

MISCELLANEOUS PROFESSIONAL INDEMNITY

THIS IS TO CERTIFY that in accordance with authorisation granted under the Certificate Number stated below to the undersigned by Markel International Hong Kong Limited (hereinafter "Underwriters"), which shall be supplied on application by reference to the Binding Authority Number E50001H130AR and in consideration of the premium specified herein, the Underwriters are hereby bound to insure in accordance with the terms and conditions herein or endorsed hereon.

Schedule

Policy Number:

The Insured:

Address:

Insured's Business:

Limit of Indemnity: **HK\$** Any one claim and in the aggregate, costs and expenses inclusive

Retention: **HK\$** Each and every Claim, costs and expenses inclusive

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

Premium: **HK\$**

Retroactive Date:

Territory:

Jurisdiction:

Date of Proposal:

Signed by: _____ **on behalf of Markel International Hong Kong**

Dated:

Insuring Clauses

1. Legal liability

Underwriters agree, subject to the terms, limitations, exclusions and conditions of this Policy, to indemnify the Insured against 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 negligent act, negligent error or negligent omission by the Insured or by any person acting on behalf of the Insured in the conduct of the Insured's Business.

2. Costs and expenses

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

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 thereof.

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.)

"Insured" shall mean

- i) the person or entity stated in the Schedule;
- ii) the Directors, Partners and Members of such entity;
- iii) 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.

“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, or
- ii) any communication received by the Insured

alleging a negligent act, a negligent error or a negligent omission by the Insured or by any person acting on behalf of the Insured.

- 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/Retention, 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.

“Director” shall have the meaning given by section 741(1) of the Companies Act 1985 (U.K).

“Document” shall mean

- i) all documents excluding stamps, currency, coins, bank notes and bullion, travellers cheques, cheques, drafts, postal orders, money orders, bills of exchange, promissory notes, securities, negotiable instruments and the like, and
- ii) separable programmes, instructions or data for physical incorporation into any Computer

belonging to the Insured or for which the Insured is legally responsible, whilst in the custody of the Insured, or in the custody of any person to or with whom they have been entrusted, lodged or deposited by the Insured in the ordinary course of the Insured's Business.

“Employee” shall mean any person, other than a Director, Partner or Member of the Insured, who is

- i) under a contract of service or apprenticeship with the Insured, or
- ii) supplied to or hired or borrowed by the Insured, or
- iii) under any work experience or similar scheme with the Insured

whilst employed or engaged by and under the control of the **Insured** in connection with the **Insured's Business**.

“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.

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

“Member” shall mean any person holding that position within a limited liability partnership.

“Partner” shall have the meaning given by the Partnership Act 1890 (U.K).

“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.

“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 (UK) or any amendment or re-enactment thereof.

“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.

Exclusions

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

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

a) Circumstances Known At Inception

which results, directly or indirectly, from any Claim or circumstances 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 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 any dishonest, fraudulent, criminal or malicious act or omission of the Insured or of any Employee of the Insured or of any person acting on behalf of the Insured.

d) Fines/Penalties

in respect of any fine or penalty, punitive, exemplary, restitutionary 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 negligent act, negligent error or negligent omission owed by the Insured to a third party.

f) Employers Liability

any breach of any obligation owed by the Insured as an employer or potential employer to any 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) Trading Loss

which results, directly or indirectly, from any trading losses or liabilities or debts incurred by any business managed by or carried on by the Insured.

k) 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.

l) 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 or any Director, Partner or Member of 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.

m) Insolvency/Bankruptcy Of Insured

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

n) Infringement/Libel

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

o) Computer Date Recognition

which results, directly or indirectly, from any failure of any Computer (by whomsoever owned or operated) to recognise or respond, correctly and effectively, to any particular date or period of time (continuous or otherwise).

p) Computer Viruses And Unauthorised Use

which results, directly or indirectly, from, in consequence of or in any way involving computer viruses or the failure to prevent unauthorised use of or access to any Computer.

q) 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.

r) 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 in a court within the Jurisdiction to enforce a foreign judgment whether by way of reciprocal agreement or otherwise.

s) 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.

t) 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.

u) Pollution

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

v) Asbestos

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

w) Toxic Mould

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

x) arising from the loss of Documents.

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 Retention stated in the Schedule, which retention shall apply to each and every Claim and shall be inclusive of costs and expenses.

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 Underwriters immediate notice in writing during the Period of Insurance of
- (i) any Claim, or
 - (ii) the receipt of any notice of an intention to make a Claim, or
 - (iii) any circumstances of which the Insured shall become aware which might reasonably be expected to give rise to a Claim, giving detailed reasons for the anticipation of such Claim, together with full particulars as to dates and persons involved.

Such notice having been given as required by (ii) or (iii) above, any subsequent Claim made shall be deemed to have been made 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 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.

Underwriters agree not to exercise any such rights against any Director, Member or 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 Director, Member or Employee.

5. 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.

6. 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 circumstances 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.

7. 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 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.

8. 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.

9. Proposal Form

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

10. 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.

11. 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.

Notice

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 20 7327 5225; e-mail: 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.

Complaints that cannot be resolved by our internal complaints handling procedure 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.