 條第 2 項似無解釋為強行規定之必要。至於保險契約中對要保人或被保險人之故意行為納入承保範圍是否會誘發道德危險，此屬保險人業務經營問題，倘若保險人無法有效控管此道德危險，自應不得於保險契約中約定擴大要保人或被保險人之故意行為。

而於兆豐商銀紐約分行裁罰案例中，其董監事是否明知紐約分行具有諸多內控等缺失存在，卻仍不加以改善，致兆豐商銀紐約分行遭美國紐約州金融服務署裁罰，對此，倘若本案兆豐商銀之董監事具有故意存在，甚至意圖利用此一消息牟利者，於現行法下，保險人自無須負給付保險金之責；惟倘若僅係具有重大過失者，則仍應屬保險公司之承保範圍，而不得免其給付保險金之責。

另就樂陞公開收購違約交割案中，其董監事對於百尺竿頭數位娛樂之公開收購，已盡其注意義務或僅具有重大過失者，保險人自仍須給付保險金；惟倘若樂陞公司之董監事明知百尺竿頭數位娛樂並無能力完成本次公開收購案，卻仍配合百尺竿頭數位娛樂公開收購者，甚至利用公司發行可轉換公司債方式意圖牟利，而有主觀故意存在者，則保險人自無須負給付保險金之責。

第二節 客觀承保範圍與除外不保問題

對於我國與美國、英國、日本等國之董監事及重要職員責任保險之差異，以下分別就我國及美國、英國、日本等國就客觀承保範圍及除外不保事項等分析，以探究相互間之差異。

第一項 董監事及重要職員責任保險之客觀承保範圍

第一款 我國客觀承保範圍

一、承保對象

承保對象主要為被保險公司之董事、監察人、重要主管及其他員工，其他部分商品亦包括被保險公司執行或非執行董事、經理人或監察人或有相同職責的高階主管、無董事頭銜卻實質上行使董事職權的自然人(包括影子董事)、被保險公司的受託人或法人董監事及被保險公司指派至外部機構的外派董事。至於，我國公司法第 27 條之法人董監事，多以附加條款等方式⁷²，納入承保，詳細如本章第四節所述。

二、承保範圍

(一) 對於我國董監事及重要職員責任保險保單之基本承保範圍

1. 董監事及重要職員責任保險：

承保被保險人因執行董監事或重要職員職務錯誤行為導致第三人受有損失，而在保險期間受有賠償請求時，由承保之保險公司對被保險人負賠償之責，但保險公司已補償被保險人

⁷² 例如參 102.03.04(102)美亞保精字第 0030 號函，美亞產物董事及重要職員責任保險-擴大承保監察人及法人董監事附加條款，第一條承保範圍：「茲經雙方約定，要保公司所投保之美亞產物董事及重要職員責任保險（以下簡稱主保險單），加保擴大承保監察人及法人董監事附加條款（以下簡稱本附加條款），故主保險單條款第二條第六項之約定應予刪除，並以下列約定代之：六、「董事或重要職員」：指任何被合法指派或選任為被保險公司董事(包括執行董事及非執行董事)、監察人或重要職員之自然人。於主保險單下，被保險公司之法人股東或其代表人，於過去、現在或未來當選為被保險公司之董事(包括執行董事及非執行董事)或監察人者，亦為主保險單所指之董事或重要職員。受前述法人股東指定或指派行使董事或監察人職務之自然人，亦同。」

損失之金額不在此限。

2. 公司補償保險：

當被保險人（董監事及重要職員）因不當行為而遭賠償請求所受之損失時，被保險公司依法或依約定對被保險人之損失予以補償，則由保險公司償還被保險公司對被保險人已補償的損失金額。

（二）其他擴大的承保範圍如下：

1. 僱傭行為責任：

於被保險公司因不當僱傭行為而受到賠償請求時，由保險公司負賠償責任。

2. 有價證券責任：

於保險期間內之不當行為，首次提出有價證券賠償請求，依法應負賠償責任所致財務損失，由保險公司負賠償責任。

3. 抗辯費用：

於保險期間內，對於任何賠償請求案件為調查、理算、抗辯或上訴所產生之合理必要費用，但不包括任何被保險人的薪資，由保險公司負擔。

4. 超額保險金額。

5. 從屬公司。

6. 緊急處理費用。

7. 退休董監事及重要職員。

8. 接管及併購發現期間。

9. 外部董監事。

10. 管理階層收購。

11. 稅賦。

12. 保釋保證金費用、危機處理費用、公關費用及聲譽維護費用。
13. 引渡程序。
14. 訴訟費用。
15. 民事罰款與罰金。
16. 職業安全衛生及業務過失致死。
17. 資產剝奪。
18. 預備調查費用。
19. 國外開放條款。
20. 賠償被保險公司之股東費用。
21. 衍生調查費用。
22. 國際證券法令釋義費用。
23. 環境污染事件。
24. 網路隱私與保密。
25. 損害防阻費用。
26. 追償後恢復責任限額。
27. 持續承保。
28. 預付費用。

第二款 外國客觀承保範圍

對於美國、英國、日本、中國、香港及新加坡之客觀承保範圍，整理如下所示：

一、承保對象

承保對象主要為被企業(或稱被保險企業)及被保險企業之董監事及重要職員為被保險個人。

二、承保範圍

(一) 主要承保範圍：

1. 在保險期間內，被保險個人因執行職務依法應負賠償責任所致之財務損失，被保險企業已對被保險個人補償者外，保險公司對被保險個人進行補償。
2. 在保險期間內，被保險個人因執行職務依法應負賠償責任所致之財務損失，若被保險企業已對被保險個人進行補償者，由保險公司對被保險企業進行補償。

(二) 公司不當僱傭行為賠償請求：

對於被保險公司因公司僱傭行為而遭受之賠償請求，本保險提供損害賠償及抗辯費用之保障。

(三) 理賠前調查(Pre-Claim Inquiry)：

被保險個人對於任何賠償請求案件於理賠前調查過程中所衍生之成本，由保險公司負擔。

(四) 非執行董事之特別超額保障：

當執行董事依法應負賠償責任時，在單一賠案之責任限額、超過前述責任限額的其他責任保險及對非執行董事其他損害補償限額皆已耗盡時，保險公司提供額外保障。

(五) 有價證券責任：

在保險期間內被保險企業因有價證券賠償請求，依法應負賠償責任所致財務損失，由承保保險公司負賠償責任。

(六) 其他擴大承保範圍：

1. 資產與人身自由引渡程序有關費用(包括：抗辯費用、引渡費用、人事費用)。
2. 衍生求償調查費用。
3. 破產審訊費用。
4. 違反美國 Dodd-Frank 954 與 Sarbanes-Oxley Act 2002 第 304 節

規定之賠案所衍生之費用。

5. 商譽費用。
6. 民事罰款或罰金與納稅責任。
7. 業務過失致死。
8. 損失減輕費用。
9. 全球自由化條款。
10. 釋義律師-國際證券法令。
11. 新取得從屬公司自動承保。
12. 發現期間。
13. 退休被保險個人的終身發現期間。
14. 緊急抗辯費用。
15. 衍生調查費用。
16. 針對有價證券賠償採用 E-Discovery Consultant Services 之抗辯費用不需適用自負額之規定。
17. 國際有價證券訴訟求償清算費用。
18. 保單持有人或從屬公司危機損失。
19. 有關專屬保險公司的風險賠償。
20. 有關核能風險所致之賠償。
21. 免責金額適用之特約條款。
22. 石棉風險之賠償責任。
23. 智慧財產權相關賠償請求補償對象特別約定。
24. 違反環境保護義務。

第二項 董監事及重要職員責任保險之除外不保事項

第一款 外國除外不保事項

對於美國、英國、日本、中國、香港及新加坡之除外不保事項，

分別臚列如下：

一、 美國

- (一) 不法行為。
- (二) 於保險期間前所發生的任何賠償請求或情況。
- (三) 任何精神或人權傷害的賠償請求。
- (四) 任何財產損失或人身傷害的賠償請求。
- (五) 被保險企業對被保險人之請求。
- (六) 違反美國員工退休所得保障法。
- (七) 違反賠償與員工責任之相關法令。
- (八) 已知悉的賠償請求。

二、 英國

- (一) 不法行為。
- (二) 於保險期間開始前所發生的任何賠償請求情形。
- (三) 任何財產損失或人身傷害的賠償請求。
- (四) 任何公司對被保險人或外部機構互告的賠償請求所衍生來自美國地區的賠案，但對於來自美國地區對被保險個人的索賠案件與被保險個人抗辯費用不在此限。

三、 日本

- (一) 非法利益。
- (二) 犯罪行為。
- (三) 違反法令規定所致之損害賠償請求。
- (四) 違法支付被保險人報酬或獎金所致之損害賠償請求。
- (五) 被保險人違法利用非公開資訊買賣公司股票、債券所致之損害賠償請求。
- (六) 政府官員(官股指派董監事)所致損害賠償。

- (七) 於首張保單保險期間開始前所發生之賠償請求。
- (八) 已依先前保險單為通報者。
- (九) 環境污染責任賠償請求。
- (十) 核能與放射性污染責任賠償請求。
- (十一) 任何精神或人權傷害的賠償請求。
- (十二) 侵犯專利權、著作權或智慧財產權所致之賠償責任。
- (十三) 任何財產損失或人身傷害的賠償請求。
- (十四) 被保險人、母公司、子公司或主要股東之損害賠償請求。

四、 中國

- (一) 經法院判決或行政機關認定之被保險人欺詐、不誠實或犯罪行為。
- (二) 被保險人實際獲得的不當得利。
- (三) 保險契約生效日之前已向其它保險契約提出賠償請求的事實、情形、行為或疏忽。
- (四) 被保險公司或被保險人在本保險合同生效日前已知悉的可能導致賠償請求的事實、情形、行為或疏忽。
- (五) 由被保險人或被保險公司或其代表所提出的賠償請求，除特別約定外。
- (六) 退休金計畫或員工福利金計畫的受託人或管理人、外部審計人員所提出的任何賠償請求。
- (七) 環境污染責任賠償請求。
- (八) 任何精神或人權傷害的賠償請求。
- (九) 任何財產損失或人身傷害的賠償請求。

五、 香港及新加坡

- (一) 經終局判決或仲裁判斷確定之不誠實或詐欺行為。

- (二) 於保險期間前，已知悉的賠償請求及危險情事。
- (三) 任何財產損失或人身傷害的賠償請求。
- (四) 任何公司對被保險人或外部機構互告的賠償請求所衍生來自美國地區的賠案，但對於來自美國地區對被保險個人的索賠案件與被保險個人抗辯費用不在此限。
- (五) 主張違反 1974 年美國員工退休所得保障法(Employee Retirement Income Security Act of 1974)之相關賠償請求。
- (六) 主張違反美國證券法、證券交易法或任何美國證券交易委員會所頒布的法規命令之相關賠償請求。但對於美國地區之櫃檯交易市場買賣或銷售、受美國證券交易委員會頒布之 Rule 144A 有關私募或 Regulation S 有關未依 1933 年證券交易法申請而於美國境外發行及銷售所規範者，及為美國存託憑證第一級(American Depositary Receipts Level I)者，不在此限。
- (七) 首次公開發行股票。

第二款 我國除外不保事項

我國董監事及重要職員責任保險保單除一般保單之共同不保事項(例如：戰爭、恐怖主義行為、核能幅射或放射性危險物質、天災所致之賠償責任或損失)外，尚有下列除外不保事項：

1. 被保險人之不誠實行為。
2. 被保險人個人獲得非法利益行為。
3. 任何型態之污染事故所致之賠償責任。
4. 任何與產品責任有關之賠償責任。
5. 被保險人之間的請求。
6. 因侵犯專利權、著作權或智慧財產權所致之賠償責任。

7. 任何人之身體傷害、疾病或死亡。
8. 任何有形財產之毀損滅失及其因而引起之附帶損失。
9. 電腦系統故障引起之損失。
10. 於保單生效日前已知或已發生之訴訟或賠償請求。

第三項 小結

對於我國與美、英、日等國就董監事及重要職員責任保險保單之比較分析如下：

第一，就客觀承保範圍而言，主要皆係指被保險個人因執行職務依法應負賠償責任所致之財務損失，由保險公司對被保險個人進行補償。若被保險公司已對被保險個人補償者，則由保險公司對被保險公司進行補償。至於其他擴大承保事項，相關承保項目多屬相同，並無明顯重大之差異存在。另外，依我國公司法第 27 條規定所產生之法人董事等，因前開條文為我國獨創之立法，對此，國外之董監事及重要職員責任保險保單之被保險人對象僅限於自然人董事，對此衍生爭議，於本章第四節詳細論述之。

第二，對於除外不保事項部分，除對於部分除外事項不同外，例如違反美國員工退休所得保障法之相關賠償請求等，其他事項亦多相同，例如對於被保險人之不誠實行為、非法利益行為、環境汙染之賠償請求、任何精神或人權傷害的賠償請求及任何財產損失或人身傷害的賠償請求等。

綜上，早期由美商美國環球產物保險有限公司臺灣分公司(現美亞產物保險公司)引進國內第一張董監事及重要職員責任保險，惟當時國內企業對此險種相當陌生且企業並無海外籌資之需求，故投保率並不高。而後隨著多起國內外董、監事嚴重舞弊案件發生，及我國企業向海

外發展與外國企業進駐國內等，董監事及重要職員責任保險逐漸開始發展並陸續普及，伴隨著國際貿易等，我國董監事及重要職員責任保險保單亦逐漸於國際接軌。

第三節 提高企業投保之意願

第一項 我國投保董監事及重要職員責任保險之相關規範

我國最早董監事及重要職員責任保險係於民國 85 年 10 月由美商美國環球產物保險有限公司台灣分公司(現美亞產物保險公司)引進，而於當時國內企業投保率並不高。嗣後，隨著我國商業與資本市場逐漸蓬勃發展，及接連爆發企業舞弊案件，致董、監事等遭投資人求償之訴訟案件屢見不鮮，我國對於董監事及重要職員責任保險之發展，亦逐漸重視。

對此，我國對於董監事及重要職員責任保險針對上市上櫃公司、金融控股公司、票券金融公司、銀行業公司、證券商公司、證券投資信託事業證券投資顧問事業公司、期貨商公司及保險業公司等，於相關治理實務守則中，雖未強制要求公司為其董、監事投保董監事及重要職員責任保險，惟仍建議前開公司為其董、監事投保董監事及重要職員責任保險，以降低並分散董事、監察人因錯誤或疏忽行為而造成公司及股東重大損害之風險。

而於近年來，隨著政府法令的增訂，公司經營者風險意識逐漸抬頭，董監事及重要職員責任保險之投保件數逐年增加，民國 95 年投保件數約 700 件，投保率僅 32.7%；民國 98 年突破 1,000 件，投保率突破 50%；而截至民國 104 年止，投保件數達 1,674 件，同時投保率約已達 67%，顯然董監事及重要職員責任保險亦逐漸普及。

第二項 外國投保董監事及重要職員責任保險之相關規範

對於國外投保董監事及重要職員責任保險之相關規範，主要可以分

成任意投保及強制投保兩種形式，分別說明如下：

一、任意投保

對於部分國家而言，主要係以鼓勵投保之方式，並未強制要求公司為其董事及重要職員投保保險，例如美國⁷³、英國⁷⁴、中國⁷⁵等國，僅明文規定公司得為董事及重要職員等投保董監事及重要職員責任保險，以保障公司董事及重要職員等所可能面臨之相關責任。

二、強制投保

另外部分國家而言，係採強制投保之方式，明文要求公司須為其主管人員等購買董監事及重要職員責任保險，以保障公司董事及重要職員等所可能面臨之相關責任，例如紐西蘭等國⁷⁶。

第三項 小結

我國第一張董監事及重要職員責任保險係於民國 85 年 10 月由美商美國環球產物保險有限公司台灣分公司(現美亞產物保險公司)所引進，伴隨國內外公司重大弊案爆發，公司治理逐漸成為社會大眾所關注之重要議題，也加速我國相關法規之改革，對此，受企業弊案消息頻傳之影響，董監事及重要職員責任保險之保險理賠率及投保率等因而大幅增加，而我國董監事及重要職員責任保險逐漸亦受到重視。

而藉由公司為董監事及重要職員購買董監事及重要職員責任保險，得以避免董事、監察人及重要職員於因執行職務之錯誤或疏失衍生出法律責任的損失負擔，及董事、監察人及重要職員因他董事、監察人或重要職員之錯誤或疏忽行為而牽累的法律責任風險，得以有效分散公司經營者風險，為公司延攬優秀之人才，並維護投資人之利益。

並且公司涉及舞弊及掏空等行為，其受害人往往為數眾多且金額龐

⁷³ Delaware Code Title 8. Corporations §145.、New York Business Corporation Law §726.

⁷⁴ 英國 2006 年公司法第 232 條及第 233 條之規定。

⁷⁵ 中國大陸《上市公司治理准則》第 39 條規定。

⁷⁶ 參王文字，公司法論，2003 年 10 月出版，元照，第 578 頁至第 580 頁。

大，為避免將來董、監事等喪失清償能力等，藉由購買董監事及重要職員責任保險之方式，得以有效提高投資人將來獲得賠償之可能性，避免因董、監事及重要職員之個人資產不足，致投資人無法獲得賠償之情形。

綜上，我國董監事及重要職員責任保險引進我國迄今已有將近 20 年之歷史，對於董監事及重要職員責任保險之發展亦逐漸完善並與國際接軌，且基於有效分散公司經營者風險及保障投資人等，實應加強公司須為其董事、監察人等投保董監事及重要職員責任保險之強度，以保障公司董監事及重要職員等，將來所可能面臨之相關責任。建議可採行的方式如下：

一、參酌民國 91 年 2 月當時《臺灣證券交易所股份有限公司有價證券上市審查準則》第 9 條之規定，於當時證券交易法未明文規定公司設置獨立董事時，即以設置獨立董事與否，作為是否准予上市之參考標準，以作為修法前之替代方案。即建議於《臺灣證券交易所股份有限公司有價證券上市審查準則》第 9 條增列是否為其董監事及主管人員等投保董監事及重要職員責任保險與否，作為是否准予上市之參考標準。

二、就各國立法例而言，目前僅有少數國家立法強制要求公司須為其董監事及主管人員等投保董監事及重要職員責任保險，故採強制要求公司須為其董監事及主管人員等投保董監事及重要職員責任保險目前似有困難。因此，建議可採間接方式，強制要求公司向投資人及社會大眾揭露投保董監事及重要職員責任保險之保險金額、承保範圍、除外不保事項等狀況，以及充分說明並揭露公司未投保董監事及重要職員責任保險之原因。

第四節 被保險人之範圍

董監事及重要職員責任保險係由國外所引進之保險商品，隨著相

關法令之完備及公司弊案之頻傳，董監事及重要職員責任保險逐漸受到重視，對此，董監事及重要職員責任保險之被保險人範圍是否足以包含我國相關法令所規定之董事等，本文以下試就法人董事為核心，探討董監事及重要職員責任保險之被保險人是否包含我國公司法第 27 條第 1 項所稱之法人董監事。

第一項 法人董監事之分析

按公司法第 27 條第 1 項規定：「政府或法人為股東時，得當選為董事或監察人。但須指定自然人代表行使職務。」於政府或法人為公司股東時，得當選為公司之董事或監察人，惟因法人或政府無法實質執行董事或監察人之職務，而需指定自然人代表行使其職務，故稱法人董監事⁷⁷。

依公司法第 27 條立法理由無從確切知悉當時立法之緣由，惟依其規定觀之，似應為提供政府或法人對於其投資之事業，藉由擔任董監事等，便利政府或法人之控制管理等⁷⁸。另外隨著轉投資規範之鬆綁等，而為企業所普遍運用，且因企業經營模式朝向關係企業或集團企業之經營模式，法人董監事制度，已成為普遍之現象⁷⁹。於法人董監事之情形下，公司當選為董事或監察人時，雖有指派自然人行使董事或監察人職務，惟該董事或監察人之委任契約，仍應係存在於投資公司與被投資公司間⁸⁰，換言之，形式上董事仍為投資公司，而非該受指派之自然人。

就前開公司法第 27 條為我國獨特之立法，於各國公司法制中，對於董事多由自然人所擔任，因此，前開條文亦受到諸多批評。有認為公司僅為組織體，無從自為實體行為，而有再指派自然人代表行使其職務

⁷⁷ 參劉連煜，現代公司法，2013 年 9 月，元照，第 135 頁。

⁷⁸ 參王文字，公司法論，2003 年 10 月，元照，第 135 頁；林仁光，公司法第二十七條法人董監事制度存廢之研究，國立臺灣大學法學論叢，2011 年 3 月，40 卷 1 期，第 258 頁。

⁷⁹ 參高靜遠，公司法上法人股東代表人人數之規範探討，月旦法學雜誌，2001 年，第 79 期，第 172 頁。

⁸⁰ 參王文字，公司法論，2003 年 10 月，元照，第 116 頁

之必要，實有疊床架屋之情形⁸¹等。而因我國法人董監事制度，與國外限自然人擔任董事之情形不同，對此，由國外所引進之董監事及重要職員責任保險商品，其被保險人是否包含法人董事之情形，即有疑義。

第二項 董監事及重要職員責任保險之被保險人範圍

對於董監事及重要職員責任保險源於英國，而於美國發展成熟。西元 1934 年英國勞伊茲(Lloyd's)於美國賣出第一張董監事及重要職員責任保險保單起，至今美國高達 9 成以上之公開發行公司投保，屬成熟之保險商品。多數國家紛紛引進此制度，亦多以美國為仿效對象。我國則於民國 85 年 10 月由美商美國環球產物保險有限公司臺灣分公司(現美亞產物保險公司)引進國內第一張董監事及重要職員責任保險商品，而我國相關董監事及重要職員責任保險亦多以國外保單為基礎，待我國保險公司將其翻譯後，隨即於我國販賣之，對此，我國董監事及重要職員責任保險，乃深受美國等國外保單之影響。

國外明文禁止法人擔任董事之規定者，有美國、日本等國。如以美國德拉瓦州公司法之規定為例，德拉瓦州公司法第 141 條(b)項即明文規定，公司法應設一名以上之董事，且每一名董事都必須是自然人⁸²。至於，日本則於西元 2005 年制定公司法法典，將原本規範於原來商法之規定抽離，而成為獨立於商法典外之公司法法典，該日本公司法第 331 條規定，即明文規定法人不得擔任董事⁸³。

⁸¹ 參林國全，法人代表董監事，月旦法學雜誌，第 49 期，第 16 頁。

⁸² “(b) The board of directors of a corporation shall consist of 1 or more members, each of whom shall be a natural person.” Delaware General Corporation Law, §141 (b).

⁸³ 会社法 第三百三十一條：次に掲げる者は、取締役となることができない。

一 法人

二 成年被後見人若しくは被保佐人又は外国の法令上これらと同様に取り扱われている者

三 この法律若しくは一般社団法人及び一般財団法人に関する法律（平成十八年法律第四十八号）の規定に違反し、又は金融商品取引法第百九十七条、第百九十七条の二第一号から第十号の三まで若しくは第十三号から第十五号まで、第百九十八条第八号、第百九十九条、第二百条第一号から第十二号の二まで、第二十号若しくは第二十一号、第二百三条第三項若しくは第二百五条第一号から第六号まで、第十九号若しくは第二十号の罪、民事再生法（平成十

於國外董監事及重要職員責任保險引進於我國時，因國外當地並無允許法人擔任董事，是以，董監事及重要職員責任保險所稱之被保險人，係指被保險公司董事或重要職員之自然人而言，並不包含由法人擔任董事之情形。於我國早期保單條款中，對於被保險人頗多僅以自然人為限。近年來為了避免被保險人範圍之爭議，多以附加條款擴大承保監察人及法人董監事等處理⁸⁴。

第三項 小結

董監事及重要職員責任保險起源於國外，而以國外立法例作為董監事及重要職員責任保險之保障範圍，對此，國外董監事及重要職員責任保險並未承保法人董事等，而可能造成我國董監事及重要職員責任保險之保障漏洞。是以，依我國公司法第 27 條第 1 項規定政府或法人得

一年法律第二百二十五号)第二百五十五条、第二百五十六条、第二百五十八条から第二百六十条まで若しくは第二百六十二条の罪、外国倒産処理手続の承認援助に関する法律（平成十二年法律第百二十九号）第六十五条、第六十六条、第六十八条若しくは第六十九条の罪、会社更生法（平成十四年法律第百五十四号）第二百六十六条、第二百六十七条、第二百六十九条から第二百七十一条まで若しくは第二百七十三条の罪若しくは破産法（平成十六年法律第七十五号）第二百六十五条、第二百六十六条、第二百六十八条から第二百七十二條まで若しくは第二百七十四条の罪を犯し、刑に処せられ、その執行を終わり、又はその執行を受けることがなくなった日から二年を経過しない者

四 前号に規定する法律の規定以外の法令の規定に違反し、禁錮以上の刑に処せられ、その執行を終わるまで又はその執行を受けることがなくなるまでの者（刑の執行猶予中の者を除く。）

2 株式会社は、取締役が株主でなければならない旨を定款で定めることができない。ただし、公開会社でない株式会社においては、この限りでない。

3 監査等委員である取締役は、監査等委員会設置会社若しくはその子会社の業務執行取締役若しくは支配人その他の使用人又は当該子会社の会計参与（会計参与が法人であるときは、その職務を行うべき社員）若しくは執行役を兼ねることができない。

4 指名委員会等設置会社の取締役は、当該指名委員会等設置会社の支配人その他の使用人を兼ねることができない。

5 取締役会設置会社においては、取締役は、三人以上でなければならない。

6 監査等委員会設置会社においては、監査等委員である取締役は、三人以上で、その過半数は、社外取締役でなければならない。

⁸⁴ 參 102.03.04(102)美亞保精字第 0030 號函，美亞產物董事及重要職員責任保險-擴大承保監察人及法人董監事附加條款，第一條承保範圍：「茲經雙方約定，要保公司所投保之美亞產物董事及重要職員責任保險（以下簡稱主保險單），加保擴大承保監察人及法人董監事附加條款（以下簡稱本附加條款），故主保險單條款第二條第六項之約定應予刪除，並以下列約定代之：六、「董事或重要職員」：指任何被合法指派或選任為被保險公司董事(包括執行董事及非執行董事)、監察人或重要職員之自然人。於主保險單下，被保險公司之法人股東或其代表人，於過去、現在或未來當選為被保險公司之董事(包括執行董事及非執行董事)或監察人者，亦為主保險單所指之董事或重要職員。受前述法人股東指定或指派行使董事或監察人職務之自然人，亦同。」

當選為公司之董事或監察人，此時若該法人董事所指派之自然人，於執行董事之職務時，因錯誤或疏忽行為致第三人受損害者，自仍有保障法人董事之必要。對此，姑且不論公司法第 27 條妥適與否，惟於公司法第 27 條修正前，實應有將法人董監事納入董監事及重要職員責任保險之必要。

惟於我國兆豐商銀紐約分行裁罰案例中，兆豐國際商業銀行股份有限公司係由兆豐金融控股股份有限公司百分之百所持股，是以，依公司法第 128 條之 1 規定，兆豐國際商業銀行股份有限公司之董事及監察人等，係由兆豐金融控股股份有限公司所指派。是以，兆豐國際商業銀行股份有限公司之董監事，係由兆豐金融控股股份有限公司所指派之代表人，擔任該公司之董監事，對此，亦屬董監事及重要職員責任保險所稱之被保險人。

惟有疑義者，兆豐金融控股公司與兆豐國際商業銀行股份有限公司之董事皆同為董監事及重要職員責任保險之被保險人，對此，依董監事及重要職員責任保險之除外條款規定，即由其他被保險人或被保險公司所提出之賠償請求，係屬除外承保事項，保險公司不負給付保險金之責。至於，倘若係由兆豐金融控股股份有限公司所提出之索賠請求，因兆豐金融控股股份有限公司係兆豐國際商業銀行股份有限公司持股百分之二十以上之大股東，依董監事及重要職員責任保險之除外條款規定，對於由持有被保險公司百分之二十以上之股東所提出之賠償請求，保險公司亦無須負給付保險金之責。是以，於本案例中，不論係由兆豐國際商業銀行股份有限公司或兆豐金融控股股份有限公司對於兆豐國際商業銀行股份有限公司董監事所為之索賠請求，因係屬董監事及重要職員責任保險之除外承保範圍，保險公司並無須負給付保險金之責。

第五節 同一保險事故之數被保險人之保險金理賠爭議

第一項 案例分析

有關銳普電子股份有限公司之董監事涉嫌以虛偽交易之方式，虛增銳普電子股份有限公司之營業收入，並致銳普電子股份有限公司之營收報告及財務報告涉嫌不實記載。而於涉案之數名董監事中，因個別董監事之任職期間及責任比例不同等因素，致部分董監事責任提前確定。對此，財團法人證券投資人及期貨交易人保護中心遂以前開部分董監事確定之法院判決，依保險法第94條第2項第三人直接請求權規定，逕向董監事及重要職員責任保險之保險人請求保險金，進而衍生後續董監事及重要職員責任保險之保險金分配等相關疑義。

惟董監事及重要職員責任保險之被保險人，係指被保險公司之董監事等，原則上應有數人，而每一被保險人因保險事故之發生，得向保險公司請求保險金之權利，應係各自獨立且不相互影響。再者，保險法第94條第2項第三人直接請求權之規定，係賦予第三人於被保險人對第三人損失賠償責任確定時，得逕向保險人請求賠償之權利，惟此時保險事故業已發生，僅前開責任須經判決等確定時，第三人方得向保險人直接請求賠償；惟前開保險人賠償金額應限於該被保險人應得之保險金額範圍內，並不包含其他共同行為人之保險金額。換言之，縱使部分被保險人之責任範圍經法院判決確定，惟僅係第三人得向保險人直接請求該部分責任確定被保險人之保險金，並不影響其他被保險人因保險事故發生，將來所得領取之保險金。

因此，於本案例中，首要探討者，應係董監事及重要職員責任保險之保險事故發生時點，倘若其他被保險人之保險事故業已發生，僅責

任未經確定，第三人尚無法依第三人直接請求權向保險人請求賠償者，第三人應僅得直接向保險人請求已確定之被保險人保險金額。

第二項 責任保險之事故發生時點

董監事及重要職員責任保險係屬責任保險之一環，而依我國保險法第 90 條規定：「責任保險人於被保險人對於第三人，依法應負賠償責任，而受賠償之請求時，負賠償之責。」責任保險係指被保險人為免除自己對於第三人依法應負之損害賠償責任為目的，而與保險人所締結之保險契約，是以，當被保險人依法對於第三人應負賠償責任時，而受該第三人請求時，保險人即應負賠償責任。是以，責任保險係消極保險，即保障「某特定人對於一種不利之關係，此關係因保險事故發生而產生，因而被保險人之財產將遭受損失」，而為避免被保險人財產上之損失，所成立之保險契約⁸⁵。

惟就責任保險之保險事故發生時點，涉及被保險人對於第三人造成損害、第三人向被保險人求償及賠償責任確定等，約可經過「損害事故」、「受賠償請求時」、「責任承擔」及「履行賠償」等階段⁸⁶，是以，責任保險之保險事故發生時點，學理主要亦就上開時點討論之。

首先，採損害事故發生說者認為責任保險之保險事故，係以被保險人負擔損害賠償責任之損害事故，作為責任保險之保險事故發生，此說優點主要在於得明確判斷保險事故之發生時間點；惟損害事故之發生，並不代表被保險人損害之發生，例如第三人其損害賠償請求權罹於時效等因素，且易因保險期間已屆至，而給付責任未隨同結束，而有長尾責任之情形⁸⁷。

其次，採請求說者認為以被保險人受第三人索賠請求時（索賠基

⁸⁵ 參江朝國，保險法逐條釋義-第三卷財產保險，初版，元照，第 667 頁。

⁸⁶ 參黎家興，論責任保險之事故發生與通知義務，保險專刊，第 2011 年，第 27 卷第 2 期，第 176 頁。

⁸⁷ 參江朝國，保險法逐條釋義-第三卷財產保險，初版，元照，第 693 頁至第 694 頁。

礎制)，作為責任保險之保險事故發生時點，是以，當被保險人於保險期間內，受第三人請求損害賠償者，保險人即應負擔賠償責任。此說同樣亦於認定保險事故發生時點，並能含括被保險人因受第三人賠償請求所支出之相關抗辯費用及避免損害事故發生說所產生之長尾責任等。惟本說恐因更換保險人而有保險保障空窗期之發生，且保險事故發生與否繫於第三人是否行使其賠償請求權為斷，恐與保險事故應具備偶發性之要件不符⁸⁸。

再者，另有認為責任保險事故應以被保險人因確定判決等，致被保險人須對第三人負擔法律上損害賠償責任時，作為責任保險事故之發生時間⁸⁹。換言之，被保險人因損害賠償責任確定，致其受有財產減損之不利益，此時，方有保險人給付保險金填補損害之必要。惟此說倘若被保險人於訴訟上或訴訟外之方法，其抗辯有理由，致無需負擔賠償責任者，恐無法解釋保險法第 91 條保障被保險人之抗辯費用支出。

最後，有認為應以被保險人已履行訴訟上或訴訟外賠償責任作為保險事故發生時點，此說主要以保險法第 94 條第 1 項之規定，為其立論基礎，即保險人於被保險人向第三人賠償前，不得將保險金一部或全部給付予被保險人。惟有學者認為，前開第 94 條第 1 項僅係保險人給付保險金之限制，並非保險事故發生時點；且倘若被保險人於履行賠償義務前，保險事故尚未發生，則無法解釋同法第 94 條第 2 項，保險人於被保險人向第三人為賠償前，即依第三人之請求逕向其為賠償給付之規定。

綜上，對於我國責任保險之保險事故發生時點，應以損害事故發生說及索賠基礎說較為可採，而保險法第 90 條雖明文規定受賠償請求

⁸⁸ 參黎家興，論責任保險之事故發生與通知義務，保險專刊，2011 年，第 27 卷第 2 期，第 176 頁。

⁸⁹ 參許慧如，論責任保險之第三人直接給付請求權及消滅時效起算，萬國法律，2009 年 6 月，第 165 期，第三頁。

時等字樣，似係指被保險人受賠償請求時，作為保險事故之發生。惟前開條文應僅係宣示意義⁹⁰，至於責任保險究係採損害事故發生說及索賠基礎說應依各責任保險之險種條款規定不同，而有不同之認定。對此，依責任保險類型之不同，其所採取之方式亦有所不同，例如損害發生與損害原因之間相距較近時，應以損害事故發生說為保險事故發生基準（即汽車責任保險等）；至於損害事故發生與第三人損害產生及發現相隔甚遠時，則應以損賠基礎說較為妥適⁹¹（即專門職業技術人員責任保險等）。

而董監事及重要職員責任保險係責任保險主要皆係採索賠基礎制當作理賠基礎，例如於富邦產物董事及經理人責任保險第 2 條：「基於發生在保險期間開始前或在該期間內的不當行為提出的董事及經理人責任索賠，其第一次提出時間是在保險期間內或延長報案期間內，而且是該被保險個人不能從機構獲得補償的損失，本公司同意代被保險個人給付。」即以被保險人於保險期間內初次受第三人賠償請求者，保險人始負給付保險金之責，惟為平衡被保險人與保險人雙方間之利益，於董監事及重要職員責任保險多加入追溯日及延長報案期間等條款。

第三項 銳普案例判決分析

於本案全部終局判決確定前，因有部分賠償義務人已先行確定，即如銳普電子股份有限公司之董事長陳○全總共須賠償新臺幣三億兩千萬元。另因銳普電子股份有限公司當時已向美亞產物保險股份有限公司投保「美國環球董事重要職員責任保險」，保險金額為美金 500 萬元，是以，財團法人證券投資人及期貨交易人保護中心遂即向美亞產物保險股份有限公司請求給付保險金，惟尚有部分被保險人之賠償責任尚未確定，且數被保險人間之賠償責任比例亦不相同，是以，即衍生董監事責

⁹⁰ 例如於一般責任保險基本參考條款，即係採事故發生制作為保險事故認定時點。

⁹¹ 參江朝國，保險法逐條釋義-第三卷財產保險，初版，元照，第 703 頁至第 707 頁。

任保險之保險金請求及分配等疑義，本文分別略述如下：

一、於本案中，針對財團法人證券投資人及期貨交易人保護中心以先行確定之被保險人責任，向保險人請求該被保險人之賠償金（因該部分被保險人賠償責任比例已高於全部保險金額，因此實際上投保中心即請求全部保險金），嗣經其他未確定之被保險人提起定暫時狀態之假處分，以保全其將來請求保險金之權益。惟法院見解認為保險法第 94 條第 2 項規定並無須以全體被保險人責任確定始得請求，是以，本案因部分被保險人責任先行確定，而第三人自得以該被保險人確定賠償範圍向保險人請求給付賠償金⁹²。

二、至於保險金分配上，法院見解認為公司投保董監事責任保險之目的，係在於將來發生保險理賠事故時，可以保險金作為補償被害人之用，避免公司董事或重要職員遭受巨額之求償，而非使公司董監事於事故發生時得獲致超出其賠償金額之保險利益，故董監事責任保險亦應如同強制汽車責任保險，其理賠金額應視為加害人或被保險人損害賠償金額之一部分，加害人或被保險人受賠償請求時，得扣除之。基此，董監事理賠金既為董監事賠償金額之一部分，其分配自應按董監事之責任比例計算，以求公允，而非按人數比例或由某些董監事優先扣抵⁹³。

綜上，於銳普案例中，針對於保險金請求上，於未確定部分被保險人所提起之定暫時狀態假處分中，似係採取被保險人責任比例先確定者先請求保險金之方式，使第三人得以先行取得該已確定被保險人應分擔賠償責任比例之保險金（本案第三人已先行取得全部之保險金）。嗣後於原法院審理中，卻認為保險金之分配應以各被保險人責任比例分配，並應自每位被保險人應賠償責任金額中扣除之。

對此，倘若第三人以先行確定被保險人之賠償責任，依保險法第

⁹² 參臺灣高等法院 102 年度抗字第 1553 號民事裁定。

⁹³ 參臺灣高等法院 105 年度金上更(二)字第 1 號民事判決。

94 條第 2 項規定，向保險人請求保險金者，則該保險金自應屬於該先行確定之被保險人賠償金額，並不包含未確定之被保險人賠償金額。惟就原案法院審理中，卻忽略該保險金取得之名義，而認定該保險金係屬全體被保險人所有，而依各被保險人責任比例，分配各被保險人應得之保險金，顯然亦認為該保險金若全數屬於先行確定被保險人所有，將有不公平之情事發生，故再依各被保險人責任比例重新分配。

第四項 小結

於同一保險事故中，對於數被保險人責任先行確定，其保險金理賠方式，可能有以下方式，第一，被保險人賠償責任及金額先行確定並向保險人請求者，先予給付直至保險金耗盡；第二，於同一保險事故下，依各被保險人之賠償責任比例，計算其應得之保險金⁹⁴；最後，於同一保險事故下，依各被保險人之人數平均分配保險金，惟倘若分配後之保險金高於其實際賠償金額者，則對於超過部分，再重新分配予其他被保險人。

上開第一種方式，以各被保險人之賠償責任比例確定先後，決定各被保險人得否請求保險金，固然可以利於保險人給付各被保險人其應得之保險金，惟恐導致被保險人為避免該董監事責任保險之保險金提早耗盡，而爭先儘早確定其賠償責任比例，致部分實際責任比例較低之人，無從有效確認其實際應賠償之比例，且責任比例確定僅係第三人得否依保險法第 94 條第 2 項逕自向保險人請求賠償金，並非保險事故發生與否認定時點。

至於，第二種之計算方式，將全部保險金依各被保險人責任比例分配，有其法院審理後之責任比例做為分配基準，無須再就保險金分配比例再為認定，易於保險金之分配，且使第三人於最大限度內皆受到董

⁹⁴ 我國臺灣高等法院 105 年度金上更(二)字第 1 號民事判決，即採此說。

監事責任保險之賠償。惟前開分配方式，將導致責任比例較重之被保險人獲得更高額之保險保障，於全部被保險人間，恐有不公平之情事，且該分配方式，無異於使董監事責任保險作為行為嚴重疏忽之被保險人之有力保障；反而使兢兢業業之被保險人，因一時疏忽，即恐須面臨經濟上之不利益，而無法藉由董監事責任保險為完全之填補，顯非董監事責任保險之原意。

最後，本文認為實應以第三種計算方式為妥，理由如後所述，即有鑑於我國董監事及重要職員責任保險係以索賠基礎制作為保險事故發生時點，對此，被保險人於保險期間內受第三人賠償請求時，則董監事及重要職員責任保險之保險事故應已發生。至於，被保險人賠償責任確定與否，僅係影響被保險人得請求保險金額之多寡及第三人得否向保險人行使第三人直接請求權，並無礙於保險事故之發生。基此，於銳普案例中，雖部分被保險人賠償金額已判決確定，惟其他被保險人之保險事故亦已發生，僅賠償金額尚未確定，對此，第三人固得依保險法第94條第2項規定直接向保險人請求保險金，惟應僅限於已確定賠償金額之被保險人應得之保險金而言；至於，其他被保險人之保險金因賠償責任尚未確定，第三人自不得依同條項規定逕向保險人請求其他被保險人應得之保險金。

另因董監事及重要職員責任保險之被保險人有數人，每一被保險人受董監事及重要職員責任保險之保障應屬相同，是以，實應以總保險金額平均分配予各被保險人，方屬公平。至於，部分被保險人如依前述保險金分配高於其應負擔之賠償金額者，則應以其應負擔之賠償金額為限，給付其保險金，剩餘之保險金則再平均分配給其他被保險人，直至保險金耗盡或第三人之損害賠償債權已全數獲得滿足等。否則，倘若依各被保險人於同一事故之賠償責任比例分配保險金，恐使個別被保險人

因其責任比例較高，而可獲得較高額之保險金，侵害其他被保險人原所得享有之保險保障；且前開分配方式，無異於鼓勵被保險人疏於其監督注意義務，即可歸責比例高之被保險人，反而得享有更高額保險保障之不公。

綜上，前開第一種及第二種計算方式，雖皆有其優點，惟考量董監事責任保險係以保障被保險人為其目的，且各被保險人受同一保險之保障應屬相同，除契約或法令另有規定外，應不得差別對待之；再者，董監事責任保險目的之一，即在於避免各被保險人因一時疏忽或錯誤等，而須面臨第三人求償之風險，以有效分散公司經營者風險及為公司延攬優秀人才等，是以，實應以各被保險人之人數平均分配保險金，以使各被保險人公平受到同一保險之相同保障，避免部分被保險人於疏失責任比例較低情況下，反而實質上卻須承擔更高之經濟上損失。

第五章 結論與建議

隨著證券投資人及期貨交易人保護法之施行及證券投資人及期貨交易人保護中心之成立，對於造成多數證券投資人或期貨交易人受損害之同一原因所引起之證券、期貨事件，得由證券投資人或期貨交易人授與仲裁或訴訟實施權後，由證券投資人及期貨交易人保護中心以自身之名義，而提付團體訴訟或仲裁。對此，公司之董監事等，遭起訴請求損害賠償之頻率持續升高且求償金額龐大。

公司購買董監事及重要職員責任保險之積極面而言，得以藉由保險公司對於投保公司及該公司董監事等之核保過程，供投資人對於公司及董、監事適任與否之參考依據。其次，公司為董監事購買責任保險可以促使董事間相互監督，避免董事會成員中一人違反相關法令規定，致其他董事之權利及名譽受影響。再者，保險公司為降低董監事及重要職員責任保險理賠之風險，將會謹慎查核等，避免損害之發生，而可達到監督公司之效果。最後，購買董監事及重要職員責任保險，得以避免董事、監察人及重要職員於因執行職務之錯誤或疏失衍生出法律責任的損失負擔，得以有效分散公司經營者風險，為公司延攬優秀之人才，且避免因董、監事及重要職員之個人資產不足，致投資人無法獲得賠償之情形，並維護投資人之利益。

而就證券交易法規定之民事責任賠償責任，主要涉及有證券交易法第 31 條公開說明書未依規定交付、證券交易法第 32 條公開說明書內容不實、證券交易法第 20 條證券詐欺、證券交易法第 20 條之 1 財務報告不實、證券交易法第 157 條第 1 項短線交易及證券交易法第 157 之 1 條內線交易等，其主觀要件，可分成無過失責任、推定過失責任、一般

