

# Directors And Officers Liability And Company Reimbursement Insurance

THIS IS TO CERTIFY that in accordance with authorisation granted under the Policy Number stated below to the undersigned by Markel International Hong Kong Ltd (hereinafter "Underwriters"), which shall be supplied on application by reference to the Binding Authority Number **E50001H120AR**, and in consideration of the premium specified herein, the Underwriters are hereby bound to insure in accordance with the terms and conditions herein or endorsed hereon.

## Schedule

<b>Policy No:</b>	{insert}		
<b>Company:</b>	{insert}		
<b>Address:</b>	{insert}		
<b>Period of Insurance:</b>	From: {insert}	To: {insert}	(both days inclusive)
<b>Limit of Indemnity:</b>	{insert} any one claim and in the aggregate during the Policy Period inclusive of costs and expenses		
<b>Non-Executive Director Additional % Limit:</b>	{insert}		
<b>Retentions:</b>	i) Claims made worldwide other than claims falling within the jurisdiction of the United States of America: ii) Claims made within the jurisdiction of the United States of America:	Insurance Clause (a): {insert} Insurance Clause (b): {insert} Insurance Clause (c): {insert}	
<b>Premium:</b>	{insert}		
<b>Extended Discovery Period:</b>	<b>(applicable to Extension 2 (b))</b>		
- Period:	{insert}		
- Additional Premium:	{insert}		
<b>Prior &amp; Pending Date:</b>	{insert}		
<b>Proposal Form Date:</b>	{insert}		
<b>Endorsements:</b>	{insert}		
<b>Signed by:</b>	<b>on behalf of MARKEL INTERNATIONAL HONG KONG LTD</b>		
<b>Dated in Hong Kong:</b>	{insert}		

## 1. Insurance Clause

Underwriters agree, subject to the terms, conditions, limitations and exclusions of this Policy, to:

- (a) Pay on behalf of any **Director** or **Officer Loss** arising from any **Claim** first made against them during the **Period of Insurance**; or
- (b) Pay on behalf of the **Company Loss** arising from any **Claim** first made against any **Director** or **Officer** during the **Period of Insurance** when and to the extent that the **Company** has indemnified such **Director** or **Officer**.
- (c) Pay on behalf of the **Company Loss** arising from any **Securities Claim** first made against the **Company** during the **Period of Insurance**.
- (d) Pay on behalf of any **Outside Entity Director** or **Officer Loss** arising from any **Claim** first made against them during the **Period of Insurance**.

## 2. Extensions

- (a) **Company Derivative Action Costs**

Underwriters shall pay on behalf of the **Company**, the reasonable fees and expenses incurred by any shareholder of the **Company** with Underwriters' prior written consent (such consent not to be unreasonably withheld or delayed) in pursuing a **Claim** first made during the **Period of Insurance** against any **Director** or **Officer** for a **Wrongful Act** which the **Company** is legally liable to pay pursuant to an order of the court.

- (b) **Extended Discovery Period**

In the event that either Underwriters or the **Insured** does not renew this Policy the **Insured** shall have the right to the Extended Discovery Period stated in the Schedule in respect of any **Wrongful Act** during or prior to the **Period of Insurance**, provided that this Policy is not replaced by any broadly equivalent insurance; and

- (i) the **Insured** shall within thirty (30) days after the **Period of Insurance** give notice in writing to Underwriters and shall pay the additional premium specified in the Schedule within thirty (30) days after the **Period of Insurance**;
- (ii) this right to an Extended Discovery Period is not exercisable on or after the **Takeover** or **Merger** of the **Company** or on or after the appointment of any liquidator, provisional liquidator, administrator or receiver of the **Company** or where the Policy is cancelled by Underwriters for non payment of Premium;
- (iii) the Limit of Indemnity stated in the Schedule shall not in any way be increased by virtue of the Extended Discovery Period.



Once the premium specified in the Schedule has been paid the Extended Discovery Period shall not be cancellable.

