

# INSURING CLAUSES

Underwriters agree, subject to the terms, limitations, exclusions and conditions of this Policy, to indemnify the Insured against:-

## 1. Legal liability

all sums which the Insured shall become Legally liable to pay as damages and claimant's costs as a result of any Claim first made against the Insured during the Period of Insurance by reason of:

- (a) a negligent act, negligent error or negligent omission by the Insured in the conduct of the Insured's Business as stated in the Proposal and regulated by the Hong Kong Confederation of Insurance Brokers or the Professional Insurance Brokers Association in Hong Kong; or
- (b) libel or slander written or spoken by the Insured or by any Employee of the Insured in connection with the Insured's Business; or
- (c) any unintentional breach of confidentiality by the Insured or by any Employee of the Insured in connection with the Insured's Business; or
- (d) any dishonest, fraudulent, criminal or malicious act or omission of any Employee of the Insured in the conduct of the Insured's Business;

## 2. Costs and expenses

necessary and reasonable legal costs and expenses incurred with Underwriters' prior written consent, such consent not to be unreasonably withheld, in the investigation, defence or settlement of any Claim which falls to be dealt with under Insuring Clause 1 above;

Costs and expenses do not include:

- (i) damages or costs awarded against the Insured
- (ii) remuneration of whatsoever nature due to the Insured or to any Director, Partner, Member or Employee of the Insured;

## 3. Loss of Documents

necessary and reasonable costs and expenses incurred with Underwriters' prior written consent, such consent not to be unreasonably withheld, in replacing or restoring Documents either owned by or the responsibility of or in the custody of the Insured in the conduct of the Insured's Business, which are discovered during the Period of Insurance to be damaged, destroyed, lost, mislaid or otherwise unobtainable and which after diligent search cannot be found.



## DEFINITIONS

**“Circumstance”** shall mean any one or more of the following

- (i) an intimation of an intention to make a Claim against the Insured;
- (ii) any known direct or indirect criticism or dispute whether expressed or implied relating to the performance of the Insured which might give rise to third party loss or damage;
- (iii) any awareness of the Insured of failing or real doubt of the efficacy of their own performance which might result in some third party loss or damage;
- (iv) the discovery by the Insured that any Documents either owned by or the responsibility of or in the custody of the Insured in the conduct of the Insured's Business have been damaged, destroyed, lost, mislaid or are otherwise unobtainable;
- (v) the discovery by the Insured of any dishonest, fraudulent, criminal or malicious act or omission of any Employee of the Insured;
- (vi) the discovery by the Insured that any words written or spoken by the Insured or by any Employee of the Insured may be defamatory;
- (vii) the discovery by the Insured of any breach of confidentiality by the Insured or by any Employee of the Insured.

**“Claim”** shall mean

- (i) any claim form, writ or summons or other application of any description whatsoever or cross-claim or counter claim issued against or served upon the Insured by a third party or
- (ii) any communication received by the Insured alleging anything which may give rise to a Legal liability covered under Insuring Clause 1 above.
  - (a) All claims consequent upon or attributable to one originating source or cause shall be deemed to be one Claim.
  - (b) Paragraph (a) above shall not apply to the provisions of the Policy relating to the Excess, or to Condition 1 (Claims Notification).

**“Computer”** shall mean any computer or other electronic data processing device, equipment or system, any hardware, software, programme, instruction, data or component utilised or intended to be utilised therein or thereby, or any actual or intended function of or process performed by any of the foregoing.

**“Documents”** shall mean all forms of documents of whatsoever nature whether written, printed or reproduced by any other method including Computer records, but excluding bearer bonds, coupons, bank notes, stamps, currency notes and other negotiable instruments.

**“Employee”** shall mean any natural person employed under a contract of service or apprenticeship with the Insured during or prior to the commencement of the Period of Insurance.

**“Fungi”** shall mean any fungus or mycota or any by product or type of infestation produced by such fungus or mycota including, but not limited to, mould, mildew, mycotoxins, spores or any biogenic aerosols.

