

# Policy documents.

# **PROFESSIONAL INDEMNITY POLICY**

## **PREAMBLE**

In consideration of the Insured having made a Proposal to Markel International Hong Kong Ltd. (hereinafter referred to as the Insurers) containing particulars and statements which are to be considered as incorporated in this Policy, and having paid the premium stated in the Schedule, Insurers will indemnify the Insured in accordance with and subject to the limitations, terms and conditions and endorsements of this Policy.

## **INDEMNITY CLAUSE**

Insurers will, subject to the following limitations, terms and conditions and endorsements:

indemnify the Insured against any Claim which may be made against the Insured and notified to Insurers during the Period of Insurance for actual or alleged breach of professional duty in the profession stated in the Schedule by reason of any negligent act, error or omission committed or allegedly committed by or on behalf of the Insured after the retroactive date stated in the Schedule.

## **COSTS AND EXPENSES**

Insurers also agree to pay all costs and expenses incurred in the investigation, defence or settlement of any Claim which falls to be dealt with under this Policy.

## **LIMIT OF INSURERS' LIABILITY**

- (i) Limit of Indemnity specified in the Schedule in respect of all Claims (which for the purpose of this clause shall be deemed to include all costs and expenses incurred in the investigation, defence or settlement of all Claims) made against the Assured during any one Period of Insurance. However always subject to a maximum of:
- (ii) Total Aggregate Liability specified in the Schedule.

## **EXCESS CLAUSE**

Provided further that Insurers shall only be liable for that part of each and every Claim (which for the purpose of this clause shall be deemed to include all costs and expenses incurred in the investigation, defence or settlement of any Claim) which exceeds the amount of the Excess stated in the Schedule.

For the purpose of this clause "Claim" shall also mean all Claims attributable to or arising out of the same cause or event.

If any expenditure is incurred by Insurers which by virtue of this clause is the responsibility of the Insured then such amount shall be reimbursed to Insurers by the Insured forthwith.



## **CLAIMS**

All Claims made against the Insured which are attributable to or arise out of the same cause or event shall be regarded as one aggregated Claim and the Insurer's total liability under this Policy for the aggregated Claim shall not exceed the Limit of Indemnity.

## **LEGAL PERSONAL REPRESENTATIVES**

In the event of the death of any Insured Insurers will, in respect of the liability incurred by the Insured, indemnify the Insured's legal personal representatives in the terms of this Policy provided that such legal personal representatives shall, as though they were the Insured, observe, fulfil and be subject to the terms, conditions and exclusions of this Policy insofar as they can apply.

## **LIBEL AND SLANDER**

Insurers agree to indemnify the Insured against all sums which the Insured shall become legally liable to pay as damages and claimants' costs and expenses as a result of any Claim or Claims made against the Insured during the Period of Insurance for Libel or Slander by reason of words written or spoken by:-

- (a) the Insured, or
- (b) any employee of the Insured, or
- (c) and director of the Insured

in or about the conduct of the Insured's business as specified in the Schedule.

## **INTELLECTUAL PROPERTY**

Insurers will indemnify the Insured, pursuant and subject always to Indemnity Clause and all other limitations, terms, conditions and endorsements of this Policy, against Claim made against the Insured for any breach of trust, breach of confidentiality, plagiarism or infringement of copyright, trademark, or registered design or patent.

## **LOSS OF DOCUMENTS**

This policy will also cover the Insured for any reasonable costs and expenses incurred with Insurers' consent in replacing or restoring any Document which is lost, damaged or destroyed during the Period of Insurance. Insurers will not pay for any loss brought about or contributed to by the dishonesty of the Insured's Partners, Directors or other Employees

## **CONSULTANTS, SUB-CONTRACTORS AND AGENTS**

The Insurers agree to provide coverage in respect of any Claim or Claims first made against the Insured arising out of any negligent act, error or omission in rendering of , or failure to render Professional Services on the part of any consultant, sub-contractor or agent for whose acts, errors or omissions the Insured is legally liable.

Provided always that such coverage shall not extend to any such consultant, sub-contractor or agent.

Provided further that the rights of recourse against such consultants, sub-contractors or agents or agents are not waived or otherwise impaired.

