



General Insurance Conditions (GIC)

# **Directors and Officers Liability Insurance (D&O)**

Version 04.2021

# Contents

Key points at a glance	4
------------------------	---

## Part A Underlying Provisions of the Insurance Contract

A1	Scope of the contract	6
A2	Territorial scope	6
A3	Trigger	6
A4	Prior acts	6
A5	Extended coverage period	7
A6	Term of the contract	7
A7	Termination of the contract	8
A8	Premiums	8
A9	Duty of care and other obligations	8
A10	Duty to provide information	8
A11	Principality of Liechtenstein	9
A12	Applicable law and place of jurisdiction	9
A13	Place of performance	9
A14	Sanctions	9
A15	Attribution of knowledge (severability)	9
A16	Assignment of claims for compensation	9

## Part B Scope of Insurance – General Provisions

B1	Insured risk, insured liability and insured activities	10
B2	General exclusions	10

## Part C 11 Scope of Insurance – Special Conditions

C1	Legal protection in criminal and administrative proceedings	11
C2	Investigations of the policyholder or its subsidiaries	11
C3	Costs in the event of self-disclosure by an insured	12
C4	Forensic service providers	12
C5	Policyholder's costs in the event of shareholder derivative actions	12
C6	Waiver of the objection of gross negligence	12
C7	Claims in connection with indirect/direct taxes and social insurance contributions	12
C8	Civil fines and penalties (FCPA and UK Bribery Act)	12
C9	Employment practices claims	12
C10	Extension of the insurance to the policyholder or its subsidiaries in the event of indemnification (company reimbursement)	12
C11	Mandates in internal employee benefit committees	12
C12	Mandates in third-party companies (third-party mandates)	13
C13	Reputation costs	13
C14	Psychological counseling	13

## Part D Claims

D1	Indemnities	14
D2	Deductible	15
D3	Claims notification and duty to provide information	15
D4	Claims handling	15
D5	Contractual fidelity	16
D6	Right of recourse	16
D7	Limitation period under this insurance contract	16

## Part E Definitions

E1	Breach of duty	17
E2	Serial loss	17
E3	Subsidiary	17
E4	Financial loss	17
E5	Insured	17
E6	Insurance year	18
E7	Policyholder	18

# Key points at a glance

This overview provides you with information about the key content of the insurance contract, in accordance with Art. 3 of the Federal Act on Insurance Contracts (ICA). The rights and obligations of the contracting parties arise on conclusion of the insurance contract, namely on the basis of the application, the policy, the insurance conditions and the 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 for 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.

The exact scope of coverage is found in the insurance conditions and the quote/policy.

This is indemnity insurance pursuant to with the Insurance Contract Act.

## What is not covered?

The insurance does not cover, among others, claims:

- arising from intentional breaches of statutory provisions and of official orders or from deliberate breaches of obligations beyond the advancement of the costs of defense;
- for compensation which exceeds the established monetary loss. Such claims include, in particular, payments of a punitive nature or which also serve as a sanction (such as fines, financial or contractual penalties, punitive or exemplary damages);
- arising from loss caused knowingly by the insureds beyond the advancement of the costs of defense.

The exact scope of coverage and the exclusions are found in the insurance conditions and the quote/policy.

## What indemnities does AXA provide?

AXA pays the amount of compensation that the insureds are required to pay to the injured party based on their statutory liability (D1.1 GIC). In the event of a claim, AXA also covers the costs of defending against unjustified or excessive claims (passive legal protection pursuant to D1.2 GIC). The insurance also covers legal protection for criminal or administrative proceedings in accordance with C1 GIC.

In addition, AXA advances the costs of defending against claims in connection with intentional breaches of statutory provisions and official orders or deliberate breaches of obligations, and unlawful acceptance of benefits (D1.3 GIC).

The indemnities 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 quote and the policy. It is due on the first day of each insurance year (A8 GIC).

## What are the policyholder's main obligations?

Among other things, the policyholder and the insureds must:

- pay the premium on time and in full;
- notify AXA as soon as possible of the occurrence of any event whose likely consequences could affect the insurance (D3.1 GIC);
- in the case of a loss event, immediately provide all notifications, rulings and information, and disclose all evidence and documents relating to the matter (D3.2 GIC);
- refrain from negotiating directly with the injured parties or their representatives regarding claims for compensation, from acknowledging liability or claims, from reaching any settlement and from paying compensation, unless AXA has given its approval to do so (D5 GIC);
- 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 (A10.2.1 GIC).