(c) ***Retired Directors***

In the event that either Underwriters or the **Insured** do not renew this Policy, any **Retired Director** and or **Retired Officer** shall have the right to an Extended Discovery Period of 72 months for no additional premium in respect of any **Wrongful Act** during or prior to the **Period of Insurance**, provided that this Policy is not replaced by any broadly equivalent insurance and the Limit of Indemnity stated in the Schedule shall not in any way be increased by virtue of the Extended Discovery Period.

(d) ***New Subsidiaries***

In the event a company that is not domiciled or incorporated or listed in the United States of America, its territories or possessions is acquired or created by the **Company** after inception of this Policy it shall nevertheless constitute a **Subsidiary** if the **Company**:

- (a) controls the composition of the Board of Directors, or
- (b) controls more than half of the voting power, or
- (c) holds more than half of the issued share capital;

and this Policy shall apply only in respect of **Wrongful Acts** of its **Directors** or **Officers** while a **Subsidiary**.

(e) ***Non-Executive Directors***

In the event the Limit of Indemnity of this Policy and the limits of indemnity of all available policies in excess of this Policy are exhausted by payments of **Loss**, the Limit of Indemnity of this Policy shall be increased by the percentage stated in the Schedule in respect of the covered **Costs and Expenses** of any Non-Executive **Director** (or such equivalent position in the relevant jurisdiction).

(f) ***Emergency Costs and Expenses***

If Underwriters' prior written consent can not reasonably be obtained before **Costs and Expenses** are incurred, Underwriters shall approve **Costs and Expenses** up to 10% of the Limit of Indemnity retrospectively as if prior written consent had been obtained.

(g) ***Spousal / Legal Representatives Cover***

This Policy shall apply in the event the lawful spouse of any **Director** or **Officer** is the subject of enforcement proceedings in respect of a judgment against such **Director** or **Officer** for a **Wrongful Act** of that **Director** or **Officer** for which he would have received cover under this Policy and at his request.

This Policy shall apply in the event of the death or incompetency or bankruptcy of a **Director** or **Officer** to their estate, heirs, legal representatives or assigns, for **Loss** incurred due to any **Wrongful Act** of such **Director** or **Officer** for which he would have received cover under this Policy.

(h) *Avoidance Waiver*

Underwriters waive any right they may have to avoid or rescind any **Insured's** interest in this Policy for material misrepresentation or non-disclosure where such misrepresentation or non-disclosure was free from any dishonest intent.

### 3. Definitions

(The following words shall have the same meaning throughout this Policy, whether expressed in the singular or the plural. Words in the masculine gender shall include the feminine.)

- (a) **"Claim"** shall mean:
- (i) any written demand or claim form, writ, summons, arbitration proceeding or other civil application of any description whatsoever for a **Wrongful Act** including any cross-claim or counter claim against a **Director** or **Officer**, or
  - (ii) Any regulatory or criminal proceeding against a **Director** or **Officer** for a **Wrongful Act**; or
  - (iii) Any **Extradition Proceeding**, including all appeals whether in the same or separate proceedings; or
  - (iv) any written notice requiring the attendance of any **Director** or **Officer** at any official investigation, examination, or inquiry into the affairs of the **Company** or such **Director** or **Officer** solely in his capacity as a **Director** or **Officer**, ordered or commissioned by any official body.
- (b) **"Company"** shall mean the Company stated in the Schedule and shall include all **Subsidiaries**.
- (c) **"Costs and Expenses"** shall mean the reasonable fees and expenses incurred by any **Director** or **Officer** with Underwriters' prior written consent (such consent not to be unreasonably withheld or delayed) resulting solely from the participation in or investigation and/or defence and/or monitoring and/or settlement of any **Claim** and appeals therefrom;
- "Costs and Expenses"** shall also include the premium paid for insurance instruments for appeal, bail or similar bonds but shall not include salaries, commissions, expenses or other benefits of any **Director** or **Officer** or of any employee of the **Company**.