過失責任、重大過失責任及故意責任。對此董監事及重要職員責任保險之主觀承保範圍宜配合證券交易法之規定釐訂不同承保範圍。

另近年來董監事及重要職員責任保險之投保率逐年增長，截至民國 104 年投保率約已達 67%，投保件數達 1,674 件。對此，我國董監事及重要職員責任保險引進我國迄今亦有將近 20 年之歷史，對於董監事及重要職員責任保險之發展亦逐漸完善並與國際接軌，而基於有效分散公司經營者風險及保障投資人等，實應有必要採強制投保方式明文規定公司須為其董事、監察人等投保董監事及重要職員責任保險，以保障公司董事及重要職員。惟僅有少數國家立法要求公司須為其主管人員等購買董監事及重要職員責任保險。因此，建議可參酌《臺灣證券交易所股份有限公司有價證券上市審查準則》第 9 條規定，將投保董監事及重要職員責任保險納入申請上、市櫃公司審查計分項目等之方式，鼓勵公司投保董監事及重要職員責任保險之誘因。另建議可採間接方式，強制要求公司向投資人及社會大眾揭露投保董監事及重要職員責任保險之狀況與公司未投保董監事及重要職員責任保險之原因，以提升公司為其董監事及主管人員投保之誘因。

再者，依我國公司法第 27 條第 1 項規定政府或法人得當選為公司之董事或監察人，此時若該法人董事所指派之自然人，於執行董事之職務時，因錯誤或疏忽行為致第三人受損害者，自仍有保障法人董事之必要。對此，姑且不論公司法第 27 條妥適與否，惟於公司法第 27 條修正前，實應有將法人董監事納入董監事及重要職員責任保險之必要。

最後，我國董監事及重要職員責任保險係以索賠基礎制作為保險事故發生時點，是以，被保險人於保險期間內受第三人索賠時，即為董監事及重要職員責任保險之保險事故發生。而每位被保險人於同一保險事故中受董監事及重要職員責任保險之保障應屬相同，故每位被保險人

所應得之保險金額，應以總保險金額平均分配予各被保險人，而若部分被保險人依前述保險金分配高於其應負擔之賠償金額者，則應以其應負擔之賠償金額為限，給付其保險金；至於，超過之保險金則再平均分配給其他被保險人，直至保險金耗盡或第三人之損害賠償債權已全數獲得滿足。

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富邦產物保險公司 <https://www.fubon.com/insurance/home/>

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四、其他

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附錄一、期中及期末報告審查意見

期中報告審查意見

審查委員修正建議	研究團隊回覆
一、建議將樂陞及兆豐案件納入報告。	遵照審查委員建議， 於期末報告補充。 (P66)
二、我國案例介紹部分，報告中二案例均屬遠航案所衍生的訴訟案件，建議宜可再增加其他案例類型，如：投保中心所承辦銳普公司財報不實案，即發生有被告董監事就每一被保險人應受(保險金)利益之範圍(數額)，以及保險公司已支付之保險金如何抵償其應負之損害賠償數額有所爭執情形(案號：最高法院 104 年臺上字第 2503 號民事判決、臺灣高等法院 102 年抗字第 1553 號民事裁定)，亦或可作為本件研究報告參考案例(報告第 50 頁)。另外，其他各國部分無相關案例介紹，如有，建議提供數例供參。	遵照審查委員建議， 於期末報告補充。 (P63)
三、有關顧問公司 Towers Waton 調查(報告第 22-29 頁)主要係針對美國區域之董監責任保險投保概況為分析，似有誤植於報告第二章情形，請調整。	遵照審查委員建議， 將本節相關內容移至 附錄供參。(P154)

<p>四、我國投保情形相關分析，建議宜可參考公開資訊觀測站「董事及監察人投保責任險情形」(網址： http://mops.twse.com.tw/mops/web/t135sb03)，針對我國上市櫃公司投保情形，就投保金額、級距區間、不投保比率及其理由、各產業投保概況及比率等，予以彙整及分析，以瞭解國內上市櫃公司整體投保情形。</p>	<p>遵照審查委員建議，於期末報告補充。 (P24)</p>
<p>五、報告第 112 頁受託單位建議應採強制納保之方式，惟現行國內外所蒐集之案例，僅有美國一洲規定「得為公司之重要職員進行投保…」，分析美國之案例亦非採強制投保之規定，若須建議採強制投保，未來之建議是否要提升法律位階，採強制投保，但理由尚須充分，是否可參考國外的方式以宣誓性來處理。</p>	<p>遵照審查委員建議，於期末報告修正。</p>
<p>六、第三章各國的法律、不保範圍等給予更清楚的差異比較表，並將其比較結果納入建議之參考。</p>	<p>遵照審查委員建議，於期末報告補充。 (P104、P105 及 P106)</p>

期末報告審查意見

審查委員修正建議	研究團隊回覆
一、 考量資訊正確性及完整性，建議更新研究報告第 41-46 頁所記載進行中團體訴訟案件彙總表，以投保中心最近一次公告資料為準。	遵照審查委員建議，於期末報告修正。(P44)
二、 建議補充說明研究報告第 48 頁，有關博達案之判決對各董監事應賠償金額及理由。	遵照審查委員建議，於期末報告修正。(P50)
三、 請確認研究報告第 59 頁倒數第 4 行，文字為「應收帳款」或「應付帳款」。	遵照審查委員建議，於期末報告修正。(P63)
四、 建議補充研究報告第 62 頁，有關銳普案對於理賠金額分配之問題與相關判決理由。	遵照審查委員建議，於期末報告修正。(P65 註 16)
五、 請確認研究報告第 73 頁，有關樂陞案發行可轉債之時間為民國 104 年或民國 105 年。	遵照審查委員建議，於期末報告修正。(P77)
六、 研究報告第 105 頁之內容提及「不保事項」，建議再釐清其定義；並說明重大事故是否屬承保範圍。另說明有關法人董事是否為除外不保事項。	遵照審查委員建議，於期末報告修正。(P112)
七、 餘文字及格式修正。	遵照審查委員建議，於期末報告修正。

附錄二、北美市場董監事及重要職員責任保險趨勢調查

顧問公司 Towers Watson 於西元 2013 年針對北美市場(含美國及加拿大)董監事及重要職員責任保險趨勢調查，參與受訪企業計 325 家，其中，製造業占 20%、保險業占 13%、能源與公共事業占 12%、非製藥業之健康照護產業占 11%、非保險之金融服務業占 6%、批發零售業占 5%、政府與教育事業占 4%，其他產業則占 2%~3% 不等。

以受訪企業之所有權型態而言，公開發行公司占 61%、私人企業占 20%、非營利事業占 13%，其他型態企業則占 6%。再依所有權型態區分，統計受訪企業是否涉及跨國營運之比重如附錄表 2-1。整體而言，公開發行公司之營運活動涉及跨國營運之比重較高，非營利事業與私人企業之營運範疇則主要以國內為主。所有受訪企業調查結果顯示，涉及跨國營運者占 54%；若排除慈善與非營利事業外之受訪企業，涉及跨國營運者則占 62%。

附錄表 2-1 受訪企業涉及跨國營運活動之比重

所有權型態	涉及跨國營運	無跨國營運
非營利事業	24%	76%
私人企業	41%	59%
公開發行公司	69%	31%
除慈善與非營利事業外之受訪企業	62%	38%

所有權型態	涉及跨國營運	無跨國營運
所有受訪企業	54%	46%

資料來源：Towers Watson, Directors and Officers Liability Survey- 2012 Summary of Results,
2013

西元 2012 年所有受訪企業平均保額為 9,800 萬美元，倘排除慈善事業與非營利事業之受訪企業，則平均保額為 1 億 1,220 萬美元。依受訪企業資產規模區分之保額統計詳如附錄表 2-2。

附錄表 2- 2 所有受訪企業依資產規模區分之保額統計

單位：百萬美元

資產規模	家數	第一 四分位數	中位數	第三 四分位數	平均
低於 2.5 億美元	16	\$3.5	\$5.0	\$10.0	\$10.4
2.5 億~9.99 億美元	25	\$20.0	\$25.0	\$45.0	\$34.0
10 億~49 億美元	77	\$45.0	\$75.0	\$100.0	\$75.5
50 億~99 億美元	46	\$85.0	\$125.0	\$150.0	\$120.8
100 億美元以上	80	\$122.5	\$165.0	\$225.0	\$182.1
除慈善與非營利事業外 之受訪企業	255	\$50.0	\$100.0	\$150.0	\$112.2
所有受訪企業	316	\$35.0	\$75.0	\$140.0	\$98.0

資料來源：Towers Watson, Directors and Officers Liability Survey- 2012 Summary of Results,
2013

西元 2012 年所有受訪私人企業平均保額為 4,850 萬美元。依受訪

私人企業資產規模區分之保額統計詳如附錄表 2-3。

附錄表 2-3 所有受訪私人企業依資產規模區分之保額統計

單位：百萬美元

資產規模	家數	第一 四分位數	中位數	第三 四分位數	平均
低於 2.5 億美元	12	\$3.5	\$5.0	\$7.5	\$8.7
2.5 億~9.99 億美元	12	\$10.0	\$17.5	\$25.0	\$18.8
10 億~49 億美元	20	\$25.0	\$35.0	\$50.0	\$41.3
50 億~99 億美元	3	\$60.0	\$75.0	\$75.0	\$70.0
100 億美元以上	8	\$120.0	\$150.0	\$185.0	\$148.1
所有受訪私人企業	62	\$10.0	\$30.0	\$59.0	\$48.5

資料來源：Towers Watson, Directors and Officers Liability Survey- 2012 Summary of Results, 2013

西元 2012 年所有受訪公開發行公司平均保額為 1 億 3,260 萬美元。

依受訪公開發行公司資產規模區分之保額統計詳如附錄表 2-4。

附錄表 2-4 所有受訪公開發行公司依資產規模區分之保額統計

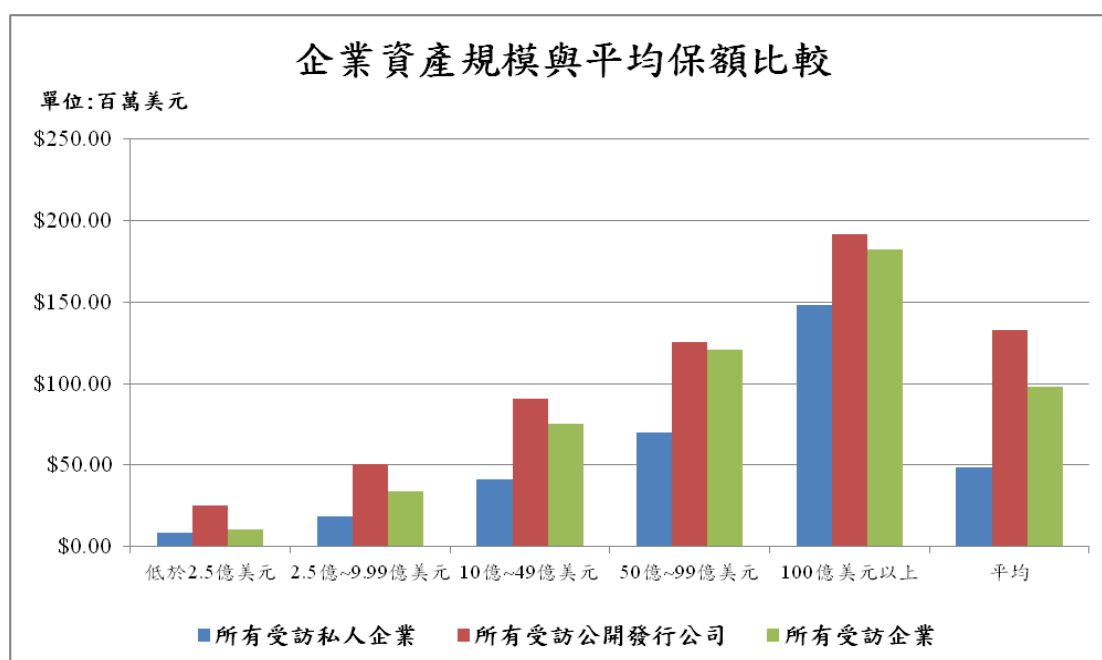
單位：百萬美元

資產規模	家數	第一 四分位數	中位數	第三 四分位數	平均
低於 2.5 億美元	2	\$20.0	\$25.0	\$30.0	\$25.0
2.5 億~9.99 億美元	12	\$40.0	\$42.5	\$50.0	\$50.4
10 億~49 億美元	54	\$60.0	\$85.0	\$105.0	\$90.9
50 億~99 億美元	42	\$100.0	\$125.0	\$150.0	\$125.8
100 億美元以上	69	\$125.0	\$175.0	\$225.0	\$191.3
所有受訪公開發行公司	193	\$75.0	\$115.0	\$175.0	\$132.6

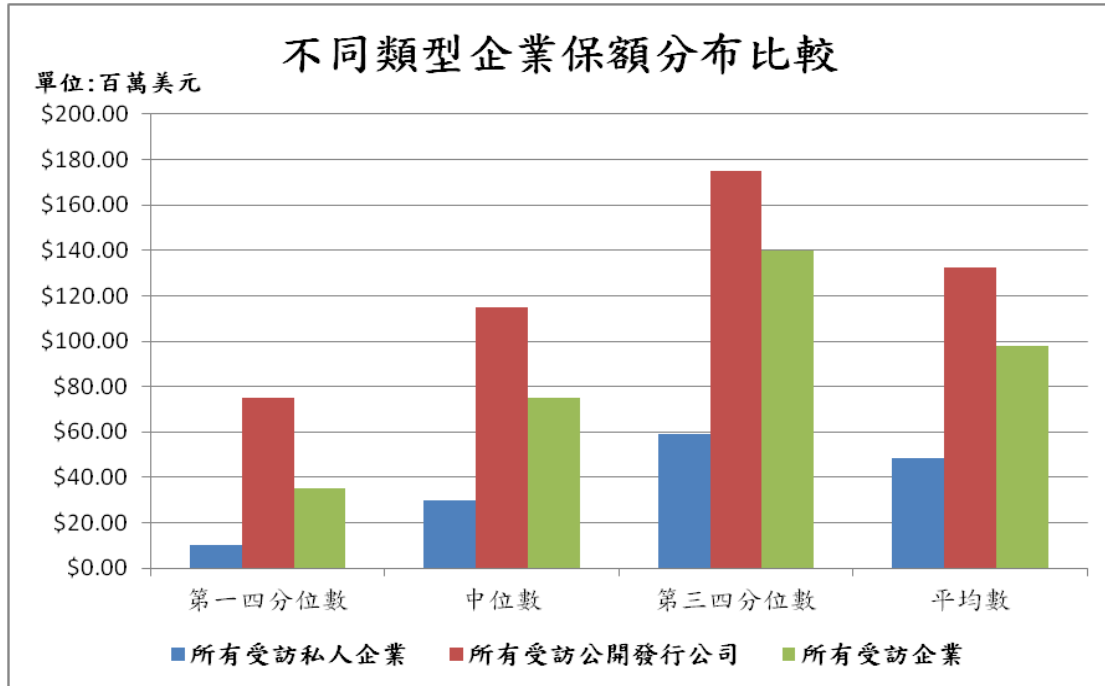
資料來源：Towers Watson, Directors and Officers Liability Survey- 2012 Summary of Results,

2013

彙整西元 2012 年受訪私人企業、受訪公開發行公司與所有受訪企業之保險金額資料顯示，資產規模與平均保額呈現正向關係，受訪公開發行公司與受訪私人企業之平均保險金額差異約 8,410 萬美元。不論第一四分位數、中位數、第三四分位數或平均數，受訪公開發行公司之保險金額均遠較受訪私人企業為高。此外，就受訪私人企業或受訪公開發行公司保險金額之分布，大部分受訪企業之保險金額均介於中位數與第三四分位數之間。資產規模與保額比較與不同類型公司之保額比較詳如附錄圖 2-1 及圖 2-2 所示。



附錄圖 2- 1 企業資產規模與平均保額比較



附錄圖 2- 2 不同類型企業之保額分布比較

西元 2012 年依受訪企業所屬產業別保額統計詳如附錄表 2-5。其中，以航太國防之平均保額最高、汽車與運輸設備次之，保額最低者為慈善與非營利事業、政府機關及教育事業。高科技產業之平均保額為 1 億 4,440 萬美元、非保險業之金融服務業平均保額為 1 億 930 萬美元、保險業平均保額僅 6,880 萬美元。

附錄表 2- 5 受訪企業產業別保額統計

單位：百萬美元

產業類別	家數	第一四分位數	中位數	第三四分位數	平均
航太國防	5	\$125.0	\$130.0	\$250.0	\$185.0
汽車與運輸設備	4	\$47.5	\$102.5	\$315.0	\$181.3
慈善與非營利事業	4	\$12.5	\$35.0	\$50.0	\$31.3
通訊	10	\$50.0	\$137.5	\$160.0	\$123.0

產業類別	家數	第一 四分位數	中位數	第三 四分位數	平均
能源與公共事業	40	\$100.0	\$142.5	\$200.0	\$152.3
金融服務業-非保險業	20	\$40.0	\$95.0	\$167.5	\$109.3
金融服務業-保險業	43	\$20.0	\$50.0	\$75.0	\$68.8
食品飲料	7	\$30.0	\$50.0	\$125.0	\$74.3
政府機關及教育事業	12	\$7.5	\$27.5	\$45.0	\$35.7
健康照護-非製藥業	35	\$25.0	\$35.0	\$50.0	\$53.3
健康照護-製藥業	5	\$55.0	\$125.0	\$180.0	\$112.0
高科技	9	\$80.0	\$105.0	\$150.0	\$144.4
製造業	65	\$45.0	\$90.0	\$125.0	\$104.0
天然資源	12	\$80.0	\$107.5	\$175.0	\$131.7
專業服務	10	\$45.0	\$52.5	\$75.0	\$60.5
批發零售	15	\$45.0	\$100.0	\$150.0	\$101.3
交通	4	\$42.5	\$72.5	\$77.5	\$60.0
其他	16	\$35.0	\$82.5	\$115.0	\$81.3
所有受訪企業	316	\$35.0	\$75.0	\$140.0	\$98.0

資料來源：Towers Watson, Directors and Officers Liability Survey- 2012 Summary of Results,

2013

依據調查結果顯示，受訪企業於西元 2012 年投保董監事與重要職員責任保險之保險金額大多維持與前一年相同。僅 17% 受訪公開發行公司與 14% 受訪私人企業與非營利事業增加保險金額。依受訪企業型態保額變化統計詳如附錄表 2-6。

附錄表 2- 6 受訪企業型態保額變化

受訪企業型態	增加	維持	減少
私人企業與非營利事業	14%	83%	3%
公開發行公司	17%	81%	2%

資料來源：Towers Watson, Directors and Officers Liability Survey- 2012 Summary of Results, 2013

董監事及重要職員責任保險之承保範圍主要包括 A、B、C 等三個部分，A 部分承保個別董事及重要職員對他人之損害賠償責任且非由公司承擔、B 部分承保個別董事及重要職員對他人之損害賠償責任得由公司補償、C 部分則針對證券相關集體訴訟所生之損害賠償與請求等加以承保。西元 2012 年 67% 受訪企業購買 A、B、C 三部分保障、17% 受訪企業購買 A、B 部分保障、6% 受訪企業僅購買 A 部分保障。詳如附錄表 2-7。

附錄表 2- 7 受訪企業保障範圍

	回覆家數	A/B/C	A/B	僅 A	其他	不確定
非營利事業	45	58%	13%	9%	2%	18%
私人企業	64	51%	25%	5%	2%	17%
公開發行公司	196	75%	14%	6%	2%	3%
合計	325	67%	17%	6%	2%	8%

資料來源：Towers Watson, Directors and Officers Liability Survey- 2012 Summary of Results, 2013

依據調查結果顯示，36% 受訪企業表示過去十年間投保董監事及重要職員責任保險曾發生理賠案件。倘依企業型態區分，63% 的非營利事

業於過去十年曾發生董監事及重要職員責任保險之理賠案件，於公開發行公司的比例為 33%，於私人企業的比例僅 27%。此結果似乎與一般的認知相反，認為公開發行公司與私人企業較非營利事業易發生理賠案件。同時，企業規模愈大，愈容易發生理賠案件，其中以資產規模 2.5 億~9.99 億美元之企業發生理賠案件的比重最高。理賠案件發生原因主要以股東與投資人訴訟案件為主，不同企業型態之賠案發生原因詳如附錄表 2-8 所示。

附錄表 2-8 不同企業型態之賠案發生原因

	股東/投資人 直接訴訟	股東/投資人 衍生訴訟	與員工 相關	與法規 相關	與信託 相關	其他
非營利事業	4%	0%	85%	39%	8%	19%
私人企業	19%	25%	38%	19%	19%	25%
公開發行公司	57%	64%	7%	20%	8%	10%
合計	36%	40%	32%	23%	9%	17%

資料來源：Towers Watson, Directors and Officers Liability Survey- 2012 Summary of Results,

2013

附錄三、美國董監事及重要職員責任保險商品



EXECUTIVE EDGE® PUBLIC COMPANY DIRECTORS & OFFICERS LIABILITY ("Public D&O Coverage Section")

Notice: Pursuant to Clause 1 of the **General Terms and Conditions**, the **General Terms and Conditions** are incorporated by reference into, made a part of, and are expressly applicable to this **Public D&O Coverage Section**, unless otherwise explicitly stated to the contrary in this **Public D&O Coverage Section**.

In consideration of the payment of the premium, and each of their respective rights and obligations in this policy, the **Insureds** and the **Insurer** agree as follows:

1. INSURING AGREEMENTS

All coverage granted for **Loss** under this **Coverage Section** is provided solely with respect to: (i) **Claims** first made against an **Insured**, and (ii) **Pre-Claim Inquiries** first received by an **Insured Person**, in each such event, during the **Policy Period** or any applicable **Discovery Period** and reported to the **Insurer** as required by this **Coverage Section**. Subject to the foregoing and the other terms, conditions and limitations of this policy, this **Coverage Section** affords the following coverage:

A. *Insured Person Coverage*

This policy shall pay the **Loss** of any **Insured Person** that no **Organization** has indemnified or paid, and that arises from any:

- (1) **Claim** (including any **Insured Person Investigation**) made against such **Insured Person** (including any **Outside Entity Executive**) for any **Wrongful Act** of such **Insured Person**; or
- (2) **Pre-Claim Inquiry**, to the extent that such **Loss** is **Pre-Claim Inquiry Costs**.

B. *Indemnification Of Insured Person Coverage*

This policy shall pay the **Loss** of an **Organization** that arises from any:

- (1) **Claim** (including any **Insured Person Investigation**) made against any **Insured Person** (including any **Outside Entity Executive**) for any **Wrongful Act** of such **Insured Person**; or
- (2) **Pre-Claim Inquiry**, to the extent that such **Loss** is **Pre-Claim Inquiry Costs**;

but only to the extent that such **Organization** has indemnified such **Loss** of, or paid such **Loss** on behalf of, the **Insured Person**.

C. *Organization Coverage*

This policy shall pay the **Loss** of any **Organization**:

- (1) arising from any **Securities Claim** made against such **Organization** for any **Wrongful Act** of such **Organization**;

- (2) incurred as **Derivative Investigation Costs**, subject to a \$250,000 aggregate sublimit of liability; or
- (3) incurred by an **Organization** or on its behalf by any **Executives** of the **Organization** (including through any special committee) as **Defense Costs** in seeking the dismissal of any **Derivative Suit** against an **Insured**.

2. EXTENSIONS

A. Executive Protection Suite

Loss shall also mean the following items, provided that they arise out of a **Claim**:

- (1) **SOX 304 Costs**;
- (2) **Extradition Costs**;
- (3) **UK Corporate Manslaughter Act Defense Costs**;
- (4) **Personal Reputation Expenses**, subject to a \$100,000 per **Executive** and a \$500,000 aggregate sublimit of liability; and
- (5) **Asset Protection Costs**, subject to a \$50,000 per **Executive** and a \$250,000 aggregate sublimit of liability.

B. First Dollar E-Discovery Consultant Services

For any **Securities Claim**, no Retention shall apply to the first \$25,000 in **Defense Costs** incurred as **E-Discovery Consultant Services**.

C. Global Liberalization

For **Loss** from that portion of any **Claim** maintained in a **Foreign Jurisdiction** or to which the law of a **Foreign Jurisdiction** is applied, the **Insurer** shall apply the terms and conditions of this **Coverage Section** as amended to include those of the **Foreign Policy** in the **Foreign Jurisdiction** that are more favorable to **Insureds** in the **Foreign Jurisdiction**. This *Global Liberalization Clause* shall not apply to any provision of any policy that has worldwide effect, including but not limited to any provision addressing limits of liability (primary, excess or sublimits), retentions, other insurance, non-renewal, duty to defend, defense within or outside the limits, taxes, conformance to law or excess liability coverage, any claims made provisions, and any endorsement to this policy that excludes or limits coverage for specific events or litigation or that specifically states that it will have worldwide effect.

3. INDEMNIFICATION PROTECTIONS

A. Advancement

If for any reason (including but not limited to insolvency) an **Organization** fails or refuses to advance, pay or indemnify covered **Loss** of an **Insured Person** within the applicable Retention, if any, then the **Insurer** shall advance such amounts on behalf of the **Insured Person** until either (i) an **Organization** has agreed to make such payments, or (ii) the Retention has been satisfied. In no event shall any such advancement by the **Insurer** relieve any **Organization** of any duty it may have to provide advancement, payment or indemnification to any **Insured Person**.

Advancement, payment or indemnification of an **Insured Person** by an **Organization** is deemed "failed" if it has been requested by an **Insured Person** in writing and has not been provided by, agreed to be provided by or acknowledged as an obligation by an **Organization** within sixty

(60) days of such request; and advancement, payment or indemnification by an **Organization** is deemed “refused” if an **Organization** gives a written notice of the refusal to the **Insured Person**. Advancement, payment or indemnification of an **Insured Person** by an **Organization** shall only be deemed “failed” or “refused” to the extent such advancement, payment or indemnification is not provided, or agreed to be provided, or acknowledged by and collectible from an **Organization**. Any payment or advancement by the **Insurer** within an applicable Retention shall apply towards the exhaustion of the **Limits of Liability**.

B. Order Of Payments

In the event of **Loss** arising from a covered **Claim(s)** and/or **Pre-Claim Inquiry(ies)** for which payment is due under the provisions of this **Coverage Section**, the **Insurer** shall in all events:

- (1) First, pay all **Loss** covered under Insuring Agreement A. *Insured Person Coverage*;
- (2) Second, only after payment of **Loss** has been made pursuant to subparagraph (1) above and to the extent that any amount of the applicable **Separate Limit of Liability** or **Shared Limit of Liability** shall remain available, at the written request of the chief executive officer of the **Named Entity**, either pay or withhold payment of **Loss** covered under Insuring Agreement B. *Indemnification Of Insured Person Coverage*; and
- (3) Lastly, only after payment of **Loss** has been made pursuant to subparagraphs (1) and (2) above and to the extent that any amount of the applicable **Separate Limit of Liability** or **Shared Limit of Liability** shall remain available, at the written request of the chief executive officer of the **Named Entity**, either pay or withhold payment of **Loss** covered under Insuring Agreement C. *Organization Coverage*.

In the event the **Insurer** withholds payment pursuant to subparagraphs (2) and/or (3) above, then the **Insurer** shall, at such time and in such manner as shall be set forth in instructions of the chief executive officer of the **Named Entity**, remit such payment to an **Organization** or directly to or on behalf of an **Insured Person**.

4. EXCLUSIONS

A. Full Severability Of Exclusions For Insured Persons

In determining whether any of the following Exclusions apply, the **Wrongful Acts** of any **Insured Person** shall not be imputed to any other **Insured**. For Insuring Agreement C. *Organization Coverage*, only the **Wrongful Acts** of any chief executive officer, chief financial officer or general counsel (or equivalent position) of an **Organization** shall be imputed to such **Organization**.

B. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against an **Insured**:

- (1) **Conduct** arising out of, based upon or attributable to any:
 - (a) remuneration, profit or other advantage to which the **Insured** was not legally entitled; or
 - (b) deliberate criminal or deliberate fraudulent act by the **Insured**;
if established by any final, non-appealable adjudication in any action or proceeding other than an action or proceeding initiated by the **Insurer** to determine coverage under the policy;
provided, however:
 - (i) Conduct Exclusion (a), above, shall not apply in a **Securities Claim**

- alleging violations of Section 11, 12 or 15 of the Securities Act of 1933, as amended, to the portion of any **Loss** attributable to such violations; and
- (ii) with respect to Conduct Exclusion (b), for acts or omissions which are treated as a criminal violation in a **Foreign Jurisdiction** that are not treated as a criminal violation in the United States of America, the imposition of a criminal fine or other criminal sanction in such **Foreign Jurisdiction** will not, by itself, be conclusive proof that a deliberate criminal or deliberate fraudulent act occurred;
- (2) *Pending & Prior Litigation* alleging, arising out of, based upon or attributable to, as of the **Continuity Date**, any pending or prior: (a) litigation; or (b) administrative or regulatory proceeding or investigation of which any **Insured** had notice; or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- (3) *Personal Injury* for emotional distress or mental anguish of any person, or for injury from libel, slander, defamation or disparagement, or a violation of a person's right of privacy; provided, however, this exclusion shall not apply to an **Employment Practices Claim** or a **Securities Claim**;
- (4) *Bodily Injury & Property Damage* for bodily injury (other than emotional distress or mental anguish), sickness, disease, or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided, however, this exclusion shall not apply to **UK Corporate Manslaughter Act Defense Costs** or a **Securities Claim**;
- (5) *Entity v. Insured* that is brought by or on behalf of any **Organization** against any **Insured**, or by any **Outside Entity** against any **Outside Entity Executive**; provided, however, this exclusion shall not apply:
- (a) to any **Defense Costs** which constitute **Non-Indemnifiable Loss** incurred by any **Insured Person** in defending any **Claim** against that **Insured Person**;
 - (b) to any **Derivative Suit** not brought, controlled or materially assisted by any **Organization**, any **Outside Entity** or any **Executive** of the foregoing; or
 - (c) if the **Organization** or **Outside Entity** is the subject of a bankruptcy case (or the equivalent in a **Foreign Jurisdiction**), unless the **Claim** is brought, controlled or materially assisted by any **Organization** or **Outside Entity**, the resulting debtor-in-possession (or foreign equivalent) of the debtor **Organization** or **Outside Entity** or any **Executive** of the foregoing;
- (6) *ERISA* for any violation of responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or any similar provisions of any state, local or foreign statutory or common law;
- (7) *Compensation & Labor Liability* for any violation of responsibilities, obligations or duties imposed by the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification (WARN) Act, the Consolidated Omnibus Budget

Reconciliation Act (COBRA), the Occupational Safety and Health Act (OSHA), or any federal, state, local or foreign law, amendment to a law, or any rule or regulation, that imposes or expands responsibilities, obligations or duties relating to compensation, retirement, benefits, deductions, withholdings, breaks or the workplace; provided, however, this exclusion shall not apply to the extent that a **Claim** is for discrimination, sexual or other harassment, wrongful termination or hostile work environment, or for **Retaliation**, or to the extent that a **Claim** is a **Securities Claim**; or

(8) *Prior Notice*

or in connection with any **Pre-Claim Inquiry** received by an **Insured Person**, alleging, arising out of, based upon or attributable to the facts alleged, or to the same or related **Wrongful Acts** alleged or contained, in any **Claim** or investigated in any **Pre-Claim Inquiry** that has been reported, or in any circumstances of which notice has been given, under any directors and officers liability insurance policy in force prior to the **Inception Date** of this policy.

5. RETENTION

In addition to the provisions of Clause 2. RETENTION of the **General Terms and Conditions**, in no event shall a Retention be applied to the following: (i) **Non-Indemnifiable Loss**; (ii) **Derivative Investigation Costs**; or (iii) the first \$25,000 in **Defense Costs** incurred for E- Discovery Consultant Services.

6. LIMITS OF LIABILITY

In addition to the provisions of Clause 3. LIMITS OF LIABILITY of the **General Terms and Conditions**, each per **Executive** sublimit of liability stated in this **Coverage Section** is the maximum limit of the **Insurer's** liability for all **Loss** of each **Executive** under this **Coverage Section** that is subject to that per **Executive** sublimit of liability. All sublimits of liability shall be part of, and not in addition to, the **Policy Aggregate** and any applicable **Separate Limit of Liability** or **Shared Limit of Liability**. Each per **Executive** sublimit of liability shall be part of, and not in addition to, its corresponding aggregate sublimit of liability.

7. NOTICE AND REPORTING

Notice hereunder shall be given in writing to the **Insurer** at the **Claims Address** indicated in the Declarations. If mailed or transmitted by electronic mail, the date of such mailing or transmission shall constitute the date that such notice was given and proof of mailing or transmission shall be sufficient proof of notice.

(a) *Reporting a Claim or Pre-Claim Inquiry*

An **Organization** or an **Insured** shall, as a condition precedent to the obligations of the **Insurer** under this **Coverage Section**:

- (1) notify the **Insurer** in writing of a **Claim** made against an **Insured**; or
- (2) if an **Insured** elects to seek coverage for **Pre-Claim Inquiry Costs** in connection with any **Pre-Claim Inquiry**, notify the **Insurer** in writing of that **Pre-Claim Inquiry**;

as soon as practicable after the **Named Entity's** Risk Manager or General Counsel (or equivalent position) first becomes aware of the **Claim** or **Pre-Claim Inquiry**. In all such events, notification must be

provided no later than sixty (60) days after the end of the **Policy Period** or the **Discovery Period** (if applicable).

(b) *Relation Back to the First Reported Claim or Pre-Claim Inquiry*

Solely for the purpose of establishing whether any subsequent **Related Claim** was first made or a **Related Pre-Claim Inquiry** was first received during the **Policy Period** or **Discovery Period** (if applicable), if during any such period:

(1)a **Claim** was first made and reported in accordance with Clause 7(a) above, then any **Related Claim** that is subsequently made against an **Insured** and that is reported in accordance with Clause 7(a) above shall be deemed to have been first made at the time that such previously reported **Claim** was first made; and

(2)a **Pre-Claim Inquiry** was actually first received by an **Insured Person** and reported in accordance with Clause 7(a) above, then:

(i) any **Related Pre-Claim Inquiry** that is reported in accordance with Clause 7(a) above shall be deemed to be a **Pre-Claim Inquiry** first received at the time that such previously reported **Pre-Claim Inquiry** was first received by an **Insured Person**; and

(ii) any subsequent **Related Claim** that is reported in accordance with Clause 7(a) above shall be deemed to be a **Claim** first made at the time that such previously reported **Pre-Claim Inquiry** was first received by an **Insured Person**.

With respect to any subsequent **Related Pre-Claim Inquiry**, this policy shall not cover **Loss** incurred before such subsequent **Related Pre-Claim Inquiry** is actually received by an **Insured Person**, and with respect to any subsequent **Related Claim**, this policy shall not cover **Loss** incurred before such subsequent **Related Claim** is actually made against an **Insured**.

(c) *Relation Back to Reported Circumstances Which May Give Rise to a Claim*

If during the **Policy Period** or **Discovery Period** (if applicable) an **Organization** or an **Insured Person** becomes aware of and notifies the **Insurer** in writing of circumstances that may give rise to a **Claim** being made against an **Insured** and provides details as required below, then any **Claim** that is subsequently made against an **Insured** that arises from such circumstances and that is reported in accordance with Clause 7(a) above shall be deemed to have been first made at the time of the notification of circumstances for the purpose of establishing whether such subsequent **Claim** was first made during the **Policy Period** or during the **Discovery Period** (if applicable). Coverage for **Loss** arising from any such subsequent **Claim** shall only apply to **Loss** incurred after that subsequent **Claim** is actually made against an **Insured**. In order to be effective, notification of circumstances must specify the facts, circumstances, nature of the alleged **Wrongful Act** anticipated and reasons for anticipating such **Claim**, with full particulars as to dates, persons and entities involved; however, notification that includes a copy of an agreement to toll a statute of limitations shall be presumed sufficiently specific as to the potential **Claims** described within that agreement.

8. DISCOVERY PREMIUM

In the event the **Named Entity** or the **Insurer** shall cancel or refuse to renew this **Coverage Section**, the **Additional Premium Amount** for: (a) one year shall be no more than 125% of the **Full Annual Premium**; and (b) two to six years shall be an amount to be determined by the **Insurer**. As used herein, "**Full Annual Premium**" means the premium level in effect for this **Coverage Section** immediately prior to the end of the **Policy Period**.

In the event of a **Transaction**, the **Additional Premium Amount** shall be an amount to be determined by the **Insurer**.

9. DEFENSE AND SETTLEMENT

A. For Claims And Pre-Claim Inquiries

(1) *No Duty to Defend or Investigate* The **Insureds** shall defend and contest any **Claim** made against them. The **Insurer** does not assume any duty to defend or investigate.

(2) *Advancement* Once the **Insurer** has received written notice of a **Claim** or **Pre-Claim Inquiry** under this **Coverage Section**, it shall advance, excess of any applicable Retention, covered **Defense Costs** or **Pre-Claim Inquiry Costs**, respectively, on a current basis, but no later than ninety (90) days after the **Insurer** has received itemized bills for those **Defense Costs** or **Pre-Claim Inquiry Costs**. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured Person** or **Organization**, severally according to their respective interests, in the event and to the extent that any such **Insured Person** or **Organization** shall not be entitled under this **Coverage Section** to payment of such **Loss**.

(3) *Claims Participation and Cooperation* The **Insurer** shall have the right, but not the obligation, to fully and effectively associate with each and every **Organization** and **Insured Person** in the defense and prosecution of any **Claim** or **Pre-Claim Inquiry** that involves, or appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Organization** and **Insured Person** shall give the **Insurer** full cooperation and such information as it may reasonably require.

The failure of any **Insured Person** to give the **Insurer** cooperation and information as required in the preceding paragraph shall not impair the rights of any other **Insured Person** under this **Coverage Section**.

The **Insureds** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment or incur any **Defense Costs** or **Pre-Claim Inquiry Costs**, without the prior written consent of the **Insurer**. Such consent shall not be unreasonably withheld.

- (4) *Full Settlement
Within Retention/
Consent Waived*

If all **Insured** defendants are able to dispose of all **Claims** and/or **Pre-Claim Inquiries** which are subject to one Retention (inclusive of **Defense Costs**) for an amount not exceeding the Retention, then the **Insurer's** consent shall not be required for such disposition.

- (5) *Applicability*

This *Defense and Settlement Clause* is not applicable to **Personal Reputation Expenses**. Nevertheless the **Insurer** does not, under this **Coverage Section**, assume any duty to defend.

B. Pre-Authorized Securities Defense Attorneys

The list of approved panel counsel law firms ("**Panel Counsel**") is accessible through the online directory at <http://www.aig.com/us/panelcounseldirectory> under the "Directors & Officers (Securities Claims)" link. The list provides the **Insureds** with a choice of law firms from which a selection of legal counsel shall be made to conduct the defense of any **Securities Claim** made against such **Insureds**. With the express prior written consent of the **Insurer**, an **Insured** may select a **Panel Counsel** different from that selected by another **Insured** defendant if such selection is required due to an actual conflict of interest or is otherwise reasonably justifiable. The list of **Panel Counsel** may be amended from time to time by the **Insurer**. However, if a firm is removed from the list during the **Policy Period**, the **Insureds** shall be entitled to select such firm to conduct the defense of any **Securities Claim** made against such **Insureds** during the **Policy Period**.

The **Insureds** shall select a **Panel Counsel** to defend the **Securities Claim** made against the **Insureds** in the jurisdiction in which the **Securities Claim** is brought. In the event the **Claim** is brought in a jurisdiction not included on the list, the **Insureds** shall select a **Panel Counsel** in the listed jurisdiction which is the nearest geographic jurisdiction to either where the **Securities Claim** is brought or where the corporate headquarters of the **Named Entity** is located. In such instance the **Insureds** also may, with the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld, select a non-**Panel Counsel** in the jurisdiction in which the **Securities Claim** is brought to function as "local counsel" on the **Claim** to assist the **Panel Counsel** which will function as "lead counsel" in conducting the defense of the **Securities Claim**. This *Pre-Authorized Securities Defense Attorneys Clause* does not apply to **Defense Costs** solely relating to **Extradition** even if the underlying **Wrongful Acts** relate to a **Securities Claim**.

C. Pre-Approved E-Consultant Firms

The list of pre-approved **E-Consultant Firms** is accessible through the online directory at <http://www.aig.com/us/panelcounseldirectory> under the "e-Consultant Panel Members" link. The list provides the **Insureds** with a choice of firms from which a selection of an **E-Consultant Firm** shall be made. Any **E-Consultant Firm** may be hired by an **Insured** to perform **E-Discovery Consultant Services** without further approval by the **Insurer**.

D. Allocation

An **Organization** is covered, subject to the policy's terms, conditions and limitations, only with respect to: (1) its indemnification of its **Insured Persons** as respects a **Claim** against or **Pre-Claim Inquiry** received by such **Insured Persons**; (2) a **Securities Claim** against such **Organization**; and (3) **Derivative Investigation Costs**. Accordingly, the **Insurer** has no obligation under this **Coverage Section** for defense or other costs incurred by, judgments against or settlements by an **Organization** arising out of a **Claim** made against an **Organization** except as respects coverage for a **Securities Claim**, or any obligation to pay loss arising out of any legal liability that an **Organization** has to a claimant, except as respects a covered **Securities Claim** against such **Organization**.

With respect to: (i) **Defense Costs** jointly incurred by; (ii) any joint settlement entered into by; and/or (iii) any judgment of joint and several liability against any **Organization** and any **Insured Person** in connection with any **Claim** other than a **Securities Claim**, such **Organization** and such **Insured Person** and the **Insurer** agree to use their best efforts to determine a fair and proper allocation of the amounts as between such **Organization**, such **Insured Person** and the **Insurer**, taking into account the relative legal and financial exposures, and the relative benefits obtained by such **Insured Person** and such **Organization**. In the event that a determination as to the amount of **Defense Costs** to be advanced under this **Coverage Section** cannot be agreed to, then the **Insurer** shall advance **Defense Costs** excess of any applicable Retention which the **Insurer** states to be fair and proper until a different amount shall be agreed upon or determined pursuant to the provisions of this policy and applicable law.

10. SUBSIDIARY COVERAGE

A. *Subsidiary Additions*

In addition to the definition of “**Subsidiary**” set forth in Clause 14. DEFINITIONS, **Subsidiary** also means any for-profit entity: (i) that is not formed as a partnership, (ii) of which the **Named Entity** first had **Management Control** during the **Policy Period**, whether directly or indirectly through one or more other **Subsidiaries**, and (iii) whose assets amount to:

- (1) less than 25% of the total consolidated assets of each and every **Organization** as reported in the **Named Entity’s** most recent public filing; or
- (2) 25% or more of those total consolidated assets, but such entity shall be a “**Subsidiary**” only:
 - (i) for a period of sixty (60) days from the date the **Named Entity** first had **Management Control** of such entity; or (ii) until the end of the **Policy Period**, whichever expires or ends first (the “**Auto-Subsidiary Period**”);

provided that, with respect only to entities described in subparagraph (2) above, the **Named Entity** or any other **Insured** shall report such **Subsidiary** to the **Insurer**, in writing, prior to the end of the **Policy Period**.

The **Insurer** shall extend coverage for any **Subsidiary** described in subparagraph (2) above, and any **Insured Person** thereof, beyond its respective **Auto-Subsidiary Period** if during such **Auto-Subsidiary Period**, the **Named Entity** shall have provided the **Insurer** with full particulars of the new **Subsidiary** and agreed to any additional premium and amendment of the provisions of this policy required by the **Insurer** relating to such **Subsidiary**. Further, coverage as shall be afforded to any **Subsidiary** and any **Insured Person** thereof is conditioned upon the **Named Entity** paying when due any additional premium required by the **Insurer** relating to such **Subsidiary**.