**“Insured”** shall mean

- (i) the person or entity stated in the Schedule,
- (ii) in the event of the death, incompetence or bankruptcy of any natural person in (i) or (ii) above, their estate, heirs, legal representatives or assigns for legal liabilities incurred by those within (i) or (ii) above and costs and expenses which are indemnifiable under this Policy.

**“Insured's Business”** shall mean the professional activities stated in the Schedule.

**“Jurisdiction”** shall mean those territories stated in the Schedule.

**“Legally liable”** or **“Legal liability”** shall mean liable as a result of the judgment of any court in the Jurisdiction.

**“Market Manipulation”** shall have the meaning given by the Securities & Futures Commission, or Hong Kong Confederation of Insurance Brokers or the Professional Insurance Brokers Association in Hong Kong.

**“Period of Insurance”** shall mean the period stated in the Schedule.

**“Pollution”** shall mean any actual, alleged or threatened discharge, dispersal, release or escape of any solid, liquid, gaseous, or thermal irritant or contaminant including, but not limited to, smoke, vapours, soot, dust, fibres, Fungi, viruses, bacteria, fumes, acids, alkalis, chemicals and waste (including nuclear waste/materials), or any actual or alleged advice given or services performed in any way associated or connected with such irritant or contaminant including but not limited to testing, monitoring, removal, treatment, containment, cleaning up, neutralising or detoxification thereof, including arranging or advising upon the insurance relating to any such services or activities.

**“Premium”** shall mean the amount stated in the Schedule plus all applicable taxes at the rates from time to time in force.

**“Proposal”** shall mean the written proposal bearing the date stated in the Schedule and containing particulars and statements together with any other information supplied to Underwriters.

**“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.

**“Unlawful Association”** shall mean any organisation which is engaged in Terrorism and includes any organisation which at any relevant time is a proscribed organisation within the meaning of the Terrorism Act 2000 or such equivalent in the relevant jurisdiction.

**“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.

## **LIMIT OF INDEMNITY**

Underwriters' total aggregate liability under this Policy including any endorsements hereto (inclusive of all 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 parties against whom such Claims may be made.

## **EXCESS**

Underwriters shall only be liable in excess of the Excess stated in the Schedule, which excess shall apply to each and every Claim and shall be inclusive of costs and expenses.

## **EXCLUSIONS**

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

Underwriters shall not be liable to indemnify the Insured against any Claim, loss or costs and expenses:-

### **(a) CIRCUMSTANCES KNOWN AT INCEPTION**

which results, directly or indirectly, from any Claim or Circumstance existing prior to or at the inception of this Policy and which the Insured knew or ought reasonably to have known might give rise to a Claim, loss or to the incurring of costs and expenses.

**(b) OTHER INSURANCE**

in respect of which the Insured is entitled to indemnity under any other insurance.

**(c) DISHONEST AND MALICIOUS ACTS**

which results, directly or indirectly, from the dishonest, fraudulent, criminal or malicious act or omission of:

(i) any Insured; or

(ii) any person after the discovery of reasonable cause for suspicion of fraud, dishonesty, crime or malice on the part of that person.

**(d) FINES/PENALTIES**

in respect of any fine or penalty, punitive, exemplary or non-compensatory damages.

**(e) BODILY INJURY/PROPERTY DAMAGE**

for bodily injury, mental injury, mental anguish, shock, sickness, disease or death sustained by any person or for any loss, damage or destruction of property, including loss of use thereof, unless such Claim directly results from breach of a professional duty owed by the Insured to a third party, provided that this exclusion shall not apply to loss, costs and expenses covered under Insuring Clause 3 and shall not apply to any damages for defamation covered under Insuring Clause 1(b).

**(f) EMPLOYERS LIABILITY**

for any breach of any obligation owed by the Insured as an employer or potential employer to any Employee, former Employee or prospective Employee.

**(g) PROPERTY**

which results, directly or indirectly, from the ownership, possession or use by or on behalf of the Insured of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle.

