

CERTIFICATE OF INSURANCE 2005

This Certificate of Insurance together with its Schedule and Appendix 1 attached forms part of the **Oriental Capital Assurance Bhd Master Policy No 92-982-04-000553** issued to the Malaysian Bar Council for and on behalf of its Members and it is hereby certified that this insurance has been effected for those Members named in the Schedule hereunder in respect of the Limits of Indemnity specified and for the Period of Insurance stated.

1. INTERPRETATION

- 1.1 This Certificate of Insurance and the Schedule attached to it evidence a single contract of insurance under the Master Policy.
- 1.2 Each Certificate of Insurance issued under the Master Policy shall be interpreted as though a separate contract of insurance subject in all respects to the terms of the Master Policy as expressed in the English language text thereof.
- 1.3 The Master Policy and Certificates of Insurance shall be interpreted in accordance with Malaysian law and usage.
- 1.4 The Master Policy may be inspected during normal business hours at the principal office of the Malaysian Bar Council situated at No 13,15 & 17 Lebuhr Pasar Besar, 50050 Kuala Lumpur.
- 1.5 The singular shall include the plural and any word or expression to which a specific meaning has been attached and shall in the absence of specific provision to the contrary bear such meaning wherever it may appear.

2. STATEMENT OF INTENT

For the purposes of this insurance

- 2.1 A Practice constituted as a partnership or as a sole proprietorship shall be regarded as a legal person and subject to Proviso 2 of General Condition 5.4, the insurance shall remain fully effective notwithstanding any change in membership.
- 2.2 Professional appointments and assignments assumed or undertaken in a personal capacity by any Principal or Employee shall be regarded as incidental to the Practice provided that any fees or other income accruing therefrom inure to the benefit of the Practice or its predecessor/s or successor/s.
- 2.3 No coverage shall be afforded to or in respect of any lawyer engaged otherwise than in "Private Practice". This term shall be interpreted in accordance with its generally accepted meaning.



3. **DEFINITIONS**

3.1 **"DAMAGES"**

excludes fines, penalties and non-compensatory awards of any kind but includes claimant's legal costs and expenses and interest payable by law on any judgment or award.

3.2 **"DEFENCE COSTS"** means

costs and expenses reasonably incurred by or on behalf of the Insured with the written consent of the Insurer in the investigation, defence and/or settlement of any actual or potential claim which may form the subject of indemnity under this insurance.

3.3 **"THE INSURED"** means

1. The Named Insured;
2. Any past, present or future legal assistant in or consultant to the Practice;
3. Any past, present or future individual (not included under Clause 3.3.2 above) employed in the Practice under a contract of service or articles of clerkship or pupillage;

(such person referred to Clause 3.3.2 or 3.3.3 being hereinafter termed an "Employee")

4. The Practice;
5. The estate and/or personal legal representative of any deceased or incapacitated person referred to in Clause 3.3.1 or 3.3.2 above; and
6. Any Predecessor Practice not more specifically insured under any current or "run-off" policy whether enforceable or not.

3.4 **"MISCONDUCT"** means

any act or omission manifesting fraudulent intent or material and significant dishonesty or substantial lack of good faith.

3.5 **"NAMED INSURED"** means

the Principal/s cited in Item 3 of the Schedule in the Practice specified in Item 4 and any past or future partners.

3.6 **"PERIOD OF INSURANCE"** means

the period specified in Item 6 of the Schedule.



3.7 **"PRACTICE"**

1. "THE PRACTICE" means

the firm style or title under which the Profession is conducted by any or all of the Named Insured.

2. "PREDECESSOR PRACTICE" means

any practice previously conducted by or engaged in by the Insured or any of them or to which the Practice is a successor or subsequent employer.

3.8 **"PRINCIPAL"** means

a partner or a sole practitioner of the Practice constituted under applicable legislation.

3.9 **"PROFESSION"** means

the functions of lawyers in Malaysia as governed by the Legal Profession Act of 1976 as amended and such other functions and services as are customarily and legitimately performed by lawyers in Malaysia.

In the event of any dispute between the Insured and the Insurer as to whether any particular function or service falls within the ambit of the Profession, the ruling of the President for the time being of the Bar Council of Malaysia shall be binding upon both parties.

