



General Insurance Conditions (GIC)

# **Directors and officers liability insurance (D&O)**

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# Key points at a glance

This overview provides you with information about the material content of the insurance contract, in accordance with Art. 3 of the Federal Act on Insurance Contracts (ICA). The contracting parties' rights and obligations arise on conclusion of the insurance contract, specifically on the basis of the application, policy, contract terms and statutory provisions.

## Who is the insurance carrier?

The insurance carrier is AXA Insurance Ltd., General Guisan-Strasse 40, 8401 Winterthur (hereinafter referred to as "AXA"), a stock corporation domiciled in Winterthur and a subsidiary of the AXA Group.

## What is insured?

AXA offers insurance coverage in respect of claims for damages which are advanced on the basis of statutory liability provisions against insureds in their function or capacity as directors or officers of the policyholder and/or its subsidiaries and/or insured third-party companies.

## What does the insurance not cover?

The insurance does not cover, among others, claims:

- arising from intentional breaches of statutory provisions and official rulings or from deliberate breaches of obligations, subject to advancement of the costs of defense;
- for amounts over and above compensatory damages. Such claims include, in particular, payments of a punitive nature or which also serve as a sanction (e.g. fines, financial or contractual penalties, punitive or exemplary damages);
- arising from losses brought about knowingly by the insureds, subject to advancement of the costs of defense.

## What benefits does AXA provide?

AXA pays the amount of compensation that the insureds must pay to the claimant based on their statutory liability (GIC D1.1.1). In the event of a claim, AXA also covers the cost of defense against unjustified or excessive claims (passive legal protection as defined in GIC D1.1.2). The insurance also covers legal protection for criminal or administrative proceedings in accordance with GIC C1.

In addition, AXA will advance the costs of defense against claims in connection with intentional breaches of statutory provisions and official rulings, deliberate breaches of obligations, and unlawful acceptance of payments or benefits (GIC D1.1.3).

The benefits are limited to the sum insured or sublimit agreed in the policy (limit within the sum insured).

## How much is the premium and when is it due?

The amount of the premium is specified in the quotation and/or the policy. It is due on the first day of each insurance year (GIC A8).

## What are the policyholder's main obligations?

The policyholder and the insureds must, for example:

- pay the premium on time and in full;
- notify AXA as soon as possible of the occurrence of any event whose likely consequences may involve the insurance (GIC D3.1);
- in case of a loss event, immediately issue all notifications, rulings and information, and disclose all evidence and documents relating to the matter (GIC D3.2);
- refrain from negotiating directly with the claimants or their representatives regarding claims for compensation, from acknowledging liability or claims in any way, from reaching a settlement and from paying compensation, unless AXA has given its approval (GIC D5);
- notify AXA in writing as soon as possible, within 60 days at the latest, of any change to a circumstance of significance for assessing the risk (GIC A10.2.1).

Any special obligations (duties) are defined in the individual contract terms of the quotation or the policy.

## When does the insurance begin and end?

The insurance begins on the date specified in the policy. AXA may reject the application up to the date on which it issues the policy or a definitive cover note. The insurance is valid for the period specified in the policy.

On expiry, the contract is renewed by one year at a time (GIC A6.2), provided that:

- neither of the contracting parties gives notice to terminate it in compliance with the notice period;
- the annual financial statements (individual financial statements and consolidated financial statements, if available) of the policyholder and its subsidiaries do not show negative equity capital during the preceding financial year.

## Special information for the Principality of Liechtenstein

The applicant is bound by the application to conclude an insurance contract for a period of two weeks after submitting or sending the application.

If AXA is in breach of the duty to provide information pursuant to the Insurance Contract Act or the Insurance Supervision Act of the Principality of Liechtenstein, the policyholder has the right to withdraw from the contract within four weeks from receipt of the policy.

The responsible supervisory authority is the Swiss Financial Market Supervisory Authority (FINMA), 3000 Bern.

## What definitions apply?

The key terms are explained in Part E under "Definitions".

## What data does AXA use and how?

Information about the use of data is provided in Part F under "Data protection".

# General Insurance Conditions (GIC)

## Part A

### Underlying provisions of the insurance contract

#### A1 Scope of the contract

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The policy specifies the insurance coverage that has been agreed. The scope of the insurance protection is governed by the policy, these General Insurance Conditions (GIC) and any Special Insurance Conditions (SIC) that may apply.

#### A2 Territorial scope

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The insurance is valid worldwide. If the foreign law governing the liability of the insured prohibits the conclusion of D&O insurance, or if such law permits only a limited scope of coverage, then insurance cover shall lapse or be accorded only to the extent permissible under the applicable foreign law.

#### A3 Trigger

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##### A3.1 Operation of the policy

The insurance covers claims brought against an insured during the operation of the policy. The operation of the policy is deemed to be:

- the contract term of this policy;
- the contract term of any contract with AXA that was replaced by this policy;
- any extended coverage period granted by AXA.

##### A3.2 Date of claim

The date on which the claim is made is deemed to be:

- the date on which a claim is brought against an insured in writing for the first time, or on which an insured is notified in writing that a claim falling under this insurance could be brought against him or her;
- the date on which AXA is notified in writing, to the extent required, of circumstances defined in D3.1. As the consequence of such a notification, claims for damages resulting from these circumstances will be handled as if they were made in writing and brought to the attention of AXA at the time of the said notification;
- the date on which an insured first becomes aware that criminal, administrative or investigative proceedings have been initiated against an insured, that could lead to an insured claim for damages.

If multiple criteria apply for the same event, the earliest date shall apply.

##### A3.3 Serial loss

All claims arising from a serial loss are deemed to have been made on the date on which claims pursuant to A3.2 were made for the first time.

