

# 專門職危險 賠償責任保險( )

- 任員賠償責任保險 -

1999. 1

嚴 倉 會

# 序 言

1997 12 IMF 金融, 企業, 勞動市場, 公共部門  
經濟各部門 構造調整 .  
1 , , , , , ,  
81 가  
合併 100  
5大財閥 6~64  
企業群 .  
國際水準 會計制度 整備 結合財務諸表 導入  
外部公示制度 實施強化 企業經營  
經營陣 民事上 賠償責任 責任經營  
가 가 .  
最近 例 大株主  
側近 經營 賠償責任  
, 一般企業破産 會社整理法 共同管理人 法定管理企  
業 損害賠償 査定申請  
, 任員 株主代表訴訟  
商法改正 民事訴訟法上  
集團訴訟制度가 , 98 2  
社外理事制度 論議

財產的 損失  
 企  
 業 企業 會社 危險管理  
 保險 會社經營 가 存在  
 報告書 任員 義務 責任  
 使用  
 英文 D&O 約款 가 法體系 解說  
 約款解說  
 單一保  
 險種目

研究報告書 嚴倉會  
 金善政 ( )  
 張宰駟, 尹贊鎬  
 筆者 個人的 意見 , 公式 見解가

1999 1  
 保 險 開 發 院  
 院長 朴 性 昱

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## · 序 論

1998. 7. 24

0 J

61 H

“ 400 ”  
“ 가 ,  
가 ”

經營陣 賠償責任

會社任員陣 義務・責任

· 持株比率 5% 1%  
( '98. 11 )

· 公企業

(

)

(

•

•

가

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’                    ’                    ’                    ’                    ’

■ <http://www.oxfordjournals.org/doi/10.1093/oxfordjournals/ehp.a001001>

IMF

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가

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■

■

9

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■

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“ 가 . D&O ”

가 . 報告書 任員賠償責任保險

商法 公正去來法 特別法上 理事

責任性

代表訴訟 概要 , D&O

任員賠償責任危險 ,

D&O 保險約款 順 構成 . D&O 危險

International Risk

Management Institute社가 .

D&O 英文約款條項

## 二. 任員 義務 責任

商法

「 」

,

$$\Gamma \quad \quad \quad \downarrow \quad ( \quad , \quad )$$

( 2 ).

가                      使用例

英文任員賠償責任保險(D&O Liability Insurance)	Directors
	Officers

. Officer

Director가                   가                   .

D&amp;O

## 1. 商法上 理事 義務 責任

가. 理事・理事會・代表理事

理 事

理事

受任者の

理事會

가

員數 3人

( 383 ).

가 ,

가

가 .

理事會

가 가

( 393 ).

가 .

가

가

企業支配構造 論議

.

가

.

會議體

.1)

,

, ,

,

가 .

가 .

代表理事

가

.

가 가

가가

가 .

1)

(Executive

Committee)

,

가 . / , 『 』 , 5 ,

, 1996, p.638

.

，  
·  
·  
가 ( 394).  
共同代表理事  
( 389). 가  
가 · ·  
가 가 가  
가 表見代表理  
事 3  
( 395).

## · 理事 義務

·  
·

### 善管義務

善良 管理者 注意 ( 382 ,  
681).

·

### 競業禁止

( 397, 398). 前者

營業部類

3

同種營業

가

. 後者

,

가

3

,

가

가

.

.

가

( 399 ),

3

( 401 ).

理事會出席義務

.

가

.

監視義務

.

理事會 監督權( 393 ), 監事 監查權( 412 )

.

,

.

## 企業秘密遵守義務

가 내부去來

## 忠實義務

1998

， 382 3 「  
」

가 가

[ 美 國 ]

受託者義務(Fiduciary Duty)

信認義務 忠實義務

(Duty of Care)

(Duty of Loyalty)

,

.

가

善管義務

.

.

가

.

.

,

,

私用禁止,

(Securities Exchange Act)

(SEA 10 ),

(SEA 16 )

.

.

가

가

.

[ 日 本 ]

1950

「

,

」 (

254 )

.

,

.2)



## · 理事 責任

· , 가  
가  
3

( 399 , 401 ).

### 1) 會社 損害賠償責任

( 382 ) 受任人

·

· , 가 法令 定款 懈怠  
( 399 ),

· 가 理事會 決議  
( 399 ). , 가

異議 가 議事錄  
( 399 ).

·

· 가 ·  
( 397 )

---

2) / , , p.657

( 398 ),

( 470),

( 341)

( 344),

( 462 )

가

作爲

不作爲

가

가

經營上 判斷

가 ,

( 3 )가

400),

2

가

( 450).

( 162 )

10

消滅時效가

2) 第3者 損害賠償責任

가

. 가 3

3 가

. 가 惡意 重大 過失

3

( 401 ).

가 惡意・重過失 3

, 401

.<sup>3)</sup> , 가

, 가 ,

, 가

.

責任 負擔者

3 「

」 , 가 ( 401).

( 401 , 399 ), 가

3)

害意가

,

.

가 ( 401, 399 ).

## 責任 性質

401 3  
法定責任說 不法行爲責任說 ,  
3

3  
가 10 消滅時效가 ( 162 ).

## 2. 商法上 監事 義務 責任

### 意 義

가

, ( 411).

員數 3  
( 409), 100 3  
가 監事選任

( 409 ).

委任 ,

( 317 ).

## 職 務

( 412 ),

(

412 ).

( 391 ),

留止請求權( 402), 訴

( 394)

訴權( 328, 376, 429, 445, 529)

.

## 義 務

( 415, 382 )

受任業務

.

競業禁止義務( 397) 自己去來

禁止義務( 398)

.

가

가

( 391 ).

( 413),

( 413 ),

.

( 447 )

.

## 責 任

가

( 414 ).

가

3

( 414 ).

가

3

( 414 ).

가

( 415,

400),

( 415, 400).

< 會社/理事/監事 責任關係圖 >

### 3. 特別法上 任員 義務 責任

#### 가. 公正去來法

##### 意 義

1981 4 1

，  
．  
1) 市場構造 2) 競爭制限行爲 3)  
施行體制 規制手段  
．  
( 7 18) ，  
( 3 6)，  
( 19 22 )，  
( 25 28)  
( 6, 17, 24 ， 28, 31 ， 34 ， 55 ， 55  
) 가 ， ( 66  
71)， ( 56, 57) ．

##### 損害賠償責任

56 「  
가  
」 ( 1 ) 「  
」 ( 2 )

· ·  
( 2 ).

,

가 .

是正措置가

가 ( 57 ),

, 가 3

( 57 ).

## · 證券去來法

意 義

1962

· 가 , 合併 營業讓受制  
度, 가 .

가

가 ,

가 .



不實公示 責任

가

가

公示主義

.

가

가

( 8 ),

가

가

가

가

( 14).

. 가

. 가

가

가

.

.

.

.

不公正去來行爲 責任

가

.

188

4

爲, , 假裝去來 時勢操縱行  
 ,  
 .  
 ,  
 .  
 가 가  
 가 ,  
 .  
 .  
 10 2  
 ( 207 ), 188 4  
 가 가  
 가 ( 188  
 )

內部者去來 責任  
 , 가  
 가  
 ( 188 ).  
 가 .  
 가  
 .  
 .  
 ( 188 ) 가

( 188 ),  
時勢操縱 ( 188 ) .

任 員 責 任

가

3

1 ( 58). .

1 399 2 (

) 3 ( 異議 不提起 )

414 3 ( ) .

## · 株主代表訴訟 概要

가 '93

'98

### 1. 株主代表訴訟 意義 · 性格 · 機能

意 義

가

가

訴 ( 403).

가

.<sup>4)</sup>

---

4)

가

訴

· · ( 324, 415, 542 ).

性 格

· 가

·

가

가

가

·

·

·

機 能

( 399 ) 가

---

derivative suit representative class suit가 .

derivative suit

가

訴

, representative suit

가

가

訴

가

·

1950

40

10

1993

'97

5

219

· 1993

가 95

,

8,200

,

·

/

,

, p.695 696.

## 2. 訴 當事者・訴提起要件・訴訟節次

訴 當事者				
’98			100	1
	( 403①). <sup>5)</sup>	100	5	持
株比率				
	( 403⑤).			
		가	100	1
	少數株主權	1		
2	가	100	1	
	被告			
	가 가			

---

5) 0.01%  
2  
共同行事方法 原告가 ( 191 3①,  
84 20②).

## 訴提起要件

가 . ( 399)  
( 428) 限定 說 ,  
가  
. 100 1 가  
( 403 ), 가  
30  
直接 訴 ( 403 ).  
가 가 가 30  
訴 ( 403 ).

## 訴訟節次

( 403 , 186).  
가  
( 403 ). 既判力  
가 가  
. 가 惡意  
(  
403 , 176 ).  
. 詐害  
終局判決 ( 406 ).

3. 判決 效力・訴訟費用負擔

判決 效力

( 204 ),

가  
反訴 .