- (d) **“Director”** and/or **“Officer”** shall mean
- (i) any natural person who is, was or may during the **Period of Insurance** become a Director or Officer of the **Company** including a Shadow Director (as defined in Section 2(1) Companies Ordinance (Cap 32), or such equivalent in the relevant jurisdiction) and any natural person who is construed to be a Director or Officer within the meaning of any applicable law or regulation governing such matters; and
  - (ii) any natural person who is, was or may during the **Period of Insurance** become an **Employee**;
- (e) **“Employee”** shall mean a natural person who is an employee of the **Company** against whom a **Claim** is made in their managerial or supervisory capacity.
- (f) **“Employment Wrongful Act”** shall mean any actual or alleged:
- (i) wrongful or unfair termination, whether actual or constructive, of the employment of, or demotion of, or failure or refusal to hire or promote, any natural person in violation of the law, whether common or statutory, or in breach of any agreement to commence or continue employment; or
  - (ii) employment discrimination, including any failure or refusal to hire any natural person, or discharge of, or other discrimination against, any natural person with respect to his remuneration or any of the terms, conditions or privileges of his employment, or any limitation, segregation or classification of any employee or of applicants for employment in any way which would deprive or tend to deprive any natural person of employment opportunities or otherwise adversely affect his status as an employee, because of such natural person’s race, colour, religion or belief, age, gender or sexual orientation, national origin, disability, pregnancy, part time or fixed term status or other protected status; or
  - (iii) sexual harassment, including unwelcome sexual advances, requests for sexual favour or other verbal or physical conduct of a sexual nature that are made a condition of the employment of an employee, are used as a basis for employment decisions, or create a work environment that interferes with performance; or
  - (iv) retaliatory treatment against an employee on account of such employee exercising or attempting to exercise his or her rights under law.
- (g) **“Extradition Proceeding”** shall mean a proceeding pursuant to the Extradition (Hong Kong) Ordinance (Cap 236) or such equivalent in any other jurisdiction alleging a **Wrongful Act**.

- (h) **“Insured(s)”** shall mean all or any of the **Directors and Officers, Outside Entity Directors and Officers**, and for the purposes of Insurance Clause 1(b) only, the **Company**.
- (i) **“Loss”** shall mean loss by reason of the legal liability of the **Insureds** to pay:
- (i) damages or costs awarded against the **Insureds**, including punitive or exemplary damages where insurance against liability to pay such punitive or exemplary damages is lawful under the laws of the territory in which the **Claim** is made;
  - (ii) settlements entered into by the **Insureds** with Underwriters’ prior written consent (such consent not to be unreasonably withheld or delayed); and
  - (iii) **Costs and Expenses**.
- “Loss”** shall not include any obligation to repay any monies wrongfully received by the **Insureds** or any civil, regulatory or criminal fines or penalties.
- (j) **“Merger”** means the combination of two or more entities such that none of them:
- (i) controls the composition of the Board of Directors, or
  - (ii) controls more than half of the voting power, or
  - (iii) holds more than half of the issued share capital.
- (k) **“Outside Entity”** shall mean any entity other than the **Company** that:
- (i) is not domiciled in the United States of America, its territories or possessions, or does not have any securities listed on an exchange in the United States of America; and/or
  - (ii) does not have negative net assets at the inception of this Policy; and/or
  - (iii) is not a bank, investment company, investment adviser/manager, hedge or mutual fund, private equity or venture capital company, stock brokerage firm, insurance company or similar entity.
- (l) **“Outside Entity Director and/or Officer”** shall mean any **Director or Officer** who at the specific request of the **Company** becomes a Director or Officer of an **Outside Entity**.
- (m) **“Period of Insurance”** shall mean the period stated in the Schedule.
- (n) **“Pollution”** shall mean the discharge, dispersal, release or escape of any substance exhibiting any hazardous characteristics as defined by or identified on a list of hazardous substances supervised by the Environmental Protection Department of Hong Kong and any equivalent EU, US law or regulation governing such matters. Such substances shall include, without limitation, solids, liquids, gaseous, or thermal irritants, contaminants or smoke, vapours, soot, dust, fibres, fungi, viruses, bacteria, fumes, acids, alkalis, radioactive material, chemicals and

waste (including, but not limited to material to be recycled, reconditioned or reclaimed), asbestos or asbestos product, noise, odour and any electric, magnetic or electromagnetic field.