Additional duties and obligations are found in the insurance conditions and the quote/policy.

## When does the notice of claim need to be submitted?

If an event occurs with consequences that are likely to affect the insurance, the policyholder must notify AXA without delay. This duty to notify also applies if a subsidiary or an insured is subjected to police investigation because of an event (D3 GIC).

## When does the insurance begin and end?

The insurance begins on the date specified in the policy. AXA may reject the application up until 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 for another year (A6 GIC), provided that:

- neither of the contracting parties gives notice of termination within 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 during the preceding financial year.

## What loss or damage is insured in terms of time?

The insurance covers claims brought against an insured during the period in which the policy is in effect (A3 GIC).

## How to exercise the right of withdrawal

The policyholder may withdraw from the contract with AXA within 14 days of their acceptance. This deadline will be met if AXA receives notice of withdrawal in writing or in another form of text (e.g. e-mail) by no later than the last day of the withdrawal period.

On withdrawal, any indemnities that have been received will have to be paid back.

**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 Contracts Act or the Insurance Supervision Act of the Principality of Liechtenstein, the policyholder has the right to withdraw from the contract within four weeks of 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?**

AXA uses data in compliance with the applicable statutory provisions. More information may be found at [AXA.ch/data-protection](https://www.axa.ch/data-protection)

# General Insurance Conditions (GIC)

## Part A

### Underlying Provisions of the Insurance Contract

#### A1 Scope of the contract

---

The policy specifies what insurance has been taken out. The policy, these General Insurance Conditions (GIC) and any Special Insurance Conditions (SIC) provide information about the scope of insurance.

#### A2 Territorial scope

---

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, the insurance cover will lapse or be accorded only to the extent permissible under the applicable foreign law.

#### A3 Trigger

---

##### A3.1 Policy period

The insurance covers claims brought against an insured, or against AXA as his or her liability insurer while the policy is in force. The policy period 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 written claim is first brought against an insured, or against AXA as his or her liability insurer, or the date on which an insured, or AXA as his or her liability insurer, is notified in writing that a claim 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 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, or AXA as his or her liability insurer, first becomes aware that criminal, administrative or investigative proceedings have been initiated against the insured that could lead to an insured claim.

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

##### A3.3 Serial loss

All claims arising from a serial loss are deemed to be made on the date on which the initial claim (A3.2) is asserted. If the initial claim of a serial loss is made prior to commencement of the contract, none of the claims arising from losses in this series are insured.

##### A3.4 Indemnity and limits

Indemnity and limits are governed by the contractual provisions (such as provisions relating to sums insured or deductibles) that were in effect at the time the claim was first asserted pursuant to A3.2.

##### A3.5 Omission

In case of doubt, a breach of a duty by 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

---

##### A4.1 Prior acts coverage

Claims arising from loss or serial loss due to a breach of duty, that was 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 or could not have known, under the circumstances, of any breach of duty giving rise to liability.

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

If the policyholder acquires a company during the insurance year, any claims arising from losses due to breaches of duty that occurred before the company was included in this contract are excluded from the insurance. The policyholder has the right to request a quote from AXA for the prior risk relating to the directors and officers of a newly acquired subsidiary. In such a case, 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 Expansion of indemnity or scope of insurance

If the insured indemnity or the scope of insurance are expanded, coverage is provided under the new agreements only if the insured did not know or could not have known, under the circumstances, of any breach of duty giving rise to liability prior to the date on which the amendment to the contract came into effect.

## A5 Extended coverage period

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

If, during the term of the contract:

- an insured leaves the group of insureds,
- a subsidiary ceases to be included because it has been sold or liquidated, for example, 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 liability occurred before they left, before the subsidiary ceased to be included, or before termination of the third-party mandate. The extended coverage period does not apply if the claim asserted is covered in whole or in part by another insurance contract.

