



## DIRECTORS & OFFICERS LIABILITY INSURANCE

### SECTION A: INSURANCE COVERS

1. In respect of a Claim which is
  - a) first made or commenced against an Insured; during the Period of Insurance and also
  - b) notified to Insurers; as required by this Policy:
    - A. Insurers will indemnify the Loss of an Insured Person;
    - B. Insurers will reimburse a Company in respect of a Corporate Indemnity provided to an Insured Person;
    - C. Insurers will indemnify the Loss of a Company resulting from Securities Allegations;
    - D. In addition to any indemnity available under sub-clause A, and in the event of the exhaustion of the Limit of Liability, Insurers shall apply the Special Protection Fund to indemnify any Insured Person who is a non-executive director of the Nominated Company in respect of Loss resulting from a Claim in respect of their conduct in that role.
2. This Policy covers each Insured individually and for their individual interest. No knowledge or conduct of an Insured shall be attributed to another Insured for the purposes of determining either the validity of this Policy or the application of the cover it provides.
3. For the purposes of the cover provided by clause 1 A of this Section, Insurers waive any rights and remedies they might otherwise have arising from any misrepresentation or non-disclosure by any party subject to the duty of utmost good faith in relation to this Policy.
4. If this Policy is neither renewed nor replaced then the Nominated Company shall be entitled to purchase a Discovery Period by paying the premium specified in the Schedule no later than 30 days after the expiry of the Period of Insurance. If the Nominated Company fails to purchase a Discovery Period then each Insured Person shall be entitled to purchase an Individual Discovery Period by paying the premium specified in the Schedule no later than 15 days after the expiry of the Period of Insurance.

### SECTION B: DEFINITIONS

1. Bail Bond Costs means the reasonable premium (not including any collateral), incurred with the prior written consent of the Insurer, such consent not to be unreasonably withheld or delayed, for a bond or other financial instrument to guarantee an Insured Person's contingent obligation for bail or equivalent in any jurisdiction required by a court in respect of any Claim.
2. Claim means any of the following arising out of a Wrongful Act:

- a) a written demand for compensation or other relief;
- b) a court, arbitral or tribunal proceeding seeking compensation or other relief;
- c) a criminal investigation or prosecution;
- d) an Investigation;
- e) Extradition Proceedings.

In respect of a Company, Claim means any written demand for, or court, arbitral or tribunal proceeding seeking, compensation or other relief but only in respect of Securities Allegations.

- 3. Company means the Nominated Company and any Subsidiary.
- 4. Corporate Indemnity means an indemnity which a Company is entitled to provide to an Insured Person in respect of Loss.
- 5. Defence Costs means fees, costs and expenditures reasonably incurred by an Insured in challenging a Claim.
- 6. Discovery Period means any period identified as such in the Schedule which, if purchased, shall commence on expiry of the Period of Insurance. If a Discovery Period is purchased then any Claim notified to Insurers during the Discovery Period in respect of a Wrongful Act occurring prior to the end of the Period of Insurance shall be treated both as first made against an Insured, and also as notified to Insurers, during the Period of Insurance.
- 7. Employment Related Wrongful Act means any actual or alleged:
  - a) wrongful or unfair or constructive dismissal;
  - b) discharge or termination of employment;
  - c) breach of oral or written or implied contract;
  - d) employment-related misrepresentation;
  - e) discrimination;
  - f) harassment;
  - g) wrongful failure to employ or promote;
  - h) wrongful deprivation of career opportunities;
  - i) wrongful discipline;
  - j) failure to grant tenure or negligent evaluation;
  - k) failure to provide accurate references;
  - l) invasion of privacy;
  - m) Retaliation;

