

**ภาคผนวก ข**

**MACAO SPECIAL ADMINISTRATIVE REGION**

**Administrative Regulation N° 40/2003**

**MACAO SPECIAL ADMINISTRATIVE REGION****Administrative Regulation N° 40/2003****Uniform Policy for Compulsory Professional Liability Insurance for Lawyers**

After hearing the opinion of the Executive Council, the Chief Executive hereby determines, pursuant to the provision of Article 50 paragraph 5) of the Basic Law of the Macao Special Administrative Region, that the following shall be enforced as administrative regulation:

**Article 1****Uniform policy**

The general terms and conditions and the policy schedule of the compulsory professional liability insurance for lawyers are those contained in the Uniform Policy annexed to the present administrative regulation, which forms an integral part thereof.

**Article 2****Effective date**

The present administrative regulation comes into force on 1st January 2004.

Approved on 4th December 2003.

To be published.

The Chief Executive, Ho Hau Wah.

**TERMS OF THE POLICY**

(Insurance company) , hereinafter called the Company, and the Policyholder as mentioned in the Schedule, hereby enter into an insurance contract which shall be governed by the terms and conditions of the present Policy, according to the declarations made in the Proposal which shall serve as the basis of this Policy and which shall form an integral part thereof.

## Article 1

### Definitions

In this Policy, unless the context otherwise requires:

- 1) **Company**                Shall mean the entity, legally authorized to transact professional liability insurance, which underwrites this contract;
- 2) **Policyholder**        Shall mean the person or entity entering into a contract with the Company and who is responsible for the payment of the premiums;
- 3) **Insured**                Shall mean the person in whose interest the contract is entered into, in his/her capacity as a lawyer legally qualified to practice the profession;
- 4) **Third party**            Shall mean the lawyer's client or other persons who, as a result of the claim covered by this contract, suffers a patrimonial loss or damage likely to be repaired or indemnified under the terms of the civil law and of this Policy;
- 5) **Beneficiary**            The person or entity who is entitled to receive the indemnity under the terms of the civil law and of this Policy;
- 6) **Claim**                    Shall mean the event or series of events resulting from a single cause likely to activate the guarantees of this contract;
- 7) **Accident**                Shall mean the event occurring as a result of a sudden and/or violent external force resulting in bodily injuries to third parties on the office premises of the Insured;
- 8) **Patrimonial loss or damage** Shall mean the loss or damage whose monetary value can be ascertained and which needs to be repaired or compensated;
- 9) **Excess**                    Shall mean the amount established in the contract, which, in the case of a claim, shall be the responsibility of the Insured; however, in no case shall such amount be applicable to third parties.

## **Article 2**

### **Object of the contract**

The object of the present contract is to provide guarantee for professional liability arising from the activity of the Insured, in the capacity of a lawyer, under the terms of the applicable specific legislation.

## **Article 3**

### **Contract guarantees**

1. The present contract guarantees the indemnities that the Insured may be legally required to pay for patrimonial loss or damage caused to third parties, resulting exclusively from acts, omissions or non-fulfilment of the obligations on the part of the Insured in the course of his/her professional activity as a lawyer.

2. The present contract equally covers the legal liability in respect of third parties for which the Insured may be held responsible for acts or omissions on the part of his non-lawyer staff and of the trainee lawyers, so too for accidents caused to third parties within the office premises of the Insured.

3. For the purposes of the preceding paragraph and under pain of exclusion of the respective cover of the present contract, the Insured shall communicate to the Company, by registered letter or by other means of written communication, the names of his non-lawyer staff and of the trainee lawyers to be so covered.

4. The Policy satisfies what is legally required in respect of the obligation to insure.

## **Article 4**

### **Territorial scope**

Unless otherwise expressly agreed, the present contract shall only be effective in relation to the events occurring in the Macao Special Administrative Region (MSAR) or relating directly to it.

## **Article 5**

### **Exclusions**

The present contract shall not cover the liability:

- 1) For loss or damage resulting from the lack of capacity or legitimacy to enter into a contract on the part of the persons who intervene in business dealings with the Insured, when such facts are fraudulently concealed from the Insured, and in the cases where it is impossible for the Insured to fulfil his/her legal obligation in terms of certifying the capacity and the legitimacy of the persons in whose business dealings they intervene;
- 2) Resulting from acts performed by the Insured with the agreement of the client, for the purpose of obtaining benefits or reductions of a fiscal nature;
- 3) For loss or damage resulting from inability to fulfil contractual obligations or from any other legal obligations due to “force majeure” not attributable to the Insured;
- 4) For the payment of taxes, penalties and fines of any nature;
- 5) Arising out of bodily injury, mental anguish, emotional distress, sickness, disease or death to any employee of the Insured, or damage to or destruction of any property of any employee of the Insured from any cause, including loss of use, arising out of accidents that can be characterized as occupational accidents or occupational diseases;
- 6) For loss or damage caused to partners, managers and legal representatives of the entity whose liability is covered;
- 7) For loss or damage caused to any persons whose liability is covered by this contract, as well as to the spouse, ascendants and descendants or to persons who cohabit with such persons or depend on such persons for their livelihood;
- 8) Relating to claims, based on the liability of the Insured, which result from private agreement or contract, where such claims exceed the legal liability of the Insured covered by this contract;
- 9) For loss or damage due to acts of war, civil war, invasion, hostilities, rebellion, insurrection, usurped military force or attempted usurped force, terrorism, sabotage and labour disturbances such as assaults, strikes, tumults and “lockouts”;