The insured, or the subsidiary that ceases to be included, has the right to request a quote for run-off cover from AXA prior to the departure of the insured, before the subsidiary ceases to be included, or before 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 (the closing date, for example, in the event of a sale), or before termination of the third-party mandate. In such case, AXA reserves the right to define the conditions and the premium.

### A5.2 Extended coverage period on expiry of the insurance (except in cases of forced liquidation, merger or acquisition of the policyholder)

#### A5.2.1 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 brought against insureds, or against AXA as their liability insurer, provided that 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 result of restructuring,
- for health-related reasons, and/or
- for age-related reasons (retirement),

an extended coverage period for claims brought against them, or against AXA as their liability insurer, within the statutory limitation period. This extended coverage period is granted automatically and is premium-free as of the date of the departure of the insured. In such case, the scope of insurance is governed by the insurance conditions that were in effect during the preceding insurance year. The insured indemnity applies to the extent of the still unused portion of the agreed sum insured for the preceding insurance year. No extended coverage period will be granted if the claim asserted is covered in whole or in part by another insurance contract.

#### A5.2.2 Optional extended coverage period subject to a premium

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. Claims brought against insureds, or against AXA as their liability insurer, within the agreed extended coverage period are insured within the scope of the policy, provided that the breach of duty can be shown to have occurred prior to the end of the preceding insurance year. A request for such an extended coverage period must be submitted to

AXA in writing 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 has the right to buy such an extended coverage period 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.

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

### A5.3 Extended coverage period in the event of forced liquidation (e.g. bankruptcy), merger or acquisition of the policyholder

#### A5.3.1 Automatic premium-free extended coverage period

As from the date of 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 for breaches of duty that occurred prior to the commencement of the forced liquidation or the initiation of bankruptcy proceedings, or before the completion (closing date) of the merger or acquisition.

#### A5.3.2 Optional extended coverage period subject to a premium

The policyholder has the right, prior to the end of this extended coverage period, to request a quote from AXA for an additional extended coverage period. In such case, AXA reserves the right to define the conditions and the premium.

## A6 Term of the contract

### A6.1 Beginning and expiry

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

If bankruptcy proceedings are initiated against the policyholder, the contract will remain in place within the scope of A5.3 and A6.3, and the bankruptcy administrator is required to comply with it.

### A6.2 Renewal on expiry

On expiry, the contract is renewed for another year, 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. Any continuation of the contract will require a new written agreement. Billing or payment of the premium invoice does not constitute mutual consent to an extension of the contract.

### A6.3 Forced liquidation (e.g. bankruptcy), merger or acquisition of the policyholder

If the policyholder is forced into liquidation, or if it merges (losing its legal personality in the process), or if one or more persons acquire at least 50% of its voting rights, the insurance only provides coverage within the scope of A5.3.1 for a period of 12 months from the beginning of the forced liquidation or the initiation of bankruptcy proceedings, or on the closing date of the merger or

acquisition. This insurance contract will automatically end after these 12 months unless the policyholder purchases an extended coverage period pursuant to A5.3.2.

The foregoing paragraph will not apply if:

- the majority of voting rights in the policyholder are transferred to heirs as part of a company succession arrangement within a family or to the current management as part of a management buyout;
- composition proceedings in relation to the policyholder do not end in its forced liquidation.

## A7 Termination of the contract

### A7.1 Ordinary termination

Either contracting party may terminate the contract in writing or in another form of text (e.g. e-mail) 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 claim for which AXA provides indemnity, the policyholder may terminate the contract no later than 14 days after it becomes aware of the payment of the indemnity. AXA waives its right to terminate the contract in the event of a claim.

### A7.3 Termination in the case of increased risk

A10.2.3 applies.

## A8 Premiums

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

## A9 Duty of care and other obligations

### A9.1 Breach of obligations and duty to notify

If the policyholder, a subsidiary or an insured breaches an obligation with which they are required to comply (e.g. D4.2 or D5) or the duty to notify and provide information (e.g. A10.2.1, D1.7 or D3), coverage will lapse. Coverage will not lapse, however, if the policyholder, a subsidiary or the insured proves that the breach did not have any effect on the occurrence of the insured event and the amount of the indemnity owed by AXA, or that the breach, under the circumstances, can be regarded as having occurred though no fault of their own.

### A9.2 Duty of care and other obligations in the event of a claim

D3, D4 and D5 apply.