**(h) PRODUCTS**

which results, directly or indirectly, from goods or products sold, supplied, repaired, altered, manufactured, constructed, installed or maintained by the Insured or by any person acting for or on behalf of the Insured.

(i) **CONTRACTUAL LIABILITY**

which results, directly or indirectly, from any liability assumed by the Insured under any express warranty, agreement or guarantee unless such liability would have attached to the Insured notwithstanding such express warranty, agreement or guarantee.

(j) **CONSORTIA AND JOINT VENTURES**

which results, directly or indirectly, from the operation or existence of any joint venture or consortia in which the Insured has an interest unless Underwriters' written agreement to the Insured's participation in such venture or consortia has been first obtained and an endorsement added to this Policy.

(k) **FINANCIAL INTEREST**

made against the Insured by

- (i) any other person falling within the definition of the Insured, or
- (ii) any parent or subsidiary company of the Insured, or
- (iii) any person or entity having a financial, executive or controlling interest in the Insured, or
- (iv) any company or entity in which the Insured has a financial, executive or controlling interest

unless such Claim is for indemnity or contribution in respect of a claim made by an independent third party against such company, person or entity and directly results from breach of a professional duty owed by the Insured to that third party.

(l) **INSURERS AND BINDING AUTHORITIES**

which results, directly or indirectly, from:

- (i) the Insured's activities as managers of any insurer and/or underwriter; or
- (ii) the operation of any binding authorities and/or delegated authorities issued/granted to the Insured by any insurer or underwriter.

(m) **FAILURE TO ACCOUNT FOR MONEY**

which results directly or indirectly from the failure to account for monies save only to the extent such Claim is for Legal liability covered under Insuring Clause 1(d).

(n) **MARKET MANIPULATION**

which results directly or indirectly from, or in consequence of or in any way involving Market Manipulation.

(o) **FINANCIAL EXCLUSION**

which results directly or indirectly from, or in consequence of or in any way involving

- (i) the purchase of shares or investment of monies in any company which is not quoted on a recognised stock exchange; or
- (ii) the insolvency of any person or undertaking in respect of whom the Insured has advised or with whom the Insured has arranged, directly or indirectly, any insurance, investments or deposits, including any insurance company, building society, bank, investment manager, stockbroker or investment intermediary; or
- (iii) the depreciation, failure to appreciate or loss of investments when such depreciation, failure to appreciate or loss is a result of normal or abnormal fluctuations in any financial, stock or commodity or other markets which are outside the influence or control of the Insured or
- (iv) advice to make any investment or the arranging, dealing in or managing of any investment in which the Insured, unless such advice or investment was preceded by full written disclosure to the Insured's client of the Insured's; or
- (v) any fees, commissions, costs, charges or any actual or alleged inducements paid or received by the Insured; or
- (vi) the concealment, disguise, conversion, or transfer of any property or with any act, error or omission facilitating the acquisition, retention, possession, use or control of property; or
- (vii) self-certification of income and/or assets and/or job description in relation to any application for a mortgage and/or other loan.

(p) **INSOLVENCY/BANKRUPTCY OF INSURED**

which results, directly or indirectly, from the insolvency or bankruptcy of the Insured.

(q) **INFRINGEMENT**

alleging infringement of copyright, patent, registered design, trade mark or any other intellectual property rights or passing off.

(r) **COMPUTER AND DATA**

which results, directly or indirectly, from:

- (i) computer viruses or the failure to prevent unauthorised use of or access to any Computer; or
- (ii) loss, distortion or erasure of Documents or records
  - (a) whilst mounted in or on any machine for use or processing unless the result of loss of or damage to the machine itself, or
  - (b) resulting from wear, tear, vermin, or gradual deterioration, or
  - (c) caused by climatic or atmospheric conditions or extremes of temperature unless recoverable under a standard fire insurance, or
  - (d) due to the presence of magnetic flux or due to loss of magnetism unless caused by lightning; or
  - (e) caused by the failure or inefficiency of any program, instruction or data for use in any computer or other electronic data processing device, equipment or system occasioned other than through its physical destruction or damage.

