

Liberty International Underwriters

Directors & Officers Liability Insurance

Important Notice - Please note that this is a Claims Made policy. Accordingly, **Liberty** will only cover the **Insured** in respect of **Claims** which are first made against the **Insured** during the **Policy Period** and reported to **Liberty** during the **Policy Period**. The **Insured** should carefully read all of this **Policy**, including all definitions and, in particular, the exclusions, to ascertain the precise scope of cover afforded by this **Policy**. The **Insured** is advised to consult its insurance agent or broker to ensure a clear understanding of the **Insured's** rights and obligations under this **Policy**.



Liberty
International
Underwriters™
Member of Liberty Mutual Group

Policy Schedule

Policy Number HK-SPC-0X-XXXXXXXX

Parent Company >

Address of Parent >

Policy Period
From: <time> on <date> local standard time
To: <time> on <date> local standard time

Limit of Liability \$X,000,000

Sub-Limits of Liability
Extension 2.1 Inquiry Representation Costs \$ X,XXX,XXX
Extension 2.2 Pollution Defence Costs \$ X,XXX,XXX

The **Sub-Limits of Liability** to Extensions 2.1 and, 2.2 apply in respect of any one claim and in the aggregate. They form part of, and are not in addition to, the **Limit of Liability**.

Optional Extensions
3.1 Former Directors & Officers Included/Not Included
3.2 Company Securities Liability Included/Not Included

Excess
Insuring Clause 1.1 \$Nil
Insuring Clause 1.2 \$XXX,XXX
Optional Extension 3.2 \$XXX,XXX

Coinsurance Percentage Optional Extension 3.2 X%

Policy Wording LIU HK D&O V8 Policy Wording (08-06)

Endorsements

Continuity Date XX.XX.XXXX

New Subsidiary Asset Size \$XXX,XXX,XXX

This policy is valid only if the schedule is signed and dated below by an Authorised Representative of **Liberty**.

Issued <Day> <Month> <Year> in <LIU Office>

**Authorised Representative
of Liberty**

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In consideration of payment of the **Premium** by the **Insured** and subject to all the terms, conditions and exclusions, including all definitions, of this **Policy**, **Liberty** agrees as follows:

1. Insuring Clauses

1.1 Directors & Officers Liability

Liberty will pay on behalf of any **Insured Person** the **Loss** which the **Insured Person** is legally liable to pay as a result of a **Claim** alleging a **Wrongful Act** unless the **Insured Person** is entitled or able to be indemnified by the **Company** for such **Loss**.

1.2 Company Reimbursement

If the **Company** is legally required or permitted to indemnify the **Insured Person** for the **Loss** referred to in Insuring Clause 1.1, then **Liberty** will pay on behalf of the **Company** the amount of that indemnity.

1.3 Defence Costs

Liberty will also pay for **Defence Costs** in respect of a **Claim** covered under Insuring Clause 1.1 or 1.2 or under any applicable extension.

Liberty will pay for these **Defence Costs** as and when they are incurred prior to the final resolution of the **Claim**.

However, an **Insured** shall repay to **Liberty** all payments of **Defence Costs** incurred on that **Insured's** behalf if and to the extent it is established that such **Defence Costs** are not insured under this **Policy**.

Defence Costs are subject to the applicable **Excess** and shall form part of the **Limit of Liability** specified in the **Schedule**.

2. Extensions

Subject to the applicable **Excess** and all the terms, conditions and exclusions, including all definitions, of this **Policy**, **Liberty** further agrees to extend cover in accordance with the following extensions. The **Excess** which is applicable will depend on whether the **Company** is legally required or permitted to indemnify the **Insured Person**. If it is, the **Excess** is the one applicable to Insuring Clause 1.2. If it is not, the **Excess** is the one applicable to Insuring Clause 1.1.

2.1 Inquiry Representation Costs

Liberty will pay on behalf of the **Insured** the costs and expenses incurred by an **Insured Person** (but excluding his or her salaries, wages, travel or accommodation expenses) in preparing for and attending an **Inquiry**, as and when they are incurred, provided that:

- (a) such costs and expenses were incurred with the prior written consent of **Liberty** which consent shall not be unreasonably withheld; and

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- (b) the notice requiring the **Insured Person** to attend the **Inquiry** is first served upon the **Insured Person** and reported to **Liberty** during the **Policy Period**.