## **90 DAYS CLAIMS REPORTING EXTENSION**

The Assured shall, as a condition precedent to the obligations of the Underwriters under this Policy, give written notice to the Underwriters of any Claim made against an Assured as soon as practicable but in no case greater than 30 days after the end of the Policy Period.



## **INQUIRY COSTS AND EXPENSES EXTENSION**

It is hereby noted and agreed there shall be an aggregate sub-limit of HK\$100,000 for all Claims per agent where Insurers agree to pay the Inquiry Costs and Expenses for any action is immediately notified to Insurers during the Period of Insurance for the defence, reply, obtaining legal advice for any disciplinary action taken by the Hong Kong Federation of Insurers (HKFI) or the Securities and Futures Commission of Hong Kong (SFC) or Independent Insurance Authority or Monetary Authority of Macao against the Insured in relation to their conduct in the profession stated in the Schedule and provided the Insured's actual or alleged action was committed after the Retroactive Date stated in the Schedule.

No Inquiry Costs and Expenses shall be incurred by the Insured without the prior written consent of Insurers.

The sub-limit referred to in the clause shall be part of and not in addition to the Limit of Indemnity for all Claims specified in the Schedule.

All other terms, conditions, limitations of the Certificate remain unaltered.

## **HOLDING OUT LIABILITY FOR ANY SECRETARY OF THE INSURED**

The Insurers agree to indemnify any secretary of the Insured for the defence costs incurred with Insurers' consent as a result of any Claim first made against any secretary of the Insured during the period of this Certificate which arises out of the exercise and conduct of Insured's professional business by the Insured and/or by others on behalf of the Assured. However, under no circumstances shall this Certificate indemnify any secretary of the Insured in respect of exercise and conduct of their own professional business by them and/or by others on their behalf.

## **CYBER LIABILITY COVER**

The Insurers agree to indemnify the INSURED in respect of any CLAIM arising out of PROFESSIONAL BUSINESS transacted via the internet, extranet, and/or via the INSURED's own web-site, internet site, web-address(s) and/or via the transmission of electronic mail or documents by electronic means arising as a direct result of:

- a. negligent advice, negligent misstatement or negligent misrepresentation
- b. defamation
- c. malicious falsehood (including slander of title and slander of goods)
- d. unintentional false attribution of authorship or passing off
- e. unintentional infringement of intellectual property rights (including copyright, trademark, service mark, moral rights, patent rights, registered design), breach of confidence or infringement of any rights or privacy
- f. unintentional misuse of any information which is either confidential or subject to statutory restrictions on its use
- g. misuse by any EMPLOYEE of the INSURED'S electronic signature or external email

and such CLAIM is free of fraudulent intent committed by or on behalf of the INSURED and arising in the conduct of the PROFESSIONAL BUSINESS.

The liability of INSURERS in respect of all CLAIMS and/or LOSSES covered under this extension shall not exceed HK\$1,000,000 in the aggregate in the POLICY PERIOD which is forming part of and not in addition to Limit of Indemnity stated in the Schedule.



## **RUN-OFF COVER FOR RETIRED INSURED**

Insurers agree that in the event that an Insured ceased to work for Current Principal during the policy period then the coverage provided under this Policy with respect to the Insured shall continue until the expiry date of the Period of Insurance.

Provided always that such coverage shall only apply in respect of legal liability for breach of professional duty by reason of any negligent act, error or omission occurring prior to the effective date that the Insured ceased to work for Current Principal, unless otherwise agreed in writing by the Insurers.

## **CIVIL FINES AND PENALTIES**

Notwithstanding Exclusion 9 FINES/ Penalty, Insurers agree to pay fine and penalty made against the Insured under this extension, so long as such fine or penalty is deemed legally insurable in relevant jurisdiction(s) and such liability arise from an unintentional breach of the statute, law and legislation.

