

RISKALERT

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Legal Practitioners' Indemnity Insurance Fund: 1256 Heuwel Avenue, Centurion 0127 • PO Box 12189, Die Hoewes 0163 • Docex 24, Centurion • Tel: 012 622 3900
Website: www.lpiif.co.za • Twitter handle: @LPIIFZA

Prescription Alert, 2nd Floor, Waalburg Building, 28 Wale Street, Cape Town 8001 • PO Box 3062, Cape Town, 8000, South Africa, Docex 149 • Tel: (021) 422 2830 • Fax: (021) 422 2990
E-mail: alert@lpiif.co.za • Website: www.lpiif.co.za

Legal Practitioners' Fidelity Fund, 5th Floor, Waalburg Building, 28 Wale Street, Cape Town 8001 • PO Box 3062, Cape Town, 8000, South Africa, Docex 154 • Tel: (021) 424 5351 • Fax: (021) 423 4819
E-mail: attorneys@fidfund.co.za • Website: www.fidfund.co.za

DISCLAIMER

Please note that the Risk Alert Bulletin is intended to provide general information to legal practitioners and its contents are not intended as legal advice.



**Legal Practitioners
Indemnity Insurance
Fund NPC**

Est. 1993 by the Legal Practitioners Fidelity Fund



**LEGAL
PRACTITIONERS
FIDELITY FUND**

SOUTH AFRICA

EDITOR'S NOTES

PROPOSED AMENDMENTS TO THE LPIIF MASTER POLICY EXPLAINED

It will be remembered that the Legal Practitioners' Indemnity Insurance Fund NPC (LPIIF) issues one Master Policy (the policy) which is applied to all insured legal practitioners - please refer to clause 5 of the policy for a list of who is an insured.

The LPIIF intends making amendments to the policy in order to:

- Better articulate the intention behind the affected clauses;
- Remove any potential ambiguity in the interpretation; and
- Improve the dispute resolution mechanism in clause 40.

It must be noted that the proposed amendments do not introduce any new exclusions and that the amount of cover (limit of indemnity) and the deductible (excess) payable remain unchanged.

The proposed amendments will come into effect on 1 July 2019. We are publishing the proposed amendments at this early stage in order to give the profession and all other stakeholders sufficient notice of the conditions under which cover is to be offered under the policy in the new insurance scheme year commencing on 1 July 2019.

Any queries and/or comments regarding the proposed amend-



**Thomas Harban,
Editor**

ments should be directed to the LPIIF team.

The proposed amendments are as follows:

- The name of the company has been changed from the "Attorneys Insurance Indemnity Fund NPC" to its new name, "Legal Practitioners' Indemnity Insurance Fund NPC";
- Definitions
 - Definition I - reference to the Attorneys Act has been removed. Act will mean the Legal Practice Act 28 of 2014;
 - Definition IV - reference

EDITOR'S NOTES continued...