訴訟費用負擔

가

( 405 ).

( 99 (21)) 「 」 .

가

. 가

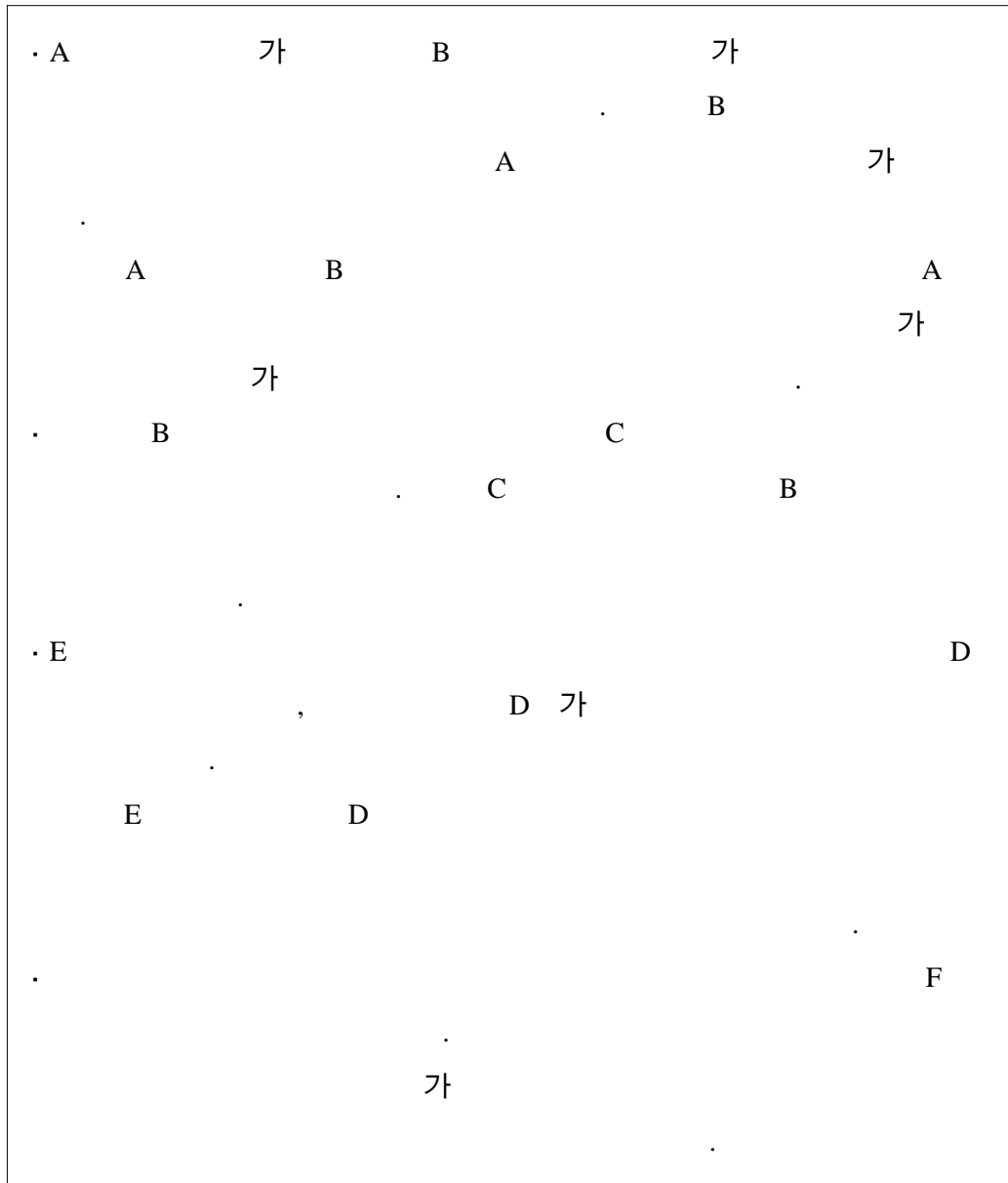
가

( 405 ). 가

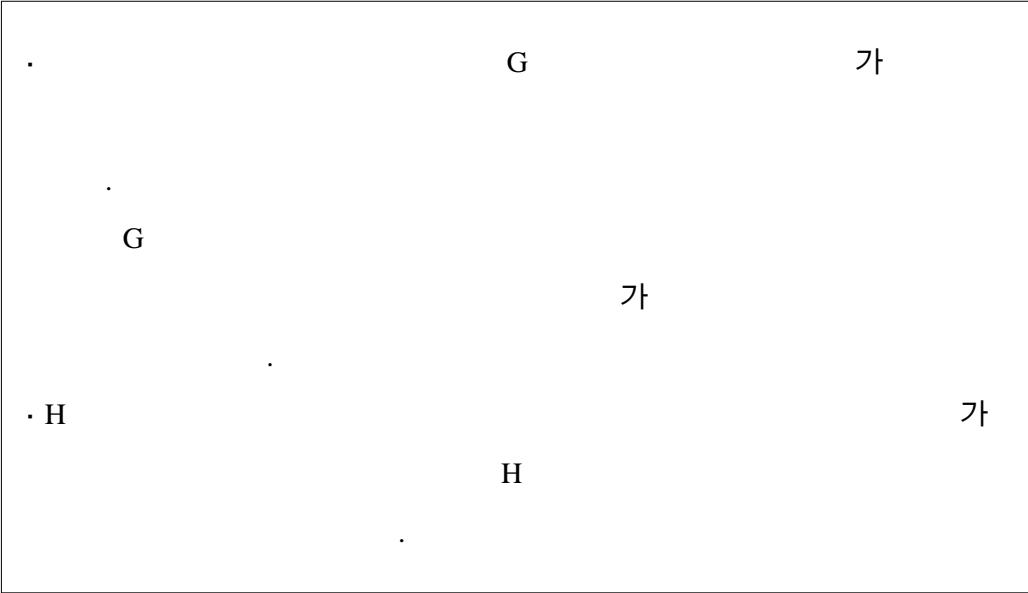
.



<代表訴訟 例示6)>



6) 保険毎日新聞社, 『株主代表訴訟と會社役員賠償責任保險(D&O 保險)の解説』, 1994.  
10. pp.12 13.



## · 任員賠償責任保險(D&O Liability Insurance)

### 1. D&O 賠償責任保險 概況

#### 가. 意義 / 成立背景 · 加入現況

##### 意 義

· 1997 IMF

·

效用性

·

, 3

·

3 ( 가 )가  
가  
가

訴 , 3 , 3 가  
3

## 成立背景・加入現況

1929  
 . 30 가 1960  
 4가 7) 가  
 ,  
 가 .  
 (Wyatt Co.) 1996  
 95% 가 가 가  
 . 97 東京證市  
 80% 가  
 . 98 110 가 가  
 , 가  
 가 .

---

7) 4 : ①(判決 : SEC v. Texas Gulf Sulphur, 1968)

가 .

. ②(判決 : Escott v. Bar Chris Const. Corp., 1968) 가

가 .

가

. ③(法案通過 : Dalaware's Corp.

Indemnification Law, 1967)

④ (內國稅廳(IRS)判定)

,

## ．約款體系

「Directors

& Officers Liability and Company Reimbursement Policy」，  
3

(D&O Liability Coverage : Coverage A )

(Company Reimbursement Coverage : Coverage B)

．會社補償擔保 가

가 ( )

가 가 .8)

가 가

가 D&O

． 가

．

90

， 1993

가 ． ，

3

， ( )

8) 「 」 ，

① (in good faith)

②

(in best interest of corp.)

．

( ).

가 가

.

(

10% ).

1991

.

D&O

.

· 保險契約者 / 被保險者 / 保險料 稅務處理

保險契約者

法人格

. 가 , 가

가 .

가

,

가 .

被保險者(任員 會社)

D&O (Coverage A)

(Coverage B) 가 .9) 「 」

· · ·

( 2 ). 「 」

·

·

(

)

·

,

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·

(

)

( ), 子會社

·

子會社 가 (D&O 50%)

,

---

9) D&O 가 . 가

D&O

·

가 ,

가 가 . Shasi Gangadharan, 「 가 D&O 」, D&O

(J&H/M&M ), 1998.12.





( 90% )

( 10% )

가 .

· 補償 損害 / 補償 損害 / 補償限度

補償 損害

「  
」 , ,

,

.

.

先支給 . 가

.

補償 損害

D&O 5가 .

反 : 1)

2) , ,

3)

4)

5)

, ,

: 1)

2)

( )

: 1) .

2)

. .

3)

/

: 1)

,

2)

.

3)

가

: 1) 가 .

2) 가

가

( ) 가

(Greenmail Exclusion) 3)

4) Y2K

가

.

. . .

. . 가 .

A( ) .

.

가 가  
가 .