Liberty agrees to pay such **Inquiry** representation costs and expenses whether or not there is an allegation of a **Wrongful Act** against the **Insured Person**. However, the **Insured** shall repay to **Liberty** all payments of **Inquiry** representation costs and expenses incurred on that **Insured's** behalf if and to the extent it is established that such **Inquiry** representation costs and expenses are not insured under this **Policy**.

Exclusion 4.6 in respect of "Pollution" does not apply to this extension.

The maximum amount payable by **Liberty** under this extension is the **Sub-Limit of Liability** specified in the **Schedule**.

2.2 Pollution Defence Costs

Notwithstanding Exclusion 4.6 in respect of "Pollution", **Liberty** will pay on behalf of the **Insured** the **Defence Costs** which an **Insured Person** incurs in defending a **Claim** in connection with the actual or alleged discharge, dispersal, release or escape of any **Pollutant**.

The maximum amount payable by **Liberty** under this extension is the **Sub-Limit of Liability** specified in the **Schedule**.

2.3 Shareholder Pollution Claims

Notwithstanding Exclusion 4.6 in respect of "Pollution", **Liberty** will pay on behalf of the **Insured** the **Loss** which an **Insured Person** is legally liable to pay as a result of a **Claim** made, either directly or derivatively, by any shareholder of the **Company** alleging loss to the **Company** or its shareholders as a result of any actual or alleged discharge, dispersal, release or escape of any **Pollutant**.

This extension shall not apply if:

- (a) on or before the **Continuity Date** specified in the **Schedule**, the **Company**, an **Insured Person** or any **Employee** with managerial responsibilities over environmental affairs, control or compliance of the **Company**, knew or could reasonably have suspected that there existed any situation, circumstance or **Wrongful Act** that might give rise to a **Claim**; or
- (b) the **Claim** is brought in the jurisdiction of the United States of America or any territory under its jurisdiction.

2.4 Spouses, Estates & Legal Representatives

Liberty will cover:

- (a) in the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** brought against his or her estate, heirs, executors, administrators or legal representatives; or
- (b) any **Claim** brought against the lawful spouse of an **Insured Person**,

for a **Wrongful Act** by the **Insured Person** as if the **Claim** had been brought against that **Insured Person**.

No cover is provided under this extension for any conduct or wrongful act committed or allegedly committed by such estate, heirs, executors, administrators, legal representatives or lawful spouse.

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2.5 New Subsidiaries

The definition of **Subsidiary** in Definition 7.26 is extended to include any company which becomes a **Subsidiary** during the **Policy Period** provided that:

- (a) the total gross assets of the new **Subsidiary** do not exceed the **New Subsidiary Asset Size** specified in the **Schedule** and the new **Subsidiary** does not have any **Securities** listed or traded in the United States of America or Canada; or
- (b) if the total gross assets of the new **Subsidiary** exceed the **New Subsidiary Asset Size** or the new **Subsidiary** has any **Securities** listed or traded in the United States of America or Canada, the **Parent Company** provides **Liberty** with full details of the new **Subsidiary** and agrees to any additional premium and conditions **Liberty** may impose within 60 days of the new **Subsidiary** being acquired or created (failing the provision of which, the extension of coverage under this clause shall automatically terminate on the expiration of the said 60 day period).

2.6 Outside Directorships

The definition of **Insured Person** in Definition 7.10 is extended to include any **Insured Person** acting in the capacity of a director or officer of an **Outside Entity** at the specific written request or with the written approval of the **Company**. **Liberty** will pay on behalf of the **Insured** the **Loss** which an **Insured Person** is legally liable to pay as a result of a **Claim** alleging a **Wrongful Act** in his or her capacity as a director or officer of an **Outside Entity**.

The cover provided under this extension:

- (a) shall be specifically in excess of any indemnity or insurance available from or provided by the **Outside Entity** including any policies of the **Outside Entity** specified in the **Proposal** and any renewal or replacement of those policies;
- (b) shall not apply to any **Claim** brought by the **Outside Entity** unless the **Claim** is a derivative action brought in the name of the **Outside Entity** by any legally authorised individual or entity including any regulatory authority where the individual or entity acts without any assistance, intervention, solicitation or active participation by the **Outside Entity** or by any **Insured**;
- (c) shall not apply to any **Claim** brought by any other director, officer or employee of the **Outside Entity** unless the **Claim** alleges an **Employment Practice Breach**; and
- (d) shall not extend to the **Outside Entity** in which the outside directorship is held or to any other director, officer or employee of such **Outside Entity**.