10) For loss or damage caused by accidents with vehicles or pleasure boats, which according to the laws in force should be subject to compulsory third party liability insurance;

11) Which arises out of any error, omission or negligence committed or alleged to have been committed prior to the Retroactive Date specified in the Policy Schedule;

12) Arising out of an alleged or actual infringement of copyright, trademark, registered design or patent;

13) Directly or indirectly based upon, attributable to or in consequence of any trading debt incurred by the Insured or any guarantee given by the Insured for a debt or any disputes involving the Insured's fees or charges or any principal amount and interest arising from the advancement of a loan or transaction in the nature of a loan or extension of credit made by or obtained from the Insured;

14) Arising out of or relating directly or indirectly from the insolvency or bankruptcy of the Insured;

15) Arising out of any legal liability of whatsoever nature directly or indirectly caused by or contributed to, by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

16) Arising out of any financial loss directly, indirectly or allegedly caused by, or in consequence of seepage, pollution of air, water or soil or contamination of any kind;

17) Relating to libel or slander;

18) In respect of losses directly or indirectly arising out of, or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.

## **Article 6**

### **Commencement of contract**

1. The present contract shall come into effect from zero hours of the day immediately following the day on which the Company accepts the proposal, except where, by mutual agreement of the parties involved, another date is agreed upon, which in no case can be earlier than the date of receipt of the proposal.

2. The proposal shall be considered as accepted on the fifteenth day from the date of its receipt by the Company, unless in the meantime the applicant is notified of its refusal or of its early approval, or of the need to collect essential information for a proper evaluation of the risk.

## **Article 7**

### **Duration of contract and cessation of guarantees**

1. The contract shall be for a fixed and determined period for up to one year and it shall cease to be effective at 24:00 hours of the last day.

2. The guarantee provided by this contract shall be limited to the consequences of the acts, omissions or non-compliance with the obligations, which give rise to the liability occurring during the effective period of the Policy and whose compensation may be claimed up to 3 years after the respective contract ceases to be effective.

3. The effectiveness of the present contract shall depend on the qualification of the Insured to practice as a lawyer, and shall cease automatically to be in effect on the date on which the Insured is no longer legally qualified to practice the said profession, in which case the return premium shall be based on a “pro rata temporis” method of calculation.

## **Article 8**

### **Reduction and termination of contract**

1. At any time, the Policyholder may reduce or terminate the present contract by means of a registered letter or by other means of written communication by giving a minimum notice of 30 days prior to the date on which the reduction or termination is to become effective.

2. The reduction shall not bring the sum insured below the minimum amount established by law.

3. In case of reduction or termination, the Policyholder shall be entitled to a refund of 50% of the premium corresponding to the remaining period of insurance. Where the termination is due to non-acceptance on the part of the Policyholder of the conditions imposed by the Company for aggravation of risk, the Policyholder shall be entitled to a refund of the total premium corresponding to the remaining period of insurance.

4. The reduction or termination shall come into effect at 24:00 hours of the appointed day.

5. Where any claim has occurred, the termination of the contract shall be subject to the provision of the preceding paragraphs, while the respective return premium shall not be higher than the part of the sum insured which exceeds the net indemnity paid.

6. In the case of alteration or termination of the insurance contract, the Company shall inform the Macao Association of Lawyers within a maximum period of 15 days following the effective date of such alteration or termination.

## **Article 9**

### **Nullity of contract**

1. This contract shall be considered null and void and, consequently, shall be ineffective in case of any claim, if the Policyholder or the Insured is proved to have made false declarations, so too for concealment of known facts and circumstances that would have influenced the existence or the conditions of the contract.

2. If the said false declarations or concealment had been made in bad faith, the Company shall be entitled to the corresponding premium, without prejudice to the nullity of the contract under the terms of the preceding paragraph.

3. Where there are several insured persons, the provisions of the preceding paragraphs shall only be applicable in relation to those who are guilty of false declarations or concealment, while in relation to the remaining insured persons the present contract shall be considered valid.