- n) breach of duty whether arising under statutory law or common law or otherwise committed by or on behalf of the Insured in connection with the employment by the Company of any current, former or prospective employee; or
  - o) defamation.
8. Eroded Limit means the amount calculated at the date of commencement of any Individual Discovery Period by deducting from the Limit of Liability the total amount of Loss:
- a) for which Insureds' legal liability has been established by admission, judgment, award or agreement; and
  - b) incurred by way of Defence Costs and Investigation Costs.
9. External Appointee means any natural person who, in the ordinary course of a Company's business, is asked or appointed by that Company to serve as a director or officer of an External Entity.
10. External Entity means any entity, other than:
- a) a Company;
  - b) a Financial Institution;
  - c) an entity that has its securities listed on a securities exchange or market within the United States of America;
  - d) an entity incorporated or otherwise established in the United States of America, or which is controlled or partly owned by persons or entities resident, incorporated or otherwise established in the United States of America.
11. Extradition Proceedings mean proceedings seeking the extradition of an Insured Person and which are commenced either when an Insured Person is told by the police or another government body that their extradition will be sought, or upon the execution of a warrant for the arrest of an Insured Person.
12. Financial Institution means any entity engaged in any of the following activities in the ordinary course of its business: lending; financial leasing; issuing and administering payment instruments; money transmission services; trading for its own account or the account of customers in money market instruments, foreign exchange, financial futures and options, exchange and interest rate instruments or transferrable securities; advising and providing services in connection with securities issues and mergers and acquisitions; portfolio management and advice; and, the safe keeping and administration of securities.
13. Individual Discovery Period means any period identified as such in the Schedule which, if purchased, shall commence on expiry of the Period of Insurance. If an Individual Discovery Period is purchased then any Claim against the Insured Person who purchased it, and which is notified to Insurers during the Individual Discovery Period in respect of a Wrongful Act occurring prior to the end of the Period of Insurance, shall be treated both as first made against that Insured Person, and also as notified to Insurers, during the Period of Insurance.
14. Individual Discovery Period Limit means the amount specified as such in the Schedule which shall be Insurers' maximum liability to each Insured Person who purchases an

Individual Discovery Period for all Loss in connection with Claims notified during that period. The Individual Discovery Period Limit shall be part of, and not in addition to, the Limit of Liability. An Insured Person may elect to apply some or all of the Individual Discovery Period Limit towards Loss of that Insured Person which is otherwise covered by this Policy but, in such event, Insurers shall be entitled to keep in full the premium paid for the Individual Discovery Period. If the total combined amount of all Individual Discovery Period Limits purchased by Insured Persons exceeds the Eroded Limit then:

- a) each Individual Discovery Period Limit shall be reduced to the amount calculated by dividing the Eroded Limit by the number of purchased Individual Discovery Periods; and,
- b) the premium for the Individual Discovery Period specified in the Schedule shall be reduced proportionately to the reduction in the Individual Discovery Period Limit produced by the operation of sub-clause (a).

15. Insured means:

- a) any Insured Person; and
- b) any Company.

16. Insured Person means any natural person who was, is, or who during the Period of Insurance becomes:

- a) an executive or non-executive director of a Company, whether de facto or de jure;
- b) an officer of a Company;
- c) an employee of a Company occupying a senior management position;
- d) an External Appointee;
- e) a Shadow Director of a Company.

An Insured Person's Spouse, executors and heirs shall each qualify as Insured Persons, as shall the manager of the affairs of a bankrupt Insured Person, but in each case only in respect of Loss arising out of a Wrongful Act of an individual falling within the scope of sub-clauses (a) to (e) of this definition.

17. Insurers means those identified as such in the Schedule.

18. Investigation means any enquiry or investigation by anybody or authority with regulatory or supervisory jurisdiction over

- a) an Insured Person where such enquiry or investigation concerns the conduct of an Insured Person on behalf of or in connection with a Company or External Entity.
- b) a Company or External Entity and where the body or authority requires the assistance or attendance of an Insured Person. An Investigation commences when an Insured Person receives formal written notice from the body or authority referred to above naming the Insured Person as under investigation or compelling the Insured Person to co-operate with such Investigation.

19. Investigation Costs means fees, costs and expenditures reasonably incurred by an Insured Person in connection with an Investigation.

