

Fund Manager Insurance

Schedule

Policy No:

Company (including all Subsidiaries and Funds):

Address:

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

Limit of Indemnity:

Sub-limit of Indemnity for Insurance Clause (e):

Retentions:

(i) Claims made worldwide other than claims falling within the jurisdiction of the United States of America:

- Insurance Clause (a):
- Insurance Clause (b):
- Insurance Clause (c):
- Insurance Clause (d)
- Insurance Clause (e)

(ii) Claims made within the jurisdiction of the United States of America:

- Insurance Clause (a):
- Insurance Clause (b):
- Insurance Clause (c):
- Insurance Clause (d):
- Insurance Clause (e)

Premium:

Extended Discovery Period:

(applicable to Extension 2(a))

Period:

Additional
Premium:

(plus Insurance Premium Tax at the rate from time to time in force)

New fund net value limit:

Proposal Form Date:

Endorsement Numbers:

Dated in Hong Kong:

MARKEL FUND MANAGEMENT INSURANCE

INSURANCE CLAUSE

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

- (a) Pay on behalf of the Directors all Loss arising from any Claim first made against them during the Period of Insurance.
- (b) Pay on behalf of the Company all Loss arising from any Claim first made against any Director during the Period of Insurance when and to the extent that the Company has indemnified such Director.
- (c) Pay on behalf of the Outside Entity Directors all Loss arising from any Claim first made against them during the Period of Insurance.
- (d) Pay on behalf of the Company all Loss arising from any Claim first made against the Company during the Period of Insurance.
- (e) Indemnify the Company for all Direct Financial Loss first discovered during the Period of Insurance resulting directly from any Dishonest Act or Crime.

EXTENSIONS

(a) Extended Discovery Period

In the event that either Underwriters or the Insured do not renew this Policy the Insured shall have the right to the Extended Discovery Period stated in the Schedule in respect of any Claim made in respect of a Wrongful Act which occurred 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 at the same time pay the additional premium specified in the Schedule;
- (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 this Extended Discovery Period shall not be cancellable.

(b) Retired Directors

In the event that either Underwriters or the Insured do not renew this Policy any Retired Director 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 this Extended Discovery Period.

(c) New Subsidiaries

In the event a company or other entity 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:

- (i) controls the composition of the Board of Directors (or other such management board);
- (ii) controls more than half of the voting power; or
- (iii) holds more than half of the issued share capital;

and this Policy shall apply only in respect of Wrongful Acts, Crime and/or Dishonest Acts first discovered, while a Subsidiary.

(d) Non-Executive Directors - Insurance Clauses 1 (a), (b), (c) only

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 10 % in the aggregate in respect of the covered Costs and Expenses of any Non-Executive Director (or such equivalent position in the relevant jurisdiction).

(e) Emergency Costs and Expenses - Insurance Clauses 1(a), (b), (c) only.

If Underwriters' prior written consent cannot 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.

(f) Spousal / Legal Representatives Cover

This Policy shall apply in the event the lawful spouse of any Director is the subject of enforcement proceedings in respect of a judgment against such Director for a Wrongful Act of that Director 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 to their estate, heirs, legal representatives or assigns, for loss incurred due to any Wrongful Act of such Director for which he would have received cover under this Policy.

(g) 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.

(h) New Fund Cover

This Policy shall apply to cover any new Fund sponsored by the Company during the Period of Insurance, provided: (i) that it is not domiciled or has a listing of any of its securities on any exchange in the United States of America; or (ii) its net value does not exceed the new fund net value limit specified in the Schedule.

(i) Loss of Property

This Policy shall indemnify the Company against any Claim first made against the Company during the Period of Insurance as a consequence of Property having been destroyed, damaged, lost or mislaid by the Company.

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) **"Approved Person"** shall mean a natural person who is approved by the Securities and Futures Commission under Section 104 or 105 of the Securities and Futures Ordinance (Cap 571).
- (b) **"Central Depository"** shall mean any clearing corporation where, as the direct result of an electronic clearing and transfer mechanism, entries are made evidencing an increase or reduction in an account, an obligation, a number of shares or the rights of any party.
- (c) **"Claim"** shall mean:
- (i) any Investigation;
 - (ii) 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);
 - (iii) any regulatory or criminal proceeding against the Company, a Director or an Outside Entity Director for a Wrongful Act; or
 - (iv) any Extradition Proceeding, including all appeals whether in the same or separate proceedings.
- (d) **"Company"** shall mean the entity/ies stated in the Schedule and shall include all Subsidiaries and Funds.
- (e) **"Costs and Expenses"** shall mean the reasonable fees and expenses incurred by any Insured 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 Outside Entity Director or of any employee of the Company.

