

..... 2010

**POLAR CAPITAL GLOBAL HEALTHCARE GROWTH AND INCOME TRUST PLC**

**- and -**

*[Director]*

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**DEED OF INDEMNITY**

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**Herbert Smith LLP  
Exchange House  
Primrose Street  
London EC2A 2HS**

**THIS DEED** is made on the *[date]*.

**BETWEEN**

- (1) Polar Capital Global Healthcare Growth and Income Trust plc, being a company registered in England and Wales under company number 07251471 and whose registered office is at 4 Matthew Parker Street, London SW1 9NP (the "**Company**"); and
- (2) *[Director]* (the "**Director**").

Each a "**Party**" and together the "**Parties**".

**WHEREAS:**

- (1) The Company has agreed to insure, indemnify and/or loan funds to the Director in relation to certain specific liabilities incurred by the Director in the performance of his duties as a director of the Company, subject to, and in accordance with the provisions of this Deed.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. INTERPRETATION**

In this Deed:

1.1 "**1985 Act**" means the Companies Act 1985 as amended from time to time;

"**2006 Act**" means the Companies Act 2006 as amended from time to time;

"**application for relief**" means an application made by the Director to the court under sections 144(3) or 144(4) of the 1985 Act, or sections 661(3) or 661 (4) or section 1157 of the 2006 Act;

"**associated company**" has the meaning given in section 256 of the 2006 Act;

"**Board**" means the board of directors of the Company, acting as such;

"**Claim**" means any claim or proposed claim made against the Director for negligence, default, breach of duty, breach of trust or otherwise, or relating to any application for relief, in connection with the performance of his duties as a director of the Company;

"**Companies Acts**" means the 1985 Act and the 2006 Act;

"**final**" in relation to any conviction, judgment or refusal of relief, has the meaning given in section 204(3) of the 2006 Act;

"**Maximum Loan Amount**" means the maximum amount which, at the applicable time of calculation, could be loaned as a single lump sum to the Director without such loan constituting a Class 2 transaction or a Class 1 transaction (as such terms are defined in the Listing Rules applying to the Official List of the London Stock Exchange) with respect to the Company; and

"**Restricted Proceedings**" has the meaning given in clause 3.2.5;

**"Stock Exchange"** means any stock exchange upon which securities issued by the Company are listed;

- 1.2 a reference to an enactment or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment or statutory provision and is a reference to that enactment, statutory provision or subordinate legislation as from time to time amended, consolidated, modified, re enacted or replaced;
- 1.3 references to an enactment or statutory provision include a reference to any repealed statute or statutory provision which it enacts (with or without modification);
- 1.4 words in the singular shall include the plural and vice versa;
- 1.5 references to one gender include other genders;
- 1.6 a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership or to an individual's executors or administrators;
- 1.7 a reference to a clause, clause or paragraph shall be a reference to a clause, clause or paragraph (as the case may be) of or to this Deed;
- 1.8 if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;
- 1.9 references to writing shall include any modes of reproducing words in any legible form and shall include email except where expressly stated otherwise;
- 1.10 a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation";
- 1.11 the headings in this Deed are for convenience only and shall not affect its interpretation; and
- 1.12 references to this Deed include this Deed as amended or supplemented in accordance with its terms.

## **2. D&O INSURANCE**

- 2.1 The Company shall at its cost purchase and maintain Directors' and Officers' Liability Insurance ("**D&O Insurance**") to insure the Director as a director of the Company during the period of the Director's appointment to the extent that such insurance can be obtained at such cost and on such terms as the Board considers to be reasonable.
- 2.2 The Company shall for a period of six years after the Director ceases to be a director of the Company purchase and maintain D&O Insurance to insure the Director and the Director's personal representatives/estate in respect of the Director's appointment as a director of the Company to the extent that such insurance can be obtained at such cost and on such terms as the Board considers to be reasonable.
- 2.3 The Company shall not be in breach of its obligations under this clause 2 where its inability to purchase and maintain D&O Insurance to insure the Director is attributable to a failure by the Director to comply with the Director's obligations to the insurers.
- 2.4 The Company shall ensure that the Director is provided at all times with a copy of the Company's current D&O Insurance policy, to the extent it relates to the Director, or with a

summary of the terms of the Company's current D&O Insurance policy, to the said extent.

