

RISK ALERT

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IN THIS EDITION

- A note from the editor 1
- The 2019/2020 Master Policy 2
- The 2019/2020 Executor Bond Policy 8

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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

In the May 2019 edition of the *Bulletin* we published the Master Policy with the proposed amendments tracked thereon. We also invited input and comment from the stakeholders.

The Master Policy has now been finalised and the policy wording for the 2019/2020 scheme year is published in this edition of the *Bulletin*. Practitioners are, once again, requested to read the policy carefully in order to understand the terms and conditions under which indemnity is provided by the Legal Practitioners' Indemnity Insurance Fund NPC (the LPIIF).

We wish to draw particular attention to the exclusion of cybercrime (clause 16(o)). Risk management steps must be taken by practitioners within their practices to mitigate cyber risk. Regard can be had to the August 2018 edition of the *Bulletin* for some suggestions of the steps that practitioners can consider implementing in their practices in order to mitigate against this risk. When dealing with requests purporting to be instructions to change beneficiary banking details, regard must be had to the obligations on the practitioner to verify the banking details of beneficiary- Rule 54.13 imposes an obligation on the practitioner to verify the banking details of clients. The new policy also explains the steps practitioners can take to verify the banking details of intended recipients. Reliance cannot be placed on the email purporting to be from the client or other intended recipient of the funds. Cybercrime is on the increase internationally and there are several insurance products available in the commercial market in order to cover this risk.



**Thomas Harban,
Editor**

Clause 16(m) excludes indemnity where the receipt or payment of funds is unrelated to an existing instruction to provide legal services. This exclusion applies in those circumstances where, for example, practitioners act as paymasters or simply a conduit for funds.

The Executor Bond policy is also published in this edition of the *Bulletin*. Bonds will not be issued to attorneys who fail to comply with the terms and conditions. Attorneys must give the LPIIF regular updates on the status of the estates they are administering. A separate estate late bank account must be opened as prescribed in section 28 of the Administration of Estates Act 66 of 1965.

We wish you a claim-free 2019/2020 scheme year.

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

THE 2019/2020 LPIIF MASTER POLICY

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 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-**

RISKALERT

- 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;
 - (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 to, payments made into the an incorrect and/or fraudulent bank account where either the **Insured**

sured 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/coun-

RISKALERT

- terclaim 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 report 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:
- 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;
 - the **Insurer** will then be reimbursed for the amount of its liability under this policy in respect of such **Claim**;
 - 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:
- 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;
 - 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;
 - 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;
 - 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.



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

THE 2019/2020 EXECUTOR BOND POLICY

1. GENERAL PROVISIONS

- 1.1 The Legal Practitioners Indemnity Insurance Fund (herein after referred to as the LPIIF) will provide a bond only to the executor of a deceased estate, the administration of which is subject to the provisions of South African Law, and who is an attorney practising in South Africa with a valid Fidelity Fund Certificate.
- 1.2 The LPIIF will, in its sole discretion, assess the validity of and risk associated with the information supplied in the application, and any other relevant information at its disposal, which includes the manner in which the administration of previous estates in respect of which bonds have been issued, in deciding whether or not to issue a bond to an applicant.
 - 1.2.1 If the applicant disputes the LPIIF's rejection of the application, such dispute will be dealt with in the following order:
 - 1.2.2 written submissions by the applicant should be referred to the LPIIF Executive Committee at disputes@lpiif.co.za or to the address set out in clause 6 of this document, within thirty (30) days of receipt of the communication from the LPIIF rejecting the application;
 - 1.2.3 should the dispute not have been resolved within thirty (30) days, then such dispute will be referred to the Sub-Committee appointed by the LPIIF's board of directors for a final determination.