B. *Former Subsidiaries*

In the event the **Named Entity** loses **Management Control** of a **Subsidiary** during or prior to the **Policy Period**, coverage with respect to such **Subsidiary** and its **Insured Persons** shall continue until termination of this **Coverage Section** but only with respect to **Claims** for **Wrongful Acts** that occurred or are alleged to have occurred during the time that the **Named Entity** had **Management Control** of such entity either directly or indirectly through one or more of its **Subsidiaries**.

C. *Scope Of Subsidiary Coverage*

Coverage as is afforded under this **Coverage Section** with respect to a **Claim** made against any **Subsidiary** and/or any **Insured Person** thereof shall only apply for **Wrongful Acts** committed or

allegedly committed during the time that such **Subsidiary** and such **Insured Person** meet the respective definitions of **Subsidiary** and **Insured Person** set forth in this **Coverage Section**.

11. APPLICATION AND UNDERWRITING

A. *Application And Reliance*

The **Insurer** has relied upon the accuracy and completeness of the statements, warranties and representations contained in the **Application**. All such statements, warranties and representations are the basis for this **Coverage Section** and are to be considered as incorporated into this **Coverage Section**.

B. *Renewal Application Procedure*

A written renewal application form is not required in order to receive a renewal quote from the **Insurer**, although the **Insurer** reserves the right to require specific information prior to renewal.

C. *Insured Person Coverage Non-Rescindable*

Under no circumstances shall the coverage provided by this **Coverage Section** for **Loss** under Insuring Agreement A. *Insured Person Coverage* be deemed void, whether by rescission or otherwise, once the premium has been paid.

D. *Severability Of The Application*

The **Application** shall be construed as a separate application for coverage by each **Insured Person**. With respect to the **Application**, no knowledge possessed by any **Organization** or any **Insured Person** shall be imputed to any other **Insured Person**.

If the statements, warranties and representations in the **Application** were not accurate and complete and materially affected either the acceptance of the risk or the hazard assumed by the **Insurer** under this **Coverage Section**, then the **Insurer** shall have the right to void coverage under this **Coverage Section**, *ab initio*, with respect to:

- (1) **Loss** under Insuring Agreement B. *Indemnification Of Insured Person Coverage* for the indemnification of any **Insured Person** who knew, as of the inception date of the **Policy Period**, the facts that were not accurately and completely disclosed; and
- (2) **Loss** under Insuring Agreement C. *Organization Coverage* if any **Insured Person** who is or was a chief executive officer or chief financial officer of the **Named Entity** knew, as of the inception date of the **Policy Period**, the facts that were not accurately and completely disclosed.

The foregoing applies even if the **Insured Person** did not know that such incomplete or inaccurate disclosure had been provided to the **Insurer** or included within the **Application**.

12. PAYMENTS AND OBLIGATIONS OF ORGANIZATIONS AND OTHERS

A. *Indemnification By Organizations*

The **Organizations** agree to indemnify the **Insured Persons** and/or advance **Defense Costs** to the fullest extent permitted by law. If the **Insurer** pays under this **Coverage Section** any indemnification or advancement owed to any **Insured Person** by any **Organization** within an applicable Retention, then that **Organization** shall reimburse the **Insurer** for such amounts and such amounts shall become immediately due and payable as a direct obligation of the **Organization** to the **Insurer**. The failure of an **Organization** to perform any of its obligations to

indemnify the **Insured Persons** and/or advance **Defense Costs** under this **Coverage Section** shall not impair the rights of any **Insured Person** under this **Coverage Section**.

B. Other Insurance And Indemnification

Such insurance as is provided by this **Coverage Section** shall apply only as excess over any other valid and collectible directors and officers liability insurance, unless such other insurance is specifically written as excess insurance over the applicable **Separate Limit of Liability** or **Shared Limit of Liability** provided by this **Coverage Section**. This **Coverage Section** 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 **Coverage Section** may be obligated to pay **Loss**. Such insurance as is provided by this **Coverage Section** shall apply as primary to any personal “umbrella” excess liability insurance purchased by an **Insured Person**.

With respect to **Employment Practices Claims**, such insurance as is provided by this **Coverage Section** shall apply only as excess of any other valid and collectible employment practices liability insurance, unless such other insurance is specifically written as excess insurance over the applicable **Separate Limit of Liability** or **Shared Limit of Liability** provided by this **Coverage Section**. If according to the terms and conditions of any employment practices liability insurance policy providing coverage for an **Employment Practices Claim** made against an **Insured**, an insurer issuing such policy is not liable for **Loss**, then the **Insurer** shall be liable for payment of the portion of such **Loss** constituting covered **Loss** under this **Coverage Section** (specifically excess of any other valid and collectible employment practices liability insurance providing coverage for such **Loss**).

In the event of a **Claim** made against an **Outside Entity Executive**, coverage as is afforded by this **Coverage Section**, whether under the *Insured Person Coverage* or the *Indemnification Of Insured Person Coverage*, shall be specifically excess of: (a) any indemnification provided by an **Outside Entity**; and (b) any insurance coverage afforded to an **Outside Entity** or its **Executives** applicable to such **Claim**. Further, in the event such other **Outside Entity** insurance is provided by the **Insurer** or any other insurance company affiliate thereof (“**Other Policy**”) (or would be provided but for the application of the retention amount, exhaustion of the limit of liability or failure to submit a notice of a claim as required), then the **Insurer’s** applicable **Separate Limit of Liability** or **Shared Limit of Liability** for all **Loss** under this **Coverage Section**, as respects any such **Claim**, shall be reduced by the amount recoverable under such **Other Policy** for loss incurred in connection with such **Claim**.

C. Subrogation

To the extent of any payment under this **Coverage Section**, the **Insurer** shall be subrogated to all of the **Organizations’** and **Insureds’** rights of recovery. Each **Organization** and each **Insured Person** shall execute all papers reasonably required and provide reasonable assistance and cooperation in securing or enabling the **Insurer** to exercise subrogation rights or any other rights, directly or in the name of the **Organization** or any **Insured Person**.

In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured** under this **Coverage Section** unless the Conduct Exclusion applies with regard to such **Insured**.

13. ALTERNATIVE DISPUTE RESOLUTION

<i>ADR Options</i>	All disputes or differences which may arise under or in connection with this Coverage Section , whether arising before or after termination of this policy, including any determination of the amount of Loss , shall be submitted to an alternative dispute resolution (ADR) process as provided in this Clause. The Named Entity may elect the type of ADR process discussed below; provided, however, that absent a timely election, the Insurer may elect the type of ADR. In that case, the Named Entity shall have the right to reject the Insurer's choice of the type of ADR process at any time prior to its commencement, after which, the Insured's choice of ADR shall control.
<i>Mediation</i>	In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least ninety (90) days shall have elapsed from the date of the termination of the mediation.
<i>Arbitration</i>	In the event of arbitration, the decision of the arbitrator(s) shall be final, binding and provided to both parties, and the arbitration award shall not include attorney's fees or other costs.
<i>ADR Process</i>	<p><i>Selection of Arbitrator(s) or Mediator:</i> The Insurer and the Named Entity shall mutually consent to: (i) in the case of arbitration, an odd number of arbitrators which shall constitute the arbitration panel, or (ii) in the case of mediation, a single mediator. The arbitrator, arbitration panel members or mediator must be disinterested and have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. In the absence of agreement, the Insurer and the Named Entity each shall select one arbitrator, the two arbitrators shall select a third arbitrator, and the panel shall then determine applicable procedural rules.</p> <p><i>ADR Rules:</i> In considering the construction or interpretation of the provisions of this policy, the mediator or arbitrator(s) must give due consideration to the general principles of the law of the State of Formation of the Named Entity. Each party shall share equally the expenses of the process elected. At the election of the Named Entity, either choice of ADR process shall be commenced in New York, New York; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; or in the state reflected in the Named Entity Address. The Named Entity shall act on behalf of each and every Insured under this <i>Alternative Dispute Resolution Clause</i>. In all other respects, the Insurer and the Named Entity shall mutually agree to the procedural rules for the mediation or arbitration. In the absence of such an agreement, after reasonable diligence, the arbitrator(s) or mediator shall specify commercially reasonable rules.</p>

14. DEFINITIONS

The following definitions shall apply only for purposes of coverage provided under this **Coverage Section**. Terms appearing in **bold** in this **Coverage Section** but not defined herein shall have the meaning and/or value ascribed to them in the Declarations or in the *Definitions Clause* of the **General Terms and Conditions**.

Application

means:

- (1) the written statements and representations made by an **Insured** and provided to the **Insurer** during the negotiation of this policy, or contained in any application or other materials or information provided to the **Insurer** in connection with the underwriting of this policy;
- (2) all warranties executed by or on behalf of an **Insured** and provided to the **Insurer** in connection with the underwriting of this policy or the underwriting of any other directors and officers (or equivalent) liability policy issued by the **Insurer**, or any of its affiliates, of which this policy is a renewal, replacement or which it succeeds in time; and
- (3) each and every public filing by or on behalf of an **Organization** made with the SEC, including but not limited to the **Organization's** Annual Report(s), 10Ks, 10Qs, 8Ks and proxy statements, any financial information in such filings, and any certifications relating to the accuracy of the foregoing, provided that such public filing was filed during the 12 month period immediately preceding the inception of the **Policy Period**.

Asset Protection Costs

means reasonable and necessary fees, costs and expenses consented to by the **Insurer** incurred by an **Executive** of an **Organization** to oppose any efforts by an **Enforcement Body** to seize or otherwise enjoin the personal assets or real property of such **Executive** or to obtain the discharge or revocation of a court order entered during the **Policy Period** in any way impairing the use thereof.

Claim

means:

- (1) a written demand for monetary, non-monetary or injunctive relief, including, but not limited to, any demand for mediation, arbitration or any other alternative dispute resolution process;
- (2) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by: (i) service of a complaint or similar pleading; (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or (iii) receipt or filing of a notice of charges;
- (3) an **Insured Person Investigation**;
- (4) a **Derivative Demand**; or
- (5) an official request for **Extradition** of any **Insured Person**, or the execution of a warrant for the arrest of an **Insured Person** where such execution is an element of **Extradition**.

"**Claim**" shall include any **Securities Claim** and any **Employment Practices Claim**.

Defense Costs	<p>means reasonable and necessary fees, costs and expenses consented to by the Insurer (including the cost of E-Discovery Consultant Services and premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond) resulting solely from:</p> <ol style="list-style-type: none"> (1) the investigation, adjustment, defense and/or appeal of a Claim against an Insured; or (2) an Insured Person lawfully: (i) opposing, challenging, resisting or defending against any request for or any effort to obtain the Extradition of that Insured Person; or (ii) appealing any order or other grant of Extradition of that Insured Person. <p>Defense Costs shall not include: (a) Derivative Investigation Costs, (b) Pre-Claim Inquiry Costs, or (c) the compensation of any Insured Person.</p>
Derivative Demand	<p>means a written demand by any shareholder of an Organization upon the board of directors (or equivalent management body) of such Organization to commence a civil action on behalf of the Organization against any Executive of the Organization for any actual or alleged wrongdoing on the part of such Executive.</p>
Derivative Investigation	<p>means, after receipt by any Insured of a Claim that is either a Derivative Suit or a Derivative Demand, any investigation conducted by the Organization, or on behalf of the Organization by its board of directors (or the equivalent management body) or any committee of the board of directors (or equivalent management body), as to how the Organization should respond.</p>
Derivative Investigation Costs	<p>means reasonable and necessary costs, charges, fees and expenses consented to by the Insurer and incurred by the Organization, or on behalf of the Organization by its board of directors (or the equivalent management body) or any committee of the board of directors (or equivalent management body), in connection with a Derivative Investigation. Derivative Investigation Costs shall not include the compensation of any Insured Person.</p>
Derivative Suit	<p>means a lawsuit purportedly brought derivatively on behalf of an Organization by a shareholder of such Organization against an Executive of the Organization.</p>
Employee	<p>means any past, present or future employee, other than an Executive of an Organization, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any full-time, part-time, seasonal and temporary employee.</p>
Employment Practices Claim	<p>means a Claim alleging any:</p> <ol style="list-style-type: none"> (1) Employment Practices Violation; or (2) Third-Party EPL Violation.
Employment Practices Retention	<p>means the Retention applicable to Loss that arises out of an Employment Practices Claim.</p>

**Employment
Practices Violation**

means any actual or alleged:

- (1) wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied contract;
- (2) harassment (including workplace bullying, sexual harassment whether “quid pro quo”, hostile work environment or otherwise);
- (3) discrimination (including, but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability);
- (4) **Retaliation**;
- (5) employment-related misrepresentation(s) to an **Employee** of the **Organization**;
- (6) employment-related libel, slander, humiliation, defamation or invasion of privacy;
- (7) wrongful failure to employ or promote;
- (8) wrongful deprivation of career opportunity with the **Organization**, wrongful demotion or negligent **Employee** evaluation, including the giving of negative or defamatory statements in connection with an employee reference;
- (9) wrongful discipline;
- (10) failure to grant tenure; or
- (11) with respect to any of the foregoing items (1) through (10) of this definition: negligent hiring, retention, training or supervision, infliction of emotional distress or mental anguish, failure to provide or enforce adequate or consistent corporate policies and procedures, or violation of an individual’s civil rights;

but only if the **Employment Practices Violation** relates to an **Employee** of an **Organization** or an **Outside Entity**, or an applicant for employment with an **Organization** or an **Outside Entity**, whether committed directly, indirectly, intentionally or unintentionally.

Executive

means any:

- (1) past, present and future duly elected or appointed director, officer, trustee or governor of a corporation, management committee member of a joint venture and member of the management board of a limited liability company (or equivalent position);
- (2) past, present and future person in a duly elected or appointed position in an entity organized and operated in a **Foreign Jurisdiction** that is equivalent to an executive position listed in subparagraph (1) above, or a member of the senior-most executive body (including, but not limited to, a supervisory board); and
- (3) past, present and future General Counsel and Risk Manager (or equivalent position) of the **Named Entity**.

Extradition

means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or otherwise to answer

	any criminal accusation.
Extradition Costs	means Defense Costs incurred by an Insured in lawfully opposing any effort to obtain the Extradition of an Insured Person .
Foreign Policy	means the standard executive managerial liability policy (including all mandatory endorsements, if any) approved by the Insurer or any of its affiliates to be sold within a Foreign Jurisdiction that provides coverage substantially similar to the coverage afforded under this Coverage Section . If more than one such policy exists, then " Foreign Policy " means the standard basic policy form most recently offered for sale for comparable risks by the Insurer or any of its affiliates in that Foreign Jurisdiction . The term " Foreign Policy " shall not include any partnership managerial, pension trust or professional liability coverage.
Insured	means any: (1) Insured Person ; or Organization .
Insured Person	means any: (1) Executive of an Organization ; (2) Employee of an Organization ; or (3) Outside Entity Executive .
Insured Person Investigation	means any civil, criminal, administrative or regulatory investigation of an Insured Person : (1) once the Insured Person is identified in writing by an Enforcement Body as a target of an investigation that may lead to a criminal, civil, administrative, regulatory or other enforcement proceeding; (2) in the case of an investigation by the SEC or any state, local or foreign body with similar regulation or enforcement authority, after the service of a subpoena (or in a Foreign Jurisdiction , the equivalent legal process) upon the Insured Person ; or (3) commenced by the arrest and detainment or incarceration for more than 24 hours of an Insured Person by any law enforcement authority in a Foreign Jurisdiction . Writings which may identify an Insured Person as a target can include a target or "Wells" letter, whether or not labeled as such.
Liberty Protection Costs	means: (1) reasonable and necessary fees, costs and expenses consented to by the Insurer and incurred by an Insured Person in order for an Insured Person to lawfully seek the release of the Insured Person from any pre-Claim arrest or confinement to a (i) specified residence or (ii) secure custodial premises operated by or on behalf of any law enforcement authority; or (2) reasonable and necessary premiums (but not collateral) consented to by the Insurer and incurred by an Insured Person for a bond or other financial instrument to guarantee the contingent obligation of the Insured Person for a specified amount required by a court that are

incurred or required outside the United States of America during the **Policy Period**, if such premiums: (i) arise out of an actual or alleged **Wrongful Act**, or (ii) are incurred solely by reason of such **Insured Person's** status as an **Executive** or **Employee** of an **Organization**.

Loss

means damages, settlements, judgments (including pre/post-judgment interest on a covered judgment), **Defense Costs**, **Derivative Investigation Costs**, **Liberty Protection Costs** and **Pre-Claim Inquiry Costs**; however, "**Loss**" (other than **Defense Costs**) shall not include: (1) civil or criminal fines or penalties; (2) taxes; (3) punitive or exemplary damages; (4) the multiplied portion of multiplied damages; (5) cleanup costs relating to hazardous materials, pollution or product defects; (6) any amounts for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**; and (7) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed. Notwithstanding the foregoing subparagraph (7), the **Insurer** shall not assert that, in a **Securities Claim** alleging violations of Section 11, 12 or 15 of the Securities Act of 1933, as amended, the portion of any amounts incurred by **Insureds** which is attributable to such violations constitutes uninsurable loss, and, unless precluded from doing so in a court order, shall treat that portion of all such settlements, judgments and **Defense Costs** as constituting **Loss** under this **Coverage Section**.

Notwithstanding the foregoing paragraph, **Loss** shall specifically include (subject to this policy's other terms, conditions and limitations, including but not limited to the Conduct Exclusion): (1) civil penalties assessed against any **Insured Person** pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2(g)(2)(B); and (2) solely with respect to **Claims** other than **Employment Practices Claims**, punitive, exemplary and multiplied damages. Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such penalties and punitive, exemplary and multiple damages.

In the event of a **Claim** alleging that the price or consideration paid or proposed to be paid for the acquisition or completion of the acquisition of all or substantially all the ownership interest in or assets of an entity is inadequate, **Loss** with respect to such **Claim** shall not include any amount of any judgment or settlement representing the amount by which such price or consideration is effectively increased; provided, however, that this paragraph shall not apply to **Defense Costs** or to any **Non-Indemnifiable Loss** in connection therewith.

Management Control

means:

- (1) owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the Board of Directors of a corporation; the management committee members of a joint venture; or the members of the management board of a limited liability company; or

	(2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an Organization , to elect, appoint or designate a majority of: the Board of Directors of a corporation; the management committee of a joint venture; or the management board of a limited liability company.
Non-Indemnifiable Loss	means Loss for which an Organization has neither indemnified nor is permitted or required to indemnify an Insured Person pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of an Organization .
Outside Entity	means any: (1) not-for-profit entity; or (2) other entity listed as an “ Outside Entity ” in an endorsement attached to this policy.
Outside Entity Executive	<p>means any: (1) Executive of an Organization who is or was acting at the specific request or direction of an Organization as an Executive of an Outside Entity; or (2) any other person listed as an Outside Entity Executive in an endorsement attached to this policy.</p> <p>In the event of a disagreement between the Organization and an Outside Entity Executive as to whether such Insured was acting “at the specific request or direction of the Organization,” this Coverage Section shall abide by the determination of the Organization on this issue and such determination shall be made by written notice to the Insurer within ninety (90) days after the Claim against such Outside Entity Executive is made. In the event no notice of any such determination is given to the Insurer within such period, this Coverage Section shall apply as if the Organization determined that such Outside Entity Executive was not acting at the Organization’s specific request or direction.</p>
Personal Reputation Crisis	means any negative statement that is included in any press release or published by any print or electronic media outlet regarding an Executive of an Organization made during the Policy Period by any individual authorized to speak on behalf of an Enforcement Body .
Personal Reputation Expenses	means reasonable and necessary fees, costs and expenses of a Crisis Firm (as defined in the CrisisFund® Appendix attached to this policy) retained within 30 days of a Personal Reputation Crisis solely and exclusively by an Executive to mitigate the adverse effects specifically to such Executive’s reputation from a Personal Reputation Crisis . “ Personal Reputation Expenses ” shall not include any fees, costs or expenses of any Crisis Firm incurred by an Executive if such Crisis Firm is also retained by or on behalf of an Organization .
Pre-Claim Inquiry	<p>means any pre-Claim:</p> <p>(1) verifiable request for an Insured Person of any Organization: (a) to appear at a meeting or interview; or (b) produce documents that, in either case, concerns the business of that Organization or that Insured Person’s insured capacities, but only if the request came from any:</p> <p>(i) Enforcement Body; or</p> <p>(ii) Organization, or, on behalf of an Organization, by its board of directors (or the equivalent management body) or any committee of</p>

the board of directors (or the equivalent management body):

(A) arising out of an inquiry or investigation by an **Enforcement Body** concerning the business of that **Organization** or that **Insured Person's** insured capacities; or

(B) as part of its **Derivative Investigation**; and

(2) arrest or confinement of an **Executive** of an **Organization** to a: (a) specified residence; or (b) secure custodial premises operated by or on behalf of an **Enforcement Body**, in connection with the business of any **Organization** or an **Insured Person's** capacity as an **Executive** or **Employee** of an **Organization**.

"**Pre-Claim Inquiry**" shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulated entity, conducted in an **Organization's** and/or **Enforcement Body's** normal review or compliance process.

Pre-Claim Inquiry Costs

means:

(1) with respect to any **Pre-Claim Inquiry** as defined in subparagraph (1) of the Definition of such term, the reasonable and necessary pre-**Claim** fees, costs and expenses consented to by the **Insurer** and incurred by an **Insured Person** solely in connection with his/her preparation for and response to a **Pre-Claim Inquiry** directed to such **Insured Person**, including attendance at an interview or meeting requested by an **Enforcement Body**, but excluding (i) any compensation of any **Insured Person**; and (ii) the costs of complying with any formal or informal discovery or other request seeking documents, records or electronic information in the possession or control of an **Organization**, the requestor or any other third party; and

(2) with respect to any **Pre-Claim Inquiry** as defined in subparagraph (2) of the Definition of such term, any **Liberty Protection Costs**.

Related Claim

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 either: (i) alleged in another **Claim** made against an **Insured**; or (ii) the subject of a **Pre-Claim Inquiry** received by an **Insured Person**.

Related Pre-Claim Inquiry

means a **Pre-Claim Inquiry** involving, arising out of, based upon or attributable to any facts or **Wrongful Acts** that are the same as or related to those that were either: (i) alleged in a **Claim** made against an **Insured**; or (ii) the subject of another **Pre-Claim Inquiry** received by an **Insured Person**.

Retaliation

means a retaliatory act of an **Insured** alleged to be in response to any of the following activities: (i) the disclosure or threat of disclosure by an **Employee** of the **Organization** or an **Outside Entity** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; (ii) the actual or attempted exercise by an **Employee** of the **Organization** or an **Outside Entity** of any right that such **Employee** has under law, including rights under worker's

compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights; (iii) the filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign “whistle-blower” law; or (iv) strikes of an **Employee** of the **Organization** or an **Outside Entity**.

Securities Claim

means a **Claim**, other than an administrative or regulatory proceeding against, or investigation of an **Organization**, made against any **Insured**:

- (1) alleging a violation of any federal, state, local or foreign regulation, rule or statute regulating securities (including but not limited to the purchase or sale or offer or solicitation of an offer to purchase or sell securities) which is:
 - (i) brought by any person or entity alleging, 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 of an **Organization**; or
 - (ii) brought by a security holder of an **Organization** with respect to such security holder’s interest in securities of such **Organization**; or
- (2) which is a **Derivative Suit**.

Notwithstanding the foregoing, the term “**Securities Claim**” shall include an administrative or regulatory proceeding against an **Organization** that meets the requirements of subparagraph (1) above, but only if and only during the time that such proceeding is also commenced and continuously maintained against an **Insured Person**.

Securities Retention

means the Retention applicable to **Loss** (including **Pre-Claim Inquiry Costs**) that arises out of (i) a **Securities Claim**, or (ii) **Pre-Claim Inquiry Costs** incurred in response to: (a) a **Pre-Claim Inquiry** by an **Enforcement Body** charged with the regulation of securities, or (b) a **Derivative Investigation**.

SOX 304 Costs

means the reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including the premium or origination fee for a loan or bond) and incurred by the chief executive officer or chief financial officer of the **Named Entity** solely to facilitate the return of amounts required to be repaid by such **Executive** 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 **Executive** pursuant to Section 304(a).

Subsidiary

means:

- (1) any for-profit entity that is not formed as a partnership of which the **Named Entity** has or had **Management Control** on or before the **Inception Date** of the policy either directly or indirectly through one or more of its other **Subsidiaries**; and
- (2) any not-for-profit entity sponsored exclusively by an **Organization**.

A for-profit entity ceases to be a **Subsidiary** when the **Named Entity** no longer maintains **Management Control** of such entity either directly or indirectly through one or more of its **Subsidiaries**. A not-for-profit entity ceases to be a **Subsidiary** when such entity is no longer sponsored exclusively by an **Organization**.

Third-Party EPL Violation	means any actual or alleged harassment or unlawful discrimination, as described in subparagraphs (2) and (3) of the definition of Employment Practices Violation , or the violation of the civil rights of a person relating to such harassment or discrimination, when such acts are alleged to be committed against anyone other than an Insured Person or applicant for employment with the Organization or an Outside Entity , including, but not limited to, students, patients, members, customers, vendors and suppliers.
Transaction	means, in addition to the definition set forth in the General Terms and Conditions , the appointment by any Enforcement Body of, or where any Enforcement Body assumes the role of, a trustee, receiver, conservator, rehabilitator, liquidator or similar official to take control of, supervise or oversee the Named Entity , or to liquidate or sell all or substantially all of the assets of the Named Entity .
UK Corporate Manslaughter Act Defense Costs	means Defense Costs incurred by an Insured Person that result solely from the investigation, adjustment, defense and/or appeal of a Claim against an Organization for violation of the United Kingdom Corporate Manslaughter and Corporate Homicide Act of 2007 or any similar statute in any jurisdiction.
Wrongful Act	<p>means:</p> <p>(1) any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act or any actual or alleged Employment Practices Violation or Third-Party EPL Violation:</p> <p>(i) with respect to any Executive of an Organization, by such Executive in his or her capacity as such or any matter claimed against such Executive solely by reason of his or her status as such;</p> <p>(ii) with respect to any Employee of an Organization, 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 Executive of an Organization; or</p> <p>(iii) with respect to any Outside Entity Executive, by such Outside Entity Executive in his or her capacity as such or any matter claimed against such Outside Entity Executive solely by reason of his or her status as such;</p> <p>or</p> <p>(2) with respect to an Organization, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by such Organization, but solely in regard to a Securities Claim.</p>

附錄四、英國董監事及重要職員責任保險商品

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Directors and Officers Liability Insurance

Policy Wording



Bring on tomorrow

In consideration of the payment of the premium or agreement to pay the premium the **Insurer** and the **Policyholder** agree as follows:

All coverages granted for **Loss** under this policy are provided solely for **Claims** first made against an **Insured** and other **Insured Events** first arising, during the **Policy Period** and reported to the **Insurer** as required by this policy.

1. Covers

1.1 Management Liability

The **Insurer** will:

- (i) pay the **Loss** of each **Insured Person** arising from a **Claim** against that **Insured Person** except to the extent that the **Insured Person** has been indemnified by the **Company** for the **Loss**; and
- (ii) reimburse the **Company** for any **Loss** arising from a **Claim** against an **Insured Person** for which it has indemnified an **Insured Person**.

1.2 Pre-Claim Inquiry

The **Insurer** will pay the **Pre-Claim Inquiry Costs** of each **Insured Person** arising from a **Pre-Claim Inquiry**.

1.3 Special Excess Protection for Non-Executive Directors

The **Insurer** will pay the **Non-Indemnifiable Loss** of each and every **Non-Executive Director** arising from a **Claim** against that **Non-Executive Director**, up to the **Non-Executive Director Special Excess Limit**, when: (i) the **Limit of Liability**; (ii) all other valid and collectible management liability insurance, whether specifically written as excess over the **Limit of Liability** or otherwise; and (iii) all other indemnification for loss available to any **Non-Executive Director**, for that **Single Claim** have all been exhausted.

The **Insurer's** aggregate liability under this Insurance Cover 1.3 (Special Excess Protection for Non-Executive Directors) for all **Non-Executive Directors** is subject to the **Non-Executive Director Special Excess Aggregate Limit** specified in Item 5 of the Schedule.

1.4 Company Securities Liability

The **Insurer** will pay the **Loss** of each **Company** arising from a **Securities Claim** brought against a **Company**.

2. Director and Officer Protection Suite

2.1 Assets & Liberty

The **Insurer** will pay:

- (i) **Defence Costs** and **Prosecution Costs** with respect to any **Asset and Liberty Proceeding** or **Extradition Proceeding**;
- (ii) **Extradition Expenses**, subject to the Sub-Limit specified in Item 7 of the Schedule; and
- (iii) **Personal Expenses** in the event of a **Confiscation Order**, subject to the Sub-Limit specified in Item 7 of the Schedule,

of each **Insured Person**.

2.2 Derivative Investigation Hearing

The **Insurer** will pay the **Derivative Investigation Hearing Costs** of an **Insured Person**.

2.3 Insolvency Hearing Cover

The **Insurer** will pay the **Insolvency Hearing Costs** of each **Insured Person**, subject to the Sub-Limit specified in Item 7 of the Schedule.

2.4 US Regulatory Clawback

The **Insurer** will pay **Dodd-Frank 954 Costs** and **Sox 304 Costs** provided they arise out of a **Claim**.

2.5 Reputation Expenses

The **Insurer** will pay the **Reputation Expenses** of each **Insured Person**, subject to the Sub-Limit specified in Item 7 of the Schedule.

2.6 Regulatory Enforcement

(i) Civil Fines and Civil Penalties

The **Insurer** will pay civil fines and civil penalties assessed against any **Insured Person** which an **Insured Person** is legally liable to pay pursuant to:

- (a) any **Claim**, but only where there has been no determination of intentional, grossly negligent or deliberate breach of the law by the **Insured Person**; or
- (b) a **Claim** alleging a violation of the Foreign Corrupt Practices Act, 15, USC Section 78dd-2(g)(2)(B) and Section 78ff-2(c)(2)(B) as amended by the International Anti-Bribery and Fair Competition Act of 1998, (Foreign Corrupt Practices Act) of the United States of America.

(ii) Personal Liability for Corporate Taxes

The **Insurer** will pay unpaid corporate taxes of the **Company** where, and only to the extent that, personal liability for such non-payment of tax is established by law against an **Insured Person** in the jurisdiction in which the **Claim** is made, provided that:

- (a) such liability does not arise from the deliberate or intentional acts of such **Insured Person**; and

- (b) the **Company** is not able to pay the tax either by reason of insolvency or legal prohibition.

2.7 Corporate Manslaughter

The **Insurer** will pay the **Loss** of any **Insured Person** with respect to any proceeding brought against them for a gross breach of duty of care causing the death of another person.

2.8 Circumstance/Claim Mitigation

Subject to the Sub-Limit specified in Item 7 of the Schedule, the **Insurer** will pay the **Mitigation Costs**, **Prosecution Costs** and **Professional Fees** incurred by an **Insured Person**, with the **Insurer's** prior written consent, to minimise the risk of a **Claim** against an **Insured Person** provided that:

- (i) notification of the relevant circumstances has been made to the **Insurer** in accordance with Section 6.1 (Notice & Reporting); and
- (ii) if the circumstances notified in accordance with (i) above were to give rise to a **Claim**, that **Claim** would result in a civil legal liability of the **Insured Person** to the potential claimant, but no such **Claim** has yet been made by the potential claimant; and
- (iii) the **Mitigation Costs** are reasonably and necessarily incurred by the **Insured Person** and the **Mitigation Costs** are paid directly or indirectly to each potential claimant for the principal purpose of avoiding a **Claim(s)** being made by that potential claimant for a specific **Wrongful Act**; and
- (iv) the **Professional Fees** are reasonably and necessarily incurred by the **Insured Person** to negotiate and facilitate the payment of **Mitigation Costs**; and
- (v) the **Prosecution Costs** are reasonably and necessarily incurred by the **Insured Person** for the principal purpose of avoiding a **Claim(s)** being made by that potential claimant for a specific **Wrongful Act**; and
- (vi) the liability of the **Insurer** under this Director and Officer Protection 2.8 (Circumstance / Claim Mitigation) shall not exceed the liability that would have existed under this policy if the **Claim** had been made against the **Insured Person** by the potential claimant.

In no event shall Section 2.8 (Circumstance / Claims Mitigation) include the remuneration of any **Insured Person**, costs of their time or any other costs or overheads of any **Company**.

2.9 International Jurisdiction Extension

With respect solely to **Claims** brought and maintained in an **International Jurisdiction** against an **Insured Person**, the **Insurer** shall apply to such **Claims** the **International Policy** of such jurisdiction if it offers more favourable coverage in respect of the following sections only (to be read together as a whole): Insurance Covers, Definitions and Exclusions. Notwithstanding the above, any specific coverage or exclusion endorsement to this policy shall apply irrespective of the **International Policy**.

2.10 Interpretive Counsel

The term **Defence Costs** expressly includes reasonable and necessary costs and expenses incurred by **Insured Persons** for counsel within their home jurisdiction to interpret and apply advice received from counsel in a foreign jurisdiction in response to any **Securities Claim** in such foreign jurisdiction.

3. Extensions

3.1 New Subsidiary

The definition of **Subsidiary** will be automatically extended to include any entity of which the **Policyholder** acquires **Control**, either directly or indirectly through one of more of its other **Subsidiaries**, during the **Policy Period** provided that such entity:

- (i) does not have any of its **Securities** listed on an exchange or market in the United States of America; or
- (ii) has, as of the date of the acquisition, assets which are less than or equal to 25% of the total consolidated assets of the **Policyholder** as of the inception date of the policy.

For any such entity that has any of its **Securities** listed on an exchange or market in the United States of America, or has total assets greater than 25% of the consolidated assets of the **Policyholder** as at the inception date of this policy, this Extension 3.1 (New Subsidiary) shall apply automatically for a period of 60 days from the date the **Policyholder** acquires **Control**, provided the **Policyholder** shall submit in writing to the **Insurer** the particulars of such entity prior to the end of the **Policy Period**. At the **Policyholder's** request, cover may be extended for a longer period of time provided that the **Policyholder** provides the **Insurer** with sufficient details during such 60 day period to permit the **Insurer** to assess and evaluate its exposure with respect to such entity and the **Policyholder** accepts any consequent amendments to the policy terms and conditions, including payment of any reasonable additional premium required by the **Insurer**.

3.2 Discovery Period

Unless a **Transaction** occurs, the **Policyholder** shall be entitled to a **Discovery Period**:

- (i) automatically for 60 days if this policy is not renewed or replaced; or
- (ii) subject to the **Policyholder** making a request for such **Discovery Period** in writing and paying any additional premium required, as specified in Item 9 of the Schedule, no later than 30 days after the expiry of the **Policy Period**.

If a **Transaction** occurs, the **Policyholder** shall be entitled to a 72 month **Discovery Period** on such terms and conditions and for such additional premium as the **Insurer** may reasonably decide.

A **Discovery Period** under this Extension 3.2 (Discovery Period) is non-cancellable.

3.3 Lifetime Run-Off for Retired Insured Persons

The **Insurer** will provide an unlimited **Discovery Period** for any **Insured Person** who retires or resigns, other than by reason of a **Transaction** or insolvency of the **Policyholder**, prior to or during the **Policy Period**, provided that, on expiry of this policy:

- (i) this policy is not renewed or replaced with any other management liability cover; or
- (ii) where this policy is renewed or replaced with any other management liability cover, such renewal or replacement policy does not provide an extended discovery period of at least six (6) years for such retired **Insured Persons**.

3.4 Emergency Costs

If the **Insurer's** prior written consent cannot reasonably be obtained before **Defence Costs** or **Pre-Claim Inquiry Costs** or costs with respect to a **Crisis Loss** are incurred, then the **Insurer** shall give retrospective approval for such costs, subject to the Sub-Limit specified in Item 7 of the Schedule.

3.5 Derivative Investigation Costs

The **Insurer** will pay the **Derivative Investigation Costs** of each **Company**, subject to the Sub-Limit specified in Item 7 of the Schedule.

3.6 First Dollar E-Discovery Consultant Services

For any **Securities Claim** brought in the United States of America, its territories or possessions, the **Securities Retention** shall not apply to the first USD 50,000 in **Defence Costs**; provided that the USD 50,000 in **Defence Costs** is incurred as costs for **E-Discovery Consultant Services**.

3.7 Global Dutch Securities Settlement Advice

The **Insurer** will pay at the request of the **Company** the reasonable and necessary fees incurred by the **Company**, with the **Insurer's** prior written consent, to retain a law firm approved by the **Insurer** to advise the **Company** regarding use of the Dutch Act on Collective Settlements of 2005 to facilitate a global **Securities** litigation settlement if a **Securities Claim** is brought and maintained against a **Company** by a class or as a collective action anywhere in the world, subject to the Sub-Limit specified in Item 7 of the Schedule.

3.8 Company Crisis Loss

The **Insurer** will pay the **Crisis Loss** of a **Company**, subject to the Sub-Limit specified in Item 7 of the Schedule.

4. Exclusions

The **Insurer** shall not be liable under any Cover, Director and Officer Protection or Extension for any **Loss**:

4.1 Conduct

arising out of, based upon or attributable to:

- (i) the gaining of profit or advantage to which the **Insured** was not legally entitled; or
- (ii) the committing of any deliberately dishonest or deliberately fraudulent act by the **Insured**,

in the event that any of the above is established by final, non-appealable adjudication in any action or proceeding or by any formal written admission by the **Insured**.

However, with respect to a **Securities Claim** alleging violations of Section 11, 12 or 15 of the Securities Act 1933 (US), as amended, Exclusion 4.1(i) shall not apply to the portion of **Loss** attributable to such violations.

4.2 Prior Claims and Circumstances

arising out of, based upon or attributable to:

- (i) any facts alleged or the same or related **Wrongful Acts** alleged or contained in any circumstance or **Insured Event** of which notice has been given under any policy of which this policy is a renewal or replacement or which it may succeed in time;
- (ii) any pending or prior civil, criminal, administrative or regulatory proceeding, investigation, arbitration, mediation, other dispute resolution or adjudication of which an **Insured** had notice as of the **Continuity Date**, or alleging or deriving from the same or essentially the same facts alleged in such actions; or

- (ii) any **Insured Event** that would otherwise constitute a **Single Claim** with any claim or other matter reported under any policy of which this policy is a renewal or replacement or which it may succeed in time.

Exclusion 4.2 (i) shall not apply to any circumstances which have been notified to the **Insurer** under any earlier policy, but were not accepted by the **Insurer** as a valid notification, and where cover has been maintained continuously with the **Insurer** from the inception date of such earlier policy until the expiry date of this policy.

4.3 Bodily Injury / Property Damage

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

This Exclusion 4.3 (Bodily Injury/Property Damage) shall not apply to:

- (i) any **Claim** for emotional distress or mental anguish with respect to an **Employment Practices Violation**;
- (ii) **Defence Costs** of any **Insured Person** including with respect to any **Claim** brought against an **Insured Person** for any alleged breach of occupational health and safety law;
- (iii) **Loss** where and to the extent personal liability is established against an **Insured Person**, but only in circumstances where the **Company** has neither indemnified, nor is permitted or required to indemnify, the **Insured Person** pursuant to law or contract or the Articles of Association, charter, bylaws, operating agreement, indemnity deeds or similar documents of the **Company**.

4.4 US Claims Brought by any Company

arising out of, based upon or attributable to any **US Claim** which is brought by or on behalf of any **Company** against any **Insured**, or by any **Outside Entity** against an **Outside Entity Director**:

This Exclusion 4.4 (US Claims Brought by any Company) shall not apply to:

- (a) any **US Claim** against any **Insured Person**:
 - (i) pursued by any **Security** holder or member of any **Company** or **Outside Entity**, whether directly or derivatively, or pursued as a class action, and that has not been solicited or brought with the voluntary intervention, assistance or active participation of any **Insured**, other than an **Insured Person** engaged in “whistleblower” activity protected pursuant to Sarbanes-Oxley Act of 2002 (US) or any similar legislation;
 - (ii) if the **Company** or **Outside Entity** is the subject of a bankruptcy case (or the equivalent in an **International Jurisdiction**), brought by the examiner, trustee, receiver, liquidator, rehabilitator, creditors committee, bondholder committee, equity committee or any other creditor or group of creditors on behalf of or in the right of such **Company** or **Outside Entity**; or
- (b) **Defence Costs** of an **Insured Person**.

5. Definitions

5.1 Approved Person

any natural person employed by any **Company** to whom the Financial Conduct Authority (or any successor organisation or organisations) has given its approval to perform one or more Significant Influence Functions under Section 59 of the Financial Services and Markets Act 2000 (UK).

5.2 Asset and Liberty Proceeding

any action taken against any **Insured Person** by any **Official Body** seeking:

- (i) to disqualify an **Insured Person** from holding office as a director or officer;
- (ii) confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of an **Insured Person**;
- (iii) a charge over real estate property or personal assets of an **Insured Person**;
- (iv) a temporary or permanent prohibition on an **Insured Person** from holding the office of or performing the functions of a **Director or Officer**;
- (v) a restriction of an **Insured Person's** liberty as an official detention, or to a specified domestic residence; or
- (vi) deportation of an **Insured Person** following revocation of otherwise proper, current and valid immigration status for any reason other than such **Insured Person's** conviction of a crime.

5.3 Bail Bond and Civil Bond Premium

the reasonable and necessary 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.

5.4 Claim

- (i)
 - (a) a written demand for monetary, non-monetary or injunctive relief, including any demand for mediation, arbitration or any other alternative dispute resolution process;
 - (b) a civil, regulatory, mediation, administrative, arbitration or other alternative dispute resolution proceeding including any counter-claim, seeking compensation or other legal remedy; or
 - (c) a criminal proceeding, including any proceeding brought pursuant to the UK Bribery Act 2010,

made or brought against an **Insured Person** alleging a **Wrongful Act**;

- (ii) any **Securities Claim**;
- (iii) any **Insured Person Investigation**;
- (iv) any **Derivative Suit**;
- (v) the receipt by an **Insured** of any written request to toll a period or statute of limitations which may be applicable to any **Claim** that may be made for any **Wrongful Act** of any **Insured**.

5.5 Company

- (i) the **Policyholder**;
- (ii) any **Subsidiary**; or
- (iii) in the event a U.S. bankruptcy proceeding shall be instituted by or against any of the foregoing entities, the resulting debtor-in-possession, if any.

5.6 Confiscation Order

an order by any **Official Body** of confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of any **Insured Person** in connection with an **Asset and Liberty Proceeding** or an **Extradition Proceeding**.

5.7 Continuity Date

the applicable date specified in Item 8 of the Schedule.

5.8 Control

the securing of the affairs of an entity by means of:

- (i) controlling the composition of the board of directors of such entity;
- (ii) controlling more than half of the shareholder or equity voting power of such entity;
- (iii) holding more than half of the issued share or equity capital of such entity; or
- (iv) creation of such entity.

5.9 Crisis

as defined in Appendix A attached to this policy.

5.10 Crisis Firm

any public relations consultants approved by the **Insurer**.

5.11 Crisis Loss

as defined in Appendix A attached to this policy.

5.12 Defence Costs

- (i) reasonable and necessary fees, costs and expenses incurred for representing an **Insured**, with the **Insurer's** prior written consent (except with respect to Extension 3.4 (Emergency Costs)), by or on behalf of an **Insured** after a **Claim, Asset and Liberty Proceeding** or **Extradition Proceeding** is made, in the investigation, defence, settlement or appeal of such **Claim, Asset and Liberty Proceeding** or **Extradition Proceeding**;
- (ii) reasonable and necessary fees, costs and expenses incurred for representing an **Insured**, with the **Insurer's** prior written consent, by or on behalf of an **Insured** of accredited experts, retained through defence counsel to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a covered **Claim, Asset and Liberty Proceeding** or **Extradition Proceeding**;
- (iii) reasonable and necessary fees, costs and expenses incurred with the **Insurer's** prior written consent for **E-Discovery Consultant Services**; and
- (iv) **Bail Bond and Civil Bond Premium** in connection with any **Claim, Asset and Liberty Proceeding** or **Extradition Proceeding**.

Defence Costs shall not include **Derivative Investigation Costs**, **Derivative Investigation Hearing Costs**, **Pre-Claim Inquiry Costs**, the remuneration of any **Insured Person**, cost of their time or any other costs or overheads of any **Company**.

5.13 Derivative Demand

a written demand by any shareholder of a **Company** upon the board of directors (or equivalent management body) to commence a civil action on behalf of the **Company** against a **Director or Officer** of the **Company** for any **Wrongful Act** on the part of such **Director or Officer**.

