

RISKALERT

JULY 2017 NO 3/2017

IN THIS EDITION

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DISCLAIMER

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



Attorneys Insurance Indemnity Fund (NPC)

Est. 1993 by the Attorneys Fidelity Fund



Attorneys Fidelity Fund
South Africa

Your Champion in the Legal Profession Since 1941

EXPLANATORY NOTES

THE AIIF'S 2017/2018 SCHEME YEAR

The 2017/2018 scheme year commences on 1 July 2017. We have pleasure in bringing you the PI and Executor Policies for the new insurance year. Practitioners are urged to study the two policies carefully in order fully appreciate the terms and conditions of both documents.

The 2017/2018 PI Master Policy

It will be noted that PI Master Policy remains unchanged from that applicable to the 2016/2017 scheme year. However, we need to highlight the following:

- The limits of indemnity and deductibles remain unchanged (Schedules A and B, respectively)
- Insured firms must give immediate written notice to the AIIF of any circumstance, act, error or omission that may give rise to claim (clause 22(a))
- Written notice must be given to the AIIF by no later than one (1) week after receipt by the insured firm of a written demand, summons/counterclaim or application (clause 22(b)). In the event of a failure by the insured firm to comply with the obligation to give notification of a claim in this regard, the AIIF reserves the right not to indemnify the insured firm for costs and ancillary charges incurred prior to or as a result of such late notification
- The completion of the risk management questionnaire and claim form are obligatory (clause 23)
- Insured attorneys must give the AIIF or its appointed agents their cooperation (clauses 25, 27 and 29)
- The exclusion of cybercrime and certain bridging finance related claims (clauses 16(o) and 16(i), respectively)
- The higher excess applicable in



Thomas Harban,
Editor

respect of prescribed RAF claims, conveyancing claims as well as claims involving dishonesty (see Schedule B)

There are still have instances where, after receiving notification of a claim, the insured firms give the AIIF late notification (or do not notify at all!) in respect of the set down of matters for hearing or that a notice of bar has been issued against them. The effect of this is that the AIIF is severely prejudiced in the conduct of the insured's defence in the matter. Going forward, the AIIF will enforce its rights in so far as any prejudice is suffered in this regard.

The 2017/2018 Executor Bond policy

The R5 million limit in respect of a bond per estate and the cumulative amount of R20 million in exposure to any one firm remain unchanged (clause 4.1). Practitioners must report to the AIIF where the administration of the estate has been completed and a release issued by the Master of the High Court.

The AIIF will not issue bonds of security to attorneys seeking appointment in any capacity other than as executor (clause 2.1) - bonds of security will thus, for example, not be issued to attorneys acting as agents

EXPLANATORY NOTES continued...

for executors, trustees of insolvent estates or as representatives appointed in terms of section 18(3) of the Administration of Estates Act 66 of 1965.

The following changes have been made to the 2017/2018 Executor Bond Policy:

- the AIIF will have regard to the information supplied in the application and any other relevant information at its disposal in deciding whether or not to issue a bond to the applicant. The decision whether or not to issue a bond remains within the sole discretion of the AIIF (clause 1.2)
- no bonds will be issued, *inter alia*, where 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 dishonest-

ty, or by reason of a dishonest act or breach of a duty, been removed from a position of trust.

Copies of the application form and the resolution (annexures A and B to the policy- referred to in clauses 3.1 and 3.10, respectively) as well as the list of documents to be submitted in support of the application for a bond can be accessed on the website www.aiif.co.za.

The AIIF continues facing serious challenges in respect of the long tail nature of this line of business. The outstanding exposure is currently over R11 billion and some of the bonds making up this total were issued more than 16 years ago. Many practitioners in whose favour bonds have been issued simply do not inform the AIIF when the administration of the estate has been

finalised. A number of measures have been implemented in an attempt to reduce the outstanding liability, which include the dispatch of regular correspondence to those attorneys with long outstanding bonds as well reporting of the conduct of the affected attorneys to the respective law societies. Practitioners in whose favour bonds have been issued are urged to conduct an audit of their practices and to advise the AIIF on the status of the matters concerned, if they have not already done so.

The AIIF team will gladly answer any queries relating to the two policies.

We wish you all a claim free 2017/2018 scheme year!