- to section 25 of the Attorneys Act has been replaced by the corresponding section, (section 53), of the Legal Practice Act providing for the continued existence of the Fidelity Fund;
- 2.3 Definition VI - the explanatory note and the definition have been combined;
- 2.4 Definition IX - Cybercrime: clarification has been added that the hacking of any of the electronic environments is not a necessity in order for the exclusion to apply. Some practitioners were, incorrectly with respect, of the view that hacking of their electronic environments must have taken place before cybercrime exclusion will apply. In the event that your practice has cybercrime cover in place, please check the wording of that policy as well in order to ensure that there is no gap in cover;
- 2.5 Definition XII - Employee: reference to "candidate attorneys" has been replaced with "candidate legal practitioners" in order to include candidate attorneys and pupils in line with section 1 of the Legal Practice Act. Advocates with Fidelity Fund Certificates (FFCs) will now be covered by the policy and so will their pupils;
- 2.6 Definition XIV - Fidelity Fund Certificate: Reference to section 42 of the old Act has been replaced with reference the corresponding section (section 85) of the new Act;
- 2.7 Definition XX: Legal Services: Legal services relate to the conduct of a legal practice in terms of section 33 of the Act;
- 2.8 Definition XXI - Practitioner: it has been clarified that advocates practising in terms of section 34(2)(b) fall within the definition of practitioners in the policy;
- 2.9 Definition XXIV - Risk Management Questionnaire: (1) reference to "an advocate referred to in section 34(2)(b)" has been added; and (2) a clarification of when the questionnaire should be completed and where to obtain the information regarding the completion thereof has been included;
- 2.10 Definition XXVI - Senior Practitioner: a requirement for experience in professional indemnity insurance law for the Senior Practitioners to whom dispute resolution referrals are made has been added;
- 2.11 Clause 4 - the order of the words has been changed in order for the clause to read better;
- 2.12 Clause 5(d) - a clarification that advocates with FFCs will be regarded as sole practitioners for purposes of the policy has been added. This is in line with section 34(6) of the new Act. This change seeks to avoid a situation where a group of advocates with FFCs purport to practise together in some form of partnership or association and therefore assume that they are entitled to a higher limit of indemnity;
- 2.13 Clause 6(d) - reference to "legal representatives of the people..." has been removed as it may create confusion if interpreted as referring to legal practitioners representing the estates referred to;
- 2.14 Clause 16(b) - reference to section 26 of the Attorneys Act is replaced with section 55 (the section dealing with the liability of the Fund) in the new Act;
- 2.15 Clause 16(m) - the words "and is part of the scope of the mandate to carry out legal services" have been added in order to clarify that when the underlying mandate to carry out legal services has been completed, the insurer carries no obligation to indemnify an insured who thereafter act as paymasters making payments unrelated to the legal services which had been carried out;
- 2.16 Clause 16(o) - where new bank account details are provided to an insured, these should first be verified in terms of Rule 53.14. Insureds failing to comply with their obligations in terms of the Rules and being defrauded into paying into incorrect accounts, and thereby losing their clients' funds to cybercrime scams, will not be covered. This risk can be insured in the commercial market under the various types of policy available. Various products from banks and other service providers offer facilities which can be used to verify the banking details of the intended recipients. The banking products approved by the Fund offer a verification service;
- 2.17 Clause 40 - Dispute Resolution Clause - (a) we have clarified that the determination of a Senior Practitioner is not an arbitration award. This is to dispel the notion that a determination can be made an order of court as if it was an arbitration award; and (b) we have removed all reference to the Short-Term Insurance Ombudsman (STIO) as that office does not have any jurisdiction over professional indemnity claims.
- For ease of reference, we have included the policy with the suggested changes underlined thereon.

Thomas Harban
General Manager
Telephone: (012) 622 3928
Email: thomas.harban@LPIIF.co.za



**Legal Practitioners
Indemnity Insurance
Fund NPC**
Est. 1993 by the Legal Practitioners Fidelity Fund

THE DRAFT LPIIF MASTER POLICY WITH THE PROPOSED CHANGES

PREAMBLE

The **Legal Practitioners' Fidelity Fund**, as permitted by the **Act**, has contracted with the **Insurer** to provide professional indemnity insurance to the **Insured**, in a sustainable manner and with due regard for the interests of the public by:

- a) protecting the integrity, esteem, status and assets of the **Insured** and the legal profession;
- b) protecting the public against indemnifiable and provable losses arising out of **Legal Services** provided by the **Insured**, on the basis set out in this policy.

DEFINITIONS:

- I **Act:** The Legal Practice Act 28 of 2014;
- II **Annual Amount of Cover:** The total available amount of cover for the **Insurance Year** for the aggregate of payments made for all **Claims**, **Approved Costs** and **Claimants' Costs** in respect of any **Legal Practice** as set out in Schedule A;
- III **Approved Costs:** Legal and other costs incurred by the **Insured** with the **Insurer's** prior written permission (which will be in the **Insurer's** sole discretion) in attempting to prevent a **Claim** or limit the amount a **Claim**;
- IV **Legal Practitioners' Fidelity Fund:** As referred to in section 53 of the **Act**;
- V **Bridging Finance:** The provision of short-term finance to a party to a **Conveyancing Transaction** before it has been registered in the Deeds Registry;
- VI **Claim:** A written demand for compensation from the **Insured**, which arises out of the **Insured's** provision of **Legal Services**.
For the purposes of this policy, a written demand is any written communication or legal document that either makes a demand for or intimates or implies an intention to demand compensation or damages from an **Insured**;
- VII **Claimant's Costs:** The legal costs the **Insured** is obliged to pay to a claimant by order of a court, arbitrator, or by an agreement approved by the **Insurer**;
- VIII **Conveyancing Transaction:** A transaction which:
 - a) involves the transfer of legal title to or the registration of a real right in immovable property from one or more legal entities or natural persons to another; and/or
 - b) involves the registration or cancellation of any mortgage bond or real right over immovable property; and/or
 - c) is required to be registered in any Deeds Registry in the Republic of South Africa, in terms of any relevant legislation;
- IX **Cybercrime:** Any criminal or other offence that is facilitated by or involves the use of electronic communications or information systems, including any device or the internet or any one or more of them. (The device may be the agent, the facilitator or the target of the crime or offence). Hacking of any of the electronic environments is not a necessity in order for the offence or the loss to fall within this definition;
- X **Defence Costs:** The reasonable costs the **Insurer** or **Insured**, with the **Insurer's** written consent, incurs in investigating and defending a **Claim** against an **Insured**;
- XI **Dishonest:** Bears its ordinary meaning but includes conduct which may occur without an **Insured's** subjective purpose, motive or intent, but which a reasonable legal practitioner would consider to be deceptive or untruthful or lacking integrity or conduct which is generally not in keeping with the ethics of the legal profession;
- XII **Employee:** A person who is or was employed or engaged by the **Legal Practice** to assist in providing **Legal Services**. (This includes in-house legal consultants, associates, professional assistants, candidate legal practitioners, paralegals and clerical staff but does not include an independent contractor who is not a **Practitioner**.);
- XIII **Excess:** The first amount payable by the **Insured** (or deductible) in respect of each and every **Claim** (including **Claimant's Costs**) as set out in schedule B;
- XIV **Fidelity Fund Certificate:** A certificate provided for in terms of section 85 of the **Act**, read with Rules 3, 47, 48 and 49 of the South African Legal Practice Council Rules (the Rules) made under the authority of section 95(1) of the **Act**;
- XV **Innocent Principal:** Each present or former **Principal** who:
 - a) may be liable for the debts and liabilities of the **Legal Practice**;
 - b) did not personally commit or participate in committing the **Dishonest**, fraudulent or other criminal act and had no knowledge or awareness of such act;
- XVI **Insured:** The persons or entities referred to in clauses 5 and 6 of this policy;
- XVII **Insurer:** The **Legal Practitioners' Indemnity Insurance** Fund NPC, Reg. No. 93/03588/08;
- XVIII **Insurance Year:** The period covered by the policy, which runs from 1 July of the first year to 30 June of the following year;
- XIX **Legal Practice:** The person or entity listed in clause 5 of this policy;
- XX **Legal Services:** Work reasonably done or advice given in the ordinary course of carrying on the business of a **Legal Practice** in the Republic of South Africa in accordance with the provisions of section 33 of the **Act**. Work done or advice given on the law applicable in jurisdictions other than the Republic of South Africa are specifically excluded, unless provided by a person admitted to practise in the applicable jurisdiction;
- XXI **Practitioner:** Any attorney, advocate referred to in Section 34(2)(b) of the Act, notary or conveyancer as defined in the **Act**;
- XXII **Prescription Alert:** The computerised back-up diary system that the **Insurer** makes available to the legal

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profession;

- XXIII **Principal:** An advocate referred in section 34(2)(b) of the Act, sole Practitioner, partner or director of a Legal Practice or any person who is publicly held out to be a partner or director of a Legal Practice;
- XXIV **Risk Management Questionnaire:** A self-assessment questionnaire which can be downloaded from or completed on the Insurer's website (www.lpiif.co.za) and which must be completed annually by the advocate referred to in section 34(2)(b) of the Act, sole practitioner, senior partner, director or designated risk manager of the Insured as referred to in clause 5. The annual completion of this questionnaire is compulsory, both in terms of this policy (see clauses XXIV and 23) and the Rules made under the Act. For attorneys this is set out in point 15 of the application for a Fidelity Fund Certificate form (schedule 7A of the Rules). Advocates referred to in section 34(2)(b) of the Act must also complete this questionnaire annually (see point 13 of the application for a Fidelity Fund Certificate form (schedule 7B of the Rules)).
- XXV **Road Accident Fund claim (RAF):** A claim for compensation for losses in respect of bodily injury or death caused by, arising from or in any way connected with the driving of a motor vehicle (as defined in the Road Accident Fund Act 56 of 1996 or any predecessor or successor of that Act) in the Republic of South Africa;
- XXVI **Senior Practitioner:** A Practitioner with no less than 15 years' standing in the legal profession, with experience in professional indemnity insurance law;
- XXVII **Trading Debt:** A debt incurred as a result of the undertaking of the Insured's business or trade. (Trading debts are not compensatory in nature and this policy deals only with claims for compensation.) This exclusion includes (but is not limited to) the following:
- a refund of any fee or disbursement charged by the Insured to a client;
 - damages or compensation or payment calculated by reference to any fee or disbursement charged by the Insured to a client;
 - payment of costs relating to a dispute about fees or disbursements charged by the Insured to a client; and/or
 - any labour dispute or act of an administrative nature in the Insured's practice.