5.14 Derivative Investigation

an internal inquiry or investigation undertaken by the **Company** or on behalf of the **Company** by its board of directors (or equivalent management body) or any committee of the board of directors (or equivalent management body) as to how the **Company** should respond to a **Derivative Demand** received by an **Insured** or a **Derivative Suit** received by a **Director or Officer**.

Derivative Investigation shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any routine or regularly scheduled obligation of any **Company** to provide information, conducted in a **Company's** and/or **Official Body's** normal review or compliance process.

5.15 Derivative Investigation Costs

in accordance with Extension 3.5 (Derivative Investigation Costs), the reasonable and necessary external costs, charges, fees and expenses incurred, with the **Insurer's** prior written consent, by the **Company** or on behalf of the **Company** by its board of directors (or the equivalent management body) or any committee of the board of directors (or equivalent management body) in connection with a **Derivative Investigation**.

Derivative Investigation Costs shall not include the remuneration of any **Insured Person**, costs of their time or any other costs or overheads of any **Company**.

5.16 Derivative Investigation Hearing Costs

in accordance with Director and Officer Protection 2.2 (Derivative Investigation Hearing Costs), the reasonable and necessary fees, costs and expenses incurred by an **Insured Person**, with the **Insurer's** prior written consent, solely in connection with the **Insured Person's** preparation for and response to a **Derivative Investigation** in respect of that **Insured Person**.

Derivative Investigation Hearing Costs shall not include (a) the remuneration of any **Insured Person**, costs of their time or any other costs or overheads of any **Company**; or (b) the costs of complying with any formal or informal discovery or other request seeking documents, records or electronic information in the possession or control of any **Company**, the requestor or any other third party.

5.17 Derivative Suit

a civil action brought derivatively on behalf of a **Company** by a shareholder of such **Company** against a **Director or Officer** of the **Company** for any **Wrongful Act** on the part of such **Director or Officer** including a derivative claim made against a **Director or Officer** under Part 11, Chapter 1 of the Companies Act 2006 following the receipt by a **Company** of any formal notice relating to an application to the court for permission to continue a derivative claim under the Companies Act 2006.

5.18 Director or Officer

any natural person who:

- (i) was, is or during the **Policy Period** becomes a duly elected or appointed director or officer of a **Company** (or equivalent position); and

- (ii) has held, or during the **Policy Period** holds a duly elected or appointed position in a **Company** organised and operated in an **International Jurisdiction** that is equivalent to an executive position listed in subparagraph (i) above, or a member of the senior-most governing body (including a supervisory board).

5.19 Discovery Period

a period immediately following the expiry of the **Policy Period** during which written notice may be given to the **Insurer** of:

- (i) a **Claim** first made against an **Insured Person** during such period or the **Policy Period** for a **Wrongful Act** occurring prior to the expiry of the **Policy Period**; or
- (ii) any other **Insured Event** which first arose prior to the expiry of the **Policy Period**.

5.20 Dodd-Frank 954 Costs

reasonable and necessary fees, costs and expenses (including the premium or origination fee for a loan or bond, but not attorney's fees) incurred by a **Director or Officer**, with the **Insurer's** prior written consent, solely to facilitate the return of amounts required to be repaid by such **Director or Officer** pursuant to Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (US).

Dodd-Frank 954 Costs do not include any amounts requested or required to be paid, returned, reimbursed, disgorged or restituted by such **Director or Officer** pursuant to Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (US).

Dodd Frank 954 Costs shall not include the remuneration of any **Insured Person**, costs of their time or any other costs or overheads of any **Company**.

5.21 E-Discovery Consultant Services

solely the following services performed by an e-consultant firm approved by the **Insurer (E-Consultant Firm)**:

- (i) assisting the **Insured** with managing and minimising the internal and external costs associated with the development, collection, storage, organisation, cataloguing, preservation and/or production of electronically stored information (**E-Discovery**);
- (ii) assisting the **Insured** in developing or formulating an **E-Discovery** strategy which shall include interviewing qualified and cost effective **E-Discovery** vendors;
- (iii) serving as project manager, advisor and/or consultant to the **Insured**, defence counsel and the **Insurer** in executing and monitoring the **E-Discovery** strategy; and
- (iv) such other services provided by the **E-Consultant Firm** that the **Insured**, **Insurer** and **E-Consultant Firm** agree are reasonable and necessary given the nature of the **Securities Claim**.

5.22 Employment Practices Retention

the **Retention** applicable to **Loss** that arises out of an **Employment Practices Violation** specified in Item 6 of the Schedule.

5.23 Employment Practices Violation

any actual or alleged act, error or omission with respect to any employment or prospective employment of any past, present, future or prospective employee or **Insured Person** of any **Company** or any **Outside Entity**.

5.24 Extradition Expenses

in accordance with Director and Officer Protection 2.1 (Assets & Liberty) the reasonable and necessary fees, costs and expenses incurred by an **Insured Person** for (i) any accredited crisis counsellor and/or tax advisor and (ii) any public relations consultants retained by an **Insured Person** and incurred in any **Extradition Proceeding** brought against such **Insured Person** or in connection with an **Asset and Liberty Proceeding**.

5.25 Extradition Proceeding

any extradition proceedings brought against an **Insured Person** or related appeal, any judicial review applications challenging the designation of any territory for the purposes of any extradition law, any challenge or appeal of any extradition decision by the responsible governmental authority, or any applications to the European Court of Human Rights or similar court in another jurisdiction.

5.26 Insolvency Hearing Costs

in accordance with Director and Officer Protection 2.3 (Insolvency Hearing Costs) the reasonable and necessary fees, costs and expenses incurred, with the **Insurer's** prior written consent, to retain legal advisors for an **Insured Person's** preparation for and attendance at any formal or official hearing in connection with the investigation or inquiry into the affairs of a **Company**, or an **Insured Person** in his capacity as a **Director or Officer**, by any insolvency administrator or receiver, bankruptcy trustee or liquidator or the equivalent under the laws of any jurisdiction where the facts underlying such hearing, investigation or inquiry may be expected to give rise to a **Claim** against such **Insured Person**.

In no event shall **Insolvency Hearing Costs** include the remuneration of any **Insured Person**, costs of their time or any other costs or overheads of any **Company**.

5.27 Insured

any **Company** or **Insured Person**.

5.28 Insured Event

any **Claim**, **Pre-Claim Inquiry** or matter or event covered under Section 2 (Director and Officer Protection Suite) or Section 3 (Extensions).

5.29 Insured Person

any natural person who was, is or during the **Policy Period** becomes:

- (i) a **Director or Officer**, but not an externally appointed auditor, insolvency administrator or receiver, bankruptcy trustee or liquidator of a **Company**;
- (ii) an **Approved Person**;
- (iii) an employee of a **Company**:
 - (a) while acting in a managerial or supervisory capacity of any **Company**;
 - (b) who is involved in a **Claim** alleging an **Employment Practices Violation**;
 - (c) named as a co-defendant with a **Director or Officer** of a **Company** in a **Claim** in which such employee is alleged to have participated or assisted in the commission of a **Wrongful Act**; or
 - (d) named in connection with an **Insured Person Investigation**;

- (iv) a **Shadow Director** or a de facto director;
- (v) a prospective director named as such in any listing particulars or prospectus issued by a **Company**;
- (vi) an **Outside Entity Director**;
- (vii) a **Senior Accounting Officer**; or
- (viii) a General Counsel or Risk Manager (or equivalent position) of the **Policyholder**,

but only when, and to the extent, that such **Insured Person** is acting in such **Insured Person** capacity.

Insured Person is extended to include:

- A. the spouse or domestic partner (including same sex relationship civil partnerships, if applicable); and
- B. the administrator, heirs, legal representatives, or executor of a deceased, legally incompetent, insolvent or bankrupt estate,

of an **Insured Person** referred to in (i) to (viii) above, to the extent that a **Claim** is brought against them solely by reason of them having an interest in property that is sought to be recovered in a **Claim**.

5.30 Insured Person Investigation

any civil, criminal, administrative or regulatory investigation of an **Insured Person**:

- (i) once the **Insured Person** is identified in writing by an **Official Body** (except the US Securities Exchange Commission) as a target of an investigation that may lead to a criminal, civil, administrative, regulatory or other enforcement proceeding;
- (ii) in the case of an investigation by the US Securities Exchange Commission after the service of a subpoena or Wells Notice upon such **Insured Person**; or
- (iii) commenced by the arrest and detainment or incarceration for more than 24 hours of an **Insured Person** by any law enforcement authority.

5.31 Insurer

as specified in Item 10 of the Schedule.

5.32 International Jurisdiction

any jurisdiction other than the country in which the policy is issued.

5.33 International Policy

the **Insurer's** or any other AIG insurance company's most recent standard directors and officers liability policy existing at the inception date of this policy approved by AIG to be sold within an **International Jurisdiction** that provides coverage substantially similar to the coverage afforded under this policy. Where more than one such standard policy exists at the inception date of this policy, **International Policy** means the standard policy most recently registered (or approved by the **Insurer** where no registration is necessary) in that **International Jurisdiction** prior to the inception date of this policy.

5.34 Limit of Liability

the amount specified in Item 4 of the Schedule.

5.35 Loss

Defence Costs, Crisis Loss and any other amount, including any awards of damages (including any court order to pay compensation for damage resulting from a contravention of any statute or legislative provision and punitive and exemplary damages), awards of costs or settlements (including claimant's legal costs and expenses), pre- and post- judgment interest on a covered judgment or award, and the multiplied portion of multiple damages, which an **Insured** is legally liable to pay resulting from a **Claim**. Enforceability of this paragraph for punitive, exemplary and multiple damages shall be governed by the applicable law that most favours coverage for such damages.

Loss shall include **Pre-Claim Inquiry Costs** and any amount covered under any Director and Officer Protection or Extension, but only to the extent set out in the relevant section.

Loss shall not include: (i) fines or penalties or taxes unless covered under Director and Officer Protection 2.6 (Regulatory Enforcement); (ii) remuneration or employment-related benefits; or (iii) cleanup costs relating to hazardous materials, pollution or product defects.

In the event of a **Claim** alleging that the price or consideration paid or proposed to be paid for the acquisition or completion of the acquisition of all or substantially all the ownership interest in or assets of an entity is inadequate, **Loss** with respect to such **Claim** shall not include any amount of any judgment or settlement representing the amount by which such price or consideration is effectively increased; provided, however, that this paragraph shall not apply to **Defence Costs** or to any **Non-Indemnifiable Loss** in connection therewith.

Notwithstanding anything contained herein, the **Insurer** shall not assert that, in a **Securities Claim** alleging violations of Section 11, 12 or 15 of the Securities Act of 1933 (US), as amended, the portion of any amounts incurred by **Insureds** which is attributable to such violations constitutes uninsurable loss, and, unless precluded from doing so in a court order, shall treat that portion of all such settlements, judgments and **Defence Costs** as constituting **Loss** under this policy.

In no event shall **Loss** include amounts which the **Insurer** is prohibited from paying by law of the policy or the law of the jurisdiction where the **Claim** was made or where an **Insured Event** first arises.

5.36 Mitigation Costs

reasonable and necessary payments to a potential claimant to reduce the ultimate civil legal liability of an **Insured Person**. In no event shall **Mitigation Costs** include: (a) liability which is not otherwise covered under this policy; (b) payments arising out of, based upon or attributable to an **Insured Person Investigation** or **Pre-Claim Inquiry**; or (c) payments to a potential claimant to reduce the ultimate civil legal liability of a **Company** whether incurred by the **Company** or by an **Insured Person** on behalf of the **Company**.

5.37 Non-Executive Director

any natural person who was, is or during the **Policy Period** begins serving as a member of the board of directors of the **Company** and who is not and has not, within the last twelve (12) months, been an employee of a **Company**, but only when and to the extent that such person is acting in such capacity.

5.38 Non-Executive Director Special Excess Aggregate Limit

the sum specified in Item 5(b) of the Schedule being the aggregate limit for all **Non-Executive Directors**.

5.39 Non-Executive Director Special Excess Limit

the sum specified in Item 5(a) of the Schedule being a separate limit for each **Non-Executive Director**.

5.40 Non-Indemnifiable Loss

Loss which a **Company** has not indemnified an **Insured Person** and is not permitted or required to indemnify such **Insured Person** pursuant to law or contract or the Articles of Association, charter, bylaws, operating agreement, indemnity deeds or similar documents of a **Company**.

5.41 Official Body

any regulator, government body, government agency, parliamentary commission, official trade body, or any similar body having legal authority to investigate the affairs of an **Insured**.

5.42 Outside Entity

any entity other than an entity:

- (i) that is a **Company**;
- (ii) whose principal operations include a bank, clearing house, credit institution, underwriting for collective investment in securities, investment firm, investment advisor / manager, investment fund or mutual fund, private equity or venture capital company, stock brokerage firm, insurance company or similar entity; or
- (iii) that has any of its securities listed on a securities exchange or market within the United States of America and is subject to any obligation to file reports with the US Securities and Exchange Commission in accordance with Section 13 of the Securities and Exchange Act of 1934 (US).

5.43 Outside Entity Director

a natural person who did, does or during the **Policy Period** begins to serve, at the specific request or direction of a **Company**, as a director or officer, **Shadow Director**, trustee (except a pension trustee) or equivalent of an **Outside Entity**.

5.44 Personal Expenses

in accordance with Director and Officer Protection 2.1(iii) (Assets & Liberty), the expenses set out below to be paid directly by the **Insurer** to a third party service provider of an **Insured Person**:

- (i) schooling cost for dependant non-adults;
- (ii) monthly primary housing mortgage payments or rental cost;
- (iii) utilities cost, including private water, gas, electricity, phone and internet services; or
- (iv) personal insurance premiums, including Property, Life, and Health policies,

provided that: (a) the services were contracted by the **Insured Person** prior to the **Confiscation Order** and are owed by such **Insured Person**; (b) the expenses are in excess of any personal allowance granted in connection with the **Confiscation Order**; and (c) the expenses fall due during the period beginning 30 days after the date of the **Confiscation Order** and ending when the **Insured Person** has obtained its discharge or revocation, but in no event shall such period be longer than 12 months.

Personal Expenses shall not include the remuneration of any **Insured Person**, cost of their time or any other costs or overheads of any **Company**.

5.45 Policyholder

the entity specified in Item 1 of the Schedule.

5.46 Policy Period

the period from the inception date to the expiry date specified in Item 3 of the Schedule.

5.47 Pre-Claim Inquiry

- (i) a verifiable request for an **Insured Person** to: (a) appear at a meeting or interview; or (b) produce documents, records or electronic information that, in either case, concerns a **Company** or an **Insured Person** in their insured capacity, but only if the request is made by:
 - (a) an **Official Body**; or
 - (b) a **Company**, or, on behalf of any **Company**, by its board of directors (or the equivalent management body) or any committee of the board of directors (or the equivalent management body) and:
 - (1) arises out of an inquiry or investigation by an **Official Body** concerning a **Company** or an **Insured Person** in their insured capacity; or
 - (2) following a formal written notification to an **Official Body** by a **Company**, **Insured Person** or whistleblower informing them of an actual or suspected material breach of an **Insured Person's** legal or regulatory duties if and to the extent that such inquiry is requested by an **Official Body**; or
- (ii) a raid on, or on site visit to any **Company** or any **Outside Entity** by an **Official Body** that involves the production, review, copying or confiscation of documents, records or electronic information or interviews of an **Insured Person**.

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

5.48 Pre-Claim Inquiry Costs

reasonable and necessary fees, costs and expenses incurred by an **Insured Person**, with the **Insurer's** prior written consent, solely in connection with his or her preparation for and response to a **Pre-Claim Inquiry** directed at such **Insured Person**, but excluding (i) any compensation of any **Insured Person** or cost of their time; and (ii) the costs of complying with any formal or informal discovery or other request seeking documents, records or electronic information in the possession or control of any **Company**, the requester or any other third party.

In no event shall **Pre-Claim Inquiry Costs** include the remuneration of any **Insured Person**, costs of their time or any other costs or overheads of any **Company**.

5.49 Professional Fees

reasonable and necessary fees, costs and expenses of appropriately qualified professionals appointed with the **Insurer's** prior written consent.

In no event shall **Professional Fees** include (a) fees, costs and expenses which are not otherwise covered under this policy; or (b) costs attributable to an **Insured Person Investigation**, **Pre-Claim Inquiry** or **Derivative Investigation Hearing Costs**.

5.50 Prosecution Costs

reasonable and necessary fees, costs and expenses incurred, with the **Insurer's** prior written consent, by an **Insured Person**, to bring legal proceedings for a declaration and/or an injunction.

Prosecution Costs shall not include the remuneration of any **Insured Person**, costs of their time or any other costs or overheads of any **Company**.

5.51 Reputation Expenses

in accordance with Director and Officer Protection 2.5 (Reputation Expenses), the reasonable and necessary fees, costs and expenses incurred, with the **Insurer's** prior written consent, of a **Crisis Firm** retained by an **Insured Person** directly to mitigate the adverse effect or potential adverse effect on that **Insured Person's** reputation from:

- (i) negative statements made during the **Policy Period** in any press release or published by any print or electronic media outlet regarding the alleged violation of fiduciary duties by such **Insured Person**; or
- (ii) a **Claim**, by disseminating findings made in a judicial disposition of that **Claim** which exonerates the **Insured Person** from fault, liability or culpability.

Reputation Expenses shall not include the remuneration of any **Insured Person**, cost of their time or any other costs or overheads of any **Company**.

5.52 Retention

the applicable amount(s) specified in Item 6 of the Schedule.

5.53 Securities

any security representing debt of or equity interests in a **Company**.

5.54 Securities Claim

a **Claim**, other than an administrative or regulatory proceeding against, or investigation of, a **Company**, made against any **Insured**:

- (i) alleging a **Wrongful Act**:
 - (a) in connection with the purchase or sale, or offer or solicitation of an offer to purchase or sell any **Securities** including any claim for compensation under section 90 of the Financial Services and Markets Act 2000;
 - (b) brought by a **Security** holder of the **Company** with respect to such **Security** holder's interest in **Securities** of such **Company**; or
- (ii) which is a **Derivative Suit**.

Notwithstanding the foregoing, the term **Securities Claim** shall include an administrative or regulatory proceeding against a **Company** that meets the requirements of subparagraph (i) above, but only if and only during the time that such proceeding is also commenced and continuously maintained against an **Insured Person**.

Securities Claim shall not mean any claim by an **Insured** 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 any warrants or options).

5.55 Securities Retention

the **Retention** applicable to (i) **Loss** that arises out of a **Securities Claim**; (ii) **Pre-Claim Inquiry Costs** incurred in response to a **Pre-Claim Inquiry** by an **Official Body** duly authorised to investigate the regulation of securities; or (iii) **Derivative Investigation Hearing Costs**.

5.56 Senior Accounting Officer

a director or officer, or employee of the **Company**, acting in a managerial or supervisory capacity, who has overall responsibility for the accounting systems.

5.57 Senior Counsel

a senior lawyer to be mutually agreed upon by the parties, or in the absence of agreement, to be appointed by the head of the bar association / law society (or equivalent organisation) in the jurisdiction in which the **Claim** was made or where an **Insured Event** first arises.

5.58 Shadow Director

any natural person, who, as a consequence of being a **Director** or **Officer** or employee of any **Company** is deemed a shadow director, as defined in Section 251 of the Companies Act 2006, of any other **Company** or any **Outside Entity**.

5.59 Single Claim

any one or more **Insured Events** to the extent that such **Insured Events** arise out of, are based upon, are in connection with, or are otherwise attributable to the same originating cause or source and all such **Insured Events** shall be regarded as a **Single Claim** regardless of whether such **Insured Events** involve the same or different claimants, **Insureds** or legal causes of action.

5.60 SOX 304 Costs

reasonable and necessary fees, costs and expenses (including the premium or origination fee for a loan or bond, but not attorney's fees) incurred, with the **Insurer's** prior written consent, by the chief executive officer or chief financial officer, acting in such capacity, of the **Company** solely to facilitate the return of amounts required to be repaid by such chief executive officer or chief financial officer pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002 (US).

SOX 304 Costs do not include any amounts requested or required to be paid, returned, reimbursed, disgorged or restituted by such chief executive officer or chief financial officer pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002 (US).

Sox 304 Costs shall not include the remuneration of any **Insured Person**, cost of their time or any other costs or overheads of any **Company**.

5.61 Subsidiary

any entity of which the **Policyholder** has or had **Control** on or before the inception of the **Policy Period** either directly or indirectly through one or more of its other **Subsidiaries**.

An entity ceases to be a **Subsidiary** when the **Policyholder** no longer maintains **Control** of such entity directly or indirectly through one or more of its **Subsidiaries**.

5.62 Transaction

any one of the following events:

- (i) the **Policyholder** consolidating with or merging into another entity such that the **Policyholder** 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
- (ii) any person or entity or group of persons or entities acting in concert acquiring **Control** of the **Policyholder**.

5.63 US Claim

a **Claim** brought or maintained within the jurisdiction of, or based upon any laws of, the United States of America, its territories or possessions.

5.64 US SEC Exposure

where a **Company**:

- (i) has any of its **Securities** listed on a securities exchange or market within the United States of America; or
- (ii) is or has **Securities** that are legally required to be the subject of any registration statement filed with the US Securities Exchange Commission; or
- (iii) is subject to any obligation to file reports with the US Securities Exchange Commission in accordance with Section 13 of the Securities Exchange Act of 1934.

US SEC Exposure does not include any **Security** purchased or sold pursuant to Rule 144A or Level 1 American Depositary Receipts pursuant to the Securities Act of 1933.

5.65 Wrongful Act

- (i) with respect to any **Insured Person** (except with respect to any **Securities Claim**):
 - (a) any actual or alleged act, error or omission, breach of duty, breach of trust, misstatement, misleading statement or breach of warranty of authority by an **Insured Person** in any of the capacities listed in Definition 5.29 (Insured Person); or any matter claimed against an **Insured Person** solely because of such listed capacity;
 - (b) any proposed act, error or omission or any default pursuant to Section 260(3) of the Companies Act 2006 (UK); or
 - (c) an **Employment Practices Violation**.
- (ii) with respect to any **Securities Claim**, any actual or alleged 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 relating to such **Securities** by an **Insured**.

6. Claims

6.1 Notice and Reporting

The cover provided under this policy is granted solely with respect to **Claims** first made against an **Insured**, and other **Insured Events** first arising, during the **Policy Period**, or any applicable **Discovery Period**, or accepted as such in accordance with Section 6.2 (Related Claims or Circumstances), and only if such **Claims** have been notified to the **Insurer** as soon as practicable, after the **Policyholder's** Risk Manager or General Counsel (or equivalent position) first becomes aware of such **Claim**; or any other **Insured Event** has been notified to the **Insurer** as soon as practicable after the **Insured Event** first arises but in all events no later than either:

- (i) during the **Policy Period** or **Discovery Period** if applicable; or
- (ii) within 60 days after the end of the **Policy Period** or the applicable **Discovery Period**, as long as notice is given to the **Insurer** within 60 days after such **Claim** was first made against an **Insured** or after any other **Insured Event** first arose.

If an **Insured** elects not to seek coverage for a **Pre-Claim Inquiry** or a **Derivation Investigation Hearing** it will not prejudice the right of the **Insured** to seek coverage for a **Claim** arising out of the same circumstances provided the **Claim** is notified in accordance with this Section 6.1 (Notice and Reporting).

If the **Policyholder** has elected the Passport Policy Master Program in the Schedule, then solely in respect of Section 6.1 (Notice and Reporting), if an **Insured Event** or circumstance is notified and accepted in accordance with the terms and conditions of any policy issued to a **Company** in an **International Jurisdiction** by the **Insurer** or any other AIG Company, such **Insured Event** or circumstance will be deemed notified in accordance with this Section 6.1 (Notice and Reporting).

Notwithstanding Section 8.6 (Notice and Authority), any **Insured** may, during the **Policy Period**, notify the **Insurer** of any circumstance reasonably expected to give rise to an **Insured Event**. The notice must include the reasons for anticipating such an **Insured Event**, and full relevant particulars with respect to dates, the **Wrongful Act** (if applicable) and the potential **Insured** and claimant(s) concerned.

The details of any other insurance policy which may apply to any **Loss** covered under this policy shall be reported to the **Insurer** within a reasonable time of any **Insured Event** notification.

All notifications relating to **Insured Events** or circumstances must be sent in writing, by email or by facsimile to the address specified in Item 10 of the Schedule.

6.2 Notification of a Crisis

The **Policyholder** must notify any **Crisis** to the **Insurer** immediately and during the **Policy Period**. A notice of **Crisis** will not satisfy the claim notice requirements of Section 6.1 (Notice and Reporting). All **Crisis** notifications must be sent in writing, by email or by facsimile to the address in Item 10 of the Schedule.

6.3 Related Insured Events or Circumstances

If notice of an **Insured Event** or circumstance is given as required by this policy, then any subsequent **Insured Event** or circumstance, that constitutes a **Single Claim** with that **Insured Event** or circumstance shall be deemed to have first been made at the same time as that circumstance was first notified, **Claim** was first made, or other **Insured Event** first arose, and reported to the **Insurer** at the time the required notices were first provided.

6.4 Defence & Settlement

All **Insureds** shall render all reasonable assistance to and cooperate with the **Insurer** in the investigation, defence, settlement or appeal of an **Insured Event** or circumstance, and provide the **Insurer** with all relevant information pertaining to any **Insured Event** or circumstance, as the **Insurer** may reasonably require. In the event of any circumstance or **Insured Event** each **Insured** shall take reasonable steps to reduce or diminish any **Loss**.

The failure of any **Insured Person** to give the **Insurer** cooperation and information as required in the preceding paragraph shall not impair the rights of any other **Insured Person** under this policy.

The **Insured** shall have the obligation to defend and contest any **Claim** made against them. The **Insurer** shall be entitled to participate fully in the defence and in the negotiation of any settlement that involves or appears reasonably likely to involve the **Insurer** making payment under the policy.

The **Insurer** will accept as necessary the retention of separate legal representation to the extent required by a material conflict of interest between any **Insured Persons**.

If a **Claim** or **Pre-Claim Inquiry** is made against an **Insured Person** by the **Company**, the **Insurer** shall have no duty or obligation to communicate with any other **Insured Person** or the **Company** in relation to that **Claim** or **Pre-Claim Inquiry**.

The applicable **Insured** shall reimburse the **Insurer** for any payments which are ultimately determined not to be covered by this policy.

6.5 Consent

The **Insured** shall not admit or assume any liability, enter into any settlement agreement, or consent to any judgment or incur any amounts covered under this policy without the prior written consent (which shall not be unreasonably delayed or withheld) of the **Insurer**. Only liabilities, settlements and judgments resulting from **Claims** defended in accordance with this policy or other **Insured Events** handled in accordance with this policy shall be recoverable as a **Loss** under this policy.

If all **Insured Events** which are subject to a single **Retention** can be fully, finally and irrevocably disposed of for an amount (inclusive of **Defence Costs**) not exceeding that **Retention**, then the **Insurer's** consent shall not be required for such disposition.

The reporting of matters to an **Official Body** without the **Insurer's** prior written consent shall not constitute a contravention of this Section 6.5 (Consent) by the **Insured**, but only where the **Insured** is not legally permitted by the **Official Body** to make a request for such consent and provided that, as soon as legally permitted by the **Official Body**, the **Insured** will seek **Insurer's** consent in accordance with this Section 6.5 (Consent).

6.6 Allocation

If a **Claim** is made jointly against any **Insured Person** and any **Company** or any other person or entity or a **Claim** or other **Insured Event** involves both covered and uncovered matters or persons under this policy, then the **Insured** and the **Insurer** shall use commercially reasonable efforts to determine a fair and equitable allocation of **Loss** covered under this policy, on the basis of established judicial allocation principles which shall take into account the legal and financial exposures, and the relative benefits obtained by the relevant parties.

If the **Insurer** and the **Insured** cannot agree on allocation in accordance with this Section 6.6 (Allocation) within 14 days of any allocation issue first notified in writing to the **Insured** by the **Insurer**, then they agree to refer the determination to **Senior Counsel**, whose decision shall be final and binding on all parties. **Senior Counsel** is to determine the fair and equitable allocation as an expert, not as an arbitrator. The **Insured** and the **Insurer** shall be entitled to make written submissions to **Senior Counsel**. **Senior Counsel** is to take account of the parties' submissions, but **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 judgment and opinion. **Senior Counsel's** expenses in

providing such determination will be borne equally by the **Insured** and the **Insurer** and any such payments will not erode the **Limit of Liability**.

6.7 Advance Payment of Costs

Except to the extent that the **Insurer** has denied cover, the **Insurer** will advance to, or pay on behalf of an **Insured**, costs provided under the policy promptly after sufficiently detailed invoices, including time, expense and narrative detail satisfactory to the **Insurer**, are received and accepted by the **Insurer**. The **Insurer** may not refuse to advance costs by reason only that the **Insurer** considers that conduct specified in Exclusion 4.1 (Conduct) has occurred until such time as the condition to that Exclusion is satisfied.

6.8 Order of Payments

The **Insurer** will pay **Loss** covered under this policy in the order in which such **Loss** is presented to the **Insurer** for payment. Should the **Insurer**, at its sole and absolute discretion, determine that the **Limit of Liability** will not be sufficient to cover all such **Loss**, the **Insurer** shall pay **Loss** in the following order:

- (i) **Loss of an Insured Person** where the **Company** has not indemnified such **Insured Person**;
- (ii) thereafter, with respect to any remaining balance of the **Limit of Liability**, the **Insurer** may, at its option, request the **Policyholder** to elect in writing either to stipulate the order and the amounts in which **Loss** is to be discharged, or to receive such balance to be held on behalf of any **Insured** who has incurred such **Loss**.

Payment pursuant to this Section 6.8 (Order of Payments) shall fully discharge the **Insurer** from its obligations under this policy.

6.9 Subrogation

In the event of any payment under this policy, the **Insurer** shall be subrogated to the extent of such payment to all of the **Insureds'** rights of recovery, contribution and indemnity and the **Insureds** will provide all reasonable assistance and will do nothing to prejudice such rights. The **Insurer** will not exercise its rights of subrogation against an **Insured Person** in connection with any **Insured Event**, unless it can establish that Exclusion 4.1 (Conduct), applies to that **Insured Event** and to that **Insured Person**.

7. Limit and Retention

7.1 Limit of Liability

The total amount payable by the **Insurer** under this policy shall not exceed the **Limit of Liability** except with respect to Cover 1.3 (Special Excess Protection for Non-Executive Directors) where the **Insurer's** liability is in addition to the **Limit of Liability**, but shall not exceed the **Non-Executive Director Special Excess Limit** for each **Non-Executive Director** and the **Non-Executive Director Special Excess Aggregate Limit** in the aggregate. The **Insurer** shall have no liability in excess of all such limits, irrespective of the number of **Insured Events**, **Insureds** or amount of any **Loss**, including with respect to all **Insured Events** that constitute a **Single Claim** whenever first made or arising.

Each Sub-Limit of Liability specified in the Schedule is the maximum the **Insurer** shall pay for the cover to which it applies and is part of the **Limit of Liability**.

7.2 Retention

The **Insurer** will only pay for any amount of **Loss** which is in excess of the **Retention**. The **Company** will be liable for the **Retention** which will remain uninsured.

If any **Company** is permitted or required to indemnify an **Insured Person**, but fails to do so within 30 days, then the **Insurer** shall advance all **Loss** to the **Insured Person** and all **Loss** within the **Retention** will be repaid by the **Company** to the **Insurer** as soon as reasonably practicable.

If an **Insured Person** becomes legally obligated to repay to a **Company** monies advanced by the **Company** on account of any **Claim**, by reason of sections 234(3) and 205 of the Companies Act 2006, the **Insurer** agrees to pay such amount to the **Company** on behalf of the **Insured Person** promptly upon notification by the **Policyholder** to the **Insurer** of such **Insured Person's** obligation to repay.

No **Retention** is applicable to the following: (i) **Non-Indemnifiable Loss**, (ii) **Derivative Investigation Costs**, (iii) **Company Crisis Loss** or (iv) **Reputation Expenses**.

A single **Retention** shall apply to **Loss** arising from all **Insured Events** that constitute a **Single Claim**. In the event a **Single Claim** triggers more than one **Retention**, then, as to such **Single Claim**, the highest of such **Retentions** shall be deemed the **Retention** applicable to **Loss** arising from such **Single Claim** unless this policy expressly provides otherwise.

7.3 Specified Underlying Insurance

This policy shall always apply excess over any other valid and collectible insurance including any directors and officers' liability, management liability, employment practices liability, environmental impairment liability, pension trustee liability, property, product liability or general liability insurance; or any indemnification available to the **Insured** from any other party.

7.4 Outside Entity Indemnification

With respect to **Outside Entities**, insurance provided by this policy applies excess over (i) any indemnification provided by an **Outside Entity**, and (ii) any other valid and collectible insurance issued to an **Outside Entity** for the benefit of its directors, officers or employees.

7.5 Recovery of Limits

In the event the **Insurer** recovers amounts it paid under this policy, the **Insurer** will reinstate the **Limit of Liability** of this policy to the extent of such recovery, less its costs and expenses incurred in administering and obtaining such recovery. The **Insurer** assumes no duty to seek a recovery of any amounts paid under this policy. The **Insurer**, in its sole and absolute discretion, shall determine the amounts to be credited, if any, toward a reinstatement of the **Limit of Liability**.

8. General Provisions

8.1 Worldwide Territory

Unless prohibited from doing so by law or regulation, this policy shall apply to any **Claim** made against an **Insured** and/or **Insured Event** occurring anywhere in the world.

8.2 Non-Rescindability

Except (i) with respect to Insurance Cover 1.4 (Company Securities Liability), or (ii) for any fraudulent misrepresentation or fraudulent non-disclosure where established by final non-appealable adjudication of a judicial or arbitral tribunal, or any written admission by or on behalf of any **Insured**, this policy is not avoidable or rescindable in whole or in part and the **Insurer** shall have no other

remedy with respect to any pre-inception misrepresentation or pre-inception non-disclosure by any **Insured** in connection with this policy.

8.3 Non-Payment

This policy may not be cancelled except for non-payment of the premium by the **Policyholder**.

8.4 Severable Nature of the Policy

This policy covers each **Insured** for its own individual interest.

No statements made by or on behalf of an **Insured** (including by an agent of the **Insured**) or breach of any term of this policy, or any information or knowledge possessed by an **Insured**, shall be imputed to any other **Insured Person** for the purpose of determining whether any individual **Insured** is covered under this policy.

In determining whether any of Exclusions 4.1 (Conduct), 4.3 (Bodily Injury / Property Damage) and 4.4 (US Claims Brought by any Company) apply, the **Wrongful Acts** of any **Insured** shall not be imputed to any other **Insured Person**.

With respect to Insurance Cover 1.4 (Company Securities Liability) only, the statements made by, or on behalf of, information or knowledge possessed by and any conduct of any past, present or future chief executive officer or chief financial officer (or equivalent executive or management positions) of a **Company** shall be imputed to that **Company**; and the knowledge of the same officers of the **Policyholder** shall be imputed to all **Companies**.

8.5 Changes in Risk

US Securities

Unless **US SEC Exposure** is shown as covered on the Schedule no cover is provided.

With respect to any **Company** that is covered for a **US SEC Exposure**, if during the **Policy Period** the US stock market capitalization of such **Company** exceeds the percentage specified in Item 15 of the Schedule as the individual or collective result of any offering of **Securities**, then the **Insurer** shall not be liable under this policy for any **Loss** arising out of, based upon or attributable to any act, error or omission occurring after the date that such percentage is exceeded, where such act, error or omission is in connection with the **Securities** offered or any related registration or reporting requirement.

Where any **US SEC Exposure** attaches or exceeds the percentage specified in Item 15 of the Schedule during the **Policy Period**, cover may be extended under this policy provided that the **Policyholder** gives the **Insurer** sufficient details to assess and evaluate its exposure with respect to such **US SEC Exposure** and the **Policyholder** accepts any consequent amendments to the policy terms and conditions, including payment of any reasonable additional premium required by the **Insurer**.

Transactions

The **Insurer** shall not be liable for **Loss** arising out of, based upon or attributable to:

- (i) a **Wrongful Act** occurring; or
- (ii) any other **Insured Event** arising

after the effective date of a **Transaction**.

Subsidiaries

With respect to any **Subsidiary**, the **Insurer** shall only be liable for **Loss** arising out of, based upon or attributable to:

- (i) a **Wrongful Act** occurring; or
- (ii) any other **Insured Event** arising;

while an entity was or is a **Subsidiary**.

8.6 Notice & Authority

Except as provided in Section 6.1 (Notice & Reporting) the **Policyholder** shall act on behalf of all **Insureds** in connection with all matters relevant to this policy unless the **Policyholder** is insolvent in which event each **Insured** shall act on their own behalf.

8.7 Assignment

This policy and any rights under or in respect of it cannot be assigned without the prior written consent of the **Insurer**.

8.8 Interpretation

The descriptions in the headings and titles of this policy are solely for reference and convenience and do not lend any meaning to this policy. Words and expressions in the singular shall include the plural and vice versa. Words following the terms including, include or any similar expression shall be construed as illustrative. Words in **bold** typeface have special meaning and are defined in the policy or in the Schedule. Words that are not specifically defined in this policy have the meaning normally attributed to them.

8.9 Rights of Third Parties

Nothing in this policy is intended to confer a directly enforceable benefit on any third party other than an **Insured**, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

8.10 Governing Law

This policy and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

8.11 Disputes

Except as otherwise specifically provided in this policy, any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) which cannot be resolved by agreement within 30 days, may be referred to binding arbitration by either party, upon giving 7 days' notice to the other, in the London Court of International Arbitration (LCIA), whose rules shall be deemed incorporated by reference to this Section 8.11 (Disputes), and the cost shall be borne equally between the **Insured** and **Insurer**.

8.12 Complaints

The **Insurer** believes you deserve courteous, fair and prompt service. If there is any occasion when our service does not meet your expectations please contact us using the appropriate contact details below and provide the Policy / Claim Number and the name of the **Policyholder / Insured Person** to help us deal with your comments quickly. policy and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

Claim related complaints:

Head of Financial Lines & Professions Claims – Claims Manager

58 Fenchurch Street, London, EC3M 4AB

Telephone: +44 (0) 20 7063 5418

Email: claims.fl2@aig.com

Online: www.aig.com/uk and select "Feedback & Complaints"

All other complaints:

Customer Relations Unit

AIG Europe Limited, 2-8 Altyre Road, Croydon CR9 2LG

Telephone: +44 (0) 20 8649 6666

Facsimile: +44 (0) 20 8680 7330 Email:

uk.customer.relations@aig.com

Online: www.aig.co.uk and select "Feedback & Complaints"

The **Insurer** will acknowledge the complaint within 5 business days of receiving it, keep you informed of progress and do our best to resolve matters to your satisfaction within 8 weeks. If we are unable to do this you may be entitled to refer the complaint to the Financial Ombudsman Service (FOS) who will review your case. The **Insurer** will provide full details of how to do this when we provide our final response letter addressing the issues raised.

The FOS may not be able to consider a complaint if the complainant:

- has not provided us with the opportunity to resolve the complaint, or
- is a business with more than 10 employees and a group annual turnover of more than €2 million; or
- is a trustee of a trust with a net asset value of more than £1 million or;
- is a charity with an annual income of more than £1 million.

The FOS can be contacted at:

Financial Ombudsman Service,
South Quay Plaza, 183 Marsh Wall, London, E14 9SR

Telephone: 0800 023 4567
(free for people phoning from a "fixed line", i.e. a landline at home)

0300 123 9123
(free for mobile-phone users who pay a monthly charge for calls to numbers starting 01 or 02)

Email: complaint.info@financial-ombudsman.org.uk

Following this complaint procedure does not affect your right to take legal action.

8.13 Privacy

AIG Europe Limited's Privacy Policy is available at www.aig.co.uk/privacypolicy or by requesting a copy from Data Protection Officer, Legal Department, AIG Europe Limited, The AIG Building, 58 Fenchurch Street, London EC3M 4AB (email: DataProtectionOfficer@aig.com).

By submitting information to AIG relating to any identifiable individual, you represent that you have authority to provide that personal information to AIG. With respect to any individual about whom you provide personal information to AIG, you agree: (a) to inform the individual about the content of the Privacy Policy; and (b) to obtain any legally-required consent for the collection, use, disclosure, and transfer (including cross-border transfer) of personal information about the individual in accordance with the Privacy Policy.

8.14 Financial Services Compensation Scheme

The **Insurer** is covered by the Financial Services Compensation Scheme (FSCS). The **Insured** may be entitled to compensation from the scheme in the unlikely event that the **Insurer** cannot meet its obligations. This depends on the type of business and the circumstances of the claim. Further information is available from the FSCS.

Financial Services Compensation Scheme, 7th Floor Lloyds Chambers, Portoken Street, London E1 8BN

Telephone: +44 (0) 20 7892 7300

Fax: +44 (0) 20 7892 7301

E-mail: enquiries@fscs.org.uk

APPENDIX A

Definitions applying to Extension 3.8 Company Crisis Loss

The following definitions apply to Extension 3.8 (Company Crisis Loss) only and shall form part of Section 5-Definitions of the policy.

(i) **Crisis** means:

(a) a **Delisting Crisis**; and

(b) one of the following events which, in the good faith opinion of the Chief Financial Officer of the **Company** did cause or is reasonably likely to cause a **Material Effect on the Company's Common Stock Price**:

1. Negative earning or sales announcement

The public announcement of the **Company's** past or future earnings or sales, which is substantially less favourable than any of the following: (i) the **Company's** prior year's earnings or sales for the same period; (ii) the **Company's** prior public statements or projections regarding earnings or sales for such period; or (iii) an outside securities analyst's published estimate of the **Company's** earnings or sales.

2. Loss of a patent, trademark or copyright or major customer or contract

The public announcement of an unforeseen loss of: (i) the **Company's** intellectual property rights for a patent, trademark or copyright, other than by expiration; (ii) a major customer or client of the **Company**; or (iii) a major contract with the **Company**.

3. Product recall or delay

The public announcement of the recall of a major product of the **Company** or the unforeseen delay in the production of a major product of the **Company**.

4. Mass tort

The public announcement or accusation that the **Company** has caused the bodily injury, sickness, disease, death or emotional distress of a group of persons, or damage to or destruction of any tangible group of properties, including the loss of use thereof.

5. Employee layoffs or loss of key directors or officers

The public announcement of layoffs of employees of the **Company**. The death or resignation of one or more key **Directors or Officers**, trustees or governors, or the General Counsel and/or Risk Manager; of the **Policyholder**.

6. Elimination or suspension of dividend

The public announcement of the elimination or suspension of a regularly scheduled dividend previously being paid by the **Company**.

7. Write-off of assets

The public announcement that the **Company** intends to write off a material amount of its assets.

8. Debt restructuring or default

The public announcement that the **Company** has defaulted or intends to default on its debt or intends to engage in a debt restructuring.

9. Bankruptcy

The public announcement that the **Company** intends to file for bankruptcy protection or that a third party is seeking to file for involuntary bankruptcy on behalf of the **Company**; or that bankruptcy proceedings are imminent, whether voluntary or involuntary.

10. Governmental or regulatory litigation

The public announcement of the commencement or threat of commencement of litigation or governmental or regulatory proceedings against the **Company**.

11. Unsolicited takeover bid

An unsolicited written offer or bid by any person or entity other than an **Insured** or any affiliate of any **Insured**, whether publicly announced or privately made to a **Director** or **Officer** of a **Company**, to effect a **Transaction** of the **Policyholder**.

A **Crisis** shall first arise when the **Company** or any of its **Directors** or **Officers**, or governors or the General Counsel and/or Risk Manager of the **Company** shall first become aware of such **Crisis**. A **Crisis** shall conclude once the **Crisis Firm** advises the **Company** that such **Crisis** no longer exists or when the Sub-Limit of liability for Extension 3.8 (Company Crisis Loss) has been exhausted.