20. Limit of Liability means the amount specified as such in the Schedule and which shall be Insurers' maximum liability for all Loss in connection with Claims notified during the combined duration of the Period of Insurance and any purchased Discovery Period or Individual Discovery Period.
21. Loss means any of the following incurred by an Insured in connection with a Claim:
- a) financial compensation payable pursuant to a judgment, award or settlement;
  - b) the legal costs of any party to a Claim for which an Insured becomes legally liable;
  - c) Bail Bond Costs;
  - d) Defence Costs;
  - e) Investigation Costs;
  - f) Reputation Protection Expenses;
  - g) fines and penalties, but only to the extent that cover for such is not prohibited by law or regulation applicable to the Insured and to this Policy;
  - h) punitive or exemplary damages, but only to the extent that cover for such is not prohibited by law or regulation applicable to the Insured and to this Policy.
22. Nominated Company means the entity identified as such in the Schedule.
23. Period of Insurance means the period identified as such in the Schedule.
24. Policy means the Schedule, this wording and any endorsements.
25. Pollutant means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, an environment protection agency (including but not limited to the United States Environmental Protection Agency) or any counterpart thereof anywhere in the world. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants, smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste materials. Pollutants shall also mean any air emission, odour, waste water, oil, oil products, infectious or medical waste, asbestos or asbestos products or noise.
26. Pollution means (a) the actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, escape, seepage, migration, dispersal, treatment, removal or disposal of any Pollutants; or (b) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants, or (i) any action taken in response to or contemplation or anticipation of any such regulation, order, direction or request; or (ii) any action taken voluntarily to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants, whether or not in relation to any such regulation, order, direction or request; including but not limited to any Claim for loss to the Company or External Entity, the holders of its securities or its creditors based upon, arising from, or in consequence of the matters described in (a) or (b) of this definition.
27. Premium means the amount specified as such in the Schedule.
28. Premium Payment Date means the date specified as such in the Schedule.

29. Reputation Protection Expenses means the reasonable fees and related expenses of a public relations firm or consultant which an Insured Person may engage in order to disseminate the findings of a final, non-appealable adjudication in favour of the Insured Person, arising from a Claim. Such fees and expenses shall only be incurred with the prior written consent of the Insurer, not to be unreasonably withheld or delayed. The sub-limit of liability for all Reputation Protection Expenses is the sub-limit specified as such in the Schedule.
30. Retention means the amount of Loss which an Insured must bear in respect of a Claim before an indemnity becomes available from Insurers. The Retentions applicable to the indemnities provided, respectively, by clauses 1A, 1B and 1C of Section A are specified in the Schedule.
31. Securities means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme and other securities of any description.
32. Securities Allegations mean allegations that a Company marketed or sold its Securities in breach of legal or regulatory rules applicable to such marketing or sale.
33. Shadow Director means a natural person who, in relation to a Company, satisfies the definition of "Shadow Director" under Section 2 of the Companies Ordinance (Cap 622). However, a person shall not be regarded as a shadow director by reason only that the directors and officers of the Company act on advice given by him in a professional capacity.
34. Special Protection Fund means the amount specified as such in the Schedule. The Special Protection Fund is in addition to, and not part of, the Limit of Liability. The amount of the Special Protection Fund shall be Insurers' maximum liability pursuant to clause 1D of Section A for all loss in connection with Claims notified during the combined duration of the Period of Insurance and any purchased Discovery Period or Individual Discovery Period.
35. Spouse means any natural person who is married to, or in a civil partnership with, a natural person within the scope of sub-clauses (a) to (e) of the definition of Insured Person.
36. Subsidiary means any company in respect of which the Nominated Company;
- a) controls a majority of the voting rights; or
  - b) controls the right to appoint or remove a majority of its board of Directors; or
  - c) holds more than half of the issued share capital; or
  - d) exercises management control

However, as regards any entity which falls within the scope of sub-clauses (a) to (d) of this definition by reason of having been created or acquired during the Period of Insurance, such entity shall not be a Subsidiary if it is a Financial Institution, or if it is an entity that has its securities listed on a securities exchange or market within the United States of America. With the written agreement of the Insurer and subject to any additional premium and any amended terms and conditions, this Policy may be extended to include such entity, but only in respect of Wrongful Acts or conduct after such entity becomes a Subsidiary.

37. Wrongful Act means any actual, attempted or proposed actionable act, error or omission which is alleged of an Insured Person in respect of their acting in any of the capacities

identified at sub-clauses (a) to (e) (inclusive) of the definition of Insured Person. For the purposes of cover for an Investigation or Extradition Proceedings the conduct of an Insured Person shall be treated as actionable if, respectively, that person, acting reasonably, seeks legal assistance in respect of their personal position in connection with that Investigation, or if that person is subject to Extradition Proceedings.

