

13 February 2025

Corporate Governance and Intellectual Property Policy
Business, Resources and Markets
Ministry of Business, Innovation & Employment (MBIE)
PO Box 1473
Wellington 6140

By email: climaterelateddisclosures@mbie.govt.nz

Dear Sirs

Adjustments to the climate-related disclosures regime

We refer to MBIE's proposed adjustments to the the climate-related disclosures regime released for consultation in December 2024 (**Proposed Adjustments**).

EBOS Group Limited (**EBOS**) is a climate reporting entity (**CRE**) listed on both NZX and ASX. We lodged our first Climate Statement on 30 October 2024.

Our substantial Australian operations will be subject to the Australian sustainability reporting regime commencing on 1 January 2025, with our first reporting period under Australian law ending 30 June 2026, and the first year of mandatory assurance under Australian law for the reporting period ending 30 June 2027. At least one of EBOS's Australian holding companies will be a 'group 1' reporting entity under Australian law, and more than 80% of EBOS group revenues are derived from our Australian operations.

Support for removal of deemed director liability

EBOS strongly supports adjustments to the director liability settings as set out in *Chapter 3: Climate reporting entity and director liability settings* of MBIE's Discussion Document, primarily because the current liability settings disincentivise CREs from making meaningful disclosures and are contributing to high legal and consultancy costs.¹

EBOS supports **Option 2**, whereby section 534 of the Financial Markets Conducts Act 2013 (**FMCA**) is no longer applied to climate related disclosures (i.e., no deemed liability).

Support for adjustments to s 23 liability

EBOS also supports a **modified version of Option 3**, whereby deemed director liability is removed (as above), and section 23 (unsubstantiated representations) of the FMCA is disapplied for key forward-looking statements with inherent uncertainty, including scenario

¹ Ministry of Business, Innovation and Employment, *Discussion Document Adjustments to the climate related disclosures regime* (December 2024) at [18]: "We have also heard that the director liability settings are causing climate reporting entities to take a very risk averse approach to reporting and are contributing to high legal and consultancy costs. We have also heard that directors are reluctant to include potentially useful information in the climate statements due to concerns about personal liability. Given climate statements contain some forward-looking statements, stakeholders have queried whether the director liability settings should be similar to those for financial statements (which have a greater focus on the past)."

analysis and transition planning. In other words, EBOS supports amending section 23 so that CREs can still be liable for a breach of section 23 for statements in their CRD, but only in relation to certain forward-looking statements.

Our view is that the nature of forward-looking statements over various time horizons, including climate-related scenarios, which are defined as "*plausible, challenging description[s] of how the future may develop*"², mean it is inherently challenging for CREs, and directors, to be confident that there is a reasonable basis to make them (which is currently required under section 23).

EBOS does not support the disapplication of section 23 in its entirety. We support retaining CRE liability under section 23 in respect of statements of fact or statements about the year in question. For example, we support the continuing application of section 23 in respect of statements relating to an entity's greenhouse gas inventory report, or current impacts of climate change, which can and should be adequately substantiated.

Given at least one of EBOS's Australian holding companies will be a 'group 1' reporting entity under Australian law, we have an interest in closer Trans-Tasman alignment of the Australian and New Zealand reporting standards. Therefore, we note the value of Option 3 being more closely aligned with the Australian regime, which also has no deemed liability for directors.

Yours faithfully

Janelle Cain
General Counsel
EBOS Group Limited

² 'Climate-related scenario' is defined in Appendix A of NZ CS 1 and NZ CS 3 as:

"A plausible, challenging description of how the future may develop based on a coherent and internally consistent set of assumptions about key driving forces and relationships covering both physical and transition risks in an integrated manner. Climate-related scenarios are not intended to be probabilistic or predictive, or to identify the 'most likely' outcome(s) of climate change. They are intended to provide an opportunity for entities to develop their internal capacity to better understand and prepare for the uncertain future impacts of climate change."