(ii) **Crisis Loss** means: In accordance with Extension 3.8 (Company Crisis Loss), the following amounts incurred, with the **Insurer's** prior written consent, during a **Crisis** for which the **Company** is legally liable:

- (a) the reasonable and necessary fees, costs and expenses of a **Crisis Firm** or, with respect to a **Delisting Crisis** only, legal counsel retained with the **Insurer's** prior written consent, in the performance of **Crisis Services** for the **Company**;
- (b) the reasonable and necessary fees, costs and expenses incurred in the printing, advertising or mailing of materials; and
- (c) travel costs incurred by **Insured Persons** of the **Company** or of the **Crisis Firm** arising from or in connection with the **Crisis**.

(iii) **Crisis Services**

services performed by:

- (a) a **Crisis Firm**; and
- (b) solely with respect to a **Delisting Crisis**, shall include any legal services performed by legal counsel,

in advising a **Company** on minimising potential harm to such **Company** from the **Crisis** (including but not limited to restoring investor confidence in the **Company**).

(iv) **Delisting Crisis**

written notice to the **Company** that such **Company's Securities** will be or have been delisted from an **Exchange** at the initiation of such **Exchange**.

Exchange means a publicly regulated stock exchange.

(v) **Material Effect on the Company's Common Stock Price** means, within a period of 24 hours, that the price per share of the **Company's** common stock shall decrease by 15% net of the percentage change in the Standard & Poor's Composite Index.

附録五、日本董監事及重要職員責任保険商品

みます。

第8条（保険金を支払わない場合—その2）

当社は、被保険者に対してなされた次のいずれかに該当する損害賠償請求に起因する損害に対しては保険金を支払いません。

なお、次の①から⑧までの中で記載されている事由または行為については、実際に生じたまたは行われたと認められた場合に限らず、それらの事由または行為があったとの申し立てに基づいて被保険者に対して損害賠償請求がなされた場合にも、本条の規定は適用されます。

- ① 初年度契約の保険期間の開始日より前に行われた行為に起因する一連の損害賠償請求
- ② 初年度契約の保険期間の開始日より前に会社に対して提起されていた訴訟およびこれらの訴訟の中で申し立てられた事実と同一または関連する事実起因する損害賠償請求
- ③ この保険契約の始期日において、被保険者に対する損害賠償請求がなされるおそれがある状況を被保険者が知っていた場合^(注1)に、その状況の原因となる行為に起因する一連の損害賠償請求
- ④ この保険契約の始期日より前に被保険者に対してなされていた損害賠償請求の中で申し立てられていた行為に起因する一連の損害賠償請求
- ⑤ 直接であるとか間接であるとかを問わず、次の事由に起因する損害賠償請求
ア. 汚染物質^(注2)の排出、流出、いつ出、漏出またはそれらが発生するおそれがある状態
イ. 汚染物質^(注2)の検査、監視、清掃、除去、漏出等の防止、処理、無害化または中和化の指示または要請
- ⑥ 直接であるとか間接であるとかを問わず、核物質の危険性^(注3)またはあらゆる形態の放射能汚染に起因する損害賠償請求
- ⑦ 次に掲げるものに対する損害賠償請求
ア. 身体の障害^(注4)または精神的苦痛
イ. 財物の滅失、破損、汚損、紛失または盗難^(注5)
ウ. 口頭または文書による誹謗、中傷または他人のプライバシーを侵害する行為による人格権侵害
- ⑧ 記名子会社の役員に対する損害賠償請求のうち、記名法人の子会社ではなかった間^(注6)に行われた行為に起因する損害賠償請求
- ⑨ 他の被保険者または記名法人もしくはその子会社からなされた損害賠償請求、ならびに株主代表訴訟であるかを問わず、被保険者または記名法人もしくはその子会社が関与して、記名法人もしくはその子会社の発行した有価証券を所有する者によってなされた損害賠償請求
- ⑩ 会社の発行済株式^(注7)総数につき、保険証券記載の割合^(注8)以上を直接であるとか間接であるとかを問わず所有する者（株主権行使の指示を与える権限を有する者を含みます。以下「大株主」といいます。）からなされた損害賠償請求、または株主代表訴訟であるかを問わず、大株主が関与して、会社の発行した有価証券を所有する者によってなされた損害賠償請求

（注1）被保険者が知っていた場合 知っていたと判断できる合理的な理由がある場合を含みます。

（注2）汚染物質

固形状、液体状、気体状もしくは熱を帯びた有害な物質、または汚染の原因となる物質をいい、煙、蒸気、すす、酸、アルカリ、化学物質および廃棄物等を含みます。廃棄物には再生利用される物質を含みます。

（注3）核物質の危険性

核物質とは、核原料物質、特殊核物質または副生成物をいい、危険性には、放射性、毒性または爆発性を含みます。

（注4）身体の障害

疾病または死亡を含みます。

（注5）財物の滅失、破損、汚損、紛失または盗難 それらに起因する財物の使用不能損害を含みます。

（注6）記名法人の子会社ではなかった間 第3条（用語の定義）⑧にかかわらず、会社法第2条（定義）に定める子会社ではなかった間をいいます。

（注7）会社の発行済株式 議決権のない株式を除きます。

（注8）保険証券記載の割合 会社が複数である場合には、個々にその割合を算出するものとします。

第9条（保険金を支払わない場合—その3）

- （1）当社は、この普通保険約款に付帯される特約で別に定める場合を除き、被保険者に対して株主代表訴訟等による損害賠償請求がなされ、その結果、被保険者が会社に対して法律上の損害賠償責任を負担する場合に被る損害に対しては、保険金を支払いません。
- （2）（1）の規定は、法律上の損害賠償責任を負担することとなった被保険者以外の被保険者については、これを適用しません。

第10条（保険金を支払わない場合—その4）

- （1）当社は、保険期間中に次のいずれかに該当する取引（以下「取引」とい

ます。）が行われた場合には、取引の発効日の後に行われた行為に起因する損害賠償請求がなされたことにより、被保険者が被る損害に対しては保険金を支払いません。

- ① 記名法人が第三者と合併すること、または記名法人の資産のすべてを第三者に譲渡すること。
- ② 第三者が、記名法人を子会社にする^(注)こと。
- （2）保険契約者または被保険者が、（1）に規定する取引が行われた事実を遅滞なく当社に対して書面により通知し、当社が（1）の規定を適用しないことを書面により承認した場合は、（1）の規定は適用されません。

（注）子会社にする

第3条（用語の定義）⑧にかかわらず、会社法第2条（定義）に定める子会社でなかった法人を、会社法第2条に定める子会社にするをいいます。

第3章 告知義務・通知義務等

第11条（告知義務）

- （1）保険契約者または被保険者になる者は、保険契約締結の際、保険申込書（当社にこの保険契約の申込みをするために提出する書類をいい、申込みに必要な内容を記載した付属書類がある場合は、これらの書類を含みます。以下「保険申込書」といいます。）の記載事項について、当社に事実を正確に告げなければなりません。
- （2）当社は、保険契約締結の際、保険契約者または被保険者が、保険申込書の記載事項について、故意または重大な過失によって事実を告げなかった場合または事実と異なることを告げた場合は、保険契約者に対する書面による通知をもって、この保険契約を解除することができます。
- （3）（2）の規定は、次のいずれかに該当する場合には適用しません。
 - ① （2）に規定する事実がなくなった場合
 - ② 当社が保険契約締結の際、（2）に規定する事実を知っていた場合または過失によってこれを知らなかった場合^(注1)
 - ③ 保険契約者または被保険者が、当社が保険金を支払うべき損害賠償請求がなされる前に、保険申込書の記載事項につき、書面をもって訂正を当社に申し出（以下「訂正の申出」^(注2)）といいます。）で、当社がこれを承認した場合。なお、当社が、訂正の申出を受けた場合において、その訂正を申し出た事実が、保険契約締結の際に当社に告げられていたとしても、当社が保険契約を締結していたと認めるときに限り、これを承認するものとします。
 - ④ 当社が、（2）の規定による解除の原因があることを知った時から1か月を経過した場合または保険契約締結時から5年を経過した場合
- （4）（2）に規定する事実が、当社が保険申込書において定めた危険^(注3)に関する重要な事項に関係のないものであった場合には、（2）の規定を適用しません。ただし、この保険契約と全部または一部に対して支払責任が同じである他の保険契約または共済契約（以下「他の保険契約等」といいます。）に関する事項については、（2）の規定を適用します。
- （5）損害賠償請求がなされた後に（2）の規定による解除がなされた場合であっても、第20条（保険契約の解約・解除の効力）の規定にかかわらず、当社は、保険金を支払いません。この場合において、既に保険金を支払っていたときは、当社は、その返還を請求することができます。
- （6）（5）の規定は、（2）に規定する事実に基づかずになされた損害賠償請求による損害については適用しません。

（注1）当社が保険契約締結の際、（2）に規定する事実を知っていた場合または過失によってこれを知らなかった場合

当社のために保険契約の締結の代理を行う者が、事実を告げることを妨げた場合または事実を告げないこともしくは事実と異なることを告げることを勧めた場合を含みます。

（注2）訂正の申出

この普通保険約款に付帯される特約に規定する訂正の申出を含みます。

（注3）危険

損害の発生の可能性をいいます。

第12条（通知義務）

- （1）保険契約締結の後、保険申込書の記載事項の内容に変更を生じさせる事実^(注1)が発生した場合には、保険契約者または被保険者は、事実の発生がその責めに帰すべき事由によるときはあらかじめ、責めに帰すことのできない事由によるときはその発生を知った後、遅滞なく、その旨を当社に申し出て、変更の承認を請求しなければなりません。ただし、その事実がなくなった場合には、当社に申し出る必要はありません。
- （2）（1）の事実がある場合^(注2)には、当社は、その事実について変更届出書を受領したと否とを問わず、保険契約者に対する書面による通知をもって、この保険契約を解除することができます。
- （3）（2）の規定は、当社が（2）の規定による解除の原因があることを知った時から1か月を経過した場合または（1）の事実が生じた時から5年を経過した場合には適用しません。
- （4）保険契約者または被保険者が（1）に規定する手続を怠った場合には、当社は、（1）の事実が発生した時または保険契約者もしくは被保険者がその

発生を知った時から当社が変更届出書を受領するまでの間になされた損害賠償請求による損害に対しては、保険金を支払いません。ただし、(1)に規定する事実が発生した場合において、変更後の保険料が変更前の保険料より高くなかったときは除きます。

(5)(4)の規定は、(1)の事実に基づかずになされた損害賠償請求による損害については適用しません。

(注1) 保険申込書の記載事項の内容に変更を生じさせる事実
保険申込書の記載事項のうち、保険契約締結の際に当社が交付する書面等においてこの条の適用がある事項として定めたものに関する事実に限ります。

(注2) (1)の事実がある場合(4)ただし書の規定に該当する場合を除きます。

第13条（保険契約者の住所変更）

保険契約者が保険証券記載の住所を変更した場合は、保険契約者は、遅滞なく、その旨を当社に通知しなければなりません。

第14条（保険契約に関する調査）

当社は、いつでも、保険申込書の記載事項、第10条（保険金を支払わない場合—その4）(2)の規定により通知された事項または保険契約に関して必要な他の事項について、調査することができます。

第4章 保険契約の無効、取消、解約または解除

第15条（保険契約の無効）

保険契約者が、保険金を不法に取得する目的または第三者に保険金を不法に取得させる目的をもって締結した保険契約は無効とします。

第16条（保険契約の取消）

保険契約者または被保険者の詐欺または強迫によって当社が保険契約を締結した場合には、当社は、保険契約者に対する書面による通知をもって、この保険契約を取り消すことができます。

第17条（保険契約者による保険契約の解約）

保険契約者は、当社に対する書面による通知をもって、この保険契約を解約することができます。ただし、この場合において、当社が未払込保険料^(注)を請求したときには、保険契約者は、その保険料を払い込まなければなりません。

(注) 未払込保険料

解約時までの既経過期間に対して払い込まれるべき保険料のうち、払込みがなされていない保険料をいいます。

第18条（当社による保険契約の解除）

当社は、次のいずれかに該当する場合には、保険契約者に対する書面による通知をもって、この保険契約を解除することができます。

① 保険契約者または被保険者が、正当な理由がなく第14条（保険契約に関する調査）に規定する調査を拒んだ場合。ただし、その拒否の事実があった時から1か月を経過した場合には、解除することはできません。

② 保険契約者が第21条（保険料の返還または請求—告知義務・通知義務等の場合）①または②の追加保険料の払込みを怠った場合^(注)

(注) 保険契約者が第21条（保険料の返還または請求—告知義務・通知義務等の場合）①または②の追加保険料の払込みを怠った場合

当社が、保険契約者に対し追加保険料を請求したにもかかわらず相当の期間内にその払込みがなかった場合に限ります。

第19条（重大事由がある場合の当社による保険契約の解除）

(1) 当社は、次のいずれかに該当する事由がある場合には、保険契約者に対する書面による通知をもって、この保険契約を解除することができます。

① 保険契約者または被保険者が、当社にこの保険契約に基づく保険金を支払わせることを目的として損害を生じさせ、または生じさせようとしたこと。

② 被保険者が、この保険契約に基づく保険金の請求について、詐欺を行い、または行おうとしたこと。

③ ①および②に掲げるもののほか、保険契約者または被保険者が①および②の事由がある場合と同程度に当社のこれらの者に対する信頼を損ない、この保険契約の存続を困難とする重大な事由を生じさせたこと。

(2) 損害賠償請求がなされた後に(1)の規定による解除がなされた場合であっても、第20条（保険契約の解約・解除の効力）の規定にかかわらず、(1)①から③までの事由が生じた時以後になされた損害賠償請求による損害に対しては、当社は、保険金を支払いません。この場合において、既に保険金を支払っていたときは、当社は、その返還を請求することができます。

第20条（保険契約の解約・解除の効力）

保険契約の解約および解除は、将来に向かってのみその効力を生じます。

第5章 保険料の返還または請求

第21条（保険料の返還または請求—告知義務・通知義務等の場合）

当社は、訂正の申出を承認する場合、第10条（保険金を支払わない場合—その4）(2)もしくは第12条（通知義務）(1)の通知を受領した場合または契約条件変更の申出を承認する場合には、保険料の返還または追加保険料の請求について、次のとおりとします。ただし、この保険契約の保険期間が1年を超えまたは1年に満たない場合等において、当社が別に定める方法により保険料を返還または追加保険料を請求することがあります。

区分	保険料の返還、追加保険料の請求
① 第11条（告知義務）(1)により告げられた内容が事実と異なる場合において、保険料を変更する必要があるとき。	変更前の保険料と変更後の保険料との差額を返還または請求します。
② 第10条（保険金を支払わない場合—その4）(1)の取引または第12条（通知義務）(1)の事実が発生した場合において、保険料を変更する必要があるとき。	次の算式により算出した額 ^(注1) を返還または請求します。 $\frac{\text{変更前の保険料と変更後の保険料との差額}}{\text{未経過日数}} \times \frac{\text{未経過日数}}{365}$
③ ①および②のほか、保険契約締結の後、保険契約者が書面をもって契約条件変更を当社に通知し、承認の請求を行い、当社がこれを承認する場合において、保険料を変更する必要があるとき。	ア. 変更後の保険料が変更前の保険料よりも高くなる場合は、次の算式により算出した額を請求します。 $\frac{\text{変更後の保険料と変更前の保険料との差額}}{\text{未経過期間}} \times \frac{\text{未経過期間}}{\text{短期料率}^{(注2)}}$ イ. 変更後の保険料が変更前の保険料よりも低くなる場合は、次の算式により算出した額を返還します。 $\frac{\text{変更後の保険料と変更前の保険料との差額}}{\text{未経過期間}} \times \left(1 - \frac{\text{既経過期間}}{\text{短期料率}^{(注2)}} \right)$

(注1) 次の算式により算出した額 保険契約者または被保険者の申出に基づき、第10条（保険金を支払わない場合—その4）(1)の取引または第12条（通知義務）(1)の事実が発生した時以後の期間に対して算出した額とします。

(注2) 短期料率

別表に掲げる短期料率をいいます。

第22条（保険料の返還—無効または失効の場合）

保険契約の無効または失効の場合には、保険料の返還について、次のとおりとします。ただし、この保険契約の保険期間が1年を超えまたは1年に満たない場合等において、当社が別に定める方法により保険料を返還することがあります。

区分	保険料の返還
① 保険契約が無効となる場合	既に払い込まれた保険料の全額を返還します。ただし、第15条（保険契約の無効）の規定により、保険契約が無効となる場合は、既に払い込まれた保険料を返還しません。
② 保険契約が失効となる場合	次の算式により算出した額を返還します。 $\frac{\text{既に払い込まれた保険料}}{\text{未経過日数}} \times \frac{\text{未経過日数}}{365}$

第23条（保険料の返還—取消の場合）

第16条（保険契約の取消）の規定により、当社が保険契約を取り消した場合は、当社は、既に払い込まれた保険料を返還しません。

第24条（保険料の返還—解約または解除の場合）

(1) 保険契約の解除または解約の場合には、保険料の返還について、次のと

おりとします。ただし、この保険契約の保険期間が1年を超えもしくは1年に満たない場合またはこの普通保険約款に付帯される特約の規定により保険契約者が保険料を分割して払い込む場合等において、当社が別に定める方法により保険料を返還することがあります。

区分	保険料の返還
① 第11条（告知義務）（2）、第12条（通知義務）（2）、第18条（当社による保険契約の解除）、第19条（重大事由がある場合の当社による保険契約の解除）（1）またはこの普通保険約款に付帯される特約の規定により、当社が保険契約を解除した場合	次の算式により算出した額を返還します。 $\frac{\text{既に払い込まれた保険料}}{365} \times \text{未経過日数}$
② 第17条（保険契約者による保険契約の解約）の規定により、保険契約者が保険契約を解約した場合	次の算式により算出した額を返還します。 $\text{既に払い込まれた保険料} \times \left(1 - \frac{\text{既経過期間に}}{\text{対応する短期料率}} \right)$

（2）（1）の規定にかかわらず、保険契約が解除または解約となる場合において、既経過期間中に保険金を支払うべき損害賠償請求がなされていたときは、当社は、保険金相当額に対応する保険料を返還しません。

（注）短期料率
別表に掲げる短期料率をいいます。

第25条（追加保険料領収前の損害賠償請求）

- （1）第21条（保険料の返還または請求・告知義務・通知義務等の場合）の規定による訂正の申出の承認または第10条（保険金を支払わない場合—その4）（2）もしくは第12条（通知義務）（1）の通知の受領によって保険契約内容を変更すべき期間が始まった後でも、第21条①または②の追加保険料を請求する場合において、第18条（当社による保険契約の解除）②の規定により、この保険契約を解除できるときは、当社は、訂正の申出または通知事項等の変更の承認によって保険契約内容を変更すべき期間の初日（以下「変更日」といいます。）から追加保険料領収までの間になされた損害賠償請求による損害に対しては、保険金を支払いません。この場合において、既に保険金を支払っていたときは、当社は、その返還を請求することができます。
- （2）第21条（保険料の返還または請求・告知義務・通知義務等の場合）の契約条件変更の申出の承認によって保険契約内容を変更すべき期間が始まった後でも、同条③の規定により追加保険料を請求する場合において、当社の請求に対して、保険契約者がその払込みを怠ったときは、当社は、変更日から追加保険料領収までの間になされた損害賠償請求による損害に対しては、契約条件変更の承認の請求がなかったものとして、この保険契約に適用される普通保険約款および特約に従い、保険金を支払います。

第6章 保険金の請求

第26条（損害賠償請求等の通知）

- （1）保険契約者または被保険者は、被保険者に対してなされたすべての損害賠償請求を遅滞なく当社に対して書面にて、損害賠償請求者の氏名および被保険者が最初にその請求を知った時の状況を含め、申し立てられている行為および原因となる事実に関する情報を通知しなければなりません。
- （2）保険契約者または被保険者が、保険期間中に、被保険者に対して損害賠償請求がなされるおそれのある状況^(注)を知った場合には、その状況ならびにその原因となる事実および行為について、発生日および関係者等に関する詳細な内容を添えて、遅滞なく、当社に対し書面により通知しなければなりません。この場合において、通知された事実または行為に起因して、被保険者に対してなされた損害賠償請求は、通知の時をもってなされたものとみなします。
- （3）保険契約者または被保険者が、正当な理由がなく（1）もしくは（2）に規定する通知を行わない場合または事実と異なることを告げた場合は、当社は、それによって当社が被った損害の額を差し引いて保険金を支払います。

（注）被保険者に対して損害賠償請求がなされるおそれのある状況 損害賠償請求がなされることが合理的に予想される状況に限ります。

第27条（損害賠償請求がなされた時の義務および義務違反の場合の取扱い）

- （1）保険契約者または被保険者は、被保険者に対して損害賠償請求がなされた場合または被保険者に対して損害賠償請求がなされるおそれのある状況を知った場合は、次表「損害賠償請求がなされた時の義務」を履行しなければなりません。これらの規定に違反した場合は、次表「義務違反の場合の取扱い」のとおりとします。

の取扱い」のとおりとします。

損害賠償請求がなされた時の義務	義務違反の場合の取扱い
① 損害の発生および拡大の防止に努めること。	保険契約者または被保険者が、正当な理由がなく左記の規定に違反した場合は、当社は、発生または拡大を防止することができたと認められる損害額を差し引いて保険金を支払います。
② 他人に損害賠償の請求 ^(注1) をすることができる場合には、その権利の保全および行使に必要な手続をすること。	保険契約者または被保険者が、正当な理由がなく左記の規定に違反した場合は、当社は、他人に損害賠償の請求 ^(注1) をすることによって取得することができたと認められる額を差し引いて保険金を支払います。
③ 損害賠償の請求 ^(注1) についての訴訟を提起し、または提起された場合は、遅滞なく当社に通知すること。	保険契約者または被保険者が、正当な理由がなく左記の規定に違反した場合は、当社は、それによって当社が被った損害の額を差し引いて保険金を支払います。
④ 他の保険契約等の有無および内容 ^(注2) について遅滞なく当社に通知すること。	
⑤ ①から④までのほか、当社が特に必要とする書類または証拠となるものを求めた場合には、遅滞なく、これを提出し、また当社が行う損害の調査に協力すること。	

- （2）保険契約者または被保険者が、正当な理由がなく（1）⑤の書類に事実と異なる記載をし、またはその書類もしくは証拠を偽造もしくは変造した場合には、当社は、それによって当社が被った損害の額を差し引いて保険金を支払います。

（注1）損害賠償の請求 共同不法行為等の場合における連帯債務者相互間の求償を含みます。

（注2）他の保険契約等の有無および内容
既に他の保険契約等から保険金または共済金の支払を受けた場合には、その事実を含みます。

第28条（争訟費用および法律上の損害賠償金）

- （1）当社は、当社が必要と認めた場合は、損害賠償請求の解決に先立って、あらかじめ争訟費用を支払うことができるものとします。ただし、被保険者は、既に支払われた争訟費用の全額または一部について、この約款の規定により保険金が受けられないこととなった場合には、支払われた額を限度として当社へ返還しなければなりません。
- （2）当社は、この保険契約によって防御の義務を負担するものではありません。
- （3）被保険者は、あらかじめ当社の書面による同意がない限り、損害賠償責任の全部もしくは一部を承認し、または争訟費用の支払いを行ってはなりません。この保険契約においては、当社が同意した法律上の損害賠償金および争訟費用のみが損害として、保険金の支払の対象となります。
- （4）当社が、会社および被保険者に対してなされた損害賠償請求に関する争訟費用と会社および被保険者が連帯して負担する法律上の損害賠償金について同意した場合には、保険契約者、被保険者および当社は、会社および被保険者各々が負担すべき金額の公正にして妥当な配分を決定するために協力するものとします。

第29条（損害賠償請求解決のための協力）

- （1）当社は、当社が必要と認めた場合には、自己の費用をもって、被保険者に対する損害賠償請求についての訴訟、調停、和解、仲裁または調査につき、被保険者に協力することができるものとします。この場合において、被保険者は、当社の求めに応じ、当社に協力し必要な情報を提供しなければなりません。
- （2）被保険者が正当な理由なく（1）の当社の求めに応じない場合には、当社は、それによって当社が被った損害の額を差し引いて保険金を支払います。

第30条（他の保険契約等がある場合の支払保険金）

当社は、第2条（損害の範囲および支払保険金）（2）の規定にかかわらず、他の保険契約等がある場合においては、損害の額が他の保険契約等により保険金を支払う対象となる金額とその免責金額の合計額、またはこの保険契約の保険証券記載の免責金額のいずれか大きい金額を超過する場合に限り、その超過額につき保険証券記載の縮小支払割合を乗じて得た額を保険金の支払額とします。ただし、他の保険契約等が、この保険契約の支払責任限度額の超過額に対して適用されると明記している場合は、本条の規定は適用されません。

第31条（保険金の請求）

- (1) 被保険者が保険金の支払を受けようとする場合、当社に対して保険金の支払を請求しなければなりません。
- (2) 当社に対する保険金の請求権は、被保険者が損害賠償請求権者に対して負担する法律上の損害賠償責任の額について、被保険者と損害賠償請求権者との間で、判決が確定した時、または裁判上の和解、調停もしくは書面による合意が成立した時から発生し、これを行使することができるものとします。
- (3) 被保険者が保険金の支払を請求する場合は、次表の書類または証拠のうち当社が求めるものを当社に提出しなければなりません。

保険金請求に必要な書類または証拠
① 保険金請求書
② 当社の定める損害賠償請求状況報告書
③ 被保険者が損害賠償請求権者に対して負担する法律上の損害賠償責任の額を示す示談書および損害賠償金の支払または損害賠償請求権者の承諾があったことを示す書類
④ 争訟費用の請求に関しては、争訟費用の額を示す見積書または請求書 ^(注)
⑤ その他当社が第32条（保険金の支払）(1)に定める必要な事項の確認を行うために欠くことのできない書類または証拠として保険契約締結の際に当社が交付する書面等において定めたもの

- (4) 当社は、損害賠償請求の内容または損害額等に応じ、保険契約者または被保険者に対して、(3)に掲げるもの以外の書類もしくは証拠の提出または当社が行う調査への協力を求めることがあります。この場合には、当社が求めた書類または証拠を速やかに提出し、必要な協力をしなければなりません。
- (5) 保険契約者または被保険者が、正当な理由がなく(4)の規定に違反した場合または(3)もしくは(4)の書類に事実と異なる記載をし、もしくはその書類もしくは証拠を偽造もしくは変造した場合は、当社は、それによって当社が被った損害の額を差し引いて保険金を支払います。
- (6) 保険金の請求権は、(2)に定める時の翌日から起算して3年を経過した場合は、時効によって消滅します。

(注) 争訟費用の額を示す見積書または請求書 既に支払がなされた場合はその領収書とします。

第32条（保険金の支払）

- (1) 当社は、請求完了日^(注1)からその日を含めて30日以内に、当社が保険金を支払うために必要な次の事項の確認を終え、保険金を支払います。
- ① 保険金の支払事由発生の有無の確認に必要な事項として、損害賠償請求の原因、損害賠償請求がなされた状況、損害発生の有無および被保険者に該当する事実
- ② 保険金が支払われない事由の有無の確認に必要な事項として、保険金が支払われない事由としてこの保険契約において定める事由に該当する事実の有無
- ③ 保険金を算出するための確認に必要な事項として、損害額および損害賠償請求と損害との関係
- ④ 保険契約の効力の有無の確認に必要な事項として、この保険契約において定める解除、無効、失効または取消の事由に該当する事実の有無
- ⑤ ①から④までのほか、他の保険契約等の有無および内容、損害について被保険者が有する損害賠償請求権その他の債権および既に取得したものの有無および内容等、当社が支払うべき保険金の額を確定するために確認が必要な事項
- (2) (1)の確認をするため、次表「事由」に掲げる特別な照会または調査が不可欠な場合には、(1)の規定にかかわらず、当社は、請求完了日^(注1)からその日を含めて次表「期間」に掲げる日数^(注2)を経過する日までに、保険金を支払います。この場合において、当社は、確認が必要な事項およびその確認を終えるべき時期を被保険者に対して通知するものとします。

事由	期間
① (1)①から④までの事項を確認するための、警察、検察、消防その他の公の機関による捜査・調査結果の照会 ^(注3)	180日
② (1)①から④までの事項を確認するための、専門機関による鑑定等の結果の照会	90日
③ 災害救助法（昭和22年法律第118号）が適用された災害の被災地域における(1)①から⑤までの事項の確認のための調査	60日
④ (1)①から⑤までの事項の確認を日本国内において行うための代替的な手段がない場合の日本国外における調査	180日
⑤ 損害賠償請求の原因、損害の内容もしくは原因事由と損害の因果関係が過去の事例に鑑みて特殊である場合または同一の原因もしくは事由に基づき多数の賠償請求がなされた場合において、(1)①から④までの事項を確認するための、専門機関による鑑定等の結果の照会	180日

- (3) (2)①から⑤までに掲げる特別な照会または調査を開始した後、(2)①から⑤までに掲げる期間中に保険金を支払う見込みがないことが明らかになった場合には、当社は、(2)①から⑤までに掲げる期間内に被保険者と

- の協議による合意に基づきその期間を延長することができます。(4)(1)から(3)までに掲げる必要な事項の確認に際し、保険契約者または被保険者が正当な理由がなくその確認を妨げ、またはこれに応じなかった場合^(注4)には、それによって確認が遅延した期間については、(1)から(3)までの期間に算入しないものとします。
- (5) (1)から(4)までの規定による保険金の支払は、保険契約者または被保険者と当社があらかじめ合意した場合を除いては、日本国内において、日本国通貨をもって行うものとします。

- (注1) 請求完了日
被保険者が第31条（保険金の請求）(3)の規定による手続を完了した日をいいます。
- (注2) 次表「期間」に掲げる日数 複数の「事由」に該当する場合は、そのうち最長の日数とします。
- (注3) 警察、検察、消防その他の公の機関による捜査・調査結果の照会 弁護士法（昭和24年法律第205号）に基づく照会その他法令に基づく照会を含みます。
- (注4) これに応じなかった場合 必要な協力を行わなかった場合を含みます。

第33条（代位）

- (1) 損害が生じたことにより被保険者が損害賠償請求権その他の債権^(注)を取得した場合において、当社がその損害に対して保険金を支払ったときは、その債権は当社に移転します。ただし、移転するのは、次表「限度額」を限度とします。

区分	限度額
① 当社が損害の額の全額を保険金として支払った場合	被保険者が取得した債権の全額
② ①以外の場合	被保険者が取得した債権の額から、保険金が支払われていない損害の額を差し引いた額

- (2) (1)②の場合において、当社に移転せずに被保険者が引き続き有する債権は、当社に移転した債権よりも優先して弁済されるものとします。
- (3) 保険契約者および被保険者は、当社が取得する(1)または(2)の債権の保全および行使ならびにそのために当社が必要とする証拠および書類の入手に協力しなければなりません。この場合において、当社に協力するために必要な費用は、当社の負担とします。

(注) 損害賠償請求権その他の債権 共同不法行為等の場合における連帯債務者相互間の求償権を含みます。

第34条（先取特権）

- (1) 第1条（保険金を支払う場合）に規定する損害賠償請求にかかわる損害賠償請求権者は、損害賠償金にかかわる被保険者の保険金請求権^(注)について先取特権を有します。
- (2) 当社は、次のいずれかに該当する場合に、損害賠償金について保険金の支払を行うものとします。
- ① 被保険者が損害賠償請求権者に対してその損害の賠償をした後に、当社から被保険者に支払う場合。ただし、被保険者が賠償した金額を限度とします。
- ② 被保険者が損害賠償請求権者に対してその損害の賠償をする前に、被保険者の指図により、当社から直接、損害賠償請求権者に支払う場合
- ③ 被保険者が損害賠償請求権者に対してその損害の賠償をする前に、損害賠償請求権者が(1)の先取特権を行使したことにより、当社から直接、損害賠償請求権者に支払う場合
- ④ 被保険者が損害賠償請求権者に対してその損害の賠償をする前に、当社が被保険者に損害賠償金にかかわる保険金を支払うことを損害賠償請求権者が承諾したことにより、当社から被保険者に支払う場合。ただし、損害賠償請求権者が承諾した金額を限度とします。
- (3) 保険金請求権^(注)は、損害賠償請求権者以外の第三者に譲渡することはできません。また、保険金請求権^(注)を質権の目的とし、または(2)③の場合を除いて差し押さえることはできません。ただし、(2)①または④の規定により被保険者が当社に対して保険金の支払を請求することができる場合を除きます。

(注) 保険金請求権
第2条（損害の範囲および支払保険金）(1)②の費用に対する保険金請求権を除きます。

第7章 その他

第35条（保険契約者または被保険者が複数の場合の取扱い）

- (1) この保険契約について、保険契約者または被保険者が2名以上である場合は、当社は、代表者1名を定めることを求めることができます。この場合において、代表者は他の保険契約者または被保険者を代理するものとします。

- (2)(1)の代表者が定まらない場合またはその所在が明らかでない場合には、保険契約者または被保険者の中の1名に対して行う当社の行為は、他の保険契約者または被保険者に対しても効力を有するものとします。
- (3)保険契約者が2名以上である場合には、各保険契約者は連帯してこの保険契約に適用される普通保険約款および特約に関する義務を負うものとします。

第36条（訴訟の提起）

この保険契約に関する訴訟については、日本国内における裁判所に提起するものとします。

第37条（準拠法）

この約款に規定のない事項については、日本国の法令に準拠します。

（別表）

短 期 料 率 表														
既経過期間	7日まで	15日まで	1か月まで	2か月まで	3か月まで	4か月まで	5か月まで	6か月まで	7か月まで	8か月まで	9か月まで	10か月まで	11か月まで	1年まで
短期料率	10%	15%	25%	35%	45%	55%	65%	70%	75%	80%	85%	90%	95%	100%

会社役員賠償責任保険追加持約

第1条（保険金を支払わない場合）

当社は、直接であると間接であるとを問わず、次のいずれかに該当する事由に起因する損害賠償請求がなされたことによる損害に対しては保険金を支払いません。

- ① 戦争^(注)、変乱、暴動、騒擾
- ② 地震、噴火、洪水、津波等の天災

(注) 戦争

宣戦の有無を問いません。

第2条（準用規定）

この特約に規定しない事項については、この特約の趣旨に反しない限り、普通保険約款およびこの保険契約に付帯される他の特約の規定を準用します。

株主代表訴訟補償特約

第1条（保険金を支払う場合）

当社は、会社役員賠償責任保険普通保険約款（以下「普通保険約款」といいます。）第9条（保険金を支払わない場合—その3）の規定にかかわらず、被保険者が会社に対して法律上の損害賠償責任を負担する場合に被る損害に対して、保険金を支払います。

第2条（支払限度額）

当社がこの保険契約で支払う保険金の額は、普通保険約款、この特約およびその他の特約で支払う保険金の額の合計で保険証券記載の支払限度額を限度とします。

第3条（準用規定）

この特約に規定しない事項については、この特約の趣旨に反しない限り、普通保険約款およびこの保険契約に付帯される他の特約の規定を準用します。

会社補償支払特約

第1条（保険金を支払う場合）

当社は、会社役員賠償責任保険普通保険約款（以下「普通保険約款」といいます。）第1条（保険金を支払う場合）の規定のほか、役員が会社の役員としての業務につき行った行為^(注)に起因して保険期間中に損害賠償請求がなされた場合において、会社が、法律、契約または定款等に基づいて適法に、普通保険約款およびその他の特約によって保険金を支払うべき損害の補償を役員に対して行ったことによって生じる損失（以下「損失」といいます。）に対して、保険金を支払います。

(注) 行為

不作為を含みます。

第2条（普通保険約款の読み替え）

この特約の適用にあたっては、次の通り普通保険約款を読み替えて適用します。

- ① 第2条（損害の範囲および支払保険金）（2）および（4）、第30条（他の保険契約等がある場合の支払保険金）ならびに第32条（保険金の支払）（2）⑤の規定中「損害の」とあるのを「損失の」
- ② 普通保険約款第28条（争訟費用および法律上の損害賠償金）（1）、第31条（保険金の請求）（1）、（3）および（5）、第32条（保険金の支払）、第33条（代位）ならびに第34条（先取特権）の規定中「被保険者」とあるのを「会社」

第3条（支払保険金）

当社がこの保険契約で支払う保険金の額は、普通保険約款、この特約およびその他の特約で支払う保険金の額の合計で保険証券記載の支払限度額を限度とします。

第4条（準用規定）

この特約に規定しない事項については、この特約の趣旨に反しない限り、普通保険約款およびこの保険契約に付帯される他の特約の規定を準用します。

保険契約の過誤に関する賠償請求補償対象外特約

当社は、直接であると間接であるとを問わず、保険契約の締結または維持について被保険者または会社に通誤があったとの申立てに基づいて被保険者に対してなされた損害賠償請求に起因する損害に対しては、保険金を支払いません。

キャプティブ保険会社危険補償対象外特約

当社は、会社によるキャプティブ保険会社の所有、運営、経営または管理^(注)に起因して被保険者に対してなされた損害賠償請求に起因する損害に対しては、保険金を支払いません。

(注) キャプティブ保険会社の所有、運営、経営または管理

これらに起因する会社の破産もしくは倒産を含みます。

北米特殊リスク補償対象外特約

当社は、被保険者に対してなされた次のいずれかに該当する損害賠償請求に起因する損害に対しては、保険金を支払いません。

- ① 米国1974年従業員退職基金保証法（Employee Retirement Income Security Act of 1974）および修正条項または米国もしくはカナダにおける州制定法もしくは判例法（Common Law）の類似の規定により受託者に課せられた責任に背き、または義務に違反したとしてなされた損害賠償請求
- ② 米国における有価証券の購入、売却、募集または勧誘に起因する^(注)損害賠償請求
- ③ 米国1933年証券法（Securities Act of 1933）、同1934年証券取引所法（Securities Exchange Act of 1934）、同連邦証券取引委員会が定める規則等、その他証券に関する同国連邦、州、地方の制定法、規則および判例法（Common Law）に対する違反に起因する^(注)損害賠償請求
- ④ 米国1970年組織犯罪取締法第9編（Title IX of the Organized Crime Control Act of 1970）もしくは修正法またはそれらに類似する州の法令もしくは判例法（Common Law）の規定に対する違反に起因する^(注)損害賠償請求

(注) 起因する

それらの事由を申し立てる場合を含みます。

原子力危険補償対象外特約

第1条（保険金を支払わない場合）

(1) 当社は、被保険者に対してなされた次のいずれかに該当する損害賠償請求に起因する損害に対しては、保険金を支払いません。

- ① 直接であると間接であるとを問わず、核物質の危険性に起因して、被保険者に対してなされた損害賠償請求。この①の規定には、次のいずれかに該当する損害賠償請求を含み、これらの中で記載されている事由または行為が、実際に生じたまたは行われたと認められた場合に限らず、それらの事由または行為があったとの申立てに基づいて被保険者に対して損害賠償請求がなされた場合にも、この規定は適用されます。ア. 会社が所有もしくは運転する、または第三者により会社のために運転される核施設に所在する核物質またはその施設から排出もしくは流出した核物質に起因する損害賠償請求
- イ. 会社によりまたは会社のために第三者により、所有、管理、使用、処理、貯蔵、輸送または処分された使用済燃料または廃棄物に含まれている核物質に起因する損害賠償請求
- ウ. 核施設の設計、建設、管理、運転または使用に関して、被保険者または会社により提供される業務、原料、部品または設備に起因する損害賠償請求

- (2) アメリカ原子力賠償責任保険協会（U.S. Nuclear Energy Liability Insurance Association）、相互原子力賠償責任アンダーライターズ（Mutual Atomic Energy Liability Underwriters）またはカナダ原子力保険協会（Nuclear Insurance Association of Canada）により発行される原子力賠償責任保険証券またはそれらに類似する保険証券により保険金が支払われるべき損害賠償請求^(注)
- (3) 米国1954年原子力法（U.S. Atomic Energy Act of 1954）またはその修正法に基づき、個人または法人が経済的補償を受けることが認められている損害賠償請求

(4) 会社または被保険者が、この特約が付帯されている会社役員賠償責任保険契約の有無にかかわらず、アメリカ合衆国またはその機関との協約に基づき、アメリカ合衆国またはその機関から原子力損害賠償を受けることができる損害賠償請求

(注) 保険金が支払われるべき損害賠償請求

支払限度額の貴消が無かったならば保険金が支払われたであろう損害賠償請求を含みます。

第2条（用語の定義）	
この特約において、次の用語の意味は、それぞれ次の定義によります。	
① 危険性	放射性、毒性または爆発性を含みます。
② 核物質	核原料物質、特殊核物質または副生成物質をいいます。核原料物質、特殊核物質および副生成物質の定義は、アメリカ1954年原子力法（U.S. Atomic Energy Act of 1954）またはその修正法の規定に従います。
③ 使用済燃料	固体であると液体であるとを問わず、原子炉において使用または放射線照射された核燃料をいいます。
④ 廃棄物	副生成物質および⑤のア、またはイ、で定義される核施設の運転によって生じた廃棄物質をいいます。
⑤ 核施設	次のいずれかに該当するものをいいます。 ア、原子炉 イ、ウランウムもしくはプルトニウムの同位元素の分離、使用済燃料の処理もしくは利用または廃棄物の管理、処理もしくは包装のために設計または使用された設備または装置 ウ、特殊核物質の処理、成型または冶金のために使用する設備または装置で、会社または被保険者が当該設備または装置の所在する施設内において保管するプルトニウムあるいはウランウム233または両者の合計が25グラムを超える場合またはウランウム235が250グラムを超えるもの エ、廃棄物の貯蔵または処分のために用意または使用された構造物、池、掘削地、施設または場所をいい、それらが所在する用地を含みます。
⑥ 原子炉	自続連鎖核分裂反応の維持のためまたは核分裂性物質が臨界量に達するように設計または使用された装置をいいます。

第3条（準用規定）
この特約に規定しない事項については、この特約の趣旨に反しない限り、普通保険約款およびこの保険契約に付帯される他の特約の規定を準用します。

免責金額の適用に関する特約

第1条（免責金額）
（1）会社役員賠償責任保険普通保険約款第2条（損害の範囲および支払保険金）（2）に規定する免責金額の適用にあたっては、一連の損害賠償請求に起因する損害の合計額から次のいずれか小さい額を差し引くものとします。 ① 保険証券記載の被保険者1名あたりの免責金額に、その一連の損害賠償請求がなされたことにより被る損害に対し、この保険契約により保険金支払の対象となる被保険者の数を乗じて得た額 ② 保険証券記載の一連の損害賠償請求あたりの免責金額（2）（1）②の免責金額が適用される場合においては、その免責金額を保険金支払の対象となる被保険者の数で除した額を各被保険者に適用されるべき免責金額とします。

第2条（会社補償支払特約を付帯する場合の特則）
第1条（免責金額）の規定にかかわらず、この保険契約に会社補償支払特約を付帯する場合には、同特約による損失に対する保険金支払につき、保険証券記載の会社補償支払特約における一連の損害賠償請求あたりの免責金額を適用します。

第3条（準用規定）
この特約に規定しない事項については、この特約の趣旨に反しない限り、会社役員賠償責任保険普通保険約款およびこの保険契約に付帯される他の特約の規定を準用します。

先行行為補償特約

会社役員賠償責任保険普通保険約款第3条（用語の定義）③および第8条（保険金を支払わない場合—その2）①の規定中「初年度契約の保険期間の開始日」とあるのを、下欄に記載された選及日に読み替えて適用します。	
選及日	保険条件明細書記載のとおり

倒産危険補償対象外特約

第1条（保険金を支払わない場合）
当社は、直接であると間接であるとを問わず、記名法人またはその子会社（以下、「記名法人等」といいます。）の倒産に関連してなされた次のいずれかに該当する損害賠償請求に起因する損害に対しては、保険金を支払いません。 ① 記名法人等の株主による損害賠償請求 ② 記名法人等の管財人による損害賠償請求 ③ 記名法人等の債権者によるまたは債権者のための損害賠償請求 ④ 記名法人等の債権回収または債務支払に係わる損害賠償請求

第2条（用語の定義）
この特約において、「倒産」の意味は、次の定義によります。 ① 損害賠償請求が日本国内においてなされた場合 ア、支払の停止または破産、民事再生手続開始、会社更正手続開始、会社整理開始もしくは特別清算開始の申立てがあったこと イ、財産につき強制換価手続が開始されたこと、仮差押命令が発せられたことまたは保全差押としての通知が発せられたこと ウ、取引金融機関または手形交換所の取引停止処分を受けたこと ② 損害賠償請求が日本国外においてなされた場合、その損害賠償請求に関して適用される法律の下で、①に規定する事項と同視し得る手続きまたは状態