## **SECTION C: EXCLUSIONS**

Insurers shall not be liable to indemnify Loss to the extent that it arises out of, is based upon or attributable to:

### **Prior Claims and Investigations**

1. a Claim received by an Insured prior to the Period of Insurance. For these purposes an Investigation shall be treated as "received" at the time at which an Insured Person first receives formal written notice of an Investigation described in Section 16(a) above naming the Insured Person as under investigation or compelling the Insured Person to co-operate with such Investigation.

### **Prior Notices**

2. any Wrongful Act or a series of related Wrongful Acts alleged in any Claim or circumstance of which notice has been given under and accepted under any policy existing or expired before or on the inception date of this Policy.

### **Conduct Exclusion**

3.
  - a) the gaining of profit or advantage to which the Insured Person was not legally entitled; or
  - b) the committing of any criminal, dishonest or fraudulent act by the Insured Person, provided that this exclusion shall only apply if it is established by final, non-appealable adjudication in any action or proceeding or by any formal written admission.

### **Major Shareholders Exclusion**

4. a Claim brought or maintained by or on behalf of any person or entity owning, at the time of any Wrongful Act alleged in the Claim, 15% or more of the issued shares of the Company, whether the ownership is legal or beneficial.

### **Professional Services Exclusion**

5. the Insured's performance of or failure to perform professional services for others for a fee, or any act, error, or omission relating thereto.

Notwithstanding the foregoing, this exclusion shall not apply to any derivative Claim made against an Insured Person alleging a failure to supervise those who performed or failed to perform such professional services.

### **Bodily Injury and/or Property Damage Exclusion**

6.
  - a) bodily injury, sickness, disease, death, mental illness, injury to feelings or emotional distress; or
  - b) damage to, destruction, impairment or loss of use of any property, Notwithstanding the foregoing, this exclusion shall not apply to:

- a) emotional distress arising from an Employment Related Wrongful Act; or
- b) Defence Costs of an Insured Person arising from any Claim alleging involuntary manslaughter, constructive manslaughter or gross negligence manslaughter or a breach of the Occupational Safety and Health Ordinance (Chapter 509 of the Laws of the Hong Kong Special Administrative Region) or any similar legislation in any other jurisdiction.

### **Pollution Exclusion**

#### 7. Pollution.

Notwithstanding the foregoing, this exclusion shall not apply to:

- a) Defence Costs of any Insured Person up to the amount of the the sub-limit specified as such in the Schedule provided such Claim is brought and maintained entirely outside the United States of America;
- b) any Derivative Proceeding brought or maintained or on behalf of the Company or External Entity without the solicitation or participation of an Insured Person, Company or External Entity unless legally compelled to do so.

### **Insured vs Insured Exclusion**

- 8. a Claim brought or maintained by or on behalf of the Insured or External Entity against an Insured Person within the United States of America except:
  - a) any Derivative Proceeding brought or maintained or on behalf of the Company or External Entity without the solicitation or participation of an Insured Person, Company or External Entity unless legally compelled to do so;
  - b) brought or maintained by a liquidator, receiver or administrative receiver, or similar person under the laws of any other jurisdiction;
  - c) Defence Costs of any Insured Person;
  - d) alleging an Employment Related Wrongful Act; or
  - e) any Claim against an Insured Person engaged in any protected activity specified in the “whistleblower” protection pursuant to the Sarbanes-Oxley Act of 2002 or any protected activity specified in any other “whistleblower” protection pursuant to any similar legislation in another jurisdiction.

### **Future Offerings Exclusion**

- 9.
  - a) any placement or offering of any Securities in the United States of America; or
  - b) any public or private offering of Securities by such Company in any jurisdiction (other than the United States of America) in which Securities of such Company are not traded at the inception date.

### **Securities and Exchange Commission (SEC) Exclusion**

- 10. a Claim brought or maintained or based upon the Securities Exchange Act of 1933 and/ or 1934.



## **Employment Retirement Income Security Act (ERISA) Exclusion**

11. any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 and any applicable amendments made, or similar provisions of any federal, country, state, territory or local statutory law or common law in the United States of America or Canada or any of their territories or possessions.