(f) **"Crime"** shall mean:

- (i) any Fraudulent Transaction;
- (ii) any IT Fraud or IT Virus Damage; or
- (iii) the physical loss of, damage to or destruction of Property anywhere by any means; by any natural person who is not an Employee and which does not fall within the definition of Dishonest Act.

(g) **"Direct Financial Loss"** shall mean pecuniary loss sustained by the Company.

Direct Financial Loss shall not include:

- (i) any taxes, civil, regulatory or criminal fines or penalties or any salaries, fees, commission, bonuses and similar employee benefits earned in the normal course of employment, including salary increases and promotions;
- (ii) any interest which is not received or becomes payable by the Company;
- (iii) any payment for extortion, kidnapping, hijacking or wrongful detention;
- (iv) costs, fees or other expenses incurred in establishing the existence or amount of Direct Financial Loss, or in prosecuting any proceeding;
- (v) indirect or consequential loss of any nature;
- (vi) any sum representing loss or deprivation to the Company of income or profits (including but not limited to interest and dividends); or
- (vii) any sum arising out of, based upon or attributable to:
 - (a) business interruption (including loss of computer time or use);
 - (b) mechanical, electronic or software failure, faulty construction, error in design, latent defect, wear or tear, gradual deterioration, electrical disturbance, electronic data corruption, failure or breakdown or any malfunction or error in programming or errors or omissions in processing, or
 - (c) loss of or damage to any property, office, premises or real estate, however caused.

Direct Financial Loss shall include, in respect of a specific transaction which constituted a Crime, any bonuses or commissions paid to an Employee.

- (h) **"Director"** shall mean:
- (i) any natural person who is, was or may during the Period of Insurance become a director or officer or member of any management board or committee of the Company or Fund including a Shadow Director (as defined in Section 2 of the Companies Ordinance (Cap 32), or such equivalent in the relevant jurisdiction) and any natural person who is construed to be a director or officer or member of any management board or committee of the Company or Fund within the meaning of any applicable law or regulation governing such matters;
 - (ii) any natural person who is, was or may during the Period of Insurance become an Employee of the Company against whom a Claim is made in their managerial or supervisory capacity;
 - (iii) any natural person who is, was or may during the Period of Insurance become general partner in a Fund which is established as a limited partnership;
 - (iv) any natural person who is, was or may during the Period of Insurance become trustee of a Fund which is established as a trust; or
 - (v) an Approved Person of the Company.
- (i) **"Dishonest Act"** shall mean any dishonest, fraudulent or malicious act committed by an Employee alone or in collusion with others. However, with respect to Loans and Trading, Dishonest Act means only a dishonest or fraudulent act committed by an employee with the intention of obtaining improper financial gain for the employee who committed such act.
- The term "improper financial gain" does not include salary, fees, commissions, promotions and other similar emoluments.
- U) **"Document"** shall mean any cheque, bill of exchange, draft, certificate of deposit, letter of credit, promissory note, withdrawal order or receipt for the withdrawal of funds, money order, orders upon public treasuries, or any similar instruments of value serving the same purpose.
- (k) **"Employee"** shall mean any natural person who is an employee of the Company, or a Director, but only when performing acts coming within the scope of the usual duties of an employee rather than directorial acts on behalf of the Company.
- (l) **"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 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;

- (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.

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

- (n) **"Fictitious Document"** shall mean:
 - (i) any Document;
 - (ii) any Security;
 - (iii) any written or printed instruction or advice directed to equipment maintained by an Insured in a secure environment authorising or acknowledging the transfer, payment delivery or receipt of funds or property; and/or
 - (iv) currencywhich is counterfeit or forged with the intent to deceive by a person other than an Employee.

- (o) **"Financial Organisation"** shall mean
 - (i) any bank, credit institution, financial institution, undertaking for collective investment in securities, investment firm or similar entity;
 - (ii) a Central Depository in connection with the purchase, sale, transfer or pledge of an Uncertificated Security; or
 - (iii) any person or organisation with which the Company has a written agreement for the provision of purchasing services, safekeeping, registration and entitlement records in connection with securities.