## A10 Duty to provide information

### A10.1 Communication with AXA

The policyholder, the subsidiary or the insured must address all communications to the responsible branch office or to the registered office of AXA.

### A10.2 Increase or decrease in risk

#### A10.2.1 Obligations

The policyholder and/or the insured must notify AXA in writing or in another form of text (e.g. e-mail) 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 in risk

An increase in risk within the meaning of the foregoing 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 USA 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 voting rights of the policyholder 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 in risk, AXA may raise the premium for the remainder of the term of the contract 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.

### A10.3 Obligation to provide information

In order to assess the risk, AXA has the right to request information, such as the current auditor's report or the financial statements (annual report, income statement, balance sheet, notes), at any time.

### 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 insurance conditions and the premiums.

### A10.5 Claims

D3 applies.



## **A11**    **Principality of Liechtenstein**

---

If the policyholder has their domicile or registered office in the Principality of Liechtenstein, the references to provisions of Swiss law contained in the insurance contract documents shall be construed as referring to the corresponding provisions of Liechtenstein law.

## **A12**    **Applicable law and place of jurisdiction**

---

### **A12.1**    **Applicable law**

This insurance contract shall be governed by Swiss substantive law; for policyholders with domicile or registered office in the Principality of Liechtenstein, it shall be governed by Liechtenstein substantive law.

### **A12.2**    **Place of jurisdiction**

The ordinary courts of Switzerland and, in the case of policyholders having their domicile or registered office in the Principality of Liechtenstein, the ordinary courts of Liechtenstein, shall have exclusive jurisdiction over any disputes arising out of or in connection with the insurance contract, including any lawsuits filed by the policyholder, insureds or third parties for indemnification for liability claims.

## **A13**    **Place of performance**

---

Compensation paid to the policyholder, a subsidiary, the insured or third parties under this contract is to be paid exclusively at the registered office of the policyholder or at the registered office of AXA.

## **A14**    **Sanctions**

---

Insurance coverage does not apply insofar and as long as applicable legal economic, trade, or financial sanctions inhibit indemnification under this contract.

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

---

Errors in and the omission of statements 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 will 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 the cases where the exclusions in B2.2 and B2.5 apply, the knowledge or breach of duty of one insured will not be attributed to any other insured.

## **A16**    **Assignment of claims for compensation**

---

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

## Part B

### Scope of Insurance – General Provisions

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

---

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

AXA offers coverage for claims for damages brought against insureds (or as part of a direct right of claim against AXA as their liability insurer) based on statutory liability provisions. The insurance covers financial loss as well as additional costs and insured indemnification pursuant to Parts C and D.

##### B1.2 Insured activities

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

##### B1.3 Internal claims

The insurance also covers claims brought by the policyholder or a subsidiary against an insured.

#### B2 General exclusions

---

##### B2.1 Professional services

The insurance does not cover claims arising from services of an insured in any capacity other than the capacity of director or officer insured under this contract (arising, for example, from professional services such as those provided by an attorney, fiduciary or corporate consultant).

However, this exclusion does not apply to claims brought against insureds because they failed to supervise an employee who performed or should have performed a professional service (carve-back).

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

The insurance does not cover claims arising from breaches of statutory provisions and official orders committed intentionally or with willful recklessness (*dolus eventualis*) or arising from willful breaches of duty. The insurance does, however, cover the advance for defense costs in accordance with D1.3.

In this regard, AXA waives any attribution of knowledge pursuant to A15.

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

The insurance does not cover claims arising from financial payments that are of a punitive or similar nature (such as fines, financial or contractual penalties, punitive or exemplary damages, etc.). C8 remains reserved.

##### 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.

##### 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. The advance for defense costs in accordance with D1.3 is, however, insured. In this regard, AXA waives any attribution of knowledge pursuant to A15.

##### 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,
  - Antitrust Actand all amendments thereto, or any other similar statutory or federal regulations;
- arising from Employment Practices Claims as defined in C9;
- if brought by the policyholder, a subsidiary, or insureds against each other, irrespective of whether such claims are brought by these parties themselves or brought at their request or on their instructions.