### **Section D: Claims Notification**

1. An Insured must notify Insurers of a Claim as soon as practicable after receipt of it by the Insured. For these purposes an Investigation is treated as "received" when an Insured Person first receives formal written notice of an Investigation described in Section 16(a) above naming the Insured Person as under investigation or compelling the Insured Person to co-operate with such Investigation. Provided that it is made as soon as practicable after receipt of a Claim, a notification of a Claim first made against an Insured during the Period of Insurance which is received by Insurers no later than 90 days after the end of the Period of Insurance shall be treated as having been received by Insurers during the Period of Insurance.
2. An Insured may notify Insurers of any circumstance likely to give rise to a Claim of which the Insured becomes aware during the Period of Insurance. The notification must include information sufficient to permit Insurers not only to identify the legal and factual basis of the potential Claim, but also to assess the likelihood of its arising.
3. An Insured shall not be in breach of clause 1 of this Section if a failure to notify is the result of legal or regulatory prohibition provided that the Insured complies with its notification obligation once the prohibition ceases to apply.
4. Any Claim received by an Insured after the expiry of the Period of Insurance but which arises out of, is based upon or is attributable to facts within the scope of any notification made both during the Period of Insurance and also in accordance with clause 1 or 2 of this Section shall, once notified to Insurers, be accepted as first made against the Insured during the Period of Insurance and notified to Insurers at the time of the original notification to which that Claim is linked by this clause.

### **SECTION E: CLAIMS HANDLING AND SUPERVISION**

1. In respect of any Claim or circumstance notified in accordance with Section D, Insurers shall be entitled to receive from the Insured all such information as Insurers reasonably request.

#### **Approval of Costs**

2. Insurers shall indemnify only those Defence Costs and Investigation Costs which are approved by Insurers in writing in advance of those costs being incurred. Insurers' approval shall not be unreasonably withheld or delayed.
3. An Insured may incur Defence Costs and Investigation Costs in the absence of approval but Insurers shall indemnify only such of those costs as are reported to Insurers within ten days of their being incurred and which also otherwise qualify for indemnity under this Policy.
4. In respect of Defence Costs or Investigation Costs incurred within the duration of the legal or regulatory prohibition envisaged by clause 3 of Section D, the ten day deadline imposed by clause 3 of this Section shall be calculated from the date on which the prohibition ceases to apply.

## Defence of Claims

5. An Insured shall defend any Claim made against it, and in relation to the conduct of such defence, shall also:
  - a) notify Insurers promptly of all significant developments; and
  - b) share with Insurers all legal advice received in respect of the Claim; and
  - c) without prejudice to clauses 6 to 8 (inclusive) of this Section, consult Insurers about material decisions before they are taken and take into account Insurers' views in respect of such material decisions.
6. If an Insured admits liability, submits to judgment or reaches a settlement in respect of any Claim, other than as required by law or regulation, then Insurers shall have no liability under this Policy for Loss thereby incurred unless they have consented in advance to the admission, submission to judgment or to the offering or acceptance of the terms of settlement, as the case may be. Insurers' consent shall not be unreasonably withheld or delayed.
7. If Insurers and the Insured cannot agree on whether the Insured should admit liability, submit to judgment, or offer or accept proposed terms of settlement, then their disagreement shall be referred to a senior barrister or lawyer of comparable standing and experience. The senior barrister or lawyer of comparable standing and experience shall be selected by agreement between Insurers and the Insured and shall not have had any involvement in the Claim. The senior barrister or lawyer of comparable standing and experience will provide an opinion as to whether there should be an admission, submission to judgment, or an offer or acceptance of terms of settlement, solely by reference to the legal risks associated with the Claim. The fees of the senior barrister or lawyer of comparable standing and experience shall be paid by whichever of Insurers or the Insured refuses to accept the proposal to admit liability, submit to judgment, or to settle or to offer to settle.
8. Insurers and the Insured shall be bound by the advice of the senior barrister or lawyer of comparable standing and experience. However, the Insured may elect to continue to defend the Claim notwithstanding advice to the contrary from the senior barrister or lawyer of comparable standing and experience. If so, and if any subsequent admission of liability, judgment or settlement results in a greater liability for the Insured than if they had followed the advice of the senior barrister or lawyer of comparable standing and experience, then the Insured shall only be entitled to an indemnity in respect of the additional liability incurred to the extent that it proves that continuing to defend the Claim after the receipt of the advice from the senior barrister or lawyer of comparable standing and experience did not contribute in that increase in its liability.

