



Bulletin

Risk Alert

A joint publication of the Attorneys Fidelity Fund and the Attorneys Insurance Indemnity Fund (A Non Profit Company, Registration No. 93/03588/08)

Special Edition July 2011 – No. 3/2011

In this edition

RISK MANAGER'S COLUMN

SCHEME POLICY 2011/2012

OPTION LETTER FOR 2011/2012

LETTERS TO THE EDITOR

**SPECIAL EDITION: THE ATTORNEYS FIDELITY FUND
PROFESSIONAL INDEMNITY INSURANCE SCHEME
1 July 2011 to 30 June 2012**

Risk Manager's Column

This is a special edition of the *Bulletin* to ensure that readers have the policy for the new insurance year (1 July 2011 to 30 June 2012) “hot off the press”.

There have been no significant changes from the previous year. There are small amendments to clauses 6.4 and 6.12, which deal with disputes between insurer and insured.

Each year, practitioners are given the option to reduce their limits of indemnity with a proportional reduction in their deductibles. Please see the information on pages 6 to 8 and complete the form **ONLY IF YOU WISH TO CHOOSE OPTIONS 2 OR 3**.

Please consider your situation and risks very carefully before deciding to take one of the options to reduce.

In this edition, I have also included a reader's letter with questions regarding cover, together with my reply. I hope that some practitioners will find the correspondence helpful.

I wish you all a happy and claim free new insurance year! Please remember to manage your risks and look out for my article on **Risk Management Tips**, which should be on the website by the time this *Bulletin* is distributed.

ANN BERTELSMANN

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THE ATTORNEYS FIDELITY FUND
PROFESSIONAL INDEMNITY INSURANCE SCHEME

1 JULY 2011 TO 30 JUNE 2012

PROFESSIONAL INDEMNITY INSURANCE

In consideration of the **Attorneys Fidelity Fund**, for and on behalf of every insured (as defined in this Policy), having paid or agreed to pay the insurer named in the schedule the premium stated in the Master Policy:

The insurer agrees to provide an indemnity in the manner and to the extent stipulated subject to the terms contained in this policy and the schedules hereto.

1. INDEMNITY

The indemnity granted in this policy is in respect of:

- 1.1 the insured's legal liability to any third party arising out of the conduct of the profession by the insured which legal liability is the subject of a claim first made on the insured during the period of insurance irrespective of when or where such liability arose.
- 1.2 approved costs in connection with any claim under 1.1.
- 1.3 approved costs of investigating and of being represented at any professional or judicial inquiry into any event or occurrence that may have given rise to or may reasonably be expected to give rise to a claim under 1.1.

2. DEFINITIONS

- 2.1 "the Act" – the Attorneys Act No. 53 of 1979 (as amended);
- 2.2 "the Attorneys Fidelity Fund" – the Attorneys Fidelity Fund referred to in Section 25 of the Act;
- 2.3 "practitioner" – any attorney notary or conveyancer as further defined in the Act;
- 2.3.1 "senior practitioner" – a practitioner of not less than 15 years standing in the profession.
- 2.4 "approved costs" – all legal and similar costs and expenses which the insured may incur with the insurer's written consent which shall not be unreasonably withheld;
- 2.5 "the insured":
 - 2.5.1 (a) every individual practitioner and
 - (b) every firm, partnership or incorporated practice consisting of one or more practitioners who, on the date on which the claim is made:
 - 2.5.1.1 is practising as such in the Republic of South Africa, and
 - 2.5.1.2 is in possession of or would have been obliged to apply for a current Fidelity Fund Certificate in terms of Section 42 of the Act;

2.5.2 any former sole practitioner and any former principal, partner, director or consultant of the firm, partnership or incorporated practice referred to in 2.5.1, who is no longer a practising practitioner when the claim is made against him provided that the claim arises out of the conduct of the profession by such person or such firm, partnership or incorporated practice at a time when he was:

2.5.2.1 practising as such in the Republic of South Africa; and

2.5.2.2 in possession of or obliged to apply for a current Fidelity Fund Certificate in terms of Section 42 of the Act;

2.5.3 in the event of the death, incapacity, insolvency or dissolution of any person or entity referred to in 2.5.1, 2.5.2 and 7, his or her estate, legal representative, heir or successor in title in respect of any claim arising out of the conduct of the profession;

2.6 "partner or director" includes any person who is

2.6.1 *de facto* a partner or director of the insured or

2.6.2 who is publicly held out to be a partner or director of the insured;

2.7 "conduct of the profession" – the activities of the insured acting as a practitioner and such activities which are legitimately conducted as part of a legal practice. In the event of a dispute as to whether a particular act or activity is conducted as aforesaid the matter shall be referred to the president of the statutory law society having jurisdiction over the insured whose decision shall be binding on the parties to this policy.

2.8 "conveyancing transaction" – a transaction which :

- involves the transfer of legal title to immovable property from a legal or natural person to another;
- involves the registration of any mortgage bond over immovable property;
- is required to be registered in any Deeds Registry in the Republic of South Africa, in terms of any relevant legislation.