- (o) **“Retired Director”** and/or **“Retired Officer”** shall mean any **Director** and/or **Officer** who other than by reason of a **Takeover** or **Merger** or insolvency of the **Company** voluntarily retires during the **Period of Insurance**.
- (p) **“Security”** means any security representing debt or equity interests in a **Company**.
- (q) **“Securities Claim”** means any written demand or civil, criminal, administrative, regulatory or arbitration proceedings (other than administrative or regulatory proceeding against the **Company**) alleging a violation of any laws (statutory or common), rules or regulations relating to **Securities**, the purchase or sale or offer or solicitation of an offer to purchase or sell **Securities**, or any registration relating to such **Securities**, brought by any person or entity alleging, arising out of, based upon or attributable to the purchase or sale, or offer or solicitation of an offer to purchase or sell any **Securities** of a **Company**.

**Securities Claim** shall not mean any **Claim** by a **Director**, **Officer** or **Employee** of a **Company** alleging, arising out of, based upon or attributable to the loss of, or the failure to receive or obtain, the benefit of any **Securities** (including any warrants or options).

- (r) **“Subsidiary”** shall mean:
  - (i) any company in respect of which the **Company** (either directly or indirectly through one or more of its **Subsidiaries**) on or before the inception date of this Policy:
    - (a) controls the composition of the Board of Directors, or
    - (b) controls more than half of the voting power, or
    - (c) holds more than half of the issued share capital;provided that this Policy shall only apply in respect of a **Wrongful Act** by any **Director** or **Officer** of such company while a **Subsidiary**.
  - (ii) any other company specifically named in the Schedule or in any endorsement to this Policy as a subsidiary.
- (s) **“Takeover”** of an entity means a transaction or event as a result of which another entity:
  - (i) controls the composition of the Board of Directors, or
  - (ii) controls more than half of the voting power, or
  - (iii) holds more than half of the issued share capital.

- (t) “**Terrorism**” shall mean the use of force or violence and/or the threat thereof, by any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.
- (u) “**Unlawful Association**” shall mean any organisation which is engaged in **Terrorism** and includes, but is not limited to, any organisation which at any relevant time is a proscribed organisation within the meaning of the Terrorism Act 2000 (UK) or any amendment or re-enactment thereof.
- (v) “**War**” shall mean war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power.
- (w) “**Wrongful Act**” shall mean any actual or alleged wrongful act or omission by any **Director** or **Officer** individually or collectively solely in their capacity as a **Director** or **Officer** of the **Company**. Related or continuous or repeated or causally-connected **Wrongful Acts** shall constitute a single **Wrongful Act**. A **Wrongful Act** shall include an **Employment Wrongful Act**.

#### 4. Exclusions

(The heading of each exclusion is for ease of identification only)

Underwriters shall not pay any **Loss** arising from any **Claim**:

- (a) **Bodily Injury Or Property Damage**  
for any actual or alleged bodily injury, sickness, disease or death of any person or any actual or alleged damage to or destruction of any tangible property, including loss of use thereof, provided that this exclusion shall not apply to:
  - (i) a **Claim** against a **Director** or **Officer** by an employee of the **Company** alleging emotional distress caused by a **Wrongful Act** relating to that employee’s contract of employment; or
  - (ii) a criminal prosecution of a **Director** or **Officer** for manslaughter in relation to the business of the **Company**.
- (b) **Pollution**  
based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged seepage, **Pollution** or contamination of any kind, provided that this exclusion shall not apply to:
  - (i) any **Claim** brought by or at the direction of any liquidator, provisional liquidator, administrator or receiver of the **Company**; or