WHAT COVER IS PROVIDED BY THIS POLICY?

- On the basis set out in this policy, the Insurer agrees to indemnify the Insured against professional legal liability to pay compensation to any third party:
 - that arises out of the provision of Legal Services by the Insured; and
 - where the Claim is first made against the Insured during the current Insurance Year.
- The Insurer agrees to indemnify the Insured for Claimants' Costs and Defence Costs on the basis set out in this policy.
- The Insurer agrees to indemnify the Insured for Approved Costs in connection with any Claim referred to in clause 1.
- As set out in Clause 38, the Insurer will not indemnify the Insured in the current Insurance Year, if the circumstance giving rise to the Claim has previously been notified to the Insurer by the Insured in an earlier Insurance Year.

WHO IS INSURED?

- Provided that each Principal had a Fidelity Fund Certificate at the time of the circumstance, act, error or omission giving rise to the Claim, the Insurer insures all Legal Practices providing Legal Services, including:
 - a sole Practitioner;
 - a partnership of Practitioners;
 - an incorporated Legal Practice as referred to in section 34(7) of the Act; and
 - an advocate referred to in section 34(2)(b) of Act. For purposes of this policy, an advocate referred to in section 34(2)(b) of the Act, will be regarded as a sole practitioner.
- The following are included in the cover, subject to the Annual Amount of Cover applicable to the Legal Practice:
 - a Principal of a Legal Practice providing Legal Services, provided that the Principal had a Fidelity Fund Certificate at the time of the circumstance, act, error or omission giving rise to the Claim;
 - a previous Principal of a Legal Practice providing Legal Services, provided that that Principal had a Fidelity Fund Certificate at the time of the circumstance, act, error or omission giving rise to the Claim;
 - an Employee of a Legal Practice providing Legal Services at the time of the circumstance, act, error or omission giving rise to the Claim;
 - the estates of the people referred to in clauses 6(a), 6(b) and 6(c);
 - subject to clause 16(c), a liquidator or trustee in an insolvent estate, where the appointment is or was motivated solely because the Insured is a Practitioner and the fees derived from such appointment are paid directly to the Legal Practice.

AMOUNT OF COVER

- The Annual Amount of Cover, as set out in Schedule A, is calculated by reference to the number of Principals that made up the Legal Practice on the date of the circumstance, act, error or omission giving rise to the Claim.

A change during the course of an insurance year in the composition of a legal practice which is a partnership will not constitute a new legal practice for purposes of this policy and would not entitle that Legal Practice to more than one limit of indemnity in respect of that insurance year.
- Schedule A sets out the maximum Annual Amount of Cover that the Insurer provides per Legal Practice. This amount includes payment of compensation (capital and interest) as well as Claimant's Costs and Approved Costs.
- Cover for Approved Costs is limited to 25% of the Annual Amount of Cover or such other amount that the Insurer may allow in its sole discretion.

INSURED'S EXCESS PAYMENT

- The Insured must pay the Excess in respect of each Claim, directly to the claimant or the claimant's legal representatives, immediately it becomes due and payable. Where two or more Claims are made simultaneously, each Claim will attract its own Ex-

cess and to the extent that one or more **Claims** arise from the same circumstance, act, error or omission the **Insured** must pay the **Excess** in respect of each such **Claim**;

11. The **Excess** is calculated by reference to the number of **Principals** that made up the **Legal Practice** on the date of the circumstance, act, error or omission giving rise to the **Claim**, and the type of matter giving rise to the **Claim**, as set out in Schedule B.
12. The **Excess** set out in column A of Schedule B applies:
 - a) in the case of a **Claim** arising out of the prescription of a **Road Accident Fund claim**. This **Excess** increases by an additional 20% if **Prescription Alert** has not been used and complied with by the **Insured**, by timeous lodgement and service of summons in accordance with the reminders sent by **Prescription Alert**;
 - b) in the case of a **Claim** arising from a **Conveyancing Transaction**.
13. In the case of a **Claim** where clause 20 applies, the **excess** increases by an additional 20%.
14. No **Excess** applies to **Approved Costs** or **Defence Costs**.
15. The **Excess** set out in column B of Schedule B applies to all other types of **Claim**.

WHAT IS EXCLUDED FROM COVER?

