

Insurance policy

Clubs and societies D&O liability

SPECIMEN

Policyholder services

We offer a range of exclusive services for policyholders, which provide practical advice and professional help from industry experts.

PR crisis management

Specified Market policyholders have access to specialist public relations advice, public relations organisation, The Counsel House (TCH), to manage adverse press coverage should certain claims situations arise.

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Please note:

PR crisis management is available exclusively with the following policy sections: directors and officers, management liability, executive liability and entity defence.

For further information, please visit
www.markelinternational.com/policyholderservices

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Welcome

Welcome and thank you for choosing to buy your clubs and societies D&O liability policy from Markel.

This document, the schedule and any endorsement(s) attached form your policy. This document sets out the conditions of the insurance between **you** and **us**. Please carefully read the following and keep them in a safe place:

- this document,
- the schedule, and
- any endorsements that apply

The insurance contract

In return for payment of the premium shown in the schedule, **we** agree to insure **you** as described in each section of this document, subject to the terms and conditions contained in or endorsed on this policy.

The cover provided

It is important that:

- **you** check that the information **you** have given **us** is accurate – see 'our reliance on the information provided to us' in the 'important information' section
- **you** notify **your** broker as soon as practicable of any inaccuracies in the information **you** have given **us**
- **you** comply with **your** duties under each section of cover and under this policy as a whole.

Exclusions

Your policy is subject to exclusions and these tell you what is not covered.

These are found under 'what is not covered (exclusions)'.

The meaning of highlighted words

Some of the words in this policy have a special meaning, **we** have highlighted these words in bold print.

These are found under the section 'words with special meaning that apply throughout this policy (definitions)'.

Important information

How to make a claim

If **you** want to make a claim under this policy, either:

- contact **your** insurance broker, or
- contact **us** by
 - writing to our claims team at Markel (UK) Limited, Verity House, 6 Canal Wharf, Leeds LS11 5AS, or
 - phoning our claims team on 0345 355 2227, or
 - email our claims team – claimsuk@markelintl.comquoting your policy number and the name of the policyholder shown in the policy schedule.

Things you must do

You must comply with the claims conditions. These can be found under 'claims conditions that apply to this policy as a whole'.

If **you** fail to comply with these conditions **we** may not pay **your** claim or any payment could be reduced.

Fraudulent claim

If **you** make a fraudulent claim under this policy:

- **we** are not liable to pay the claim, and
- **we** may recover from **you** any sums **we** have paid to **you** in respect of the claim, and

If this policy provides cover for any person who is not a party to the contract of insurance ('a covered person'), and a fraudulent claim is made under this policy by or on behalf of a covered person, **we** may exercise the same rights as above as if there was an individual contract of insurance between the covered person and **us**. However, the exercise of any of these rights shall not affect the cover provided under this policy for any other person.

Our reliance on the information provided to us

In deciding to accept this policy and in setting the terms and premium **we** have relied on the information **you** have given **us**. **You** must take care when answering any questions **we** ask by ensuring that all information provided is accurate and complete.

If **you** become aware that information **you** have given **us** is inaccurate **you** must inform **us** as soon as practicable.

The information **you** have provided us constitutes **your** fair presentation of risk.