##### A3.4 Indemnities and limitations

Indemnities are based on the contractual provisions (such as stipulations relating to sums insured or deductibles) which were in force when a claim pursuant to A3.2 was made for the first time.

##### A3.5 Omission

In case of doubt, a breach of a duty through omission is deemed to have occurred on the day on which the act that was not performed or was omitted should have been performed at the latest, in order to prevent the occurrence of the financial loss.

#### A4 Prior acts

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##### A4.1 Prior acts coverage

Claims arising from breaches of duty for losses that were caused prior to the initial conclusion of this policy are insured only if prior to the initial conclusion of this contract, the insured did not know, nor could he or she have known, under the circumstances, of any breach of duty giving rise to liability. The same shall also apply to serial losses.

##### A4.2 Prior acts coverage in connection with acquired subsidiaries

If the policyholder acquires a company during the insurance year, claims arising from losses due to breaches of duty that occurred before the said company was included in this contract are excluded from the insurance. The policyholder has the right to request a quotation from AXA for the prior risk relating to the directors and officers of a newly acquired subsidiary. In such cases, AXA reserves the right to define the conditions and the premium. The request must be submitted no later than 30 days following the acquisition (closing date) of the subsidiary concerned.

##### A4.3 Increased indemnities or scope of insurance

If the insured indemnities or the scope of insurance are increased, coverage pursuant to the new covenants applies only if before the amendment to the contract came into force, the insured did not know, nor could he or she have known, under the circumstances, of any breach of duty giving rise to liability.

#### A5 Extended coverage period

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##### A5.1 During the contract term

If, during the contract term:

- an insured leaves the group of insureds,
- a subsidiary ceases to be included, e.g. because it has been sold or liquidated and no longer meets the definition in E3, or
- an insured third-party mandate is terminated,

coverage will remain in effect for the directors and officers concerned as long as the policy is in force, provided that their breach of duty giving rise to their liability demonstrably occurred before they left, before the exclusion of the subsidiary, or before the third-party mandate was terminated. No coverage extension is granted if another insurance contract covers the claim in whole or part. The insured, or the subsidiary that ceases to be included, has the right to request a quotation for run-off cover from AXA prior to the departure of the insured, before the subsidiary ceases to be included, or prior to the termination of the third-party mandate. This run-off cover is valid only for breaches of duty committed by the insured before his or her departure, before the subsidiary ceased to be included (e.g. the closing date in the event of a sale), or prior to termination of the third-party mandate. In such cases, AXA reserves the right to define the conditions and the premium.

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## **A5.2 Extended coverage period upon termination of the insurance**

### **A5.2.1 Except in cases of forced liquidation (e.g. bankruptcy), merger or acquisition of the policyholder**

#### **a) Automatic premium-free extension of coverage**

Except in the event of termination due to premium arrears, AXA automatically grants the insureds a premium-free extension of coverage for a period of 12 months. This applies to claims for damages brought against insureds if the breach of duty can be shown to have occurred prior to the end of the preceding insurance year. In addition, AXA grants each insured who leaves the group of insureds prior to the end of the preceding insurance year

- of their own free will,
- solely as a consequence of restructuring,
- for health-related reasons, and/or
- for age-related reasons (retirement),

an extended coverage period for claims brought against them within the statutory limitation period. This extended coverage period is granted automatically and without premiums as of the date of the departure of the insured.

In such cases, the scope of insurance shall be governed by the insurance conditions that were in effect during the preceding insurance year. Coverage applies within the scope of the still unused portion of the specified insurance for the preceding insurance year.

No extended coverage period is granted if another insurance contract covers the claim in whole or in part.

#### **b) Optional extended coverage period for up to 120 months against payment of premiums**

The policyholder also has the right to purchase a non-lapsable extended coverage period of up to 120 months from the end of the preceding insurance year. Within the scope of the policy, claims for damages brought against insureds within the agreed extended coverage period shall be insured, provided that the breach of a duty can be shown to have occurred prior to the end of the preceding insurance year. An application for such an extended coverage period must be submitted in writing to AXA no later than 30 days following the end of the preceding insurance year. If the policyholder does not purchase an extended coverage period as defined in this section, each insured shall have the right to acquire such insurance for him- or herself, provided that he or she notifies AXA to this effect in writing within 60 days of the end of the preceding insurance year, at the latest.

A5.2.2

In such cases, AXA reserves the right to define the conditions and premium for the extended coverage period.

### **In case of forced liquidation (e.g. bankruptcy), merger or acquisition of the policyholder**

As from the date of any forced liquidation, merger or acquisition of the policyholder by one or more persons or entities (together accounting for at least 50% of the voting rights), AXA grants an automatic extended coverage period of 12 months in respect of breaches of duty that occurred prior to the commencement of the forced liquidation or the opening of bankruptcy proceedings, or before the completion (closing date) of the merger or acquisition. Prior to the end of this extended coverage period, the policyholder has the right to request a quotation from AXA for an additional extended coverage period. In such cases, AXA reserves the right to define the conditions and the premium.

AXA waives application of the two preceding paragraphs if the majority of voting rights in the policyholder are transferred to the heirs in connection with a company succession arrangement within the family, or to the current management in connection with a management buyout. Furthermore, composition proceedings in respect of the policyholder do not impact the coverage unless they end in forced liquidation.

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## **A6 Contract term**

### **A6.1 Beginning and expiry**

The beginning and expiry of the term is specified in the policy.