(s) **RETROACTIVE DATE**

which results, directly or indirectly, from any act, error, event or omission occurring or alleged to have occurred prior to the Retroactive Date (if any) stated in the Schedule

(t) **LEGAL ACTION**

in a court or before an arbitration tribunal outside the Jurisdiction, made under laws of countries outside the Jurisdiction or where action is brought anywhere to enforce a judgment first obtained outside the Jurisdiction.

(u) **WAR AND TERRORISM**

which results, directly or indirectly, from, in consequence of or in any way involving:

- (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, cost 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 providing 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.

(v) **RADIOACTIVE CONTAMINATION OR EXPLOSIVE NUCLEAR ASSEMBLIES**

brought about by or contributed to by or consequent upon

- (i) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss
- (ii) any legal liability of whatsoever nature

directly or indirectly caused by or contributed to by or arising from

- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- (ii) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

(w) **POLLUTION**

which results, directly or indirectly, from, in consequence of or in any way involving any Pollution.

(x) **ASBESTOS**

which results, directly or indirectly, from, in consequence of or in any way involving asbestos in whatever form or quantity.

# CONDITIONS

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

## 1. CLAIMS NOTIFICATION

- (a) The Insured, as a condition precedent to their right to indemnity under this Policy, shall give to Underwriters immediate notice in writing during the Period of Insurance of
  - (i) any Claim, or
  - (ii) any Circumstance.

It is a condition precedent that any such notice must include the name of the potential claimant, full details of the relevant act, error or omission and the grounds on which the Insured considers such act, error or omission likely to give rise to a Legal liability covered under Insuring Clause 1 above and full particulars of the amounts involved. Such notice having been given as required by (ii) above, any subsequent Claim made or loss discovered shall be deemed to have been made or discovered during the Period of Insurance.

- (b) The Insured, as a condition precedent to their right to indemnity under this Policy, shall give Underwriters such information and co-operation as Underwriters may reasonably require including all reasonable assistance in identifying locations and securing the co-operation of any appropriate individual to sign a Statement of Truth or any other document necessary to comply with the Civil Procedure Rules current at the material time.

## 2. CLAIMS HANDLING

- (a) The Insured, as a condition precedent to their right to indemnity under this Policy, 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).
- (b) Underwriters shall be entitled, but not obliged, at any time to take over and conduct in the name of the Insured the defence or settlement of any Claim or to prosecute in the name of the Insured for their own benefit any claim for payment, indemnity or damages or otherwise against any third party.
- (c) The Insured shall not be required to contest any Claim unless Leading Counsel (to be mutually agreed upon by the Insured and Underwriters or, in default of agreement, to be appointed by the President for the time being of the Law Society) shall advise that such Claim should be contested.
- (d) Underwriters shall not settle any Claim without the consent of the Insured. If however the Insured shall refuse to consent to any settlement recommended by Underwriters and shall elect to contest a Claim, then Underwriters' liability for such Claim (including costs and expenses) shall not exceed the amount for which the Claim could have been settled inclusive of costs and expenses incurred with their consent up to the date of such refusal, and then only up to the Limit of Indemnity stated in the Schedule.

- (e) The Insured, as a condition precedent to their right to indemnity under this Policy, shall not, except insofar as may be required by law, disclose to anyone the existence of this Policy without Underwriters' prior written consent. For the avoidance of doubt, a requirement to disclose the existence of this Policy is not a requirement to disclose its terms and conditions.