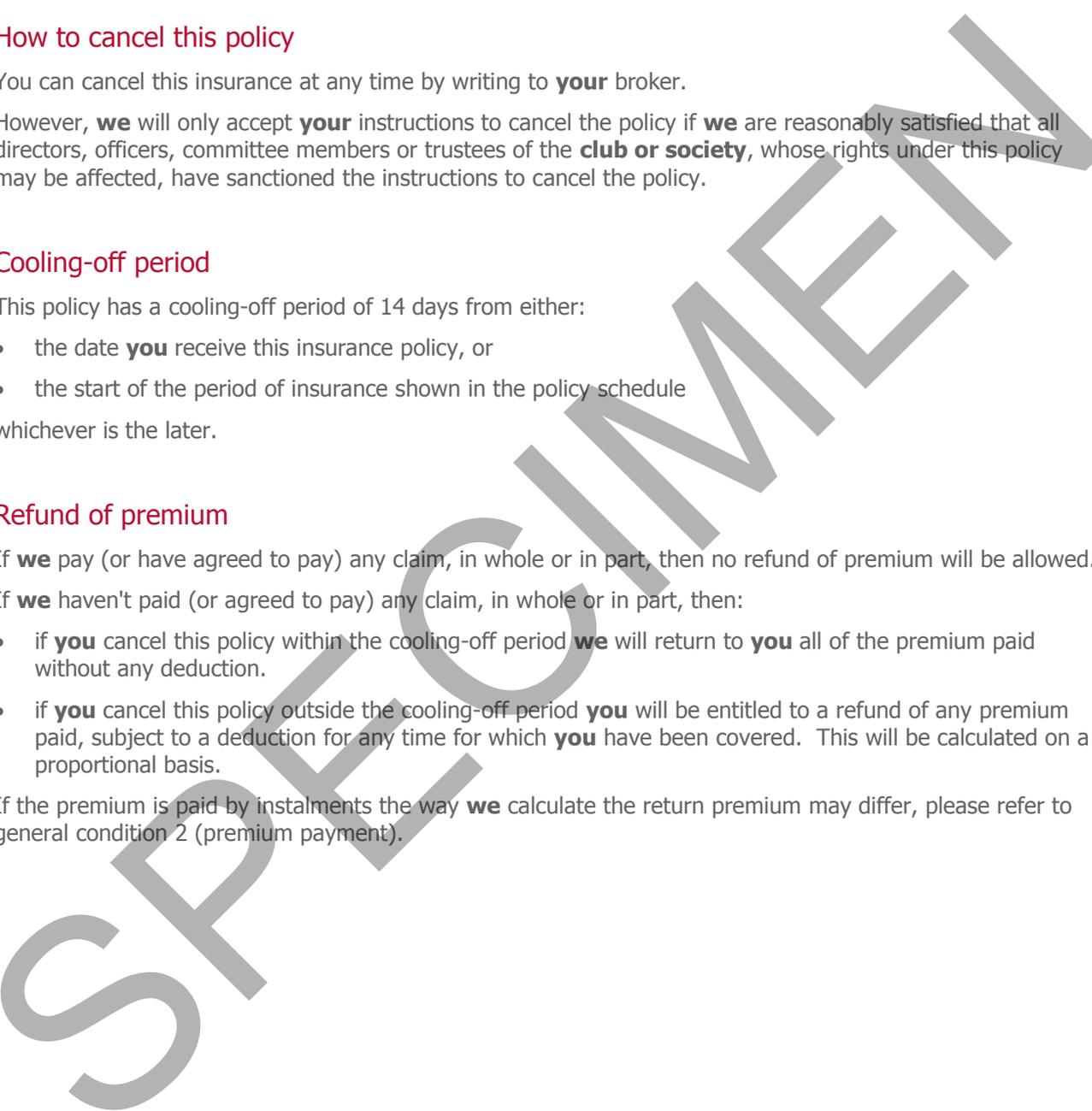
A 'fair presentation of the risk' is one

- which discloses to **us** every material circumstance which **you** know of or ought to know of, or
 - gives **us** sufficient information to put **us** on notice that we will need to make further enquiries for the purpose of revealing those material circumstances, and
 - which makes that disclosure in a manner which is reasonably clear and accessible to us

and

- in which every material representation as to a matter of fact is substantially correct and every material representation as to a matter of expectation or belief is made in good faith.

A 'material circumstance' is one that would influence **our** decision as to whether or not to agree to insure **you** and, if so, the terms of that insurance. If **you** are in any doubt as to whether a circumstance is material **you** should disclose it to **us**.

If **you** fail to make a fair presentation of risk there are a number of remedies available to **us** which are set out in general condition 8 (breach of the duty of fair presentation) in the section 'conditions that apply to this policy as a whole (general conditions)'.


We will write to **you** if **we** intend to take one of these remedies.

How to cancel this policy

You can cancel this insurance at any time by writing to **your** broker.

However, **we** will only accept **your** instructions to cancel the policy if **we** are reasonably satisfied that all directors, officers, committee members or trustees of the **club or society**, whose rights under this policy may be affected, have sanctioned the instructions to cancel the policy.

Cooling-off period

This policy has a cooling-off period of 14 days from either:

- the date **you** receive this insurance policy, or
- the start of the period of insurance shown in the policy schedule

whichever is the later.

Refund of premium

If **we** pay (or have agreed to pay) any claim, in whole or in part, then no refund of premium will be allowed.

If **we** haven't paid (or agreed to pay) any claim, in whole or in part, then:

- if **you** cancel this policy within the cooling-off period **we** will return to **you** all of the premium paid without any deduction.
- if **you** cancel this policy outside the cooling-off period **you** will be entitled to a refund of any premium paid, subject to a deduction for any time for which **you** have been covered. This will be calculated on a proportional basis.

If the premium is paid by instalments the way **we** calculate the return premium may differ, please refer to general condition 2 (premium payment).

How to make a complaint

Our aim is to ensure that all aspects of **your** insurance are dealt with promptly, efficiently and fairly. At all times **we** are committed to providing **you** with the highest standard of service.