2. EXCLUSIONS

Before completing the application, please note that a bond will NOT be issued where:

- 2.1 the applicant would be appointed in any capacity other than as the executor;
- 2.2 the day to day administration of the estate would not be executed by the applicant, partners or co-directors or members of staff under the applicant's, partners or co-directors' supervision, within the applicant's offices;
- 2.3 the administration of the estate would be executed by any entity other than the legal firm of which the applicant is part;
- 2.4 the co-executor is not a practising attorney;
- 2.5 any claim involving dishonesty has been made against the applicant or any member of his or her firm. We reserve the right not to issue any bonds to the applicant or any firm in which the applicant is/was a partner or director or member of staff at the time of the alleged dishonesty or thereafter;
- 2.6 the applicant or his or her firm has not provided the LPIIF with all updates or the required information in respect of previous bonds, or complied with the Terms and Conditions;

- 2.7 the applicant has a direct or indirect interest in the estate for which the bond is requested other than executor fees;
- 2.8 the applicant is an unrehabilitated insolvent, suspended or interdicted from practice, or where proceedings have commenced to remove him or her from the roll of practicing attorneys;
- 2.9 the applicant has either been found guilty by a court or a professional regulatory body of an offence or an act involving an element of dishonesty, or by reason of a dishonest act or breach of a duty, been removed from a position of trust.

3. TERMS AND CONDITIONS

- 3.1 An applicant must complete the prescribed application form, and provide the LPIIF with all the relevant supporting documents. A copy of the application form is attached as annexure "A".
- 3.2 In the case of an application for co-executorship, each applicant must sign and submit a separate application form and also sign the Undertaking (Form J262E). Each applicant will be jointly and severally responsible for adhering to all the terms and conditions contained in this application.
- 3.3 The applicant undertakes:
 - 3.3.1 to finalise the administration of the estate for which the bond is requested, within twelve (12) months from date of issue. In the event that the administration takes longer than twelve (12) months, the executor shall provide written reasons for the delay and evidence thereof, not later than thirty (30) days before the expiry of the twelve (12) month period;
 - 3.3.2 to provide the LPIIF with information and access to records and correspondence relating to each estate for which the LPIIF has issued a bond, as if the LPIIF were in a similar position to the Master of the High Court or any beneficiary. In this regard:
 - 3.3.2.1 a copy of the letters of executorship must be provided to the LPIIF within thirty (30) days of being granted by the Master. Failure to provide the letters of executorship or any written reasons and evidence on why the letters cannot be provided within the thirty (30) days will result in no further bonds being issued and an application to the Master of the High Court to have the applicant removed as an executor;
 - 3.3.2.2 a separate estate bank account must be opened as required in terms of Section