- (ii) any **Claim** made against any former **Director** or **Officer** by the **Company** after there has been a change in the majority of the board of directors; or
  - (iii) any **Claim** for contribution or indemnity in respect of a **Claim** made by an independent third party without the procurement or instigation of any **Director** or **Officer**; or
  - (iv) any **Claim** brought as a shareholder derivative action of the **Company** without the involvement, procurement or instigation of any **Director** or **Officer**; or
  - (v) **Costs and Expenses.**
- (c) **Conduct**
- brought about by or contributed to by or consequent upon the dishonesty, fraud or deliberately criminal conduct of the **Insured**, provided that this exclusion shall not apply to any **Insured** not found by a court or other judicial panel to be guilty of such conduct, and shall not apply to **Costs and Expenses.**
- (d) **Breach Of Professional Duty**
- made by any third party alleging a breach of any professional duty owed to such third party; provided however that this exclusion shall not apply to any **Claim** for the failure to supervise or manage.
- (e) **Pension Schemes**
- based upon, arising out of, resulting from or in consequence of, or in any way involving any pension or superannuation scheme or programme, however provided that this exclusion shall not apply to:
- (i) any **Claim** brought by or at the direction of any liquidator, provisional liquidator, administrator or receiver of the **Company**; or
  - (ii) any **Claim** made against any former **Director** or **Officer** by the **Company** after there has been a change in the majority of the board of directors; or
  - (iii) any **Claim** for contribution or indemnity in respect of a **Claim** made by an independent third party without the procurement or instigation of any **Director** or **Officer**; or
  - (iv) any **Claim** brought as a shareholder derivative action of the **Company** without the involvement, procurement or instigation of any **Director** or **Officer**; or
  - (v) **Costs and Expenses.**
- (f) **Claims Made By The Company In The USA**
- made in the United States, its territories or possessions, by or on behalf of the **Company** or any **Director** or **Officer**, provided that this exclusion shall not apply to:

- (i) any **Claim** brought by or at the direction of any liquidator, provisional liquidator, administrator or receiver; or
- (ii) any **Claim** made against any former **Director** or **Officer** after there has been a change in the majority of the board of directors; or
- (iii) any **Claim** for contribution or indemnity in respect of a **Claim** made by an independent third party without the procurement or instigation of any **Director** or **Officer**; or
- (iv) any **Claim** brought as a shareholder derivative action without the involvement, procurement or instigation of any **Director** or **Officer**; or
- (v) any **Claim** against a **Director** or **Officer** in respect of an **Employment Wrongful Act**; or
- (vi) **Costs and Expenses.**

(g) **Claims Made By The Outside Entity In The USA**

made in the United States, its territories or possessions, by or on behalf of an **Outside Entity** or any director or officer of an **Outside Entity**, provided that this exclusion shall not apply to:

- (i) any **Claim** brought by or at the direction of any liquidator, provisional liquidator, administrator or receiver of the **Outside Entity**; or
- (ii) any **Claim** made against any former **Outside Entity Director** or **Officer** after there has been a change in the majority of the **Outside Entity** board of directors; or
- (iii) any **Claim** for contribution or indemnity in respect of a **Claim** made by an independent third party without the procurement or instigation of the **Outside Entity**; or
- (iv) any **Claim** brought as a shareholder derivative action without the involvement, procurement or instigation of the **Outside Entity**; or
- (v) any **Claim** against an **Outside Entity Director** or **Officer** in respect of an **Employment Wrongful Act**; or
- (vi) **Costs and Expenses.**

(h) **Prior And Pending Claims**

based upon or in any way involving allegations made or any facts in issue in any pending or prior litigation as at the Pending and Prior Date stated in the Schedule or any **Claim** arising out of the same or substantially the same facts, circumstances or situations.

For the purposes of this exclusion "litigation" shall mean any civil, administrative, regulatory or criminal proceedings or any investigation, examination, inquiry or disciplinary proceedings, including any correspondence prior to any such proceedings, involving any **Insured**.

(i) **Claims Notified Under Previous Insurance**

arising out of any circumstance notified under any insurance in force prior to the inception date of this Policy or which should have been so notified.

(j) **War And Terrorism**

based upon, resulting directly or indirectly from, in consequence of, or contributed to, by or in any way arising from:

(i) **War**

(ii) **Terrorism**

(iii) Any unlawful, wanton or malicious act committed by a person or persons acting on behalf of or in connection with any **Unlawful Association**

regardless of any other cause or event contributing concurrently or in any other sequence to the **Claim** or **Loss**.