### **A6.2 Renewal on expiry**

On expiry, the contract will renew for one year at a time, provided that:

- a) neither of the contracting parties gives notice of termination within the notice period;
- b) the consolidated and audited annual financial statements for the policyholder do not show negative equity capital in the preceding financial year. If no consolidated and audited annual financial statements are available, the individual financial statements of the policyholder and its subsidiaries are relevant.

If the equity capital is negative, the contract ends on expiry with no need for notice of termination. The continuation of the contract shall require a new written agreement. Billing or payment of the premium invoice does not constitute mutual consent to an extension of the contract.

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## **A7 Termination of the contract**

### **A7.1 Termination effective as of the end of the insurance year**

Either contracting party may terminate the contract in writing to be effective as of the end of any insurance year, subject to compliance with a period of notice of three months (annual right of termination).

### **A7.2 Termination in the event of a claim**

After a loss which AXA indemnifies, the policyholder may terminate the contract no later than 14 days after he or she becomes aware of the payment of the indemnity. Coverage ends 14 days following receipt by AXA of the notice of termination.

AXA waives its right to terminate the contract in the event of a loss (Art. 42, ICA).

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**A7.3 Bankruptcy of the policyholder**  
If the policyholder goes bankrupt, AXA waives the application of Art. 55 ICA. The extended coverage period pursuant to A5.2.2 b) shall apply as from the opening of bankruptcy proceedings.

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**A7.4 Termination in case of risk increase**  
A8.2.3 shall apply.

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## **A8 Premiums**

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The premium specified in the policy is due on the first day of each insurance year; the due date for the first premium is shown on the invoice. In the case of payment in installments, the installments due during the insurance year are deemed to be deferred. AXA may add a surcharge to each installment.

## **A9 Due diligence and other obligations**

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**A9.1 Breach of obligations and duty to notify**  
If the policyholder, a subsidiary or an insured culpably breaches obligations or duties which the party concerned must perform and thereby increases the amount of benefits for which AXA would be liable, insurance coverage shall be forfeited to the extent of such an increase.

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**A9.2 Duty of care and other obligations in event of a claim**  
D3, D4 and D5 shall apply.

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## **A10 Duty to provide information**

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**A10.1 Communication with AXA**  
The policyholder, subsidiary or insured must address all communications to the responsible branch office or registered office of AXA.

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### **A10.2 Increase or reduction of risk**

**A10.2.1 Obligations**  
The policyholder and/or the insured must notify AXA in writing as soon as possible, and within two months at the latest, after becoming aware of any change to a circumstance of significance for assessing the risk.

**A10.2.2 Increase of risk**  
An increase of risk in the context of this section is deemed to be:

- the acquisition/establishment of a subsidiary
  - whose balance sheet total exceeds CHF 100 million;
  - that is listed on a stock exchange;
  - that is a bank, an insurance company or a reinsurance company;
  - that has its registered office in the US or Canada.
- The directors and officers of any other subsidiaries that are subsequently added are automatically included in the coverage (provisional insurance);
- the forced liquidation (e.g. bankruptcy) or merger of the policyholder;
- the direct or indirect acquisition of at least 50% of the policyholder's voting rights by one or more individuals or legal entities acting alone or jointly.

**A10.2.3 Rights of the contracting parties**  
In the event of an increase of risk, AXA may increase the premium for the remainder of the contract term and may amend the conditions. The policyholder may terminate the contract within 14 days of receiving notification to this effect if no agreement is reached on the premium increase or amendment of the conditions. In both cases, AXA is entitled to a risk-based premium increase from the date on which the risk increases until the contract ends.

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**A10.3 Obligation to provide information**  
In order to assess the risk, AXA shall have the right to request information, e.g. the current auditor's report or the business report (annual report, profit and loss account, balance sheet, notes), at any time.

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**A10.4 Initial Public Offering (IPO)**  
If, during the insurance year, securities of the policyholder or one of its subsidiaries are listed on a new or additional stock exchange for the first time, or if such a listing is initiated, the policyholder must notify AXA in writing as soon as possible, before the IPO takes place, and must include the prospectus with the notification. Coverage includes breaches of obligations in connection with such an IPO only if AXA has given its written approval. AXA reserves the right to amend the contractual conditions and the premiums.

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**A10.5 Claims**  
D3 shall apply.

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**A10.6 Termination of the contract**  
A7 shall apply.

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## **A11 Other insurance**

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**A11.1 Subsidiarity**  
If the claim filed is also covered in whole or in part by another insurance contract, the other contract shall take precedence over this contract. The sum insured, subject to the conditions of this insurance, is available only in respect of any amounts remaining after exhaustion of the indemnities which have been or will be paid by the other insurance. Insurance contracts that were expressly agreed as excess contracts for this policy are excepted from this provision.

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**A11.2 Advancement of costs in the case of double insurance**  
If the other insurer disputes its obligation to indemnify entirely, AXA will cover the costs of defense against unjustified or excessive claims until its definitive assessment of coverage. The insured is obliged to cooperate with AXA so that a definitive assessment of coverage can be carried out. If it subsequently becomes evident that the claim is not covered under this contract, the insured shall reimburse AXA for the internal and external costs which AXA provisionally assumed.

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## **A12 Principality of Liechtenstein**

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If the policyholder has his or her place of residence or registered office in the Principality of Liechtenstein, the references to provisions of Swiss law contained in the insurance contract documents shall relate to the corresponding provisions of Liechtenstein law.

## **A13 Applicable law and place of jurisdiction**

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### **A13.1 Applicable law**

This insurance contract shall be governed by Swiss substantive law; in the case of policyholders having their place of residence or registered office in the Principality of Liechtenstein, the insurance contract shall be governed by Liechtenstein substantive law.

