



## DIRECTOR'S PERSONAL INDEMNITY INSURANCE

This is to certify that in accordance with the authorisation granted under Contract to the undersigned by Arch Insurance Company (Europe) Limited and in consideration of the premium specified in the Schedule *We*, the Insurers named below, are hereby bound to insure in accordance with the terms and conditions contained herein or endorsed hereon.

We hereby agree, to the extent and in the manner hereinafter provided, to indemnify or otherwise pay *You* in respect of the contingencies or events specified in the sections of the Certificate. However this Certificate only applies to those Sections as indicated in the Schedule attached to this Certificate.

The Certificate, Schedule, Exclusions and General Conditions shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of the Certificate, Schedule, Exclusions and General Conditions shall bear the same meaning wherever it may appear.

Please read **this Certificate** and, if it is incorrect, return it immediately for alteration.

.....

Signed by **DUAL CORPORATE RISKS LIMITED** acting for Arch Insurance Company (Europe) Limited





## DIRECTOR'S PERSONAL INDEMNITY INSURANCE

In consideration of payment of the premium and subject to the terms and conditions of this Certificate, *You* and *We* agree as follows:

### Section 1 Insuring Clause

We shall pay on behalf of *You* *Loss* following the exhaustion of *Your* right to *Indemnification*.

### Section 2 Definitions

When used in *Italics* type in this Certificate:

- 2.1 *Certificate Period* means the initial twelve month period commencing from the inception date specified in Item 2 of the Schedule, and thereafter, each successive twelve month period commencing on the annual anniversary of such Inception Date, subject to termination in accordance with Section 7.6 below.
- 2.2 *Claim* means:
  - (a) any written demand, whether or not containing a demand for monetary compensation;
  - (b) any civil, criminal or regulatory proceeding;against *You* alleging a *Wrongful Act*, including any appeal therefrom.
- 2.3 *Company* or *Companies* means the *Company* or *Companies* of whom the Insured is a director, except any company with a negative net worth.
- 2.4 *Costs* means that part of *Loss* consisting of reasonable costs, charges, fees (including lawyers' and experts' fees) and expenses incurred in defending or investigating a *Claim*.
- 2.5 *Indemnification* means the *Company* or any other source paying on behalf of or reimbursing *You* for *Loss* to the fullest extent authorised or not prevented by law, or pursuant to any contract, unless unable by reason of *Insolvency*.
- 2.6 *Insolvency* means the status of a *Company* resulting from the appointment by any government official, agency or court of any receiver, conservator, liquidator, administrator, trustee, rehabilitator or similar official to take control of, supervise, manage, liquidate or administrate the *Company*.
- 2.7 *Insured Capacity* means the performance or discharge of the function, duties and responsibilities which *You* have been retained, appointed or employed to perform in *Your* managerial capacity within a *Company*.
- 2.8 *Loss* means the amount which *You* are legally and personally liable to pay, including *Costs*, on account of a *Claim* first made against *You* during the *Certificate Period* for a *Wrongful Act* except:
  - (i) Matters uninsurable under English law;
  - (ii) Fines or penalties imposed by law;
  - (iii) Taxes.
- 2.9 *Personal Injury* means bodily injury, mental or emotional distress, sickness, disease or death of any natural person.
- 2.10 *Pollutants* means any substance exhibiting any hazardous characteristics to the environment including, but not limited to, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, soil, chemicals or waste materials, air emission, odour, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products and any noise.
- 2.11 *Pollution* means the actual, alleged or threatened discharge, release, escape, dispersal or disposal of *Pollutants* into or on real or personal property, soil, water or the atmosphere or any direction or request that *You* or the *Company* test for, monitor, clean up, remove, contain, treat, detoxify or neutralise *Pollutants*, or any voluntary decision to do so.
- 2.12 *Property Damage* means physical damage to or destruction or loss of use of any tangible property.
- 2.13 *USA* means the United States of America, its territories, possessions and any state or political sub-division thereof.

- 2.14 *We, Our or Us* means the Insurers named in Item 9 of the Schedule.
- 2.15 *Wrongful Act* means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted, by *You* in your *Insured Capacity*.
- 2.16 *You* or *Your* mean any natural person who is, was or becomes during the *Certificate Period*: a director of the Companies identified in the schedule or subsequently added by endorsement and, but solely for the *Wrongful Act* of the aforesaid natural person, their:
- (a) lawful spouse, if named as co-defendant solely because of their spousal relationship; or
  - (a) estates, heirs, legal representatives or assigns, if *You* is deceased or declared incompetent, insolvent, or bankrupt.