- (p) **"Fraudulent Transaction"** shall mean a transaction undertaken by the Company in the ordinary course of its business in reliance on a Fictitious Document.

- (q) **"Fund"** shall mean any investment fund, investment trust, limited partnership, general partnership, protected cell company or any other similar entity listed in the Schedule or any endorsement and the automatically covered funds pursuant to Extension 2 (h).

- (r) **"Impairment"** shall mean any actual or attempted preparation, input, modification or destruction for a fraudulent purpose.

- (s) **"Insured(s)"** shall mean all or any of the Company, Directors and Outside Entity Directors.
- (t) **"Investigation"** shall mean any investigation by a regulator or prosecuting authority into the affairs or actions of the Company or Director (solely in their capacity as a Director or an Outside Entity Director). Investigation shall not mean routine investigations or reviews.

For the avoidance of doubt an Investigation shall be deemed to be made against a Director and/or Officer where that investigation is in the affairs of the Company and the Director and/or Officer is compelled to attend.

- (u) **"Investment Advisory Services"** shall mean those investment advisory or investment administration services provided by the Company pursuant to a written agreement, as more fully described in the proposal form completed by the Company.
- (v) **"IT Fraud"** shall mean:
- (i) the Impairment of any electronic data, Uncertificated Security, electronic computer program, electronic communications or Voice Initiated Instruction upon which an Insured, or any Financial Organisation acting on its behalf, has acted or relied; or
 - (ii) Impairment of, or reliance by an automated clearing house or a Financial Organisation upon, any electronic communication or Voice Initiated Instruction;

which purported to, but which did not, originate from an Insured.

- (w) **"IT Virus Damage"** shall mean the loss or destruction of or amendment to or damage to any electronic data upon which an Insured has acted or relied due to any unauthorised program or code fraudulently or maliciously created and/or distributed by a person other than an Employee through the computer system of the Company.

- (x) **"Loan"** shall mean:
- (i) any loan or transaction in the nature of, or amounting to, loan or extension of credit, including a lease, made by or obtained by or from the Company;
 - (ii) any note, account, invoice, agreement or other evidence of debt, assigned or sold by or to, or discounted or otherwise acquired by the Company; or
 - (iii) any payments made or withdrawals from the account of a customer of the Company involving items which are not finally paid for any reason.

- (y) **"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 taxes, civil, regulatory or criminal fines or penalties.

(z) **"Loss of Property"** shall mean the physical loss, damage or destruction of Property anywhere by any means by the Insured and which does not fall within the definition of Dishonest Act.

(aa) **"Merger"** means the combination of the Company with one or more entities such that none of them:

(i) controls the composition of the Board of Directors (or other such management board);

(ii) controls more than half of the voting power; or

(iii) holds more than half of the issued share capital of the new entity.

(ab) **"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; or

(ii) does not have negative net assets at the inception of this Policy; or

(iii) is not a Fund.

(ac) **"Outside Entity Director"** shall mean any Director who at the specific request of the Company becomes a Director or Officer or member of any management board or committee of an Outside Entity.

(ad) **"Period of Insurance"** shall mean the period stated in the Schedule.

(ae) **"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 issued under legislation, regulations or an environmental protection authority (including but not limited to any such legislation, regulations or authority in Hong Kong, the United Kingdom, the United States of America or the European Union). 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.

- (af) **"Property"** shall mean:
- (i) cash (including currency, coins and banknotes), bullion, precious metals and articles made therefrom, jewellery, gems (including uncut gem stones), precious and semi-precious stones, stamps, postal orders and insurance policies;
 - (ii) any Document;
 - (iii) any Security;
 - (iv) all other negotiable and non-negotiable instruments or contracts representing money or other property (real or personal) or interests therein, and other valuable papers, including books of account and other records used by the Company in the conduct of their business, in which the Company has an interest, or which are held by the Company for any purpose or in any capacity; or
 - (v) physical media upon which electronic data are stored or recorded.
- (ag) **"Retired Director"** shall mean any Director who other than by reason of a Takeover or Merger or insolvency of the Company voluntarily retires during the Period of Insurance.
- (ah) **"Security"** shall mean:
- (i) any stock, shares, scrip, transfers, certificates, bonds, coupons and all other types of securities (including securities held in book entry form), bills of exchange, promissory notes, certificates of deposit, letters of credit, warrants, title deeds, deeds of trust, bearer instruments and any other negotiable documents; or
 - (ii) original (including original counterparts) agreements in writing, (other than corporate, partnership or personal guarantees), having value which is, in the ordinary course of business, transferable by delivery of such agreements with any necessary endorsement or assignment.
- (ai) **"Subsidiary"** shall mean:
- (i) any entity 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 other such management board);
 - (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 while a Subsidiary; or
 - (ii) any other company specifically named in the Schedule or in any endorsement to this Policy as a subsidiary.

