



## Malus and Clawback Policy

**APPROVED BY** : S Chaba            Chairperson – Remuneration Committee  
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*This document contains 17 pages.*

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**REVISION HISTORY**

Revision	Author	Approved by	Reason for change	Date issued	Next revision due date
01	R Lyon	S Chaba	New Policy	11 September 2019	11 September 2020

## APPROVAL

Title	Name	Approval	Date
Chairperson – Remuneration Committee	S Chaba	Minutes – Remuneration Committee	11 September 2019
Chairperson – Board	A Tugendhaft	Minutes- Board	11 September 2019

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**ABBREVIATIONS AND TERMINOLOGY**

Abbreviation / Terminology	Definition
Alviva	Alviva Holdings Ltd and its subsidiary companies
Board	Board of directors of Alviva Holdings Ltd
Committee	Remuneration Committee
Company	Alviva Holdings Ltd

## 1. Purpose

- 1.1. Alviva Holdings Limited (“the Company”) has adopted this malus and clawback policy (“the Policy”) with the intention of aligning shareholder interests and the remuneration outcomes of employees. It allows the Company to reduce or recoup the Incentive Remuneration in specified circumstances defined herein.
- 1.2. Malus provisions apply before awards have vested or been paid to an employee whilst clawback provisions apply to awards that have already vested or been paid to an employee.
- 1.3. This Policy forms part of the Company’s remuneration policy and assists the Company in ensuring that remuneration outcomes are fair, appropriate and reflect business performance. This Policy sets out the circumstances where the remuneration committee may:
  - 1.3.1. apply its discretion to adjust the value of an unvested award granted to an employee downward (to zero if required) or cancel unvested awards; or
  - 1.3.2. pursue remedies to clawback the value of any awards that have already vested or been paid to an employee.

## 2. Definitions

In this Policy, the following capitalised terms have the meaning set out below:

- 2.1. “**Applicable Rules**” means any laws, regulations or rules of any stock exchange or other applicable regulatory authority applicable to the Company;
- 2.2. “**Board**” means the board of directors for the time being of the Company, acting either through itself, through any committee of its members appointed by it from time to time and/or through the company secretary, whichever is charged by the Board with the administration and enforcement of this Policy;
- 2.3. “**Clawback**” means where Incentive Remuneration has already vested, been settled, paid or otherwise made available, a Trigger Event which indicates an error in the calculation of an employee’s remuneration is discovered and the Board seeks to fulfill its fiduciary duty to shareholders by invoking its discretion to seek recoupment of an Incentive Remuneration Amount;
- 2.4. “**Effective Date**” means the date of approval of this Policy by the Board;

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- 2.5. **“Group”** means collectively, the Company, its subsidiaries and entities or associates identified as such by the Board;
- 2.6. **“Incentive Remuneration”** means awards made in terms of any of the Company’s short- and long-term incentives;
- 2.7. **“Incentive Remuneration Amount”** means the pre-tax cash value thereof or the market value of the Incentive Remuneration on the settlement date;
- 2.8. **“Malus”** means the reduction and/or cancellation of unpaid, unvested or unsettled Incentive Remuneration when a Trigger Event is discovered, and the Board seeks to fulfill its fiduciary duty to shareholders by invoking its discretion to reduce and/or cancel the Incentive Remuneration;
- 2.9. **“Participant”** means any employee of the Company as well as employees in Alviva’s subsidiary companies; and
- 2.10. **“Trigger Event”** includes, but is not limited to:
  - 2.10.1. a material misstatement of the financial results resulting in an adjustment in the audited consolidated accounts of the Company or the audited accounts of any member of the Group; and/or
  - 2.10.2. in the case of awards which are subject to the achievement of performance conditions, the assessment of any performance metric or condition in respect of an award or payment which was based on error, or inaccurate or misleading information;
  - 2.10.3. the fact that any information used to determine the quantum of an Incentive Remuneration Amount was based on error, or inaccurate or misleading information; and/or
  - 2.10.4. action or conduct of a Participant which, in the reasonable opinion of the Board/remuneration committee, amounts to serious misconduct or gross negligence; and/or
  - 2.10.5. events or behaviour of a Participant or the existence of events attributable to a Participant which led to the censure of the Company or a member of the Group, by a regulatory authority or have had a significant detrimental impact on the reputation of the Company.