- 28 of the Administration of Estates Act 66 of 1965 and proof of such account must be submitted to the LPIIF within thirty (30) days of being appointed as executor. When completing the application for a Fidelity Fund Certificate, all funds and property held in respect of estates must be accounted for and a detailed list setting out the particulars thereof must be provided to the LPIIF;
- 3.3.2.3 copies of the provisional and final liquidation and distribution accounts must be provided to the LPIIF, within six (6) months from the granting of the letter of executorship. Alternatively proof of an application for and the granting of an extension or condonation by the Master of the High Court must be provided. Failure to comply with this provision will result in an application to the Master of the High Court to have the applicant removed as executor.
- 3.3.2.4 if applicable, within 30 days of the final liquidation and distribution account having being approved, the executor must formally apply to the Master of the High Court for a reduction of the value of the bond and provide proof of such application to the LPIIF within 30 days of doing so.
- 3.3.2.5 the Master's filing slip or release must be provided to the LPIIF within 30 days of issue by the Master.
- 3.3.3 to ensure that all insurable assets in the estate are sufficiently and appropriately insured, within 24 hours of receipt of the letters of executorship, and to provide the LPIIF with proof of such insurance within 30 days of such appointment. The insurance must remain in place for the duration of the administration of the estate, failing which the applicant and his firm will be personally liable for any loss or damage that may result from the absence of such insurance;
- 3.3.4 to keep the LPIIF fully informed about the progress of the administration of the estate - in the same way as he or she would inform the Master of the High Court or any beneficiary, of the progress of the administration;
- 3.3.5 to inform the LPIIF within 30 days of becoming aware of a change in his or her status as a practitioner or of any application for removal or suspension as attorney or executor or any similar office;
- 3.3.6 If an applicant or a firm reaches 75 % of the R20 million limit (that is, R15 million) as specified in clause 4 and clause 3.1.1 is applicable, the applicant or firm shall provide the LPIIF, within thirty (30) days from request, with a written plan evidencing how the reduction of the exposure in respect of active bonds older than twelve (12) months will be achieved. Failure to comply with this provision will result in no new bonds being issued.
- 3.4 Once a bond has been issued, the applicant will not seek to reduce its value, unless the Master of the High Court is satisfied that the reduced security will sufficiently indemnify the beneficiaries and has given written confirmation of such reduction. A copy of such written confirmation must be provided to the LPIIF within thirty (30) days of it being provided.
- 3.5 The applicant consents to the LPIIF making enquiries about his or her credit record with any credit reference agency and any other party, for the purposes of risk management.
- 3.6 The applicant consents to the relevant law society or regulator giving the LPIIF all information in respect of the applicant's disciplinary record and status of good standing or otherwise.
- 3.7 The applicant undertakes to give the LPIIF all information, documents, assistance and co-operation that may be reasonably required, at the applicant's own expense. If the applicant fails or refuses to provide assistance or co-operation to the LPIIF, and remains in breach for a period of thirty (30) days after receipt of written notice from the LPIIF to remedy such breach, the LPIIF reserves the right to:
- 3.7.1 report the applicant to the law society or regulator having jurisdiction over the executor; and/or
- 3.7.2 request the Master to remove him or her as the executor.
- 3.8. The applicant accepts personal liability for all and any acts and/or omissions, including negligence, misappropriation or maladministration committed or incurred whether personally or by any agent, consultant, employee or representative appointed or used by the applicant in the administration of an estate.
- 3.9 In the event of the LPIIF's having made a payment in respect of a claim arising out of a fraudulent act or misappropriation or maladministration, it reserves the right to take action to:
- 3.9.1 institute civil and/or criminal proceedings against the applicant; and/or
- 3.9.2 report the applicant to the law society or regulator having jurisdiction over the executor.
- 3.10 The other partners or directors of the firm must sign a resolution acknowledging and agreeing to the provisions set out in that resolution. A copy of such resolution is attached as annexure "B".
- 3.11 If there is any dispute between the LPIIF and the executor as to the validity of a claim by the Master of the High Court, then such dispute will be dealt with in the following order:
- 3.11.1 written submissions by the executor should be referred to the LPIIF's internal dispute team at dispute@lpiif.co.za or to the address set out in clause 6 of this document, within thirty (30) days of receipt of the written communication from the LPIIF, which has given rise to the dispute;
- 3.11.2 should the dispute not have been resolved within

RISKALERT

thirty (30) days from the date of receipt by the LPIIF of the submission referred to in 3.11.1, then the parties must agree on an independent senior estates practitioner with no less than 15 years standing in the legal profession, to which the dispute can be referred for a determination. Failing an agreement, the choice of such senior estates practitioner will be referred to the president of the law society (or his/her successor in title) having jurisdiction over the executor;

3.11.3 the parties must make written submissions which will be referred for a determination to the senior estates practitioner referred to in 3.11.2. The costs incurred in so referring the matter will be borne by the unsuccessful party;

3.12 A copy of the executor's current Fidelity Fund Certificate must be submitted annually within (thirty) 30 days of issue, but no later than the end of February each year.

4. LIMITS

4.1 The value of any bond is limited to **R5 million** per estate. The cumulative total of all bonds issued to any one firm will not exceed **R20 million** at any given time.

4.2 If a practitioner is part of or holds himself or herself out to be part of, more than one firm simultaneously, such practitioner and all the entities associated with that practitioner will hold a maximum cumulative total of **R20 million** in bonds at any given time.

4.3 In the case of co-executorship, each executor needs to meet the criteria as specified in this document. The limits will apply as mentioned in 4.1 and 4.2 above as if there were no co-executorship.

4.4 No new bonds will be issued where the applicant or the firm has failed to adhere to any of the provisions of this policy.

5. SOLE RECORD OF THE AGREEMENT

5.1 This document constitutes the sole record of the agreement between the LPIIF, the firm and the applicant in relation to the bond to which this document applies.

5.2 This document supersedes and replaces all prior commitments, undertakings or representations, (whether oral or written) between the parties in respect of this application.

5.3 No addition to, variation, novation or agreed cancellation of any provision of this document shall be binding upon the LPIIF unless reduced to writing and signed by or on behalf of both parties, by authorised persons.