### **3. EMPLOYEE INDEMNIFICATION**

If the Insured so requires, Underwriters will indemnify any Employee of the Insured against his liability to pay any Claim made against that Employee personally, and necessary and reasonable legal costs and expenses incurred with Underwriters' prior written consent, such consent not to be unreasonably withheld, in the investigation, defence or settlement of any such Claim to the same extent as if the Claim were made against the Insured and subject to the terms, limitations, exclusions and conditions of this Policy, provided always that such Employee shall observe, fulfil and be subject to all the terms, conditions and exclusions of this Policy as if he were the Insured, and provided also that this Condition shall not increase the Limit of Indemnity under this Policy, and provided also that the Employee does not have any direct or indirect financial interest in the proceeds of the Claim and has not made any profit or gain out of the transaction giving rise to the Claim.

### **4. SUBROGATION**

Underwriters shall be subrogated to all the Insured's rights of recovery against any person whether before or after any payment or indemnity under this Policy and the Insured, as a condition precedent to their right to indemnity under this Policy, shall take all steps necessary to preserve Underwriters' rights of subrogation and shall give all such assistance in the exercise of rights of recovery as Underwriters may require. It is a condition precedent to the Insured's right to be indemnified under this Policy that the Insured shall not enter into any contractual agreement limiting or restricting in any way whatsoever the Insured's rights of recovery.

Underwriters agree not to exercise any subrogated rights of recovery against any Employee of the Insured unless the Claim is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of that Employee.

### **5. DISHONESTY, ETC**

- (i) No indemnity shall be afforded to any person committing or condoning any dishonest, fraudulent, criminal or malicious act or omission.
- (ii) Any sums payable under this Policy in respect of any dishonest, fraudulent, criminal or malicious act or omission shall be reduced by the amount or amounts
- (iii) recoverable without disproportionate expense from the dishonest, fraudulent, criminal or malicious person or persons or their estates or legal representatives.

### **6. FRAUDULENT CLAIMS**

If the Insured shall make any request for payment or indemnity knowing the same to be false or fraudulent as regards amount, or otherwise, this Policy shall be void and all payment and indemnity hereunder shall be forfeited.

## **7. PREMIUM PAYMENT**

If the Premium has not been paid within 60 days of inception, Underwriters may cancel this Policy by giving 15 days written notice to the Insured or to the broker. In the event of 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 Circumstance before the effective date of termination. 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.

## **8. THIRD PARTY RIGHTS**

The parties to this Policy are Underwriters and the person or entity named as the Insured in the Schedule. A person who is not a party to this contract has no right under the Contracts (Rights of Third Parties) Act 1999 or such equivalent in the relevant jurisdiction 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 other than by virtue of the Act.

## **9. CANCELLATION**

This Policy may be cancelled by or on behalf of Underwriters by thirty days notice given in writing to the Insured or the broker and the Premium hereon shall be adjusted on the basis of Underwriters receiving or retaining pro rata Premium.

## **10. PROPOSAL FORM**

The Proposal is the basis of this Policy and is incorporated herein.

## **11. LAW OF CONTRACT**

This Policy shall be governed by the laws of Hong Kong and any dispute in connection herewith shall be submitted to the exclusive jurisdiction of the Hong Kong Courts.

## **12. ASSIGNMENT**

No assignment of this Policy, or of any interest under it, shall be effective unless Underwriters' written consent has been first obtained and an endorsement added to this Policy.

## **NOTICES**

## **APPLICABLE LAW**

The applicable laws to this Policy are of Hong Kong.

## COMPLAINTS

Below are two complaints notices. If you are insured with Markel Syndicate 3000 at Lloyd's please follow the procedure set out in (1) below. If you are insured with Markel International Insurance Company Ltd, please follow the procedure set out in (2).

### 1. Markel Syndicate 3000 at Lloyd's

If at any time you have any questions or concerns regarding this Policy 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 Limited, The Markel Building, 49 Leadenhall Street, London, EC3A 2EA. We will then advise you of Markel's internal complaints handling procedure.

If you are still unable to resolve the situation 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: +44 20 7327 5693; Fax: +44 020 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.

### 2. Markel International Insurance Company Ltd

If at any time you have any questions or concerns regarding this Policy 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 Limited, The Markel Building, 49 Leadenhall Street, London, EC3A 2EA. We will then 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.