## **EXCLUSIONS**

This Policy will not indemnify the Insured against any Claim:

### **1. CONTRACTUAL LIABILITY**

in respect of liability imposed upon the Insured pursuant to any contract if such liability would not have been imposed upon the Insured in the absence of any such contract; or for fines, penalties or exemplary damages of any description, or

### **2. LEGAL JURISDICTION**

where action for damages is brought in a court of law outside the territories specified in the Schedule, or where action is brought in a court of law within those territories to enforce a foreign judgement whether by way of Reciprocal Agreement or otherwise, or

### **3. EMPLOYERS LIABILITY**

arising directly or indirectly from bodily injury, sickness, disease or death sustained by any person arising out of and in the course of his/her employment by the Insured under any contract of service or apprenticeship, or for any breach of any obligation owed by the Insured as an employer to any employee, or

### **4. PRIOR CIRCUMSTANCES**

made against the Insured prior to the commencement of the Period of Insurance nor in respect of any claim(s) or circumstance(s) notified under any previous policy nor in respect of any claim(s) or circumstance(s) which might give rise to a Claim which was known to the Insured prior to the commencement of the Period of Insurance or which is stated on the proposal form, declaration or underwriting information being the basis of this insurance.

(This exclusion relates to the negligent act, error or omission from which the claim(s) or circumstance(s) known to the Insured arises, irrespective of how, or whether, that claim(s) or circumstance(s) is declared to Insurers.), or



5. **ASSURED DUTIES**

made against them which relates to any duty or obligation assumed by the Assured which is not assumed in the normal conduct of the Assured's profession as stated in the Schedule, or

6. **DISHONESTY**

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

- (i) Assured gaining any personal profit or advantage or receiving any remuneration to which they were not legally entitled;
- (ii) Assured committing any dishonesty or fraudulent act or omission or any wilful violation of the law;

provided that this exclusion shall only apply in the event that it is established by admission, judgement or any other means of adjudication that profit, advantage or remuneration was in fact gained or a dishonest or fraudulent act or omission was in fact committed.

The Underwriters may, at their absolute discretion, advance defence costs on behalf of the Assured prior to the resolution of a Claim and agree to waive the right to recover such advance payment, or

7. **PRODUCTS**

- (i) arising out of the promotion, sale or distribution of products not expressly approved in writing by Current Principal and or any local authorities,  
  
and/or
- (ii) arising out of any alleged defect or deficiency of the products or an alleged inappropriateness of the products, or

8. **INSOLVENCY/BANKRUPTCY OF INSURED**

arising out of or relating directly or indirectly from the insolvency or bankruptcy of the Insured, or

9. **FINES/PENALTIES**

for punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law, including but not limited to, awards of statutory compensation and or damages under the Companies and/or Securities and Futures Ordinances, Independent Insurance Authority and related legislation, or

10. **RETROACTIVE DATE**

first made against the Assured by reason of any negligent act, error or omission committed or alleged to have been committed prior to the retroactive date stated in the Schedule, or

11. **EXCESSIVE CHANGING OF POLICIES**

arising directly or indirectly based upon, attributable to, or in consequence of the excessive changing of policies, otherwise known as "churning" without fully explaining the financial impact, including commissions, to third party clients, or



## 12. **RELATED ENTITY**

brought by or in connection with

- (i) any entity which is directly or indirectly owned, controlled, operated or managed by an Insured, or
- (ii) any entity which owns, controls, operates or manages an Insured, or
- (iii) any entity as to which any Insured is a partner, consultant or employee, unless such Claim is instigated and continued totally independently of, and totally without the solicitation, assistance, active participation or intervention of any Insured, or
- (iv) Current Principal, or
- (v) any person who, at the time of the negligent act, error or omission giving rise to the Claim, is a Family Member unless such person is acting without any prior direct or indirect solicitation or co-operation of any Insured.

Family Member means:

- (a) any spouse, companion (who permanently resides with the Insured), or domestic partner;
  - (b) any parent, or parent of the spouse or their partner or companion;
  - (c) any sibling or child;
- of the Insured, or

## 13. **INSURANCE AGENTS**

- (i) by any insurer arising out of any alleged negligent act, error or omission by the insured in their capacity as insurance agents or general insurance agents of that insurer, unless that insurer has obtained a judgement against the Assured in any court in respect of that Claim, or
- (ii) arising out of the commingling of monies or accounts, or loss of monies received by the Assured or credited to the Insured's account, or
- (iii) arising out of, due to or involving directly or indirectly the insolvency, receivership, bankruptcy, liquidation or financial inability to pay, by any insurance company, agent, broker or intermediary with which the Insured has placed or obtained coverage for a client or an account, or
- (iv) arising out of actions relating to excessive fees, commissions, costs or other charges, including the non-disclosure of these, or
- (v) arising out of the Insured's activities by signing any insurance proposal on behalf of others, or

#### 14. **WAR AND TERRORISM**

for loss, damage or liability directly or indirectly occasioned by or, in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

- (i) 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; or
- (ii) any act of terrorism.