2.7 Extended Policy Period

If a **Change in Control** occurs during the **Policy Period** then the **Insured** may request an extended policy period of up to 84 months commencing from the end of the **Policy Period** during which time the **Insured** may notify any **Claim** to **Liberty** provided it results from a **Wrongful Act** committed or allegedly committed prior to the effective date of the **Change in Control**. The **Insured** must request this extended policy period before the **Policy Period** expires. **Liberty** may, but is not obliged to, offer this extended policy period on such terms and conditions and for such additional premium as **Liberty** may reasonably impose.

An extended policy period granted under this extension shall be non-cancellable by the **Insured** and any additional premium paid shall be non-refundable.

This extension is subject to the **Limit of Liability** and does not apply if this **Policy** is cancelled or avoided by **Liberty**.

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2.8 Continuous Cover

Notwithstanding Exclusion 4.5(b) in respect of "Prior Matters", if an **Insured** was aware of any facts that might give rise to a **Claim**, prior to the **Policy Period** and had not notified **Liberty** of such facts prior to the commencement of the **Policy Period**, **Liberty** will indemnify the **Insured** in respect of a **Claim** arising from such prior known facts, provided that:

- (a) the **Insured** first became aware of such facts after the **Continuity Date** specified in the **Schedule**; and
- (b) the failure to notify such facts was not a result of any fraudulent misrepresentation or fraudulent non-disclosure by the **Insured**; but
- (c) the limit of liability, sub-limits of liability and excesses of the policy in force at the time when the **Insured** first became aware of such prior known facts shall apply; and
- (d) **Liberty** will reduce its liability to the extent of any prejudice suffered as a result of the **Insured's** failure to notify such facts giving rise to a **Claim**, prior to the **Policy Period**.

3. Optional Extensions

The following extensions are subject to all the terms, conditions and exclusions, including all definitions, of this **Policy** and shall apply only if they are specifically included in the **Schedule**.

3.1 Former Directors & Officers

- (a) If a **Change in Control** occurs during the **Policy Period** and the **Parent Company** does not purchase the extended policy period offered under Extension 2.8 in respect of "Extended Policy Period" or purchase the same or similar cover from another insurer or insurers, then **Liberty** will provide an extended policy period of 84 months following the effective date of the **Change in Control** but only for the benefit of those **Insured Persons** who resigned from the **Company** at least 6 months prior to the effective date of the **Change in Control**.
- (b) If a **Change in Control** does not occur during the **Policy Period** and at the end of the **Policy Period** the **Parent Company** does not renew this **Policy** with **Liberty** or replace this **Policy** with one or more Directors and Officers Liability policies issued by another insurer or insurers, then **Liberty** agrees to provide an extended policy period of 84 months following the end of the **Policy Period** but only for the benefit of those **Insured Persons** who resigned from the **Company** at least 6 months prior to the end of the **Policy Period**.

The **Insured Persons** referred to in 3.1(a) and (b) will be entitled to notify **Liberty** of any **Claim** during such extended policy period provided the **Claim** results from a **Wrongful Act** committed or allegedly committed whilst they were a **Director, Officer** or **Employee** of the **Company**.

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3.2 Company Securities Liability

Liberty will pay on behalf of the **Company** the **Loss** and associated **Defence Costs** which the **Company** is legally liable to pay as a result of a **Securities Claim** alleging a **Wrongful Act**.

In respect of the cover provided under this extension, the **Company** will bear uninsured the **Coinsurance Percentage** of any **Loss** and associated **Defence Costs** which exceeds the **Excess**. **Liberty** will pay on behalf of the **Company** the remaining percentage of such **Loss** and associated **Defence Costs** up to the **Limit of Liability**.

The **Coinsurance Percentage** and **Excess** which apply to this extension are specified in the **Schedule**.

4. Exclusions

Liberty will not pay for any **Loss, Defence Costs** or any other amounts insured under this **Policy** for, arising out of, or in any way connected with:

4.1 Fraud & Dishonesty

- (a) any fraudulent, criminal, wilfully reckless, malicious or dishonest act, error or omission including any intentional violation or breach of any law or regulation committed or omitted by any **Insured**; or
- (b) any improper use of position or information by an **Insured Person** for the purpose of gaining any profit, benefit or advantage to which an **Insured** is not legally entitled or to cause detriment to the **Company**.

These exclusions will only apply where it is established by an admission of such **Insured** or by a judgment, award, finding or other adjudication of a court, tribunal, commission or arbitrator that such conduct did in fact occur.