### **A13.2 Place of jurisdiction**

The ordinary courts of Switzerland shall have jurisdiction over any disputes arising out of or in connection with this insurance contract; in the case of policyholders having their place of residence or registered office in the Principality of Liechtenstein, the ordinary courts of Liechtenstein shall have jurisdiction over any such disputes.

## **A14 Sanctions**

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AXA's insurance protection shall not apply insofar and as long as applicable legal economic, trade or financial sanctions inhibit indemnification under this contract.

## **A15 Attribution of knowledge (severability)**

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Errors in and the omission of notifications and information in the application/questionnaire are attributed only to those insureds who completed and/or signed the application, or who were aware of the false declaration on the application (waiver of attribution).

Knowledge of such errors and omissions shall nonetheless be attributed to all insureds in the event of a false declaration in connection with the questions on the financial situation in the application/questionnaire. In cases where the exclusions in B2.2 and B2.6 apply, the knowledge or breach of duty of one insured will not be attributed to any other insured.

## **A16 Contractual limitation period**

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In partial derogation of Art. 46 para. 1 ICA, any claims arising from this insurance contract shall become time-barred five years following the occurrence of the circumstance on which the obligation of AXA to indemnify is based.

## **A17 Assignment of claims**

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The insured shall not have the right to assign claims under this policy without authorization from AXA.

## **A18 Assignment of rights to indemnification**

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Claims of an insured against third parties for indemnification shall devolve to AXA to the extent of the indemnity paid by AXA. The insured shall be liable for all acts or omissions that could negatively affect any rights of recovery. Coverage shall cease if third parties are released from their liability without the consent of AXA.



## Part B

### Scope of insurance – general provisions

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#### B1 Insured risk, insured activity and insured liability

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##### B1.1 Insured risk and insured liability

AXA offers coverage in respect of claims for damages brought against insureds under provisions of liability law. The insurance covers financial losses, further costs and insured benefits in accordance with Parts C and D.

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##### B1.2 Insured activities

The insurance covers the liability of the insured while exercising or performing functions, tasks, obligations and responsibilities in connection with the incorporation/ establishment, administration, management, control or liquidation of the policyholder and/or its subsidiaries.

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##### B1.3 Internal liability

The insurance also covers claims for damages advanced by the policyholder or a subsidiary against an insured.

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#### B2 General exclusions

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##### B2.1 Professional services

The insurance does not cover claims arising from any services of an insured in a capacity other than the capacity of director or officer that is insured under this contract (e.g. from any professional services such as those provided by an attorney, fiduciary or corporate consultant). However, this exclusion does not apply to claims for damages brought against insureds because they failed to supervise an employee who performed or should have performed a professional service (carve-back).

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##### B2.2 Intent and willful breaches of duty

The insurance does not cover claims arising from breaches of statutory provisions and government orders committed intentionally or with conditional intent (dolus eventualis), or from willful breaches of duty. However, the advancement of defense costs in accordance with D1.1.3 is insured. In this regard, AXA waives any attribution of knowledge pursuant to A15.

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##### B2.3 Financial payments of a punitive or similar nature

The insurance does not cover claims arising from financial payments which are of punitive or similar nature (e.g. fines, financial or contractual penalties, punitive or exemplary damages, etc.). The foregoing shall be subject to C6.

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##### B2.4 Environmental impairment and asbestos

The insurance does not cover claims arising from environmental impairment or claims in connection with asbestos. The insurance does, however, cover the defense against unjustified claims in connection with environmental impairment.

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##### B2.5 Bribery or other unlawful acceptance of payments or benefits

The insurance does not cover claims that are based on or related to active or passive bribery, or any other form of unlawful acceptance of payments or benefits by an insured. However, the advancement of defense costs in accordance with D1.1.3 is insured. In this regard, AXA waives any attribution of knowledge pursuant to A15.

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##### B2.6 Special exclusions for the USA

The insurance does not cover claims that are asserted in the USA or adjudicated in accordance with US state or federal law,

- arising from any breach of obligations, ordinances or provisions in accordance with the US
  - Employee Retirement Income Security Act of 1974,
  - Securities Exchange Act of 1934 and/or
  - Sherman Antitrust Act of 1890 and all amendments thereto, or any other similar statutory or federal regulations,
- arising from Employment Practices Claims as defined in C11,
- if brought by the policyholder, one of its subsidiaries, or insureds against each other, irrespective of whether such claims are brought by such a party itself or on their request or instruction.

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##### B2.7 Previously notified circumstances

The insurance does not cover claims related to circumstances that were previously notified

- under another insurance contract or
- during another contract term of this policy (e.g. in case of extension or renewal of the contract).

## Part C

# Scope of insurance – special provisions

### C1 Legal protection in criminal and administrative proceedings

If any proceeding is initiated before criminal or administrative authorities against an insured based on a breach of duty that could result in an insured claim, AXA will pay the ensuing costs (e.g. attorney fees, costs of expert opinions), as well as any costs imposed on the insured in the proceeding (court fees and costs of investigations). AXA also covers further necessary and appropriate costs (e.g. travel expenses) incurred by the insured, unless the insured is otherwise indemnified for these costs. The insurance does not cover costs owed on the basis of an employment relationship, such as salaries and other compensation.

If a fine or a decision by a court of first or second instance is appealed, AXA may refuse further benefits if it considers that the appeal is unlikely to succeed.