Also excluded is loss, damage, costs or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (i) and/or (ii) and/or (iii) above.

If Underwriters allege by reason of this exclusion that any loss, damage, cost or expense is not covered by this Policy, the burden of proving the contrary shall be upon the **Insured**.

In the event that any part of this exclusion is found to be invalid or unenforceable, the remainder shall still be of full force and effect.

## 5. **Limit And Retention**

- (a) Underwriters' total aggregate liability under this Policy including any endorsements to this Policy (inclusive of **Costs and Expenses**) shall not exceed the Limit of Indemnity stated in the Schedule, irrespective of the number of **Claims** made and the number of **Directors** and **Officers** against whom such **Claims** may be made.
- (b) Underwriters shall only be liable for **Loss** in excess of the Retentions (if any) stated in the Schedule applicable to each Insurance Clause which Retentions apply to each and every **Loss** for each individual **Director** or **Officer** subject to the aggregate (if any) stated in the Schedule. Such Retentions include all **Costs and Expenses** and are to be borne by the **Director** or **Officer** or the **Company** (as the case may be) and are not to be insured.
- (c) If indemnity by the **Company** is permitted by applicable law the Retention applicable to Insurance Clause (b) shall apply as if indemnity had been provided to the fullest extent permitted, regardless of whether or not indemnity is actually made, unless the **Company** is unable to make indemnity solely by reason of its insolvency. Where the **Company** is permitted to indemnify and does not do so for



reasons other than its insolvency, Underwriters shall pay **Loss** on behalf of any **Director** or **Officer** without regard to the Retention, but the **Company** shall reimburse Underwriters for such amounts up to the Retention stated in the Schedule upon demand.

## 6. Claims Provisions

- (a) It shall be a condition precedent to Underwriters' liability under this Policy that the **Insured** shall as soon as practicable (and in any event not later than the expiry of the **Period of Insurance**) give to Underwriters notice in writing of any **Claim** or of any circumstances of which the **Insured** shall become aware which might reasonably be expected to give rise to a **Claim**, giving reasons for the anticipation of such **Claim**, with full particulars as to dates and persons involved.

Such notice having been given as required by this provision, any subsequent **Claim** arising out of the circumstances so notified shall be deemed to have been made during the **Period of Insurance**.

- (b) It shall be a condition precedent to Underwriters' liability under this Policy that the **Insured** shall give Underwriters such information and co-operation as Underwriters may reasonably require.
- (c) The **Insured** shall not admit liability for or settle or attempt to settle any **Claim** or incur any **Costs and Expenses** in connection with any **Claim** without Underwriters' prior written consent (such consent not to be unreasonably withheld or delayed). Subject to (d) below, the **Insureds** may, subject to Underwriters' prior written consent (such consent not to be unreasonably withheld or delayed), appoint solicitors or counsel to represent them in defending any **Claim**, but where the same or a similar **Claim** is made against more than one **Insured** the same solicitors and counsel shall be appointed to defend all **Insureds** unless there is a conflict of interest between them.
- (d) Underwriters shall not be entitled to take over and conduct in the name of the **Insureds** the defence or settlement of any **Claim** except where a **Claim** is made by the **Company** against a **Director** or **Officer** outside the United States of America, its territories or possessions.
- (e) Underwriters shall be entitled to prosecute in the name of the **Insureds** for their own benefit any claim for payment, indemnity or damages or otherwise against any third party.
- (f) Underwriters shall pay covered **Costs and Expenses** prior to the final resolution of any **Claim**. If such payment is made the **Insureds** shall refund such **Costs and Expenses** if it is established at a later date that they are not entitled to indemnity under this Policy.