##### B2.7 Circumstances already disclosed

The insurance does not cover claims relating to circumstances that were already reported

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

## Part C

# Scope of Insurance – Special Conditions

### C1 Legal protection in criminal and administrative proceedings

If a 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 (such as attorney fees and the costs of expert opinions) as well as any costs imposed on the insured in the proceeding (such as court fees and the costs of investigations).

AXA also covers any other necessary and appropriate costs (such as 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 to pay any further indemnification 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 will be entitled to reimbursement from AXA for the attorney fees and the costs of the proceeding. In this case, AXA will be entitled to any reimbursement for attorney fees and disbursements 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 will not affect the right of AXA to retain another attorney for civil proceedings.

AXA waives its right to recover payments made pursuant to 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 willful recklessness.

#### C1.1 Seizure and freezing of assets (including living expenses and costs of security deposits)

If the assets of an insured are seized or frozen in a proceeding pursuant to C1 (such as a proceeding for attachment), AXA also covers the reasonable costs of defending against such an order. Any security deposit that is required to be provided is excluded from this cover.

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 costs reasonable and necessary for this for a maximum period of six months from the effective date of the relevant court order, subject to the recovery of such costs.

#### C1.2 Extradition costs

The costs of defense in the event of 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 respective national extradition law.

AXA also covers reasonable and necessary travel expenses of spouses, registered partners, cohabiting partners living in the same household and minor children of the insured concerned, directly related to the request for extradition subject to written approval in advance.

#### C1.3 Costs of defense for proceedings relating to a ban on exercising an activity

Coverage is also provided within the scope of C1 for the costs of defense in the event that proceedings are initiated against an insured for a temporary or permanent ban on 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 (including travel expenses), the cost of an attorney engaged to advise or represent them as well as the costs of proceedings and court fees imposed on the insured, provided that the following cumulative conditions are met:

- the first order requiring the insured to cooperate in an investigation proceeding is issued during the policy period 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 duty that could result in an insured claim;
- the investigation does not involve a proceeding
  - conducted entirely or in part in the USA or in accordance with its law. This also includes proceedings before the United States Securities and 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 C10).

### **C3 Costs in the event of self-disclosure by an insured**

---

After giving its written approval, AXA will cover the necessary and reasonable costs incurred by an insured in connection with a self-disclosure to be made by the insured to an official agency for the first time in an insurance year. In order for coverage to apply, the insured must reasonably assume that a material breach of statutory or regulatory provisions was committed by the policyholder or the insured, or could occur in the near future.

### **C4 Forensic service providers**

---

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 on the insured against whom a claim is made. The selection and engagement of the forensic service provider must be agreed with AXA in advance.

### **C5 Policyholder's costs in the event of shareholder derivative actions**

---

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

### **C6 Waiver of the objection of gross negligence**

---

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.

### **C7 Claims in connection with indirect/direct taxes and social insurance contributions**

---

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. The insurance does not cover claims where the non-payment of such taxes and/or social insurance contributions is based on a deliberate decision made by an insured.

### **C8 Civil fines and penalties (FCPA and UK Bribery Act)**

---

The insurance covers civil fines and penalties that have been imposed on an insured based on the legal principles of the Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act, provided that these are also 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 are excluded from coverage.

### **C9 Employment practices claims**

---

The insurance covers claims against an insured by a former or current employee or job applicant of the policyholder and/or a subsidiary. Coverage is granted subject to the condition that the claim is for financial loss arising in connection with an alleged or actual breach of labor law provisions by the insured.  
For the purposes of this provision, financial loss is also deemed to include psychological impairments.  
Within the scope of this extended coverage, the insurance also covers claims brought against employees who do not have the capacity of a de facto director or officer.

### **C10 Extension of the insurance to the policyholder or its subsidiaries in the event of indemnification (company reimbursement)**

---

If the insured has a claim for indemnification through the policyholder or its subsidiaries, the right to insurance indemnity under this contract is transferred to the policyholder or its subsidiaries, provided that it or they have made the payments owed under this contract.

### **C11 Mandates in internal employee benefit committees**

---

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 employee benefit committee of a pension plan that the policyholder and/or one of its subsidiaries has with a Swiss collective foundation.