保險者 補償限度

限度

1賠償請求當 限度

年間單一限度

(Coverage A)

(Coverage B)

.10)

D&O

가  
가

가

控除金額 自己負擔率

D&O

1

1

全任員合計

. 1

1

( ),

(Coverage A B)

.

(

)

가

.

10)

per claim aggregate

coverage A B

95% 5% .

保險期間 延長通知期間 (Extended Reporting Period)

1 3

가

가

( 60 1 )

前 契約 (

가

가

가

## 2. D&O 危險

가. 意義 / 節次

意 義

意思 合致 ,

가

「 」 . ,

가

가 意思決定 過程

,  
가 (hazard recognition & evaluation) (risk selection) 가

가

D&O

「 」

가

節 次

가

가

가

가 ,

가 , 가 가  
良否決定

代案

<

>

· 危險狀況 調查 評價

- 1) ( ) 2)
- 3) ( ) 4) 5)
- 가 가 6)
- 7) 8)

調査・評價要綱( )

	<ul style="list-style-type: none"> <li>·</li> <li>·</li> <li>·</li> <li>·</li> <li>·</li> <li>·</li> </ul>	<ul style="list-style-type: none"> <li>·</li> <li>· 가 / /</li> <li>( ) 가 ( )</li> </ul>
	<ul style="list-style-type: none"> <li>·</li> <li>·</li> <li>·</li> </ul>	<ul style="list-style-type: none"> <li>· (5% )</li> <li>가</li> <li>·</li> </ul>
		<ul style="list-style-type: none"> <li>· 가, 가</li> <li>( )</li> </ul>

	<ul style="list-style-type: none"> <li>· / /</li> <li>· 가 가</li> <li>· 가</li> <li>· , , , ,</li> <li>· 가</li> <li>· 가</li> <li>· 가</li> <li>· 가</li> <li>· 가</li> <li>· 가 ( :</li> <li>· )</li> <li>· 가</li> <li>· 가 . 가 (</li> <li>· 가 大 )</li> <li>· 가(</li> <li>· 가 )</li> <li>· / / /</li> </ul>	<ul style="list-style-type: none"> <li>· / /</li> <li>· 가 가</li> <li>· 가</li> <li>· , , , ,</li> <li>· 가</li> <li>· 가</li> <li>· 가</li> <li>· 가</li> <li>· 가</li> <li>· 가 ( :</li> <li>· )</li> <li>· 가</li> <li>· 가 . 가 (</li> <li>· 가 大 )</li> <li>· 가(</li> <li>· 가 )</li> <li>· / / /</li> </ul>
--	--	--





		<ul style="list-style-type: none"> <li>가</li> <li>가</li> <li>가</li> <li>가</li> <li>가</li> <li>가</li> <li>가</li> <li>가</li> <li>가</li> </ul>
		<ul style="list-style-type: none"> <li>가 가</li> <li>( , 가)</li> <li>가 가</li> <li>( 逆 ( )</li> <li>), )</li> <li>가</li> <li>( 가)</li> <li>가 가/</li> <li>가 ( )</li> </ul>

	USA	<ul style="list-style-type: none"> <li>· (SEC)/가</li> <li>· 가</li> <li>· 가</li> <li>· 가</li> </ul>
		<ul style="list-style-type: none"> <li>· 가</li> <li>· ( , , 가 )</li> <li>· 가 가</li> <li>· 가</li> </ul>
	·	<ul style="list-style-type: none"> <li>· 가</li> <li>· 가</li> <li>· 가</li> <li>· 가</li> <li>· 가</li> <li>· 가</li> <li>· 가</li> </ul>

· 保險請約書 請約書上 告知 · 確約事項

1) 保險請約書

請約書 記載事項

·	( )	,	,	,
·				
·				
·	3	/	/	
·				
·	常勤檢査人			
·	D&O			
·				
·	36	( )	25%	
·		/		가
·	12	가		
·	가	/		
·		D&O		
·	가			
·	/			
·				가

告知・確約事項 (Warranty : )

가

.

가

注意喚起事項 ( )

.

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( )

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\* < 1>

2) 保險請約書 告知・確約事項 ( Warranty )<sup>11)</sup>

warranty 가 . . . . .

, .

. , 가

. .

가

.

「Warranty Clause」

warranty

.<sup>12)</sup>

---

11) warranty( ) 가 ①

② ③

(literary and exactly)

가 . warranty

12) Warranty Clause : , .

가 가 . warranty

warranty representation 가 .

representation 가

, 223 123

, warranty 가

warranty . warranty 가

가 「  
 가 / 「  
 , 「 가  
 가 .

가 .

,

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## ・ 保険料率 保険條件 決定

D&O

가

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D&O 가 , , ,

外的要因 , ,

內的要因 13),

13)

20

1,500

30

2,500

保險契約條件

· 損害輕減活動 着眼點 / D&O 保險

例示

損害輕減活動<sup>14)</sup> 着眼點

- 1) ( ) 2) .
- ( )
- 3) 4)
- 5)
- 6) 7) /
- 가 8) 가 9)
- 10) 가 11)

---

	1	20	50	, 1
	100 (	200 )		
	(Deductible)	(Retentions)	2	
가 가 D&O			2	
10 , 2	1			
	5 %			
』, 1998. 7 ; , 「	D&O	가	』, J&H / M&M	D&O
	, 1998. 12.			
14) (Loss Control)	가			
		①		
②	③	④	가	
가	⑤			



12) D&O

D&O 保險

例示(外國綜合)

· 가  
· , , , ,  
( ) · 가  
( 2 ) ·  
가 가 ( 40% ) ·  
· 가 500  
가 .

< D&O (1997) >

· 29%	· ( ) 5%	· 1%
· 27%	· 33%	· 3 5%
· 2 10	· 240	· 750
· 23	· / 580	
· 25%	· 59%	· 16%
· (1934 Securities Exchange Act )	· EPL ( )	·
·	·	·
·	·	·
· M&A	·	·
( ,	·	·
, )	·	· Y2K

\* : 1997 Wyatt Survey

## · 任員賠償責任保險 約款解說

가

D&O

### 1. 擔保危險 / 違法行爲

擔保危險

#### COVERAGE A : DIRECTORS AND OFFICERS LIABILITY COVERAGE

The Company shall pay on behalf of each of the Insured Persons all loss for which the Insured Person is not indemnified by the Insured Organization and which the Insured Person becomes legally obligated to pay on account of any claim made against him, individually or otherwise . . . for a Wrongful Act committed, attempted, or allegedly committed or attempted, by the Insured Person(s) . . . .

<要旨>

가

(

)

## COVERAGE B : CORPORATE REIMBURSEMENT COVERAGE

This policy shall reimburse the Company for Loss arising from any claim or claims which are first made against the Directors or Officers . . . for any alleged Wrongful Act in their respective capacities as Directors or Officers of the Company, but only when and to the extent that the Company has indemnified the Directors or Officers for such loss pursuant to law, common or statutory, or contract, or the Charter or Bylaws of the Company duly effective under such law which determines and defines such rights of indemnity.

### <要旨>

( ) 가  
가 . ,  
( )

### <解 說>

, ,

가

가

Coverage B

가

Coverage A

.15)

Coverage

Coverage

3

Coverage A

, Coverage B

가

가

가

3

가

( )

가

3

가

州

「

가

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가

가

州

15)

가

, A

가 B  
Coverage A B

가

가 .

.

가

가 Coverage B .

3 가

가 가 .<sup>16)</sup>

## 違法行爲

### WRONGFUL ACT - DEFINITION

"Wrongful Act" shall mean any actual or alleged error, misstatement, misleading statement, act or omission, or neglect or breach of duty by the Directors or Officers in the discharge of their duties, of any matter claimed against them solely by reason of their being Directors or Officers of the Company.

16) 가 1)

2)

( 가

172 ).

〈要旨〉 「 」

， ， ， ，

。

D&O

가 , , ,

1)            가            2)            3)

2. 被保險者 / 共同・單獨責任 / 被保險會社

被保險者

## INSURED - DEFINITION

The term Insured shall mean any duly elected Directors and duly elected or appointed Officers of the Corporation, who were, are, may hereafter be Directors or Officers of the Corporation. Insured also means the estates, heirs, or legal representatives of deceased Directors or Officers who were Directors or Officers at the time the acts upon which the claims are based were committed and the legal representatives of Directors or Officers in the event of their incompetency, insolvency, or bankruptcy.

<要旨> 「 」 ( )

( ) , , .

가

, , , ,

, .

<解 說>

「elected」 ( )

「appointed」 ,

D&O 가 . D&O

.

多寡

가

任員範圍劃定

·  
D&O Coverage A Coverage B  
· Coverage A(  
) Coverage B( ) 가  
· 가 가 Coverage A ,  
Coverage B  
Coverage B  
가 D&O 任員  
限定 .  
D&O  
가  
保險保護 , 17), ,  
, , 가  
·

---

17) : ‘98. 2  
25% .  
· 600 769 가 ,  
· · · · · 『 』 , ‘98. 9. 10. 22



## 共同責任・單獨責任

### JOINT AND SEVERAL LIABILITY COVERAGE

The Insurer will pay on behalf of the Directors and Officers all loss which the Directors and Officers or any of them shall become legally obligated to pay as a result of any claim or claims first made during the policy period against the Directors and Officers, individually or collectively, for a Wrongful Act.