5.4 If there are any material changes to the information contained in this application, the applicant undertakes to inform the LPIIF in writing within fifteen (15) days of such change.

6. DOMICILIUM

The parties choose as their *domicilia citandi et executandi* for the service of notices given in terms of this agreement

and all legal processes, the following addresses:

6.1 LPIIF: 1256 Heuwel Avenue
Centurion
0157

Email: courtbonds@lpiif.co.za

6.2 The Applicant: The address provided in the application form.

6.3 Notices or legal processes may be delivered by hand or sent by electronic mail to the above addresses. The date of receipt by the addressee will be the date of hand delivery or transmission.

6.4 Either party may change its *domicilium* by giving the other party written notice of such change.

7. DECLARATION

If the bond is granted, I agree:

7.1 to fully comply with the terms and conditions contained in clause 3;

7.2 that all estate funds will be invested strictly in terms of the Administration of Estates Act 66 of 1965, the Legal Practice Act 28 of 2014 and the rules and regulations as promulgated in respect thereof;

7.3 to furnish the LPIIF with the annual audit certificates completed by my or our external auditors, verifying the continued existence of the property or funds under my control as executor within thirty (30) days of such certificate being issued;

I hereby confirm that I have read, understand and agree to be bound by the terms and conditions contained in this document.

DATED AT

ON THIS DAY OF 20....

.....

WITNESS (Full names & signature)

.....

WITNESS (Full names & signature)

.....

APPLICANT (Full names & signature)

RISKALERT

1.20	Are you / is your firm personally responsible for the day to day administration of the estate?	YES	NO
1.21	Has a claim been made against you or the firm relating to a previous estate administrated by you or the firm?	YES	NO
(a) If YES, please provide details : ----- ----- -----			
1.22	Do you have any direct or indirect interest in this estate other than executor fees?	YES	NO
(a) If YES, please provide details : ----- ----- -----			
1.23	Have you made application for an executor bond with an institution other than the LPIIF in the past three years?	YES	NO
a) If YES, state name of institution (s) and estate name(s) : ----- ----- -----			
1.24	Has any previous application for an executor bond with the LPIIF or other institution been declined?	YES	NO
a) If YES, please provide details : ----- ----- -----			
1.25	Have you ever been declared insolvent or has your personal estate been placed under administration? · If YES, please provide proof of rehabilitation or release from administration.	YES	NO
1.26 Have you (or the person who will be assisting with the estate within your firm) :			
1.26.1	ever been found guilty (by a court of law or professional regulatory body) of an offence involving an element of dishonesty ?	YES	NO
1.26.2	been struck off the roll of practising attorneys or suspended or interdicted from practice?	YES	NO
1.26.3	any outstanding criminal cases or civil lawsuits or any regulatory disciplinary matters pending?	YES	NO
a) If YES, please provide details : ----- ----- -----			
1.27 Is there any other material factor that you wish to bring to the LPIIF's attention? ----- ----- ----- ----- -----			

2 FIRM		
2.1 Name of firm :		
2.2 Firm number :		
2.3 Number of partners/ directors :		
2.4 Physical address :		
		Code
2.5 Postal address :		
		Code :
2.6 Telephone number :		
2.7 Fax number :		
2.8 Does your firm have misappropriation of trust monies insurance? <ul style="list-style-type: none"> If YES, please, state insurer and the limit of Indemnity. ----- 	YES	NO
3 DECEASED		
3.1 Surname :		
3.2 Full names :		
3.3 Identity number :		
3.4 Date of birth :		
3.5 Date of death : <ul style="list-style-type: none"> A copy of the death certificate must be attached to this application form. 		
3.6 At which Master's office was the estate reported?	Province : -----	
	Division : -----	
3.7 Master's reference/Estate number :		
3.8 Did the deceased die testate or intestate? <ul style="list-style-type: none"> If testate a copy of the will must be attached to this application form. 	Testate	
	Intestate	
3.9 In terms of the inventory please advise the following : <ul style="list-style-type: none"> A copy of the inventory must be attached to this application. 	Assets : R -----	
	Liabilities : R -----	
3.10 Would appropriate insurance for the insurable assets in the estate be in place on your appointment? <ul style="list-style-type: none"> Please refer to clause 3.3.3 of the terms and conditions. 	YES	NO