## **Article 10**

### **Aggravation of risk**

1. The Insured promises to inform the Company, by registered letter or by other means of written communication and within 8 days from the date he has knowledge of the facts, of all the changes of the risk that may aggravate the liability assumed by the Company.



2. It shall be considered as aggravating the risk all the circumstances that make it more probable for the occurrence of a fact or omission susceptible to give rise to the liability of the Insured or widen the extent of damages to be repaired by the latter, namely:

- 1) The number of non-lawyer assistants;
- 2) The absence from or inability to appear at the office address for a period of over 2 months;
- 3) The carrying on of professional activity in conjunction with other lawyers.

3. The failure to communicate, as referred to in the preceding paragraph 1, shall be considered a valid reason for the termination of the present contract under the terms of the current laws in force, except where the aggravation of the risk is due to the circumstance mentioned in the preceding paragraph 2 1), in which case shall be applicable only the procedures stipulated in paragraphs 5 to 9 of the present article, without prejudice to the provision of Article 975 paragraph 3 of the Commercial Code.

4. Unless otherwise agreed and provided the alteration of risk has been communicated in accordance with the terms of the preceding paragraph 1, the contract shall cover the aggravated risk from the date of its aggravation and up to the termination of the contract by either of the parties.

5. The Company shall have a period of 8 days, counted from the date of communication of the aggravation of risk, to accept or refuse the same.

6. In case of acceptance, the Company shall inform the Insured, within the period referred to in the preceding paragraph, of the new conditions to be contained in the endorsement to the contract.

7. In case of refusal, the Company shall notify the Insured, within the same period as referred to in paragraph 5, of the termination of the contract.

8. In the case mentioned in paragraph 6, the Insured shall have an equal period of 8 days, counted from the date of communication, to terminate the contract if he does not wish to accept the new conditions.

9. The alterations shall be considered as having been tacitly accepted in case neither of the parties expressly states to the contrary within the periods mentioned in this Article.

## **Article 11**

### **Sum insured**

1. Regardless of the number of victims per claim, the liability of the Company, as referred to in Article 3, shall be limited to an annual maximum amount stated in the Policy Schedule, which in no case can be less than the minimum limit fixed by law.

2. If, as a result of payment of indemnity by the Company, the remaining sum insured be less than 10% of the minimum sum fixed, the Insured shall restore this amount to the said minimum sum and pay, through the Policyholder, the corresponding additional premium as determined by the Company.

3. Where the Company refuses to restore the sum insured, the Insured shall effect an additional insurance cover with another insurance company for the remaining period of the first insurance, in which case the provision of Article 15 shall be applicable.

4. Unless otherwise expressly agreed:

1) The Company shall not be liable for the judicial expenses where the indemnity paid to the victims equals or exceeds the sum insured;

2) Where the indemnity payable is lower than the sum insured, the Company shall be liable for the indemnity and for the corresponding judicial expenses up to the sum insured;

3) The Insured promises to reimburse the judicial expenses to the Company in case the judicial expenses incurred by the Company together with the indemnity paid exceed the maximum amount fixed in the Policy schedule.

5. The Company shall be liable for the fees charged by the lawyers and solicitors chosen by the Company.

## **Article 12**

### **Payment of indemnity**

Unless otherwise expressly stated in the Policy schedule, the Company shall pay the indemnity in patacas and in MSAR. The Company shall be deemed to have fulfilled its obligation from the moment it notifies the beneficial entity of the deposit effected at a bank legally authorized to operate in MSAR, in favor of the said beneficial entity, in the amount it is obliged to indemnify according to the applicable law.

### **Article 13**

#### **Excess**

1. By means of an express agreement, a part of the indemnity payable to third parties may be borne by the Insured. However, in no case can this limitation on the payment of indemnity be applicable to the claimants or their heirs.

2. The excess shall be applied compulsorily and shall correspond to 10% of the indemnity payable as a result of any claim arising, directly or indirectly, from any dishonest, fraudulent, criminal or malicious act of the insured, or of his non-lawyer staff and trainee lawyers.

3. In case of a third-party claim, the Company shall pay in full the indemnity due without prejudice to its right to recover from the Insured the applicable excess.

### **Article 14**

#### **Insufficient capital**

In case of coexistence of various claimants as a result of the same claim and the corresponding total amount claimed exceeds the total sum insured, the liability of the Company in respect of each of such claimants shall be reduced proportionately, in terms of the respective losses suffered, so that the total amount of claims equals the total sum insured.

### **Article 15**

#### **Coexistence of contracts**

1. The Policyholder, under pain of being liable for the loss or damage, shall compulsorily inform the Company on the existence of other insurance contracts covering the same risk.

2. In case of existence of more than one insurance contract covering the same risk on the date of the claim, the present contract shall be effective only if the other insurance contracts are deemed to be nonexistent, null and void, ineffective or insufficient.