2.9. "bridging finance" – the provision of short term finance to a party to a conveyancing transaction prior to the registration of the conveyancing transaction in the Deeds Registry.

3. LIMIT OF INDEMNITY

3.1 The liability of the insurer in respect of all claims and claimants' costs and expenses and approved costs shall not exceed the limit of indemnity specified in Schedule A.

3.2 All claims arising out of one act or omission or out of the dishonesty of any one person or any number of persons together or in collusion shall be deemed to arise out of one event or occurrence.

4. THE DEDUCTIBLE

The insured shall be responsible for the first amount of any claim and claimant's costs and expenses arising out of one event or occurrence, but not exceeding the deductibles specified in Schedule A. The deductibles shall only apply in respect of claims for breach of professional duty, but shall not be applied to approved costs.

5. EXCEPTIONS

5.1 Unless specifically stated to the contrary this policy does not cover any loss, destruction or damage whatsoever or any legal liability of whatever nature:

5.1.1 directly or indirectly caused by or arising from or in consequence of or contributed to by nuclear weapons materials or by ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self-sustaining process of nuclear fission;

5.1.2 which is insured or would but for the existence of this policy be insured by any other policy or policies or guarantees except in respect of any excess beyond the amount which would be payable under such policy or policies or guarantees had this insurance not been effected;

5.1.3 arising from any event or occurrence, which has been notified under any insurance in force prior to the inception of this policy;

5.1.4 arising out of or in connection with any trading losses or trading liabilities incurred by the insured or by any practice or business managed by or carried on by the insured;

5.1.5 arising from theft by any principal, partner, director, candidate attorney, employee or "in-house" consultant of the insured or of the insured's predecessors in practice of any money or other property referred to in Section 26 of the Act;

5.1.6 arising from or in terms of any judgement delivered or obtained in the first instance otherwise than by a court of competent jurisdiction within the Republic of South Africa;

5.1.7 arising out of or in connection with the provision of investment advice or the administration of any funds in contravention of the Banks Act 94 of 1990 (as amended), or as a liquidator in terms of the Agricultural Credit Act No. 28 of 1996 (as amended);

5.1.8 arising out of or in connection with an order made against the insured to pay costs *de bonis propriis* in circumstances where the insured is acting in a capacity as attorney for one of the parties before the court which makes such order;

5.1.9 arising out of or in consequence of an instruction to the insured to invest money on behalf of any person other than an instruction to pay money into an account contemplated in Section 78 2(A) of the Act, if such payment is for the purpose of investing such money in such account on a temporary or interim basis only, pending the conclusion or implementation of a particular matter or transaction which is already in existence or about to come in to existence at the time the investment is made. This exclusion does not apply to money which the insured is authorised to invest in his or her capacity as executor, trustee or curator or in any other similar capacity;

5.1.10 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 1997;

5.1.11 arising (whether directly or indirectly) out of, in connection with or as a consequence of the provision of bridging finance in respect of a conveyancing transaction where the insured is acting or it is intended that he should act as conveyancing attorney. This exclusion does not apply where bridging finance has been provided for the payment of:

- transfer duty and costs;
- municipal or other rates and taxes relating to the immovable property which is to be transferred;
- levies payable to the body corporate or homeowners association relating to the immovable property which is to be transferred.

5.2 Unless specifically stated to the contrary this policy also does not cover:

5.2.1 any person who was in any way and at any time dishonest in relation to or in connection with any claim under this policy;

5.2.2 costs and expenses of litigation recovered by any claimant from the insured which are not incurred in and recoverable in the Republic of South Africa;

5.2.3 loss or destruction of or damage to any property whatsoever (including a computer) or any loss or expense whatsoever resulting or arising therefrom;

5.2.3.1 any legal liability of whatsoever nature;

5.2.3.2 any consequential loss;

directly or indirectly caused by or contributed to or consisting of or arising from the incapacity or failure of any computer:

(i) to treat any date before, during or after the year 2000 as the correct date or true calendar date, or correctly or appropriately to recognise, manipulate, interpret, process, store, receive or to respond to any data or information, or to carry out any command or instruction, in regard to or in connection with any such date; or

(ii) to capture, save, retain or correctly to process any data as a result of the operation of any command which has been programmed into any computer, being a command which causes the loss of data or the inability to capture, save, retain or correctly to process such data in regard to or in connection with any such date.

A computer includes any computer, data processing equipment, micro-chip, integrated circuit or similar device or any computer software tools operating system or any computer hardware or peripherals and the information or data stored in or on any of the above, whether the property of the insured or not.

6. CONDITIONS

6.1 The insured shall give immediate written notice to the insurer of any claim or intimation of a claim. Once the insured has notified the insurer in terms of this clause the insurer may submit to the insured a claim form requiring the insured to provide all further information reasonably required by the insurer in respect of the claim or intimation of a claim. The insured shall not be entitled to the indemnity afforded by this policy until the insurer's claim form has been properly completed by the insured and returned to the insurer.