**3. Application**

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- 3.1. This Policy may apply to selected persons who are or become a Participant on or after the Effective Date and applies to all Incentive Remuneration awarded to the Participant on or after the Effective Date.
- 3.2. The Incentive Remuneration awarded to a Participant on the award date will be calculated on the basis that no Trigger Event is present at the time of award.
- 3.3. This Policy can be applied without prejudicing any other legal remedies which the Company may have against a Participant.
- 3.4. Subject to the Trigger Event, the Company, has the right to reduce the Incentive Remuneration Amount prior to payment or vesting, as applicable, to a Participant.
- 3.5. Subject to the Trigger Event, the Company has the right to Clawback the Incentive Remuneration Amount from a Participant for a period of three (3) years from the date of payment or vesting, as applicable.
- 3.6. The right to invoke Malus and/or Clawback applies to a Trigger Event that is discovered to have taken place during a Participant’s employment, and this right remains intact even if a Participant leaves employment.

**4. Right to invoke malus and/or clawback**

- 4.1. In respect of determining if Malus and/or Clawback should be invoked in terms of a Trigger Event which has been discovered, the Board may consider a Participant’s proximity to the applicable Trigger Event and his or her level of responsibility.
- 4.2. *Malus*
  - 4.2.1. In the event that the Board becomes aware of a Trigger Event, it may apply Malus as defined in 2.8.
- 4.3. *Clawback*
  - 4.3.1. In the event that the Board becomes aware of a Trigger Event and determines, in its discretion, that Clawback should apply:
    - 4.3.1.1. the Board may require a Participant to reimburse the Company for all or part of any relevant Incentive Remuneration Amount;
    - 4.3.1.2. to the extent that any Incentive Remuneration Amount is not immediately recovered upon demand from a Participant, the Company has the right to require that payment of any compensation owing by the Company to a

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Participant, including any salary any other unpaid remuneration, be immediately withheld or irrevocably cancelled by the Company to compensate for the Incentive Remuneration Amount or any unrecovered portion thereof, and to bring any other legal actions against a Participant which the Board may deem necessary or advisable to recover the Incentive Remuneration Amount;

- 4.3.1.3. recovery of the Incentive Remuneration Amount in terms of this Policy will be initiated by the Company at the instruction of the Board, and all amounts recoverable or payable in terms hereof shall be paid to the Company or any member of the Group at the direction of the Board; and
- 4.3.1.4. the Company will not obstruct any process that deals with any tax recovery related to an Incentive Remuneration Amount.

**5. Board discretion in enforcing the Policy**

- 5.1. The Board is empowered with the absolute discretion to enforce or decline to enforce Malus or Clawback and should, in determining whether to enforce or decline to enforce Malus or Clawback, consider the interests of the Company and its shareholders.
- 5.2. In applying its discretion in terms of this Policy, the Board shall at all times act in good faith.
- 5.3. In making such determination, the Board may take into consideration the following factors:
  - 5.3.1. the likelihood of success of invoking Clawback and recovering such Incentive Remuneration Amount;
  - 5.3.2. the likelihood that such claim may prejudice the interests of the Company;
  - 5.3.3. the passage of time since the occurrence of the applicable Trigger Event(s); and
  - 5.3.4. the existence of any legal proceedings against a Participant related to the applicable Trigger Event(s).
- 5.4. Before invoking Malus or Clawback the Board will advise the affected Participant in writing of its reasons for intending to invoke it. A Participant will be given an opportunity to make representations to the Board in writing within a period specified in the notice as to factors which may be relevant to the application of the Board’s discretion in invoking Malus or Clawback.

**6. Further provisions**

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- 6.1. If Applicable Rules require the Company to adopt a policy or provisions relating to the reduction and/or cancellation of Incentive Remuneration or the recoupment or recovery of Incentive Remuneration which are different from this Policy and the Board adopts a policy or provisions to comply with the Applicable Rules (a “New Policy”), the New Policy will replace and supersede this Policy and will apply to Incentive Remuneration awarded to a Participant following the effective date of the New Policy.
- 6.2. Unless otherwise required by the Applicable Rules, the New Policy shall not be retrospectively applied, i.e. the New Policy shall only apply to awards made after the effective date of the New Policy.
- 6.3. This Policy shall continue to apply to Incentive Remuneration awarded to a Participant prior to the effective date of the New Policy.
- 6.4. Subject to the consent of a Participant, to the extent that any action affects their rights in terms of this Policy, this Policy may be terminated, suspended or amended at any time by the Board.

**7. Disclosure**

- 7.1. The Company will make appropriate disclosure of this Policy in its integrated annual report. This will include outlining specific details regarding the malus and clawback provisions relating to Incentive Remuneration.

**8. Policy review**

- 8.1. This policy, upon adoption by the Company, will apply to all Incentive Remuneration awards made on or after **11 September 2019**.
- 8.2. The remuneration committee will review the Policy from time to time and make recommendations to the Board as to any amendments it considers necessary.

Approved by the Board on **11 September 2019**.

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