<要旨>

( )

<解 説>

D&O

가

가

「 」

D&O

## 被保險會社

### COVERED ORGANIZATION - DEFINITION

The Company means the Named Corporation designated in the Declarations and any subsidiary thereof.

"Subsidiary" means a corporation of which the Named Corporation owns on or before the inception of the Policy Period more than 50% of the issued and outstanding voting stock either directly or indirectly through one or more of its subsidiary.

<要旨> 「 」

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「 」

(

) 50%

.

<解 説>

,

가 50%

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D&O

)

母會社 子會社 )

(newly-created)

)

(newly-acquired) . 가 (

30 90 )

.

30 60

, 가

商法 (B) 40/ 100 가

(A), (B) . 가

가 (C) 40/ 100

가 가 40/ 100 (C)

(A) 孫會社 .

D&O 가 50%

.

### 3. 損害 / 防禦義務 / 防禦費用・支給時期 / 補償限度

損害

## LOSS - DEFINITION

"Loss" shall mean damages, settlements, and Costs of Defense provided always, however, Loss shall not include criminal or civil fines or penalties imposed by law, punitive or exemplary damages, or the two-third's portion of any treble damage award, taxes, or any matter which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

<要旨> 「 」 , . , , 3 2/3 가 .

## <解 說>

D&O 18) .  
가

---

18) 가  
Special Damages( , ) General Damages(  
) Punitive Damages( ) . Punitive Damages 가  
가 , 가 .

(Coverage B)

1)

2)

가

가

가

가

가

. D&O

賠償請求

防禦義務

#### DEFENSE PROCEDURE

It shall be the duty of the Insured Persons and not the duty of the Underwriter to defend Claims made against the Insured Persons, provided that no Defense Expenses shall be incurred without the Underwriter's consent, such consent not to be unreasonably withheld.

<要旨>

가

<解 說>

D&O

가



## ADVANCEMENT OF DEFENSE COSTS

Any advancement by the Insurer of Costs of Defense prior to the final disposition of such Claim, shall only be on the condition that (1) the Directors and Officers and/or the Company provide a written undertaking satisfactory to the Insurer providing that in the event it is finally established that the Insurer has no liability under this Policy to the Directors and Officers, or any of them for such Claim, such Directors and Officers and/or the Company agree to repay the Insurer upon demand all Costs of Defense advanced on their behalf by virtue of this provision.

<要旨>

<解 説>

가

가 가  
가  
D&O 가 가  
가.

防禦費用 保險者 補償限度

#### DEFENSE COSTS, CHARGES AND EXPENSES

(A) . . . nor are the costs, charges, and expenses of defense payable by the company in addition to the limit of liability

(B) The words "defense costs, charges, and expenses" shall include the cost of appeal, attachment, or similar bonds. Defense costs, charges, and expenses and settlements are part of loss . . .

<要旨> (A) 가

(B) , ,

,



<解 說>

1 ( 1 ; per loss limit),  
 ( ; combined single annual aggregate limit) .  
 1 「per loss」 가  
 가  
 가  
 (Coverage A) (Coverage B)  
 .  
 ( )  
 가 D&O  
 가  
 .  
 「bad faith」<sup>19)</sup>  
 가 ,  
 2 1 , 3  
 1 50  
 1 50 .  
 가

---

19) bad faith : (good faith) .

bad faith . Blue Cross and Blue Shield of  
 Alabama v. Granger, Ala., 461 So. 2d 1320, 1327.

가

誤導

「bad faith」

#### 4. 複數 賠償請求 / 控除金額・自己負擔率 / 重複保險

複數 賠償請求

##### ANTI-STACKING PROVISION

Loss arising from the same wrongful act or interrelated, repeated, or continuous wrongful acts of one or more assureds shall constitute a single loss . . . .

<要旨>

( ) 1 ( ) .

##### NON-ACCUMULATION CLAUSE

For the purposes of this policy, all Loss arising out of all interrelated Wrongful Acts of any Insured Person(s) shall be deemed one Loss, and such Loss shall be deemed to have originated in the earliest Policy Year in which a claim is made against any Insured Person alleging any such Wrongful Acts.

<要旨> ( )

( ) 1 ( ) ,

.

<解 説>

1 가? 1

가? D&O

가

, non-accumulation clause .

「 1 」 ,

復元,

. 3

( 3 ) 1 ,

.

가

가

non-accumulation clause .

控除金額 自己負擔率

D&O

가 가 .

1

1

(aggregate deductibles)

. 1

( )

1

( ).

(Coverage A B)

(Coverage A)

(Coverage B)

.

가

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D&O

가

.

95%

5%

.

가

가 .

.

<控除金額/自己負擔率 適用例示>

: 6 .  
 1 25 .  
 25 .  
 .  
 : 1 200 .  
 1 1 5  
 .  
 95% 5% ( ,  
 2 1 . 1  
 )  
 : 175 (25 × 6 + 25 )  
 : (aggregate) 5  
 : 170 (175 - 5 ),  
 165 [(1 × 95%)  
 + 70 ]  
 : 1 10 × 1/6[( 5 +  
 5 ) ÷ 6 ]

## 重複保險

### OTHER INSURANCE

If any Loss arising from any claim made against any Insured Person(s) is insured under any other valid policy(ies), prior or current, then this policy shall cover such Loss, subject to its limitations, conditions, provisions, and other terms, only to the extent that the amount of such Loss is in excess of the amount of payment from such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent, or otherwise, unless such other insurance is written only as specific excess insurance over the limits provided in this policy.

#### <要旨>

#### <解 說>

超過額保險

1 (primary) .

按分

## 5. 補償 損害

D&O

가 .

D&O 가 , A( )  
(Exclusions for Uninsurable Exposures) A( )

가. 相對的 免責

保險加入・維持

損害賠償請求

### FAILURE TO MAINTAIN INSURANCE

The Insurer shall not be liable . . . in conjunction with any claim . . . alleging, arising out of, based upon or attributable to any failure or omission on the part of the Insureds or the Company to effect and maintain insurance.

<要旨>

가 .

非加入・非維持

<解 說>

가 .

가

가 .

가 .

D&O

가

가 .

非加入 · 非維持

自家保險/共同保險(自己負擔)

가 . 가 .

同

寄附金, 謝禮金, 其他 利益提供 理由 損害賠償請求

#### PAYMENTS/DISBURSEMENTS

. . . the Insurer shall not be liable . . . for loss related to . . .

- 1) payments, commissions, gratuities, benefits, or any other favors to . . .  
domestic or foreign governmental . . . officials . . .



- 2) payments, commissions, gratuities, benefits, or any other favors to . .  
 . officers, directors, agents, owners, partners, representatives, principal  
 shareholders, or employees of any customers of the company . . .
- 3) political contributions, whether domestic or foreign.

<要旨>

가

- 1) , ,
- 2) , , , , , , ,
- 3)

<解 說>

, , ,

, 外國腐敗行爲法(Foreign Corrupt Practices Act)

. 가 同 法

保險期間 開始日 以前

開始日 現在

訴訟件

賠償請求

#### PRIOR AND PENDING LITIGATION

The Company shall not be liable to make any payment for Loss in connection with any claim . . . arising from any prior or pending litigation as of the inception date of this policy, as well as all future claims or litigation based upon the pending or prior litigation or derived from essentially the same facts (actual or alleged) that gave rise to the prior or pending litigation.

<要旨>

<解 說>

逆選擇            가

보험效用           가           .

被保險者間                   (被保險者間 賠償請求免責)

#### INSURED VERSUS INSURED

##### Exclusion of Wrongful Termination

The Company shall not be liable . . . for Loss in connection with any claim . . . brought by . . . any other Insureds . . . against one or more . . . Directors or Officers . . . or for wrongful termination of employment . . .

##### Inclusion of Wrongful Termination

The Underwriter shall not . . . make any payment for Loss in connection with any Claim made against any of the Insured Persons . . . by or on behalf of any of the Insured Persons except where . . . such Claim arises out of the actual or alleged tort of wrongful termination of an Insured Person.

<要旨>	: 가	.
	: 가	.
		. ,
		.

## <解 說>

D&O  
 . 「  
 」 「  
 (Cross Liability Exclusion)」 .  
 1) 2) 3)  
 4) (5% ) 「  
 」 가  
 가 20)

(CEO : Chief Executive Officer) , 「

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20) Finici V. American Casualty, 1990 : Maryland Special Court of Appeals  
 (FDIC)

D&O 「  
 」 .