If **you** have any questions or concerns about **your** policy or the handling of a claim **you** should, in the first instance, contact **your** insurance broker.

In the event that **you** remain dissatisfied and wish to make a complaint **you** can do so at any time by either writing to:

Markel (UK) Limited
Verity House
6 Canal Wharf
Leeds
LS11 5AS

Markel International Insurance Company Ltd
20 Fenchurch Street
London
EC3M 3AZ

Complaints that cannot be resolved in this way may be referred to the Financial Ombudsman Service.

If **you** were sold this product online or by other electronic means and within the European Union (EU) **you** may refer **your** complaint to the EU Online dispute Resolution (ODR) platform. Upon receipt of **your** complaint the ODR will escalate **your** complaint to **your** local dispute resolution service – this process is free and conducted entirely online.

You can access the ODR platform on <http://ec.europa.eu/odr>

The Financial Ombudsman Service (FOS)

The FOS is an independent service in the UK for settling disputes between consumers and businesses providing financial services. You can find out more information on the FOS at www.financial-ombudsman.org.uk

The contact details for the FOS are:

The Financial Ombudsman Service
Exchange Tower
London E14 9SR

Telephone: 0800 023 4567 (calls to this number are free from 'fixed lines' in the UK, or
0300 123 9123 (calls to this number are charged at the same rate as 01 and 02 numbers on mobile tariffs in the UK)

Email: complaint.info@financial-ombudsman.org.uk

Website: www.financial-ombudsman.org.uk

In certain situations **you** will not be able to refer **your** complaint to the Financial Ombudsman Service.

If **you** are a large business with an annual turnover of over two million euros (or the equivalent in pounds sterling) and **you** employ more than 10 employees, **you** are not eligible to refer **your** complaint to the Financial Ombudsman Service. If **you** are unsure whether **you** are able to refer **your** complaint, please contact the Financial Ombudsman Service.

Making a complaint does not affect **your** right to take legal action.

Details of the Financial Services Compensation Scheme

Under the Financial Services & Markets Act 2000 **you** may be able to claim from the Financial Services Compensation Scheme. The level of compensation is different depending on the type of cover **you** hold:

- compulsory insurance, such as employer's liability, is covered for 100% of the claim
- for other insurances 90% of the claim is covered with no upper limit
- further information can be obtained by visiting the Financial Services Compensation Scheme

website on www.fscs.org.uk or by telephoning 0800 678 1100 or 020 7741 4100

Language

This policy and all correspondence between **you** and **us** in relation to this policy (including any correspondence in relation to a claim) shall be in English.

Regulatory authorities

We are authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority (Financial Services number 202570) and registered in England with company number 966670 with a registered office at 20 Fenchurch Street, London EC3M 3BY.

Data protection

Some of the information that **you** have provided to **us** may be personal data as defined by the Data Protection Acts 1998 (the 'DPA'). This will be processed by **us**, in compliance with the DPA, for the purpose of providing insurance and handling claims or complaints, if any, which may necessitate providing such information to other parties.

Rights of third parties

A person who is not a party to this policy has no right under the Contracts (Rights of Third Parties) Act 1999 (or any amendment or re-enactment of the Act) to enforce any term of this policy but this does not affect any right or remedy of a third party which exists or is available apart from the Act.

Sanctions limitation

We will not provide any benefit under this contract of insurance to the extent of providing cover, payment of any claim or the provision of any benefit where doing so would expose **us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanction, laws or regulations of the European Union, United Kingdom or United States of America.

Choice of law

The law of England and Wales will apply to this contract unless at the commencement of the period of insurance shown in the policy schedule **you** are a resident of (or, in the case of a business, the registered office or principal place of business is situated in) Scotland, in which case (in the absence of agreement to the contrary) the law of Scotland will apply.

Any legal proceedings between **you** and **us** in connection with this policy will take place in the courts of the part of the **United Kingdom** in which **you** live or have **your** registered office.

Directors and Officers liability

What is covered

a Directors and officers liability

We will pay **you** for **your** legal liability for damages and costs awarded against **you** arising from any claim first made against **you** and reported to **us** during the period of insurance shown in the policy schedule which arises from any actual or alleged wrongful act, error or omission committed or attempted by **you** during the performance of **your** duties as a director, officer, committee member or trustee of the **club or society** including

- breach of any duty including fiduciary or statutory duty
- breach of trust
- negligence, negligent statement, misleading statement or negligent misrepresentation
- libel, slander or defamation
- wrongful trading as defined under United Kingdom law
- breach of warranty or authority
- or any other act, error or omission committed by **you** in **your** capacity of a director, officer, committee member or trustee of the **club or society**.