If the insured continues the proceedings at his or her own risk and is acquitted, he or she shall be entitled to reimbursement from AXA of the attorney fees and procedural costs incurred. In this case, AXA shall be entitled to any reimbursement for non-court costs awarded to the insured. Any compensation awarded to the insured for his or her personal efforts may be retained by the insured. AXA will, with the agreement of the insured, appoint an attorney to represent him or her. The insured is not authorized to retain an attorney without the approval of AXA. This choice of attorney shall not affect the right of AXA to retain another attorney for civil proceedings. AXA waives its right to recover payments made pursuant to the legal protection coverage in connection with any criminal and administrative proceedings, except in the case of convictions under criminal law for breaches of duty committed intentionally or with conditional intent (*dolus eventualis*).

#### C1.1 Seizure and freezing of assets (incl. living expenses / security deposit costs)

If the assets of an insured are seized or frozen in proceedings pursuant to C1 (e.g. attachment), AXA also covers the reasonable costs of defense against the relevant order. Any security that is required to be provided is excluded from this.

If the insured is no longer able to maintain the standard of living to which he or she is accustomed as a result of the seizure or freezing of assets, AXA will advance the reasonable and necessary costs for a period of no more than six months from the effective date of the relevant court order, subject to recovery of such costs.

#### C1.2 Extradition costs

The costs of defense against requests for the extradition of insureds are also covered within the scope of C1. A request for extradition is defined as any formal request, demand, arrest warrant, or other administrative act that is based on the applicable national extradition law. AXA also covers reasonable and necessary travel expenses directly related to the request for extradition of spouses, registered partners, cohabiting partners living in the same household and minor children of the insured concerned, subject to written approval in advance.

#### C1.3 Defense costs for proceedings relating to a disqualification from exercising an activity

Coverage is also provided within the scope of C1 for defense costs if proceedings are initiated against an insured for a temporary or permanent disqualification from exercising the insured office or performing the insured function.

### C2 Investigations of the policyholder or its subsidiaries

If an insured is questioned as a witness or as a person providing information during a criminal or administrative investigation proceeding against the policyholder or one of its subsidiaries, AXA will cover the costs of the insured (incl. travel expenses), the cost of an attorney engaged to advise or represent the insured, and the procedural costs and court fees imposed on the insured.

This shall be subject to the following cumulative conditions:

- the first order requiring the insured to cooperate with an investigation proceeding is issued within the period during which the policy is in effect and AXA is notified of it as soon as possible;
- the obligation of the insured to cooperate arises from his or her activity as a member of an executive board or a board of directors (or a similar function abroad) and must be in connection with a potential breach of an obligation that could result in an insured claim;
- the investigative action does not involve proceedings – conducted entirely or partially in the USA or in accordance with US law. This also includes proceedings before the United States Securities Exchange Commission (SEC); – brought against an industrial sector as a whole; – conducted as part of a routine or regular review;
- the insured is not entitled by law, articles of association or contract to indemnification by the policyholder or a subsidiary (in partial amendment of C12).

### C3 Emergency costs

In an emergency, AXA will provide its consent to cover the costs of defending against an insured claim retroactively. This will apply if the insured could not reasonably obtain prior written consent from AXA. The insured must, however, inform AXA immediately and delegate all further handling of the claim to AXA.

### C4 Threat of claim

If an insured is faced with the serious threat of a claim that is insured under this contract, AXA will also cover preparations for the defense, provided that such measures are reasonable and appropriate.

## **C5 Costs in the event of self-disclosure by an insured**

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After giving its written approval, AXA will cover the necessary and reasonable costs incurred by an insured in connection with a voluntary self-disclosure to an authority which the insured makes the first time in an insurance year. It is a condition of coverage that the insured can reasonably assume that a significant breach of statutory or regulatory provisions was committed by the policyholder or the insured, or could occur in the near future.

## **C6 Forensic service providers**

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In the event of an insured claim, AXA will cover the reasonable costs of a forensic service provider to clarify the actual facts, collect, secure and submit the evidence required to meet the procedural burden of substantiation and proof incumbent upon insureds against whom claims are asserted. The selection and engagement of the forensic service provider must be agreed with AXA in advance.

## **C7 Policyholder's costs in the event of shareholder derivative actions**

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In the event of claims for damages by shareholders of the policyholder against an insured which are asserted on behalf or in favor of the policyholder (shareholder derivative actions), AXA will cover the litigation costs, provided that they are imposed on the policyholder by a final and binding court decision.

## **C8 Waiver of gross negligence defense**

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AXA waives its right pursuant to Art. 14 para. 2, ICA, to reduce its indemnity if the event was caused by the insured as a result of gross negligence.

## **C9 Claims in connection with indirect/direct taxes and social insurance contributions**

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The insurance covers claims in connection with unpaid direct and indirect taxes (e.g. value-added tax) and social insurance contributions (e.g. OASI, OPA) only insofar as an insured is personally liable for same in the event of the insolvency of the policyholder and/or one of its subsidiaries. No insurance coverage is provided for claims if the non-payment of such taxes and/or social insurance contributions is based upon a deliberate decision by an insured.

## **C10 Civil fines and penalties (FCPA and UK Bribery Act)**

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The coverage includes civil fines and penalties that have been imposed on an insured pursuant to the Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act, provided that they are insurable under the laws of the competent jurisdiction.

Coverage is granted if the claim is based on a final and binding judgment and the insured cannot be indemnified in any other way under the law, articles of association or contract. Punitive and exemplary damages shall be excluded from coverage.

## **C11 Employment practices claims**

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The insurance covers claims against an insured by a former or current employee or job applicant of the policyholder and/or of a subsidiary. Coverage is granted subject to the condition that the claim is for financial loss arising from an alleged or actual breach of labor law provisions by the insured.

For the purposes of this provision, financial loss is deemed to also include psychological impairments. Within the scope of this coverage extension, the insurance also covers claims brought against employees who do not have the capacity of a de facto director or officer.