## C12 Mandates in third-party companies (third-party mandates)

---

### C12.1 Scope of coverage

If an insured or an employee of the policyholder or a subsidiary is seconded to a third-party company (legal entity) as a director or officer, the insurance also covers 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 (including de facto status as director or officer).

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

- companies listed on a stock exchange;
- banks, insurance and reinsurance companies or employee benefit plans;
- companies with 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 reported to AXA for review.

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

---

### C12.2 Change of mandate holder

If the person mandated is replaced by another insured or another employee during the insurance year, the insurance coverage automatically extends to the new mandate holder.

---

### C12.3 Exclusions

#### C12.3.1 Claims by the policyholder and its subsidiaries

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

#### C12.3.2 Known circumstances

The insurance does not cover claims in connection with circumstances that were or ought to 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.

---

### C12.4 Other insurance and indemnification

Coverage is granted only for the amounts remaining after payment of indemnity from any other insurance (D1.6) and/or compensation based on an option available to the third-party company by law, articles of association or contract to hold these persons harmless. In the latter case, C10 will not apply.

## C13 Reputation costs

---

If it is established that the image and good reputation of an insured in the public is damaged because of an insured claim, AXA will pay the costs of restoring the image and good reputation of the insured.

In partial derogation of C10, AXA will not cover the costs of restoring the image and good reputation of the insured if the policyholder or its subsidiaries indemnify the insured for these costs, or if they have undertaken an obligation to do so.

The costs of restoring the image and good reputation of an insured are deemed to be all the necessary and reasonable expenses incurred for the work of an independent PR professional following prior written consent from AXA.

---

## C14 Psychological counseling

---

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

# Part D

## Claims

### D1 Indemnities

---

#### D1.1 Compensation of justified claims

AXA will pay, within the scope of the insurance and statutory liability, the amount that the insured, or AXA as their liability insurer, is required to pay the injured party as compensation. AXA may pay the compensation to the injured party directly.

AXA will cover the costs pursuant to C1-C14 within the scope of the sum insured. The provisions of A3 governing the trigger apply mutatis mutandis to these costs.

---

#### D1.2 Defense against unjustified claims

In the case of an insured event, AXA will cover the costs of defending against unjustified or excessive claims for damages that are brought against an insured or against AXA as their liability insurer.

In the case of unjustified claims against insureds, or against AXA as their liability insurer, relating to bodily injury and/or property damage, AXA will also cover the costs of defending these if there is no statutory or other entitlement to indemnity (such as through commercial general liability insurance or indemnification by the employer) available for this purpose. The insurance does not cover compensation for justified claims in connection with bodily injury and property damage.

---

#### D1.3 Advance for the costs of defense

AXA will advance the costs of defending claims in connection with:

- intentional breaches of statutory provisions and official orders;
  - 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
- have been confirmed by a final and binding court decision, in a judicial, administrative or arbitration proceeding, or by means of a settlement; or
  - are acknowledged by an insured.

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

---

#### D1.4 Limit of indemnity

##### D1.4.1 Scope of indemnity

Indemnity from AXA for all claims against the policyholder, a subsidiary, an insured and/or AXA as their liability insurer, and for all other insurance indemnities, is limited to the sum insured specified in the policy. This includes interest on damages, recourse interest, loss mitigation costs, costs of expert opinions, attorney fees, court costs, costs of arbitration and mediation and any other costs (such as the legal expenses of the opposing party).

A sublimit (limited amount within the sum insured) that is set out in the policy or these GIC may apply for individual risks included in the insurance.

If the claims and costs (including claims and costs in connection with risks to which sublimits apply) per event or serial loss exceed the sum insured specified in the policy,

the maximum indemnity payable by AXA will be limited to the sum insured (maximum compensation). The sum insured or sublimit is reduced by the agreed deductible in each case.

##### D1.4.2 Single aggregate

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

---

#### D1.5 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 specified 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 compensation from excess contracts to this contract and/or all available indemnity under other contracts.

---

#### D1.6 Other insurance

##### D1.6.1 Excess insurance

If the claim filed is also covered in whole or in part by another insurance contract, the other contract will take precedence over this contract. The sum insured, subject to the conditions of this insurance, is available only for any amounts remaining after exhaustion of the indemnity that has 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.

