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# Directors & Officers Liability Insurance

PROPOSAL FORM

[libertyspecialtymarkets.com.au](http://libertyspecialtymarkets.com.au)



**Liberty**  
Specialty Markets



#### CLAIMS MADE INSURANCE

This is a proposal for a 'Claims Made' policy of insurance. This means that the policy covers you for any claims made against you and notified to the insurer during the policy period. The policy does not provide cover in relation to:

- acts, errors or omissions that occurred prior to the retroactive date (if one is specified) in the policy;
- any claim made, threatened or intimated against you prior to the commencement of the policy period;
- any claim or fact that might give rise to a claim, reported or which can be reported to an insurer under any insurance policy entered into before the commencement of the policy period;
- any claim or fact that might give rise to a claim, noted in this proposal or any previous proposal;
- any claim arising out of any fact you are aware of before the commencement of the policy period;
- any claim made against you after the expiry of the policy period.

However, the effect of Section 40(3) of the Insurance Contracts Act 1984 (Cth) is that where you become aware, and notify us in writing as soon as is reasonably practicable after first becoming aware but within the policy period, of any facts which might give rise to a claim against you, any claim which does arise out of such facts shall be deemed to have been made during the policy period, notwithstanding that the claim was made against you after the expiry of the policy period.

#### YOUR DUTY OF DISCLOSURE

Before you enter into a contract of general insurance with an insurer, you have a duty, under the Insurance Contracts Act 1984 (Cth) to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, on what terms.

You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require disclosure of matter:

- that diminishes the risk to be undertaken by the insurer;
- that is of common knowledge;
- that your insurer knows or, in the ordinary course of its business, ought to know;
- as to which compliance with your duty is waived by the insurer.

#### NON DISCLOSURE

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce their liability under the contract in respect of a claim or may cancel the contract. If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

#### PRIVACY NOTICE

Liberty Specialty Markets is a trading name of Liberty Mutual Insurance Company, Australia Branch (ABN 61 086 083 605) incorporated in Massachusetts, USA (the liability of members is limited) (**Liberty**). It is a member of Boston-based Liberty Mutual Group. Liberty Australia's head office contact details are:

Address: Locked Bag 18, Royal Exchange NSW 1225, Australia  
Phone: +61 2 8298 5800

Liberty is bound by the Privacy Act 1988 (Cth) and its associated Australian Privacy Principles when it collects and handles your personal information.

Liberty collects personal information, including from insurance brokers, in order to provide its services and products, manage claims and for purposes ancillary to its business. Liberty passes it to third parties involved in this process such as Liberty's related companies, reinsurers, agents, loss adjusters and other service providers. We may store your information with third party cloud or other types of networked or electronic storage providers. Third parties may be located locally or overseas in the United States, Canada, United Kingdom, Singapore, Hong Kong and Malaysia. Your information may be transferred to countries without comparable privacy laws if it is reasonably necessary to provide you with the products or services you seek from Liberty. If you do not provide the personal information Liberty or other relevant third parties require to offer you specific products or services, Liberty may not be able to provide the appropriate type or level of service.

If you wish to gain access to or correct your personal information, make a privacy complaint, or if you have any query about how Liberty collects or handles your personal information please write to Liberty's Privacy Officer at the address above or by emailing: [privacy.officer.ap@libertyglobalgroup.com](mailto:privacy.officer.ap@libertyglobalgroup.com). To obtain a copy of Liberty's Privacy Policy go to Liberty's website ([www.libertyspecialtymarkets.com.au](http://www.libertyspecialtymarkets.com.au)) or request a copy from Liberty's Privacy Officer.

When you give Liberty personal or sensitive information about other individuals, Liberty relies on you to provide its Privacy Notice to them. If you have not done this, you must tell Liberty before you provide the relevant data.

## Directors & Officers Liability Insurance

**IMPORTANT:** Please answer all questions fully. If the space provided in this proposal form is insufficient please attach your response using Company letterhead. Please also attach the Company's latest audited financial statement or annual report.

### DETAILS OF COMPANY

1. Name of the Company

Berkeley Energia Limited

2. Business Registration No: 40 052 468 569

3. Address (please provide a street address only)

Street Level 9, 28 The Esplanade

City Perth

State WA

Country Australia

Postcode 6000

4. Contact

Name Dylan Browne

Position Company Secretary

Telephone +61 8 9322 6322

Email dbrowne@apollogroup.com.au

5. Country of Registration Australia

6. Date Established

7. Website Address www.berkeleyenergia.com

### OWNERSHIP

8 a. Type of Company

Private

☐ Government Owned ☐

Public Listed

☒ Mutual ☐

Public Unlisted

☐ Not-for-Profit ☐

Other

☐

If "Other" please provide details.

b. If the Company or any of its subsidiaries have securities which are either publicly listed, or have unlisted securities issued, then please provide details (including but not limited to the stock exchange, type of securities, etc).

listed, ordinary fully paid shares, unlisted options, unlisted performance rights, unlisted non-interest bearing convertible note

## Directors & Officers Liability Insurance

9. Please list all shareholders who control more than 10% of the Company's share capital and the percentage of shares held by those shareholders.