- (g) Notwithstanding (d) above the **Insureds** shall not be required to contest any **Claim** unless a Senior Counsel or equivalent in the relevant jurisdiction (to be mutually agreed upon by the **Insureds** and Underwriters or, in default of agreement, to be appointed by the President for the time being of the Law Society of Hong Kong or equivalent in the relevant jurisdiction) shall advise that such **Claim** should be contested.
- (h) If a **Claim** is made both against any **Director** or **Officer** and against the **Company** (or otherwise against any **Director** or **Officer** and any other persons not insured under this Policy), Underwriters shall pay only **Loss** sustained by such **Director** or **Officer**.

In respect of **Costs and Expenses** incurred on behalf of both the **Director** or **Officer** and the **Company** (or any other person not insured under this Policy), Underwriters shall pay only such proportion of such **Costs and Expenses** as is reasonable having regard to such **Director's** or **Officer's** reasonable potential liability for the **Claim**.

In respect of any liability for **Loss** (excluding **Costs and Expenses**) under any settlement, Underwriters shall pay only such amount as may be just and equitable having regard to the **Director's** or **Officer's** responsibility for the same.

The **Company** and any **Director** or **Officer** and Underwriters shall use their best efforts to determine a fair and proper allocation of **Loss** as between the **Company** and such **Director** or **Officer** and Underwriters, but in default of agreement Underwriters shall pay sums that they state are fair and proper until such time as a Senior Counsel determines allocation on the principles set out in this condition. The Senior Counsel is to be mutually agreed upon by the **Director** or **Officer**, the **Company** and Underwriters or, in default of agreement, to be appointed by the President for the time being of the Law Society of Hong Kong.

- (i) It shall be a condition precedent to Underwriters' liability under this Policy that the **Insureds** shall not disclose the terms of this Policy to anyone without Underwriters' prior written consent, save to the extent that such disclosure is required by law (and for the avoidance of doubt a requirement to disclose the existence of this Policy is not a requirement to disclose its terms).

## 7. Conditions

- (a) In the event of the **Takeover** or **Merger** of the **Company**, the Policy shall automatically be amended so that it shall apply only to **Wrongful Acts** of any **Director** or **Officer** prior to the date of the **Takeover** or **Merger**.
- (b) In the event of any **Subsidiary** ceasing during the **Period of Insurance** to be a **Subsidiary**, the Policy shall automatically be amended so that it shall apply only to **Wrongful Acts** of any **Director** or **Officer** of that **Subsidiary** when it was a **Subsidiary**.
- (c) This Policy shall not cover **Loss** in respect of any **Claim** arising out of any proposed offering of securities of the **Company** in the USA. However, subject to



Underwriters having been provided with information concerning such proposed offering of securities and having received payment of such additional premium as they may require, this Policy shall be extended to cover **Loss** arising from any **Claim** arising out of such offering of securities of the **Company**.

- (d) This Policy shall be in excess of any more specific available insurance, and in the case of Insurance Clause 1(c), shall also only apply in respect of **Loss** which the **Outside Entity** is unable by reason of a prohibition, in the applicable law, or insolvency, to indemnify.
- (e) If the Premium has not been paid within 60 days or otherwise stated, Underwriters may cancel this Policy by giving 15 days written notice to the **Company** or to the Broker. If the Premium is paid in full to Underwriters before the notice period expires, notice of cancellation shall automatically be revoked. If not, the Policy shall automatically terminate at the end of the notice period. In the event of such cancellation, premium is due to Underwriters on a pro rata basis for the period that Underwriters were on risk but the full Premium shall be payable in the event of notification of a **Claim** or of any circumstances before the effective date of termination.
- (f) The Proposal Form shall be construed as a separate application by each **Director** or **Officer** and no statement or omission in the Proposal Form nor any other knowledge, act or omission by any one **Director** or **Officer** shall be imputed to any other **Director** or **Officer** for the purpose of determining the availability of any payment under this Policy. For the purposes of Extension 2(a), knowledge of any of the Chairman, CEO or CFO shall be imputed to the **Company**.
- (g) The parties to this Policy are Underwriters and the **Insureds** to the extent of their respective insured interests. A person who is not a party to this contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- (h) This Policy is governed by the laws of Hong Kong and except as provided by Claims Provisions 6(g) and 6(h), the Underwriters and the **Insureds** agree to submit any dispute in relation to this Policy to binding arbitration in accordance with the Hong Kong Arbitration Ordinance (Cap 341).