16. This policy does not cover any liability for compensation:
 - a) arising out of or in connection with the **Insured's Trading Debts** or those of any **Legal Practice** or business managed by or carried on by the **Insured**;
 - b) arising from or in connection with misappropriation or unauthorised borrowing by the **Insured** or **Employee** or agent of the **Insured** or of the **Insured's** predecessors in practice, of any money or other property belonging to a client or third party and/or as referred to in **section 55** of the **Act**;
 - c) which is insured or could more appropriately have been insured under any other valid and collectible insurance available to the **Insured**, covering a loss arising out of the normal course and conduct of the business or where the risk has been guaranteed by a person or entity, either in general or in respect of a particular transaction, to the extent to which it is covered by the guarantee. This includes but is not limited to Misappropriation of Trust Funds, Personal Injury, Commercial and Cybercrime insurance policies;
 - d) arising from or in terms of any judgment or order(s) obtained in the first instance other than in a court of competent jurisdiction within the Republic of South Africa;
 - e) arising from or in connection with the provision of investment advice, the administration of any funds or taking of any deposits as contemplated in:
 - (i) the Banks Act 94 of 1990;
 - (ii) the Financial Advisory and Intermediary Services Act 37 of 2002;
 - (iii) the Agricultural Credit Act 28 of 1996 as amended or replaced;
 - (iv) any law administered by the Financial Sector Conduct Authority and/or the South African

Reserve Bank and any regulations issued thereunder; or

- (v) the Medical Schemes Act 131 of 1998 as amended or replaced;
- f) arising where the **Insured** is instructed to invest money on behalf of any person, except for an instruction to invest the funds in an interest-bearing account in terms of section 78(2A) of the **Attorneys Act 53 of 1979 and/or section 86(4) of the Act**, and if such investment is done pending the conclusion or implementation of a particular matter or transaction which is already in existence or about to come into existence at the time the investment is made.

This exclusion (subject to the other provisions of this policy) does not apply to funds which the **Insured** is authorised to invest in his or her capacity as executor, trustee, curator or in any similar representative capacity;
- g) arising from or in connection with any fine, penalty, punitive or exemplary damages awarded against the **Insured**, or from an order against the **Insured** to pay costs *de bonis propriis*;
- h) arising out of or in connection with any work done on behalf of an entity defined in the Housing Act 107 of 1997 or its representative, with respect to the National Housing Programme provided for in the Housing Act;
- i) directly or indirectly arising from, or in connection with or as a consequence of the provision of **Bridging Finance** in respect of a **Conveyancing Transaction**. This exclusion does not apply where **Bridging Finance** has been provided for the payment of:
 - (i) transfer duty and costs;
 - (ii) municipal or other rates and taxes relating to the immovable property which is to be transferred;
 - (iii) levies payable to the body corporate or homeowners' association relating to the immovable property which is to be transferred;
- j) arising from the **Insured's** having given an unqualified undertaking legally binding his or her practice, in matters where the fulfilment of that undertaking is dependent on the act or omission of a third party;
- k) arising out of or in connection with a breach of contract unless such breach is a breach of professional duty by the **Insured**;
- l) arising where the **Insured** acts or acted as a business rescue practitioner as defined in section 128 (1) (d) of the Companies Act 71 of 2008;
- m) arising out of or in connection with the receipt or payment of funds, whether into or from the trust account or otherwise, where that receipt or payment is unrelated to or unconnected with a particular matter or transaction which is already in existence or about to come into existence and is an essential or integral part of the scope of the mandate to carry out Legal Services, at the time of the receipt or payment and in respect of which the Insured has received a mandate;**
- n) arising out of a defamation **Claim** that is brought against the **Insured**;
- o) arising out of Cybercrime. Losses arising out of Cybercrime will include, but not be limited**

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to, payments made into the an incorrect and/ or fraudulent bank account where either the Insured or any other party has been induced to make the payment into the incorrect bank account and has failed to verify the authenticity of such bank account.

For purposes of this Clause, “verify” means that the Insured must have a face to face meeting with the client and or other intended recipient of the funds. The client or other intended recipient of the funds (as the case may be), must provide the Insured with an original signed and duly commissioned affidavit confirming the instruction to change their banking details and attaching an original stamped document from the bank confirming ownership of the account.

- p) arising out of a **Claim** against the **Insured** by an entity in which the **Insured** and/or related or interrelated persons* has/have a material interest and/or hold/s a position of influence or control**.

