

PROSPECTUS LIABILITY INSURANCE

SCHEDULE

Policy No:

Issuing Company:

Address:

Period of Insurance: From:
To:
(both dates inclusive)

Limit of Indemnity:

Retentions for Insurance 1a)
1b)
1c)
1d)

Premium:

Underwriting Agreement:

Offer Document:

Proposal Form Date:

Endorsement Numbers:

Dated in Hong Kong:

Insurance Clause

The Insurer agrees, subject to the terms, conditions, limitations and exclusions of this Policy, to:

Insured Individual Cover:

- (a) Pay on behalf of any Insured Individual their Loss arising from any Offering Claim first made against them during the Period of Insurance; or
- (b) Pay on behalf of the Issuing Company the Loss arising from any Offering Claim first made against any Insured Individual during the Period of Insurance when and to the extent that the Issuing Company has indemnified such Insured Individual, for that Loss.

Issuing Company Cover:

- (c) Pay on behalf of the Issuing Company its Loss arising from any Offering Claim made against the Issuing Company during the Period of Insurance.

Underwriter Cover:

- (d) Indemnify the Issuing Company and/or Insured Individual in respect of their liability to the Underwriter assumed pursuant to the Underwriting Agreement in connection with an Offering Claim made against the Underwriter in the Period of Insurance, but subject to Exclusion 4 (b) below.

Extensions

- (a) Emergency Costs and Expenses

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

- (b) Spousal / Legal Representatives Cover

This Policy shall apply in the event the lawful spouse of any Insured Individual is the subject of enforcement proceedings in respect of a judgment against such Insured Individual arising from an Offering Claim 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 an Insured Individual to their estate, heirs, legal representatives or assigns, for Loss incurred due to an Offering Claim against an Insured Individual for which he would have received cover under this Policy.

- (c) Innocent misrepresentation extension

The Insurer waives 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.

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) **"Costs and Expenses"** shall mean the reasonable fees and expenses incurred by any Insured with the Insurer's 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 Offering 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 Insured.

- (b) **"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;
- (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 of this employment, or any limitation, segregation or classification of any employee or of applicants for employment in 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;
- (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.

- (c) **"Extradition Proceeding"** shall mean a proceeding pursuant to the Extradition Act 2003 or such equivalent in any other jurisdiction.

- (d) **"Insured(s)"** shall mean the Issuing Company or all or any of the Insured Individuals.

- (e) **"Insured Individual"** shall mean

- (i) any natural person who is, was or may during the Period of Insurance become a director or officer of the Issuing Company including any natural person who is construed to be a director or officer within the meaning of any applicable law or regulation governing such matters; or

(ii) an employee of the Issuing Company responsible for statements made in the Offer Document.

"Insured Individual" does not include any external auditor, receiver, liquidator, administrator, trustee or mortgagee in possession or the like of the Issuing Company.

(f) **"Insurer"** shall mean Syndicate 3000 at Lloyd's.

(g) **"Issuing Company"** shall mean the Company stated in the Schedule.

(h) **"Loss"** shall mean:

(i) the Insured's legal liability to pay 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 Offering Claim is made;

(ii) the Insured's legal liability to pay settlements entered into by the Insureds with the Insurer's prior written consent (such consent not to be unreasonably withheld or delayed); or

(iii) the Insured's 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.

(i) **"Offer"** shall mean the proposal to sell shares or bonds described in the Offer Document.

(j) **"Offer Document"** shall mean:

(i) the documents forming part of the submission referred to in the schedule filed with the appropriate regulatory and/or stock exchange authorities.

(ii) any document, such as a "pathfinder" document, which serves as a preliminary prospectus to the documents stated in the schedule.

(iii) any statements made by an Insured Individual in a formal presentation intending to market the Offer to investors or analysts of the shares or bonds of the Issuing Company

(k) **"Offering Claim"** shall mean:

(i) any written demand or civil claim seeking compensation from an Insured and/or Underwriter;

(ii) any regulatory or criminal proceeding against an Insured and/or Underwriter;

- (iii) any Extradition Proceeding, including all appeals whether in the same or separate proceedings; or
- (iv) any written notice requiring the attendance of any Insured and/or Underwriter at any official investigation, examination, or inquiry into the affairs of the Insured or such Underwriter ordered or commissioned by any official body.

resulting from any actual or alleged untrue or misleading statement or information provided by any Insured or omissions by any Insured from:

- (i) the Offer Document; or
 - (ii) any directly related representations or presentations prior to, or within, 7 days following the filing or issuance of the Offer Document.
- (l) **"Period of Insurance"** shall mean the period stated in the Schedule.
- (m) **"Submission"** shall mean any information submitted to the Insurer, the proposal form and in relation to the Offering together with the Offer Document.
- (n) **"Underwriter"** shall mean every underwriter or sponsor appointed in the Offer Document that is party to the Underwriting Agreement.
- (o) **"Underwriting Agreement"** means the agreement referred to in the Schedule.

Exclusions

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

The **Insurer** shall not pay any **Loss** arising from any **Offering Claim**:

(a) **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**.

(b) **Breach Of Underwriter's Professional Duty**

under Insuring Clause 1(d) in connection with the Underwriter's liability caused by the Underwriter's liability arising from any actual or alleged untrue or misleading statement or information supplied by any Insured or omissions made by any Insured arising from either:

- (i) the Offer Document; or

(ii) directly related representations or presentations prior to, or within, the 7 days immediately following the filing or issuance of the Offer Document.

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

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

(d) **ERISA**

arising out of any actual or alleged violation of the responsibilities, obligation or duties imposed by the Employee Retirement Income Security Act, 1974 (USA) and amendments thereto.