4.2 Insured versus Insured

any **Claim** brought by or on behalf of the **Company** or any **Insured Person** other than a **Claim**:

- (a) brought by or on behalf of any **Insured Person** for contribution or indemnity, if the **Claim** results directly from another **Claim** which would be covered under this **Policy** if made directly against the **Insured Person**;
- (b) brought in the name of the **Company** by any legally authorised individual or entity (other than the **Company** itself) provided that they are acting without the assistance, intervention, solicitation or active participation of the **Insured** against whom the **Claim** is brought;
- (c) alleging an **Employment Practice Breach**.

4.3 Professional Services

the provision of professional services or any actual or alleged breach of duty owed in a professional capacity. This exclusion does not apply to services provided by an **Insured Person** in his or her capacity as a **Director** or **Officer**.

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4.4 ERISA

any actual or alleged violation or breach of any responsibilities, obligations or duties imposed under the Employee Retirement Income Security Act 1974 (USA) or any amendment thereto.

4.5 Prior Matters

- (a) any **Claim** made, threatened or intimated against an **Insured** prior to the commencement of the **Policy Period**;
- (b) any facts that an **Insured** was aware of before the commencement of the **Policy Period** that might give rise to a **Claim**;
- (c) any facts that might give rise to a **Claim** which have been reported, or which can be or could have been reported, to an insurer under any insurance policy entered into before the commencement of the **Policy Period**;
- (d) any facts that might give rise to a **Claim** which have been disclosed to any insurer in any proposal for insurance made before the commencement of the **Policy Period**; or
- (e) any facts that might give rise to a **Claim** which have been disclosed to **Liberty** in the **Proposal**.

4.6 Pollution

the actual or alleged presence, discharge, dispersal, release or escape of any **Pollutant** or the cost of removing, nullifying or cleaning up any **Pollutant**.

4.7 War

war or military action which includes, without limitation, the following:

- (a) war, including undeclared or civil war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;
- (b) warlike action by military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (c) insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against the same.

4.8 Radiation & Nuclear

- (a) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof; or
- (b) any weapon of war employing atomic or nuclear fission or fusion or other like reaction or radioactive force or matter.

In addition, **Liberty** will not pay for any **Loss, Defence Costs** or any other amounts insured under this **Policy** for:

4.9 Personal Injury

death, bodily or mental injury, sickness or disease, emotional distress or mental anguish of any person. This exclusion shall not apply to **Claims** alleging emotional distress or mental anguish resulting from an **Employment Practice Breach**.

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4.10 Property Damage

loss of, damage to or destruction of any real or personal property or any consequential losses flowing from such loss, damage or destruction.

4.11 Penalties & Punitive Damages

- (a) any fines or penalties; or
- (b) any exemplary, aggravated, multiple or punitive damages.

5. Claims Conditions

5.1 Notification of Claims

It is a condition precedent to cover under this **Policy** that as soon as the **Insured** becomes aware of a **Claim** or **Inquiry** during the **Policy Period**, the **Insured** must immediately notify **Liberty** in writing of the **Claim** or **Inquiry**.

Where the **Insured** becomes aware of facts that might give rise to a **Claim** against the **Insured** or **Inquiry** that might involve the **Insured** during the **Policy Period** then the **Insured** may elect to report those facts in writing to **Liberty** as soon as the **Insured** becomes aware of those facts but before the end of the **Policy Period** in which case any **Claim** or **Inquiry** that subsequently arises out of those reported facts shall be deemed to have been reported to **Liberty** at the time those facts were reported to **Liberty**.

All notifications must be sent to:

The Claims Department
Liberty International Underwriters
Suite 2401-2404
24/F Cityplaza One
1111 King's Road
Tai Koo Shing
Hong Kong
Tel: +852-3655 2600
Fax: +852-3655 2699

If the **Insured** reports a **Claim** or **Inquiry**, or facts that might give rise to a **Claim** or **Inquiry**, to **Liberty** then the **Insured** must give **Liberty** such information and co-operation as it may reasonably require including but not limited to:

- (a) a description of the **Claim** or **Inquiry**;
- (b) the nature of the alleged act, error or omission;
- (c) the nature of the alleged or potential loss;
- (d) the names of actual or potential claimants; and
- (e) the manner in which the **Insured** first became aware of the **Claim** or **Inquiry**.

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5.2 Defence & Settlement

In the event of a **Claim**, the **Insured** has the right to appoint lawyers to conduct the defence and settlement of the **Claim** or to have **Liberty** do so. The **Insured** may only appoint lawyers approved by **Liberty**, that approval to be obtained in writing prior to their appointment.

If the **Insured** appoints lawyers, **Liberty** has the right to associate effectively in the defence and settlement of the **Claim**.