## **Article 16**

### **Payment of premium**

1. The initial premium or instalment shall be due on the date of signing of the present contract.
2. The subsequent premiums or instalments shall be due on the dates set out in the Policy.
3. The Company shall notify the Policyholder in writing, at least 10 days prior to the due date of the premium or of the instalment, indicating the actual date of payment and the amount due.
4. This insurance shall be considered effective for the corresponding period when the insurance intermediary authorized to collect the premium delivers the premium receipt to the Policyholder.

## **Article 17**

### **Alteration of contract or of premium**

Where there is no change in the risk, any alteration to the contract or to the premium shall be made effective only at the next renewal of the annual period of insurance, by means of prior notice to the Policyholder of at least 30 days before the effective date.

## **Article 18**

### **Obligations of the Company**

1. The Company shall take the place of the Insured in amicable or litigious settlement process of any claim that occurs, under the terms of the present contract, during the validity period of the contract.
2. The Company shall carry out immediately and diligently necessary investigations and loss adjustment procedures in order to verify the claim and evaluate the loss or damage.
3. Without prejudice to the provision of Article 11, the Company shall bear the expenses, including judicial expenses, resulting from the settlement of the claims as referred to in the preceding paragraphs.

4. The indemnity shall be paid as soon as the investigations and loss adjustment procedures considered necessary have been concluded in order to verify the liability of the Insured and to determine the amount of the loss or damage.

5. If after 45 days the Company, which is in possession of all the elements necessary for repairs of the loss or damage or for payment of the indemnity agreed upon, fails to execute its obligations, for unjustified reasons or due to its own fault, shall be responsible for the delay and be liable to pay overdue interest on the corresponding amount of indemnity at the applicable legal rate of interest.

6. The Insured may refuse the amicable settlement of a claim, in which case he shall bear the part that exceeds the amount the Company had been willing to pay.

## **Article 19**

### **Obligations of the Insured**

1. In case of a claim covered by this contract, the Insured, subject to being liable for loss or damage, shall be obliged to:

1) Inform the Company of the claim in writing as soon as possible but not later than 8 days counted from the date of occurrence of the said claim or from the date the Insured has knowledge of the same;

2) Take reasonable steps to avoid or minimize the consequences of the claim. 2. The Insured, under pain of being liable for loss or damage, shall not:

1) Sanction extra-judicial payment of the indemnity claimed without written authorization of the Company, formulate offers, make compromises or take any action that would lead to the admission of liability of the Company, the fixing of the nature and amount of indemnity or which, in any way, would establish or indicate such liability;

2) Give advice and assistance or advance money in the name of or on behalf of the Company without its express authorization;

3) Through omission or negligence, give opportunity for a favourable sentence in respect of third parties or, when immediate notification is not given to the Company, for any judicial action to be taken against the Insured on account of the claim covered by the Policy.

3. The Insured, under pain of being liable for the loss or damage, agrees to grant the Company the right to prepare and conduct the civil cases resulting from facts likely to generate the claim covered by the Policy, by executing the necessary power of attorney, so too providing and facilitating all the documents, witnesses and other proofs and elements under his/her control.

## **Article 20**

### **Communications and notifications between the parties**

Any communications or notifications between the parties named in the present contract shall be considered valid and perfectly effective, when the same have been made by registered mail, or by other means wherein there is a written record, to the last known address of the Policyholder or the Insured mentioned in the contract, or to the head office of the Company or, in case of an overseas insurance company, to its branch office.

## **Article 21**

### **Right of recovery**

Upon payment of the indemnity due, the Company shall have the right of recovery from the Insured:

- 1) When the liability of the Insured, or of the person for whom the Insured is civilly liable, is due to fraudulent act or of an act that can be classified as a criminal act or a contravention;
- 2) When the liability of the Insured results from loss of money or of any other valuables or documents entrusted to the Insured for safekeeping;
- 3) When the liability results from violation of the duty of professional secrecy by the Insured or by the person for whom the Insured is civilly liable;
- 4) When the liability results from acts or omissions committed by the Insured or by the person for whom the Insured is civilly liable under the influence of alcohol, use of drugs or because of insanity.

## **Article 22**

### **Subrogation**

1. Upon settlement of the claim, the Company shall subrogate, up to the amount of the indemnity paid, in all the rights of the Insured against the third party responsible for the losses, while the Insured shall be obliged to do whatever is deemed necessary to make such rights effective.

2. The Insured shall be liable for loss or damage resulting from any act or voluntary omission that may impede or hinder the exercise of the said rights.

## **Article 23**

### **Applicable legislation and arbitration**

1. The current laws of MSAR shall be applicable to the present contract.

2. Unless expressly agreed to the contrary, all differences arising from the application of this contract may be resolved through arbitration under the terms of the law in force.

## **Article 24**

### **Jurisdiction**

The Court of Macao shall be competent to pronounce judgments on actions arising from the present contract.