Related, continuous or repeated wrongful acts, or wrongful acts that are connected by the same cause, shall constitute a single wrongful act.

In addition **we** will pay **your costs and expenses** resulting from the claim.

However, if the **club or society** are legally allowed to pay **you** under their Memorandum or Articles of Association, trust deed, constitution or charter for their legal liability and **we** reimburse the **club or society** or make that payment on their behalf under section of cover 'f' (club or society reimbursement) below, then **we** will not make any payment under this section of cover 'a' (directors and officers liability).

b Other concern cover

We will pay **you** for **your** legal liability for damages and costs awarded against **you** arising from any claim first made against **you** and reported to **us** during the period of insurance shown in the policy schedule which arises from any actual or alleged wrongful act, error or omission committed or attempted by **you** during the performance of **your** duties as a director, officer, committee member or trustee of the **other concern** including

- breach of any duty including fiduciary or statutory duty
- breach of trust
- negligence, negligent statement, misleading statement or negligent misrepresentation
- libel, slander or defamation
- wrongful trading as defined under United Kingdom law
- breach of warranty or authority
- or any other act, error or omission committed by **you** in **your** capacity of a director, officer, committee member or trustee of the **other concern**.
- Related, continuous or repeated wrongful acts, or wrongful acts that are connected by the same cause, shall constitute a single wrongful act.

In addition **we** will pay **your costs and expenses** resulting from the claim.

However, **we** will not pay any amount which **you** recover from the **club or society** and where **we** pay them under 'h' (club or society reimbursement) below.

c Disqualification proceedings

We will pay **you** for **costs and expenses** arising from **disqualification proceedings** which are first ordered or commissioned and reported to **us** during the period of insurance shown in the policy schedule.

However, **we** will not pay any amount which **you** recover from the **club or society** and where **we** pay them under 'h' (club or society reimbursement) below.

d Investigation costs

We will pay **you** for **costs and expenses** arising from an **investigation** which is first ordered or commissioned and reported to **us** during the period of insurance shown in the policy schedule.

However, **we** will not pay any amount which **you** recover from the **club or society** and where **we** pay them under 'h' (club or society reimbursement) below.

e Environmental proceedings

We will pay **you** for **costs and expenses** arising from **environmental proceedings** which are first ordered or commissioned and reported to **us** during the period of insurance shown in the policy schedule.

However, **we** will not pay any amount which **you** recover from the **club or society** and where **we** pay them under 'h' (club or society reimbursement) below.

f Club or society reimbursement

If the **club or society** is legally allowed to pay on **your** behalf any amount which **you** would otherwise be entitled to payment by **us** under

- a above (directors and officers liability)
- c above (disqualification proceedings)
- d above (investigation costs)
- e above (environmental proceedings)

then **we** will reimburse the **club or society** for that payment.

g Discovery period

If **we** refuse to renew this policy for reasons other than

- non-payment of premium, or
- failure to comply with or observe the terms, provisions and conditions of this policy,

or if **you** or the **club or society** declines to accept **our** renewal terms, then **you** or the **club or society** shall automatically be entitled to a 30 day **discovery period**.

The **discovery period** shall only apply to:

- **wrongful acts**
- **disqualification proceedings**
- **investigations**
- **environmental proceedings**

first committed or allegedly committed, ordered or commissioned during the period of insurance shown in the policy schedule.

You or the **club or society** will not be entitled to any **discovery period** if other insurance has been bought with the intention of providing equivalent cover for any part of the **discovery period**.

What we will pay

The most **we** will pay in the period of insurance shown in the policy schedule for

- all claims in total, plus

all **costs and expenses**, is the **limit**.

The most **we** will pay in the period of insurance shown in the policy schedule for **costs and expenses** arising from **environmental proceedings** is £250,000 or 25% of the **limit** whichever is the least. This amount is not in addition to the **limit**.

We will not pay the **excess**. This amount must be paid by **you**.

What is not covered (exclusions)

1 Other insurance

We will not pay more than **our** proportionate share if **your** or the **club or society's** loss is covered under any other insurance.

2 Legal action

We will not pay **you** or the **club or society**

- where the claim is brought in a court of law outside the jurisdiction of the **United Kingdom**, and/or
- where action for damages is brought in a court within the jurisdiction of the **United Kingdom** to enforce a foreign judgement.
- where **disqualification proceedings**, **investigation** or **environmental proceedings** are ordered or commissioned outside the jurisdiction of the **United Kingdom**.

3 Employment disputes

We will not pay **you** or the **club or society** for

- an **employment wrongful act**
- an **investigation** in respect of employment discrimination.