4. **INSURING CLAUSES**

4.1 On the terms and conditions herein contained and in consideration of the premium, the Insurer shall indemnify the Insured against any claim first made against any or all of them during the Period of Insurance in respect of any civil liability incurred in the course of the conduct of the Profession by the Practice

4.2 The liability of the Insurer for Damages shall not exceed in respect of any one claim the Limit of Indemnity specified in Item 7 of the Schedule, except in respect of the aggregate limits applicable to any claim specified in Special Provision 7.3

4.3 Defence Costs shall be payable in addition to the Limit of Indemnity *provided* that if the total Damages payable to dispose of any claim exceed the Limit of Indemnity, the Insurer's liability for Defence Costs shall be restricted to such proportion thereof as the limit of indemnity bears to the total Damages.

4.4 All claims first made or deemed to have been first made against all or any of the Insured in one or more Periods of Insurance arising from one act or omission or series of acts or omissions attributable to the same underlying cause or event shall be regarded as one



claim. All claims arising out of Misconduct of one person acting alone or in collusion with others shall be regarded as attributable to one underlying cause and accordingly deemed to constitute one claim subject to the terms of Special Provisions 7.2. and 7.3

5. GENERAL CONDITIONS

- 5.1 The due observance and fulfillment of the terms, conditions and endorsements of this policy insofar as they relate to anything to be done or complied with by the Insured and the truth of the statements and answers in the proposal form shall be conditions precedent to any liability of the Insurer to make any payments under this policy.
- 5.2.1 The Practice shall ensure that notice is given as soon as practicable, but no later than 30 days, of any claim made against the Insured during the Period of Insurance which may form the subject of indemnity under this insurance or of the receipt of any intimation of an intention to make a claim against the Insured.
- 5.2.2 Notice shall also be given of any matter, event or circumstance of which the Insured shall become aware during the Period of Insurance and which may reasonably be expected to give rise to a claim against the Insured [hereinafter called "Notifiable Circumstances"].
- 5.2.3. Any claim arising from any matter, event or Notifiable Circumstances of which notice has been given in accordance with General Condition 5.2.1 or 5.2.2 shall be regarded as a claim first made during the Period of Insurance in which such notice was given.
- 5.3.1 Unless otherwise notified by the Insurer, notice in terms of General Condition 5.2 shall be given in writing or by facsimile to:
- Jardine Lloyd Thompson Snd Bhd**
Suite 10.2 10th Floor
Faber Imperial Court
21A Jalan Sultan Ismail
50250 Kuala Lumpur
- Telephone No: 2723 3388**
- Facsimile No: 2723 3301**
- 5.3.2 Upon receipt of notice from the Insured of any writ, the Insurer and/or their authorised representatives shall appoint solicitors within 14 working days to take conduct of the claim without prejudice to the Insurer's right to investigate and subsequently refuse policy coverage or to avoid the claim as provided under this insurance.



If the Insurer and/or their authorised representatives fail or neglect to appoint solicitors within 14 working days and take conduct of the claim, the Insured shall have the right, if the Insured so chooses, to appoint a firm from the approved panel solicitors to defend the claim and instruct the appointed solicitors as the Insured deems fit. The Insured shall not be liable for any act or omission that compromises the Insurer's right to settle or defend the claim. The Insurer shall be liable to indemnify the Insured as if the Insurer had conduct of the claim.

- 5.4 During the Period of Insurance the Practice shall as soon as reasonably practicable give notice in the manner prescribed in General Condition 5.5 of the dissolution or amalgamation or merger of the Practice with any other Practice

PROVIDED THAT

1. The premium, Limit of Indemnity and excess (Insured's contribution) shall not be varied during any Period of Insurance by turnover in partners, legal assistants or consultants in any circumstances other than the amalgamation or merger of the Practice with another.
 2. In the case of an amalgamation or merger, the Limit of Indemnity, excess (Insured's contribution) and premium shall be re-determined.
- 5.5 Notice in terms of General Condition 5.4 shall be given in writing or facsimile to

Jardine Lloyd Thompson Snd Bhd
Suite 10.2 10th Floor
Faber Imperial Court
21A Jalan Sultan Ismail
50250 Kuala Lumpur

Telephone No: 2723 3388

Facsimile No: 2723 3301

- 5.6 The Insured shall not admit liability for nor settle any claim falling within the ambit of Clause 4.1. nor incur any Defence Costs without the prior consent of the Insurer, which consent shall not be unreasonably withheld.
- 5.7 Subject to General Condition 5.9 the Insurer shall be entitled at their own expense at any time to take over the conduct in the name of the Insured of the defence or settlement of any claim including any claim in respect of which the Insured may become entitled to partial indemnity or which but for Exclusion 6.3 would have fallen within the scope of this insurance.