가 . 가  
가 가 .  
D&O 가  
가  
,<sup>21)</sup>

會社株式 高價買入 損害賠償請求

#### GREENMAIL

The Insurer shall not be liable . . . in connection with any Claim . . . based upon . . . any offer to purchase, or purchase of securities of the Company at a premium over their then-current market value, made by the Company or by the Directors or Officers, except where such offer or purchase extends to all security-holders of the company.

<要旨>

가 ( ) 가

. , 가

( ) .

21) Wyatt Survey

1997

D&O

20%가

<解 說>

가

가

greenmail

.

同

greenmail

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Greenmail

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가

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가 1)

가

2)

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汚染・公害

損害賠償請求

#### POLLUTION

The Insurer shall not be liable to make any payment for Loss in connection with . . . consequence of, or in any way involving, actual or alleged seepage, pollution or contamination of any kind.

<要旨>

, ,

.

<解 說>

가가

會社      會社財産      任員      賣却      損害賠償請求

#### SALES OF COMPANY TO DIRECTORS/OFFICERS

The Underwriter shall not be liable to make payment for Loss in connection with . . . any plan or proposal to sell the Parent Corporation or any Subsidiary or any of the assets or stock of the Parent Corporation or of any Subsidiary to any directors, officers, or employees of the Company.

<要旨>

母會社

子會社

<解 說>

가 .  
가 ,  
D&O .  
가 가  
가 가  
가 가  
가 .

． 絶對的 免責

任員 不正直

#### DISHONESTY

The Insurer shall not be liable to make any payment for Loss . . . brought about or contributed to by the fraudulent, dishonest, or criminal acts of the Directors or Officers; provided, however, that this exclusion shall not apply unless it is established in fact that such Claim was brought about or contributed to by fraudulent, dishonest, or criminal acts of the Directors and/or Officers.

<要旨>

． ,



<解 說>

反  
가 2) 가 가  
가 가  
가  
가  
가

個人的 利得

#### PERSONAL PROFIT

The Insurer shall not be liable to make any payment for loss . . . based upon or attributable to the Directors or Officers gaining in fact any profit or advantage to which they were not legally entitled.

<要旨>

<解 說>

가 . 가 .

内部者 去來

#### INSIDER TRADING PROFITS

The Insurer shall not be liable . . . in connection with . . . an accounting of profits made from the purchase or sale by the Directors or Officers of securities of the Company within the meaning of Section 16 (b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any State statutory law or common law.

<要旨> 가 (1934 )

<解 說>

가 6  
(1934) .

188 2

188 3

, 1988

188 2

가

가 ( )

#### 有價證券保有者 免責

##### SECURITY HOLDER EXCLUSION

The Insurer shall not be liable . . . for . . . any Claim . . . by any security holder of the Company whether directly or derivatively unless such security holder bringing such Claim is acting totally independent of, and totally without the solicitation of, or the assistnace of, or participation of, or intervention of, any Director or Officer, or the Company or any affiliate of the Company.

<要旨> 가 가 ( )  
가 가

「 (Insured v. Insured) D&O  
」  
( )  
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The Company shall not be liable . . . for the return by any such Insured Person of any remuneration paid in fact to him without the previous approval of the stockholders of the Insured Organization . . . .

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差別待遇 (Discrimination)

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D&O

Employment Practice Liability

D&O

・ 其他 免責

對人・對物賠償/人格侵害

#### BODILY INJURY/PROPERTY DAMAGE/PERSONAL INJURY

The Underwriter shall not be liable . . . for . . . actual or alleged libel or slander or oral or written publication of defamatory or disparaging material, bodily injury, sickness, disease, or death . . . or any damage to or destruction of any tangible property including loss of use thereof, or any invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, malicious use or abuse of process, assault, battery, mental anguish, emotional distress, or loss of consortium.



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#### NON-IMPUTATION PROVISION

The Wrongful Act of any Director or Officer shall not be imputed to any other Director or Officer for the purpose of determining the applicability of Exclusions (A), (B), (C), and (D) as respects Insuring Agreement B only.

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(severability)

(innocent director)

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## 6. 保險者 補償責任要件

### 가. 賠償請求基準

#### PURE CLAIMS-MADE PROVISION

The Underwriter will reimburse the Insured Persons . . . resulting from any Claim first made against the Insured Persons during the Policy Period . . . for a Wrongful Act committed subsequent to the Retroactive Date stated in . . . the Declarations.

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## CLAIMS-MADE & REPORTED PROVISION

This policy shall pay the Loss of each and every Director or Officer . .  
. arising from any claim or claims first made against the Directors or  
Officers and reported to the Insurer during the Policy Period . . . .

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(Pure Claims-Made Form)

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(Claims-Made & Reported Form)

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· 賠償請求提起 可能性 認知 · 發見

#### DISCOVERY PROVISION

If during the Policy period . . . the Company or the Insureds shall become aware of any circumstances which may reasonably be expected to give rise to a claim being made against the Insureds and shall give written notice to the Insurer of the circumstances . . . than any claim . . . subsequently made against the Insureds . . . shall be considered made at the time such notice of circumstances was given.

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(Discovery Provision) .

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． 延長通知期間(Extended Reporting(Discovery) Period)

EXTENDED REPORTING (DISCOVERY) PERIOD

If the Insurer shall cancel this policy for any reason, except for the nonpayment of premium, or refuse to renew this policy, the Company shall have the right, upon payment within ten (10) days after the effective date of such cancellation or nonrenewal of an additional premium of . . . 75 percent of the annual premium hereunder to an extension of this insurance granted by this policy in respect of any claim or claims made against the Directors or Officers during the twelve (12) calendar months after the date of such cancellation or nonrenewal, but only in respect of any Wrongful Act committed before the date of such cancellation or nonrenewal. Such twelve (12) month period is hereinafter referred to as "extended discovery period".

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#### ．單獨責任約款(Severability Clauses)

##### SEVERABILITY PROVISION

It is further agreed by the Company and the Directors that the statements in the proposal form or in any material submitted therewith are their representations . . . however . . . except for material facts or circumstances known to the person(s) who subscribed in the Proposal Form, any misstatement or omission in such Proposal Form or materials submitted therewith in respect of a specific Wrongful Act by a particular Director or Officer or his cognizance of any matter which he has reason to suppose might afford grounds for a future claim against him shall not be imputed to any other Director or Officer for purposes of determining the validity of this Policy as to such Director or Officer.

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不歸責約款(Non-Imputation Clause)  
(p.89 ).

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24) Shapiro v. American Home Assurance Co. (1984) : D&O

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## · 結 論

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(要件 範圍 ), , 가 ,  
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會社補償(保險加入)  
,<sup>26)</sup> 가 ,

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- 25) 가 / / /D&O  
366 . Noel O'Sullivan, "Insuring the  
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D. Brown, "Technical Problems in Writing D&O in Asia", *Asia Insurance Review*,  
Vol.1. No.4, 91.8.

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## < 參 考 文 獻 >

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 ， 1998. 2.

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## < 附 錄 1 > 保險請約書 記載事項(例示)





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1. (        ),        ,        ,  
○        (母・子會社,        )  
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3.        (社外株 5%        .        )

4. □        3        任員陣        理事陣  
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○        가

5. □  
○        (        /        )  
○ 「        」

- 理事會內        常勤檢查人(auditor ; auditor committee)        (        /        )  
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○ 「 」 同人

6. D&O

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## **< 附 錄 2 > D&O 責任保險**







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### **< 附 錄 3 > 國內使用 英文約款(特別約款 包含)**



## **DIRECTORS AND OFFICERS LIABILITY AND COMPANY**

### **REIMBURSEMENT POLICY**

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer by application forming a part hereof and its attachments and the material incorporated therein, × × Insurance Company herein called the "Insurer", agrees as follows :

#### **1. INSURING AGREEMENTS**

##### **COVERAGE A : DIRECTORS AND OFFICERS LIABILITY**

The Insurer shall pay the Loss of each and every Director or Officer of the Company arising from any claim or claims first made against the Directors or Officers during the Policy Period for any alleged Wrongful Act in their respective capacities as Directors or Officers of the Company, except for and to the extent that the Company has indemnified the Directors or Officers. The Insurer may, in accordance with and subject to Clause 9, advance to each and every Director and Officer the Defense Costs of such claim or claims prior to their final disposition.

##### **COVERAGE B : COMPANY REIMBURSEMENT**

The Insurer shall reimburse the Company for Loss arising from any claim or claims which are first made against the Directors or Officers during the Policy Period for any alleged Wrongful Act in their respective capacities as Directors

or Officers of the Company, but only when and to the extent that the Company has indemnified the Directors or Officers for such Loss pursuant to law, common or statutory, or contract, or the Charter or By-laws of the Company duly effective under such law which determines and defines such rights of indemnity.

## **2. DEFINITIONS**

(a) The "Company" means the Named Corporation and its Subsidiary designated in the Declarations

(b) "Defense Costs" means reasonable and necessary fees, costs and expenses consented by the Insurer (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of any claim against the Insureds, but excluding salaries of Officers or employees of the Company.