## Company Failure to Indemnify

9. If an Insured Person does not receive a Corporate Indemnity:
  - a) in respect of Defence Costs or Investigation Costs, within 14 days of receiving an invoice for such; and/or,
  - b) in respect of any other liability covered by this Policy, within 28 days of that liability being incurred;

then Insurers shall indemnify the Insured Person. In such event, each and every Company shall be jointly and severally liable to pay to Insurers an amount equivalent to

that paid by Insurers to the Insured Person, provided that such amount shall not exceed the Retention applicable to the cover provided by clause 1B of Section A.

#### Other Insurance and Indemnification

10. Except in the case of an External Appointee, if an Insured has access to other insurance and/or an indemnity, other than a Corporate Indemnity, applicable to Loss covered by this Policy then this Policy shall apply only to the extent that such alternative insurance and/or indemnity fails to indemnify.
11. In the case of an External Appointee, this Policy shall apply only in the event of exhaustion of both any indemnity available to the External Appointee from the External Entity and also of any indemnity due under any policy protecting directors and officers of the External Entity under which the External Appointee has rights. However, and if, notwithstanding the availability of such insurance and indemnity, a Company provides a Corporate Indemnity to the External Appointee then Insurers will reimburse that Company pursuant to clause 1A of Section A but only once the Company has exhausted all rights of the External Appointee as against the External Entity and the relevant insurers.

### Section F: Policy Administration

#### Responsibility for Policy Administration

1. The Nominated Company has authority on behalf of the Insured in relation to all dealings with Insurers in connection with this Policy. However, if Insurers perceive a conflict of interest between the Nominated Company and any Insured Person in respect of any act of the Nominated Company purportedly on that Insured Person's behalf, then Insurers shall, at their discretion, be entitled to seek the views of any potentially affected Insured Person before Insurers give effect to the act of the Nominated Company. Insurers may refuse to give effect to such act if, and to the extent that, in the reasonable opinion of Insurers, it prejudices some or all of those Insured Persons whose interests conflict with those of the Nominated Company.
2. Notwithstanding the authority conferred by clause 1 of this Section, effect shall be given to any communication to Insurers by an Insured Person in respect of that Insured Person's rights and obligations pursuant to this Policy.

#### Order of Payments

3. Loss shall be indemnified by Insurers in the chronological order in which Loss is incurred.
4. The order of payments specified in clause 3 of this Section shall be modified as necessary to achieve the following result:
  - a) subject to the Limit of Liability, the Policy shall indemnify Loss covered by clause 1A of Section A in priority to Insurers' obligations arising pursuant to any other sub-clause of clause 1 of Section A;
  - b) the Policy shall next indemnify Loss covered by clause 1B of Section A using whatever may remain of the Limit of Liability;
  - c) the Policy shall next indemnify Loss covered by clause 1C of Section A using whatever may remain of the Limit of Liability.
5. In order to give effect to clause 4 of this Section:

- a) Insurers shall be entitled to refuse to effect payment pursuant to clauses 1B and 1C of Section A in order to make provision for indemnification pursuant to clause 1A of Section A; and/or,
- b) If payments are made pursuant to clauses 1B and 1C of Section A, then each and every Company shall be jointly and severally liable to repay to Insurers the amount necessary to achieve the outcome stipulated at clause 4(a) of this Section, provided that such liability shall not exceed the equivalent of the total of the amounts received by Companies pursuant to clauses 1B and 1C of Section A.