For the purpose of this exclusion an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of 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.

This exclusion includes 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) above.

If the Insurers allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this Certificate the burden of proving the contrary shall be upon the Insured.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect, or

for loss, damage or liability directly or indirectly occasioned by or, in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

- (i) 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; or
- (ii) any act of terrorism.

For the purpose of this exclusion an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of 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.

This exclusion includes 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) above.

If the Insurers allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.



**15. NUCLEAR ASSEMBLIES**

for loss, damage or liability directly or indirectly occasioned by or caused by or arising from or in consequence of or contributed to by nuclear weapons materials, or arising from or in consequence of or contributed to by ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self sustaining process of nuclear fission, or

**16. SEEPAGE AND POLLUTION**

based upon, arising out of or relating directly or indirectly from or in consequence of or in any way involving, seepage, pollution or contamination of any kind, or

**17. MOULD AND ASBESTOS**

arising directly or indirectly out of or resulting from or in consequence of, or in any way involving:

- (i) asbestos, or any materials containing asbestos in whatever form or quantity, or
- (ii) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind, or
- (iii) any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins, or
- (iv) any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins, or

**18. EMPLOYMENT PRACTICES**

arising out of any actual or alleged:

- (i) wrongful dismissal, actual or constructive dismissal or other termination of the employment of, demotion of or failure or refusal to employ or promote any person in relation to the Insured; or
- (ii) discrimination or harassment affecting any employee of, or prospective employee with, the Insured; or
- (iii) retaliatory treatment against an employee of the Insured on account of the employee's exercise or attempted exercise of his or her legal rights, or

## 19. FINANCIAL INSTRUMENTS

- (i) based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, any actual or alleged dealings of any nature whatsoever by which it is sought to affect the price of, or market in, any shares and/or debentures of any company, or of any food-stuff or raw material or commodity or currency, or of any negotiable instrument, other than dealings carried out in accordance with all laws, rules and regulations applicable to such dealings, or
- (ii) based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, any allegation that the Assured improperly benefited from securities transactions as a result of information that was not available to other sellers or purchasers of such securities, or
- (iii) brought by or on behalf of any client or customer of the Assured resulting from the investment in, management of, or advice concerning any estate, trust or property, or
- (iv) arising solely out of the depreciation or loss of investments when such depreciation or loss is a result of any fluctuation in any financial stock or commodity or other markets when such fluctuation is outside the influence or control of the Assured, or
- (v) arising solely out of any stock or commodity or investment failing to perform as represented or as expected to perform.

## 20. SANCTION LIMITATION AND EXCLUSION CLAUSE

no (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America, or

## DEFENCE AND SETTLEMENT

- 1. Insurers will be entitled to take over and conduct, in the name of the Insured, the defence or settlement of any Claim.
- 2. The Insured will, when instructed by Insurers pay promptly (or within the terms of any proposed settlement) any Excess amount payable by them under this Policy. Any failure or refusal by the Insured to make such payment will entitle Insurers to deduct such amount from any amount(s) required to settle any Claim, judgement, order or any other payment to be made by Insurers under this Policy.
- 3. The Insured will not be required to contest any legal proceedings unless a Queen's Counsel or Senior Counsel (to be mutually agreed upon by the Insured and Insurers) advises that such proceedings should be contested.
- 4. In the event that Insurers elect to settle any Claim, Insurers may discharge its total liability under this Policy by paying the then available Limit of Indemnity to the Insured.
- 5. In the event that the Insured wishes to continue to contest any Claim which, in the opinion of Insurers should be settled, then, with the consent of Insurers the Insured may so elect, provided that Insurer's liability in respect of any such Claim shall not exceed the amount for which, but for such election, the Claim could have been settled, together with costs and expenses payable in accordance with this Policy and incurred up to the date of such election.