* as defined in section 2(1) of the Companies Act 71 of 2008

** as defined in section 2(2) of the Companies Act 71 of 2008

For the purposes of this paragraph, “material interest” means an interest of at least ten (10) percent in the entity;

- q) arising out of or in connection with a **Claim** resulting from:
- (i) War, invasion, act of foreign enemy, hostilities or warlike operations (whether war is declared or not) civil war, mutiny, insurrection, rebellion, revolution, military or usurped power;
 - (ii) Any action taken in controlling, preventing, suppressing or in any way relating to the excluded situations in (i) above including, but not limited to, confiscation, nationalisation, damage to or destruction of property by or under the control of any Government or Public or Local Authority;
 - (iii) Any act of terrorism regardless of any other cause contributing concurrently or in any other sequence to the loss;
For the purpose of this exclusion, terrorism includes an act of violence or any act dangerous to human life, tangible or intangible property or infrastructure with the intention or effect to influence any Government or to put the public or any section of the public in fear;
- r) arising out of or in connection with any **Claim** resulting from:
- (i) ionising radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion or use of nuclear fuel;
 - (ii) nuclear material, nuclear fission or fusion, nuclear radiation;
 - (iii) nuclear explosives or any nuclear weapon;
 - (iv) nuclear waste in whatever form; regardless of any other cause or event contributing concurrently or in any other sequence to the loss. For the purpose of this exclusion only, combustion includes any self-sustaining process of nuclear fission or

fusion;

- s) arising out of or resulting from the hazardous nature of asbestos in whatever form or quantity; and
- t) **Legal Services** carried out in violation of the Act and the Rules.

FRAUDULENT APPLICATIONS FOR INDEMNITY

17. The **Insurer** will reject a fraudulent application for indemnity.

CLAIMS ARISING OUT OF DISHONESTY OR FRAUD

18. Any **Insured** will not be indemnified for a **Claim** that arises:
- a) directly or indirectly from any **Dishonest**, fraudulent or other criminal act or omission by that **Insured**;
 - b) directly or indirectly from any **Dishonest**, fraudulent or other criminal act or omission by another party and that **Insured** was knowingly connected with, or colluded with or condoned or acquiesced or was party to that dishonesty, fraud or other criminal act or omission.
Subject to clauses 16, 19 and 20, this exclusion does not apply to an **Innocent Principal**.
19. In the event of a **Claim** to which clause 18 applies, the **Insurer** will have the discretion not to make any payment, before the **Innocent Principal** takes all reasonable action to:
- a) institute criminal proceedings against the alleged **Dishonest** party and present proof thereof to the **Insurer**; and/or
 - b) sue for and obtain reimbursement from any such alleged **Dishonest** party or its or her or his estate or legal representatives;
Any benefits due to the alleged **Dishonest** party held by the **Legal Practice**, must, to the extent allowable by law, be deducted from the **Legal Practice's** loss.
20. Where the **Dishonest** conduct includes:
- a) the witnessing (or purported witnessing) of the signing or execution of a document without seeing the actual signing or execution; or
 - b) the making of a representation (including, but not limited to, a representation by way of a certificate, acknowledgement or other document) which was known at the time it was made to be false;
The **Excess** payable by the **Innocent Insured** will be increased by an additional 20%.
21. If the **Insurer** makes a payment of any nature under the policy in connection with a **Claim** and it later emerges that it wholly or partly arose from a **Dishonest**, fraudulent or other criminal act or omission of the **Insured**, the **Insurer** will have the right to recover full repayment from that **Insured** and any party knowingly connected with that **Dishonest**, fraudulent or criminal act or omission.

THE INSURED'S RIGHTS AND DUTIES

22. The **Insured** must;
- a) give immediate written notice to the **Insurer** of any circumstance, act, error or omission that may give rise to a **Claim**; and
 - b) notify the **Insurer** in writing as soon as practicable, of any **Claim** made against them, but by no later than one (1) week after receipt by the

