

# CERTIFICATE OF INSURANCE 2006

This Certificate of Insurance and the attached sample Schedule in Appendix 1 forms part of the **Oriental Capital Assurance Bhd Master Policy No 92-982-05-000536** 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.

When reading this Certificate, please note the use of specially-defined words that appear in **bold** type. There is a list of these words in Clause 36. Although the words "we" and "you" are defined, these words do not appear in bold type.

In consideration of payment of the premium and subject to the Schedule, limitations, conditions, provisions and other terms of this Certificate, we agree as follows:

## WHO IS INSURED?

1. We agree to insure you being the **Firm**; and:
  - (a) each **principal**;
  - (b) each **employee**; and
  - (c) the estate and legal representative of each person referred to in (a) and (b) above.

## WHAT WE INSURE YOU FOR AND WHEN

2. We agree to indemnify you against civil liability for a **claim** that:
  - (a) arises from your **legal practice**; and
  - (b) is first made against you during the **Period of Insurance**.
3. Our indemnity also extends to **claimant's costs** and **defence costs**.
4. Professional appointments and assignments assumed or undertaken by you in a personal capacity shall be regarded as incidental to the **Firm** provided that any fees or other income accruing therefrom inure to the benefit of the **Firm** or its predecessor/s or successor/s.
5. However we will not indemnify you if you engage otherwise than in "Private Practice" which shall be interpreted in accordance with its generally accepted meaning.



## HOW MUCH WE INSURE YOU FOR

6. The maximum amount we will indemnify you for any **one claim** is the amount specified in Item 7 of the Schedule, subject to the provisions of Clauses 12 and 13. The maximum amount includes **claimant's costs**.
7. We will also indemnify you for **defence costs**, which amount shall be in addition to the Limit of Indemnity specified in Item 7 of the Schedule. Any payment by us of **defence costs** shall not reduce such Limit of Indemnity.

Provided however, that if any **one claim** exceeds the Limit of Indemnity, our liability for **defence costs** shall be restricted to such proportion thereof that the Limit of Indemnity bears to the **claim**.

## YOUR SELF – INSURED EXCESS

8. Our liability under this insurance shall only apply to that part of any **one claim** which exceeds the Base Excess specified in Item 10 of the Schedule. The Base Excess shall be borne by you uninsured and at your own risk.
9. Our liability under this insurance shall only apply to that part of the **defence costs** on account of any **one claim** which exceeds the Base Excess specified in Item 10 of the Schedule. Provided however, that the Base Excess shall only be applied once in the event both **claim** and **defence costs** are incurred.
10. Where **defence costs** is payable to panel advocates and solicitors, you must pay the amount of the Base Excess specified in Item 10 of the Schedule within 45 days of the receipt of the invoice. This payment is a condition precedent to your right to renew your insurance in 2007.
11. The Base Excess specified in Item 10 of the Schedule shall be increased to the amounts specified below in the event of any **claim** arising out of following circumstances or events:
  - (a) RM 100,000 or 2 times the Base Excess whichever is the higher subject to a maximum of RM 300,000 where you have 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.

However the Base Excess shall apply in the event you had obtained written waivers from the clients.

- (b) RM 50,000 minimum in respect of conveyancing of land and/or buildings.

However the Base Excess shall apply in the event you had in place a risk management programme at the time the act, error or omission giving rise to the **claim** was committed.



- (c) RM 20,000 multiplied by the number of **principals** subject to a minimum of RM 30,000 and maximum of RM 250,000 per **Firm** in respect of **misconduct** of **principals**.
- (d) RM 30,000 minimum where you have more than two open **claims** or **notifiable circumstances** in the five [5] years preceding 31<sup>st</sup> December 2005 but the total amount paid or reserved by us or any other insurer does not exceed RM 30,003.
- (e) RM 20,000 minimum where you have notified **claim(s)** or **notifiable circumstances** in the five [5] years preceding 31<sup>st</sup> December 2005 and the amount paid or reserved by us or any other insurer exceeds either RM 50,000 or the premium paid by the **Firm** for the year 2005 (whichever is lesser).

#### CLAIMS INVOLVING MISCONDUCT

12. Notwithstanding Exclusion 33(e), we will indemnify the **Firm** and its **employees** against any claim arising out of **misconduct** excluding indemnity to any person(s) or **employees** who were party to or condoned such **misconduct** relating to the **claim**.