It is a condition precedent to cover under this **Policy** that the **Insured** must:

- (a) take all reasonable steps to mitigate loss;
- (b) not agree to any waiver or limitation of or delay as to their legal rights of recovery against any other party;
- (c) not admit liability, negotiate any settlement, enter into any settlement agreement or incur any **Defence Costs** without the prior written consent of **Liberty** which consent shall not be unreasonably withheld; and
- (d) give **Liberty** all the information and assistance that **Liberty** requires for the purpose of investigating:
 - (i) the cause and consequences of any **Claim**;
 - (ii) the **Insured's** liability to any party in respect of any **Claim**; and
 - (iii) whether **Liberty** has any liability to the **Insured** under this **Policy** and, if so, the extent of its liability;and, where applicable, conducting the defence of any **Claim**.

5.3 Requirement to Contest a Claim

The **Insured** shall not be required to contest any **Claim** unless **Senior Counsel** advises that such **Claim** should be contested. In formulating such advice, **Senior Counsel** shall take into consideration the economics of the matter (including potential **Loss** and **Defence Costs**) and the prospects of the **Insured** successfully defending the **Claim**.

In the event that **Senior Counsel** recommends settlement in respect of any **Claim** and the **Insured** does not agree that such **Claim** should be settled, the **Insured** may elect to contest such **Claim** provided always that the liability of **Liberty** shall not exceed the amount for which the **Claim** could have been settled plus **Defence Costs** incurred with **Liberty's** prior written consent up to the date of such election.

5.4 Allocation Clause

In the event an **Insured** is a party to a demand, proceeding, inquiry, investigation or examination which is covered only in part by this **Policy**, the **Insured** and **Liberty** will use their best efforts to agree upon a fair and proper allocation of **Loss**, **Defence Costs** or any other amounts insured under this **Policy** which relates solely to what is covered under this **Policy**.

In the event that an agreement cannot be reached, **Senior Counsel** shall determine, as an independent expert but not as an arbitrator, a fair and proper allocation. Until the **Senior Counsel** has made his or her determination, **Liberty** may, in its absolute discretion, pay such **Loss**, **Defence Costs** or any other amount insured under this **Policy** as it considers appropriate.

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5.5 Order of Payments

Liberty will pay for **Losses, Defence Costs** and other amounts insured under this **Policy** in the order that they are presented to **Liberty**.

If it becomes apparent to **Liberty** that the **Limit of Liability** will not be sufficient to cover all such **Losses, Defence Costs** and other amounts, then **Liberty** will first pay for **Losses, Defence Costs** and other amounts insured under this **Policy** for which any **Insured Person** is legally liable. If after paying all such amounts there remains an unexhausted portion of the **Limit of Liability**, then **Liberty** will pay such **Losses, Defence Costs** and other amounts for which the **Company** is entitled to indemnity under this **Policy**.

5.6 Subrogation

If **Liberty** grants indemnity under this **Policy** in respect of any **Claim**, then **Liberty** shall be subrogated to all the **Insured's** rights of recovery in respect of such **Claim** whether or not payment has in fact been made and whether or not the **Insured** has been compensated in full for their loss. Each **Insured** must, at its own cost, provide all reasonable assistance to **Liberty** (including, but not limited to, giving information, signing documents and giving evidence) to help enforce those rights.

The **Insured** must not do anything that may prejudice **Liberty's** position or its potential or actual rights of recovery against any party. Any amounts recovered by **Liberty** in excess of **Liberty's** total payment to the **Insured** (including **Defence Costs**) shall be restored to the **Insured** less the cost to **Liberty** of such recovery.

5.7 Other Insurance

If **Loss, Defence Costs** or any other amounts insured under this **Policy** are also potentially insured under any other insurance policy or policies, then the **Insured** must advise **Liberty** within a reasonable time of making a claim under this **Policy** and provide **Liberty** with details of the other insurance.

5.8 Excess Insurance

If at the time of making any claim under this **Policy** there is, or would be but for the existence of this **Policy**, any other policy of indemnity or insurance in favour of or effected by or on behalf of the **Insured** applicable to such claim, **Liberty** shall not be liable under this **Policy** to indemnify the **Insured** for such claim except insofar as it concerns any excess beyond the amount which would be payable under such policy of indemnity or insurance had this **Policy** not been effected.

6. General Conditions

6.1 Premium Payment Warranty

It is a condition precedent to cover under this **Policy** that any **Premium** due must be paid and actually received in full by **Liberty** (or the registered broker or registered agent through whom this **Policy** was effected) before the expiry of the **Premium Warranty Period**.