- Insured**, of a written demand or summons/counterclaim or application. In the case of a late notification of receipt of the written demand, summons or application by the **Insured**, the **Insurer** reserves the right not to indemnify the **Insured** for costs and ancillary charges incurred prior to or as a result of such late notification.
23. Once the **Insured** has notified the **Insurer**, the **Insurer** will require the **Insured** to provide a completed **Risk Management Questionnaire** and to complete a claim form providing all information reasonably required by the **Insurer** in respect of the **Claim**. The **Insured** will not be entitled to indemnity until the claim form and **Risk Management Questionnaire** have been completed by the **Insured**, to the **Insurer's** reasonable satisfaction and returned to the **Insurer**.
 24. The **Insured**:
 - 24.1. shall not cede or assign any rights in terms of this policy;
 - 24.2. agrees not to, without the **Insurer's** prior written consent:
 - a) admit or deny liability for a **Claim**;
 - b) settle a **Claim**;
 - c) incur any costs or expenses in connection with a **Claim** unless the sum of the **Claim** and **Claimant's Costs** falls within the **Insured's Excess**; failing which, the **Insurer** will be entitled to reject the **Claim**, but will have sole discretion to agree to provide indemnity, wholly or partly.
 25. The **Insured** agrees to give the **Insurer** and any of its appointed agents:
 - 25.1. all information and documents that may be reasonably required, at the **Insured's** own expense.
 - 25.2. assistance and cooperation, which includes, but not limited to, preparing, service and filing of notices and pleadings by the **Insured** as specifically instructed by the **Insurer** at the **Insurer's** expense, which expenses must be agreed to in writing.
 26. The **Insured** also gives the **Insurer** or its appointed agents the right of reasonable access to the **Insured's** premises, staff and records for purposes of inspecting or reviewing them in the conduct of an investigation of any **Claim** where the **Insurer** believes such review or inspection is necessary.
 27. Notwithstanding anything else contained in this policy, should the **Insured** fail or refuse to provide information, documents, assistance or cooperation in terms of this policy, to the **Insurer** or its appointed agents and remain in breach for a period of ten (10) working days after receipt of written notice to remedy such breach (from the **Insurer** or its appointed agents) the **Insurer** has the right to:
 - a) withdraw indemnity; and/or
 - b) report the **Insured's** conduct to the regulator; and/or
 - c) recover all payments and expenses incurred by it. For the purposes of this paragraph, written notice will be sent to the address last provided to the **Insurer** by the **Insured** and will be deemed to have been received five (5) working days after electronic transmission or posting by registered mail.
 28. By complying with the obligation to disclose all documents and information required by the **Insurer** and its legal representatives, the **Insured** does not waive any claim of legal professional privilege or confidentiality.
 29. Where a breach of, or non-compliance with any term of this policy by the **Insured** has resulted in material prejudice to the handling or settlement of any **Claim** against the **Insured**, the **Insured** will reimburse the **Insurer** the difference between the sum payable by the **Insurer** in respect of that **Claim** and the sum which would in the sole opinion of the **Insurer** have been payable in the absence of such prejudice. It is a condition precedent of the **Insurer's** right to obtain reimbursement, that the **Insurer** has fully indemnified the **Insured** in terms of this policy.
 30. Written notice of any new **Claim** must be given to:

Legal Practitioners' Indemnity Insurance Fund NPC
1256 Heuwel Avenue|Centurion|0127
PO Box 12189|Die Hoewes|0163
Docex 24 | Centurion
Email: claims@lpiif.co.za
Tel:+27(0)12 622 3900
- ### THE INSURER'S RIGHTS AND DUTIES
31. The **Insured** agrees that:
 - a) the **Insurer** has full discretion in the conduct of the **Claim** against the **Insured** including, but not limited to, its investigation, defence, settlement or appeal in the name of the **Insured**;
 - b) the **Insurer** has the right to appoint its own legal representative(s) or service providers to act in the conduct and the investigation of the **Claim**; The exercise of the **Insurer's** discretion in terms of a) will not be unreasonable.
 32. The **Insurer** agrees that it will not settle any **Claim** against any **Insured** without prior consultation with that **Insured**. However, if the **Insured** does not accept the **Insurer's** recommendation for settlement:
 - a) the **Insurer** will not cover further **Defence Costs** and **Claimant's Costs** beyond the date of the **Insurer's** recommendation to the **Insured**; and
 - b) the **Insurer's** obligation to indemnify the **Insured** will be limited to the amount of its recommendation for settlement or the **Insured's** available **Annual Amount of Cover** (whichever is the lesser amount).
 33. If the amount of any **Claim** exceeds the **Insured's** available **Annual Amount of Cover** the **Insurer** may, in its sole discretion, hold or pay over such amount or any lesser amount for which the **Claim** can be settled. The **Insurer** will thereafter be under no further liability in respect of such a **Claim**, except for the payment of **Approved Costs** or **Defence Costs** incurred prior to the date on which the **Insurer** notifies the **Insured** of its decision.
 34. Where the **Insurer** indemnifies the **Insured** in relation to only part of any **Claim**, the **Insurer** will be responsible for only the portion of the **Defence Costs** that reflects an amount attributable to the matters so indemnified. The **Insurer** reserves the right to determine that proportion in its absolute discretion.
 35. In the event of the **Insured's** material non-disclosure or misrepresentation in respect of the application for indemnity, the **Insurer** reserves the right to re-

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port the **Insured's** conduct to the regulator and to recover any amounts that it may have incurred as a result of the **Insured's** conduct.