N/A

%  
%  
%  
%  
%

### OPERATIONS

10. Please describe the nature of the operations of the Company and its subsidiaries.

Mining exploration and development

### MATERIAL CHANGES

11. During the last 3 years has:

- |  |   |  |
|--|---|--|
| a) the name of the Company changed?  | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> |
| b) the capital structure of the Company changed?   | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            |
| c) any subsidiary of the Company been sold or ceased trading?  | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> |
| d) any acquisition involving the Company taken place?  | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> |
| e) the Company issued any prospectus or public offering of securities (including equities, debt, share, notes, bonds or debentures)? | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> |

- |   |                              |  |
|---|------------------------------|--|
| 12. a) Has the Company any acquisition, tender offers, or mergers pending or under consideration?                 | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| b) Is the Company aware of any proposed acquisition of the Company or any of its subsidiaries by any other party? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

If the answer to either Question 11 or 12 is "Yes", please provide further information in the space below.  
expiry of unlisted options and performance rights

## INTERNAL CONTROLS & CORPORATE GOVERNANCE

13. Has the Company changed its external auditor in the last 3 years or intending to change their external auditor in the next 12 months? Yes ☐ No ☒
14. Within the last 12 months has the Company's external auditors stated that there are any material weaknesses or made any recommendations/changes in the Company's system of internal control? Yes ☐ No ☒
15. Within the last 3 years has the Company had any disputes with its external auditors regarding internal treatment of financial information or revenue recognition practices? Yes ☐ No ☒
16. Has the Company ever re-stated its financial results or is it intending to re-state its financial results in the next 12 months? Yes ☐ No ☒
17. Since the date of the latest Financial Statements attached to this proposal, have there been any developments which have adversely impacted the financial position of the Company? Yes ☐ No ☒
18. Has the Company ever been questioned by regulators concerning their continuous disclosure obligations? Yes ☐ No ☒
19. Within the last 12 months have there been any changes to the board members or structure of the Company's board? Yes ☒ No ☐

If the answer is "Yes" to any of Questions 13 to 19, please provide further information in the space below.

In November 2020, Mr Nigel Jones (Non-Executive Director) resigned due to corporate governance requirements at Rio Tinto, where he holds the position of Managing Director of the Simandou iron ore project, which did not allow Mr Jones to sit on other publicly listed boards.

20. Does the Company have in place policies with respect to directors and officers trading in the company's securities? Yes ☒ No ☐
21. If the Company is listed on a Stock Exchange does the Company meet the required Corporate Governance standards and/or best practice recommendations concerning corporate governance? Yes ☒ No ☐

If the answer is "No" to either Question 20 or 21, please provide further information in the space below.

## USA EXPOSURES

22. Is cover required for USA operations or activities? Yes ☐ No ☒  
If "Yes" please complete Questions 23 to 28. If "No" please proceed to Question 30.

23. Does the Company have any subsidiaries or business operations in the USA? Yes ☐ No ☒  
If "Yes" please list these subsidiaries and their business operations.

24. Does the Company have any equity interest in any US based businesses or operations? Yes ☐ No ☒  
If "Yes" please provide further details including the name of the entity and the Companies equity interest below.

25. Please state for the Company and all of its subsidiaries:

- |   |       |
|---|-------|
| a) Total gross assets in the USA                                    | \$nil |
| b) Total gross turnover derived from business operations in the USA | \$nil |
| c) Total employees located in the USA                               | nil   |

26. Does the Company or any of its subsidiaries have any USA securities listings? Yes ☐ No ☒  
If "Yes" please provide details.

27. Does the Company or any of its subsidiaries have any American Depositary Receipts (ADR's) on issue? Yes ☐ No ☒

If "Yes" please provide the following details:

- What was the commencement date of the ADR programme?
- What is the level of the ADR programme (I, II, III or s144)?
- How many ADR's are currently on issue?
- What size is the ADR programme in terms of current market capitalisation?
- What is the ratio of ADR's to ordinary shares?
- Please list the 3 largest holders of ADR's and their respective shareholdings.

%

%

%



## Directors & Officers Liability Insurance

28. Does the Company have any other USA securities on issue including any debt instruments? Yes ☐ No ☒  
If "Yes", please provide details including the nature of those securities and the number in dollar terms on issue.

### CLAIM HISTORY

Please note that Questions 29 to 31 relate to all parties seeking cover under this insurance policy and enquiries should be made of all those parties prior to answering these questions.