6. Insurers may, if it believes that any Claim will not exceed the Excess, instruct the Insured to conduct the defence of the Claim, keeping Insurers advised of developments as they occur. In these circumstances Insurers will reimburse the Insured for all reasonable defence costs in the event that any payment made to dispose of the Claim by way of damages exceeds the Excess.

## **CONDITIONS**

1. The Insured will not admit liability for or settle any Claim or incur any costs or expenses in connection with any Claim without the written consent of Insurers.
2. The Insured will, as a condition precedent to their right to be indemnified under this Policy, give to Insurers immediate notice in writing of any Claim whether oral or in writing and will, on request, give to Insurers any information they may reasonably require to investigate the matter notified.

Such notice having been given as required above, any subsequent Claim against the Insured shall be deemed to have been made during the Period of Insurance.

3. Insurers will be entitled to claim indemnity or contribution at any time in the name of the Insured from any party against whom the Insured may have such rights.
4. The construction, interpretation and meaning of this Policy shall be determined according to the law(s) of Hong Kong and in accordance with the English text as it appears in this Policy.
5. If there are any material changes to the Proposal during the Period of Insurance then the Insured shall promptly inform the Insurers.
6. This Policy shall terminate thirty days after receipt by the Insured of notice in writing from the Insurers of their decision to terminate this Policy. Such notice shall be deemed to be duly received in the course of post if sent by prepaid registered post properly addressed to the Head Office of the Insured.
7. The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

## **DEFINITIONS**

1. **"Claim" or "Claims"** means:
  - (a) any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counter-claim or third or similar party notice issued against or served on the Insured; or
  - (b) the receipt by the Insured of any written or verbal notice of demand for compensation made against the Insured; or
  - (c) circumstances which are or should, after enquiry, be known to the Insured, and which might give rise to a Claim.
2. **"Limit of Indemnity"** means the sum stated as the limit of indemnity in the Schedule.
3. **"Insured"** means any active registered technical representative (insurance agent) of Current Principal
4. **"Period of Insurance"** means the period stated in the Schedule.
5. **"Excess"** means the excess applicable stated in the Schedule.
6. **"Proposal"** means all information, whether oral or in writing, supplied by the Insured or on the Insured's behalf.



7. “**Current Principal**” means any licensed life insurance company registered in Hong Kong / Macao which the Insured is / working for at the material time when the Claim is / was incurred.

## COMPLAINTS PROCEDURES

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 Director, Markel International Singapore Pte Ltd, 138 Market Street, #04-02 CapitaGreen, Singapore 048946. We will then advise you of Markel’s internal complaints handling procedure. If a complaint has not been resolved to a policyholder’s satisfaction, it may be referred to Lloyd’s of London (Asia) Pte Ltd. Brief details will be taken and, where possible, efforts will be made to resolve the matter. In most instances, policyholders are asked to submit their issues in writing.

Disputes are acknowledged by Lloyd’s of London (Asia) Pte Ltd within 10 working days of receipt. Lloyd’s of London (Asia) Pte Ltd will work with the Lloyd’s Complaints Department in London.

The following information is required for recording by Lloyd’s Complaints Department:

- Name, address and telephone number of the policyholder;
- The type of insurance policy involved (household, motor, etc);
- Details of the policy concerned (policy and/or claim reference numbers, etc);
- Name and address of the service Insured through whom the policy was obtained;
- A brief summary of the complaint;
- If the complaint was considered justified or not and against which party;
- Statistics of the numbers of complaints received

Lloyd’s of London (Asia) Pte Ltd/Lloyd’s Complaints Department will endeavour to resolve all complaints as soon as possible, by liaising with the Service Insured/local broker and/or other parties involved. The Lloyd’s of London (Asia) Pte Ltd/Lloyd’s Complaints Department should ensure that the complainant is kept informed of developments, without creating false expectations.

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

Complaints that cannot be resolved by our internal complaint handling procedure or by the Complaints Department at Lloyd’s may be referred to the Insurance Authority (IA) if suitable. Further details will be provided at the appropriate stage of the complaints process.

The contact details of IA are as follows:

Insurance Authority  
19th Floor, 14 Heung Yip Road  
Wong Chuk Hang, Hong Kong

Fax: (852) 3753 3812  
Email: [complaints@ia.org.hk](mailto:complaints@ia.org.hk)

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

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