4 Dishonest and malicious acts

We will not pay **you** or the **club or society** if **your** legal liability arises from

- **your** actual dishonesty, fraud or malicious conduct
- any wanton, wilful, reckless or intentional disregard of the law.

5 Remuneration

We will not pay **you** or the **club or society** to the extent of any

- fine or penalty
- non-compensatory damages
- remuneration of any kind that is due to any **director or officer** or **employee**.

6 Circumstances known at inception

We will not cover any claim made against **you** or the **club or society** or pay any **costs and expenses** arising from

- a **wrongful act**
- **disqualification proceedings**
- an **investigation**
- **environmental proceedings**

arising in any way from any previous or known litigation or proceedings (including allegations from the same or essentially the same facts) involving a **you**, the **club or society** or an **other concern** that was first started prior to the date that this section of cover came into force.

We will not cover any claim, proceedings or circumstances which have been reported or notified under any contract of insurance which this section of cover renews or replaces.

If **you** or the **club or society** knew or ought to have known of any circumstances that existed prior to the date that this section of cover started then **we** will not pay **you** or the **club or society** for any legal liability that arises from such circumstances.

7 Pollution

We will not pay **you** or the **club or society** in respect of any claim or proceedings arising from or in any way involving **pollution**.

This exclusion does not apply to section of cover 'e' (environmental proceedings).

8 Injury or property damage

We will not cover any claim for

- bodily injury, mental injury, emotional distress, shock, sickness, disease or death to any **employee** or any other person
- loss, damage, destruction or loss of use of property.
- This exclusion does not apply to emotional distress to anyone other than an **employee** arising from libel, slander or defamation

9 Pension funds

We will not pay **you** in respect of any claim or proceedings arising from **you** acting in the capacity of trustee or administrator of any pension, retirement or superannuation scheme or programme created for **your** benefit or for the benefit of an **employee**.

10 Takeover or merger.

We will not cover any actual or alleged **wrongful act** committed or attempted after the effective date of the takeover or merger of the **club or society** by or with any person or entity.

We will not cover any **disqualification proceedings, investigations or environmental proceedings** instigated after the effective date of the takeover or merger of the **club or society** by or with any person or entity.

11 Professional duties to third parties

We will not cover any claim made by a third party for any breach of any professional duty owed to that party.

12 'Insured v insured'

We will not cover any claim made by or on behalf of

- the **club or society**
- any **other concern**
- any other director, officer, committee member or trustee of the **club or society**.

This exclusion does not apply to

- any claim brought by a director, officer, committee member or trustee of the **club or society** if the claim is made solely in their capacity as a tenant or general member of the **club or society**
- any claim for contribution brought by any director, officer, committee member or trustee of the **club or trustee** if the claim directly results from any other claim or payment under this policy.

13 Radioactive contaminations and sonic bangs etc

We will not pay **you** or the **club or society** for a loss that is otherwise covered under this policy if the loss is caused by or arises in any way 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

14 War risks and terrorism

We will not pay **you** or the **club or society** for a loss that is otherwise covered under this policy if the loss is caused by or arises in any way from

- **war** and/or **terrorism**
- any action taken in controlling, preventing or suppressing **war** and/or **terrorism**
- any unlawful or malicious act committed maliciously by a person or persons acting on behalf of or in connection with any **unlawful association**

regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

If **we** allege that, because of this exclusion, any loss is not covered by this policy the burden of proving otherwise will be upon **you** and/or the **club or society**.

If any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

15 Mould

We will not pay **you** or the **director or officer** for a loss that is otherwise covered under this policy if the loss is caused by or arises in any way from **mould** or a **mould event**.

Claims conditions

1 Notification of claims

You must notify **us** in writing of

- any claim made against **you**
- the receipt of any communication of an intention to make a claim against **you**
- any circumstance of which **you** or the **club or society** shall become aware which is likely to give rise to
 - a claim against **you** or the **club or society**, or
 - the instigation of **disqualification proceedings, investigation or environmental proceedings**, or
 - **you** or the **club or society** seeking payment under this policy

you must give **us**

- **your** reasons for **your** anticipation of a claim, **disqualification proceedings, investigation, environmental proceedings, or request for payment**
- full details of dates and persons involved

your notification to **us** must be within the period of insurance shown in the policy schedule.

If **you** comply with the above then any subsequent

- claim made, or
- **disqualification proceedings, investigation or environmental proceedings** instigated, or
- request for payment

will be regarded as having been made, instigated or requested during the period of insurance shown in the policy schedule.

If **you** fail to do this **your** claim may not be covered or the amount **we** pay **you** may be reduced.