- (aj) **"Takeover"** of the Company means a transaction or event as a result of which another entity: (i) controls the composition of the Board of Directors (or other such management board); or (ii) controls more than half of the voting power; or (iii) holds more than half of the issued share capital of the Company. Takeover shall also mean the merger, consolidation or other combination of any Fund with any other unrelated fund not currently covered under this Policy or if the investment advisor and/or principal underwriter / general distributor of any Fund ceases to act as such.
- (ak) **"Tested"** shall mean a method of authenticating the contents of a communication between the **Company** and a customer or a Financial Organisation, or between offices of the Company, for the purpose of protecting the integrity of the communication.
- (al) **"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.
- (am) **"Trading"** means trading or other dealings in Securities, commodities, futures, options, foreign or Federal funds, currencies, foreign exchange and the like.
- (an) **"Uncertificated Security"** shall mean a share, participation or other interest in property, or an enterprise of the issuer or an obligation of the issuer which:
- (i) is a type commonly dealt in upon securities exchanges or markets;
 - (ii) is either one of a class or series or by its terms is divisible into a class or series of shares, participations, interests or obligations; or
 - (iii)
 - (a) is not represented by any instrument;
 - (b) is part of a master or global certificate; or
 - (c) represents a paper certificate that has been surrendered by a Financial Organisation and which paper certificate has been combined into a master depository note and the paper certificates are immobilised;

and such security is shown as an electronic entry on the account of the transferor, pledgor or pledgee at a Central Depository.

- (ao) **"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 United Nations (Anti-Terrorism Measures) Ordinance (Cap 575) or any equivalent or similar legislation.
- (ap) **"Voice Initiated Instruction"** shall mean any telephone instruction requesting the transfer of funds or property which is Tested or subject to a call back to an authorised person other than the individual initiating the transfer.

(aq) **"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.

(ar) **"Wrongful Act"** shall mean, in respect of cover under Insurance Clauses 1 (a) and 1 (c), any actual or alleged negligent act or omission by any Director or Outside Entity Director individually or collectively solely in their capacity as a Director or Outside Entity Director.

In respect of cover under Insurance Clause 1(d), "Wrongful Act" shall mean the negligent provision of (i) Investment Advisory Services; or (ii) services solely in connection with the management/operation of a Fund.

In respect of Extension 2 (i), "Wrongful Act" shall mean the actual or alleged negligent act or omission by an Insured.

EXCLUSIONS APPLICABLE TO INSURING CLAUSES 1 (A) TO 1 (D)

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

Underwriters shall not be liable to make any payment in respect of any Loss:

(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 by an employee of the Company alleging an Employment Wrongful Act;
- (ii) a Claim against an Outside Entity Director by an employee of the Outside Entity alleging an Employment Wrongful Act;
- (iii) a criminal prosecution of a Director for manslaughter in relation to the business of the Company;
or
- (iv) a criminal prosecution of an Outside Entity Director for manslaughter in relation to the business of the Outside Entity.

(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 against a Director brought by or at the direction of any liquidator, provisional liquidator, administrator or receiver of the Company;
- (ii) any Claim made against any former Director by the Company after there has been a change in the majority of the Board of Directors (or other such management board);

- (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;
- (iv) any Claim against a Director brought as a shareholder derivative action of the Company without the involvement, procurement or instigation of any Director; or
- (v) in relation to Insurance Clause 1 (a), (b) and (c) only: Costs and Expenses.

(c) CONDUCT

brought about by or contributed to by or consequent upon the dishonestly, 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) PENSION SCHEMES

based upon, arising out of, resulting from or in consequence of, or in any way involving any Wrongful Act by any Director acting as a trustee, fiduciary or administrator of the Company's pension or superannuation scheme or programme. However 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;
- (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 other such management board);
- (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;
- (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.