#### PROVIDED THAT

- (A) The maximum amount we will indemnify you for **claims** in respect of the **misconduct** is:
  - (i) RM 250,000 any **one claim** and in the aggregate during the Period of Insurance in respect of any **principal**. This Limit of Indemnity is over and above the Excess in Clause 8.
  - (ii) The Limit of Indemnity stated in Item 7 of the Schedule in respect of **employees**.
- (B) You shall at our request take or procure to be taken at our expense all reasonable steps to obtain reimbursement from any party to such **misconduct** or from his personal legal representatives.
- (C) You agree that any recovery so obtained together with any monies which but for such **misconduct** would have been due to any party to such **misconduct**, shall be paid to us up to but not exceeding the amounts paid by us in respect of such **claim** together with any expenditure reasonably incurred in obtaining such reimbursement.
- (D) You establish that at the time of the **misconduct** giving rise to the claim occurred, the **principal** who committed such **misconduct** was practising as a genuine **principal** of and carrying on practice in common with other **principals** of the **Firm**.



- (E) The **Firm** complied with risk management procedures set out below or equivalent thereto at the time of such **misconduct**.
- (i) entries in the client cashbook and client ledger of each branch maintained pursuant to Rule 11(2) of the Solicitors' Account Rules were copied and exchanged;
  - (ii) bank statements of client accounts and office account of each branch office are sent by its bank direct to the principal office as well as the branch office;
  - (iii) withdrawals transfers and cheques on client bank accounts must have two (2) signatories to stop operation of an account or the cancellation of any transaction, where one (1) signatory will suffice; and
  - (iv) 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).

#### CLAIMS INVOLVING DEFAMATION

13. The maximum amount we will indemnify you for all **claims** in respect of defamation is RM 250,000 any **one claim** and in the aggregate for the **Period of Insurance**. This Limit of Indemnity is over and above the Excess in Clause 8.

#### WHEN YOU HAVE TO NOTIFY US

14. You must notify us in writing as soon as practicable but no later than 30 days of:
- (a) any **claim** first made against you during the **Period of Insurance**; and
  - (b) any **notifiable circumstances** of which you first become aware of during the **Period of Insurance**. We will treat any subsequently resulting **claim** as if it had been made against you during this **Period of Insurance**.

#### YOUR DUTY TO CO-OPERATE

15. You agree, at your expense, to:
- (a) give us and our **authorised representatives** all information, documents and assistance we reasonably require; and
  - (b) co-operate fully with us and our **authorised representatives**.
16. You further agree to waive any claim to legal professional privilege to the extent only that the privilege would otherwise prevent any **authorised representative** appointed by us from disclosing information to us.



17. If after several requests for information, documents or assistance you fail to respond or respond only in part, your inaction shall be deemed as total or gross disregard or avoidance and shall entitle us to void the **claim** except when the failure was due to circumstances beyond your reasonable control.

#### **YOU MUST NOT ADMIT LIABILITY OR INCUR COSTS**

18. You agree:
- (a) not to admit liability for a **claim**;
  - (b) not to settle a **claim**; or
  - (c) not to incur any costs or expenses in connection with a **claim** without our consent except as stated in the proviso in Clause 21

without our written consent, which shall not be unreasonably withheld.

#### **WE HAVE RIGHT TO TAKE CONDUCT OF THE CLAIM**

19. You agree that:
- (a) we have the right to take over the conduct of a **claim** against you, including its investigation, defence, avoidance, reduction or, subject to Clause 22, its settlement; and
  - (b) we may do so in your name.
20. Upon receipt of notice from you of any writ, we and and/or our **authorised representatives** shall appoint a **legal practitioner** within 14 working days to take conduct of the claim without prejudice to our right to investigate and subsequently refuse coverage or to avoid the claim as provided under this insurance.

Provided that if we and/or our **authorised representatives** fail or neglect to appoint a **legal practitioner** within 14 working days and take conduct of the claim, you shall have the right, if you so choose, to appoint a **legal practitioner** from the approved panel to defend the claim and instruct the appointed **legal practitioner** as you deem fit. You shall not be liable for any act or omission that compromises our right to settle or defend the claim. We shall be liable to indemnify you as if we had conduct of the claim.

21. Where the amount of the **claim** is less than the Base Excess in Item 10 of the Schedule, you may, with our prior written consent, assume the conduct of and settle the **claim**.

#### **DECIDING WHETHER TO PROCEED TO HEARING OR SETTLE**

22. Neither of us shall be required to contest any legal proceedings to trial unless a senior member of the Malaysian Bar (to be appointed in the absence of mutual agreement between us by the President for the time being of the Bar Council of Malaysia) shall advise that such proceedings could be contested with a reasonable prospect of success.
23. This advice binds both of us.
24. We shall share the fees for this advice equally.



## DISPUTES WITH US

25. Except as provided in Clause 22 and Definition (g), if there is any dispute between us about this insurance we both may agree to arbitration on the basis that:
- (a) the sole arbitrator is to be appointed by the President for the time being of the Bar Council of Malaysia;
  - (b) we share the costs of the arbitration equally; and
  - (c) the arbitrator's decision binds both of us.