### Section 3 Exclusions

We shall not be liable for *Loss* on account of any *Claim*:

- 3.1 based upon, arising from, or in consequence of any circumstance if written notice of such circumstance has been given under any policy prior to the inception of this Certificate;
- 3.2 for *Personal Injury* or *Property Damage*;
- 3.3 for *Pollution*;
- 3.4 based upon, arising from, or in consequence of any dishonest or fraudulent act or omission or any intentional breach of any law by *You*. However, *We* shall pay *Costs* on behalf of *You* until such dishonesty, fraud or intent is established by a judgement or other final adjudication;
- 3.5 for the rendering or failure to render any service or advice to a customer or client of a *Company*;
- 3.6 based upon, arising from, or in consequence of *You* having gained in fact any personal profit, remuneration or advantage to which *You* were not legally entitled;
- 3.7 based upon, arising from or in consequence of Insolvency except for the *Costs* for *Insolvency* sub-limit set forth in Item 3 of the Schedule;
- 3.8 brought by or on behalf of the *Company* or any person insured under this Certificate in the *USA* or Canada, or any *Claim* brought in the jurisdiction of the *USA* or Canada or any *Claim* brought elsewhere to enforce a judgement in the *USA* or Canada whether by way of reciprocal agreement or otherwise.

### Section 4 Limits of Liability

- 4.1 *Our* maximum liability for each *Loss* and for each *Certificate Period* shall be the amount set forth in Item 3 of the Schedule irrespective of the number of *Claims* made during the *Certificate Period*.
- 4.2 *Costs*, including the *Costs* for *Insolvency* sub-limit in Item 3 of the Schedule, are part of and not in addition to the Limit of Liability
- 4.3 All *Loss* arising out of the same *Wrongful Act* and all causally connected *Wrongful Acts* shall be deemed to be a single *Loss* and to have originated in the earliest *Certificate Period* in which a *Claim* is first made alleging said *Wrongful Act* or causally connected *Wrongful Acts*.

### Section 5 Reporting and Notice

- 5.1 *You* will, as a condition precedent to *Our* liability under this Certificate, give to *Us* written notice as soon as practicable of any *Claim*.
- 5.2 If during the *Certificate Period* *You* become aware of circumstances which could give rise to a *Claim* and give written notice of such circumstance(s) to *Us*, then any *Claim*(s) subsequently arising from such circumstances shall be deemed to have been made during the *Certificate Period* in which the circumstances were first reported to *Us*.
- 5.3 *You* will, as a condition precedent to *Our* liability under this Certificate, give to *Us* such information and cooperation as *We* may reasonably require, including but not limited to a description of the *Claim* or circumstances, the nature of the alleged *Wrongful Act*, the nature of the alleged or potential damage, the names of actual or potential claimants, and the manner in which *You* first became aware of the *Claim* or circumstances.

## Section 6 Defence and Settlement

- 6.1 *We* will pay *Costs* on an as incurred basis prior to final determination or adjudication or up until the time that a *Claim* is withdrawn. If at any time a *Claim* is deemed not to be covered under this Certificate or is found to be excluded then all such *Costs* must be returned to *Us* on demand.
- 6.2 *You* shall have the right and duty to defend and contest any *Claim*. *We* shall have the right to effectively associate with *You* and the *Company* in the defence and settlement of any *Claim* that appears reasonably likely to involve *Us*. This will include, but not be limited to, effectively associating in the negotiation of any settlement.
- 6.3 *You* shall not admit or assume any liability, enter into any settlement agreement, stipulate as to any judgement or incur any *Costs* without our written consent as a condition precedent to our liability for *Loss* arising out of the *Claim*. Only those settlements, stipulated judgements and *Costs* to which *We* have consented shall be recoverable as *Loss* under this Certificate. Our consent shall not be unreasonably withheld provided that *We* shall be entitled to effectively assess the defence and negotiation of any settlement of any *Claim* in order to reach a decision as to reasonableness.
- 6.4 *You* and the *Company* shall give *Us* full co-operation and any information that *We* may reasonably require as a condition precedent to our liability for *Loss* arising out of a *Claim*. In the event that a dispute arises as to whether or not to contest any legal proceedings, neither *We* nor *You* (or the *Company*) shall be required to contest any legal proceedings unless a Queen's Counsel or equivalent (to be mutually agreed upon) shall advise that the proceedings should be contested. *We* will bear the cost of obtaining the advice of the Queen's Counsel or equivalent.

## Section 7: General Conditions

### 7.1 Allocation

Where a *Claim* involves matters which give rise to *Loss* covered by this Certificate and matters which do not, or where a *Claim* is made against both *You* and any parties other than *You*, then *We* agree with *You* that we shall both use our best efforts to agree upon a fair and proper allocation of the proportion of the *Loss* covered under this Certificate. Only *Loss* incurred by *You*, and in the case of *Costs* those which are directly attributable to your defence, are covered. *Loss* incurred by, or attributable to the defence of, the *Company* is not covered.