##### D1.6.2 Advance for costs in the event 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 what is covered. The insured must cooperate with AXA so that AXA can make a definitive assessment of what is covered. If it subsequently becomes evident that the claim is not covered under this contract, the insured is required to reimburse AXA for the provisional internal and external costs assumed by AXA.

---

#### D1.7 Emergency costs

If, in an emergency, it is proven that prior written consent from AXA to cover the costs of defending against a claim could not reasonably be obtained, AXA will provide its consent to cover such costs retroactively. The insured must, however, inform AXA immediately and delegate all further handling of the claim to AXA.

---

#### D1.8 Threat of claim

If the insured, or AXA as their liability insurer, is faced with the serious threat of an insured claim, AXA will also cover preparations for the defense if this is reasonable and appropriate.

---

#### D1.9 Internal costs of claims handling

The internal costs of AXA for the handling of claims are not deducted from the sum insured, nor are they taken into account when determining the deductible. Internal costs are deemed to be exclusively the costs incurred by AXA for its employees.

---

## D2 Deductible

---

### D2.1 Per event

The insured must pay the deductible specified in the policy for each loss event. A special deductible may be set out in the policy for individual risks. The deductible for financial loss also applies for the coverage of costs pursuant to C1-C14 as well as for other costs, such as for defending unjustified claims. This applies regardless of whether the claims are brought against an insured and/or against AXA as their liability insurer.

---

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

If multiple coverages with identical deductibles are triggered for the same loss event, the insured will be required to pay the deductible only once. If deductibles with different amounts were agreed for these coverages, the insured will pay at most the highest of the agreed deductibles.

---

### D2.3 Reimbursement

The deductible is charged in advance to the insured. If AXA indemnifies the injured party without first subtracting the deductible, the insured must reimburse AXA for the amount of the deductible, waiving any objections. The same applies if AXA pays the costs for the engagement of third parties (such as experts, lawyers or courts) directly.

---

### D2.4 Statutory requirements

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

---

## D3 Claims notification and duty to provide information

---

### D3.1 Claims notification

The policyholder, its subsidiary and/or the insured must notify AXA in writing as soon as possible if a claim is first made against an insured in writing, or if an insured receives written notice that a claim under this insurance could be brought against him or her.

If the policyholder, its subsidiary and/or an insured becomes aware of circumstances that could result in an insured claim while the policy is in force, they can notify AXA of these circumstances in writing until the end of the insurance year (or end of the agreed extended coverage period). The notification must contain at least the following information for coverage to apply:

- a description of the circumstances that indicate that a claim may be filed at a later date;
- 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 the potential injured parties.

The insured must notify AXA as soon as possible if a police, criminal, administrative or investigative proceeding is initiated against an insured as a result of an event that might affect the insurance. If an injured party contacts AXA directly, AXA will so inform the policyholder, its subsidiary and/or the insured.

---

---

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

The policyholder, its subsidiaries and the insureds must always provide AXA with all information relating to the loss event as quickly as possible and at their own expense. This includes correspondence, data, documents, evidence, official and court documents such as summonses, rulings, notifications, judgments, etc. In addition, the policyholder, its subsidiaries and the insureds must forward to AXA, of their own accord, any additional information about the loss event and any steps undertaken by the injured party.

---

## D4 Claims handling

---

### D4.1 Assumption of claims handling

AXA will handle claims if they exceed the deductible and the sum insured has not yet been exhausted. AXA has the right to handle claims even if the claims do not exceed the deductible.

AXA conducts negotiations with the injured party at its own expense. In doing so, AXA acts as representative of the insured. The manner in which AXA settles the claims of the injured party is binding on the insured.

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

---

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

The policyholder, its subsidiaries and the insureds must assist AXA with handling the claims at their own expense. This applies, in particular, to establishing the facts and the loss, as well as to defending against claims. The duty to provide assistance also applies in the event of litigation and if the claims are brought against AXA as their liability insurer.

---

### D4.3 Litigation

If no understanding can be reached with the injured party and if this party takes legal action, the following applies:

#### D4.3.1 Lawsuit against an insured

AXA, in consultation with the insured, appoints the trial lawyer, determines the trial strategy, the outcome of the proceeding (acknowledgment, settlement or judgment) and all other procedural steps. In this regard, AXA acts as representative of the insured. AXA will assume the costs of litigation and attorney fees incurred by the insured. It is authorized to reach an agreement with the trial lawyer regarding fees. AXA is entitled to any attorney fees awarded to the insured. However, any compensation awarded to the insured for their personal efforts may be retained by them.