29. Has there ever been, or is there now pending, any claim against any directors or officers in their capacity as a director or officer of the Company or its subsidiaries? Yes ☐ No ☒
30. Is the Company, its subsidiaries, or its directors and officers aware of any facts which might give rise to a claim being made against any director or officer in their capacity as director or officer of the Company or its subsidiaries? Yes ☐ No ☒
31. Have any of the principals, partners, directors, officers or employees of the Company or its subsidiaries ever been the subject of any disciplinary proceedings? Yes ☐ No ☒

If the answer is "Yes" to any of Questions 30 to 32, please provide further details of the claim including the claimant, current status, amounts paid and insurer reserve amounts in the space provided below.

### INSURANCE HISTORY

32. Please detail the Directors & Officers Liability Insurance currently purchased by the Company.  
Insurer:  
Policy Period:  
Policy Limit:  
Excess:

## Directors & Officers Liability Insurance

33. Has the Company ever had any special terms or conditions imposed on any Directors & Officers Liability policy held by the Company? Yes ☐ No ☒
34. Has the Company or any directors and officers ever had any entitlement to indemnity under any insurance policy denied, or otherwise affected due to non-disclosure, misrepresentation or breach of a policy provision? Yes ☐ No ☒
35. Has any insurer ever refused to provide terms or offer renewal terms to the Company or has any insurance held by the Company ever been avoided or cancelled by an Insurer? Yes ☐ No ☒

If the answer is "Yes" to any of Questions 34 to 36, please provide further information in the space below.

### LIMIT OF LIABILITY

- |                                |                    |
|--------------------------------|--------------------|
| 36. Limit of Liability sought: | 37. Excess sought: |
| a) A\$5,000,000                | a) A\$500,000      |
| b) A\$10,000,000               | b) A\$1,000,000    |
| c)                             | c)                 |

### OUTSIDE DIRECTORSHIP LIABILITY

38. The policy provides cover for claims or inquiries for Insured persons who, at the request of the Company, act as directors or officers of an outside entity.

Please complete the **Outside Directorship Addendum** attached to this proposal.

### OPTIONAL EXTENSIONS

#### 39. Employment Practices Liability

Would you like the policy to be extended to provide cover for claims made against the Company for employment related claims?

Yes ☐ No ☒

If the answer to this question is "Yes", please answer the following questions:

- a) Does the Company have formal written employment procedures (e.g. HR manual which addresses discriminatory sexual harassment or terminations) which is issued to all employees? Yes ☐ No ☐
- b) Please list the number of retrenchments that have occurred over the last 12 months and please advise if any are expected over the next 12 months.



## Directors & Officers Liability Insurance

### 40. Company Securities Liability

Would you like the policy to be extended to provide cover for the Company for its own liability as a result of claims made against it by holders of the Company's securities?

Yes ☐No ☒

If the answer to this question is "Yes", please answer the following questions:

a) Is the Company aware of any facts which might give rise to a securities claim being made against the Company?

Yes ☐No ☐

b) Has there ever been, or is there now pending, any securities claim against the Company?

Yes ☐No ☐

If "Yes", please provide details of the claim including the claimant, current status, amounts paid and insurer reserve amounts.

### STAMP DUTY

**Please be aware:** With effect from 1 January 2018, unless Liberty or its agents receive a Small Business Declaration from you, in accordance with CH 8, Pt 5A of the *Duties Act 1997* (NSW) at the time of entering into the contract of insurance, Liberty will charge stamp duty on risks that 1) occur within or partly within NSW or 2) cover NSW property.

41. Please provide a breakdown of staff numbers by State, including all directors and officers

ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Overseas
							3	15

### ADDITIONAL INFORMATION

Have you answered all questions fully and remembered to attach the following?

- The Company's latest audited financial statements or annual report.

## DECLARATION

We, the undersigned, declare and acknowledge:

- that we are, after enquiry, authorised by all persons or entities seeking insurance, to make this proposal;
- that after enquiry, all information supplied in this proposal and any supporting documents attached to this proposal or supplied separately, is true and correct and that until a contract of insurance is entered into, we are obliged to inform Liberty Specialty Markets of any changes to any information supplied or of any new information that is relevant;
- that we understand Liberty Specialty Markets relies on the accuracy of the information and documentation supplied proposing for this insurance;
- that if a contract of insurance is entered into, all information and documentation supplied in proposing for this insurance shall be incorporated into and form part of such contract of insurance;
- that we have read and understood the **Important Notices** which form part of this proposal;
- that we understand that no insurance is in force until a contract of insurance is entered into, which is upon the Proposers' acceptance of an offer by Liberty Specialty Markets, if any.

- that the proposed Insured is a small business with a turnover of less than AU\$2 million in the last financial year. Note that if No is selected or this question is left blank, Liberty will charge stamp duty on risks that 1) occur within or partly within NSW or 2) cover NSW property.

Yes ☒

No ☐

To be signed by the Chairperson and an Executive Officer of the Company

Signed

Print Name

Title

Chairperson

Dated

Signed

Print Name Dylan Browne

Title Company Secretary Executive Officer

Dated 4/3/20



## OUTSIDE DIRECTORSHIPS ADDENDUM

[illegible]