- 5.8 The Insured shall comply with any reasonable requests by the Insurers or their authorised representatives for information and/or documents relating to any actual or potential claim. If after several such requests the Insured continues not to respond or responds only in part, the inaction on the part of the Insured shall be deemed as total or gross disregard or avoidance and shall entitle the Insurer to void the claim except when the failure was due to circumstances beyond the reasonable control of the Insured.

For the purposes of Clauses 5.3.2 and 5.8, the Insurer's authorised representatives are the employees/management of the Company specified in Clause 5.3.1, the loss adjusters and any advocate or solicitor retained by the Insurer.

- 5.9 Neither the Insured nor the Insurer shall be required to contest any legal proceedings unless a senior member of the Bar (to be appointed in the absence of agreement between the Insured and the Insurer by the President for the time being of the Bar Council) shall advise that such proceedings could be contested with a reasonable prospect of success.
- 5.10 Save as provided in definition 3.9. and General Condition 5.9 any dispute or disagreement between the Insured and the Insurer arising out of or in connection with this insurance may be referred to a sole arbitrator to be appointed by agreement or in the absence thereof by the President for the time being of the Bar Council. The decision of such arbitrator shall be final and binding on both parties.
- 5.11 If any Insured shall prefer any claim hereunder knowing it to be false or fraudulent as regards amount or otherwise, this insurance shall be voidable and such Insured shall forfeit the benefit of this insurance as regards such claim.

6. EXCLUSIONS

The indemnity in terms of this insurance specifically excludes

- 6.1 any liability which is more specifically insured under any other policy effected by or on behalf of the Insured or which would but for this insurance be so covered.
- 6.2 (a) any Notifiable Circumstances or occurrence notified under any other insurance attaching prior hereto; or
- (b) any Notifiable Circumstances or occurrence known to the Insured prior to the Insured effecting cover under the Master Policy which might reasonably be expected to produce a claim.



- 6.3 the base excess which is the amount specified in Item 10 of the Schedule being the Insured's contribution shall apply to any one claim and be payable on payment to a claimant or on the incurring of Defence Costs except for investigation costs incurred to adjusters and the Insurer's costs of or incidental to determining if any claim is indemnifiable under this insurance.

PROVIDED however that the base excess shall be increased to the amount specified below:

- (a) if the claim arises out of or is contributed to by any of the following circumstances, factors, acts or omissions:

- (i) where the Insured has acted for more than one party to a transaction in respect of conveyancing of land and/or buildings otherwise than in accordance with the Bar Council Rulings on conflict of interest applicable at the time of the transaction, then the amount of the excess applicable to such claim shall be minimum RM 100,000 or DOUBLE the amount specified in Item 10 of the Schedule, whichever is higher, subject to a maximum of RM 300,000.

However the base excess shall apply in the event the Insured had obtained a written waiver from the client.

- (ii) on any claim in respect of conveyancing of land/buildings the minimum excess shall be RM 50,000.

However the base excess shall apply in the event the Insured had in place a risk management programme at the time the act was committed.

- (iii) for any claim arising from Misconduct of a partner in which case the applicable excess shall be RM 20,000 per Insured multiplied by the number of Insureds named in Item 3 of the Schedule or RM 30,000 per Practice, whichever is higher but not exceeding RM 250,000 on any one claim.

- (b) if the practice has more than two open claims or Notifiable Circumstances in the five [5] years preceding 1st July 2004 but the total amount paid or reserved in the aggregate does not exceed RM 30,003 the excess shall be a minimum RM 30,000.

- (c) if in the five [5] years preceding 1st July 2004 the Practice has notified any claim or Notifiable Circumstance and the amount paid or reserved by the Insurers exceeds either RM 50,000 or the premium paid by the Practice for the policy period 2004 [whichever is lesser], the excess shall be a minimum RM 20,000.