(e) **Claims Made by the Insured in the USA**

made in the United States, its territories or possessions, by or on behalf of the Issuing Company or any Individual Insured, provided that this exclusion shall not apply to:

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

Limit and Retention

- (a) The Insurer's 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 Offering Claims made and the number of Insureds against whom such Offering Claims may be made.
- (b) The Insurer 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 subject to the aggregate (if any) stated in the Schedule. Such Retentions include all Costs and Expenses and are to be borne by the Insureds and are not to be insured.

- (c) If indemnity by the Issuing Company is permitted by applicable law the Retention applicable to Insurance Clauses (b) and (d) shall apply as if indemnity had been provided to the fullest extent permitted, regardless of whether or not indemnity is actually made, unless the Issuing Company is unable to make indemnity solely by reason of its insolvency. Where the Issuing Company is permitted to indemnify and does not do so for reasons other than its insolvency, the Insurers shall pay Loss on behalf of any Insured Individual without regard to the Retention, but the Issuing Company shall reimburse the Insurers for such amounts up to the Retention stated in the Schedule upon demand.

Claims Provisions

- (a) The Insured shall as soon as practicable (and in any event not later than the expiry of the Period of Insurance) give to the Insurer's notice in writing of any Offering Claim or of any circumstances of which the Insured shall become aware which might reasonably be expected to give rise to an Offering Claim, giving reasons for the anticipation of such Offering Claim, with full particulars as to dates and persons involved.

Such notice having been given as required by this provision, any subsequent Offering 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 the Insurer's liability under this Policy that the Insured shall give the Insurer such information and co-operation as the Insurer's may reasonably require.
- (c) The Insured shall not admit liability for or settle or attempt to settle any Offering Claim or incur any Costs and Expenses in connection with any Offering Claim without the Insurer's prior written consent (such consent not to be unreasonably withheld or delayed). The Insureds may, subject to the Insurer's 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) The Insurer 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.
- (e) The Insurer shall pay covered Costs and Expenses prior to the final resolution of any Offering 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.
- (f) The Insureds shall not be required to contest any Offering Claim unless a Senior Counsel or equivalent in the relevant jurisdiction (to be mutually agreed upon by the Insureds and the Insurer or, in default of agreement, to be selected in accordance with the Domestic Arbitration Rules of the Hong Kong International Arbitration Centre or equivalent in the relevant jurisdiction) shall advise that such Offering Claim should be contested.
- (g) The Insurer agrees to pay Loss covered by their policy in the order the Loss is presented to the Insurer for payment. Should the Loss exceed the Limit of Indemnity the Insurer, at their sole discretion will:
- (i) first pay Loss under Insurance Clause 1(a); and

- (ii) allow the Issuing Company, with regards to any remaining balance of the Limit of Indemnity to elect in writing either to stipulate the order and amounts in which the Loss is to be settled, or to receive the balance of such Loss to be held on behalf of any Insured who has incurred such Loss.

The Insurer shall be fully discharged from their obligations under this Policy subsequent to payment under this order of payments. If applicable, once payment has been made under (i) and (ii) above the Insureds will indemnify and keep indemnified the Insurer against any claim that might be made against the Insurer in relation to the order and amount paid by the Insurer relating to such Loss.

- (h) Two or more Offering Claims arising out of a single untrue or misleading statement or information provided by any Insured or omissions by any Insured from:
 - (i) the Offer Document; or
 - (ii) any directly related representations or presentations prior to, or within, 7 days following the filing or issuance of the Offer Document;

or a series of related untrue or misleading statement or information or omissions shall be treated as a single Offering Claim under this Policy.

Conditions

- (a) This Policy shall be in excess of any insurance covering the Underwriter for the Offering Claim or to any more specific available insurance held by any Insured.
- (b) If, after 60 days from the inception of this Policy, the Premium has not been received by the Insurer, they 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 the Insurer before the notice period expires, the 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 the Insurer on a pro rata basis for the period that the Insurer was 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.
- (c) The Submission shall be construed as a separate application by each Insured Individual and no statement or omission in the Submission nor any other knowledge, act or omission by any one Insured Individual shall be imputed to any other Insured Individual for the purpose of determining the availability of any payment under this Policy.

For the purposes of Exclusion 4(a), no knowledge, act or omission of one Insured Individual shall be attributable or imputed to another and only information or Insured Individual knowledge possessed by the Chief Executive Officer, Chief Operating Officer or Chief Legal Officer of the Issuing Company at the time of the Offering shall be attributable to the Issuing Company.

- (d) The parties to this Policy are the Insurer and the Insureds to the extent of their respective insured interests. A person who is not a party to this contract has no right 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 under Hong Kong legislation.

- (e) This Policy is governed by the laws of Hong Kong and except as provided by Claims Provisions 6(f) the Insurer and the Insureds agree to submit any dispute in relation to this Policy to binding arbitration in accordance with the 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 Insurer 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 Insurer 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 Association 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 Arbitration Ordinance (Cap 341) as amended from time to time, be at the discretion of the arbitrators.

Any arbitration proceedings commenced against the Insurer shall be served upon the Claims Manager, Professional Liability Division, Markel International Hong Kong Limited, office 4511, 45/F, The Lee Gardens, 33 Hysan Avenue, Causeway Bay, Hong Kong.

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 Claims Manager, Professional Liability Division, Markel International Hong Kong Limited, office 4511, 45/F, The Lee Gardens, 33 Hysan Avenue, Causeway Bay, Hong Kong.

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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