第3条（準用規定）
この特約に規定しない事項については、この特約の趣旨に反しない限り、会社役員賠償責任保険普通保険約款およびこの保険契約に付帯される他の特約の規定を準用します。

石綿（アスベスト）危険補償対象外特約

当社は、直接であると間接であるとを問わず、次のいずれかに該当する物質もしくは製品の製造、販売、提供、貯蔵、使用、設置もしくは除去またはそれらの物質もしくは製品が含まれる粉塵への曝露に起因して、被保険者に対してなされた損害賠償請求によって生じる損害に対しては、保険金を支払いません。 ① 石綿 ^{（注）} または石綿 ^{（注）} 製品 ② 発癌性を有する石綿 ^{（注）} の代替物質またはその代替物質を含む製品 ③ その他石綿 ^{（注）} と同種の有害な特性を有する物質またはその物質を含む製品 （注）石綿 アスベストをいいます。

勝訴時免責金額不適用に関する特約

第1条（免責金額の不適用）
当社は、すべての被保険者に対して訴訟費用以外の損害が発生しないことが次のいずれかにより確定した場合には、会社役員賠償責任保険普通保険約款第2条（損害の範囲および支払保険金）（2）に規定する免責金額を適用しません。 ① 損害賠償請求が、正式事実審理、訴え却下の申立て、正式事実審理を経ないでなされる判決により再訴禁止効果をもつ終局的司法的判断がなされた場合 ② 再訴禁止効果をもつ完全かつ終局的和解がなされた場合

第2条（準用規定）
この特約に規定しない事項については、この特約の趣旨に反しない限り、会社役員賠償責任保険普通保険約款およびこの保険契約に付帯される他の特約の規定を準用します。

勝訴時縮小支払割合不適用に関する特約

第1条（縮小支払割合の不適用）
当社は、すべての被保険者に対して訴訟費用以外の損害が発生しないことが次のいずれかにより確定した場合には、会社役員賠償責任保険普通保険約款第2条（損害の範囲および支払保険金）（2）に規定する縮小支払割合を適用しません。 ① 損害賠償請求が、正式事実審理、訴え却下の申立て、正式事実審理を経ないでなされる判決により再訴禁止効果をもつ終局的司法的判断がなされた場合

- ② 再訴禁止効果をもつ完全かつ終局的和解がなされた場合

第2条（準用規定）

この特約に規定しない事項については、この特約の趣旨に反しない限り、会社役員賠償責任保険普通保険約款およびこの保険契約に付帯される他の特約の規定を準用します。

株主代表訴訟補助参加費用補償特約

第1条（保険金を支払う場合）

- (1) 当社は、会社役員賠償責任保険普通保険約款（以下「普通保険約款」といいます。）第1条（保険金を支払う場合）の規定のほか、被保険者が会社の役員としての業務につき行った行為^(注1)に起因して被保険者に対して株主代表訴訟がなされた場合において、会社が被保険者を補助するためにその訴訟に参加した^(注2)とき、会社が争訟費用を負担することによって被る損害に対して、この特約に従って、保険金を支払います。
- (2) 当社は、被保険者が被る損害に対して当社が普通保険約款およびこの保険契約に付帯される他の特約によって保険金を支払うべき場合に限り、(1)の規定を適用します。

(注1) 行為

不作為を含みます。

(注2) その訴訟に参加した 会社法（平成17年法律第86号）第849条（訴訟参加）の規定に基づき、被保険者を補助するため、訴訟に参加した場合に限ります。

第2条（普通保険約款の読み替え）

この特約の適用にあたっては、普通保険約款第3条（用語の定義）⑦、同第28条（争訟費用および法律上の損害賠償金）(1)および(3)、同第31条（保険金の請求）(1)、(3)および(5)、同第32条（保険金の支払）ならびに同第33条（代位）の規定中、「被保険者」とあるのは「会社」と読み替えて適用します。

第3条（免責金額の適用に関する特約の読み替え）

この特約の適用にあたっては、免責金額の適用に関する特約の規定を、次のとおり読み替えて適用します。

- ① 第1条（免責金額）(1)および(2)の規定中「被保険者の数」とあるのは、「被保険者および会社の数」
- ② 第1条（免責金額）(2)の規定中「各被保険者」とあるのは、「各被保険者および会社」

第4条（支払限度額）

当社がこの保険契約で支払う保険金の額は、普通保険約款、この特約およびその他の特約により支払う保険金の額の合計で、保険証券記載の支払限度額を限度とします。

第5条（準用規定）

この特約に規定しない事項については、この特約の趣旨に反しない限り、普通保険約款およびこの保険契約に付帯される他の特約の規定を準用します。

初期・訴訟対応費用補償特約

第1条（保険金を支払う場合）

当社は、この特約により、会社役員賠償責任保険普通保険約款（以下「普通保険約款」といいます。）第2条（損害の範囲および支払保険金）(1)に規定する争訟費用に、別表に記載する費用^(注)で被保険者が当社の同意を得て支出した費用を含みます。

(注) 別表に記載する費用 その額および使途が社会通念上妥当なものに限ります。

第2条（損害賠償請求がなされるおそれの通知義務）

- (1) 保険契約者または被保険者は、普通保険約款第26条（損害賠償請求等の通知）(2)の規定に従って、被保険者に対して損害賠償請求がなされるおそれのある状況等を通知しなければなりません。
- (2) この特約が付帯された保険契約においては、(1)の通知がなされた場合において、損害賠償請求がなされるおそれのある状況が発生したと当社が認めたときは、通知された事実または行為に起因して被保険者に対してなされた損害賠償請求は、その通知の時になされたものとみなします。

第3条（支払限度額）

第1条（保険金を支払う場合）の規定により当社が保険金を支払う費用は争訟費用の一部であり、保険証券記載の支払限度額に加算して支払われるものではありません。

第4条（準用規定）

この特約に規定しない事項については、この特約の趣旨に反しない限り、普通保険約款およびこの保険契約に付帯される他の特約の規定を準用します。

<別表>

被保険者に対して日本国内において普通保険約款第1条（保険金を支払う場合）に規定する損害賠償請求がなされた場合または普通保険約款第26条（損害賠償請求等の通知）(2)もしくはこの特約の第2条（損害賠償請求がなされるおそれの通知義務）(2)の規定により損害賠償請求がなされたものとみなされる場合に、被保険者が負担する次のいずれかに該当する費用

- ① 訴訟に関する必要文書作成にかかる費用
- ② 会社の使用人の超過勤務手当、交通費、宿泊費または臨時雇用費用
- ③ 文書提出命令および当事者照会対応費用
- ④ 資料の翻訳にかかる費用
- ⑤ ①から④までのほか、当社の同意を得て支出した費用

公告・通知費用補償特約

第1条（保険金を支払う場合）

- (1) 当社は、会社役員賠償責任保険普通保険約款（以下「普通保険約款」といいます。）第1条の規定のほか、会社が次のいずれかに該当する費用を負担することによって被る損害に対して、その費用を争訟費用の一部とみなして、保険金を支払います。
- ① 責任軽減公告・通知費用
- ② 不提訴理由通知費用
- ③ 訴訟告知受理公告・通知費用 (2) 当社は、被保険者が被る損害に対して当社が会社役員賠償責任保険普通保険約款（以下「普通保険約款」といいます。）およびその他の特約によって保険金を支払う場合に限り、(1)の規定を適用します。

第2条（用語の定義）

この特約において、次の用語の意味は、それぞれ次の定義によります。ただし、いずれの費用も、その額が社会通念上妥当なものであり当社が必要かつ有益であると認めるものに限ります。

- ① 責任軽減公告・通知費用 会社法（平成17年法律第86号）第426条（取締役等による免除に関する定款の定め）第3項または第4項の規定に基づき、取締役会が役員の責任免除の決議を行った場合に、会社法第425条（責任の一部免除）第2項第1号から第3号までに掲げる事項を公告または株主に通知するために要した費用^(注)をいいます。
- ② 不提訴理由通知費用 会社法第847条（責任追及等の訴え）第4項の規定に基づき、責任追及等の訴えを提起しない理由を株主に通知するために要した費用^(注)をいいます。
- ③ 訴訟告知受理公告・通知費用 会社法第849条（訴訟参加）第4項または第5項の規定に基づき、被保険者に対する株主代表訴訟の訴訟告知を受理した旨を公告または株主に通知するための費用をいいます。
- (注) 通知するために要した費用 弁護士意見書作成費用、事実調査にかかる費用を含み、通常支出している人件費や弁護士顧問料等は含みません。

第3条（普通保険約款の読み替え）

この特約の適用にあたっては、普通保険約款第3条（用語の定義）⑦、同第28条（争訟費用および法律上の損害賠償金）(1)および(3)、同第31条（保険金の請求）(1)、(3)および(5)、同第32条（保険金の支払）ならびに同第33条（代位）の規定中、「被保険者」とあるのは「会社」と読み替えて適用します。

第4条（支払限度額）

- (1) 当社が第1条（保険金を支払う場合）(1)の規定により支払う保険金の額は、会社が支出した第2条（用語の定義）に規定する費用の額に保険証券記載の縮小支払割合を乗じて得た額とし、第1条(1)の規定により支払う保険金の額の合計で、別表に記載する金額を限度とします。

(2)(1)の規定により当社が支払う保険金は、争訟費用の一部とみなして支払われるものであり、保険証券記載の支払限度額に加算して支払われるものではありません。

第5条（準用規定）

この特約に規定しない事項については、この特約の趣旨に反しない限り、普通保険約款およびこの保険契約に付帯される他の特約の規定を準用します。

別表

一請求および保険期間中通算の支払限度額：10,000千円ただし、保険証券にこの特約の限度額として異なる金額が記載されている場合には、その額を適用します。

被保険者の範囲に関する特約（執行役員用）

第1条（被保険者の範囲）

この特約が付帯された保険契約においては、会社役員賠償責任保険普通保険約款第3条（用語の定義）②に規定する役員に、執行役員を含みます。

第2条（準用規定）

この特約に規定しない事項については、この特約の趣旨に反しない限り、会社役員賠償責任保険普通保険約款およびこの保険契約に付帯される他の特約の規定を準用します。

被保険者の範囲に関する特約（会計参与用）

第1条（被保険者の範囲）

この特約が付帯された保険契約においては、会社役員賠償責任保険普通保険約款第3条（用語の定義）②に規定する役員に、会社法（平成17年法律第86号）上の会計参与を含みます。

第2条（準用規定）

この特約に規定しない事項については、この特約の趣旨に反しない限り、会社役員賠償責任保険普通保険約款およびこの保険契約に付帯される他の特約の規定を準用します。

被保険者の範囲に関する特約（会計監査人用）

第1条（被保険者の範囲）

この特約が付帯された保険契約においては、会社役員賠償責任保険普通保険約款第3条（用語の定義）②に規定する役員に、会社法（平成17年法律第86号）上の会計監査人を含みます。

第2条（準用規定）

この特約に規定しない事項については、この特約の趣旨に反しない限り、会社役員賠償責任保険普通保険約款およびこの保険契約に付帯される他の特約の規定を準用します。

雇用慣行賠償責任補償対象外特約

第1条（保険金を支払わない場合）

当社は、直接であると間接であるとを問わず、被保険者が役員または従業員^(注1)のいずれかに該当する事由または行為^(注2)に起因して^(注3)、被保険者に対して請求による損害に対しては、保険金を支払いません。

- ① 差別的行為
- ② セクシャルハラスメント
- ③ 不当解雇

(注1) 役員または従業員 既に退任または退職した者および採用応募者を含みます。

(注2) 事由または行為 不作為を含みます。

(注3) いずれかに該当する事由または行為に起因して それらの事由または行為を申し立てる場合を含みます。

第2条（用語の定義）

この特約において、次の用語の意味は、それぞれ次の定義によります。

- ① 差別的行為 国籍、宗教、年齢または性別その他の特性を理由として解雇すること、採用しないことまたは労働条件に関して差別的な取扱いを行うことをいいます。
 - ② セクシャルハラスメント 職場において行われる性的な言動に対する役員または従業員の対応により、その役員または従業員がその労働条件につき不利益を受けるもの、またはその性的な言動により従業員の就業環境が害されるものをいいます。
 - ③ 不当解雇 正当な理由なく、雇用契約^(注)を一方的に解約することをいい、労使の合意による退職を含みません。
- (注) 雇用契約 形式を問いません。

第3条（準用規定）

この特約に規定しない事項については、この特約の趣旨に反しない限り、会社役員賠償責任保険普通保険約款およびこの保険契約に付帯される他の特約の規定を準用します。

知的財産権に関する賠償請求補償対象外特約

第1条（保険金を支払わない場合）

- (1) 当社は、直接であると間接であるとを問わず、特許権、著作権、商標、標識もしくは種苗法に基づく権利等の知的財産権の剽窃、侵害または不正使用があったことに起因して、被保険者に対してなされた損害賠償請求による損害に対しては保険金を支払いません。
- (2) この特約の規定は、被保険者に対してなされた株主代表訴訟に対しては適用しません。

第2条（準用規定）

この特約に規定しない事項については、この特約の趣旨に反しない限り、会社役員賠償責任保険普通保険約款およびこの保険契約に付帯される他の特約の規定を準用します。

専門業務危険補償対象外特約

第1条（保険金を支払わない場合）

- (1) 当社は、会社または被保険者が他人に対して有償で行う別表に掲げる専門業務の遂行^(注)に過誤があったとの申立てに基づき、被保険者に対してなされた損害賠償請求に起因する損害に対しては保険金を支払いません。
 - (2) この特約の規定は、被保険者に対してなされた株主代表訴訟に対しては適用しません。
- (注) 業務の遂行 不作為を含みます。

第2条（準用規定）

この特約に規定しない事項については、この特約の趣旨に反しない限り、会社役員賠償責任保険普通保険約款およびこの保険契約に付帯される他の特約の規定を準用します。

<別表>

業種	業務内容
金融機関	ブローカー、ディーラー、ファイナンシャル・アドバイザー、投資アドバイザー、銀行、不動産シンジケート、保険仲立人、信託または金融商品取引法に定める証券会社としての各業務および他人に対して有償で行うその他の業務
不動産業	不動産ブローカー、不動産仲介業者、不動産シンジケート、投資アドバイザーまたは土地開発業者としての各業務および他人に対して有償で行うその他の業務

保険業	① 保険、再保険、ボンドまたは損害賠償契約（年金、寄付、養老年金契約、自家保険プログラム、プールその他の類似のプログラムのリスク・マネージメント等を含みます。） ② ①に関する保険金の支払の過誤、謝絶または遅延 ③ ①に関する損害調査または義務の履行の誠実かつ公正な取扱いの欠如
建築業	設計・意匠・デザインの立案・決定もしくはそれらに係る明細書・仕様書の作成、これらの実現に向けての準備、プロジェクトの実現可能性等に関する意見の表明、見積もり、予想、推論等の正確性に関すること、建設・組立に対する指示・監督またはこれらの事項に対して被保険者が行った指示・助言および他人に対して有償で行うその他の業務
不動産投資信託業	投資信託及び投資法人に関する法律（昭和26年法律第198号）第2条（定義）第19項に定める「資産運用会社」および他人に対して有償で行うその他の業務
情報通信事業	情報処理サービス、保守サービス、ネットワークサービス、ソフトウェア開発、情報技術者派遣、販売サービス、ネット関連サービス、その他情報サービスおよび他人に対して有償で行うその他の業務
その他の業種	他人に対して有償で行う業務

株主代表訴訟補償対象外特約

第1条（読み替え規定）

当社は、会社役員賠償責任保険普通保険約款第9条（保険金を支払わない場合—その3）（1）および（2）の規定にかかわらず、被保険者に対して株主代表訴訟等がなされたことによって被保険者が被る損害に対しては、保険金を支払いません。

第2条（準用規定）

この特約に規定しない事項については、この特約の趣旨に反しない限り、会社役員賠償責任保険普通保険約款およびこの保険契約に適用される他の特約の規定を準用します。

会社役員賠償責任保険追加特約（標準契約プラン用）

第1条（保険金を支払わない場合）

当社は、直接であると間接であるとを問わず、次のいずれかに該当する事由に起因する損害賠償請求がなされたことによる損害に対しては保険金を支払いません。

- ① 戦争^(注)、変乱、暴動、騒擾
- ② 地震、噴火、洪水、津波等の天災

（注）戦争
宣戦の無有を問いません。

第2条（普通保険約款の読み替え）

この特約が付帯される保険契約においては、会社役員賠償責任保険普通保険約款（以下「普通保険約款」といいます。）第3条（用語の定義）⑨の規定を次のとおり読み替えて適用します。

「⑨ 継続契約

次のいずれかに該当する保険契約をいいます。ア. 会社役員賠償責任保険普通保険約款に基づく当社との保険契約（以下

「会社役員賠償責任保険契約」といいます。）の保険期間の終了日（その会社役員賠償責任保険契約が終了日前に解約または解除されていた場合にはその解約または解除の日）を保険期間の開始日とし、記名法人を同一とする会社役員賠償責任保険契約

イ. 会社役員賠償責任保険普通保険約款に基づくスミセイ損害保険株式会社との保険契約（以下「スミセイ損保会社役員賠償責任保険契約」といいます。）の保険期間の終了日（そのスミセイ損保会社役員賠償責任保険契約が終了日前に解約または解除されていた場合にはその解約または解除の日）を保険期間の開始日とし、記名法人を同一とする会社役員賠償責任保険契約

第3条（保険金を支払わない場合の適用除外）

この特約が付帯された保険契約については、普通保険約款第8条（保険金を支払わない場合）⑩の規定は、適用しません。

第4条（普通保険約款の適用除外）

この特約が付帯された保険契約については、普通保険約款第24条（保険料の返還—解約または解除の場合）（2）の規定は、適用しません。

第5条（準用規定）

この特約に規定しない事項については、この特約の趣旨に反しない限り、普通保険約款およびこの保険契約に適用される他の特約の規定を準用します。

被保険者間訴訟費用一部補償特約

第1条（保険金を支払う場合）

- （1）当社は、会社役員賠償責任保険普通保険約款第8条（保険金を支払わない場合—その2）⑨の規定にかかわらず、この保険契約により保険金を支払われる損害賠償請求に起因して被保険者相互間において責任分担についての訴訟が提起された場合に、被保険者が訴訟費用（以下、「被保険者間訴訟費用」といいます。）を負担することによって被る損害について保険金を支払います。
- （2）（1）の規定にかかわらず、当社は、保険金を支払わない被保険者の負担する被保険者間訴訟費用に対しては、保険金を支払いません。

第2条（準用規定）

この特約に規定しない事項については、この特約の趣旨に反しない限り、会社役員賠償責任保険普通保険約款およびこの保険契約に適用される他の特約の規定を準用します。

専門業務危険補償対象外特約（標準契約プラン用）

第1条（保険金を支払わない場合）

- （1）当社は、会社または被保険者が他人に対して有償で行う別表に掲げる専門業務の遂行^(注)に過誤があったとの申立てに基づき、被保険者に対してなされた損害賠償請求に起因する損害に対しては保険金を支払いません。
- （2）この特約の規定は、被保険者に対してなされた株主代表訴訟に対しては適用しません。

（注）業務の遂行
不作為を含みます。

第2条（準用規定）

この特約に規定しない事項については、この特約の趣旨に反しない限り、会社役員賠償責任保険普通保険約款およびこの保険契約に付帯される他の特約の規定を準用します。

<別表>

業種	業務内容
金融機関	ブローカー、ディーラー、ファイナンシャル・アドバイザー、投資アドバイザー、銀行、不動産シンジケート、保険仲立人、信託または金融商品取引法に定める証券会社としての各業務および他人に対して有償で行うその他の業務
不動産業	不動産ブローカー、不動産仲介業者、不動産シンジケート、投資アドバイザーまたは土地開発業者としての各業務および他人に対して有償で行うその他の業務
保険業	① 保険、再保険、ボンドまたは損害賠償契約（年金、寄付、養老年金契約、自家保険プログラム、プールその他の類似のプログラムのリスク・マネージメント等を含みます。） ② ①に関する保険金の支払の過誤、謝絶または遅延 ③ ①に関する損害調査または義務の履行の誠実かつ公正な取扱いの欠如
建築業	設計・意匠・デザインの立案・決定もしくはそれらに係る明細書・仕様書の作成、これらの実現に向けての準備、プロジェクトの実現可能性等に関する意見の表明、見積もり、予想、推論等の正確性に関すること、建設・組立に対する指示・監督またはこれらの事項に対して被保険者が行った指示・助言および他人に対して有償で行うその他の業務
情報通信事業	情報処理サービス、保守サービス、ネットワークサービス、ソフトウェア開発、情報技術者派遣、販売サービス、ネット関連サービス、その他情報サービスおよび他人に対して有償で行うその他の業務

先行行為補償特約（標準契約プラン用）

第1条（読み替え規定）

会社役員賠償責任保険普通保険約款第3条（用語の定義）③および第8条（保険金を支払わない場合—その2）①の規定中「初年度契約の保険期間の開始

第2条（普通保険約款等との関係）

この特約に規定しない事項については、この特約に反しない限り、会社役員賠償責任保険普通保険約款およびこの保険契約に適用される他の特約の規定を適用します。

遡及日 初年度契約の保険期間の開始日の10年前の応当日

共同保険に関する特約

第1条（独立責任）

この保険契約は、保険証券記載の保険会社（以下「引受保険会社」といいます。）による共同保険契約であって、引受保険会社は、保険証券記載のそれぞれの保険金額または引受割合に応じて、連帯することなく単独別個に、保険契約上の権利を有し、義務を負います。

第2条（幹事保険会社の行う事項）

保険契約者が保険契約の締結に際しこの保険契約の幹事保険会社として指名した保険会社は、全ての引受保険会社のために次の各号に掲げる事項を行います。

- ① 保険申込書の受領ならびに保険証券等の発行および交付
- ② 保険料の収納および受領または返戻
- ③ 保険契約の内容の変更の承認または保険契約の解約もしくは解除
- ④ 保険契約上の規定に基づく告知または通知に係る書類等の受領およびその告知または通知の承認
- ⑤ 保険金請求権等の譲渡の通知に係る書類等の受領およびその譲渡の承認または保険金請求権等の上の質権の設定、譲渡もしくは消滅の通知に係る書類等の受領およびその設定、譲渡もしくは消滅の承認
- ⑥ 保険契約に係る変更確認書の発行および交付または保険証券に対する裏書等
- ⑦ 保険の目的その他の保険契約に係る事項の調査
- ⑧ 事故発生もしくは損害発生等の通知に係る書類等の受領または保険金請求に関する書類等の受領
- ⑨ 損害の調査、損害の査定、保険金等の支払および引受保険会社の権利の保全
- ⑩ その他前各号の事務または業務に付随する事項

第3条（幹事保険会社の行為の効果）

この保険契約に関し幹事保険会社が行った第2条（幹事保険会社の行う事項）に掲げる事項は、全ての引受保険会社がこれを行ったものとみなします。

第4条（保険契約者等の行為の効果）

この保険契約に関し保険契約者等が幹事保険会社に対して行った通知その他の行為は、全ての引受保険会社に対して行われたものとみなします。

保険料大口分割払特約

「用語の説明」

この特約において使用される用語の説明は、この保険契約の普通保険約款の規定による場合のほか、次のとおりとします。

用語	説明
保険料	この保険契約に定められた総保険料をいいます。
分割保険料	保険料を保険証券記載の回数に分割した金額であって、保険証券に記載された金額をいいます。
分割追加保険料	追加保険料を変更確認書記載の回数に分割した金額であって、変更確認書に記載された金額をいいます。
保険料払込期日	保険証券記載の払込期日をいいます。ただし、保険料の払込方法が口座振替による場合、提携金融機関ごとに当社の定める期日とします。
追加保険料払込期日	変更確認書記載の払込期日をいいます。ただし、追加保険料の払込方法が口座振替による場合、提携金融機関ごとに当社の定める期日とします。
次回保険料払込期日	保険料払込期日の翌月の保険料払込期日をいいます。

次回追加保険料払込期日	追加保険料払込期日の翌月の追加保険料払込期日をいいます。
口座振替	保険契約者の指定する口座から口座振替により保険料を集金することをいいます。
提携金融機関	当社と保険料の口座振替の取扱いを提携している金融機関とあるのを、下欄に記載された遡及日に読み替えて適用します。
請求日	当社が追加保険料を請求した日をいいます。
第1条（この特約の付帯条件）	

この特約は、次に定める条件をすべて満たしている場合で、保険契約者がこの特約を付帯する旨申し出て、当社がこれを引き受けるときに付帯されます。

- ① 保険契約者が保険料を分割して払い込むこと。
- ② この保険契約の保険料が当社が別に定める額を超えること。

第2条（保険料の払込方法）

(1) 保険契約者は、保険料を保険証券記載の回数および金額に分割して、次のとおり払い込むことができます。

区分	保険料の払込み
① 第1回分割保険料	保険契約締結と同時に当社に払い込むものとします。
② 第2回目以降分割保険料	保険料払込期日までに当社に払い込むものとします。

(2) 第2回目以降分割保険料の払込方法が口座振替による場合において、保険料払込期日が提携金融機関の休業日に該当し、口座振替によるその分割保険料の払込みがその休業日の翌営業日に行われたときは、当社は、保険料払込期日にその分割保険料の払込みがあったものとみなします。

(3) 第2回目以降分割保険料の払込方法が口座振替による場合で、第2回分割保険料の保険料払込期日が始期日の属する月の翌末日までにあるときにおいて、保険契約者が第2回分割保険料を払い込むべき保険料払込期日までその払込みを怠り、かつ、払込みを怠った理由が、提携金融機関に対して口座振替請求が行われなかったことによるときは、第3回分割保険料の保険料払込期日^(注)をその第2回分割保険料の保険料払込期日とみなしてこの特約の規定を適用します。ただし、口座振替請求が行われなかった理由が保険契約者の責に帰すべき事由による場合を除きます。

(注) 第3回分割保険料の保険料払込期日 分割回数が2回の場合は、第2回分割保険料の保険料払込期日の属する月の翌月の応当日とします。

第3条（保険料領収前の損害賠償請求）

(1) 保険期間が始まった後でも、保険契約者が第1回分割保険料の払込みを怠った場合は、当社は、始期日から第1回分割保険料領収までの間になされた損害賠償請求による損害に対しては、保険金を支払いません。

(2) 保険契約者が第2回目以降分割保険料について、その分割保険料を払い込むべき保険料払込期日の属する月の翌末日までその払込みを怠った場合は、当社は、その保険料払込期日の翌日以後になされた損害賠償請求による損害に対しては、保険金を支払いません。

(3) (2)の規定にかかわらず、第2回目以降分割保険料の払込方法が口座振替による場合であって、保険契約者がその分割保険料の払込みを怠ったことについて故意および重大な過失がなかったときは、当社は、「保険料払込期日の属する月の翌末日」を「保険料払込期日の属する月の翌々末日」と読み替えて(2)の規定を適用します。この場合において、当社は保険料払込期日の属する月の翌々月の保険料払込期日に請求する分割保険料をあわせて請求できるものとします。ただし、この保険契約の保険期間中にこの規定^(注)が既に適用されている場合には、当社は、保険契約者に対して、保険料払込期日到来前の分割保険料の全額を一括して請求できるものとします。

(注) この規定

第5条（追加保険料領収前の損害賠償請求）(3)③の規定ならびにこの保険契約に付帯される他の特約に定める「保険料払込期日の属する月の翌末日」を「保険料払込期日の属する月の翌々末日」と読み替える規定および「追加保険料払込期日の属する月の翌末日」を「追加保険料払込期日の属する月の翌々末日」と読み替える規定を含みます。

第4条（追加保険料の払込方法）

(1) 訂正の申出を承認する場合、通知事項の通知を受領した場合または契約条件変更の申出を承認する場合において、当社が追加保険料を請求したときは、次のとおりとします。

区分	追加保険料の払込み
① 訂正の申出を承認する場合または通知事項の通知を受領した場合において、追加保険料を請求したとき	保険契約者は、当社の請求に対して相応の期間内にその全額を一括して当社に払い込まなければなりません。

② 契約条件変更の申出を承認する場合において、追加保険料を請求したとき。	保険契約者は、請求日にその全額を一括して当社に払い込まなければなりません。
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(2)(1)の規定にかかわらず、保険契約者は、追加保険料を変更確認書記載の回数および金額に分割して、次のとおり払い込むことができます。

区分		追加保険料の払込み
① 第1回分割追加保険料	ア. (1)①の追加保険料	当社の請求に対して相当の期間内に当社に払い込むものとします。
	イ. (1)②の追加保険料	請求日に当社に払い込むものとします。
② 第2回目以降分割追加保険料		追加保険料払込期日までに当社に払い込むものとします。

(3)第2回目以降分割追加保険料の払込方法が口座振替による場合において、追加保険料払込期日が提携金融機関の休業日に該当し、口座振替によるその分割追加保険料の払込みがその休業日の翌営業日に行われたときは、当社は、追加保険料払込期日にその分割追加保険料の払込みがあったものとみなします。

第5条（追加保険料領収前の損害賠償請求）

- (1)第4条（追加保険料の払込方法）(1)の訂正の申出の承認または通知事項の通知の受領によって保険契約内容を変更すべき期間が始まった後でも、同条(1)①の追加保険料を請求する場合において、この保険契約の普通保険約款に定める当社による保険契約の解除に関する規定により、この保険契約を解除できるときは、当社は、変更日から追加保険料領収までの間になされた損害賠償請求による損害に対しては、保険金を支払いません。この場合において、既に保険金を支払っていたときは、当社は、その返還を請求することができます。
- (2)第4条（追加保険料の払込方法）(1)の契約条件変更の申出の承認によって保険契約内容を変更すべき期間が始まった後でも、同条(1)②の規定により追加保険料を請求する場合において、当社の請求に対して、保険契約者がその払込みを怠ったときは、当社は、変更日から追加保険料領収までの間になされた損害賠償請求による損害に対しては、契約条件変更の承認の請求がなかったものとして、この保険契約の普通保険約款およびこれに付帯される他の特約に従い、保険金を支払います。
- (3)追加保険料が第4条（追加保険料の払込方法）(2)の定めるところにより、分割して払い込まれる場合には、次のとおりとします。
- ① 保険契約者が第1回分割追加保険料について、その払込みを怠った場合は、(1)および(2)の規定を適用します。
 - ② 保険契約者が第2回目以降分割追加保険料について、その分割追加保険料を払い込むべき追加保険料払込期日の属する月の翌月末日までその払込みを怠った場合は、その追加保険料払込期日の翌日以後になされた損害賠償請求による損害に対しては、保険金を支払いません。
 - ③ ②の規定にかかわらず、第2回目以降分割追加保険料の払込方法が口座振替による場合であって、保険契約者がその分割追加保険料の払込みを怠ったことについて故意および重大な過失がなかったときは、当社は、「追加保険料払込期日の属する月の翌月末日」を「追加保険料払込期日の属する月の翌々月末日」と読み替えて②の規定を適用します。この場合において、当社は追加保険料払込期日の属する月の翌々月の追加保険料払込期日に請求する分割追加保険料をあわせて請求できるものとします。ただし、この保険契約の保険期間中にこの規定^(注)が既に適用されている場合には、当社は、保険契約者に対して、追加保険料払込期日到来前の分割追加保険料の全額を一括して請求できるものとします。

(注) この規定

第3条（保険料領収前の損害賠償請求）(3)の規定ならびにこの保険契約に付帯される他の特約に定める「保険料払込期日の属する月の翌月末日」を「保険料払込期日の属する月の翌々月末日」と読み替える規定および「追加保険料払込期日の属する月の翌月末日」を「追加保険料払込期日の属する月の翌々月末日」と読み替える規定を含みます。

第6条（当社による保険契約の解除）

- (1)当社は、次のいずれかに該当する場合には、保険契約者に対する書面による通知をもって、この保険契約を解除することができます。
- ① 保険料払込期日^(注1)の属する月の翌月末日までに、その保険料払込期日^(注1)に払い込まれるべき分割保険料^(注2)の払込みがない場合
 - ② 保険料払込期日^(注1)までに、その保険料払込期日^(注1)に払い込まれるべき分割保険料^(注2)の払込みがなく、かつ、次回保険料払込期日^(注3)までに、次回保険料払込期日^(注3)に払い込まれるべき分割保険料^(注2)の払込みがない場合
- (2)(1)の解除は、次の時から、それぞれ将来に向かってのみその効力を生じます。
- ① (1)①による解除の場合は、その分割保険料^(注2)を払い込むべき保険料払込期日^(注1)または満期日のいずれか早い日
 - ② (1)②による解除の場合は、次回保険料払込期日^(注3)または満期日のいずれか早い日

(注1) 保険料払込期日 第4条（追加保険料の払込方法）(2)の規定により追加保険料が分割して払い込まれる場合は、追加保険料払込期日を含みます。

(注2) 分割保険料 第4条(2)の規定により追加保険料が分割して払い込まれる場合は、分割追加保険料を含みます。

(注3) 次回保険料払込期日 第4条(2)の規定により追加保険料が分割して払い込まれる場合は、次回追加保険料払込期日を含みます。

第7条（保険料の返還または追加保険料の請求）

この保険契約の普通保険約款およびこれに付帯される特約の規定により保険料の返還または追加保険料の請求をすべき事由が生じた場合には、当社は、この保険契約の普通保険約款およびこれに付帯される特約の保険料の返還または追加保険料の請求に関する規定にかかわらず、当社の定めるところにより、保険料の返還または追加保険料の請求をします。

第8条（準用規定）

この特約に規定しない事項については、この特約の趣旨に反しない限り、この保険契約の普通保険約款およびこれに付帯される他の特約の規定を準用します。

初回保険料口座振替特約

「用語の説明」

この特約において使用される用語の説明は、この保険契約の普通保険約款の規定による場合のほか、次のとおりとします。

用語	説明
初回保険料	保険料を一括して払い込む場合は、この保険契約に定められた保険料をいい、保険料を分割して払い込む場合は、第1回目に払い込むべき分割保険料をいいます。
分割保険料	保険料を保険証券記載の回数に分割した金額であって、保険証券に記載された金額をいいます。
保険料払込期日	提携金融機関ごとに当社の定める期日をいいます。
口座振替	指定口座から口座振替により保険料を収集することをいいます。
指定口座	保険契約者の指定する口座をいいます。
提携金融機関	当社と保険料の口座振替の取扱いを提携している金融機関等をいいます。

第1条（この特約の付帯条件）

- この特約は、次に定める条件をすべて満たしている場合で、保険契約者がこの特約を付帯する旨申し出て、当社がこれを引き受けるときに付帯されます。
- ① 保険契約締結の時に、指定口座が、提携金融機関に設定されていること。
 - ② 次のいずれかの条件を満たすこと。
 - ア. この保険契約の締結および保険契約者から当社への損害保険料預金口座振替依頼書等の提出が、始期日の属する月の前月末日までになされること。
 - イ. 保険契約者が、この保険契約の申込みおよび当社への損害保険料預金口座振替依頼書等の提出を当社所定の連絡先に行うこと。

第2条（保険料の払込方法）

- (1)保険契約者は、保険料払込期日に、口座振替によって初回保険料を払い込むことができます。
- (2)(1)の場合、保険契約者は、保険料払込期日の前日までに初回保険料相当額を指定口座に預け入れておかねばなりません。
- (3)保険料払込期日が提携金融機関の休業日に該当し、口座振替による初回保険料の払込みがその休業日の翌営業日に行われた場合は、当社は、保険料払込期日に初回保険料の払込みがあったものとみなします。

第3条（保険料領収前の損害賠償請求）

- (1)保険料払込期日に初回保険料の払込みがない場合には、保険契約者は、初回保険料を保険料払込期日の属する月の翌月末日までに当社の指定した場所に払い込まなければなりません。
- (2)当社は、保険契約者が保険料払込期日の属する月の翌月末日までに初回保険料を払い込んだ場合には、初回保険料領収前になされた損害賠償請求による損害に対しては、この保険契約の普通保険約款およびこれに付帯される他の特約に定める保険料領収前になされた損害賠償請求の取扱いに関する規定を適用しません。
- (3)(2)の規定にかかわらず、保険契約者が初回保険料について、その初回保険料を払い込むべき保険料払込期日の属する月の翌月末日までその払込み

を怠った場合は、当社は、始期日から初回保険料領収までの間になされた 損害賠償請求による損害に対しては、保険金を支払いません。

- (4)(3)の規定にかかわらず、保険契約者が初回保険料の払込みを怠ったことについて故意および重大な過失がなかった場合は、当社は、「保険料払込期日の属する月の翌月末日」を「保険料払込期日の属する月の翌々月末日」と読み替えて(3)の規定を適用します。この場合において、保険料が分割して払い込まれるときは、当社は保険料払込期日の属する月の翌々月の保険料払込期日に請求する分割保険料をあわせて請求できるものとします。

第4条（保険料領収前の保険金支払）

- (1)第3条（保険料領収前の損害賠償請求）(2)の規定により、被保険者が、初回保険料の払込み前になされた損害賠償請求による損害に対して保険金の支払を受ける場合には、その支払を受ける前に、保険契約者は初回保険料を当社に払い込まなければなりません。
- (2)(1)の規定にかかわらず、損害賠償請求のなされた日が、保険料払込期日以前であり、保険契約者が、初回保険料を保険料払込期日までに払い込む旨の確約を行った場合で、かつ、当社が承認したときは、当社は、初回保険料が払い込まれたものとみなしてその損害賠償請求に対して保険金を支払います。
- (3)(2)の確約に反して保険契約者が保険料払込期日まで初回保険料の払込みを怠り、かつ、保険料払込期日の属する月の翌月末日^(注)までその払込みを怠った場合は、当社は、既に支払った保険金の全額の返還を請求することができま
- (注) 保険料払込期日の属する月の翌月末日 第3条（保険料領収前の損害賠償請求）(4)の規定が適用される場合には、「保険料払込期日の属する月の翌々月末日」とします。

第5条（当社による保険契約の解除）

- (1)当社は、保険料払込期日の属する月の翌月末日までに、初回保険料の払込みがない場合には、保険契約者に対する書面による通知をもって、この保険契約を解除することができます。
- (2)(1)の規定は、この保険契約に付帯される保険料分割払に関する特約の保険契約の解除に関する規定に優先して適用されます。
- (3)(1)の解除は、始期日から将来に向かってのみその効力を生じます。

第6条（準用規定）

この特約に規定しない事項については、この特約の趣旨に反しない限り、この保険契約の普通保険約款およびこれに付帯される他の特約の規定を準用します。

初回追加保険料口座振替特約

「用語の説明」

この特約において使用される用語の説明は、この保険契約の普通保険約款の規定による場合のほか、次のとおりとします。

用語	説明
初回追加保険料	追加保険料を一括して払い込む場合は、当社が請求した追加保険料の総額をいい、追加保険料を分割して払い込む場合は、第1回目に払い込むべき分割追加保険料をいいます。
分割追加保険料	追加保険料を変更確認書記載の回数に分割した金額であって、変更確認書に記載された金額をいいます。
追加保険料払込期日	提携金融機関ごとに当社の定める期日をいいます。
口座振替	指定口座から口座振替により保険料を集金することをいいます。
指定口座	保険契約者の指定する口座をいいます。
提携金融機関	当社と保険料の口座振替の取扱いを提携している金融機関等をいいます。

第1条（この特約の付帯条件）

この特約は、次に定める条件をすべて満たしている場合で、保険契約者がこの特約を付帯する旨申し出て、当社がこれを引き受けるときに付帯されます。

- ① この保険契約の保険料払込方法が口座振替による場合であること。
- ② 次のいずれかの条件を満たすこと。ア. 保険証券または保険申込書の記載事項の変更が保険期間が始まる時までに生じたことにより、保険契約者または被保険者が訂正の申出、通知事項の通知または契約条件変更の申出を行った場合であって、始期日を変更日として保険契約内容の変更が行われること。
- イ. ア. 以外の場合であって、保険契約者または被保険者が、訂正の申出、通知事項の通知または契約条件変更の申出を当社所定の連絡先に行う

こと。

第2条（追加保険料の払込方法）

- (1)訂正の申出を承認する場合、通知事項の通知を受領した場合または契約条件変更の申出を承認する場合において、当社が追加保険料を請求したときは、保険契約者は、追加保険料払込期日に、口座振替によって初回追加保険料を払い込むことができます。
- (2)(1)の場合、保険契約者は、追加保険料払込期日の前日までに初回追加保険料相当額を指定口座に預け入れておかねばなりません。
- (3)追加保険料払込期日が提携金融機関の休業日に該当し、口座振替による初回追加保険料の払込みがその休業日の翌営業日に行われた場合は、当社は、追加保険料払込期日に初回追加保険料の払込みがあったものとみなします。
- (4)保険契約者は、契約条件変更の申出については、保険契約者または被保険者に正当な理由がある場合を除いてこれを撤回することはできません。

第3条（追加保険料領収前の損害賠償請求）

- (1)追加保険料払込期日に初回追加保険料の払込みがない場合には、保険契約者は、初回追加保険料を追加保険料払込期日の属する月の翌月末日までに当社の指定した場所に払い込まなければなりません。
- (2)当社は、保険契約者が追加保険料払込期日の属する月の翌月末日までに初回追加保険料を払い込んだ場合には、初回追加保険料領収前になされた損害賠償請求による損害に対しては、この保険契約の普通保険約款およびこれに付帯される他の特約に定める追加保険料領収前になされた損害賠償請求の取扱いに関する規定を適用しません。
- (3)(2)の規定にかかわらず、保険契約者が、訂正の申出を承認する場合または通知事項の通知を受領した場合の追加保険料について、その初回追加保険料を払い込むべき追加保険料払込期日の属する月の翌月末日までその払込みを怠った場合は、当社は、変更日から初回追加保険料領収までの間になされた損害賠償請求による損害に対しては、保険金を支払いません。
- (4)(2)の規定にかかわらず、保険契約者が、契約条件変更の申出を承認する場合の追加保険料について、その初回追加保険料を払い込むべき追加保険料払込期日の属する月の翌月末日までその払込みを怠った場合は、当社は、変更日から初回追加保険料領収までの間になされた損害賠償請求による損害に対しては、契約条件変更の承認の請求がなかったものとして、この保険契約に適用される普通保険約款および特約に従い、保険金を支払います。
- (5)(3)および(4)の規定にかかわらず、保険契約者が初回追加保険料の払込みを怠ったことについて故意および重大な過失がなかった場合は、当社は、「追加保険料払込期日の属する月の翌月末日」を「追加保険料払込期日の属する月の翌々月末日」と読み替えて(3)および(4)の規定を適用します。この場合において、追加保険料が分割して払い込まれるときは、当社は追加保険料払込期日の属する月の翌々月の追加保険料払込期日に請求する分割追加保険料をあわせて請求できるものとします。ただし、この保険契約の保険期間中にこの規定^(注)が既に適用されている場合には、当社は、保険契約者に対して、追加保険料払込期日到来前の分割追加保険料の全額を一括して請求できるものとします。
- (注) この規定
この保険契約に付帯される他の特約に定める「保険料払込期日の属する月の翌月末日」を「保険料払込期日の属する月の翌々月末日」と読み替える規定および「追加保険料払込期日の属する月の翌月末日」を「追加保険料払込期日の属する月の翌々月末日」と読み替える規定を含みます。

第4条（追加保険料領収前の保険金支払）

- (1)第3条（追加保険料領収前の損害賠償請求）(2)の規定により、被保険者が、初回追加保険料の払込み前になされた損害賠償請求による損害に対して保険金の支払を受ける場合には、その支払を受ける前に、保険契約者は初回追加保険料を当社に払い込まなければなりません。
- (2)(1)の規定にかかわらず、損害賠償請求のなされた日が、追加保険料払込期日以前であり、保険契約者が、初回追加保険料を追加保険料払込期日までに払い込む旨の確約を行った場合で、かつ、当社が承認したときは、当社は、初回追加保険料が払い込まれたものとみなしてその損害賠償請求に対して保険金を支払います。
- (3)(2)の確約に反して保険契約者が追加保険料払込期日まで初回追加保険料の払込みを怠り、かつ、追加保険料払込期日の属する月の翌月末日^(注)までその払込みを怠った場合は、当社は、次表に定める保険金の額の返還を請求することができます。

追加保険料の種類	返還を請求できる保険金の額
① 訂正の申出を承認する場合または通知事項の通知を受領した場合において、追加保険料を請求したとき。	なされた損害賠償請求による損害に対して既に支払った保険金の全額

<p>② 契約条件変更の申出を承認する場合において、追加保険料を請求したとき。</p>	<p>次の算式により算出される額</p> <table border="1"><tr><td data-bbox="515 255 651 376">なされた損害賠償請求による損害に対して既に支払った保険金の額</td><td data-bbox="657 304 671 324">－</td><td data-bbox="686 255 855 376">第3条（追加保険料領収前の損害賠償請求）（4）の保険金の額</td></tr></table>	なされた損害賠償請求による損害に対して既に支払った保険金の額	－	第3条（追加保険料領収前の損害賠償請求）（4）の保険金の額
なされた損害賠償請求による損害に対して既に支払った保険金の額	－	第3条（追加保険料領収前の損害賠償請求）（4）の保険金の額		

（注）追加保険料払込期日の属する月の翌月末日 第3条（追加保険料領収前の損害賠償請求）（5）の規定が適用される場合においては、
「追加保険料払込期日の属する月の翌々月末日」とします。

第5条（当社による保険契約の解除）

(1) 当社は、追加保険料払込期日の属する月の翌月末日までに、初回追加保険料の払込みがない場合には、保険契約者に対する書面による通知をもって、この保険契約を解除することができます。

(2) (1)の解除は、変更日から将来に向かってのみその効力を生じます。

第6条（準用規定）

この特約に規定しない事項については、この特約の趣旨に反しない限り、この保険契約の普通保険約款およびこれに付帯される他の特約の規定を準用します。

附錄六、中國大陸董監事及重要職員責任保險

HUATAI INSURANCE COMPANY OF CHINA, LIMITED DIRECTORS & OFFICERS LIABILITY INSURANCE POLICY WORDING

In consideration of the payment of the Premium and in reliance upon all statements made and information furnished to Huatai Insurance Company of China, Limited (“Huatai”), including statements made in the proposal and materials accompanying it, and subject to all terms, conditions, exclusions and limitations of this Policy, Huatai agrees with the Insured(s) and with the Company as follows:

1. Insuring Agreement

Huatai shall pay on behalf of the Insured(s) all Loss which they are legally obligated to pay, and/or shall pay on behalf of the Company all Loss which the Company is legally required or permitted to pay the Insured(s) as advancements or indemnity under applicable company indemnity laws, rules, regulations or agreements, for any Claim against the Insured(s) for a Wrongful Act, provided the Claim is first made against the Insured(s) during the Policy Period.