## Allocation

6. Where a Claim against an Insured involves losses and/or defendants which are not covered by this Policy, and any liability incurred in respect of that Claim does not permit the identification of the portion of that liability indemnifiable under this Policy, then Insurers or the Insured may request that an allocation be made.
7. There shall be no allocation where a joint and several liability is enforced against a single Insured.
8. Any allocation shall be applied retrospectively. Defence Costs and Investigation Costs shall be indemnified as they are incurred, notwithstanding that an allocation may need to be made.
9. Allocation requires Insurers and the relevant Insureds to seek to agree the portion of the liability which qualifies for indemnity under the Policy. The parties to the allocation shall act reasonably in so doing, taking account of the nature of the Claim and the potential individual exposures of each defendant. The Insureds shall not be penalised in any allocation because they have chosen to be jointly represented or because the nature of any claim or incurred costs were such that it is, or was, not reasonably practicable to differentiate between insured and uninsured elements.
10. If an allocation has not been agreed within 28 days of being requested then a senior barrister or lawyer of comparable standing and experience shall be appointed to make an allocation in accordance with the criteria identified in clause 9 of this Section. The senior barrister or lawyer of comparable standing and experience shall be selected by agreement between Insurers and the Insured and shall not have had any involvement in the Claim. The fees of the senior barrister or lawyer of comparable standing and experience shall be shared equally by Insurers and the Insured.

## Cancellation

11. This Policy is provided by Insurers in consideration of payment of the Premium, or of a promise to pay the Premium, having been made on behalf of the Insured. If the Premium is not paid by the Premium Payment Date then Insurers shall be entitled to issue a demand for payment to the Nominated Company. If payment of the Premium is not received by Insurers within 30 days of the date of such demand then the Policy is cancelled.
12. The effect of cancellation is:
  - a) the Policy shall cease to be in effect;
  - b) any rights which have accrued to any Insured prior to cancellation shall be extinguished.

However, if any Claim or a circumstance likely to give rise to a Claim has been notified to this Policy prior to cancellation then, if any aspect of any notified actual or potential Claim may fall within the scope of clause 1A of Section A, then this Policy shall continue in effect solely in respect of that element of any notified actual or potential Claim and for the benefit only of Insured Persons potentially entitled to indemnity under clause 1A of Section A in respect of such. In this event, and notwithstanding that the Policy is otherwise cancelled, each every Company shall be jointly and severally liable to pay the Premium to Insurers.

#### Change in Risk

13. If a Company ceases to be a Subsidiary during the Period of Insurance then cover under this Policy:

- a) for that Company; and,
- b) for any Insured Person insofar as cover is provided for their conduct in any role with any Company within the scope of sub-clause (a);

shall continue, but only in respect of Wrongful Acts occurring prior to the date on which the Company ceased to be a Subsidiary.

14. If during the Period of Insurance there is a change of ownership or control of

- a) the majority of voting rights in; or
- b) the right to appoint or remove a majority of the board of directors of; or
- c) more than 50% of the issued share capital to any one person or entity or persons or entities acting in concert in;

the Nominated Company then this Policy shall continue, but only in respect of Wrongful Acts occurring prior to the date on which change of ownership or control took place.

#### Territory

15. The coverage provided under this Policy is in respect of Claims brought or maintained in any jurisdiction worldwide.

#### Choice of Law

16. The validity of this Policy shall be determined, and its terms shall be construed, in accordance with the laws of the Hong Kong Special Administrative Region.

#### Arbitration

17. All disputes and differences arising under or in connection with this Policy shall be referred to and finally resolved by arbitration under the UNCITRAL Arbitration Rules in force when the Notice of Arbitration is submitted, provided that:

- a) the Arbitration Tribunal shall consist of three arbitrators;
- b) the arbitrators shall be persons with not less than ten years' experience within the insurance industry or as lawyers or other service providers to the insurance industry;

- c) the appointing authority shall be the Hong Kong International Arbitration Centre;
- d) the place of arbitration shall be the Hong Kong Special Administrative Region;
- e) the arbitration proceedings shall be conducted in English.

Contracts (Rights of Third Parties) Ordinance (Cap 623)

18. Having regard to the provisions of the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of the Hong Kong Special Administrative Region), it is agreed for the avoidance of doubt:
- a) Nothing in this Policy is intended to confer upon any person a directly enforceable right against Insurers whether pursuant to the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of the Hong Kong Special Administrative Region) or otherwise
  - b) The parties subject to this Policy shall be entitled to rescind or vary or alter this Policy without the consent of any person who is not a party to this Policy.
  - c) In the event of proceedings by a third party against Insurers for the enforcement of a term of this Policy, Insurers shall have available to them by way of defence or set-off any matter which would have been available to them by way of defence or set-off if the proceedings had been brought by an Insured.