Arbitration proceedings shall be commenced by the service of an Arbitration Notice upon the other party. Within thirty (30) days of the service of the Arbitration Notice, the Underwriters and the **Insureds** shall agree the appropriate arbitration procedure in any given dispute according to the precise circumstances but in default of agreement the following shall apply:-

The Underwriters and the **Insureds** shall appoint one person as an arbitrator, and the two arbitrators thus appointed shall appoint a third arbitrator as chairman. The two party-appointed arbitrators shall be persons with not less than ten years experience of insurance within the industry or as lawyers or other professional advisers serving the industry. The chairman shall be a present or former member of the Hong Kong Bar with experience in insurance law who has attained the status of Senior Counsel or equivalent. The seat of the arbitration shall be Hong Kong. The rules for the conduct of the arbitration shall, subject to the provisions of the



Hong Kong Arbitration Ordinance (Cap 341) as amended from time to time, be at the discretion of the arbitrators.

Any arbitration proceedings commenced against the underwriters shall be served upon the Managing Director, Markel International Singapore Pte Ltd, 8 Marina View #15-01, Asia Square Tower 1, Singapore 018960.

- (i) This Policy applies to Wrongful Act which takes place anywhere in the world.



## Notice

If at any time you have any questions or concerns regarding this contract or the handling of a claim, you should in the first instance refer to your insurance broker or intermediary, if any. If your problem cannot be resolved in this way, please write to the Managing Director, Markel International Singapore Pte Ltd, 8 Marina View #15-01, Asia Square Tower 1, Singapore 018960. We will advise you of Markel's internal complaints handling procedure, which applies to both underwriting entities in the Markel International Group, Markel Syndicate 3000 at Lloyd's and Terra Nova Insurance Company Limited.

If you are still unable to resolve the situation, and are insured with Markel Syndicate 3000, and wish to make a complaint you can do so at any time by referring the matter to the Complaints Department at Lloyd's. Their address is Complaints Department, Lloyd's, One Lime Street, London, EC3M 7HA; Tel: 020 7327 5693; Fax: 020 7327 5225; e-mail: [Lloyds-Regulatory-Complaints@Lloyds.com](mailto:Lloyds-Regulatory-Complaints@Lloyds.com)

Complaints that cannot be resolved by our internal complaints handling procedure or by the Complaints Department at Lloyd's may be referred to the Financial Ombudsman Service. Further details will be provided at the appropriate stage of the complaints process.

These complaints procedures do not affect your right to have recourse to legal action or to any other remedy available to you.

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## MARKEL INTERNATIONAL

### PREMIUM PAYMENT CLAUSE

The Assured undertakes that premium will be paid in full to Underwriters within 60 days of inception of this Policy (or, in respect of instalment premiums, when due).

If the premium due under this Policy has not been so paid to Underwriters by the sixtieth day from the inception of this Policy (and, in respect of instalment premiums, by the date they are due), Underwriters shall have the right to cancel this Policy by notifying the Assured via the broker in writing. In the event of cancellation, premium is due to Underwriters on a pro rata basis for the period that Underwriters are on risk but the full policy premium shall be payable to Underwriters in the event of a loss or occurrence prior to the date of termination which gives rise to a valid claim under this Policy.

It is agreed that Underwriters shall give not less than 15 days prior notice of cancellation to the Assured via the broker. If premium due is paid in full to Underwriters before the notice period expires, notice of cancellation shall automatically be revoked. If not, the Policy shall automatically terminate at the end of the notice period.

Unless otherwise agreed, the Leading Underwriter (and Agreement Parties if appropriate) are authorised to exercise rights under this clause on their own behalf and on behalf of all Underwriters participating in this contract.

If any provision of this clause is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this clause which will remain in full force and effect.

Where the premium is to be paid through a London Market Bureau, payment to Underwriters will be deemed to occur on the day of delivery of a premium advice note to the Bureau.

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