### 3. INDEMNITY PROVISIONS

#### Indemnity

3.1 Subject always to the provisions of clauses 3.2 and 3.3, the Company hereby indemnifies the Director in respect of all costs, charges, losses, liabilities, damages and expenses, including any expenditure incurred or to be incurred by the Director in defending any Claim (whether in relation to civil or criminal proceedings or in connection with regulatory actions or investigations), (together referred to as a "**Liability**") arising out of any Claim.

#### Exclusions and limitations

3.2 The indemnity set out in clause 3.1 above is subject to the following exclusions and limitations:

3.2.1 it will not apply to any Claim or Liability to the extent prohibited by the 2006 Act or otherwise as prohibited by law;

3.2.2 if any recovery is made by the Director in respect of a Liability or a Claim under any policy of insurance then an amount equal to that so recovered shall be deducted from the amount to which, in respect of that Liability or Claim, the Director would otherwise have been entitled pursuant to the indemnity;

3.2.3 it will not apply to any Liability incurred by the Director to the Company or any associated company;

3.2.4 it will not apply to any fines imposed on the Director in criminal proceedings or sums payable by the Director to a regulatory authority or Stock Exchange by way of a penalty in respect of non-compliance with any requirement of a regulatory nature or the listing regime of a Stock Exchange (howsoever arising);

3.2.5 save as provided for under clause 4.6, it will not apply to any Liability incurred by the Director:

(A) in defending, or otherwise in connection with, any Claim brought by the Company or any associated company;

(B) in defending, or otherwise in connection with, any criminal proceedings;

(C) in connection with any application for relief;

(the proceedings referred to in this clause 3.2.5 hereinafter referred to as "**Restricted Proceedings**")

3.2.6 subject to clause 5.4, it will not apply to any Liability or Claim relating to any taxation and/or national insurance payable by the Director in connection with his remuneration or other payments or benefits received from the Company or any associated company;

3.2.7 it will not apply to any Liability incurred by, or any Claim made against, the Director in circumstances in which the Board, acting reasonably, determines that the Liability or Claim arises:

- (A) out of the Director's fraud, wilful default, wilful misconduct, reckless conduct, dishonesty or act of bad faith;
- (B) out of the Director being in wilful default of his duties as a director of the Company or any associated company including (without limitation) where the Director knowingly exceeded his authority to act on behalf of the Company or any associated company;
- (C) because the Director has improperly derived a personal benefit or profit,

(together "**Misconduct**"), save that if the Board makes such a determination but thereafter a court determines in a final judgment that the relevant Liability or Claim did not arise from the Misconduct of the Director then the Director may by notice to the Company request payment of such amount from the Company as the Company would have paid under this indemnity had the Board not so determined and the Company shall, subject always to the provisions of clause 3.3, pay such amount to the Director (without interest) within 28 days of receipt of such request;

- 3.2.8 it will not apply to any Liability incurred by, or any Claim made against, the Director in circumstances in which the Board in its absolute discretion determines that the actions of the Director have brought the Company, or any associated company, into disrepute.