## CHANGES IN EXPOSURE

26. Your Premium, Limit of Indemnity and Base Excess shall not be varied during the **Period of Insurance** by turnover in **principals** or **employees** after the inception date of this insurance in any circumstances other than in respect of your merger or consolidation with another firm.
27. In the case of your merger or consolidation with another firm during the **Period of Insurance**, your Premium, Limit of Indemnity and Base Excess shall be re-determined. You shall give written notice of such event to us as soon as practicable and provide such other information as we may reasonably request.

## SUBROGATION

28. In the event of any payment under this insurance, we shall be subrogated to the extent of such payment to all your rights of recovery. You shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable us effectively to bring the suit in your name.
29. We agree not to exercise our rights of subrogation against a **principal** or an **employee** except in the case of that person's **misconduct**.

## CONDITIONS PRECEDENT TO LIABILITY

30. The due observance and fulfilment of the terms, conditions and endorsements of this insurance in so far as they relate to anything to be done or complied with by you and the truth of the statements and answers in the proposal form shall be conditions precedent to our liability to make any payments under this insurance.

## INNOCENT NON-DISCLOSURE

31. Notwithstanding Clause 30 if a **principal** inadvertently fails to:
- (a) to disclose facts not material to the assessment of the risk hereunder, we shall not exercise our right to avoid this insurance on the grounds of such failure; or



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

#### **FRAUDULENT CLAIMS**

32. If you make any claim for indemnity knowing the same to be false or fraudulent, as regards amount or otherwise, you shall forfeit the benefits of this insurance with regards to such claim.

#### **WHAT WE EXCLUDE FROM THE INSURANCE**

33. We will not indemnify you under this insurance for:
- (a) any liability which is more specifically insured under any other policy effected by you or on your behalf or which would but for this insurance be so covered.
  - (b) **claims** arising from any **notifiable circumstances** which you were aware of prior to the inception of this insurance.
  - (c) **claims** relating to circumstances to which this insurance would otherwise respond which you notified to us or any other insurer prior to the inception of this insurance.
  - (d) 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.
  - (e) any liability directly or indirectly caused by or contributed to by or arising from or in respect of **misconduct** (except as provided in Clause 12).
  - (f) any **claim** in respect of any personal financial guarantee or undertaking given by you otherwise than in good faith in the course of the conduct of the **Firm** or as required by law or order of the courts.
  - (g) death, bodily injury or loss of or damage to any physical property occupied or used by you for the purposes of the operations of the **Firm** (excluding property in your care, custody and control in connection with the **Firm** and for which you are responsible).
  - (h) wrongful dismissal or any other alleged breach of any contract of employment by you.
  - (i) wrongful termination or any other alleged breach of any contract for supply to or use by you of services, materials, equipment, other goods and/or immovable property.
  - (j) any trading debt incurred by you.



- (k) the giving of any express or implied warranty or guarantee relating to the financial return on any investment.
- (l) 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.
- (m) any liability directly occasioned by pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.
- (n) 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.
- (o) any **claims** brought about by or attributable to or consequent upon the holding by you of any appointment as a director, officer or company secretary of a company or organisation.

Provided however that this exclusion shall not apply to **claims** arising out of you acting in a professional capacity as a legal practitioner for any company or organisation for whom you are a director, officer or company secretary and for which you received a fee.

- (p) any liability directly or indirectly, wholly or in part caused by or contributed to by or arising from or in respect of dispute over your professional fees, charges, disbursements and other incidental costs.
- (q) 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 you or by you.
- (r) any **claim** or counterclaim set off by an insured against another insured under the Malaysian Bar Professional Indemnity Insurance Scheme unless the **claim** is in respect of you acting as a legal practitioner for the claimant.
- (s) for fines and penalties imposed by law and non-compensatory awards of any kind.

#### INTERPRETATION

34. The construction, interpretation and meaning of the provisions of this Certificate shall be determined in accordance with the law of Malaysia, and any disputes relating thereto shall be subject to Malaysian law and jurisdiction.





35. In this Certificate, unless the context requires otherwise:
- (a) the singular includes the plural and vice versa;
  - (b) the male gender includes the female and vice versa;
  - (c) where an expression is defined for the purpose of this Certificate, any other grammatical form of the expression has the same meaning;
  - (d) headings are merely descriptive and not an aid to interpretation;
  - (e) references to an amount of money are references to that amount in Malaysian Ringgit (RM).