2 General claims handling

- **you** must give **us** the information and co-operation that **we** may reasonably request
- **you** must not do anything which might prejudice **us**
- **you** must take all reasonable steps to prevent any further claim or request for payment under this policy
- **you** must not admit liability or settle any claim or incur any **costs and expenses** without **our** written consent

If **you** fail to do this **your** claim may not be covered or the amount **we** pay **you** may be reduced.

3 Defence of claims

- **we** are entitled to take over the defence or settlement of any claim in **your** name
- **you** or the **club or society** have a duty to defend any claim, **disqualification proceedings, investigation or environmental proceedings**.

- **we** have the right, but not the obligation, to actively associate with **you** or the **club or society** in the settlement or handling of any claim, **disqualification proceedings, investigation or environmental proceedings**.
- **you** have the right, subject to **our** written consent, to appoint any appropriately qualified legal representative to deal with any claim notified to **us** in accordance with claims condition 1.

8 Payment of indemnity limit

We are entitled at any time to pay **you** or the **club or society**:

- the **limit** (or as much of it as remains available), or
- any lesser sum for which any claim can be settled.

If **we** do this **we** will not be under any further liability to **you** or the **club or society** in respect of the claim.

Other conditions (general conditions)

1 Unintentional non-disclosure

You or the **club or society** must have provided the **proposal** with reasonable skill and care and after having made all reasonable and appropriate enquiries.

Despite general condition 7 (breach of the duty of fair presentation):

- If **you** or the **club or society** have made any misrepresentation or non-disclosure of any material facts or circumstances then **we** will not avoid this section of cover
 - unless either:
 - **we** reasonably believe the misrepresentation or non-disclosure was deliberate or reckless; or
 - **we** would not have underwritten this section of cover on any terms if the facts or circumstances had been disclosed or not misrepresented
 - and provided that
 - where **you** or the **club or society** should have notified **us** during a preceding period of insurance to that shown in the policy schedule of a claim or the instigation of **disqualification proceedings, investigation or environmental proceedings** and the cover to which **you** or the **club or society** would have been entitled was in any way more restrictive than that provided at the date of notification **we** will only be liable to the extent available during that preceding period of insurance.
 - where **you** or the **club or society** have prejudiced the handling or settlement of any claim, **disqualification proceedings, investigation or environmental proceedings**, the amount **we** will pay **you** will be reduced to the amount which, in **our** opinion, would have been payable in the absence of the prejudice.
- Subject to the above, if **you** or the **club or society** make any misrepresentation or non-disclosure of any material facts and **we** would still have underwritten this section of cover but on different terms had the facts been disclosed or not misrepresented, then **we** may instead:
 - reduce proportionately the amount paid or payable on any claim by reference to the ratio which the premium actually charged bears to the premium which **we** would have charged had **you** or the **club or society** told **us** about a material fact or circumstance. The same reduction will be applied to any claims which have already

been paid and any overpayment of claims by **us** will be repaid by **you** or the **club or society**; and/or

- treat this section of cover as if it had included such additional terms (other than terms relating to premium) as **we** would have imposed had **you** or the **club or society** told **us** about a material fact of circumstance. These additional terms will apply equally to existing, past and future claims.
- **We** will not deny payment on the grounds of the breach of claims conditions 1 or 2 of this policy subject to the above.

2 Cancellation

Neither the **club or society** nor **you** has a right to cancel this section of cover or to reduce the cover provided.

We will only consider a request for cancellation or a reduction in cover if **we** are reasonably satisfied that the request has been sanctioned by all the directors, officers, committee members or trustees whose rights under this section of cover are or may be affected.

Whether or not **we** agree to a request for cancellation or reduction in cover is at **our** complete discretion.

3 Offering

If the **club or society** decide to make a public or private offering of their shares or other equity interest during the period of insurance shown in the policy schedule then

- the **club or society** shall provide **us** with
 - any prospectus, and/or
 - any offering statement, and/or
 - any other information **we** may require
- **we** may at our discretion
 - amend the terms, limitations, exclusions and/or conditions of this section of cover, and/or
 - charge an additional premium.

4 Severability

Nothing in the **proposal** or otherwise known or done by any director, officer, committee member or trustee shall be attributed to any other person in determining any right or obligation of the director, officer, committee member or trustee under this policy.

In no case shall a director, officer, committee member or trustee be prevented from pursuing any point in his or her defence only because it is obstructive or harmful to the interests of any other director, officer, committee member or trustee.

