

MACAO SPECIAL ADMINISTRATIVE REGION

Administrative Regulation N° 39/2003

***Establishment of Compulsory Professional
Liability Insurance for Lawyers***

After hearing the opinion of the Executive Council, the Chief Executive hereby determines, pursuant to the provision of Article 50 paragraph 5) of the Basic Law of the Macao Special Administrative Region that the following shall be enforced as administrative regulation:

Article 1

Scope of the insurance

- 1. It is hereby established the compulsoriness of the professional liability insurance for lawyers, which guarantees the indemnities that may be legally required to be paid for patrimonial loss or damage caused to third parties, resulting exclusively from acts, omissions or non-fulfilment of obligations on the part of the lawyers in the course of their professional activity.*
- 2. The insurance equally covers the legal liability in respect of third parties for which the lawyer may be held responsible for acts or omissions on the part of his non-lawyer staff and of the trainee lawyers, so too for accidents caused to third parties within the office premises of the lawyer.*

Article 2

Exclusions

The insurance shall not cover the liability:

- 1) For loss or damage resulting from the lack of capacity or legitimacy to enter into a contract on the part of the persons who intervene in business dealings with the lawyer, when such facts are fraudulently concealed from the lawyer, and in the cases where it is impossible for the lawyer to fulfil his/her legal obligation in terms of certifying the capacity and the legitimacy of the persons in whose business dealings they intervene;*
- 2) Resulting from acts performed by the lawyer with the agreement of the client, for the purpose of obtaining benefits or reductions of a fiscal nature;*

- 3) *For loss or damage resulting from inability to fulfil contractual obligations or from any other legal obligations due to “force majeure” not attributable to the lawyer;*
- 4) *For the payment of taxes and fines of any nature;*
- 5) *Arising out of bodily injury, mental anguish, emotional distress, disease or death to any employee of the lawyer, or damage to or destruction of any property of any employee of the lawyer from any cause, including loss of use, arising out of accidents that can be characterized as occupational accidents or occupational diseases;*
- 6) *For loss or damage caused to partners, managers and legal representatives of the entity whose liability is covered;*
- 7) *For loss or damage caused to any persons whose liability is covered by the insurance contract, as well as to the spouse, ascendants and descendants or to persons who cohabit with such persons or depend on such persons for their livelihood;*
- 8) *Relating to claims, based on the liability of the lawyer, which result from private agreement or contract, where such claims exceed the legal liability of the lawyer covered by the insurance contract;*
- 9) *For loss or damage due to acts of war, civil war, invasion, hostilities, rebellion, insurrection, usurped military force or attempted usurped force, terrorism, sabotage and labour disturbances such as assaults, strikes, tumults and “lock-outs”;*
- 10) *For loss or damage caused by accidents with vehicles or pleasure boats, which according to the laws in force should be subject to compulsory third party liability insurance;*
- 11) *Which arises out of any error, omission or negligence committed or alleged to have been committed prior to the Retroactive Date specified in the Policy Schedule of the respective insurance contract;*
- 12) *Arising out of an alleged or actual infringement of copyright, trademark, registered design or patent;*
- 13) *Directly or indirectly based upon, attributable to or in consequence of any trading debt incurred by the lawyer or any guarantee given by the lawyer for a debt or any disputes involving the lawyer’s fees or charges or any principal amount and interest arising from the advancement of a loan or transaction in the nature of a loan or extension of credit made by or obtained from the lawyer;*
- 14) *Arising out of or relating directly or indirectly from the insolvency or bankruptcy of the lawyer;*

- 15) *Arising out of any legal liability of whatsoever nature directly or indirectly caused by or contributed to, by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;*
- 16) *Arising out of any financial loss directly, indirectly or allegedly caused by, or in consequence of seepage, pollution of air, water or soil or contamination of any kind;*
- 17) *Relating to libel or slander;*
- 18) *In respect of losses directly or indirectly arising out of, or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.*

Article 3
Minimum sum for insurance

The minimum sum for the professional liability insurance for lawyers is MOP 2,000,000.00 (two million patacas).

Article 4
Acceptance of the compulsory insurance

1. *Insurers authorized to carry on the professional liability insurance for lawyers can accept insurance contracts only under the terms and the general conditions of the uniform policy as established by administrative regulation.*
2. *By means of an express statement an agreed amount relating to the indemnity to third parties may be borne by the lawyer; however, such amount shall in no case be applicable to claimants or to their heirs.*

Article 5
Special conditions for the acceptance of insurance

1. *Where the acceptance of insurance is refused by at least three insurers, the lawyer may turn to the Monetary Authority of Macao for definition of the special conditions of acceptance.*
2. *The insurer chosen by the lawyer or appointed by the Monetary Authority of Macao, in the case referred to in the preceding paragraph, is obliged to accept the mentioned insurance under the conditions defined by the said entity, or shall be subject to*

temporary suspension from carrying on professional liability insurance for a period of from six months to three years.

- 3. The operating results of such insurance contracts shall be shared by the insurers authorised to carry on professional liability insurance for lawyers according to the rules established by the Monetary Authority of Macao by Notice, which will define the method to determine the said results as well as the criteria for its distribution.*
- 4. It is not permissible for any insurance intermediary to intervene in the contracts entered into under the conditions established in this Article, nor shall any commission be payable on such contracts.*

Article 6
Effective date

The present administrative regulation comes into force on 1st January 2004.

Approved on 4th December 2003.

To be published.

The Chief Executive, Ho Hau Wah.