### **Conditions**

- 3.3 The Director's right to claim under the indemnity provided in clause 3.1 or to receive amounts loaned to him under clause 4.1 is conditional upon the following (unless, and to the extent, waived in writing by the Company at its sole discretion):

- 3.3.1 he shall give notice to the Company as soon as possible after becoming aware of any Claim or any circumstance for which there may be Liability under this indemnity;
- 3.3.2 he shall first take all steps and carry out all actions required to obtain recovery under any applicable policy of insurance and, if applicable, assist the Company in taking all steps and carrying out all actions required to obtain such recovery on his behalf;
- 3.3.3 except where the Claim is brought by the Company or an associated company, he shall forward every letter, claim or other document in any way relevant to such a Claim or Liability to the Company immediately on receipt;
- 3.3.4 except where the Claim is brought by the Company or an associated company, save as required by law, he shall not make, or permit to be made on his behalf, any admission, compromise, release, waiver, offer or payment relating to the Claim or Liability or take any other action reasonably likely to prejudice the Company's ability to defend such a Claim, in each case without the prior written consent of the Company;
- 3.3.5 on the request of the Company, within five days of receiving a request from the Company he shall provide the Company with written details of the Liability incurred by him, providing such level of detail, and evidence, of the Liability as

requested by the Company; and

- 3.3.6 except where the Claim is brought by the Company or an associated company, whether before or after any payment by the Company to him pursuant to this Deed, he shall give full co-operation and provide such information as the Company may require, and do everything that the Company may request to enable the Company to exercise its rights under clause 5.1 or be subrogated to the extent of any payment under this indemnity.

#### **4. FUNDING OF LEGAL COSTS**

##### **Loan Facility**

- 4.1 Subject to the terms of this Deed, the Company shall loan to the Director such amounts as are required to meet such legal and other reasonable costs of Restricted Proceedings as are incurred by the Director, subject to the condition that no loan may be made if to do so would cause the aggregate amount of all outstanding loans made pursuant to this Deed to exceed the Maximum Loan Amount.
- 4.2 The Company shall lend such amounts as provided for under clause 4.1 ("**Loan Amounts**") to the Director within fourteen days of receiving notice in writing from the Director of the amount required together with such evidence of the costs having been properly incurred as the Company may reasonably require.
- 4.3 No interest shall accrue on the Loan Amounts.
- 4.4 All Loan Amounts outstanding to a Director in respect of particular Restricted Proceedings shall be repaid by the Director if, in respect of those proceedings (as applicable):
- (A) the Director is convicted;
  - (B) judgement is given against the Director; or
  - (C) the court refuses to grant the Director relief on the application,
- and such outstanding Loan Amounts shall be repaid no later than the date when the conviction, judgement or the refusal of relief (as applicable) becomes final.
- 4.5 The Company shall not be required to lend any amount under this clause 4, and any amounts lent shall become repayable upon demand from the Company, in the event that:
- (A) the Director has breached or is in breach of a condition applicable to him under clause 3.3; or
  - (B) the Board, acting reasonably, determines that the Restricted Proceedings arise:
    - (1) out of the Director's fraud, wilful default, wilful misconduct, reckless conduct, dishonesty or act of bad faith;
    - (2) out of the Director being in wilful default of his duties as a director of the Company or any associated company including (without limitation) where the Director knowingly exceeded his authority to act on behalf of the Company or any associated company;

- (3) because the Director has improperly derived a personal benefit or profit;
- (C) the Board in its absolute discretion determines that the actions of the Director have brought the Company, or any associated company, into disrepute.

### **Indemnity**

- 4.6 In the event that Restricted Proceedings are either (i) abandoned, withdrawn or discontinued, (ii) settled, (iii) a permanent stay is granted, or (iv) a final determination of the court is made (or proceedings otherwise finally conclude) without any of the events referred to in clause 4.4(A) to (C) (as applicable) occurring (each such conclusion of proceedings being hereinafter a "**Favourable Conclusion**") then the indemnity provided under clause 3.1 shall thereupon apply with respect to all legal and other reasonable costs of those Restricted Proceedings as were incurred by the Director. Any liability of the Company to so indemnify the Director:
- 4.6.1 shall be set-off against any Liability of the Director to repay to the Company any Loan Amounts outstanding in respect of those Restricted Proceedings; and
  - 4.6.2 shall be subject to the exclusions, limitations and conditions contained in clauses 3.2 (other than clause 3.2.5) and 3.3, applied *mutatis mutandis*.