5 Premium payment

Despite any other conditions relating to cancellation, if payment of the premium has been arranged on a deferred basis with a premium finance company which has entered into a contractual agreement with Markel (UK) Limited to provide premium credit facilities, then it is agreed that

- if payment of any instalment to the premium finance company is overdue, Markel (UK) Limited may, in accordance with the authority granted to the premium finance company by **you** under the terms of the Credit Agreement, accept cancellation instructions from the premium finance company and will allow a return pro-rata premium to the premium finance

company provided there have been no claims or circumstances known or reported to **us** during the period of insurance shown in the policy schedule

- all premiums due or returned will be processed by the premium finance company in accordance with the Credit Agreement.

6 Notice

Any notice under this policy will be regarded as given

- to **us** if sent by first class prepaid post to Markel (UK) Limited, Verity House, 6 Canal Wharf, Leeds, LS11 5AS
- to **you** or the **club or society** if sent by post to the **club or society's** last known address.

7 Multiple insureds

Our liability under this policy is as stated in the policy. **Our** liability shall not be varied or regarded as varied because of the number or type of **insureds** or claims under the policy.

8 Breach of terms not relevant to the actual loss

If **you** or the **club or society** fail to comply with a term (express or implied) of this policy (other than a term that defines the risk as a whole) and compliance with the term would tend to reduce the risk of a loss, either

- of a particular kind, and/or
- at a particular location, and/or
- at a particular time

we cannot rely on the breach of the term to exclude, limit or discharge **our** liability under this policy if **you** or **the club or society** show that the failure to comply with the term could not have increased the risk of loss which actually occurred in the circumstances in which it occurred.

8 Breach of the duty of fair presentation

(a) breach of duty prior to entering into the contract of insurance

If **you** or the **club or society** breach the duty of fair presentation prior to entering into this insurance contract, the remedies available to **us** are:

- if the breach of the duty of fair presentation is deliberate or reckless:
 - **we** may avoid this policy and refuse all requests for payment, and
 - **we** need not return any of the premium paid
- if the breach of the duty of fair presentation is not deliberate or reckless, **our** remedy will depend upon what **we** would have done if **you** or the **club or society** had complied with the duty of fair presentation
 - if **we** would not have entered into the contract of insurance at all **we** may avoid this policy and refuse all requests for payment and will return the premium paid
 - if **we** would have entered into the contract of insurance but on different terms (other than terms relating to the premium), this policy will be treated as if it had been entered into on those different terms from the outset
 - in addition, if **we** would have entered into the contract but would have charged a higher premium **we** may proportionately reduce the amount to be paid under

this policy and, if applicable, any amount already paid in the same proportion as the premium we would have charged bears to the premium actually charged

(b) **breach of duty prior to entering into a variation of this contract of insurance**

If **you** or the **club or society** breach the duty of fair presentation prior to entering into a variation of this insurance contract, the remedies available to **us** are:

- if the breach of the duty of fair presentation is deliberate or reckless:
 - **we** may treat this policy as having been terminated from the time when the variation was concluded, and
 - **we** need not return any of the premium paid
- if the breach of the duty of fair presentation is not deliberate or reckless, **our** remedy will depend upon what **we** would have done if **you** or the **director or officer** had complied with the duty of fair presentation
 - if **we** would not have agreed to the variation at all **we** may treat the contract as if the variation was never made and will return any extra premium paid
 - if **we** would have agreed to the variation but on different terms (other than terms relating to the premium), the variation will be treated as if it had been entered into on those different terms from the outset

in addition, if either

- **we** would have increased the premium by more than **we** did or at all, or
- **we** would not have reduced the premium as much as **we** did or at all, then **we** may proportionally reduce the amount to be paid under this policy arising out of events after the variation.

Words with special meanings (definitions)

The following words or phrases have the same meaning wherever they are highlighted in bold in this section of cover. Plural forms of the words defined in this policy have the same meaning when used in the singular form.

Insured/you/yours means

- any person who was, is, or during the period of insurance shown in the policy schedule becomes a director, officer, committee member or trustee of the **club or society**.
- any person acting at the request, order or direction of the **club or society** as a director, officer, committee member or trustee of the **other concern**, or
- any shadow director as defined under United Kingdom law or similar legislation in any other country.
- the lawful husband, wife or civil partner of any of the above, only because of their relationship, following a claim against the above.
- the estates, heirs or legal representatives of any of the above who has died or become incapacitated, insolvent or bankrupt but only in relation to a claim against the above.

Club or society means

- the company, association or organisation named as the policyholder in the policy schedule
- the **subsidiary company**

Costs and expenses means legal costs and expenses incurred

- by us, or
- by **you** (provided **we** have agreed with **you** in writing that **you** may incur these costs and expenses)

but does not include

- damages and costs awarded against **you**
- any kind of payment for work or service due to **you**.