In the event that the **Premium** is not paid in full to **Liberty** (or the registered broker or registered agent through whom this **Policy** was effected) before the expiry of the **Premium Warranty Period**, then the cover under this **Policy** shall be deemed to have terminated from the expiry of the **Premium Warranty Period** and **Liberty** shall be discharged from all liability under this **Policy** but without any prejudice to any liability incurred before that date and **Liberty** will be entitled to charge or retain its customary short period proportion of the **Premium**. **Liberty's** short period rates are available upon request.

6.2 Limit of Liability

The maximum amount payable by **Liberty** under this **Policy** for all **Loss, Defence Costs** and other amounts insured under this **Policy** is the **Limit of Liability** specified in the **Schedule**. The **Limit of Liability** is inclusive of any **Defence Costs, Inquiry** representation costs, **Sub-Limits of Liability** and other amounts insured under this **Policy** but does not include costs incurred by **Liberty** in determining whether the **Policy** provides insurance to the **Insured**.

6.3 Excess

Liberty will only pay in respect of each **Loss** (or alleged **Loss**) and associated **Defence Costs** and each claim under the **Policy** for other amounts insured, the amount which is above the applicable **Excess** specified in the **Schedule**. The **Excess** shall be the first amount borne by the **Insured** and shall remain uninsured.

6.4 Assignment

This **Policy** and any rights under or in respect of it cannot be assigned without **Liberty's** prior written consent.

6.5 Valuation & Foreign Currency

All amounts referred to in this **Policy** are expressed and payable in the currency specified in the **Schedule**. If judgment is rendered, settlement is negotiated or any element of **Loss, Defence Costs** or any other amount insured under this **Policy** is stated in a currency other than the currency specified in the **Schedule**, then payment under this **Policy** shall be made in that currency at the rate of exchange for the purchase of the currency specified in the **Schedule** published in the South China Morning Post on the date, or if not published on that date then immediately thereafter, the final judgment is reached or the settlement is agreed upon.

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6.6 Notices

Any notice given to **Liberty** under this **Policy** must be in writing and sent to the address specified in Claims Condition 5.1. A notice served by post, if not received earlier, is taken to have been received on the next day after posting. A notice served by fax is taken to be served only if a complete and correct transmission report is received and it is taken to be received by the addressee (whether it is in fact received or not) on the day of transmission.

6.7 Preservation of Right to Indemnity

If the **Company** is legally required or permitted to indemnify any **Insured Person** for **Loss, Defence Costs** or other amounts insured under this **Policy** but fails or refuses to do so, then **Liberty** will pay for the **Loss, Defence Costs** or other amounts insured under this **Policy** on behalf of the **Insured Person**. In such event the **Company** will be required to pay to **Liberty** the **Excess** specified in the **Schedule** for Insuring Clause 1.2.

6.8 Severability of Proposal

Failure by any **Insured** to comply with their duty of disclosure or misrepresentation by any **Insured** to **Liberty** shall not prejudice the right of any other **Insured** to cover under this **Policy**. Cover is only provided to an **Insured** who is innocent of and has no prior knowledge of such failure or misrepresentation.

6.9 Non-Imputation

For the purposes of determining the availability of cover provided under this **Policy**, the conduct of one **Insured** shall not be imputed to any other **Insured**, provided that cover is only provided to an **Insured** who is innocent of and has no prior knowledge of such conduct.

6.10 Knowledge of the Company

The **Company** will be deemed to have knowledge of any particular fact or conduct if any past, present or future chairman of the board, chief executive officer, chief operating officer, chief financial officer or chief legal officer (or any person performing the duties of such officers irrespective of their title) of the **Company** has or ought to have knowledge of those facts or conduct.

6.11 Change in Control

If a **Change in Control** occurs during the **Policy Period**, this **Policy** will continue to provide cover but only in respect of **Wrongful Acts** committed or allegedly committed prior to the effective date of the **Change in Control**.

6.12 Governing Law & Jurisdiction

This **Policy** is governed by the law in force in Hong Kong. All matters arising from or relating to the construction or operation of the provisions of this **Policy** shall be submitted to the exclusive jurisdiction of the courts of Hong Kong.

6.13 Policy Interpretation & Construction

The headings in this **Policy** are for descriptive purposes only and do not form part of this **Policy** for the purpose of its construction or operation. Words used in the singular shall include the plural and vice versa. For the meaning of any words in bold refer to the **Schedule** or to Section 7 - Definitions.