### **Tax on Loan Amounts**

- 4.7 Within 10 business days of the Director notifying the Company and providing the Company with evidence to its reasonable satisfaction that the Director is liable to taxation in respect of the Loan Amounts under clause 4.1 in a particular tax year, the Company shall pay to the Director such further sums as will ensure that the aggregate of the sums paid under this clause and clause 4.1 shall, after deducting therefrom all liabilities to taxation in respect of such sums, leave the Director with the same amount as the Director would have been entitled to receive under clause 4.1 in the absence of any liability to taxation in respect of the Loan Amounts. Amounts paid by the Company to the Director under this clause 4.7 shall be taken into account in calculating the Maximum Loan Amount for the purposes of clause 4.1 and no payment may be made if to do so would cause the aggregate amount of all outstanding loans made pursuant to this Deed and amounts paid under this clause 4.7 to exceed the Maximum Loan Amount.
- 4.8 In the event that any Loan Amounts are to be repaid by the Director due to the occurrence of any of the circumstances set out in clause 4.4, the Director shall be liable to repay to the Company, in addition to and at the same time as the outstanding Loan Amounts are repaid, all further sums previously paid to the Director under clause 4.7.

### **Repayment**

- 4.9 In the event that a Favourable Conclusion is reached in relation to particular Restricted Proceedings but any Loan Amount lent to the Director in relation to those proceedings remains outstanding in circumstances where the Company is (for any reason) not liable or is no longer liable to indemnify or further indemnify the Director in relation to those Restricted Proceedings then all such Loan Amounts which remain outstanding shall be repayable upon demand from the Company

## **5. GENERAL**

- 5.1 Except where the Claim is brought by the Company or an associated company, if the Director has given notice to the Company under clause 3.3.1, the Company will be entitled to take over and conduct in the Director's name the defence or settlement of any Claim or to prosecute in his name for its own benefit any proceedings relating to a Claim. The Company shall have full discretion in the conduct or settlement of any proceedings relating to a Claim, save that the Company shall not, without the prior consent in writing of the Director, make any settlement of proceedings:
- 5.1.1 that would result in the liability accruing to the Director exceeding the amount by which the Director is indemnified by the Company in respect of such liability; or
  - 5.1.2 under which the Director makes any public or private admission of fault or gives any other undertakings which might reasonably be considered unusual or going beyond undertakings commonly given when settling proceedings in consideration of one or more financial payments between the parties.
- 5.2 This indemnity will not modify or waive any of the duties which the Director owes as an officer or director as a matter of law or under the rules of any relevant stock exchange or other regulatory body.
- 5.3 The Company shall, in the event that a payment is made to the Director under this indemnity in respect of a particular Liability, be entitled to recover from the Director an amount equal to any payment received by the Director under any policy of insurance or from any other third party source to the extent that such payment relates to the Liability, and any such payment to him shall be made on that basis. The Director shall pay over such sum immediately upon the Company's request.
- 5.4 The Company shall pay such amount to the Director as shall after the payment of any tax thereon leave the Director with sufficient funds to meet any Liability to which this indemnity applies. For the avoidance of doubt, when calculating the amount of any such tax the amount of any tax deductions, credits or reliefs which are or may be available to the Director in respect of the relevant payment under this indemnity received by the Director or any payment made by the Director to a third party in respect of the relevant Liability will be taken into account. In the event that any amounts are paid to the Director under this clause 5.4 but a tax deduction, credit or relief is or becomes available to the Director in respect of the relevant payment under this indemnity received by the Director or any payment made by the Director to a third party in respect of the relevant Liability which was not taken into account in calculating the amount payable under this clause 5.4, the Director shall make a payment to the Company of such an amount as is equal to the benefit of such deduction, credit or relief which was not taken into account.
- 5.5 This provision constitutes the entirety of any indemnity given by the Company to the Director. It supersedes all prior arrangements between the Company and the Director whether written or oral which in any way indemnify him in his capacity as a director or officer of the Company.
- 5.6 Any notice to be given by the Company to the Director under or in connection with this indemnity shall be served in accordance with clause 6.1 to 6.6 of this Deed.