(c) "Insured(s)", or "Director(s) or Officer(s)", means any past, present or future duly elected or appointed Directors or Officers of the Company. Coverage will automatically apply to all new Directors and Officers during the Policy Period of this policy.

(d) "Loss" means damages, judgments, settlements and Defense Costs ; however, Loss shall not include civil or criminal fines or penalties imposed by law; punitive or exemplary damages, the multiplied portion of multiplied



damages, taxes, any amount for which the Insureds are not financially liable or which are without legal recourse to the Insureds, or matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

(e) "Policy Period" means the period of time from the inception date shown of the Declarations to the earlier of the expiration date shown of the Declarations or the effective date of cancellation of this policy

(f) "Subsidiary" means a corporation of which the Named Corporation owns on or before the inception of the Policy Period more than 40% of the issued and outstanding voting stock either directly or indirectly through one or more of its Subsidiaries.

"Subsidiary" also means any corporation which becomes a Subsidiary during the Policy Period but only upon the condition that within 90 days of its becoming a subsidiary, the Named Corporation shall have provided the Insurer with full particulars of the new Subsidiary and agreed to any additional premium and/or amendment of the provisions of this policy required by the Insurer relating to such new Subsidiary. Further, coverage as shall be afforded to the new Subsidiary is conditioned upon the Named Corporation paying when due any additional premium required by the Insurer relating to such new Subsidiary. A corporation becomes a Subsidiary when the Named Corporation owns more than 40% of the issued and outstanding voting stock either directly or indirectly through one or more of its Subsidiaries.

(g) "Wrongful Act" means any breach of duty, neglect, error, misstatement, misleading statement, omission or act by the Directors or Officers of the Company in their respective capacities as such, or any matter claimed against them solely by reason of their status as Directors or Officers of the Company.

### **3. EXTENSIONS**

Subject otherwise to the terms hereof, this policy shall cover Loss arising from any claims made against the estates, heirs, or legal representatives of deceased Directors or Officers, and the legal representatives of Directors or Officers in the event of their incompetency, insolvency or bankruptcy, who were Directors or Officers at the time the Wrongful Acts upon which such claims are based were committed.

### **4. EXCLUSION**

The Insurer shall not be liable to make any payment for Loss in connection with any claim or claims made against the Directors or Officers :

(a) arising out of, based upon or attributable to the gaining in fact of any personal profit or advantage to which they were not legally entitled ;

(b) arising out of, based upon or attributable to the committing in fact of any dishonest or criminal act ;

(c) arising out of, based upon or attributable to the payment to the Insureds

of any remuneration without the previous approval of the stockholders of the Company, which payment without such previous approval shall be held to have been illegal ;

(d) arising out of, based upon or attributable to profits in fact made from the purchase or sale by the Insureds of securities of the Company using non-public information in a manner held to have been illegal ;

(e) arising out of, based upon or attributable to payment of commissions, gratuities, benefits or any other favor provided to or for the benefits of any ;

(1) political group, government official, director, officer, employee or any person having an ownership interest in any customers of the company or their agent(s), representative(s) or member(s) of their family or any other entity(ies) with which they are affiliated.

(2) Any other person(s) or organization if such payments to those person(s) or organization shall be held to have been illegal under the law pursuant to where the payment was made or which this policy shall be construed.

{The Wrongful Act of any Director or officer shall not be imputed to any other Director or Officers for the purpose of determining the applicability of the foregoing exclusions 4(a) through 4(e)}

(f) alleging, arising out of, based upon or attributable to the facts alleged, or the same or related Wrongful Acts alleged or contained, in any claim which

has been reported, or in any circumstances of which notice has been given, under any policy of which this policy is a renewal or replacement or which it may succeed in time ;

(g) alleging, arising out of, based upon or attributable to any pending or prior litigation as of the inception date of this policy, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation ;

(h) alleging, arising out of, based upon or attributable to any fact, situation, circumstances, or Wrongful Act which, at the inception date of this policy, such Insured knew or should reasonably have foreseen, might lead to a claim against the Insured and/or the Company ;

(i) alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly ;

(1) the actual, alleged or threatened discharge, dispersal, release or escape of pollutants, or

(2) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants,

including but not limited to claims alleging damage to the Company or its shareholders.

Pollutants includes (but is not limited to) any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis,

chemicals and waste. Waste includes (but is not limited to) materials to be recycled, reconditioned or reclaimed ;

(j) alleging, arising out of, based upon or attributable to any act or omission in their capacities as directors or officers of any other entity other than the Company, or by reason of their status as a director or officer of such other entity ;

(k) arising out of any legal liability or whatsoever nature directly or indirectly caused by or arising from the hazardous properties of nuclear material and/or all forms of radioactive contamination.

Hazardous properties include radioactive, toxic or explosive properties.

Nuclear material means source material, special nuclear material or byproduct material.

(l) for bodily injury, sickness, disease, death or emotional distress of any person, or damage to or destruction of any tangible property, including the loss of use thereof, or for injury from oral or written publication of a libel or slander or of other defamatory or disparaging material or of material that violates a person's right of privacy ;

(m) of any Subsidiary for any alleged Wrongful Act occurring at any time when the Named Corporation did not own more than 40% of the issued and outstanding voting stock of such Subsidiary either directly or indirectly through one or more of its Subsidiaries.

**5. LIMIT OF LIABILITY-**  
**(FOR ALL LOSS-INCLUDING DEFENSE COSTS)**

The limit of liability stated on the Declarations is the limit of the Insurer's liability for all Loss, under Coverage A and Coverage B combined, arising out of all claims first made against the Insureds during the Policy Period.

Further, any claim which is made subsequent to the Policy Period which pursuant to Clause 8(b) or 8(c) is considered made during the Policy Period shall also be subject to the one aggregate limit of liability stated in the Declarations.

Defense costs are not payable by the Insurer in addition to the limit of liability. Defense costs are part of Loss and as such are subject to the limit of liability for Loss.

**6. RETENTION-INDEMNIFIED OR INDEMNIFIABLE LOSS**

The Insurer shall only be liable for the amount of Loss arising from a claim which is in excess of the retention amount stated in the Declarations, such retention amount to be borne by the Company and/or the Insureds and shall remain uninsured. A single retention amount shall apply to Loss arising from all claims alleging the same Wrongful Act or related Wrongful Acts.

**7. COINSURANCE CLAUSE**

The Insurer shall be liable to pay - percent, specified as Coinsurance Percent

in the Declarations, of Loss excess of the retention amount described in Clause 6 up to the Limit of Liability described in Clause 5, it being a condition of this insurance that the remaining\_\_percent of each and every Loss shall be carried by the Company and the Insureds at their own risk and be uninsured.

## **8. NOTICE/CLAIM REPORTING PROVISIONS**

Notice hereunder shall be given in writing to the Insurer at the Insurer's address.

If mailed, the date of mailing of such notice shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

(a) The Company or the Insureds shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the Insurer as soon as practicable, of any claim made against the Insureds and shall give the Insurer information, including but not limited, to the Wrongful Act or facts alleged, the names of claimants and the manner in which the Insureds first became aware of the claim.

(b) If written notice of a claim has been given to the Insurer pursuant to Clause 8(a)above, then any claim which is subsequently made against the Insureds alleging, arising out of based upon or attributable to the facts alleged in the claim of which such notice has been given, or alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged in the claim of which such notice has been given, shall be considered made at the time such notice was given.

(c) If during the Policy Period the Company or the Insureds shall become aware of any circumstances which may reasonably be expected to give rise to a claim being made against the Insureds and shall give written notice to the Insurer of circumstances and the reasons for anticipating such a claim, with full particulars as to dates and persons involved, then any claim which is subsequently made against the Insureds alleging, arising out of, based upon or attributable to such circumstances or alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged or contained in such circumstances, shall be considered made at the time such notice of such circumstances was given.

## **9. DEFENSE COSTS, SETTLEMENTS, JUDGMENTS (INCLUDING THE ADVANCEMENT OF DEFENSE COSTS)**

Under Coverage A, the Insurer may, in its absolute discretion, advance Defense Costs prior to the final disposition of the claim, unless such Defense Costs have been advanced by the Company. Such advance payments by the Insurer shall be repaid to the Insurer by the Insureds, severally according to their respective interests, in the event and to the extent that the Insureds shall not be entitled under the terms and conditions of this policy to payment of such Loss. The retention amount as stated in the Declarations shall apply to such Defense Cost.

Under Coverage B, the Insurer assumes no duty to reimburse Defense Costs prior to the final disposition of the claim. The Insurer may, in its absolute discretion, reimburse all or any part of such Defense Costs prior to the final



disposition of the claim. In such event, however, such advance payments by the Insurer shall be repaid to the Insurer by the Company or the Insureds, severally according to their respective interests, in the event and to the extent that the Company or the Insureds shall not be entitled under the terms and conditions of this policy to payment of such Loss.