- 6.4. any legal proceedings in a court other than of Malaysia. This exclusion shall not apply to proceedings in Malaysia for the enforcement of any award or judgment secured in any foreign jurisdiction except the United States of America, its possessions and dependencies or Canada.
- 6.5 any liability directly or indirectly caused by or contributed to by or arising from or in respect of Misconduct (save as provided in Special Provision 7.2 and 7.3).
- 6.6 any claim in respect of any personal financial guarantee or undertaking given by the Insured otherwise than in good faith in the course of the conduct of the Practice or as required by law or order of the courts.
- 6.7 death, bodily injury or loss of or damage to any physical property occupied or used by any of the Insured for the purposes of the Practice (not being property in the care, custody and control of the Insured in connection with the Practice for which the Insured is responsible).
- 6.8 wrongful dismissal or any other alleged breach of any contract of employment by the Insured.
- 6.9 wrongful termination or any other alleged breach of any contract for supply to or use by the Insured of services, materials, equipment, other goods and/or immovable property.
- 6.10 any trading debt incurred by the Insured.
- 6.11 the giving of any express or implied warranty or guarantee relating to the financial return on any investment.
- 6.12 any liability 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 nuclear fuel the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- 6.13 any liability directly occasioned by pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.
- 6.14 any liability directly or indirectly caused by or contributed to by or arising from war, invasion, acts of foreign enemy, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power or terrorist activity or from any action taken to avoid or detect terrorist activity.
- 6.15 any claims brought about by or attributable to or consequent upon the holding by the Insured of any appointment as a director, officer or company secretary of a company or organisation.



This exclusion shall not apply to claims arising out of the Insured acting in a professional capacity as an advocate or solicitor for any company or organisation for whom the Insured is a director, officer or company secretary and for which they received a fee.

- 6.16 any liability directly or indirectly, wholly or in part caused by or contributed to by or arising from or in respect of dispute of the Insured's professional fees, charges, disbursements and other incidental costs.
- 6.17 any liability directly or indirectly, wholly or in part caused or contributed to or arising from or in respect of any disciplinary proceedings brought against or by the Insured.
- 6.18 any claim or counterclaim set off by an Insured against another Insured under this Scheme unless the claim is in respect of the Insured acting as solicitor or advocate for the claiming Insured.

7 SPECIAL PROVISIONS

7.1 INNOCENT NON-DISCLOSURE

Notwithstanding General Condition 5.1, in the event of a failure at inception or at any renewal of policy thereof on the part of the Named Insured

- (a) to disclose facts not material to the assessment of the risk hereunder, the Insurer shall not exercise its right to avoid this insurance on the grounds of such failure; or
- (b) to disclose facts material to the assessment of the risk hereunder, the Insurer shall not exercise its right to avoid this insurance on the grounds of such failure but all monies paid by the Insurer to any claimant or any other party shall be recoverable from the Principal(s) of the Practice as a debt due jointly and severally.

7.2 MISCONDUCT

In respect of any claim arising out of Misconduct, the Insurer shall notwithstanding Exclusion 6.5 indemnify the Practice and any Principal therein or Employee thereof (excluding any person who was a party to or condoned such Misconduct)

PROVIDED THAT

- 1. at the request of the Insurer, the Insured being indemnified shall take or procure to be taken at the Insurer's expense all reasonable steps to obtain reimbursement from any party to such Misconduct or from his/her personal legal representative.



2. the Insured being indemnified shall procure that any recovery so obtained together with any monies which but for such fraud would be due to any party to such Misconduct, shall be paid to the Insurer up to but not exceeding the amounts paid by them in respect of such claim together with any expenditure reasonably incurred in obtaining such reimbursement.
3. the Insured seeking indemnity establishes that at the time the loss occurred, the Named Insured who caused the loss was practising as a genuine partner of and carrying on practice in common with the Insured seeking indemnity and that the firm complied with risk management procedures set out below or equivalent thereto:
 - (a) Each branch to copy and exchange monthly entries in the client's cash book and client's ledger maintained pursuant to Rule 11(2) Solicitors' Account Rules.
 - (b) Each branch's client account and office account bank statement to be sent by the bank direct to the partner branch as well as to branch of origin.
 - (c) Authority to each branch's bank requiring 2 signatories to all withdrawals or transfers or cheques on the client account but authorizing one signature as able to stop operation of the account or cancellation of any transaction.
 - (d) In all other respects the firm complies with the Solicitors Account Rules 1990 and the Accountant's Report Rules 1990 (as amended from time to time) as a firm encompassing all its branches.

7.3 LIMITS IN RESPECT OF DEFAMATION AND DISHONESTY OF PARTNERS

Defamation: RM 250,000 in the aggregate

Dishonesty of Partners: RM 250,000 in the aggregate

The above limits are over and above the Excess in Clause 6.3

7.4 EXCESS

Where Defence Cost is payable to panel solicitors, the Insured's excess contribution towards the Defence Cost must be paid by the Insured within 45 days of receipt of invoice. The settlement of all outstanding excess contribution towards Defence Cost is condition precedent to the right of the Insured to renew its Insurance under the Master Policy.

-END-