7. Definitions

In this **Policy**:

7.1 Change in Control means any one of the following events:

- (a) the **Parent Company** specified in the **Schedule** consolidates or merges with, or sells all or substantially all of its assets to a person, entity or group of persons or entities acting in concert;
- (b) the **Parent Company** becomes a subsidiary of another entity or becomes controlled by another entity; or
- (c) an administrator, receiver or liquidator is appointed to the **Parent Company**.

7.2 Claim means any:

- (a) written demand for damages or other legal remedy;
- (b) civil proceeding including third party proceeding or counterclaim;
- (c) criminal proceeding; or
- (d) administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document,

first made or brought against an **Insured Person** during the **Policy Period** (or the extended policy period under Extension 2.7 in respect of "Extended Policy Period" or Optional Extension 3.1 in respect of "Former Directors & Officers", if applicable) and reported to **Liberty** during the **Policy Period** (or the extended policy period under Extension 2.7 in respect of "Extended Policy Period" or Optional Extension 3.1 in respect of "Former Directors & Officers", if applicable) for a **Wrongful Act** which may result in **Loss, Defence Costs** or any other amounts insured under this **Policy**.

Where Optional Extension 3.2 in respect of "Company Securities Liability" applies, reference to a **Claim** also includes a **Securities Claim**.

7.3 Company means the **Parent Company** specified in the **Schedule** and its **Subsidiaries**.

7.4 Defence Costs means:

- (a) costs and expenses incurred by **Liberty**, or by an **Insured** but only with **Liberty's** prior written consent, solely for the benefit of the **Insured** in the investigation, settlement, defence or appeal of any **Claim** covered under this **Policy**; and
- (b) the costs of obtaining **Senior Counsel's** advice or determination under this **Policy**.

Defence Costs does not include the **Insured's** salaries, wages, travel or accommodation expenses.

7.5 Director means a person who:

- (a) is appointed to the position of director of the **Company**;
- (b) is appointed to the position of alternate director of the **Company** and is acting in that capacity; or
- (c) is not validly appointed as a director of the **Company** but acts in the position of a director of the **Company**.

Directors & Officers Liability Insurance

7.6 Employee means a person who is or was employed by the **Company** including any full time, part time or casual employee. **Employee** does not include **Directors**, consultants, independent contractors, secondees to or agents of the **Company** or their respective employees (including the employees of labour-hire companies).

7.7 Employment Practice Breach means any:

- (a) unfair, harsh, unreasonable, unjust or unlawful dismissal or termination of employment for which a statutory remedy exists or allegedly exists;
- (b) harassment (including sexual harassment) of any kind in the workplace including the alleged creation or permission of an harassing workplace environment;
- (c) discrimination on any unlawful basis;
- (d) victimisation on any unlawful basis;
- (e) misleading or deceptive advertising or representation in respect of employment;
- (f) unfair failure to employ or promote, unfair deprivation of a career opportunity, unfair discipline, unfair failure to grant tenure or negligent performance evaluation;
- (g) unlawful interference with privacy;
- (h) denial of natural justice or denial of procedural fairness;
- (i) defamation; or
- (j) wrongful infliction of emotional distress, anguish or humiliation,

committed or allegedly committed against an **Employee** or prospective employee in respect of that person's past, present or prospective employment with the **Company**.

7.8 Inquiry means any administrative or regulatory proceeding, official investigation, examination or inquiry into the affairs of the **Company** at or in which:

- (a) an **Insured Person** is legally required to attend; or
- (b) an **Insured Person** has been specifically designated in writing as a person under investigation in respect of their conduct as a **Director** or **Officer**.

7.9 Insured means any **Insured Person** and the **Company**.

7.10 Insured Person means any past, present or future **Director**, **Officer** or **Employee** of the **Company**.

In the case of a pension, retirement or provident benefit fund established for the benefit of **Employees**, **Insured Person** also includes a natural person trustee or a director or officer of a corporate trustee or a policy committee member.

Insured Person does not include any independent contractors, professional consultants, service providers, auditors, receivers, managers, liquidators, administrators, trustees, mortgagees in possession or the like, or any employees of such persons or entities, who are not employed by the **Company**.

Directors & Officers Liability Insurance

7.11 Liberty means Liberty Mutual Insurance Europe Limited, a company incorporated in the United Kingdom trading as Liberty International Underwriters.