The Insurer does not, however, under this policy, assume any duty to defend. The Insureds shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment or incur any Defense Costs without the prior written consent of the Insurer. Only those settlements, stipulated judgments and Defense Cost which have been consented to by the Insurer shall be recoverable as Loss under the terms of this policy. The Insurer's consent shall not be unreasonably withheld, provided that the Insurer shall be entitled to effectively associate in the defense and the negotiation of any settlement of any claim in order to reach a decision as to reasonableness.

The Insurer shall have the right to effectively associate with Company and the Insureds in the defense and settlement of any claim that appears reasonably likely to involve the Insurer, including but not limited to effectively associating in the negotiation of a settlement. The Insureds shall defend and contest any such claim. The Company and the Insureds shall give the Insurer full cooperation and such information as is may reasonably require.

With respect to the Defense Costs and joint settlement of any claim made against the Company and the Insureds, such Defense Costs and joint settlement having been consented to by the Insurer, the Company and the Insureds and

the Insurer agree to use their best efforts to determine a fair and proper allocation of the amount as between the Company and the Insureds and the Insurer.

## **10. CANCELLATION CLAUSE**

This policy may be canceled by the Named Corporation by surrender thereof to the insurer or any of its authorized agents or by mailing to the Insurer written notice stating of when thereafter the cancellation shall be effective. This policy may be canceled by the Insurer by mailing to the Named Corporation at the address shown in this policy, written notice stating when not less than 30 days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the Policy Period. Delivery of such written notice either by Named Corporation or by the Insurer shall be equivalent to mailing.

If the Named Corporation cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If Insurer cancels, earned premium shall be computed pro-rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling construction thereof, such period shall be

deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

## **11. TERMINATION OF COVERAGE FOR SUBSEQUENT WRONGFUL ACTS AFTER CERTAIN TRANSACTIONS**

### **If during the Policy Period :**

1. the named Corporation shall consolidate with or merge into, or sell all or substantially all of its assets to, any other person or entity or group of persons and/or entities acting in concert ; or

2. any person or entity or group of persons and/or entities acting in concert shall acquire an amount of the outstanding securities representing more than 40% of the voting power for the election of Directors of the Named Corporation, or acquires the voting rights of such an amount of such securities;

(either of the above events herein referred to as the "Transaction")

then, there shall be no coverage afforded by any provision of this policy for any alleged Wrongful Act occurring after the effective date of the Transaction. The Named Corporation shall give the Insurer written notice of the Transaction as soon as practicable, but not later than 30 days after the effective date of the Transaction.

## **12. RISIK ALTERATION**

The Named Corporation shall give immediate notice to the Insurer in writing of any alterations which materially affect the risk covered by this policy. Such alterations include, but are not llimited to, alterations of statements in the Declarations of this policy, the application and all attachments thereto. No coverage shall apply under this policy for nay loss in connection with any claim or claim resulting therefrom unless and until the Insurer has given written notice of their acceptance of such alteration.

## **13. SUBROGATION**

In the event of any payment under this policy, the Insurer shall be subrogated to the extend of such payment to all the Company's and the Insureds' rights of recovery therefor, and the Company and the Insureds shall execute all papers required and shall do everything that rmay be necessary to secure such rights including the execution of such documents necessary to enable the Insurer effectively to bring suit in the name of the Company and/or the Insureds.

## **14. OTHER INSURANCE**

Such insurance as is provided by this policy shall apply only as excess over any other valid and collectible insurance.

## **15. NOTICE AND AUTHORITY**

It is agreed that the Named Corporation shall act on behalf of its Subsidiaries and all Insureds with respect to the giving and receiving of notice of claim or cancellation, the payment of premiums and the receiving of any return premiums that may become due under this policy, the receipt and acceptance of any endorsements issued to from a part of this policy.

## **16. ASSIGNMENT**

Any and all right hereunder shall not be assignable without the prior written consent of the Insurer.

## **17. ACTION AGAINST INSURER**

No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with of the terms of this policy, nor until the amount of the Insureds' obligation to pay shall have been finally determined either by judgment against the Insureds after actual trial or by written agreement of the Insureds' the claimant and the Insurer.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Insurer as a party to any action against the Insureds or the Company to determine the

Insureds' liability, nor shall the Insurer be impleaded by the Insureds or the Company or their legal representatives. Bankruptcy or insolvency of the Company or the Insureds or of the their estates shall not relieve the Insurer of any of its obligations hereunder.

## **18. ARBITRATION**

If any difference shall arise between the Company or the Insureds and the Insurer as to the amount to be paid under this policy, such difference shall be referred to the decision of two arbitrators, one to be appointed in writing by each of the parties; or in case the arbitrators do not agree, such difference shall be referred to the decision of an umpire to be appointed in writing by the arbitrators.

Each party shall bear the expenses of its own arbitrator and shall equally bear other expenses including the expenses of the umpire.

## **19. DECLARATIONS**

By acceptance of this policy, the Named Corporation and its Direction and Officers agree that the statements made in the application and all attachments thereto are true and accurate and this policy has been issued in reliance thereof and this policy embodies all agreements between the Named Corporation or its Directors and Officers and the Insurer or any of their agents relating to this insurance.

### **Punitive Damages Exclusion Clause**

This insurance does not cover liability for fines, penalties, punitive or exemplary damages.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

**× × INSURANCE CO., LTD.**

**BY** \_\_\_\_\_

**Authorized Representative**

## **Nuclear Energy Liability Exclusion Clause**

It is hereby understood and agreed that this policy shall not apply to any accident or occurrence resulting from the hazardous properties of nuclear material if such accident or occurrence arises out of the ownership, use of operations by the insured of any nuclear facility other than the use of radioactive isotopes. For the purpose of this endorsement :

"Nuclear material", means source material, special nuclear material or by-product material,

"Source material", "special nuclear material", "By-product material" have the meanings given them in the Republic of Korea atomic energy act or in any law amendatory thereof. "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor ;

"Waste" means any waste material (1) Containing by-product material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (A) or (B) thereof :

"Radioactive isotope" means any by-product material except such material (1) contained in spent fuel or waste, or (2) discharged or dispersed from any nuclear facility ;

"Nuclear Facility" means :



(A) Any Nuclear Reactor :

(B) Any equipment or device designed or used for (1)separating, the isotopes or uranium or plutonium, (2)processing or utilizing spent fuel, or (3)handling, processing or packaging waste :

(C) Any equipment or device used for the processing, fabricating or alloying or special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235 :

(D) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste.

And includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations :

"Nuclear Reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material :

"Hazardous Properties" includes radioactive, toxic or explosive properties ; with respect to injury to or destruction of property, the word "Injury" or "Destruction" includes all forms of radioactive contamination of property.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

× × INSURANCE CO., LTD.

BY \_\_\_\_\_  
Authorized Representative

### **Prior Acts Exclusion Endorsement**

In consideration of the premium charged, it is hereby understood and agreed that;

- 1) this policy only provides coverage for Loss arising from claims for alleged Wrongful Acts occurring on or after policy inception date of (                      ) and prior to the end of the Policy Period and otherwise covered by this policy
- 2) Loss(es) arising out of the same or related Wrongful Act(s) shall be deemed to arise from the first such same or related Wrongful Act.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

**× × INSURANCE CO., LTD.**

**BY** \_\_\_\_\_

**Authorized Representative**

## **Retention Endorsement**

I. In consideration of the premium charged, it is hereby understood and agreed that Retention of the Declarations is amended to read as follows ;

RETENTION : Refer to the policy declaration page

A. Not-Indemnifiable Loss ;

\_\_\_\_\_ per Director or Officer, subject to a maximum of  
\_\_\_\_\_ for Loss arising from claims alleging the same  
Wrongful Act or related Wrongful Acts

B. Company Reimbursement and Indemnifiable Loss ;

\_\_\_\_\_ for Loss arising from claims alleging the same  
Wrongful Act or related Wrongful Acts

. It is further understood and agreed that the Clause 6. RETENTION-  
INDEMNIFIED OR INDEFINABLE LOSS, is deleted in its entirety and  
replaced by the following ;

6. RETENTION

The insurer shall only be liable for the amount of Loss arising from a claim which is in excess of the retention amount stated in Retention of the Declarations, such retention amount to be borne by the Company and/or the

Insureds and shall remain uninsured. A single retention amount shall apply to Loss arising from all claims alleging the same Wrongful Act or related Wrongful Acts. The amount stated as Retention A, Non-Indemnifiable Loss applies separately to each Director or Officer, subject to the maximum retention for any single Loss, in cases where such maximum retention applies, the retention shall then be prorated among the Insureds in Proportion to their respective Loss.

Notwithstanding the foregoing, the amount stated as Retention B applies to all Loss under coverage A or B for which the Company is required or permitted to indemnify the Insureds in accordance with the fullest application of law, common or statutory, or contract, or the Charter or By-laws of the Company.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

**× × INSURANCE CO., LTD.**

**BY \_\_\_\_\_**

**Authorized Representative**

### **Failure To Maintain Insurance Exclusion Endorsement**

In consideration of the premium charged, it is hereby understood and agreed that, in addition to the 4.exclusions shown in the policy, the following exc lusions shall apply to any claim or claims.