36. If the **Insurer** makes payment under this policy, it will not require the **Insured's** consent to take over the **Insured's** right to recover (whether in the **Insurer's** name or the name of the **Insured**) any amounts paid by the **Insurer**;
37. All recoveries made in respect of any **Claim** under this policy will be applied (after deduction of the costs, fees and expenses incurred in obtaining such recovery) in the following order of priority:
 - a) the **Insured** will first be reimbursed for the amount by which its liability in respect of such **Claim** exceeded the **Amount of Cover** provided by this policy;
 - b) the **Insurer** will then be reimbursed for the amount of its liability under this policy in respect of such **Claim**;
 - c) any remaining amount will be applied toward the **Excess** paid by the **Insured** in respect of such **Claim**.
38. If the **Insured** gives notice during an **Insurance Year**, of any circumstance, act, error or omission (or a related series of acts, errors or omissions) which may give rise to a **Claim** or **Claims**, then any **Claim** or **Claims** in respect of that/those circumstance/s, act/s, error/s or omission/s subsequently made against the **Insured**, will for the purposes of this policy be considered to fall within one **Insurance Year**, being the **Insurance Year** of the first notice.
39. This policy does not give third parties any rights against the **Insurer**.

HOW THE PARTIES WILL RESOLVE DISPUTES

40. Subject to the provisions of this policy, any dispute or disagreement between the **Insured** and the **Insurer** as to any right to indemnity in terms of this policy, or as to any matter arising out of or in connection with this policy, must be dealt with in the following order:
 - a) written submissions by the **Insured** must be referred to the **Insurer's** internal complaints/dispute team at disputes@lpiif.co.za or to the address set out in clause 30 of this policy, within thirty (30) days of receipt of the written communication from the **Insurer** which has given rise to the dispute;
 - b) should the dispute not have been resolved within thirty (30) days from the date of receipt by the **Insurer** of the submission referred to in a), then the parties must agree on an independent **Senior Practitioner** who has experience in the area of professional indemnity insurance law, to whom the dispute can be referred for a determination. Failing such an agreement, the choice of such **Senior Practitioner** must be referred to the Chairperson of the Legal Practice Council to appoint the **Senior Practitioner** with the relevant experience;
 - c) the parties must make written submissions which will be referred for determination to the **Senior Practitioner** referred to in b). The costs incurred in so referring the matter and the costs of the **Senior Practitioner** will be borne by the

unsuccessful party;

- d) the determination does not have the force of an arbitration award. The unsuccessful party must notify the successful party in writing, within thirty (30) days of the determination by the Senior Practitioner, if the determination is not acceptable to it.

The procedures in a) b) c) and d) above must be completed before any formal legal action is undertaken by the parties.

SCHEDULE A

PERIOD OF INSURANCE: 1ST JULY 2019 TO 30TH JUNE 2020 (BOTH DAYS INCLUSIVE)

No of Principals	Annual Amount of Cover for Insurance Year
1	R1 562 500
2	R1 562 500
3	R1 562 500
4	R1 562 500
5	R1 562 500
6	R1 562 500
7	R1 640 625
8	R1 875 000
9	R2 109 375
10	R2 343 750
11	R2 578 125
12	R2 812 500
13	R3 046 875
14 and above	R3 125 000

SCHEDULE B

PERIOD OF INSURANCE: 1ST JULY 2019 TO 30TH JUNE 2020 (BOTH DAYS INCLUSIVE)

No of Principals	Column A Excess for prescribed RAF* and Conveyancing Claims**	Column B Excess for all other Claims**
1	R35 000	R20 000
2	R63 000	R36 000
3	R84 000	R48 000
4	R105 000	R60 000
5	R126 000	R72 000
6	R147 000	R84 000
7	R168 000	R96 000
8	R189 000	R108 000
9	R210 000	R120 000
10	R231 000	R132 000
11	R252 000	R144 000
12	R273 000	R156 000
13	R294 000	R168 000
14 and above	R315 000	R180 000

*The applicable Excess will be increased by an additional 20% if **Prescription Alert** is not used and complied with.

**The applicable Excess will be increased by an additional 20% if clause 20 of this policy applies.