## **6. MISCELLANEOUS**

### **Notice**

- 6.1 Any notice, claim or demand required to be served under or in connection with this Deed shall be in made writing and shall be sufficiently given or served:
- 6.1.1 in the case of the Company, if addressed to its company secretary and delivered to the Company's registered office from time to time; and
  - 6.1.2 in the case of the Director, if delivered to the address stated in this Deed in respect of the Director or to such other address as the Director may from time to time notify to the Company for this purpose.
- 6.2 Any such notice, claim or demand shall be delivered by hand, telex or facsimile transmission or sent by prepaid first class post.
- 6.3 Where such notice, claim or demand is:
- (A) delivered by hand, delivery shall conclusively be deemed to have been given or served at the time of delivery;
  - (B) sent by telex or facsimile, delivery shall conclusively be deemed to have been given or served upon production of a transmission report indicating that the telex or facsimile was sent in its entirety to the number of the recipient; and
  - (C) sent by prepaid first class post, delivery shall conclusively be deemed to have been received 48 hours from the time of posting.
- 6.4 For the avoidance of doubt, notices must not be sent by electronic mail.
- 6.5 A notice received or deemed to be received in accordance with sub-clauses 6.1.1 to 6.1.3 above on a day which is not a Business Day or after 5 p.m. on any Business Day, according to local time in the place of receipt, shall be deemed to be received on the next following Business Day.
- 6.6 For the purposes of this clause 6, "Business Day" shall mean a day not being a Saturday on which trading banks are generally open for business in the City of London.

### **Entire Agreement, Severance and Variation**

- 6.7 Each of the parties to this Deed confirms that this Deed represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing.
- 6.8 Each party confirms that:
- (A) in entering into this Deed it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out or referred to in this Deed; and

(B) in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Deed are pursuant to this Deed, and for the avoidance of doubt and without limitation, neither party has any right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Deed).

6.9 In the event that any part (including any sub-clause or part thereof) of this Deed shall be void or unenforceable by reason of any applicable law, it shall be deemed to be deleted and the remaining parts of this Deed shall continue in full force and effect. If necessary, both parties shall use their best endeavours to agree any amendments to the Deed necessary to give effect to the spirit of this Deed.

6.10 No variation of this Deed shall be effective unless it is in writing signed by the parties.

### **Assignment**

6.11 No party may assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge, declare itself a trustee for a third party of, or otherwise dispose of (in any manner whatsoever) the benefit of this Deed or sub contract or delegate in any manner whatsoever its performance under this Deed (each of the above a "dealing") and any such purported dealing in contravention of this clause shall be ineffective.

### **Third Party Rights**

6.12 No term of this Deed is enforceable by a person who is not a party to this Deed.

### **Governing Law and Jurisdiction**

6.13 This Deed shall be construed in accordance with and governed by the laws of the England and the Parties hereby submit irrevocably to the exclusive jurisdiction of the Courts of England for resolution of any dispute arising hereunder.

### **Counterparts**

6.14 This Deed may be executed in any number of counterparts each of which when executed and delivered is an original, but all the counterparts together shall constitute the same document.

**IN WITNESS WHEREOF** the parties hereto have executed this document as a deed the day and year first above written.

**EXECUTED and DELIVERED** as a )  
**DEED by POLAR CAPITAL** )  
**GLOBAL HEALTHCARE GROWTH)**  
**AND INCOME TRUST PLC** )

.....  
Director

.....  
Director

**EXECUTED and DELIVERED** )  
as a **DEED** by [*Director*] )  
in the presence of )

Signature of witness .....

Name and Address of witness .....

Occupation of witness .....