RISKALERT

The following documents are required for a bond to be issued:

1. A covering letter on the applicant's official company letterhead;
2. Proof of practice or firm number;*
3. Proof of practitioner or member number;
4. The original form J262E (Bond of Security) which must be completed and signed by the applicant, whose signature must be attested to by two witnesses;
5. Copy of the will (if applicable);
6. Copy of certified death certificate (a copy of the death notice, if there is no death certificate);
7. Copy of court order (if applicable);
8. Inventory or statement of assets & liabilities of the estate;
9. Copy of any directions from the Master as to the security required;
10. Proof of Master's estate reference number;
11. Nomination forms by the beneficiaries/person appointing the applicant as executor;
12. The executor's acceptance of trust as executor;
13. A certified copy of the executor's identity document;
14. The executor's current fidelity fund certificate;
15. If applicant is not a director/partner a letter on the firm's letterhead signed by one of the partners confirming that the appointee is employed by the firm and has been authorised to apply for bonds of security in the name of the firm and to administer the estate on behalf of the firm. This letter must be accompanied by the certified current fidelity fund certificate of the partner/director;
16. Applicant's abridged curriculum vitae (CV);
17. A resolution as contemplated in clause 3.10 of the terms and conditions, where applicable.

The application documents may not be faxed or emailed.

The application forms and requirements are available on our website www.lpiif.co.za.

**This may be obtained from your law society. Change to Provincial Council / Regulator*

Alternatively you may contact:

- Ms Haniffah Mbela on 012 622 3926 - email haniffah.mbela@lpiif.co.za
- Ms Patricia Motsepe on 012 622 3927 - email patricia.motsepe@lpiif.co.za
- Mr Sifiso Khuboni on 012 622 3935 - email Sifiso.khuboni@lpiif.co.za

I hereby declare that to the best of my knowledge and belief, the information provided in this application is true in every respect, and will form the basis of the agreement between myself and the LPIIF. If any information herein is not true and correct, or if any relevant information has not been disclosed, the LPIIF will be entitled to make use of all rights and remedies available to it in terms of the law.

DATED AT ON THIS DAY OF 20.....

.....
WITNESS (Full names & signature)

.....
WITNESS (Full names & signature)

.....
APPLICANT (Full names & signature)

**ANNEXURE B:
RESOLUTION IN TERMS OF CLAUSE 3.10**

In the matter of: Estate Late _____

_____ [the firm of attorneys]
herein represented by :

- 1. _____;
- 2. _____;
- 3. _____;
- 4. _____;
- 5. _____;

Full names of directors or partners signing. (Attach a list if necessary.)

who warrant/s that they or she or he are/is duly authorised to act on behalf of the firm and to bind it in terms of this resolution;

and who, by signing this document, undertake/s and agree/s unequivocally that the firm of attorneys together with each and every director or partner listed above, will be jointly and severally liable to the Legal Practitioners Indemnity Insurance Fund NPC (LPIIF) for the fulfilment of the terms and conditions set out in 1 and 2 below.

- 1. The firm and its directors or partners will provide full co-operation to the LPIIF in the event of any claim being made against the LPIIF in respect of any fraudulent act, misappropriation or maladministration committed by the firm, or its present or former director or partner or present or former employee, arising out of the administration of an estate in respect of which the LPIIF has issued an executor bond.
- 2. The firm and its directors or partners will provide full assistance to the LPIIF:
 - 1.1 to institute and prosecute to completion any criminal or civil proceedings brought against any person referred to in 1 above or any individual or entity connected to any fraudulent act, misappropriation or maladministration resulting in a claim for which the LPIIF may have to pay compensation;

RISKALERT

1.2 to report any attorney or candidate attorney to the relevant law society or regulator on the request of the LPIIF within thirty (30) days;

3. The directors or partners renounce the legal benefits of “order”, “excussion”, “division”, “cession of action”, “*non numeratae pecuniae*”, “*non causa debiti*”, “*errore calculi*”, “revision of accounts” and all or any exceptions which could or might be pleaded to any claim.

Director/Partner 1 Signature

Director/Partner 2 Signature

Director/Partner 3 Signature

Director/Partner 4 Signature

Director/Partner 5 Signature