2. Definitions

- (a) “Administrative Authority” means any national, provincial, local government, or governmental or administrative body, agency or commission.
- (b) “Claim” means any notice received by, the Company, or by the Insured(s) alleged to have committed a Wrongful Act, of the intention of a person or entity to hold the Insured(s) responsible for the results of any Wrongful Act, including any demand received by the Insured(s) for money or services naming the Insured(s) as defendant(s), or the institution of legal, arbitration or administrative proceedings against the Insured(s).
- (c) “Company” means the Company shown in Item 2 of the Schedule and any Subsidiary.
- (d) “Deductible” means the amount shown in Item 5 of the Schedule.
- (e) “Defence Costs” means reasonable legal fees, costs and expenses incurred by or on behalf of the Insured(s) with the prior written consent of Huatai (but shall not include wages, salaries or other remuneration of the Insured(s) or of any employee of the Company) which are necessary to defend or appeal a Claim covered by this Policy.
- (f) “Discovery Period” means the period of 12 months referred to in Clause 3(f) which shall run from the date this Policy expires.
- (g) “Employment Practice Liability” means, with respect to any past, present or prospective employee of the Company, any actual or alleged:

- (1) employment-related sexual or other unlawful harassment;
 - (2) termination of employment which is against the law;
 - (3) employment-related unlawful discrimination;
 - (4) employment related denial of justice;
 - (5) false or misleading advertising or representation involving terms or conditions of employment with the Company;
 - (6) employment-related defamation;
 - (7) failure to employ, promote or grant tenure;
 - (8) unfair deprivation of career opportunity;
 - (9) unfair discipline or evaluation of employment performance;
 - (10) failure to provide or adhere to adequate employment policies or procedures;
 - (11) violation of any laws or regulations governing employment practices;
 - (12) breach of employment contract;
 - (13) employment-related invasion of privacy.
- (h) “Insured(s)” means all natural persons who were, now are or shall be directors, supervisors, officers, company secretaries or employees (but only where such employees are acting in a managerial capacity) of the Company.

The term Insured(s) shall also include:

- (1) the lawful spouses of all directors, supervisors, officers, company secretaries or employees (but only where such employees are acting in a managerial capacity) of the Company;
- (2) the estates, heirs or legal representatives of deceased persons who were directors, supervisors, officers, company secretaries or employees (but only where such employees are acting in a managerial capacity) of the Company at the time of the Wrongful Act upon which the Claim is based;
- (3) the legal representatives of directors, supervisors, officers, company secretaries or employees (but only where such employees are acting in a managerial capacity) of the Company in the event of incompetency, insolvency or bankruptcy;

The term Insured(s) shall not include:

- (1) a receiver or a liquidator;

- (2) an official manager;
 - (3) an external auditor;
 - (4) a trustee or administrator of any occupational pension scheme or employment benefit programmes.
- or any employee(s) of such person(s).
- (i) "Investigation" means any investigation, inquiry, public examination, commission or prosecution, criminal or otherwise;
 - (j) "Loss" means any damages, judgments, settlements and Defence Costs. Loss shall not include fines or penalties imposed by law, punitive or exemplary damages, taxes, any amount for which the Insured(s) is not legally liable or any matter deemed uninsurable under the law. Damages, judgments, settlements and Defence Costs incurred with respect to more than one Claim against the Insured(s), but resulting from a single Wrongful Act shall constitute a single Loss.
 - (k) "Non-Profit Organisation" means any corporation, institution, association, trust, fund or foundation established for any social, community, charitable or industry purpose to provide services or benefits to its members and not for the purpose of making profits.
 - (l) "Outside Directorship" means the position held by the Insured(s) in an Outside Organisation with the knowledge and consent and at the request of the Company.
 - (m) "Outside Organisation" means any company or organisation, other than the Company, in which an Outside Directorship is held.
 - (n) "Policy" means:
 - (1) the Insuring Agreement, the Definitions, the Extensions, the Exclusions, the Conditions and all other terms contained herein;
 - (2) the Proposal and any attachments thereto;
 - (3) any Endorsement attaching to and forming part of this Policy either at commencement of the Policy Period or during the Policy Period.
 - (o) "Policy Period" means the period of time shown in Item 3 of the Schedule of this Policy.
 - (p) "Premium" means the premium shown in Item 6 of the Schedule and any additional premium shown in any Endorsement attaching to and forming part of this Policy.
 - (q) "Subsidiary" means any company, including any company held directly or indirectly through one or more Subsidiaries, in which, at the inception of the Policy Period:
 - (1) the Company:

- (a) controls the composition of the Board of Directors; or
 - (b) controls the voting power at any general meeting; or
 - (c) holds more than 50% of the issued share capital; and
- (2) the accounts are consolidated with the accounts of the Company in accordance with professionally accepted Accounting Standards for the consolidation of accounts applicable in the country in which this Policy was issued.
- (f) “Wrongful Act” means any actual or alleged act, error, omission, breach of duty, misstatement or misleading statement by the Insured(s) while acting in their capacity as Insured(s) of the Company or of any Outside Organisation to which the Outside Directorship Extension applies.

3. Extensions

The following Extensions, which are automatically included in this Policy, are subject to all of the terms, conditions, exclusions and limitations of this Policy. These Extensions do not increase the Limit of Liability unless Huatai otherwise agrees in writing.

(a) Advancement of Defence Costs

Huatai shall pay Defence Costs on behalf of the Insured(s) on an ongoing basis prior to the final payment or settlement of any Claim PROVIDED THAT:

- (1) such Defence Costs are incurred with the prior written consent of Huatai;
- (2) such advance payments by Huatai shall be repaid to Huatai in the event that the Insured(s) shall not be entitled to payment of any Loss or receipt of any benefit under this Policy.

(b) Investigations, Inquiries, Prosecutions (Criminal Or Otherwise)

Huatai shall pay on behalf of the Insured(s) on an ongoing basis prior to the final payment or settlement of any Claim all reasonable legal fees, costs and expenses incurred in being legally represented at any Investigation PROVIDED THAT:

- (1) the Investigation involves an allegation that the Insured(s) committed a Wrongful Act;
- (2) the allegation is first made against the Insured(s) during the Policy Period;
- (3) such legal fees, costs and expenses are incurred with the prior written consent of Huatai;
- (4) this Extension does not cover any fines or penalties imposed by law;
- (5) this Extension does not cover wages, salaries or other remuneration of the Insured(s) or of any employee of the Company;

- (6) such advance payments by Huatai shall be repaid to Huatai in the event that the Insured(s) shall not be entitled to payment of any Loss or receipt of any benefit under this Policy.

(c) Acquisition Creation Sale or Dissolution of Subsidiaries

If during the Policy Period the Company acquires or creates a Subsidiary that:

- (1) increases the Company's total assets by no greater than 10% based on the Company's latest annual report; and
- (2) is domiciled outside of the United States of America or Canada,

then the Insured(s) of such Subsidiary shall be automatically covered by this Policy for Claims for Wrongful Acts committed or alleged to have been committed on or after the effective date of such acquisition or creation, and no notice needs to be given to Huatai relating to the acquisition or creation of such Subsidiary and no additional premium shall be paid relating to this extended cover.

If during the Policy Period the Company acquires or creates a Subsidiary that either increases the Company's assets by more than 10%, or is domiciled in the United States of America or Canada, and written notice of such acquisition or creation is given to Huatai as soon as practicable, and the Company agrees to pay any additional premium required and agrees to any amendments to the Policy required by Huatai relating to such Subsidiary, then the Insured(s) of such Subsidiary shall be covered by this Policy for Claims for Wrongful Acts committed or alleged to have been committed on or after the effective date of such acquisition or creation.

If during the Policy Period the Company acquires or creates a Subsidiary, and if the Insured(s) require cover for Claims for Wrongful Acts committed or alleged to have been committed prior to the effective date of such acquisition or creation, Huatai may at its discretion, and subject to the payment of an appropriate additional premium, agree to provide such cover after presentation and consideration of a complete proposal and all necessary information.

If the Company effects a sale or dissolution of a Subsidiary, cover under this Policy shall apply to any person who was an Insured(s) of that Subsidiary prior to the sale or dissolution PROVIDED THAT cover shall only apply for or in respect of Claims for Wrongful Acts committed or alleged to have been committed prior to the effective date of sale or dissolution.

(d) Continuous Cover

Notwithstanding Exclusions 4(b), (c) and (d), and in the absence of fraudulent non-disclosure, this Policy extends to cover the Insured(s) for any Claim, and for any Wrongful Act which may give rise to a Claim, which should or could have been notified to Huatai under any other preceding directors and officers liability

insurance policy issued by Huatai and which is notified during the Policy Period,
PROVIDED THAT:

- (1) Huatai has been the insurer pursuant to any other preceding directors and officers liability insurance policy continuously between the date when such notification should have been given and the date when notification was in fact given;
- (2) the terms, conditions and limits of this Policy shall not apply to this Extension, which shall be subject to the terms, conditions and limits of the preceding Huatai directors and officers liability insurance policy which applied at the date on which such notification should have been given.

(e) Outside Directorships

For the period during which the Outside Directorship is held this Policy covers:

- (1) Outside Directorships in any Outside Organisation listed in the Schedule of Outside Directorships attached to this Policy; and
- (2) Outside Directorships in Non-Profit Organisations.

Cover for any other Outside Directorships is subject to:

- (3) receipt of the most recent annual reports and audited financial statements for each Outside Organisation proposed;
- (4) receipt of details of any Directors and Officers Liability Insurance Policy held by or on behalf of the Outside Organisation or its directors, supervisors, officers, company secretaries and employees;
- (5) receipt of any other information which Huatai may require;
- (6) acceptance by Huatai in writing of each Outside Directorship.

If during the Policy Period the Insured(s) ceases to hold an Outside Directorship the cover provided by this Policy for such Outside Directorship shall continue, PROVIDED THAT the Claim for Loss arises from a Wrongful Act which occurred prior to the Outside Directorship ceasing.

The cover provided by this Policy for Outside Directorships does not extend to cover:

- (7) any Outside Organisation in which the Outside Directorship is held or any other director, supervisor, officer, company secretaries and employee of such Outside Organisation;
- (8) any claim made against the Insured(s) the Outside Organisation or any of its directors, supervisors, officers, company secretaries and employees;
- (9) Loss with respect to which insurance cover is available pursuant to any

underlying policy listed in the Schedule of Outside Directorships attached to this Policy.

(f) Discovery Period

If Huatai refuses to renew this Policy, the Company and/or the Insured(s) may upon payment of an additional 50% of the full annual premium extend the cover under this Policy for a period of 12 Months which shall run from the date this Policy expires, for any Claim first made against the Insured(s) during the Discovery Period and notified in writing to Huatai during the Discovery Period, but only in respect of Wrongful Acts committed or alleged to have been committed before the date of expiration of the Policy Period.

The right of the Company and/or the Insured(s) to exercise the Discovery Period must be by notice to Huatai in writing within 30 days of expiration of the Policy Period and the Company shall elect equally to exercise its right (if any) to this extension of cover under any directors and officers insurance policy issued in respect of the same Policy Period.

The right to exercise the Discovery Period does not apply in the event of cancellation of this Policy. Huatai's offer of renewal terms, conditions, limits of liability or premium different from those of the expiring policy shall not constitute a refusal to renew.

4. Exclusions

Huatai shall not be liable to make any payment for Loss in connection with any Claim made against the Insured(s) or any payment in connection with any Investigation involving an allegation made against the Insured(s), in either case based on, arising from or attributable to:

- (a) (1) fraudulent, dishonest or criminal acts of the Insured(s) if such acts are found by any Court or Administrative Authority to be fraudulent, dishonest or criminal;
- (2) any personal profit or advantage gained in fact by the Insured(s) to which such Insured(s) was not legally entitled.
- (b) any litigation or other proceedings begun before the prior and pending litigation date shown in Item 7 of this Policy or alleging the same or essentially the same facts alleged in prior or pending litigation.
- (c) any fact, circumstance, act, omission, or claim of which notice has been given under any policy existing or expired before or on the inception date of this Policy.
- (d) any fact, circumstance, act or omission which may give rise to a claim and of which the Company or the Insured(s) are aware prior to the inception of this Policy.
- (e) any Claim brought by or on behalf of the Insured(s) or the Company other than any Claim:

- (1) arising from an Employment Practice Liability;
 - (2) instigated by a shareholder or group of shareholders of the Company in the name of the Company without the participation, solicitation or assistance of any Insured(s) or the Company;
 - (3) instigated by a receiver or a liquidator without the participation, solicitation, or assistance of the Insured(s) or the Company;
 - (4) for contribution or indemnity, if the Claim for contribution or indemnity directly results from a Claim which is covered under this Policy.
- (f) any Claim brought against any person acting in the capacity:
- (1) as trustee or administrator of a superannuation scheme; or
 - (2) as external auditor.
- (g) (1) any injury, damage, expense, cost, loss, liability or legal obligation in any way related to pollution however caused including shareholder or derivative Claims arising from or attributable to such pollution. Pollution includes the actual, alleged or potential presence in or introduction into the environment of any substance, if such substance has, or is alleged to have, the effect of making the environment impure, harmful or dangerous. Environment includes any air, land, structure or the air therein, watercourse or water, including groundwater; or
- (2) the hazardous properties of nuclear or radioactive material.
- (h) any Claim for:
- (1) bodily injury, sickness, disease, death or emotional distress of any person, provided however that any Claim for emotional distress shall not be excluded with respect to any actual or alleged Employment Practice Liability; or
 - (2) damage to or destruction of any tangible property including loss of use of such property.

5. Conditions

(a) Allocations

If a Claim against the Insured(s) includes causes of action against uninsured defendants, allegations of uninsured damages, uninsured acts or other uninsured matters, Huatai, the Company and the Insured(s) agree to use their best efforts to agree upon a fair and proper allocation of defence costs, settlements and damages between Huatai, the Company and the Insured(s).

(b) Assignment

This Policy and any rights hereunder may not be assigned without the written consent of Huatai.

(c) Claims, Circumstances or Investigations - Notifications

The Company and the Insured(s) shall give written notice to Huatai as soon as practicable of

- (1) any Claim first made during the Policy Period;
- (2) any facts or circumstances of which they shall first become aware during the Policy Period which may give rise to a Claim;
- (3) any notice first received during the Policy Period of any Investigation(s),

but in no event later than 45 days after this Policy expires, or, in the case of Claims first made, facts and circumstances of which the Company and/or the Insured(s) shall first become aware and notice(s) of any Investigation(s) first received during the Discovery Period, if applicable, no later than 45 days after the Discovery Period expires. Notice and all information regarding a Claim, a circumstance that may result in a Claim or an Investigation shall be sent in writing to Huatai at [insert address] or by facsimile to [insert facsimile number].

The Company and the Insured(s) shall give Huatai such information and cooperation as it may reasonably require to enable Huatai to investigate and determine both its liability under this Policy and the extent of the Insured(s') actual or potential liability for any Claim or arising from any facts or circumstances which may give rise to a Claim.

If during the Policy Period or Discovery Period, if applicable, the Insured(s) shall become aware of an actual or alleged Wrongful Act which may subsequently give rise to a Claim and during such period gives immediate notice to Huatai of such Wrongful Act, any Claim later made against the Insured(s) arising out of that Wrongful Act shall, for the purposes of this Policy, be treated as a Claim made during the Policy Period or Discovery Period, if applicable, in which such notice was first given. Notice of such Wrongful Act must contain a specific description of the actual or alleged Wrongful Act, state by whom it was committed or alleged to have been committed, and describe the material facts or circumstances which may give rise to a Claim.

(d) Claims - Defence & Settlement

Neither the Company nor the Insured(s) shall admit liability for or settle any Claim or incur Defence Costs without Huatai's prior written consent, which consent shall not be unreasonably withheld.

Huatai shall at all times have the right but not the duty to associate in the investigation, defence or settlement of any Claim to which this Policy may apply.

Huatai shall at all times have the right but not the duty to assume conduct in the

name of the Insured(s) of the defence or settlement of any Claim or any claim for contribution or indemnity against any person or entity with respect to which the Insured(s) may have rights.

Huatai and the Insured(s) shall not be required to contest any Claim unless a lawyer (to be mutually agreed upon by Huatai and the Insured(s)) shall advise that the Claim should be contested. The lawyer shall take into consideration the economics of the Claim, the damages and costs which are likely to be recovered by the plaintiff, the Defence Costs which will be incurred in contesting the Claim and the prospects of the Insured(s) successfully defending the Claim. The costs of obtaining such opinion from the lawyer shall be paid by Huatai as part of the Defence Costs. Should the lawyer advise that in all the circumstances the Claim should not be contested but should be settled Huatai and the Insured(s) shall not object to or oppose settlement of the Claim within the limits advised by the lawyer as being reasonable.

(e) Confidentiality

The Company or the Insured(s) may disclose that it has paid or agreed to pay a premium in respect of a contract insuring the Insured(s) against a liability.

The Company or the Insured(s) shall not, without Huatai's prior written consent, otherwise disclose the existence of or the terms of this Policy, including but not limited to the identity of Huatai, the limit of liability and the premium, unless required to do so by law.

(f) Deductible

The Company shall pay the Deductible for all Loss resulting from each Claim. Huatai shall have no obligation to pay Loss until the Insured(s) or the Company have incurred Loss in the amount of the Deductible if applicable, except that, if the Company is unable to pay the amount of the Deductible due to insolvency then, subject to all other terms and conditions of this Policy, Huatai shall pay such Loss.

If two or more Claims are made against any Insured(s) arising out of a single Wrongful Act, or out of a series of related Wrongful Acts, the Claims shall be treated as a single Claim for the purpose of applying the Deductible. This single Claim will be treated as if it was first made during the Policy Period at the earlier of:

- (1) when the earliest Claim was first made, or
- (2) when the earliest circumstance giving rise to a Claim was notified.

The Deductible shall apply to all Loss for which advancement or indemnification by the Company is required or permissible under company indemnification laws, rules, regulations or agreements regardless of whether or not the Company actually advances or indemnifies the Insured(s) for such Loss.

The amount of any Deductible payable will be calculated after deduction of any tax credit that is or may be available to the Company for payment of the Deductible.

(g) Limit of Liability

The amount shown in Item 4 of the Schedule is Huatai's maximum aggregate liability for all Loss including Defence Costs, arising from all Claims first made against the Insured(s) during the Policy Period and the Discovery Period if applicable.

Two or more Claims arising out of a single Wrongful Act or a series of related Wrongful Acts shall be treated as a single Claim. All such Claims shall be treated as if first made during the Policy Period or Discovery Period at the earlier of:

- (1) when the earliest Claim was first made, or
- (2) when the earliest circumstance giving rise to a Claim was notified.

(h) Loss Mitigation

The Company and the Insured(s) shall, at their own cost, use due diligence and do and concur in doing all things reasonably practicable to avoid, or diminish any Loss under this Policy.

(i) Non-Executive Directors

In the event that Huatai is entitled to avoid this Policy from inception, or from the time of any variation in cover, due to non-disclosure or misrepresentation by the Insured(s), Huatai shall maintain cover for non-executive directors who are Insured(s) under this Policy until the expiry date of the Policy Period. Provided that such non-executive directors are able to establish to the satisfaction of Huatai that they are innocent and free from all such fraudulent conduct, non disclosure, misrepresentation or intent to deceive. Any return of premium or amendment to the terms of this Policy shall be at the discretion of Huatai.

(j) Other Insurance

Unless otherwise required by PRC laws, this Policy shall apply only as excess over any other valid and collectible insurance. However, if a Loss is not covered by the other insurance but would be covered under this Policy, this is hereby agreed that this Policy would drop down and serve as the primary policy.

(k) Governing Law

This Policy shall be governed by and interpreted in accordance with the laws of the People's Republic of China.

The parties to this Policy shall choose one of the following methods to resolve any dispute in connection with this Policy:

- (1) Any dispute arising out of the performance of or in connection with this Policy shall be resolved through consultations in good faith. If the dispute cannot be resolved through such consultations, the dispute shall:
- (a) Where the party(ies) other than Huatai is a PRC citizen or entity, be submitted to the China International Economic and Trade Arbitration Commission in Beijing for arbitration in accordance with the Financial Disputes Arbitration Rules administered by CIETAC at the time of the arbitration; and
 - (b) Where the party(ies) other than Huatai is not a PRC citizen or entity, be submitted to the Hong Kong International Arbitration Centre (the "HKIAC") for arbitration in accordance with the UNCITRAL Arbitration Rules administered by the HKIAC at the time of the arbitration, or be submitted to the China International Economic and Trade Arbitration Commission in Beijing for arbitration in accordance with the Financial Disputes Arbitration Rules administered by CIETAC at the time of the arbitration; or
- (2) Any dispute arising out of the performance of or in connection with this Policy shall be resolved through consultations in good faith. If the dispute cannot be resolved through such consultations, the dispute shall be submitted to the PRC courts for litigation in accordance with relevant laws and regulations.

(l) Representation and Severability

Huatai has relied upon the statements made in the proposal, the supplementary proposal(s) if any, and materials accompanying them in granting cover under this Policy. All such statements and materials form the basis of the contract of insurance.

The proposal(s) shall be construed as separate proposal(s) by each of the Insured(s) and, with respect to statements made and particulars provided in the proposal(s), no such statements or particulars, and no information possessed by the Insured(s), shall be imputed to any other Insured(s) to determine whether cover is available for any Claim against such other Insured(s).

(m) Subrogation

In the event Huatai makes any payment under this Policy, Huatai shall be subrogated to all rights of recovery of all Insured(s), and the Insured(s) shall fully cooperate with Huatai in securing such rights, including but not limited to the execution of any documents necessary to enable Huatai to effectively bring suit in the name of the Company or the Insured(s).

(n) Takeovers and Mergers

If during the Policy Period the Company merges with or consolidates into another

entity, or any person or entity acquires 50% or more of the issued capital of the Company, then the cover provided under this Policy is amended so as to apply only to Wrongful Acts committed prior to the effective date of such transaction.

In the event of such takeover or merger the Insured(s) may cancel this Policy by sending written notice to Huatai, stating when thereafter the cancellation shall be effective, whereupon Huatai shall refund the unearned premium at customary rates.

In the event of such takeover or merger the Insured(s) and Huatai may agree that this Policy applies to Wrongful Acts committed after the effective date of such transaction subject to:

- (1) presentation by the Company of all information required by Huatai;
- (2) payment of any additional premium which Huatai may require.

(o) Premium Payment Clause

It is hereby agreed that Huatai should not avoid any claim not otherwise excluded by the term of the Policy on the grounds that the Company has elected to pay the directors, supervisors, officers, company secretaries and employees premium on their behalf.

(p) Cancellation Clause

Save as otherwise permitted by PRC laws and regulations, this Policy is non-cancellable by Huatai except for non-payment of premium. If the Policy is cancelled by the Company and/or the Insured(s), the earned premium should be calculated as follows:

- (1) In the event that a Claim or circumstance has been notified under the Policy, the Premium will be fully earned;
- (2) In the event that a Claim or circumstance has not been notified under the Policy and:
 - (a) the Policy has been in effect for less than six (6) months, the earned premium will be half of the Premium; and
 - (b) the Policy has been in effect for more than six (6) months, the earned premium will be calculated on a pro-rata basis..

For a multi-year policy, if the Policy is cancelled by the Company and/or the Insured(s), the Company and/or the Insured(s) agrees to pay the full premium stated on the Schedule page and the premium will be deemed to be fully-earned by Huatai.

(q) Territory Covered

This Policy covers Wrongful Acts committed and Claims made anywhere in the world.

附錄七、香港及新加坡董監事及重要職員責任保險商品



龍盾 Dragonshield™ 2015 Corporate Liability Insurance – Non U.S. Securities

In consideration of the payment of the premium the Insurer and the Policyholder agree as follows:

All coverages granted under this policy apply solely to Claims first made, and other Insured Events first arising, during the Policy Period or applicable Discovery Period and reported as required by this policy.

1. Covers

A. Insured Person Protections

1.1 Management Liability

The Insurer will:

- (i) pay to or on behalf of each Insured Person any Loss except to the extent that the Insured Person has been indemnified by the Company for the Loss; or
- (ii) pay to or on behalf of the Company any Loss in respect of which it has indemnified or is liable to indemnify an Insured Person.

B. Company Insurance Protections

1.2 Company Securities

The Insurer will pay the Loss of each Company arising from a Securities Claim subject to the Sublimit of Liability.

1.3 Company Employment Practices Breach

The Insurer will pay the Loss of each Company arising from an Employment Practices Breach subject to the Sublimit of Liability.

2. Additional Protections

2.1 Investigations and Regulatory Crisis Events

The Insurer will pay to or on behalf of each Insured Person;

- (i) Regulatory Crisis Event Costs, and
- (ii) Investigation Costs,

subject to the respective Sublimits of Liability.

2.2 Excess Limit Protection

The Insurer will pay to or on behalf of each Director of the Policyholder any Loss up to the Individual Excess Limit specified at Item 6(a) of the Schedule, when:

- (i) the Limit of Liability;
- (ii) all other applicable management liability insurance; and
- (iii) all other indemnification for Loss available,

have all been exhausted, provided that:

- (a) the cover available under this Extension shall only extend to Insured Events or circumstances first notified and accepted before exhaustion of the Limit of Liability; and
- (b) the Insurer's maximum aggregate liability under this Section 2.2 shall not exceed the Aggregate Excess Limit specified at Item 6(b) of the Schedule.

2.3 Bodily Injury & Property Damage Defence Costs

The Insurer will pay to or on behalf of each Insured Person the:

- (i) Defence Costs arising from a Claim for Bodily Injury or Property Damage;
- (ii) Health & Safety Defence Costs; and
- (iii) Gross Negligence Manslaughter Defence Costs,

subject to the Additional Limit.

2.4 Emergency Costs

The Insurer will reimburse Emergency Costs of each Insured Person up to the Sublimit of Liability but only upon receipt by the Insurer of a written request from the Policyholder received within thirty (30) days of those Emergency Costs being incurred.

2.5 Assets and Liberty

The Insurer will pay to or on behalf of each Insured Person the:

- (i) Bail Bond and Civil Bond Premium;
- (ii) Prosecution Costs;
- (iii) Assets and Liberty Defence Costs; and
- (iv) Assets and Liberty Expenses,

of each Insured Person.

2.6 Public Relations Expenses

The Insurer will pay to or on behalf of each Insured Person the Public Relations Expenses of each Insured Person, subject to the Sublimit of Liability.

2.7 Extradition

The Insurer will pay to or on behalf of each Insured Person the Extradition Costs of each Insured Person.

2.8 Company Crisis Management Costs

The Insurer will pay the Crisis Management Costs incurred by a Company in connection with a Crisis Management Event as set out in Appendix II of this policy, up to the limit specified at Item 16 of the Schedule which is outside the Limit of Liability and is the total aggregate limit in respect of all Company Crisis Management Costs.

2.9 Environmental Violation

The Insurer will pay to or on behalf of each Insured Person the Loss arising from an Environmental Violation, subject to the Additional Limit.

2.10 Investigation Costs for Derivative Demands

Subject to the Sublimit of Liability, the Insurer will pay the Derivative Demand Investigation Costs of each Company arising from a Derivative Demand Investigation in response to a Derivative Demand.

It shall be the duty of the Company and not the duty of the Insurer to conduct, investigate, and evaluate any Derivative Demand Investigation.

Nothing in this Section 2.10 shall be construed to afford coverage under this policy for any Insured Event brought by the Company against any Insured Person other than in respect of Derivative Demand Investigation Costs incurred in a covered Derivative Demand Investigation. Payment of any Derivative Demand Investigation Costs under this policy shall not waive any of the Insurer's rights under this policy or at law.

The Company shall be entitled to payment of its covered Derivative Demand Investigation Costs ninety (90) days after a final decision not to bring a civil proceeding in a court of law has been communicated to the Complaining Shareholders.

Such payment shall be subject to an undertaking by the Company, in a form acceptable to the Insurer, that the Company shall return to the Insurer such payment in the event any Company or Complaining Shareholders brings a Claim alleging, arising out of, based upon or attributable to any Wrongful Acts which were the subject of the Derivative Demand.

No Retention shall apply to any payment in respect of Derivative Demand Investigation Costs.

2.11 Tax Liability

The Insurer will pay to or on behalf of each Insured Person, any:

- (i) Tax Liability; and
 - (ii) Tax Liability Defence Costs,
- subject to the Sublimit of Liability.

2.12 Civil Fines and Civil Penalties

- (i) The Insurer will pay civil and administrative fines and penalties assessed against any Insured Person which an Insured Person is legally liable to pay pursuant to a Claim other than arising out of the Foreign Corrupt Practices Act as amended by the International Anti-Bribery and Fair Competition Act of 1998, (Foreign Corrupt Practices Act) of the United States of America (the "FCPA").
- (ii) With respect to the FCPA, the Insurer will pay civil fines and civil penalties assessed against any Insured Person which an Insured Person is legally liable to pay pursuant to a Claim alleging a violation of the FCPA, 15, USC Section 78dd-2(g)(2)(B) and Section 78ff-2(c)(2)(B).

2.13 Mitigation

Subject to the Sub-Limit of Liability, the Insurer will pay the Mitigation Costs, Mitigation Prosecution Costs and Professional Fees incurred by an Insured Person, with the Insurer's prior written consent, to minimise the risk of a Claim against an Insured Person provided that:

- (i) notification of the relevant circumstances has been made to the Insurer in accordance with Section 7.1 "Notification of Insured Events and Circumstances"; and
- (ii) if the circumstances notified in accordance with (i) above were to give rise to a Claim, that Claim would result in a civil legal liability of the Insured Person to the potential claimant, but no such Claim has yet been made by the potential claimant; and
- (iii) the liability of the Insurer under this Additional Protection 2.13 shall not exceed the liability that would have existed under this policy if the Claim had been made against the Insured Person by the potential claimant.

In no event shall Additional Protection 2.13 include the remuneration of any Insured Person, costs of their time or any other costs or overheads of any Company; or payments to a potential claimant to reduce the ultimate civil legal liability of a Company whether incurred by the Company or by an Insured Person on behalf of the Company.

2.14 Specialist Counsel

Defence Costs is extended to include the reasonable fees, costs and expenses incurred by an Insured Person for counsel within their home jurisdiction to interpret and apply advice received from counsel in a foreign jurisdiction in response to any Securities Claim in such foreign jurisdiction.

3. Extensions

3.1 Automatic New Subsidiary

The definition of **Company** will be automatically extended to any entity which becomes a **Subsidiary** during the **Policy Period** provided that the entity:

- (i) has total assets representing no more than 50% of the consolidated assets of the **Policyholder** at the inception date of the policy; and
- (ii) has no listing of **Securities** in the United States of America, Canada or any of their territories or possessions.

If, during the **Policy Period**, an entity not satisfying the conditions above becomes a **Subsidiary** of the **Policyholder**, the cover provided by this Extension shall apply automatically for a period of sixty (60) days from the date upon which the entity becomes a **Subsidiary**, subject to the provision of written notice to the **Insurer** during the **Policy Period** that such entity has become a **Subsidiary**. At the **Policyholder's** request, cover may be extended beyond sixty (60) days provided that the **Policyholder** provides the **Insurer** with sufficient details during such 60 day period to permit the **Insurer** to assess and evaluate its exposure with respect to such entity and the **Policyholder** accepts any consequent amendments to the policy terms and conditions, including payment of any additional premium required by the **Insurer** as the **Insurer** in its absolute discretion may decide.

3.2 Elective Reinstatement Limit

In the event of a **Claim** under this policy, the **Policyholder** shall be entitled once, upon giving written notice to the **Insurer**, to purchase a reinstated limit equal to the **Limit of Liability** (the "**Reinstated Limit**"). The **Reinstated Limit** shall be subject to the following conditions:

- (i) the right to purchase the **Reinstated Limit** shall commence on the date a **Claim** is reported to the **Insurer**, and shall expire on the last day of the **Policy Period** or the **Discovery Period** if one is already in effect; provided that in all events only one reinstatement shall be permitted during the **Policy Period**;
- (ii) the effective date of the **Reinstated Limit** shall be the date on which the **Insurer** acknowledges receipt of the written notice of the **Insured's** election to purchase the **Reinstated Limit**;
- (iii) the payment of the additional premium specified at Item 10 of the Schedule shall be a condition precedent to liability under the **Reinstated Limit**;
- (iv) if a **Discovery Period** is already in effect, then the additional premium to elect the **Reinstated Limit** at any time after one year from the inception date of this policy shall be fixed at 150% of the premium specified at Item 12 of the Schedule;
- (v) the **Reinstated Limit** shall only provide cover for **Non-Indemnifiable Loss** arising from **Claims** made on or after the effective date of the **Reinstated Limit** and prior to the end of the **Policy Period** or **Discovery Period** if applicable; and the **Claim** does not constitute a **Single Claim** with any previously notified **Insured Event** or circumstance ("**Reinstatement Claims**");
- (vi) all other **Claims** shall continue to be subject to the **Limit of Liability**, the **Sublimits of Liability**, and the **Additional Limits**, and nothing in this Section 3.2 shall act to increase the **Insurer's** liability under this policy other than in respect of **Reinstatement Claims**;
- (vii) the **Reinstated Limit** shall only be available once and shall be the maximum aggregate liability of the **Insurer** for all **Reinstatement Claims**. The **Limit of Liability** shall remain separate and shall not apply to any **Reinstatement Claim**;
- (viii) upon exercise of the **Reinstated Limit**, the entire premium specified at Items 10 and 12 of the Schedule shall be deemed fully earned; the **Policyholder** shall not be entitled to any refund of premium as a result of the exercise of the **Reinstated Limit** nor shall any of the premium paid for the policy be credited toward the additional premium required to exercise the **Reinstated Limit**;
- (ix) in no event shall the right to a **Reinstated Limit** apply if prior to the effective date of the reinstatement, this policy has been cancelled, or is otherwise not in effect; and
- (x) other than as stated above, coverage for **Reinstatement Claims** shall be subject to the same terms, conditions and exclusions of the policy applicable to other **Claims** under this policy, including without limitation the **Sublimits of Liability**, the **Additional Limits**, and the **Retentions**.

3.3 Blanket DIC

If the **Insurer** is not liable for **Loss** under this policy, but cover for the same loss would have been available to any **Insured Person** or any **Company** based upon the terms, conditions, exclusions and limitations of an **Existing Policy**, then this policy shall provide cover in accordance with the same terms, conditions, exclusions and limitations of the **Existing Policy** as if it was in existence on the inception date. If the **Existing Policy** remains in force after the inception date of this policy, then the insurance provided by this policy applies excess over the **Existing Policy**.

If the **Existing Policy** remains in force after the inception date of this policy and cover would be available under this policy but not under the **Existing Policy**, then this policy shall provide cover in accordance with the terms and conditions of this policy.

Nothing in this Section 3.3 shall act to increase the Insurer's maximum aggregate liability under this policy, and any payment by the Insurer pursuant to this Section 3.3 shall be subject to, and shall act to erode the limits of, the **Limits of Liability**, **Sublimits of Liability** and **Additional Limits**.

3.4 Global Liberalization

In respect of **Loss** arising from any **Claim** maintained in a **Foreign Jurisdiction** or to which the law of a **Foreign Jurisdiction** is applied, the Insurer shall apply the terms and conditions of this policy as amended to include those of the **Foreign Policy** that are more favourable to **Insureds** in the **Foreign Jurisdiction**. This Section shall not apply to any endorsement to this policy that excludes or limits coverage for specific events or litigation or any provision of any policy that has worldwide effect, including but not limited to any provision addressing limits of liability (primary, excess or sublimits), retentions, other insurance, non-renewal, duty to defend, defence within or without limits, taxes, conformance to law or excess liability coverage or any claims made provisions.

3.5 Discovery

In the event that this policy is not renewed or replaced, the **Insured** shall be entitled to an automatic **Discovery Period** of ninety (90) days.

The **Insured** shall be entitled to purchase an extended **Discovery Period**:

- (i) on the terms specified at Item 9(a) of the Schedule in the event that the **Policyholder** declines to accept such terms and conditions for renewal of the policy that the Insurer shall offer; or
- (ii) on the terms specified at Item 9(b) of the Schedule in the event that the Insurer declines to offer terms for renewal of the policy,

in each case subject to the **Policyholder** notifying the Insurer in writing of its election to purchase such extended **Discovery Period** within thirty (30) days of expiry of the **Policy Period**.

A **Discovery Period** shall be non-cancellable, other than by the Insurer for non-payment of premium.

A **Discovery Period** shall not be available under this Extension 3.5 if a **Transaction** occurs during the **Policy Period**.

3.6 Lifetime Run Off for Retired Insured Persons

The Insurer will provide an unlimited **Discovery Period** for any **Insured Person** who has resigned or retired during the **Policy Period** provided that on the expiry of this policy:

- (i) this policy is not renewed or replaced; or
- (ii) where this policy is renewed or replaced on the expiry of this policy, such renewal or replacement does not provide cover for **Insured Persons** who have resigned or retired during the **Policy Period**.

This Extension shall not apply in the event an **Insured Person** resigns or retires from their position with the **Company** by reason of a **Transaction** or the **Financial Impairment** of the **Company**.

3.7 Continuous Cover

The Insurer will pay the Loss resulting from any Claim made against an Insured, or other Insured Event first arising, before the start of the Policy Period, but which is notified to the Insurer during the Policy Period where:

- (i) the Insured has continuously held a similar Directors & Officers Liability insurance policy issued by the Insurer or any of its affiliates (the "Previous Policy"), under which coverage of the Insured Event or circumstance would have been provided, and under which notification should have been made;
- (ii) notification of the Insured Event or circumstance was not made within the applicable notification period of the Previous Policy; and
- (iii) the failure to notify the Insured Event or circumstance prior to the start of the Policy Period was not due to the deliberate, dishonest, fraudulent or criminal act or omission of any Insured.

The cover available under this Section 3.7 shall be construed in accordance with the terms and conditions of the Previous Policy, provided that:

- (a) the Limit of Liability available to pay the Loss resulting from any Insured Event covered under this Section 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
- (b) the Limit of Liability, Sublimits of Liability and Additional Limits available under this policy shall be eroded by any payment made pursuant to this Extension.

4. Exclusions

The Insurer shall not be liable under this policy to make any payment:

4.1 Conduct

arising out of, based upon or attributable to:

- (i) the gaining of profit or advantage to which the Insured was not legally entitled; or
- (ii) the committing of any criminal, dishonest or fraudulent act or omission,

in the event that any of the above is established by final non-appealable adjudication of a judicial or arbitral tribunal other than in an action or proceeding initiated by the Insurer to determine coverage under the policy.

4.2 Prior Insured Events and Circumstances

arising out of, based upon or attributable to:

- (i) facts alleged or the same or related Wrongful Act(s) alleged or contained in any Insured Event which has been or could have been reported or in any circumstances of which notice has been or should have been given under any policy of which this policy is a renewal or replacement or which it may succeed in time; or any Insured Event that would otherwise constitute a single claim with any claim or other matter reported under any policy of which this policy is a renewal or replacement or which it may succeed in time; or
- (ii) any pending or prior civil, criminal, administrative or regulatory proceeding, investigation, arbitration or adjudication of which an Insured had notice as at the Continuity Date, or alleging or deriving from the same or essentially the same facts as alleged in such actions.

Exclusion 4.2 (i) shall not apply to any Insured Event or circumstance covered under Extension 3.7 "Continuous Cover".

4.3 Bodily Injury and Property Damage

for any **Claim** or other **Insured Event** for **Bodily Injury** or **Property Damage**.

This Exclusion shall not apply to:

- (i) any **Claim** for emotional distress arising from an **Employment Practice Breach**; or
- (ii) **Defence Costs** of any **Insured Person** including **Gross Negligence Manslaughter Defence Costs** and **Health & Safety Defence Costs** covered under Additional Protection 2.3 "Bodily Injury & Property Damage Defence Costs";
- (iii) **Non-Indemnifiable Loss** where and to the extent personal liability is established against any **Insured Person**; or
- (iv) any **Securities Claim**.

4.4 US Claims Brought by any Company of Outside Entity

arising out of, based upon or attributable to any **US Claim** which is brought by or on behalf of any **Company** against any **Insured**; or by any **Outside Entity** against an **Outside Entity Director** of that **Outside Entity**.

This Exclusion shall not apply to:

- (a) any **Claim** against any **Insured Person**:
 - (i) pursued by any **Security** holder or member of any **Company** or **Outside Entity**; either directly or derivatively, or pursued as a class action; and in respect of which the intervention, assistance or participation of the **Insured** is of a legally required rather than voluntary nature (including by way of a **Derivative Demand Investigation**); or
 - (ii) engaged in any protected activity specified in the "whistleblower" protection pursuant to the Sarbanes-Oxley Act of 2002 (18 U.S.C. 1514 (A)) or any protected activity specified in any other "whistleblower" protection pursuant to any similar legislation in another jurisdiction;
- (b) any **Claim** against any **Insured** pursued by an insolvency administrator, receiver, trustee or liquidator of the **Company** or **Outside Entity** either directly or derivatively on behalf of the **Company** or **Outside Entity**; or
- (c) **Defence Costs** of any **Insured Person**.

4.5 Employment Retirement Income Security Act(ERISA)

arising out of, based upon or attributable to any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (US) and any applicable amendments made, or similar provisions of any federal, country, state, territory or local statutory law or common law in the United States of America or Canada or any of their territories or possessions.

4.6 SEC Claims

arising out of, based upon or attributable to any **Securities Claim** brought within or maintained within the jurisdiction of, or based upon any laws of, the United States of America, its territories or possessions except as expressly provided in Section 6 of this policy.

This Exclusion shall not apply to **Securities**:

- (i) purchased or sold pursuant to Rule 144A or Regulation S of the Securities Act of 1933 (US); or
- (ii) registered under the American Depositary Receipts (ADR) Level 1 facility.