(e) INSURED vs INSURED

arising from any Claim brought against the Company or Directors or Outside Entity Directors by or on behalf of:

- (a) an Insured, or successors or assignees of any Insured;
- (b) any entity that is operated or managed or controlled by any Insured; or
- (c) an Outside Entity.

This exclusion shall not apply to:

- (a) any Claim brought by a Fund, where the Fund is advised by independent legal counsel selected by and at the expense of the Fund (selection of such counsel being subject to approval by Underwriters, which approval shall not be unreasonably withheld) that such a claim on the balance of probabilities, if not made, would be a breach of duty owed by the Directors of the Fund;

- (b) any Claim brought by a Director as long as it is brought solely in such claimant's capacity as a customer or client of the Company and is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any other Insured;
- (c) any claim against a Director or Outside Entity Directors in respect of an Employment Wrongful Act;
- (d) any Claim brought by or at the direction of any liquidator, provisional liquidator, administrator or receiver;
- (e) any Claim made against any former Director or Outside Entity Director after there has been a change in the majority of the Board of Directors (or other such management board);
- (f) any Claim for contribution or indemnity in respect of a Claim made by an independent third party without the procurement or instigation of any Insured or the Outside Entity;
- (g) any Claim brought as a shareholder derivative action without the involvement, procurement or instigation of any Director or the Outside Entity; or
- (h) Costs and Expenses.

(f) PERFORMANCE GUARANTEE/WARRANTY

arising from any Claim for loss of any investment as a result of any guarantee or warranty provided by or on behalf of the Insured.

(g) SECURITIES ACTS

based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, any actual or alleged violation of any of the provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, or any similar federal or state law, or any common law relating thereto.

EXCLUSIONS APPLICABLE TO INSURANCE CLAUSE 1(D) ONLY

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

Underwriters shall not be liable to make any payment in respect of any **Loss**:

(a) CONTRACTUAL LIABILITY

arising out of, based upon or attributable to any liability assumed or accepted by an Insured under any contract or agreement except to the extent such liability would have attached to the Insured in the absence of such contract or agreement.

(b) FEES, COMMISSIONS OR OTHER COMPENSATION

arising out of, based upon, or attributable to a dispute concerning fees, commissions, or other compensation for services rendered or required to be rendered by the Insured or that portion of any settlement or award in an amount equal to such fees, commissions, or other compensation.

EXCLUSIONS APPLICABLE TO INSURANCE CLAUSE 1(E) ONLY

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

Underwriters shall not be liable to make any payment in respect of any Direct Financial Loss:

(a) CREDIT RISKS

resulting from the complete or partial non-payment of or default upon any loan, unless **such Direct Financial Loss** results directly from a Crime or Dishonest Act.

(b) DIRECTORS INFIDELITY

resulting from a Dishonest Act by any Director, except where the Director is performing acts solely within the scope of the usual duties of an employee of the Company.

(c) PROPRIETARY INFORMATION, TRADE SECRETS AND INTELLECTUAL PROPERTY

arising directly or indirectly from the actual or alleged plagiarism of, or accessing of, any confidential information (including but not limited to trade secrets, computer programs, customer information, patents, trademarks, trade names or copyrights), except to the extent that any such confidential information is used to support or facilitate the commission of a Crime or Dishonest Act.

(d) FRAUDULENT FEATURES IN COMPUTER PROGRAMS

resulting from fraudulent features contained in computer programs developed for sale to, or that were sold to, multiple customers at the time of their acquisition from a vendor or consultant unless:

- (i) no other purchaser of the computer programs has sustained an insurable loss resulting from such fraudulent features during the period of 60 days from the date of discovery of the Direct Financial Loss by an insured entity or fund;
- (ii) at the time of Direct Financial Loss such fraudulent features were contained solely on the computer programs of an insured entity or fund and not on those sold to any other customer; or
- (iii) such fraudulent features were inserted subsequent to the date of their acquisition.

(e) AUTHORISED ACCESS

resulting from the input of data at an electronic terminal by a customer, or another person who had authorised access to the customer's authentication mechanism, unless such customer was accessing the Company's computer system for a purpose not pre-agreed by the Company with the intent to cause the Company to sustain a loss.

EXCLUSIONS APPLICABLE TO INSURANCE CLAUSES 1(A) TO 1(E)

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

Underwriters shall not be liable to make any payment in respect of any Loss or Direct Financial Loss:

(a) 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 inception date of the first Directors and Officers policy bought by the Company 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.