If an allocation cannot be agreed then it shall be determined by a Queen's Counsel to be mutually agreed upon or, in default of agreement, to be nominated by the then Chairperson of the Bar Council. Such determination will be based upon written submissions only and will be final and binding. Pending that determination *We* may at our sole discretion meet the *Loss* on an interim basis. After the allocation has been determined, *You* or the *Company* (whichever is appropriate) will refund to *Us* any *Loss* which we have paid that exceeds the entitlement under this Certificate.

The costs of any reference to a Queen's Counsel under this clause shall be borne by *Us*.

### 7.2 Changes in Exposure

If during the *Certificate Period*, *You* are appointed as a director or officer of a limited liability company not declared in the original proposal form for cover hereunder, then upon written request to *Us* cover may be granted subject to receipt by *Us* of such information and any additional premium required by *Us*.

### 7.3 Representations

In issuing this Certificate to *You*, *We* have relied upon the declarations and statements in the proposal form for this Certificate. All such declarations and statements are the basis of cover and are incorporated into and constitute part of this Certificate.

### 7.4 Other Insurance

This Certificate is specifically excess of any other insurance responding to directors or officers liability.

### 7.5 Territory

Anywhere in the world, except the *USA* and *Canada*

**7.6 Termination/Cancellation**

The *Insured* may cancel this Certificate by giving notice in writing to *Us* at any time. If the *Insured* cancels this Certificate, *We* will retain the proportion of the premium calculated pro rata as at the date of cancellation plus thirty five percent (35%) of that amount.

*We* may cancel this Certificate due to non-payment of premium in accordance with the terms of this Certificate by giving 30 days written notice to the *Insured*.

This Certificate shall terminate at the expiry of the *Certificate Period* stated in Item 2 of the Schedule.

This Certificate may be cancelled in writing by mutual agreement of the *Insured* and *Us*.

**7.7 Subrogation and Assignment of Rights**

If any payments are made under this Certificate, *We* shall be subrogated to all rights of recovery in respect of such payments. In addition, *You* shall upon request execute all documentation that may be necessary to enable *Us* to bring an action or suit in your name or that of the *Company*. Any recovery received shall be applied first against any *Loss* insofar as it exceeds the *Limit of Liability*, then against any payment made by *Us*, and finally against the *Deductible*. *We* will not subrogate against any person insured under this Certificate unless that person is found to have committed a criminal act.

**7.8 Assignment of Certificate**

This Certificate and any rights hereunder cannot be assigned without our written consent.

**7.9 Governing Law and Jurisdiction**

This Certificate shall be governed by and construed in accordance with the laws of England and Wales and it is agreed that the courts of England and Wales shall have exclusive jurisdiction to determine any disputes which arise in relation to this Certificate.

## Our Regulatory Status

This insurance is underwritten by DUAL Corporate Risks Limited (Company No. 4160680) on behalf of Arch Insurance Company (Europe) Limited (Company No. 4977362). Both DUAL Corporate Risks Limited and Arch Insurance Company (Europe) Limited are authorised and regulated by the Financial Services Authority. Our Firm Registration Numbers at the FSA are 312593 and 229887 respectively. These details may be checked by visiting the Financial Services Authority website at [www.fsa.gov.uk/register](http://www.fsa.gov.uk/register). Alternatively the Financial Services Authority may be contacted on 0845 606 1234.

Arch Insurance Company (Europe) Limited is a member of the Financial Services Compensation Scheme (FSCS). *You* may be entitled to compensation from the scheme if it is unable to meet its liabilities under this insurance certificate. This depends upon the type of business and the circumstances of the claim. Further information about the compensation scheme arrangements is available from the FSCS or by visiting the FSCS website at [www.fscs.org.uk](http://www.fscs.org.uk).

## How to Complain

We intend to provide an excellent service to you, however, we recognise that there may be occasions when you feel that this has not been achieved. If you are unhappy with any aspect of the service that you receive, please contact either your insurance broker or

The Managing Director  
DUAL Corporate Risks Limited  
140 Leadenhall Street  
London  
EC3V 4QT

Please state the nature of your complaint, the certificate and/or claim number.

If after taking this action you are still unhappy with our response please write to:

Chief Executive Officer  
Arch Insurance Company (Europe) Limited  
6<sup>th</sup> Floor  
Plantation Place South  
60 Great Tower Street  
London  
EC3R 5AZ

Having taken this action, if you feel that your complaint has not been handled satisfactorily, you may seek assistance from The Financial Ombudsman Service  
South Quay Plaza, 183 Marsh Wall London E14 9SR  
Telephone – 0845 080 1800  
Email – [enquiries@financial-ombudsman.org.uk](mailto:enquiries@financial-ombudsman.org.uk)  
Website – [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)  
The Financial Ombudsman Service will become involved if you are an eligible complainant as defined by the rules of the Financial Services Authority.

**The existence of this complaints procedure does not affect any right of legal action you may have against DUAL Corporate Risks Limited or Arch Insurance Company (Europe) Limited.**