7.12 Loss means:

- (a) damages or claimant's costs or both payable by the **Insured** pursuant to an award or judgment entered against the **Insured**;
- (b) settlements negotiated by **Liberty** and consented to by the **Insured**; or
- (c) settlements negotiated by the **Insured** but only with the prior written consent of **Liberty**.

Loss does not include amounts uninsurable at law, salaries, wages, travel or accommodation expenses of an **Insured** incurred in assessing, investigating, dealing with or assisting others to deal with the **Claim**.

All **Loss** attributable to one source or originating cause will be deemed one **Loss**.

7.13 Not-for-Profit Entity means any entity with a written constitution prohibiting the distribution of profits or assets amongst its members during the lifetime of the entity or upon its winding up.

7.14 Officer means an **Employee** (including any **Company** secretary) who:

- (a) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the **Company**; or
- (b) is concerned in, or takes part in, the management of the **Company**.

7.15 Outside Entity means:

- (a) any **Not-for-Profit Entity**; and
- (b) any other entity specifically listed as such by **Liberty** in an endorsement to this **Policy**.

7.16 Policy means this policy wording, any endorsements to it, the **Schedule** and the **Proposal**.

7.17 Policy Period means the period of time specified in the **Schedule** unless the **Policy** is cancelled in which event the **Policy Period** will end on the effective date of the cancellation.

7.18 Pollutant means any solid, liquid, gaseous, biological or thermal irritant or contaminant including, but not limited to, smoke, vapour, soot, fumes, noise, acids, alkalis, compounds, chemicals, asbestos, mould or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Directors & Officers Liability Insurance

7.19 Premium means the amount payable by the **Insured** for this **Policy** including any applicable charges advised by **Liberty**.

7.20 Premium Warranty Period means:

- (a) where the **Policy Period** is 60 days or more, 60 days from the commencement of the **Policy Period**;
- (b) where **Liberty** has allowed payment of the **Premium** by instalments, 60 days from the commencement of the **Policy Period**; or
- (c) where the **Policy Period** is less than 60 days, the **Policy Period**.

7.21 Proposal means the proposal form and any other information submitted by the **Insured** in applying for this insurance which shall be incorporated in and form the basis of this **Policy**.

7.22 Schedule means the schedule attached to this **Policy** and signed by an authorised representative of **Liberty**.

7.23 Securities means any security representing an equity interest in or debt of the **Company**.

7.24 Securities Claim means any:

- (a) written demand for damages or other legal remedy or civil proceeding including third party proceeding or counterclaim brought either directly or derivatively by any holder of **Securities** (other than a **Director** or **Officer**) in the holder's capacity as an investor in the **Company**; or
- (b) administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document,

first made or brought against the **Company** during the **Policy Period** (or the extended policy period under Extension 2.7 in respect of "Extended Policy Period", if applicable) and reported to **Liberty** during the **Policy Period** (or the extended policy period under Extension 2.7 in respect of "Extended Policy Period", if applicable) for a **Wrongful Act** which may result in **Loss** or **Defence Costs** insured under this **Policy**.

7.25 Senior Counsel shall mean a Senior Counsel to be mutually agreed upon by **Liberty** and the **Insured** or, in the absence of agreement, to be appointed by the current President of the Law Society of Hong Kong.

Directors & Officers Liability Insurance

7.26 Subsidiary means any company which, according to the laws of Hong Kong:

- (a) was or is a subsidiary of the **Parent Company** prior to or at the commencement of the **Policy Period**; or
- (b) becomes a subsidiary during the **Policy Period** but only in accordance with Extension 2.5 in respect of "New Subsidiaries".

Cover in respect of any such company applies only in respect of **Wrongful Acts** committed or allegedly committed whilst the company was or is a **Subsidiary**.

7.27 Wrongful Act means any:

- (a) act, error or omission including breach of duty, breach of trust, neglect, misstatement, misleading statement, misrepresentation or breach of warranty of authority committed or allegedly committed by an **Insured Person** in his or her capacity as a **Director** or **Officer**; or
- (b) matter claimed against an **Insured Person** solely because of his or her status as a **Director** or **Officer**.

Wrongful Act includes any **Employment Practice Breach** but it does not include any other act, error or omission committed or allegedly committed against an Employee.

For the purposes of any **Securities Claim** against the **Company**, **Wrongful Act** means any act, error or omission including breach of duty, breach of trust, neglect, misstatement, misleading statement, misrepresentation or breach of warranty of authority committed or allegedly committed by the **Company** in connection with the purchase or sale of, or the offer to purchase or sell, **Securities** whether such purchase, sale or offer involves a transaction with the **Company** or occurs in the open market.