## **C12 Company reimbursement**

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If the insured is entitled to indemnification by the policyholder or its subsidiaries, the right to insurance benefits under this contract is transferred to the policyholder or its subsidiaries, provided that it or they have paid the indemnification owed under this contract.

## **C13 Mandates in internal occupational benefits fund committees**

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The insurance covers the employees of the policyholder and/or its subsidiaries for claims arising from their capacity and function as a member of an occupational benefits fund committee of a pension plan that the policyholder and/or one of its subsidiaries has with a Swiss collective foundation.

## **C14 Mandates in third-party companies (third-party mandates)**

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### **C14.1 Scope of coverage**

If an insured or an employee of the policyholder or of a subsidiary is seconded to a third-party company (legal entity) as a director or officer, the insurance also covers liability claims against the person seconded for breaches of obligations in his or her capacity or function as a director or officer of the third-party company (incl. de facto status as director or officer).

However, the coverage for third-party mandates does not apply automatically to mandates in the following legal entities:

- companies listed on a stock exchange;
- banks, insurance and reinsurance companies or occupational benefits institutions;
- companies with their registered office in the USA or Canada;
- sports, gaming, betting and lottery companies;
- legal entities reporting negative equity capital at the time of acceptance of the mandate.

Such third-party mandates may be notified to AXA for review.

Companies which meet the definitions of "policyholder" and "subsidiary" are not deemed to be third-party companies within the meaning of this provision.

### **C14.2 Change of mandate holder**

If the person seconded is replaced by another insured or another employee during the insurance year, the new mandate holder is automatically insured.

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**C14.3 Exclusions****C14.3.1 Claims by the policyholder and its subsidiaries**

The insurance does not cover claims by the policyholder or its subsidiaries against insureds.

**C14.3.2 Known circumstances**

The insurance does not cover claims in connection with circumstances that were or should have been known to the policyholder, one of its subsidiaries, a third-party company, an insured or the seconded employee when the third-party mandate was accepted.

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**C14.4 Other insurance and indemnification**

Coverage is granted only for the amounts remaining after payment of any benefits from other insurance (A11) and/ or compensation based on other possible indemnification of such persons that was available to the third-party company by law, articles of association or contract. In the latter case, C12 shall not apply.

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**C15 Reputation costs**

If the standing or good reputation of an insured is shown to have been compromised because of an insured claim, AXA will pay the costs of restoring the standing and good reputation of the insured.

In partial derogation of C12, AXA will not cover the costs of restoring standing and good reputation if the policyholder or its subsidiaries indemnify the insured for such costs, or if they have undertaken an obligation to do so. The costs of restoring standing and good reputation are deemed to be all the necessary and reasonable expenditure incurred for the efforts of an independent PR expert following prior written agreement from AXA.

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**C16 Psychological counseling**

In connection with insured claims, AXA will assume the reasonable costs incurred by the affected insureds for necessary psychological counseling or stress management by a recognized psychologist or psychiatrist. These costs are assumed by AXA subject to there being no statutory or other entitlement (e.g. through health or accident insurance, indemnification by the employer) available for this purpose. Moreover, coverage shall be limited to the costs of treatment lasting a maximum of two years.

# Part D

## Claims

### D1 Benefits

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#### D1.1 Insured benefits

##### D1.1.1 Compensation of justified claims

Within the scope of the insurance and statutory liability, AXA will pay the amount that the insured is required to pay to the claimant as compensation. AXA may pay the compensation to the claimant directly.

Within the scope of the sum insured, AXA will cover the costs pursuant to C1–C16. The provisions of A3 governing the trigger shall apply mutatis mutandis to these costs.

##### D1.1.2 Defense against unjustified claims

AXA will assume the cost of defense against unjustified or excessive claims for damages, provided that they relate an insured event.

In the event of unjustified claims against insureds relating to bodily injury and/or property damage, AXA will also assume the cost of defense if no statutory or other entitlement to benefits (e.g. through commercial general liability insurance or indemnification by the employer) is available for this purpose. The insurance does not cover compensation for justified liability claims in connection with bodily injury and property damage.

##### D1.1.3 Advancement of defense costs

AXA will advance the costs of defense against claims in connection with:

- intentional breaches of statutory provisions and official rulings;
- deliberate breaches of obligations;
- active or passive bribery or other unlawful acceptance of payments or benefits;

until such time as the breaches referred to above

- are determined by a final and binding court decision, or in judicial, administrative or arbitration proceedings, or by means of a settlement; or
- are acknowledged by an insured.

In the event of such a determination or acknowledgment, the insurance coverage shall cease to apply with retroactive effect. AXA must be reimbursed for all costs expended up to this point.

#### D1.2 Limitation of indemnity

##### D1.2.1 Scope of indemnity

AXA's indemnities for all claims and any other benefits shall be limited to the sum insured that is specified in the policy. This includes interest on damages, loss mitigation costs, fees for expert opinions, attorney fees, court costs, mediation costs and other costs, such as the legal expenses of the opposing party. Some risks included in the insurance may be subject to a sublimit specified in the policy (limit within the sum insured).

If such claims and costs, including those in connection with risks to which sublimits apply, per event or serial loss exceed the amount of insurance stipulated in the policy, the maximum indemnity from AXA shall be limited to the sum insured (maximum compensation).

The sum insured or sublimit is reduced by the agreed deductible in each case.

##### D1.2.2 Single aggregate

The sum insured or the sublimit constitutes a single aggregate per insurance year. It is paid a maximum of once for all claims arising from losses and costs made during the same insurance year.

