

# 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 Labuan Ltd (hereinafter "Underwriters"), which shall be supplied on application by reference to the Binding Authority Number E400121Z130AR, 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:**      **RM**      Any one claim and in the aggregate, costs and expenses inclusive

**Retention:**      **RM**      Each and every Claim, costs and expenses inclusive

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

**Premium:**      **RM**

**Retroactive Date:**

**Territory:**

**Jurisdiction:**

**Date of Proposal:**

**Signed by:** \_\_\_\_\_

**on behalf of Markel International Labuan**

**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:

- (i) for a company incorporated or registered under the Labuan Companies Act 1990, the meaning given by section 2(1) of that Act;
- (ii) for a company incorporated under the Companies Act 1965, the meaning given by section 4(1) of that Act.

**“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 section 2(1) of the Labuan Limited Partnerships and Limited Liability Partnerships Act 2009.

**“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 the subject of a prohibition order issued under the Internal Security Act 1960 or which has been declared unlawful under section 5(1) of the Societies Act 1966 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 Assured, 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 Assured 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 Assured, 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.

### 2. CLAIMS HANDLING

- (a) The Assured, 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 Assured the defence or settlement of any Claim or to prosecute in the name of the Assured for their own benefit any claim for payment, indemnity or damages or otherwise against any third party.
- (c) The Assured shall not be required to contest any Claim unless a practising member of the Malaysian Bar with at least 20 years continuous post-admission experience (to be mutually agreed upon by the Assured and Underwriters or, in default of agreement, a practising member of the Malaysian Bar with at least 20 years continuous post-admission experience appointed by the President for the time being of the Malaysian Bar) shall advise that such Claim should be contested.

- (d) Underwriters shall not settle any Claim without the consent of the Assured. If however the Assured 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 Assured, 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 other than the Labuan Financial Services Authority 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 Assured so requires, Underwriters will indemnify any Employee of the Assured 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 Assured 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 Assured, 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 Assured's rights of recovery against any person whether before or after any payment or indemnity under this Policy and the Assured, 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 subrogated rights of recovery against any Director, Partner or Employee of the Assured unless the Claim is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of that Director, Partner or 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 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 Assured 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 Assured 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. CANCELLATION**

This Policy may be cancelled by or on behalf of Underwriters by thirty days notice given in writing to the Assured 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. THIRD PARTY RIGHTS**

The parties to this Policy are Underwriters and the person or entity named as the Assured in the Schedule. A person who is not a party to this contract has no right under the Singapore Contracts (Rights of Third Parties) Act (Cap. 53B) 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.

## **11. LAW OF CONTRACT AND DISPUTES**

This Policy shall be governed by the laws of Malaysia and any dispute, controversy or claim arising out of or relating to this Policy (the "Dispute"), including any question regarding its existence, breach, termination or validity, shall be referred to and finally resolved by international arbitration. The Tribunal shall consist of one arbitrator. The parties shall agree the identity of the arbitrator within 28 days of the referring party serving written notice on the other party of its intention to refer the Dispute to arbitration under this clause. If the parties cannot reach agreement on the identity of the arbitrator within this period, the parties agree that the Kuala Lumpur Regional Centre for Arbitration will appoint the arbitrator. The seat of the arbitration shall be Kuala Lumpur. The language of the arbitration shall be English.

Any arbitration proceedings commenced against the Underwriters shall be served upon the Principal Officer, Markel International Labuan Ltd c/o Markel International Singapore Limited, 8 Marina View, #15-01 Asia Square Tower 1, Singapore 018960.

## **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.

## COMPLAINTS

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 Singapore Limited, 8 Marina View, #15-01 Asia Square Tower 1, Singapore 018960. 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 Asia. Their address is Complaints Department, Lloyd's Asia, 8 Marina View, #15-01 Asia Square Tower 1, Singapore 018960; Tel: +65 6499 9330.

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

Miscellaneous PI\_Labuan 2012

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