

Definitions

The following definitions apply to the words or terms listed below wherever they appear in this section unless specifically otherwise indicated:

1 Underlying insurance

underlying insurance shall mean an existing insurance policy in force with"

1.1 A registered Namibian, Botswanan or South African insurer which covers one or more of the following

- 1.1.1 Personal liability
- 1.1.2 Property owner's liability
- 1.1.3 Tenant's liability
- 1.1.4 Motor liability
- 1.1.5 Watercraft liability

1.2 Any insurer in the world that covers one or more of the following:

- 1.2.1 Motor liability
- 1.2.2 Watercraft liability
- 1.2.3 Property owner's liability

in respect of any motor vehicle hired, leased or owned by the insured or any watercraft or property owned by the insured, outside the Republic of South Africa, Botswana or Namibia.

Defined Events

The company will indemnify the insured up to the limit of indemnity stated in the schedule for all sums which the insured becomes legally liable to pay as damages arising from an occurrence anywhere in the world, but not in respect of any judgement, award, payment or settlement made within countries which operate under the laws of the United States of America or Canada (or to any order made anywhere in the world to enforce such judgement, award, payment or settlement either in whole or in part) during the period of insurance to the extent that:

1 such liability is not indemnifiable in terms of the insuring clause and/or insurable events clause and/or operative clause of any underlying insurance

or

2 such liability is not indemnifiable by reason of exclusion in any underlying insurance

or

3 the amount of such liability exceeds the limit of the underlying insurance and the underlying insurer has paid or has admitted liability or has been held liable to pay the full amount of such limit, which for purposes of this policy is deemed to be a minimum of N\$500 000 but N\$1 000 000 in respect of motor liability and/or watercraft liability.

Limits of indemnity

The amount payable, inclusive of any legal costs recoverable from the insured by a claimant or any number of claimants and all other costs and expenses incurred with the company's consent for any one event or series of events with one original cause or source, shall not exceed the limit of indemnity stated in the schedule.

Specific Conditions

1 Admission, offer, promise or payment

No admission, offer, promise or payment in relation to a claim under this section may be made or given by or on behalf of the insured without the written consent of the company. The insured will take all reasonable steps to ensure that the underlying insurers will comply with this condition and cooperate with the company in the defence and settlement of any claim which is indemnifiable both by an underlying insurance and this section, and in the exercise of any subrogation rights. The costs incurred in exercising such rights and any amounts recovered shall be apportioned to each party according to the sums paid or payable under the respective policies.

2 Claims reporting

Written notice must be given to the company as soon as possible of any event that may give rise to a claim under this section and the insured shall furnish such further information as the company may reasonably require. Every claim, writ, summons or process and all related documents must be forwarded to the company as soon as possible.

Inadvertent failure to give notice as aforesaid because the insured could not reasonably have anticipated that the event would give rise to a claim under this section will not be construed as a breach of this condition.

3 Currency

Payments under this section will be made in the same currency as the premium payments.

4 Defence or prosecution

In respect of any claim not covered at least in part by an underlying insurance, the company may take over and conduct in the name of the insured the defence or settlement of any claim or prosecute in the name of the insured for their own benefit and will have full discretion in the conduct of any proceedings and in the settlement of any claim. The insured will give all necessary information and assistance as may be required by the company.

5 Jurisdiction

The laws of the Republic of South Africa, Botswana and Namibia whose courts shall have exclusive jurisdiction in any dispute between the company and the insured will govern this section.

6 Maximum amount payable

In the event of a claim for which the company is liable for the maximum amount payable under any item the total amount of outstanding instalments for that item to the end of the current period of insurance will be deducted from the amount payable.

7 Payment of limit

The company may in the case of any occurrence pay to the insured the maximum indemnity limit (but deducting any sum or sums already paid) or any lesser sum for which the claim or claims can be settled and the company shall thereafter be under no further liability in respect of such occurrence

8 Pollution

The indemnity granted by this section in respect of seepage, pollution or contamination not caused by sudden, unforeseen, unintended and unexpected occurrences is limited to N\$250 000 in the aggregate in any one (annual) period of insurance (being the period of twelve consecutive months from the inception date or anniversary date).

9 Underlying insurance

The indemnity granted by this section is conditional upon there being in force at the time of the occurrence an underlying insurance policy that substantially provides cover for the type of liability for which indemnity is sought hereunder and upon the insured not being in breach of the conditions of such an underlying insurance.

Specific Exceptions

The company will not indemnify the insured in respect of liability:

1 Acts of the insured

arising out of any dishonest, fraudulent or malicious act of the insured or acts of physical assault, seduction, sexual abuse assault harassment or molestation including unwelcome sexual advances, requests for sexual favours and any unwelcome verbal, visual or physical contact of a sexual nature committed by the insured;

2 Aircraft

arising out of the ownership or use of any aircraft other than model aircraft and hang gliders;

3 Debt

for any debt;

4 Employment, business or profession

arising out of or in the course of the insured's employment, business or profession including but not limited to the sale of any goods or the rendering of any services for a fee, reward or any other consideration;

5 Fines and penalties

for payment of any fine, penalty, multiple, punitive or exemplary damages or arising out of liquidated damages clauses, penalty clauses, or performance warranties except to the extent that it can be proved that liability would have attached in the absence of such clauses or warranties;

6 HIV and AIDS

arising out of any condition directly or indirectly caused by or associated with Human Immuno-deficiency Virus (HIV) or the mutants, derivatives or variations thereof or in any way related to Acquired Immuno Deficiency Syndrome or any syndrome or condition of a similar kind howsoever it shall be named;

7 Letting and/or hiring out

arising out of the letting and/or hiring out of any movable or immovable property or part thereof for a fee, reward or any other consideration;

8 Liability to the insured

8.1 of one insured to another;

8.2 to any former insured in respect of an occurrence during any period when such former insured was an insured;

9 Motor liability

for any claim in respect of motor liability unless such liability is indemnifiable by any of the underlying insurances, other than any claim excluded solely by reason of any territorial restrictions;

10 Nuclear

directly or indirectly caused by or contributed to by or arising from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

11 Other insurance

arising out of loss of or damage to property to the extent that such liability is indemnifiable under any other insurance policy;

12 Payment of maintenance or alimony

for the failure to pay maintenance or alimony or any amounts following a breach of promise;

13 Property hired, leased or borrowed

for the first N\$5 000 of any claim in relation to property hired, leased or borrowed by the insured;

14 Property in the insured's custody or control

for loss of or damage to any self-propelled land vehicle, trailer, caravan, watercraft or aircraft in the insured's care, custody or control;

15 Purchase of property

arising out of the purchase, sale, barter or exchange of any property, movable or immovable or the failure of the insured to comply with any obligations in relation thereto;

16 Reckless disregard

arising out of the reckless disregard by the insured of the possible consequences of his acts or omissions;

17 Statutory or similar legislation controlling the use of motor vehicles

which is the subject of statutory or similar legislation controlling the use of motor vehicles or trailers and in respect of which liability:

17.1 the insured is compelled to effect insurance or to furnish security or

17.2 the state or other government body or authority has accepted responsibility;

18 Termination of employment

for the first N\$2 000 of any claim arising from the suspension or termination of employment of any domestic servant;

19 Watercraft liability

for any claim in respect of watercraft liability:

- 19.1 unless such liability is indemnifiable by any of the underlying insurances, other than any claim excluded solely by reason of any territorial restrictions;
- 19.2 where the overall length of the watercraft exceeds 10,5 metres.