##### D1.2.3 Additional limit for defense costs

If the sum insured is fully exhausted by a loss event in one insurance year, AXA will cover the defense costs for a further loss event in the same insurance year, up to the additional limit mentioned in the policy. However, this applies only if these loss events are independent of one another and do not form part of a serial loss. Defense costs are, in all cases, subsidiary to the payment of any benefits from excess contracts to this contract and/or all available indemnities from other contracts.

#### D1.3 Internal costs for claims settlement

The internal costs of AXA for the settlement of claims are not deducted from the sum insured, nor are they taken into account when defining the deductible.

### D2 Deductible

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#### D2.1 Per event

The insured must pay the deductible defined in the policy for each loss event. The deductible for financial losses also applies to the costs pursuant to C1–C16.

#### D2.2 In the event of multiple coverages

If multiple coverages apply to a single loss event, each with a different deductible, the insured must pay at maximum the amount of the highest agreed deductible.

#### D2.3 Reimbursement

The deductible shall be borne by the insured. If AXA indemnifies the claimant without subtracting the deductible in advance, the insured must reimburse AXA for the amount of the deductible, waiving any defenses and objections.

#### D2.4 Statutory requirements

If any law prescribes a different deductible than that specified in the policy, the amount prescribed by law shall apply.

### D3 Notification of claims and duty to provide information

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#### D3.1 Notification of claims

The policyholder and/or insured must inform AXA in writing as soon as possible when a written claim is brought against an insured for the first time, or if an insured receives written notification that a claim falling under this insurance could be brought against him or her.

If the policyholder and/or an insured becomes aware of circumstances that could lead to an insured claim while the policy is in force, they may submit written notification of these circumstances until the end of the insur-

ance year (or end of the period of any extended coverage agreed). Insurance coverage is subject to the notification containing at least the following information:

- a description of the circumstances that make a subsequent claim probable;
- information on the nature and amount of the potential claim;
- time, place, nature and discovery of the breach of duty;
- information on the insureds concerned and potential claimants.

The insured must inform AXA as soon as possible if criminal, administrative or investigative proceedings are initiated against an insured following an event that could involve the insurance.

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#### **D3.2 Duty to provide information in the event of a claim**

The policyholder, its subsidiaries and the insureds must at all times and at their own expense provide AXA with, or make it aware of, all relevant information on the loss event such as correspondence, data, documents, and evidence, as well as any official and court documents such as summonses, orders, notifications, judgments, etc. as soon as possible. In addition, the policyholder, its subsidiaries and the insureds must, of their own accord, ensure that AXA receives any additional information about the loss event and any steps taken by the claimant.

### **D4 Claims handling**

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#### **D4.1 Management of claims handling**

AXA will handle claims if they exceed the deductible and are the sum insured has not yet been exhausted. AXA conducts negotiations with the claimant at its own expense. In this regard, it acts as representative of the insured and its settlement of the claims of the claimant shall be binding on the insured.

AXA has the right to refrain from handling claims itself. In such an event, AXA will inform the insured in writing that the insured may engage an attorney by agreement with AXA. AXA may refuse the choice of attorney by the insured only in justified cases (e.g. lack of independence, conflict of interest, excessive fee rates). The other obligations and duties in the event of a claim shall continue to apply without change.

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#### **D4.2 Obligations in the event of a claim**

The policyholder, its subsidiaries and the insureds must assist AXA with the handling of claims.

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#### **D4.3 Litigation**

If no agreement with the claimant is reached and the claimant files suit, AXA will, after consulting with the insured, retain the defense attorney and manage the defense strategy, the conclusion of the proceedings (acknowledgment, settlement or judgment), and all other steps relating to the proceedings. In this regard, it acts as representative of the insured. AXA covers the litigation expenses and attorney fees of the insured. AXA is authorized to reach an agreement with the defense attorney regarding fees. AXA shall be entitled to any compensation for proceedings awarded to the insured. Any compensation awarded to the insured for his or her personal efforts is retained by the insured.

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#### **D4.4 Satisfaction of claims by means of settlement**

If AXA has negotiated a settlement with the claimant but the insured does not agree to such an arrangement, the obligation of AXA to indemnify will apply only to the amount for which the claim could have been settled, taking account of the deductible. As soon as the amount of the settlement is paid to the insured, AXA will have paid all indemnities arising from the claim.

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#### **D4.5 Notices and declarations**

In the event of a claim, AXA shall have the right to deliver, with legal effect, notices and declarations for all insureds exclusively to the most recent address of the policyholder.

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### **D5 Contractual fidelity**

The policyholder, its subsidiaries, and the insureds are required to maintain contractual fidelity. Without the consent of AXA, they may not:

- conduct any direct negotiations regarding claims for compensation with the claimant or the legal representatives of the claimant;
- acknowledge any liability or claim;
- enter into any settlement;
- pay any compensation;
- release third parties from liability.

## Part E

### Definitions

#### E1 Breach of duty

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A breach of duty is deemed to be any proven or allegedly improper act or omission by an insured while engaging in the insured activity.

#### E2 Serial loss

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The total of all insured losses in various matters resulting from the same cause, as well as the consequence of several breaches of duty in the same matter, constitute one single loss event (serial loss, e.g. similar violations of internal guidelines by directors and officers, repeated failure to prepare annual financial statements, repeated breaches of the same legal provisions; in the context of a delegation of management activities of a company, a director or officer is found to have breached various duties of supervision). The number of claimants, parties asserting claims or eligible claimants is irrelevant.

The same cause, within the meaning of this provision, will exist if several claims are attributable to identical or similar breaches of duty.

The same matter, within the meaning of this provision, is given if several interconnected factual situations exist that may be considered a self-contained entity, and thus a single event.