**Attorneys Insurance
Indemnity Fund (NPC)**

Est. 1993 by the Attorneys Fidelity Fund

THE FULL 2017/2018 PI MASTER POLICY

PREAMBLE

The **Attorneys 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 Attorneys Act 53 of 1979 (as amended or as replaced by 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. Attorneys Fidelity Fund:** As referred to in Section 25 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 definition, 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);
- X. Defence Costs:** The reasonable costs the **Insurer** (or **Insured** - with the **Insurer's** 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 attorneys, 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 in terms of section 42 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 Attorneys Insurance Indemnity 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. 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, notary or conveyancer as defined in the Act;
- XXII. **Prescription Alert:** The computerised back-up diary system that the **Insurer** makes available to the **Insured**;
- XXIII. **Principal:** A 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.aiif.co.za) and which must be completed annually by the senior partner or director or designated risk manager of the **Insured** as referred to in clause 5;
- 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 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;
- 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) a refund of any fee or disbursement charged by the **Insured** to a client;
 - b) damages or compensation or payment calculated by reference to any fee or disbursement charged by the **Insured** to a client;
 - c) payment of costs relating to a dispute about fees or disbursements charged by the **Insured** to a client;
 - d) any labour dispute or act of an administrative nature in the **Insured's** practice;

For the purposes of this policy, "disbursement" does not include any amount paid to counsel or an expert.

WHAT COVER IS PROVIDED BY THIS POLICY?

1. 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:
 - a) that arises out of the provision of **Legal Services** by the **Insured**; and
 - b) where the **Claim** is first made against the **Insured** during the current **Insurance Year**.
2. The **Insurer** agrees to indemnify the **Insured** for **Claimants' Costs** and **Defence Costs** on the basis set out in this policy.
3. The **Insurer** agrees to indemnify the **Insured** for **Approved Costs** in connection with any **Claim** referred to in clause 1.
4. 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**, on the basis set out in clause 38.

WHO IS INSURED?

5. Provided that each **Principal** has, or is obliged to have, a current **Fidelity Fund Certificate** at the time the **Claim** is made, the **Insurer** insures all **Legal Practices** providing **Legal Services**, including:
 - a) a sole **Practitioner**;
 - b) a partnership of **Practitioners**;
 - c) an incorporated **Legal Practice** ;
6. The following are included in the cover, subject to the **Annual Amount of Cover** applicable to the **Legal Practice**:
 - a) a **Principal** of a **Legal Practice** providing **Legal Services**, provided that the **Principal** has, or is obliged to have, a current **Fidelity Fund Certificate**;
 - b) a previous **Principal** of a **Legal Practice** providing **Legal Services**, provided that that **Principal** had, or was obliged to have, a current **Fidelity Fund Certificate** at the time of the circumstance, act, error or omission giving rise to the **Claim**;
 - c) an **Employee** of a **Legal Practice** providing **Legal Services** at the time of the circumstance, act, error or omission giving rise to the **Claim**;
 - d) the estates or legal representatives of the people referred to in clauses 6(a) 6(b) and 6(c).

AMOUNT OF COVER

7. 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**.
8. 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**.
9. 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

10. 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 **Excess** 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:

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- 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 timely 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 26 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. This includes but is not limited to Misappropriation of Trust Funds, Personal Injury, Commercial and Cyber-crime 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 Services Board and/or the South African Reserve Bank and any regulations issued thereunder;
 - (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 **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 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 liquidator or trustee in an insolvent estate, except in cases 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**;
 - m) arising out of or in connection with the receipt or payment of funds, whether into or from trust 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, 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** brought by one **Insured** against another;
 - o) arising out of **Cybercrime**;
 - 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.

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:
- directly or indirectly from any **Dishonest**, fraudulent or other criminal act or omission by that **Insured**;
 - 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 19 and 20 below, 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:
- institute criminal proceedings against the alleged **Dishonest** party and present proof thereof to the **Insurer**; and/or
 - 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:
- the witnessing (or purported witnessing) of the signing or execution of a document without seeing the actual signing or execution; or
 - 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;
- give immediate written notice to the **Insurer** of any circumstance, act, error or omission that may give rise to a **Claim**; and
 - 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** agrees not to, without the **Insurer's** prior written consent:
- admit or deny liability for a **Claim**;
 - settle a **Claim**;
 - 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 all information, documents, assistance and cooperation that may be reasonably required, at the **Insured's** own expense.
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 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:
- withdraw indemnity; and/or
 - report the **Insured's** conduct to the regulator; and/or
 - 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:
- Attorneys Insurance Indemnity Fund NPC**
 1256 Heuvel Avenue|Centurion|0127
 PO Box 12189|Die Hoewes|0163
 Docex 24 | Centurion
 Email: claims@aiif.co.za
 Tel:+27(0)12 622 3900
- ## THE INSURER'S RIGHTS AND DUTIES
31. The **Insured** agrees that:
- 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**;
 - 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.