(b) CIRCUMSTANCES NOTIFIED OR DISHONEST ACT/CRIME DISCOVERED UNDER PREVIOUS INSURANCE

arising out of any circumstance notified and/or Dishonest Acts and/or Crime discovered under any insurance in force prior to the inception date of this Policy or which could by the terms of the previous policy have been so notified.

(c) WAR AND TERRORISM

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

- (i) War;
- (ii) Terrorism; or
- (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.

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 or Direct Financial Losses discovered and the number of Insureds.
- (b) The total liability claimable for Direct Financial Loss under Insurance Clause e) shall be the sub-limit in the Schedule. This shall be part of the Limit of Indemnity in the schedule and not in addition to it.
- (c) Underwriters shall only be liable for Loss or Direct Financial 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 or Direct Financial Loss for each Insured subject to the aggregate retention (if any) stated in the Schedule. Such retentions include all Costs and Expenses and are to be borne by the Director, Outside Entity Director or the Company (as the case may be) and are not to be insured.
- (d) In respect of claims under Insurance Clauses 1(a) and 1(c), if indemnity by the Company is permitted by applicable law the retention applicable to Insurance Clause 1(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 Outside Entity Director without regard to the retention, but the Company shall reimburse Underwriters for such amounts up to the retention stated in the Schedule upon demand.
- (e) Two or more Claims arising out of a Wrongful Act or a series of related or continuous Wrongful Acts will be treated as a single Claim for the purposes of this Policy.
- (f) A series of related or continuous Crimes and/or Dishonest Acts shall constitute one Crime and/or Dishonest Act for the purposes of this Policy.

CLAIMS PROVISIONS

- (a) The Insured shall as soon as practicable (and in any event not later than the expiry of the Period of Insurance or, in the event of the invocation of the Extended Discovery Period (as per Extension 2 a) or 2 (b), no later than the expiry of the Extended Discovery Period) give to Underwriters notice in writing of any Direct Financial Loss, 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 be entitled to take over and conduct in the name of the Insureds the defence or settlement of any Claim.
- (e) If a Claim is made against an Insured by an Insured, Underwriters shall have no duty or obligation to communicate with any other Insured in relation to that Claim.
- (f) In the event that any Loss or Direct Financial Loss is only partially covered by the terms of this Policy, or any Claim includes covered and uncovered matters or is made against the Insured and others who are not covered under the terms of this Policy, then the Insured and Underwriters shall use their best efforts to determine a fair and proper allocation of Loss or Direct Financial Loss between them. In default of agreement Underwriters shall pay sums that they consider 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 Insured and Underwriters or, in default of agreement, to be selected in accordance with the Domestic Arbitration Rules of the Hong Kong International Arbitration Centre.
- (g) 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.
- (h) 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.
- (i) 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 selected in accordance with the Domestic Arbitration Rules of the Hong Kong International Arbitration Centre.

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 committed or Crime and/or Dishonest Act that is discovered prior to the date of the Takeover or Merger.
- (b) In the event of any Subsidiary or Fund ceasing during the Period of Insurance to be a Subsidiary or Fund, the Policy shall automatically be amended so that it shall apply only to Wrongful Acts committed or Direct Financial Loss that is discovered when it was a Subsidiary or Fund.
- (c) 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.
- (d) If the Premium has not been paid, 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.
- (e) The Proposal Form shall be construed as a separate application by each Insured and no statement or omission in the Proposal Form nor any other knowledge, act or omission by any one Insured shall be imputed to any other Insured for the purpose of determining the availability of any payment under this Policy.

- (f) For the purposes of Insurance Clause 1(d), knowledge of any of the Chairman, CEO, CFO or head of any management board or committee shall be imputed to the Company. For the purposes of Insurance Clause 1(e), Direct Financial Loss is deemed to be discovered when any of the Chairman, CEO, CFO or head of any management board or committee first becomes aware of it.
- (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 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.
- (h) This Policy is governed by the laws of Hong Kong and except as provided by Claims Provision 9 (f) and (i) the Underwriters 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 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 each 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 in the discretion of the arbitrators.

Any arbitration proceedings commenced against the Underwriters shall be served upon the Claims Manager, Professional Liability Division, Markel International Hong Kong Limited, Office No. 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 No. 4511, 45/F, The Lee Gardens, 33 Hysan Avenue, Causeway Bay, Hong Kong. We will advise you of Markel's internal complaints handling procedure.

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