4.7 Foreign Jurisdiction IPO

arising out of, based upon or attributable to any **Securities Claim** brought within or maintained within any jurisdiction in which **Securities** of the **Company** are not publicly traded at the inception date of this policy except as expressly provided in Section 6 of this policy.

For the purposes of determining the applicability of these Exclusions, the acts of any **Insured** shall not be imputed to any other **Insured Person**.

5. Definitions

5.1 Additional Limit

means the applicable amounts set out at Item 5 of the Schedule, which shall be the aggregate amount available in addition to the **Limit of Liability** in respect of the applicable Section.

5.2 Application

means:

- (i) the written statements and representations made by an **Insured** and provided to the **Insurer** during the negotiation of this policy, or contained in any application or other materials or information provided to the **Insurer** in connection with the underwriting of this policy;
- (ii) all warranties executed by or on behalf of an **Insured** and provided to the **Insurer** in connection with the underwriting of this policy or the underwriting of any other directors and officers (or equivalent) liability policy issued by the **Insurer**, or any of its affiliates, of which this policy is a renewal, replacement or which it succeeds in time; and
- (iii) each and every public filing by or on behalf of a **Company** made with the Hong Kong Securities and Futures Commission or any other government agency with responsibility or power to enforce local securities laws and regulations, including but not limited to the **Company's** Annual Report(s), any financial information in such filings, and any certifications relating to the accuracy of the foregoing.

5.3 Assets and Liberty Defence Costs

means reasonable fees, costs and expenses incurred, with the **Insurer's** prior written consent, by any **Insured Person** to defend any **Assets and Liberty Proceeding**.

5.4 Assets and Liberty Expenses

means, in the event of an interim or interlocutory order in the course of any **Assets and Liberty Proceeding** 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**, the reasonable day to day expenses and financial commitments of an **Insured Person** in excess of any personal allowance directed by a court, including but not limited to schooling, housing, utilities, personal insurances and other household expenses, incurred within a period of twelve (12) months after the occurrence of such order.

5.5 Assets and Liberty Proceeding

means any proceeding brought against an **Insured Person** by any **Official Body** alleging a **Wrongful Act** and seeking:

- (i) to disqualify an **Insured Person** from holding office as a **Director** or officer;
- (ii) confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of an **Insured Person**;
- (iii) a charge over real estate property or personal assets of an **Insured Person**;
- (iv) a temporary or permanent prohibition on an **Insured Person** from holding the office of or performing the function of a **Director** or officer;
- (v) a restriction of an **Insured Person's** liberty to a specified domestic residence or an official detention; or
- (vi) deportation of an **Insured Person** following revocation of otherwise proper, current and valid immigration status for any reason other than such **Insured Person's** conviction of a crime.

5.6 Bail Bond and Civil Bond Premium

means 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 hearing a **Claim**.

5.7 Bodily Injury or Property Damage

means bodily injury, sickness, disease, death or emotional distress, or damage to, destruction, impairment or loss of use of any property (including business interruption).

5.8 Claim

means:

- (i) (a) a written demand, or a civil, regulatory, mediation, administrative or arbitration proceeding including any counter-claim seeking compensation or other legal remedy; or
(b) a criminal proceeding, including any proceeding brought pursuant to the Hong Kong Prevention of Bribery Ordinance;
made or brought against an **Insured Person** alleging a **Wrongful Act**; or
- (ii) a written demand, or a civil, regulatory, mediation, administrative or arbitration proceeding including any counter-claim seeking compensation or other legal remedy made or brought against an **Insured** alleging an **Employment Practices Breach**; or
- (iii) any **Securities Claim**; or
- (iv) the receipt by an **Insured** of any written request to toll a period or statute of limitations which may be applicable to any of (i) or (iii) above and that may be made for any **Wrongful Act** of any **Insured**.

5.9 Company

means:

- (i) the **Policyholder**; and
- (ii) any **Subsidiary** prior to or at the inception date of this policy.

5.10 Complaining Shareholder

means any shareholder or shareholders, other than any **Insured**, that makes a **Derivative Demand**.

5.11 Continuity Date

means the applicable date specified in Item 8 of the Schedule.

5.12 Defamation

means the libel or slander of any natural person who is not an **Insured**, that is made by an **Insured Person**.

5.13 Defence Costs

means:

- (i) reasonable fees, costs and expenses incurred (including but not limited to legal counsels' fees and experts' fees), with the **Insurer's** prior written consent, by or on behalf of an **Insured** after a **Claim** is made, for the investigation, defence, settlement or appeal of such **Claim**; and
- (ii) reasonable fees, costs and expenses incurred, with the **Insurer's** prior written consent, of accredited experts, retained through defence counsel 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 the remuneration of any **Insured Person**, cost of their time or overhead of or any other costs of any **Company**.

5.14 Derivative Demand

means a written demand by shareholders upon the **Directors** of a **Company** asking it to bring, on behalf of the **Company**, a civil proceeding in a court of law against any **Insured Person** of the **Company** for a **Wrongful Act** of such **Director**.

5.15 Derivative Demand Investigation

means the investigation by the **Company** or, on behalf of the **Company** by its **Directors** or any committee of the **Directors**, as to whether or not the **Company** should bring the civil proceeding demanded in a **Derivative Demand**.

5.16 Derivative Demand Investigation Costs

means reasonable and necessary fees, costs and expenses) incurred by the **Company** or its **Directors** or any committee of the **Directors** solely in connection with a **Derivative Demand Investigation**.

Derivative Demand Investigation Costs shall not include any settlement, judgment or damages or any regular or the remuneration of any **Insured Person**, the cost of their time or overhead of or any other costs of any **Company**.

5.17 Director

means any natural person who was, is or during the **Policy Period** becomes a director of the board (or equivalent management body) but only when and to the extent that such natural person is acting in their capacity as a director of a **Company** or **OutsideEntity**.

5.18 Discovery Period

means a period immediately following the expiry of the **Policy Period** (or upon effective date of a **Transaction** if applicable in accordance with Section 9.6) during which written notice may be given to the **Insurer**:

- (i) of a **Claim** first made during such period for a **Wrongful Act** occurring; or
- (ii) a matter the subject of any other **Insured Event** which first occurred or arose, prior to the commencement of the **Discovery Period**.

5.19 Emergency Costs

means **Defence Costs**, **Investigation Costs** or **Regulatory Crisis Event Costs**:

- (i) incurred without the **Insurer's** prior written consent because an emergency reasonably prevents the **Insured** from obtaining such consent;
- (ii) for the defence of a **Claim**, **Investigation** or **Regulatory Crisis Event** only; and
- (iii) which the **Insurer** later agrees have been reasonably incurred.

5.20 Employee

means any past, present or future employee, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any full-time, part-time, seasonal and temporary employee.

5.21 Employment-Related Benefits

means:

- (i) non-monetary benefits including but not limited to the allocation of a company car, travel allowance, mobile or landline telephone, medical or life insurance expenses, education and training allowances, and equipment allowances;
- (ii) stock, shares, stock options, share options or any entitlement or right under any equity plan of any description;
- (iii) participation in any stock, share, stock option or share option plan, or participation in any equity plan of any description;
- (iv) severance or redundancy payments or entitlements;
- (v) any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;
- (vi) bonus or incentive payments (including deferred compensation), or any entitlement or right under a bonus or incentive plan (which, for the avoidance of doubt, does not include any payments, entitlement or right under a commission scheme); or
- (vii) payments or contributions in respect of any provident, benefit, superannuation, pension or retirement fund, or any other account, fund, scheme or plan intended to provide benefits, in whole or in part, at retirement or a particular age, or on the happening of a particular event.

5.22 Employment Practices Breach

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 **Company**.

5.23 Environmental Condition

means:

- (i) the actual, alleged or threatened discharge, dispersal, release or escape of, pollutants (as defined by local legislation), including greenhouse gases; or
- (ii) any regulatory direction or request to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize pollutants (as defined by applicable local legislation), including greenhouse gases.

5.24 Environmental Violation

means any **Claim** based upon, arising out of, or attributable to an **Environmental Condition** if, and to the extent, such **Claim**:

- (i) alleges an **Employment Practice Breach** against an **Insured Person**;
- (ii) is against an **Insured Person** alleging a **Wrongful Act** in connection with misrepresenting or failing to disclose information as governed by any statute, regulation, rule, or common law regulating or creating liability for an **Environmental Condition**; or
- (iii) results in a **Non-Indemnifiable Loss** to any **Insured Person**.

5.25 Existing Policy

means the management liability insurance policy held by the **Policyholder** immediately prior to and which continues uninterrupted until the inception date of this policy, and that is listed in Appendix I hereto.

5.26 Extradition Costs

means reasonable fees, costs and expenses incurred, with the **Insurer's** prior written consent, in any extradition proceedings or related appeal, any judicial review application challenging the designation of any territory for the purposes of any extradition law, any challenge or appeal of any extradition decision by the responsible governmental authority, or any applications to the European Court of Human Rights or similar court in another jurisdiction, including the costs of any accredited crisis counsellor tax advisor or public relations consultant retained by an **Insured Person** in respect of extradition proceedings brought against such **Insured Person**.

5.27 Financial Impairment

means the status of the **Company** resulting from (i) the appointment by any official, agency or court of any receiver and manager, judicial manager, administrator, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, administer, manage or liquidate the **Company**; or (ii) the **Company** becoming a debtor in possession.

5.28 Foreign Jurisdiction

means any jurisdiction, other than Hong Kong.

5.29 Foreign Policy

means the standard executive managerial liability policy (including all mandatory endorsements, if any) approved by the **Insurer** or any of its affiliates to be sold within a **Foreign Jurisdiction** that provides coverage substantially similar to the coverage afforded under this policy. If more than one such policy exists, then **Foreign Policy** means the standard basis policy form most recently offered for sale for comparable risks by the **Insurer** or any of its affiliates in that **Foreign Jurisdiction**. **Foreign Policy** shall not include any partnership managerial, pension trust or professional liability coverage.

5.30 Gross Negligence Manslaughter Defence Costs

means the **Defence Costs** of any **Insured Person** arising from a **Claim** alleging a gross breach of duty causing a workplace death of a person.

5.31 Health & Safety Defence Costs

means the **Defence Costs** of any **Insured Person** arising from any **Claim** alleging a breach of occupational health and safety laws.

5.32 Insured

means any **Company** or any **Insured Person**.

5.33 Insured Event

means any **Claim** or matter or event covered under Section 2 "Additional Protections"; Section 3 "Extensions" or any endorsement to this policy.

5.34 Insured Person

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

- (i) a **Director** or officer or member of a management board or supervisory board of a **Company**, but not an external auditor or insolvency office-holder;
- (ii) an official of the **Company** whose duties are the same as those of a director;
- (iii) an **Employee** (including in-house general counsel or controller) of the **Company** but only:
 - (a) while acting as a manager (or in a supervisory capacity) of the **Company**;
 - (b) in connection with an **Employment Practices Breach** against that **Employee**; or
 - (c) where that **Employee** and any other **Insured Person** are named as co-defendants in a **Claim** or **Investigation**.
- (iv) a consultant, independent contractor, seconded or agent of the **Company** to the extent indemnified by the **Company** in the same terms as the **Directors** and officers of the **Company**;
- (v) a **Trustee**;

- (vi) a person who acts as a member of a committee established by or approved by the board of directors of any **Company** whether under statute or otherwise (provided that such **Company** provides indemnification to such person);
- (vii) an **Outside Entity Director**;
- (viii) a **Shadow Director** of a **Company**;
- (ix) a de facto director of a **Company**; or
- (x) a prospective director named as such in any listing particulars or prospectus issued by a **Company**,

but only when and to the extent that such **Insured Person** is acting in such **Insured Person** capacity.

Insured Person shall also include:

- (a) the spouse or domestic partner (including same sex relationship civil partnerships, if applicable); and
- (b) the administrator, heirs, legal representatives, or executor of a deceased, incompetent, insolvent or bankrupt estate;

of an **Insured Person** referred to in (i) to (x) above, to the extent that a **Claim** is brought against them solely by reason of them having an interest in property that is sought to be recovered in such **Claim**.

5.35 Insurer

means AIG Insurance Hong Kong Limited.

5.36 Investigation

means a formal investigation or inquiry by an **Official Body**, which:

- (i) starts during the **Policy Period**; and
- (ii) names an **Insured Person** as either being under investigation or as a witness; or
- (iii) invites that **Insured Person** to produce documents, answer questions, or attend an interview or hearing in their capacity as an **Insured Person**,

but shall not include any inquiry or action that is industry-wide or otherwise not specific to the **Company** or the **Insured Person**.

5.37 Investigation Costs

means the reasonable fees, costs and expenses of any legal advisors incurred by or on behalf of an **Insured Person**, with the **Insurer's** prior written consent, for the principal purpose of representing an **Insured Person** in connection with an **Investigation**.

Investigation Costs do not include the remuneration of any **Insured Person**, the cost of their time or overhead of or any other costs of any **Company**.

5.38 Limit of Liability

means the amount specified in Item 3 of the Schedule.

5.39 Loss

means:

- (i) any amount which an **Insured** is legally liable to pay resulting from a **Claim**, including any award of damages (including punitive and exemplary damages), award of costs or settlement in respect thereof (including claimants' legal costs and expenses), pre and post judgment interest on a covered judgment or award and plaintiff's costs awarded against the **Insured** as part of any final or interim judgment;
- (ii) **Defence Costs**; and
- (iii) any amount covered under any **Additional Protection**, but only to the extent set out in the relevant section.

With respect to Cover 1.3 "Company Employment Practices Breach" only, **Loss** does not include:

- (i) remuneration, back pay, compensation or **Employment Related Benefits**;
- (ii) costs incurred by the **Company** in connection with any educational, corrective, sensitivity or other programme, policy or seminar relating to any **Employment Practices Breach**;
- (iii) costs incurred by the **Company** to modify any building or property, or to provide any service, in order to make such building or property, or make any service more accessible or accommodating to any disabled person; or
- (iv) non-compensatory damages including punitive, aggravated or exemplary damages; compensation payable in respect of a contractual obligation;

Loss does not include:

- (i) taxes, except as provided under **Additional Protection 2.11 'Tax Liability'**;
- (ii) costs in respect of the containment, clean-up, removal or treatment of hazardous materials, pollution or product defects; or
- (iii) civil or criminal fines or penalties except as provided under **Additional Protection 2.12 "Civil Fines and Civil Penalties"**; or
- (iv) any amount for which an **Insured** is not legally liable, or the **Insurer** is prohibited by local laws from paying to the **Insured**; or matters which are uninsurable under the law of a relevant jurisdiction.

In the event of a **Claim** alleging that the price or consideration paid or proposed to be paid for the acquisition or completion of the acquisition of all or substantially all of the ownership interest in or assets of any entity is inadequate, **Loss** with respect to such **Claim** shall not include any amount of any judgment or settlement representing the amount by which such price or consideration is effectively increased; provided however, that this paragraph shall not apply to **Defence Costs**.

5.40 Mitigation Costs

means the reasonable and necessary payments incurred by the **Insured Person**, with **Insurer's** prior written consent, and paid directly or indirectly to each potential claimant for the principal purpose of avoiding a **Claim(s)** being made by that potential claimant for a specific **Wrongful Act**.

Mitigation Costs shall not include: (a) liability which is not otherwise covered under this policy or (b) payments arising out of, based upon or attributable to an **Investigation, Regulatory Crisis Event or Derivative Demand Investigation**.

5.41 Mitigation Prosecution Costs

means the reasonable and necessary fees, costs and expenses incurred by an **Insured Person**, with the **Insurer's** prior written consent, to bring legal proceedings for a declaration and/or an

injunction for the principal purpose of avoiding a **Claim(s)** being made by a potential claimant for a specific **Wrongful Act**.

5.42 Non-Indemnifiable Loss

means **Loss** of an **Insured Person** that the **Company** cannot reimburse because it is either illegal for the **Company** to do so or because the **Company** is insolvent in accordance with the law of its place of business.

5.43 Official Body

means any regulator, government body, government agency, official trade body, or any other body that is empowered by statute to investigate the affairs of a **Company** or an **Insured Person**.

5.44 Outside Entity

means any entity other than an entity that is a **Company** provided that the relevant **Outside Entity**:

- (i) is not a bank, clearing house, credit institution, undertaking for collective investment in securities, investment firm, investment advisor/manager, investment fund or mutual fund, private equity or venture capital company, stock brokerage firm, insurance company or any similar entity; and
- (ii) has none of its securities listed on a securities exchange or market within the United States of America or is subject to any obligation to file reports with the United States Securities and Exchange Commission in accordance with Section 13 of the U.S. Securities and Exchange Act of 1934,

other than as specifically provided for in Section 9.8 "Outside Entities".

5.45 Outside Entity Director

means any **Insured Person** who did or does, or during the **Policy Period** begins to serve, at the specific request or direction of a **Company**, as a director or officer, trustee (except a pension trustee), governor or equivalent of an **Outside Entity**.

5.46 Policy Period

means the period specified in Item 2 of the Schedule.

5.47 Policyholder

means the entity specified in Item 1 of the Schedule.

5.48 Professional Fees

means the reasonable and necessary fees, costs and expenses incurred by an **Insured Person** of appropriately qualified professionals appointed with the **Insurer's** prior written consent to negotiate and facilitate the payment of **Mitigation Costs**.

Professional Fees shall not include (a) fees, costs and expenses which are not otherwise covered under this policy; or (b) costs attributable to an **Investigation**, **Regulatory Crisis Event** or **Derivative Investigation**.

5.49 Prosecution Costs

means reasonable fees, costs and expenses incurred, with the **Insurer's** prior written consent, by an **Insured Person**, to bring legal proceedings for a declaration and/or an injunction in connection with any **Assets and Liberty Proceedings**.

5.50 Public Relations Expenses

means reasonable fees, costs and expenses incurred, with the **Insurer's** prior written consent, of public relations consultants retained by an **Insured Person** directly to mitigate the adverse effect or

potential adverse effect on that Insured Person's reputation resulting from a Claim, by disseminating findings made in a final judicial disposition of that Claim which exonerates the Insured Person from fault, liability or culpability.

5.51 Regulatory Crisis Event

means, during the Policy Period:

- (i) a raid on, or on-site visit to the Company or an Outside Entity by an Official Body that involves the production, review, copying or confiscation of documents, or interviews of any Insured Person;
- (ii) a public announcement relating to (i) above;
- (iii) any formal written notification to an Official Body of a suspected material breach of an Insured Person's legal or regulatory duty; or
- (iv) a verifiable request by a Company for an Insured Person to appear at a meeting or interview with, or produce documents, records or electronic information to the Directors of the Company which:
 - a. results from (i), (ii) or (iii) above; or
 - b. follows or is in anticipation of either an Investigation or (iii) above.

5.52 Regulatory Crisis Event Costs

means the reasonable fees, costs, and expenses of any legal advisors incurred by or on behalf of an Insured Person, with the Insurer's prior written consent, for the principal purpose of representing an Insured Person in connection with a Regulatory Crisis Event.

Regulatory Crisis Event Costs do not include the remuneration of any Insured Person, the cost of their time or overhead of or any other costs of any Company.

5.53 Retention

means the applicable amount(s) specified at Item 7 of the Schedule.

5.54 Security

means any security representing debt or equity interests in a Company.

5.55 Securities Claim

means:

- (i) any:
 - (a) written demand;
 - (b) civil, criminal, mediation or arbitration proceedings; or
 - (c) administrative or regulatory proceedings,made or brought by any person or entity against any Insured Person alleging a Wrongful Act; or
- (ii) any:
 - (a) written demand; or
 - (b) civil, criminal, mediation or arbitration proceedings,made or brought by or on behalf of any Security holder (including by any Official Body on behalf of any Security holder), against any Company alleging a Wrongful Act,

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 of a Company provided that the Securities are not issued or traded

in the United States of America, or any of its territories or possessions.

Securities Claim shall not mean any **Claim** by a director, officer or **Employee** of a **Company** 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 any warrants or options).

5.56 Senior Counsel

means a senior lawyer to be mutually agreed upon by the parties, or in the absence of agreement, to be recommended by the head of the bar association / law society (or equivalent organisation) in the jurisdiction in which the **Loss** was incurred.

5.57 Shadow Director

means a natural person in accordance with whose directions or instructions a director or officer is accustomed to act, as defined in the Hong Kong Companies Ordinance or equivalent legislation in any other jurisdiction.

5.58 Single Claim

means any one or more **Insured Events** to the extent that such **Insured Events** arise out of, are based upon, or are attributable to continuous, repeated or related acts or omissions (including **Wrongful Act**), whether or not committed by more than one **Insured** and regardless of whether directed to or affecting one or more person or entity or involving the same or different claimants, **Insureds** or legal causes of action.

5.59 Sublimit(s) of Liability

means the applicable amount(s) specified at Item 4 of the Schedule which is the total aggregate limit in respect of the applicable Section.

5.60 Subsidiary

means any entity or company, including incorporated joint venture or partnership, in which the **Policyholder** either directly or indirectly through one or more other entities:

- (i) controls the composition of the board of directors;
- (ii) controls more than half of the shareholder or equity voting power; or
- (iii) holds more than half of the issued share capital or equity.

Subsidiary also includes any entity specifically endorsed to this policy as a **Subsidiary**.

5.61 Tax Liability

means liability imposed personally upon an **Insured Person**, in respect of:

- (i) personal taxes of such **Insured Person** unpaid by a **Company**, due to such **Company's Financial Impairment**; or
- (ii) unpaid corporate taxes of the **Company** where, and only to the extent that, the **Insured Person's** liability for such non-payment of tax is established by law against such **Insured Person** in the jurisdiction in which the **Claim** is made and the **Company** is not able to pay the tax either by reason of **Financial Impairment** or legal prohibition,

provided that such liabilities:

- (i) shall be limited to the amount of taxes unpaid, and shall not include any punitive, multiple award, or any liability in respect of a criminal or civil penalty or fine; and
- (ii) shall not include liability that arises due to an **Insured Person's** criminal, deliberate or wilful breach of any law or regulation.

5.62 Tax Liability Defence Costs

means reasonable fees, costs and expenses incurred with the **Insurer's** prior written consent, by or on behalf of an **Insured Person**, for the purpose of defending any written demand or proceeding brought against an **Insured Person** for **Tax Liability**.

Tax Liability Defence Costs shall not include the remuneration of any **Insured Person**, the cost of their time or overhead of or any other costs of any **Company**.

5.63 Transaction

means any one of the following events:

- (i) the **Policyholder** consolidates with or merges into or sells all or a majority of its assets to any other person or entity or group of persons or entities acting in concert, resulting in the extinction of the **Policyholder** as an independent legal entity; or
- (ii) any person or entity, or persons or entities acting in concert (other than a **Subsidiary** or **Subsidiaries**) becomes entitled to exercise more than fifty percent (50%) of the rights to vote at general meetings of the **Policyholder** or control the appointment of directors who are able to exercise a majority of votes at meetings of the board of directors of the **Policyholder**.

5.64 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 Company**.

5.65 US Claim

means any **Claim** brought or maintained within the jurisdiction of, or based upon any laws of the United States of America, its territories or possessions.

5.66 Wrongful Act

means:

- (i) with respect to any **Insured Person**:
 - (a) any actual or alleged: (i) act, error or omission, (ii) breach of duty, (iii) breach of trust, (iv) misstatement, (v) misleading statement, (vi) breach of warranty of authority; or (vii) **Defamation by an Insured Person**;
 - (b) any matter claimed against an **Insured Person** solely relating to him or her acting in the capacity as a **Director** or officer or member of a management board or supervisory board of the **Company**; or
 - (c) any actual or alleged act, error or omission with respect to any employment or prospective employment of any past, present, future or prospective **Employee** or **Insured Person** of any **Company** or any **Outside Entity**,
- (ii) with respect to any **Company**:
 - (a) any actual or alleged violation of any laws (statutory or common), rules or regulations relating to **Securities**, the purchase or sale or offer or solicitation of an offer to purchase or sell **Securities**, or any registration relating to such **Securities** by the **Company**; or
 - (b) an **Employment Practices Breach**.

6. Specific provisions relating to IPOs

6.1 IPO and Spin Out Automatic Cover

The Insurer will pay the Loss of each Insured arising from a Securities Claim connected with any public offering of Securities by a:

- (i) **Subsidiary** which did not have **Securities** publicly traded at the inception date of this Policy, provided that any such offering (other than in the United States of America, or any of its territories or possessions) is of a value less than US\$5,000,000 (or its local currency equivalent);
- (ii) **Company** (other than a **Subsidiary** in (i) above) in any jurisdiction (other than the United States of America, or any of its territories or possessions) in which **Securities** of such **Company** are not publicly traded at the inception date of this Policy, provided that any such offering is of a value less than US\$10,000,000 (or its local currency equivalent); or
- (iii) **Company** in the United States of America, or any of its territories or possessions, provided that the **Securities Claim** is first made during a period of thirty (30) days after the **Securities** have first been offered, listed or traded, or upon expiry of the **Policy Period**, whichever is the earlier, unless cover is extended for a longer period in accordance with Section 6.2.

6.2 Extension of Cover for IPOs, Spin Outs and US Securities

An Insured may be entitled to cover with respect to any public offering not provided for by Section 6.1, if:

- (i) any of the conditions in 6.1(i) to 6.1 (iii) are not met; and
- (ii) the Insurer receives a written request from the Policyholder within thirty (30) days of the **Securities** having been offered, listed or traded, seeking an extension of cover under this Section; and
- (iii) the Insurer has been provided with a copy of any prospectus, offering statement or other regulatory filing as soon as it becomes publicly available, together with any other information relating to the **Securities** which have been offered, listed or traded that the Insurer may reasonably require; and
- (iv) the Policyholder accepts the terms of any offer the Insurer may make.

If the Insurer does not receive a request in accordance with this Section, any cover provided automatically under Section 6.1 above will automatically lapse on expiry of the thirty (30) day period and be deemed void ab initio.

7. Claims

7.1 Notification of Insured Events and Circumstances

The Covers, Additional Protections and Extensions provided under this policy are granted solely with respect to **Claims** first made against an **Insured**, and other **Insured Events** first arising, during the **Policy Period** or applicable **Discovery Period**, or accepted as such in accordance with Section 7.3 "Related Insured Events or Circumstances", and only if such **Claims** have been reported to the **Insurer** as soon as is practicable after the **Claim** is first made against the **Insured**, or other **Insured Event** first arises, and in any event no later than either during the **Policy Period** or **Discovery Period** or within thirty (30) days of expiry of the **Policy Period** or **Discovery Period**.

The **Insured** shall, as a condition precedent to the **Insurer's** liability under this policy, give notice to the **Insurer** of any circumstance that might reasonably be expected to give rise to an **Insured Event** as soon as practicable after the **Company's** Risk Manager or General Counsel (or equivalent position) first becomes aware of the circumstance. The notice must include the reasons for anticipating the **Insured Event**, and full relevant particulars with respect to dates, the **Wrongful Act** (if applicable) and the potential **Insured** and claimant concerned.

If an **Insured** elects not to seek coverage for a **Regulatory Crisis Event** it will not prejudice the right of the **Insured** to seek coverage for any other **Insured Event** arising out of the same circumstances provided the **Insured Event** is notified in accordance with Section 7.1.

In the event that a statutory duty of confidentiality is imposed on the **Insured**, such that the **Insured** is not able to notify a circumstance or **Insured Event** in accordance with the terms and conditions of this policy, the **Insurer** shall:

- (i) not consider this as late notification provided that the **Insured** has exercised reasonable care and effort to fulfil its duties of notification under the policy; and
- (ii) subject to the other terms and conditions of the policy, pay the reasonable costs and expenses incurred by the **Insured** in the defence of a **Claim** or in responding to any other **Insured Event** where such statutory duty of confidentiality prevented the **Insured** from obtaining the **Insurer's** prior consent to the costs and expenses incurred.

The **Insurer** shall co-operate with the **Insured** to enter into a confidentiality agreement with the **Insured** or any **Official Body** in the event the agreement will facilitate the release of information or documentation that enables the **Insured** to notify any **Insured Event** or circumstance in accordance with this Section 7.1.

All notifications relating to **Insured Events** or circumstances must be in writing or sent by facsimile or email to:

Financial Lines Claims Department,

45/F, One Island East, 18 Westlands Road, Island East, Hong Kong.

Fax No. 852 2838 9916

financial.claim.hk@aig.com

7.2 Notification of a Crisis Management Event

The **Policyholder** must notify any **Crisis Management Event** to the **Insurer** immediately and in no event later than thirty (30) days of incurring **Crisis Management Costs** or the expiration of the **Policy Period** whichever is earlier. A notice of **Crisis** will not satisfy the claim notice requirements of Section 7.1 "Notification of Insured Events and Circumstances". All **Crisis Management Event** notifications must be sent in writing or sent by facsimile or email to the address in Section 7.1.

7.3 Related Insured Events or Circumstances

If notice of an **Insured Event** or circumstance is notified as required by this policy, then any subsequent **Insured Event**, that constitutes a **Single Claim** with that **Insured Event** or circumstance, shall be deemed to have first been made at the same time that the **Claim** was first made, other **Insured Event** first arose or notice of circumstance was first given and reported to the insurer on the date the required notices were first provided.

7.4 Defence & Settlement

All **Insureds** shall render all reasonable assistance to and cooperate with the **Insurer** in the investigation, defence, settlement or appeal of an **Insured Event** or circumstance, and provide the **Insurer** with all relevant information pertaining to any **Insured Event** or circumstance, as the **Insurer** may reasonably require. In the event of any **Insured Event**, each **Insured** shall take reasonable steps to minimise or reduce any **Loss**.

The **Insured** shall have the obligation to defend and contest any **Claim** made against them. The **Insurer** shall be entitled to participate fully in the defence and in the negotiation of any settlement that involves or appears reasonably likely to involve the **Insurer**.

The **Insurer** will accept as necessary the retention of separate legal representation to the extent required by an actual or potential conflict of interest between any **Insureds**.

If a **Claim** is made against an **Insured Person** by the **Company**, the **Insurer** shall have no duty or obligation to communicate with any other **Insured Person** or the **Company** in relation to that **Claim**.

Only those settlements, judgments or other amounts covered under this policy which have been consented to in writing by the **Insurer** (which shall not be unreasonably delayed or withheld) shall be payable as **Loss** under this policy (this does not apply to **Defence Costs** incurred in accordance with Extension 2.4 "Emergency Costs").

The applicable **Insured** or **Policyholder** shall reimburse the **Insurer** for any payments which are ultimately determined not to be covered by this policy.

7.5 Consent

The **Insured** shall not admit or assume any liability, enter into any settlement agreement, or consent to any judgment without the prior written consent (which shall not be unreasonably delayed or withheld) of the **Insurer**. Only liabilities, settlements and judgments resulting from **Insured Events** handled in accordance with this policy shall be recoverable as **Loss** under this policy.

7.6 Allocation

If a **Claim** or other **Insured Event** involves both covered and uncovered matters or persons under this policy, then the **Insured** and the **Insurer** shall use reasonable efforts to determine a fair and equitable allocation of **Loss** covered under this policy, on the basis of established judicial allocation principles which take into account the legal and financial exposures, and the relative benefits obtained by the relevant parties.

If the **Insurer** and the **Insured** cannot agree on allocation in accordance with this Section, then:

- (i) the **Insurer** shall advance that proportion of **Loss** which the **Insurer** reasonably considers to be fair and proper until a different amount shall be agreed upon or determined pursuant to the provisions of this Section; and
- (ii) the **Insurer** and the **Insured** agree to refer the determination to a **Senior Counsel**, whose decision shall be final and binding on all parties. The **Insured** and the **Insurer** shall be entitled

to make written submissions to the **Senior Counsel**. The expense of such determination by **Senior Counsel** will follow the same allocation of **Loss**.

7.7 Payment of Costs

The **Insurer** will pay all costs (not including **Mitigation Costs**) covered under this policy within thirty (30) days of the **Insurer** receiving and accepting sufficiently detailed invoices and other relevant information for those costs. The **Insurer** may not refuse to reimburse **Defence Costs** by reason only that the **Insurer** considers that the conduct specified in Exclusion 4.1 "Conduct" has occurred, until such time as a condition to that Exclusion is satisfied.

7.8 Order of Payments

The **Insurer** will pay **Loss** covered under this policy in the order in which such **Loss** is presented to the **Insurer** for payment. Should the **Insurer**, at its sole and absolute discretion, determine that the **Limit of Liability** will not be sufficient to cover all such **Loss**, the **Insurer** shall pay **Loss** in the following order:

- (i) **Loss of Insured Persons** where the **Company** has not indemnified such **Insured Person**;
- (ii) thereafter, with respect to any remaining balance of the **Limit of Liability**, the **Insurer** may, at its option, request the Chief Executive Officer (CEO) or equivalent of the **Policyholder** to elect in writing either to stipulate the order and the amounts in which **Loss** is to be discharged, or to receive such balance to be held on behalf of any **Insured** who has incurred such **Loss**.

Payment pursuant to this order of payments clause shall fully discharge the **Insurer** from its obligations under this policy.

7.9 Subrogation

In the event of any payment under this policy, the **Insurer** shall be subrogated to the extent of such payment to all of the **Insureds'** rights of recovery, contribution and indemnity and the **Insured** will provide all reasonable assistance and will do nothing to prejudice such rights. The **Insurer** will not exercise its rights of subrogation against an **Insured Person** in connection with an **Insured Event**, unless it can establish that Exclusion 4.1 "Conduct", applies to that **Insured Event** and to that **Insured Person**.

7.10 Recovery of Limits

In the event the **Insurer** recovers any amount paid under this policy, the **Insurer** will reinstate the **Limit of Liability** and any appropriate **Sublimit of Liability** or **Additional Limits** to the extent of such recovery, less the **Insurer's** costs incurred in administering and obtaining such recovery. The **Insurer** assumes no duty to seek a recovery of any amount paid under this policy. The **Insurer**, in its sole and absolute discretion, shall determine the amounts to be credited.

8. Limit & Retention

8.1 Limit of Liability

The total amount payable by the **Insurer** under this policy shall not exceed the **Limit of Liability**, except with respect to Additional Cover 2.2 "Excess Limit Protection", Additional Cover 2.8 "Company Crisis Management Costs"; Extension 3.2 "Elective Reinstatement Limit" and the **Additional Limits** where the **Insurer's** liability is expressly stated to be in excess of, outside of or in addition to the **Limit of Liability**.

The **Insurer** shall have no liability in excess of all such limits, irrespective of the number of **Insured Events**, **Insureds** or amount of any **Loss**, including with respect to any **Insured Event** specified in Section 7.3 "Related Insured Events or Circumstances".

Each **Sublimit of Liability** and any other sublimit is the maximum the **Insurer** shall pay in the aggregate for the **Policy Period** for the cover to which it applies and is part of the **Limit of Liability**.

8.2 Retention

The **Insurer** will only pay for any amount of **Loss** which is in excess of the **Retention** as applicable. The **Company** will be liable for the **Retention** which will remain uninsured.

No **Retention** shall be applicable to **Non-Indemnifiable Loss**, provided that the **Company** shall indemnify each **Insured Person** for any **Loss** incurred by the **Insured Person** to the fullest extent permissible by the applicable law.

No **Retention** shall be applicable to Additional Protection 2.8 "Company Crisis Management Costs", Additional Protection 2.10 "Investigation Costs for Derivative Demands" or costs of the **Regulatory Crisis Event Team** incurred in accordance with Appendix III.

If any **Company** is legally permitted or required to indemnify an **Insured Person**, but fails to do so within thirty (30) days, the **Insurer** shall advance payment to the **Insured Person** under this policy. All **Loss** within the **Retention** will be repaid by the **Company** to the **Insurer** immediately upon request for such payment.

No **Retention** will apply in respect of an **Insured Event** if:

- (i) the **Company** can reasonably show to the **Insurer** that it cannot cover payments for **Loss** because it is either (a) prohibited by law; or (b) financially unable because of insolvency; or
- (ii) the **Claim** is brought against the **Insured Person** by the **Company**.

In the event that more than one **Retention** is triggered by an **Insured Event** or related insured events then the highest of such **Retentions** shall be deemed the **Retention** applicable to **Loss** arising from such **Insured Event** or related insured events.

8.3 Other Insurance & Indemnification

This policy shall always apply excess over any other valid and collectible insurance, including but not limited to, any directors and officers liability, management liability, employment practices liability, product liability, environmental impairment liability, or general liability insurance; or any indemnification available to the **Insured** from any other party.

8.4 Outside Entity Indemnification

With respect to **Outside Entity Directors**, insurance provided by this policy applies excess over:

- (i) any indemnification provided by an **Outside Entity**, and
- (ii) any other valid and collectible insurance issued to an **Outside Entity** for the benefit of its directors, officers or employees (including any policy specified in a schedule of outside

directorships provided to the Insurer). The coverage available under this policy shall be no broader than the terms and conditions of the said insurance policy issued to an Outside Entity.

Notwithstanding the above, if any Claim made, or other Insured Event first arising against an Outside Entity Director is insured under any other policy issued by the Insurer, its parent, a subsidiary or affiliate, then payment under such policy on account of an insured event also covered under this policy, shall reduce by the amount of the payment, the Insurer's Limit of Liability under this policy.

9. General Provisions

9.1 Application and Reliance

The Insurer has relied upon the accuracy and completeness of the statements, warranties and representations contained in the Application. All such statements, warranties and representations are the basis for this policy and are to be considered as incorporated into this policy. The Policyholder warrants that it has complied with all duties to publicly file documents with the Securities & Futures Commission of Hong Kong or other similar public body, including but not limited to annual reports and financial statements.

9.2 Option to Renew

Where indicated on the Schedule, the Policyholder shall have the option to renew this policy without submitting any further Application for one (1) consecutive period of 12 months following the expiry of the Policy Period on the same terms, conditions and exclusions as this policy (except for the inception and expiration dates of the renewed Policy Period).

This option is not available if during the expiring Policy Period:

- (i) a Transaction takes place;
- (ii) the Policyholder has become insolvent, a receiver, receiver and manager, mortgagee in possession, provisional liquidator, liquidator or administrator has been appointed to the Policyholder, or the Policyholder has entered into any debt rescheduling scheme of arrangement, scheme of management or composition with creditors and the matter is still pending at the expiration of the Policy Period;
- (iii) a Claim is made against any Insured, any other Insured Event first arises, or any Insured becomes aware of a circumstance notifiable pursuant to Section 7.1 "Notification of Insured Events and Circumstances";
- (iv) this policy is cancelled as permitted or required by law;
- (v) there has occurred a change in the law (including insurance regulations) or insurance regulatory action which in the reasonable opinion of the Insurer gives rise to a material change to the risks covered by this policy;
- (vi) mid term amendments are made to the terms and conditions of this policy, including any requirement to pay additional premium as a result in any change of risk in relation to the Company;
- (vii) an entity becomes a Subsidiary during the Policy Period which does not fall for automatic coverage under this policy; or
- (viii) Securities are issued by the Company which do not fall for automatic coverage under this policy.

The Policyholder may exercise the option set out above by notifying the Insurer in writing not later than sixty (60) days prior to expiry of the Policy Period. The premium payable for the second policy period shall be the amount specified in Item 11 of the Schedule.

Nothing in this Section shall be construed to affect any rights the Insurer has to require an additional premium and/or amendment of the provisions of this policy during the Policy Period, including but not limited to the addition of a new Subsidiary or for the purchase of any other Extension or Endorsement hereon.

9.3 Non-Rescindability

Except with respect to Cover 1.2 "Company Securities", the **Insurer** 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.

9.4 Non-Payment

Any premium due must be paid in full to the **Insurer** within sixty (60) days of the start of the **Policy Period**.

In the event that any premium due is not paid in full to the **Insurer** upon expiry of the sixty (60) day period, cover under this policy shall be cancelled immediately. The cancellation shall be without prejudice to any liability incurred within the sixty (60) day period and the **Insurer** shall be entitled to a pro-rata time on risk premium.

This policy shall not be cancelled except by the **Insurer** for non-payment of the premium in accordance with the provisions of this Section.

9.5 Severable Nature of the Policy

This policy is a severable policy covering each **Insured Person** for their own individual interest.

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 Cover 1.2 "Company Securities", only the statements made by, and knowledge of any past, present, or future chief executive officer (CEO) and/or chief financial officer (CFO) (or equivalent executive or management position) of a **Company** shall be imputed to that **Company**; and the knowledge of the same officeholders of the **Policyholder** shall be imputed to all **Companies**.

9.6 Transactions

In the event of a **Transaction** during the **Policy Period** this policy shall continue in full force and effect as to **Wrongful Acts**, and the matters subject of any other **Insured Event** occurring prior to the effective time of the **Transaction**, but there shall be no coverage afforded by any provision of this policy for any **Wrongful Act** or the matters subject of any other **Insured Event** which did occur or are alleged to have occurred after the effective time of the **Transaction**. This policy may not be cancelled after the effective time of the **Transaction** and no portion of the premium paid for this policy shall be refundable.

An **Insured** may be entitled to a run-off **Discovery Period** in the event of a **Transaction**, but only if:

- (i) the **Insurer** receives a written request from the **Policyholder** within ninety (90) days of the date of the **Transaction**, or thirty (30) days of expiry of the **Policy Period**, whichever is sooner; and
- (ii) the **Policyholder** accepts the terms of any offer the **Insurer** may make.

9.7 Subsidiaries

In all cases the cover provided by this policy for any **Subsidiary** shall only apply in respect of:

- (i) **Wrongful Acts** committed or allegedly committed; or
- (ii) a matter which is the subject of any other **Insured Event** occurring or arising, whilst an entity was or is a **Subsidiary**.

9.8 Outside Entities

In respect of any **Insured Person** that, during the **Policy Period**, becomes an outside entity director of an entity that does not fall within the definition of **Outside Entity**, then coverage shall apply for a period of ninety (90) days from the date of commencement of such outside directorship. Coverage for such **Insured Person** shall cease ninety (90) days after the date of commencement unless the **Insurer** accepts in writing such outside directorship and the entity is specifically endorsed to this policy as an **Outside Entity**.

9.9 Bankruptcy

The bankruptcy, winding-up, receivership or insolvency of an **Insured** or of the estate of an **Insured** shall not relieve the **Insurer** of its obligations nor deprive the **Insured** of its rights under this policy.

In such event, the **Insurer** and each **Company** and **Insured Person** agree to cooperate in any efforts by the **Insurer** or any **Company** or **Insured Person** to obtain relief for the benefit of any **Insured Person** from any stay or injunction applicable to the distribution of the policy proceeds.

9.10 Disputes

Any dispute, controversy, difference or claim arising out of or relating to this policy, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it ("Dispute") shall first be referred to mediation at Hong Kong International Arbitration Centre (HKIAC) and in accordance with its Mediation Rules.

If the mediation is terminated or is otherwise concluded without the Dispute being resolved, then such Dispute shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted.

The law of the arbitration clause shall be Hong Kong law.

The seat of the arbitration shall be Hong Kong.

The number of arbitrators shall be three.

The language to be used in the arbitral proceedings shall be English.

The **Insurer** and the **Insured** shall each be responsible for their own costs and expenses incurred in the arbitration.

9.11 Notice & Authority

The **Policyholder** shall act on behalf of all **Insureds** in connection with all matters relevant to this **Policy** except in the event of:

- (i) a **Transaction**;
 - (ii) the receivership, bankruptcy, liquidation or administration of the **Policyholder**; or
 - (iii) a **Claim** against an **Insured Person** by a **Company**;
- in which case each **Insured** shall act on their own behalf.

9.12 Assignment

This policy and any rights under or in respect of it cannot be assigned without the prior written consent of the **Insurer**.

9.13 Rights of Third Parties

Nothing in this policy is intended to confer a directly enforceable benefit to any third party other than an **Insured**, whether pursuant to the Contracts (Rights of Third Parties) Ordinance or otherwise.

9.14 Governing Law

Any interpretation of this policy or issue relating to its construction, validity or operation shall be determined by the laws of the Government of the Hong Kong Special Administrative Region.

9.15 Headings and Titles

The descriptions in the headings and titles of this policy are solely for reference and convenience and do not lend any meaning to this policy. Words and expressions in the singular shall include the plural and vice versa. In this policy, words in **bold** typeface have special meaning and are defined. Words that are not specifically defined in this policy have the meaning normally attributed to them.

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