The Insurer shall not be liable to make any payment for Loss in connection with any claim or claims made against the Insureds ;

-- alleging, arising out of, based upon or attributable to any failure or omission on the Insureds or the Company to effect and maintain insurance ;

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

**× × INSURANCE CO., LTD.**

**BY** \_\_\_\_\_

**Authorized Representative**

## **Captive Insurance Company Exclusion Endorsement**

In consideration of the premium charged, it is hereby understood and agreed that the Insurer shall not be liable to make any payments for Loss in connection with any claim or claims made against the Directors or Officers alleging, arising out of, based upon or attributable to the ownership, management, maintenance and/or control by the Company of any captive insurance company or entity including but not limited to claims alleging the insolvency or bankruptcy of the Named Corporation as a result of such ownership, operation, management and control.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

**× × INSURANCE CO., LTD.**

**BY** \_\_\_\_\_

**Authorized Representative**

### **Regulatory Exclusion - Broad Form**

In consideration of the premium charged, it is hereby understood and agreed that the Insurer shall not be liable for any Loss in connection with any claim or claims made against the Directors and Officers ;

(1) brought by or on the behalf of, or with the solicitation, assistance, participation, or intervention of ;

(a) any Regulator, in any capacity whatsoever (including but not limited to its capacity as receiver, conservator, liquidator or otherwise) regardless of in whose name or for whose benefit (including but not limited to for the benefit of the Company or its shareholders or the Company's creditors) the claim is made ; or

(b) any person or entity against whom any Regulator has asserted any claim or demand of whatever nature in such Regulator's capacity as insurer of, successor to, or subrogee of the company ;

(2) any derivative suit or representative class action alleging, arising out of, based upon or attributable to any such above action.

(3) alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly any written agreements or memoranda of understanding of other agreements with a Regulator, including without limitation income maintenance agreements, purchase and assumptions agreements, indemnity



agreements, capital contribution agreements, loan agreements, asset purchase agreements, cease and desist orders, and assistance agreements, or any amendments to any of the foregoing, or any actions required by a Regulator pursuant to the terms of any such agreements :

- (4) alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly any loss or reduction of earnings resulting from any agreement with, or action by, any Regulator.

For the purposes of this endorsement, the term "Regulator" shall mean ;

- (1) the Federal Savings and Loan Insurance Corporation, the Federal Deposit Insurance Corporation, any other federal or state depository insurance organization, the United States Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Reserve Board, or any similar federal, state or local regulatory or supervisory agency or authority, or any affiliate of any of the foregoing, or
- (2) any receiver, conservator, trustee, liquidator, rehabilitator or other similar official with respect to the Company.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

**× × INSURANCE CO., LTD.**

**BY \_\_\_\_\_**

**Authorized Representative**

### **Company Securities Claims (Entity Cover)**

It is agreed that Section (3), EXTENSIONS, shall be amended by adding the following :

- I. The Company, the Directors and/or Officers and the Insurer agree, subject to the limitations set forth below and all other terms, conditions, exclusions and endorsements of this Policy, that coverage under this Policy is extended to include all Securities Loss, including Securities Claim Expenses, incurred on account of a Securities Claim against the Directors, Officers and/or the Company.
- II. Coverage under this endorsement shall apply whether such Securities Claim is made against only the Directors and Officers, only the Company, or both.
- III. Securities Loss incurred by the Company shall be subject to the Retention amount listed in the Declarations as being applicable to Company Reimbursement.
- . If in a Securities Claim all defendant Directors, Officers and the Company obtain by reason of a motion to dismiss, motion for summary judgment or trial a final non-applicable judgment of no liability in their favour, there shall be no Retention or coinsurance percentage applicable to any Securities Claim Expenses resulting from such Securities Claim.

. With respect to all Securities Loss which is in excess of the applicable Retention, the Company shall bear uninsured the following portions of such Securities Loss. The Insurer's liability shall only apply to the remaining percentage of all such Securities Loss.

- A.   N/A   % of all Securities Claim Expenses ; and
- B.   N/A   % of all Securities Loss other than Securities Claim Expenses.

However, this paragraph shall not apply with respect to any Securities Loss which is incurred solely by a natural person Director and Officer and which is subject to Retention amounts set forth in the Declarations.

VI. Section (4) EXCLUSIONS of this Policy shall be amended as follows ;

Exc lusion (b) shall be deleted in its entirety and replaced with the following ;

- (b) by reason of any deliberately dishonest, malicious or fraudulent act or omission or any wilful violation of law by the Directors or Officers if a judgment or other final adjudication adverse to such Directors or Officers establishes such an act, omission or wilful violation, provided this exclusion shall apply with respect to the Company only if such judgment or final adjudication establishes that a Director or the president, chief executive officer, chief operation officer, chief financial

officer, in-house general counsel, managing director of the Company committed such an act, omission or wilful violation ;

The following exclusion shall be added to the Policy ;

( ) for based upon, arising from, or in any way related to the actual or proposed payment by the Company of allegedly inadequate or unfair consideration in connection with its purchase of securities issued by the Company ; provided. However, that this exclusion shall not apply to any covered Loss incurred by the Directors or Officers or any Securities Claim Expenses incurred by the Company.

. Section 9. DEFENSE COSTS, SETTLEMENTS, JUDGEMENTS of this Policy shall be amended by adding the following ;

( ) The Insurer may, with the written consent of the Company, settle any Securities Claim for solely a monetary amount which the Insurer deems reasonable. If the Company withholds consent to such settlement, the Insurer's liability for all Loss on account of such Securities Claim shall not exceed the amount for which the Insurer could have settled such Securities Claim plus Securities Claim Expenses accrued as of the date such settlement was proposed in writing by the Insurer to the Company.

VIII. Definitions that apply solely for purposes of this endorsement ;

Securities Claim means any claim brought by a securities holder of the Company against the Directors, Officers and/or the Company which alleges a breach of the securities laws of any Country, State or Jurisdiction arising from a Wrongful Act in connection with the purchase or sale of securities of the Company.

Securities Claim Expenses means that part of Securities Loss consisting of reasonable and necessary costs, charges, fees (including attorneys' fees and experts' fees) and expenses incurred in the defense of a Securities Claim and the premium for appeal, attachment or similar bonds, but shall not include the wages, salaries or expenses of any Director, Officer or employee of the Company.

Securities Loss means any Loss otherwise covered under this Policy incurred by the Directors, Officers and/or the Company as a result of a Securities Claim ; provided, however, Securities Loss shall remain subject to all other policy terms, conditions, exclusions, endorsements and other provisions that may, in whole or in part, preclude coverage for such Securities Loss.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

**× × INSURANCE CO., LTD.**

**BY** \_\_\_\_\_

**Authorized Representative**

### **One Vs One-Exclusion Endorsement**

In consideration of the premium charged, it is hereby understood and agreed that the insurer shall not be liable to make any payment in connection with any claim made against the insureds which is brought by any insured or the subsidiary or affiliate of the company, or any security holder(s) of any of the above entities whether directly, derivatively or by class action.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

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**BY \_\_\_\_\_**

**Authorized Representative**

### **Closely-Held Clause**

Underwriters shall not provide any payment for any Claim made by or on behalf of any person or entity holding beneficially or otherwise more than 15% of the issued share capital of the Company whether such Claim is made in the name of the Company or not

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

**× × INSURANCE CO., LTD.**

**BY** \_\_\_\_\_

**Authorized Representative**

### **SEC Exclusion**

In consideration of the premium charged, it is hereby understood and agreed that in addition to the exclusion shown in Section 4 of this Policy, the following exclusion shall apply to any claim or claims.

The Insurer shall not be liable to make any payment for Loss in connection with any claim or claims made against the Insureds ;

arising out of, based upon or attributable to profits in fact made from the purchase or sale by the Insureds of securities of the Company within the meaning of section 16(b) of the Securities Exchange Act of 1934, and amendments thereto of similar provision of any state statutory law ;

The wrongful Act of any Director or Officer shall not be imputed to any other Director or Officer for the purpose of determining the applicability of this clause.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

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**BY** \_\_\_\_\_

**Authorized Representative**



### **ERISA Exclusion**

It is understood and agreed that Section 4, EXCLUSION, shall be amended by adding the following ;

- (A) Based upon, arising out of, or in any way involving, the Employee Retirement Income Security Act of 1974 or amendments thereto or any regulation promulgated thereunder, or similar provisions of any Federal, State or Local Statutory law or common law

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

**× × INSURANCE CO., LTD.**

**BY** \_\_\_\_\_

**Authorized Representative**

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專門職危險 賠償責任保險( )

- 任員賠償責任保險 -

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ISBN 89-88001-21-4 93320

定價 10,000