#### D4.3.2 Lawsuit against AXA

AXA appoints the trial lawyer, determines the trial strategy, the outcome of the proceeding (acknowledgment, settlement or judgment) and all other procedural steps. AXA will assume the costs of litigation and attorney fees incurred as part of the insurance indemnity. AXA will keep the insured informed about the proceeding.

#### D4.3.3 Lawsuit against an insured and against AXA

AXA decides, as far as possible and in consultation with the insured, on a trial lawyer to jointly represent the insured and AXA. D4.3.1 and D4.3.2 apply in all other respects.

---

---

**D4.4 Notices and declarations**

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

**D5 Contractual fidelity**

---

The policyholder, its subsidiaries, and the insureds are required to maintain contractual fidelity. Insureds may not, without the consent of AXA, conduct any direct negotiations with the injured party, acknowledge any liability or claims, enter into any settlement or pay any compensation. They may not assign coverage claims without the consent of AXA.

**D6 Right of recourse**

---

AXA has a right of recourse against the policyholder, its subsidiaries and/or the insured, provided that it would be entitled, pursuant to the provisions of the insurance contract or the Federal Act on Insurance Contracts (ICA), to refuse or reduce its indemnity.

**D7 Limitation period under this insurance contract**

---

Claims arising under the insurance contract become time-barred five years following the occurrence of the event on which AXA's obligation to indemnify is based.



## Part E

### Definitions

#### E1 Breach of duty

---

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

#### E2 Serial loss

---

The total of all insured losses in various cases resulting from the same cause, as well as the consequence of several breaches of duty in the same case, constitute a single loss event (serial loss, for example 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 the delegation of management activities of a company, a director or officer is found to have breached various supervisory duties). The number of injured parties, claimants or persons entitled to claim is irrelevant. Within the meaning of this provision, the cause is considered to be one and the same if several claims are attributable to identical or similar breaches of duty. Within the meaning of this provision, this same situation is said to exist if several correlated instances occur, which, in this context, can only be considered a self-contained occurrence and thus a single event.

#### E3 Subsidiary

---

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

- a) owns a share of more than 50%, or
- b) 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 in which the majority of the members of the board of trustees is appointed by the policyholder and which is financed to a significant extent by the policyholder. Employee benefit plans are not included in this definition.

#### E4 Financial loss

---

Financial loss is loss measurable in monetary terms that is not attributable to bodily injury or property damage, and that constitutes neither direct nor indirect consequential loss due to bodily injury (such as death, physical injury or any other health impairment of individuals, including any resulting pecuniary loss or loss of earnings) or property damage (such as destruction, damage to or loss of property, including any resulting pecuniary loss or loss of earnings incurred by the injured party). Financial loss is, however, 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 involves a directors and officers liability claim by the policyholder and/or a subsidiary against an insured in this regard.

#### E5 Insured

---

##### 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:

- a) members of boards of directors;
- b) members of the boards of cooperatives;
- c) managing directors of limited liability companies LLC;
- d) members of the boards of associations;
- e) members of boards of trustees (in the case of employee benefit plans, only if included in the insurance);
- f) members of general management (including interim managers);
- g) members of executive boards and of internal audit units;
- h) founders;
- i) 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 said legal entity in this company.

The insureds also include members of the internal employee benefit committee pursuant to C11, directors and officers seconded to third-party companies pursuant to C12, and employees without a de facto director or officer function as defined in C9.

##### 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:

- a) spouses, 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;
- b) 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**

---

The insurance year is defined as the period for which the annual premium is calculated. It begins on the day on which the annual premium is due and ends on the day before the annual premium for the next insurance year is due.

**E7 Policyholder**

---

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



## Want to file a claim?

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

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

AXA  
General-Guisan-Strasse 40  
P.O. Box 357  
8401 Winterthur  
AXA Insurance Ltd.

[AXA.ch](https://www.axa.ch)  
[myAXA.ch](https://myaxa.ch) (customer portal)