Discovery period means the period immediately following the expiry of the period of insurance shown in the policy schedule during which

- a claim, or
- circumstance for which cover is provided under the policy

can be reported to **us**.

Disqualification proceedings means legal action taken against **you** following which **you** are liable to be disqualified from continuing to be a director or officer of the **club or society**.

Employee means any person (other than a director, officer, committee member or trustee of the **club or society**) who is (or was or who may be in the future):

- under a contract of service or apprenticeship with the **club or society**, or
- under a work experience or similar scheme, or
- supplied to or hired in or borrowed by the **club or society**

and who is working for and under the direct control of the **club or society** in connection with the activities of the **club or society**, or

- any volunteer working for the **club or society**.

Employment wrongful act means any actual or alleged

- act or omission that results in a dispute in connection with the employment of an **employee** or prospective **employee**, or
- **retaliatory treatment**

committed or allegedly committed by **you**.

Environmental proceedings means any

- prosecution
- official investigation
- examination
- inquiry, or
- other proceedings

by any official body or institution that has the authority or power to investigate the affairs of the **club or society** and/or the affairs of the **other concern**, arising from **pollution** or alleged **pollution**.

Excess means the first amount of any claim for which **you** are responsible. The amount in respect of this section of cover is shown in the policy schedule.

Investigation means any

- official investigation
- examination
- inquiry, or
- other proceedings

(other than when arising from **pollution** or alleged **pollution**) by any official body or institution that has the authority or power to investigate the affairs of the **club or society** and/or the affairs of the **other concern**.

Limit means the maximum amount **we** will pay. The amount in respect of this section of cover is shown in the policy schedule.

Mould means any permanent or impermanent fungus (including mould or mildew but not including dry rot) or any of the spores, scents or by-products produced by a fungus regardless of whether or not they are proved to have caused any disease, injury or damage.

Mould event means any actual, alleged or threat of:

- contact with,
- exposure to,
- inhalation of,
- absorption of,
- discharge of,
- dispersal of,
- seepage of,
- migration of,
- release of,
- escape of,
- presence of,
- growth of

mould.

Outside Other concern means

- any registered charity
- any trade, research, promotional, training or similar organisation existing for non-profit making purposes (whether incorporated or not)
- any profit-sharing or share option committee, sports, social or similar association or organisation (whether incorporated or not) that is established or conducted for **your** or **your** family's or dependent's benefit or the benefit of any **employee** and their families and dependents.

Our, us, we means Markel International Insurance Company Limited.

Pollution means the

- discharge,
- dispersal,
- release, or
- escape

of any irritant or contaminant.

Proposal means all the information supplied to **us** (whether by written, electronic or any other means) for the purpose of effecting this policy.

Retaliatory treatment means action taken against an **employee** on account of the **employee** exercising or attempting to exercise their rights under law.

Subsidiary company means any company where the **club or society**, as at the date of inception of this policy

- owns more than 50% of the share capital
- has a majority of the voting rights
- has the right to appoint or remove a majority of the company's board of directors
- controls a majority of the voting rights of the company under a written agreement with other shareholders or members.

or any other company which **we** have agreed in writing to include.

Terrorism means any act of terrorism (including the use or threat of violence) of any person or group of persons whether acting alone or on behalf of or in connection with any organisation or government committed for:

- political,
- religious,
- ideological,
- or similar purposes including the intention to influence or overthrow any government (whether by right or not) and/or putting the public or any section of the public in fear.

United Kingdom means England, Scotland, Wales, Northern Ireland, the Isle of Man and the Channel Islands.

Unlawful association means any unlawful organisation which is engaged in **terrorism** including any organisation which at any relevant time is a proscribed organisation within the meaning of the Terrorism Act 2000 or any amendment or re-enactment of that act.

War means

- war
- invasion
- act of foreign enemies
- hostilities or warlike operations (whether or not war is declared)

- civil war
- rebellion
- revolution
- insurrection
- civil commotion assuming the proportions of or amounting to an uprising mutiny or usurped power.

Wrongful act means any actual or alleged wrongful act, error or omission committed or attempted by **you** during the performance of **your** duties as a director, officer, committee member or trustee of the **club or society** including

- breach of any duty including fiduciary or statutory duty
- breach of trust
- negligence, negligent statement, misleading statement or negligent misrepresentation
- libel, slander or defamation
- wrongful trading as defined under United Kingdom law
- breach of warranty or authority

or any other act, error or omission committed by **you** in **your** capacity of a director, officer, committee member or trustee of the **club or society**. Related, continuous or repeated wrongful acts, or wrongful acts that are connected by the same cause, shall constitute a single wrongful act.

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