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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:
- the **Insurer** will not cover further **Defence Costs** and **Claimant's Costs** beyond the date of the **Insurer's** recommendation to the **Insured**; and
 - 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@aif.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**, to which the dispute can be referred for a determination. Failing an agreement, the choice of such **Senior Practitioner** must be referred to the President of the Law Society (or his/her successor in title) having jurisdiction over the **Insured**;

- 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 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 accepted;

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

Complaints may be lodged with the:

Short Term Insurance Ombudsman

Tel: 011 726-8900

Fax: 011 726-5501

Share call: 0860 726 980

E-mail info@osti.co.za

Web: <http://osti.co.za>

Physical Address: Sunnyside Office Park, 5th Floor, Building D, 32 Princess of Wales, Terrace, Parktown

Postal Address: PO Box 32334, Braamfontein, 2017

SCHEDULE A

Period of Insurance: 1st July 2017 to 30th June 2018 (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 2017 to 30th June 2018 (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	R321 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.



**Attorneys Insurance
Indemnity Fund (NPC)**

Est. 1993 by the Attorneys Fidelity Fund

THE 2017 EXECUTOR BOND POLICY

1. GENERAL PROVISIONS

- 1.1 The AIIF 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 AIIF will, in its sole discretion, assess the validity and risk associated with the information supplied in the application, and any other relevant information at its disposal, in deciding whether or not to issue a bond to an applicant.
 - 1.2.1 If the applicant disputes the AIIF's rejection of the application, such dispute will be dealt with in the following order:
 - 1.2.1.1 Written submissions by the applicant should be referred to the AIIF Executive Committee at disputes@aiif.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 AIIF rejecting the application;
 - 1.2.1.2 Should the dispute not have been resolved within thirty (30) days, then such dispute will be referred to the Sub-Committee appointed by the AIIF'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 AIIF 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 practising 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 AIIF 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, expeditiously in the prevailing circumstances;
 - 3.3.2 to provide the AIIF with information and access to records and correspondence relating to each estate for which the AIIF has issued a bond, as if the AIIF 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 letter of executorship must be provided to the AIIF within 30 days of being granted by the Master;
 - 3.3.2.2 a separate estate account must be opened as required in terms of Section 28 of the Administration of Estates Act 66 of 1965;
 - 3.3.2.3 copies of the provisional and final liquidation and distribution accounts must be provided to the AIIF, 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 must be provided.
 - 3.3.2.4 if applicable, within 30 days of the final liquidation and distribution account having been 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 AIIF within 30 days of doing so.
 - 3.3.2.5 the Master's filing slip or release must be provided to the AIIF 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 AIIF 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 AIIF 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 AIIF 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.
- 3.4 Once a bond has been issued, the applicant will not seek to

RISKALERT

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 AIIF within thirty (30) days of it being provided.

- 3.5 The applicant consents to the AIIF 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 AIIF 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 AIIF 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 AIIF, and remains in breach for a period of thirty (30) days after receipt of written notice from the AIIF to remedy such breach, the AIIF 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 AIIF'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 AIIF 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 AIIF's internal dispute team at dispute@aiif.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 AIIF, which has given rise to the dispute;
 - 3.11.2 should the dispute not have been resolved within thirty (30) days from the date of receipt by the AIIF 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.
- #### 5. SOLE RECORD OF THE AGREEMENT
- 5.1 This document constitutes the sole record of the agreement between the AIIF, 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 AIIF 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 AIIF 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 **AIIF: 1256 Heuwel Avenue
Centurion
0157
Email: courtbonds@aiif.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:

- (i) to fully comply with the terms and conditions contained in clause 3;
- (ii) that all estate funds will be invested strictly in terms of the Administration of Estates Act 66 of 1965, the Attorneys Act 53 of 1979 or the Legal Practice Act 28 of 2014 and the rules and regulations as promulgated in respect thereof;
- (iii) to furnish the AIIF 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)

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

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