#### DEFINITIONS

36. In this Certificate, unless the context otherwise requires:
- (a) **authorised representatives** means the employees and management of Jardine Lloyd Thompson Sdn Bhd, the Third Party Administrator (to be named) and any **legal practitioner** retained by us.
  - (b) **claim** means:
    - (i) a demand for, or an assertion of a right to, compensation or damages; or
    - (ii) an intimation of an intention to seek compensation or damages.
  - (c) **claimant's costs** means legal costs you have to pay to the person making a **claim** against you.
  - (d) **defence costs** means reasonable costs, charges, fees and expenses incurred by you or on your behalf in the investigation, defence and/or settlement of any actual or potential **claim** which may form the subject of indemnity under this insurance.
  - (e) **employee** means a person who, at any time, is or was employed or similarly engaged by the **Firm** (such as a legal assistant, articled clerk, consultant, office or clerical staff).
  - (f) **Firm** means the person(s) and/or firm name named in Item 4 of the Schedule and includes a **prior practice** which is not more specifically insured under any current or run-off whether enforceable or not.
  - (g) **legal practice** means the provision of such services as are provided in the normal course of carrying on the profession as advocate or solicitor in private practice anywhere in Malaysia.  
In the event of any dispute as to whether any particular service falls within the definition of **legal practice** the ruling of the President for the time being of the Bar Council of Malaysia shall be binding on us.



- (h) **legal practitioner** means an advocate and solicitor.
- (i) **misconduct** means dishonest or fraudulent conduct in the discharge of his duties.
- (j) **notifiable circumstances** means any fact, circumstance or event which may reasonably be anticipated to give rise to a **claim** against you at any future time.
- (k) **one claim** means:
  - (i) all claims by one or more claimants that arise from the same act or omission;
  - (ii) all claims by one or more claimants that arise from one series of related acts or omissions or from the same or similar act or omission in a series of related matters or transactions;
  - (iii) all claims by one or more claimants arising from one matter or transaction;
  - (iv) otherwise each claim will be regarded as **one claim**.
- (l) **Period of Insurance** means the period specified in Item 6 of the Schedule.
- (m) **principal** means
  - (i) a person who, at any time is or was a partner of the **Firm**; or
  - (ii) a person who is the sole practitioner of the **Firm**.
- (n) **prior practice** means any practice previously conducted by or engaged by any of you or to which this practice is a successor or subsequent employer.
- (o) **us** means the Insurer named in Item 2 of the Schedule except when the context requires 'us' to refer to both the Insurer and **you**.
- (p) **we** means the Insurer named in Item 2 of the Schedule except when the context requires 'we' to refer to both the Insurer and **you**.
- (q) **you** means the **Firm** and other parties referred to in Clause 1 or where the context requires any one or more of the **Firm** and other parties referred to in Clause 1.

<b>ADDRESS FOR NOTICES TO INSURER</b>
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37. Any summons, notice, or process to be served on us may be served at the address specified in the Schedule.
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**APPENDIX 1**

**MALAYSIAN BAR**

SCHEDULE ATTACHING TO AND FORMING PART OF THE MALAYSIAN BAR PROFESSIONAL INDEMNITY INSURANCE CERTIFICATE AS PART OF MASTER POLICY NO. 92-982-05-000536					
1.	CERTIFICATE NO.	:	2006/M/____/____		
2.	INSURER	:	Oriental Capital Assurance Berhad (30686 K) Bangunan Oriental Capital No. 36, Jalan Ampang 50450 Kuala Lumpur (and its successors or assigns)		
3.	NAMED INSURED	:	(Attachment 1 to this Schedule lists out every practitioner in the Firm)		
4.	THE FIRM	:			
5.	ADDRESS (deemed to include all branches within West Malaysia)	:			
6.	PERIOD OF INSURANCE	:	From 1 <sup>st</sup> January 2006 to 31 December 2006 at midnight Malaysian Time		
7.	MANDATORY LIMIT OF INDEMNITY	:	RM		each and every claim (subject to sub-limit in respect of Defamation and Dishonesty of Partners)
8.	SUB-LIMIT IN RESPECT OF DEFAMATION	:	RM	250,000.00	in the aggregate
9.	SUB-LIMIT IN RESPECT OF DISHONESTY OF PARTNERS	:	RM	250,000.00	in the aggregate
10.	BASE EXCESS	:	RM		each and every claim (subject to Clause 6.3 of the Certificate of Insurance)
11.	PREMIUM INCLUSIVE OF 5% SERVICE TAX	:	RM		
12.	STAMP DUTY	:	Paid on the Master Policy		
SIGNED:			For: Oriental Capital Assurance Berhad MOHD YUSOF IDRIS Chief Executive Officer		
The insurance is subject to the terms of the Master Policy No. 92-982-05-000536, which is available for inspection at the offices of the Malaysian Bar Council. The main provisions thereof are expressed in this Certificate.					