#### E3 Subsidiary

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A subsidiary is deemed to be a legal entity in which the policyholder, in terms of voting rights, directly or indirectly

- owns a share of more than 50%, or
- owns a share of 20–50% and also appoints the majority of members of the management or administrative body.

Subsidiaries are also deemed to include charitable foundations for which the majority of members of the board of trustees are appointed by the policyholder, and which are financed to a significant extent by the policyholder. Occupational benefits institutions are not included in this definition..

#### E4 Financial losses

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Financial losses are losses quantifiable in monetary terms that are not attributable to bodily injury or property damage, and that constitute neither direct nor indirect consequential loss from bodily injury (i.e. death, physical injury or other health impairments of individuals, including any resultant pecuniary loss or loss of earnings) or property damage (i.e. destruction, damage to or loss of property, including any resultant loss of assets or earnings incurred by the claimant).

However, financial losses are also deemed to include third-party bodily injury or property damage, provided that the claim does not involve compensation for such injury and/or damage, but rather a directors and officers liability claim by the policyholder and/or a subsidiary against an insured in respect of such bodily injury/property damage.

#### E5 Insured

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##### E5.1 Directors and officers of the policyholder and/or of a subsidiary

The insurance covers all persons listed below in their capacity or function as former, current and future directors and officers of the policyholder and/or of a subsidiary:

- members of boards of directors;
- members of the boards of cooperatives;
- managing directors of limited liability companies LLC;
- members of the boards of associations;
- members of boards of trustees (in the case of occupational benefits institutions, only if included in the insurance);
- members of general management (including interim managers);
- members of executive boards and of internal audit units;
- founders;
- liquidators, in case of voluntary liquidation of the policyholder and/or of a subsidiary.

If a legal entity is appointed as a member of a governing body of a company, the insureds are also deemed to include natural persons as representatives of the said legal entity in this company.

The insureds also include members of the internal occupational benefits fund committee pursuant to C13, directors and officers seconded to third-party companies pursuant to C14, and employees without a de facto director or officer function as defined in C11.

##### E5.2 De facto directors and officers

The insurance covers all former, current and future employees of the policyholder and/or a subsidiary, insofar as claims for damages are advanced against such employees on the grounds of their (alleged) de facto status as directors or officers. These employees include, for example, individuals with management functions, risk managers, compliance officers, data privacy officers and/or money laundering officers.

##### E5.3 Spouses, registered partners, cohabiting partners and heirs

In the event of claims arising from breaches of duty by insureds as defined in E5.1 and E5.2 above, the insurance also covers the following persons:

- spouses and registered partners of the insureds, their registered partners and cohabiting partners of the insureds living in the same household, if claims relating to breaches of duty by the insureds are brought against them in their capacity as life partners;
- heirs and legal representatives (such as guardians and estate trustees) of the insureds, if claims are brought against them for breaches of duty committed by the insureds before they died, lost mental capacity, became insolvent, or went bankrupt.

The insurance does not cover own acts and omissions by spouses, registered partners, heirs, and legal representatives.

**E6 Insurance year**

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The insurance year is defined as the period for which the annual premium calculated, i.e. from the beginning of the day on which the premium is due until the end of the day before the next premium is due.

**E7 Policyholder**

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The policyholder is the legal entity, autonomous public-law institution or public-law corporation named as the policyholder in the policy.



## Part F

### Data protection

In the course of preparing and executing the contract, AXA becomes aware of the following data:

- customer information (name, address, date of birth, gender, nationality, bank account details, etc.), stored in electronic customer files;
- application information (on the risk to be insured, answers to the questions in the application, reports by claims adjusters, information on claims experience from the previous insurer, etc.), stored in the policy files;
- contract information (contract term, insured risks and indemnities, etc.), stored in contract administration systems such as physical policy files and electronic risk databases;
- payment information (dates of premium payments, outstanding amounts, reminders, credit balances, etc.), stored in debt collection databases;
- any available claims information (notices of claim, investigation reports, invoices, etc.), stored in physical claims files and electronic claims application systems.

This data is needed in order to review and assess the risk, manage the contract, collect the premiums on time and process claims correctly in the event of a claim. The data must be stored for at least ten years after a contract ends; claims data must be stored for at least ten years after the claim has been settled. AXA undertakes to treat the information it receives as confidential.

AXA shall be authorized to obtain and process the data necessary for managing the contract and handling claims. If necessary, the data may be exchanged with third parties involved in the contract,

such as reinsurers and other participating insurers, pledge holders, authorities, attorneys and external claims adjusters. Information may also be passed on to liable third parties and their liability insurers for the purpose of enforcing recourse claims. AXA shall be authorized to inform third parties (e.g. relevant authorities) to whom insurance coverage has been confirmed if the insurance is suspended, amended or terminated.

Information may also be shared for the purpose of uncovering or preventing insurance fraud.

AXA shall be entitled to request the credit history of the customer from external providers in order to assess the creditworthiness of the customer.

To simplify administrative procedures, AXA Group companies operating in Switzerland and the Principality of Liechtenstein grant each other access to the following data:

- master data;
- basic contract data;
- claims summary;
- customer profiles.

This data is also used for marketing purposes. Promotional material may be sent to the policyholder. Policyholders who do not wish to receive promotional material may communicate this by calling 0800 809 809 (AXA 24-hour helpline).

Mutual access to health data is excluded.



## Want to file a claim?

It's easy and fast – notify us of your claim online at:

**[www.axa.ch/report-claim](http://www.axa.ch/report-claim)**

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[www.axa.ch](http://www.axa.ch)  
[www.myaxa.ch](http://www.myaxa.ch) (customer portal)