- 6.1.2 Every letter, claim, summons or process received by the insured, which evidences a claim or an intention to claim, shall be forwarded to the insurer immediately.
- 6.1.3 If the insured gives notice of any event or occurrence of which the insured becomes aware during the period of insurance which may give rise to a claim, then any claim in respect of that event or occurrence which is subsequently notified against the insured after the expiry of the period of insurance shall for the purpose of this policy be treated as having been made during the period of insurance.
- 6.2 The insurer waives any right of subrogation against any partner or director of the insured, unless such person has committed a dishonest or criminal act in relation to matters, which are the subject of a claim under this policy.
- 6.3 In the event of a claim arising out of any dishonest act or omission of any partner, director or employee of the insured, the insured shall take all possible action to sue for and obtain reimbursement from any such person or from the estate or legal representatives of such person and any monies which but for such dishonesty would be due to such person from the insured or any monies of such person held by the insured, shall to the extent allowable by law be deducted from the insured's loss.
- 6.4 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, shall be referred for a final decision to a senior counsel or senior practitioner agreed upon between the insured and the insurer or failing such agreement, nominated by the president of the statutory law society having jurisdiction over the insured and the costs incurred in so referring the matter shall be borne by the unsuccessful party.
- 6.5.1 Subject to the exceptions, the deductible and 6.1, 6.7.2 and 6.9 hereof, the insurer shall not seek to avoid, repudiate or rescind this insurance upon any ground whatsoever, including in particular non-disclosure or misrepresentation;
- 6.5.2 Where the breach of or non-compliance with any term of this policy by the insured other than 6.1, 6.7.2 and 6.9 has resulted in substantial prejudice to the handling or settlement of any claim against the insured, the insured shall reimburse to the insurer the difference between the sum payable by the insurer in respect of that claim and the sum which would have been payable in the absence of such prejudice. Provided always that it shall be a condition precedent of the right of the insurer to seek reimbursement that they shall have fully indemnified the insured in accordance with the terms of this policy.
- 6.6 The insured shall not without the written consent of the insurer repudiate liability, negotiate or make any admission, offer, promise or payment in connection with any claim and the insurer shall be entitled, if it so desires, to take over the conduct in the name of the insured of the defence of any claim or to prosecute in the name of the insured at its own expense and for its own benefit any claim for indemnity or damages or otherwise against any person and shall have full discretion in the conduct of any proceedings and in the settlement of any claim.
- 6.7.1 The insured shall render at his or her own cost such assistance as the insurer may reasonably require and shall arrange to be available at his or her own cost for such interviews as may reasonably be required by the insurer or the legal advisers of the insurer.
- 6.7.2 Notwithstanding anything else contained in this policy, should the insured fail or refuse to provide assistance or to attend interviews stipulated in 6.7.1 and remain in breach of such clause for the period of ten (10) days after receiving written notice from the insurer to remedy such breach, all benefits afforded by this policy may be withdrawn by the insurer.
- 6.8 Unless otherwise expressly stated nothing contained in this policy shall give any rights against the insurer to any person other than the insured.
- 6.9 If any claim by the insured be in any respect fraudulent or any fraudulent means or devices be used by the insured or anyone acting on his or her behalf with his or her knowledge or authority to obtain benefits in respect of that claim all benefit under this policy shall be forfeited.
- 6.10 Whenever this policy provides for notice to be given to the insurer, such notice shall be given to:
- Aon Professional Risks**
PO Box 2544
Randburg, 2125
Docex 34 Randburg
Telephone No. (011) 329-1140
Fax No. (011) 329-1984
- 6.11 The insurer may in its sole discretion, in the case of any claim for indemnity, pay to the insured or to the claimant, the limit of indemnity (but deducting in such case any sum or sums already paid as indemnity) or any lesser sum for which the claim or claims arising from such claim for indemnity can be settled and the insurer shall thereafter be under no further liability in respect of such claims for indemnity, except for the payment of costs and expenses of litigation incurred prior to the date of payment of such limit of indemnity or such lesser sum.
- 6.12 If the insured reasonably so requires he or she shall not be obliged to contest or prosecute any legal proceedings unless a senior counsel or senior practitioner shall advise that there are reasonable grounds for contesting or prosecuting such proceedings, such senior counsel to be agreed upon between the insured and the insurer or failing such agreement, nominated by the president of the statutory law society having jurisdiction over the insured and the costs incurred in so referring the matter shall be borne by the unsuccessful party.
- 6.13 In the case of any conflict or divergence between the English and Afrikaans texts of this policy, the English text shall prevail.
- 6.14 All recoveries made in respect of any claim under this policy shall be applied (after deduction of the costs, fees and expenses incurred in obtaining such recovery) in the following order of priority:
- (i) the insured shall first be reimbursed for the amount by which its liability in respect of such claim exceeded the amount of indemnity provided by the policy or any other policy;
 - (ii) the insurers shall then be reimbursed for the amount of their liability under the policy in respect of such claim;
 - (iii) any remaining amount shall be applied towards the amount of the deductible borne by the insured in respect of such claim.

7. SPECIAL EXTENSIONS

7.1 Indemnity under this policy shall be extended to any candidate attorney or other person employed by the insured in an employer/employee relationship in the conduct of the profession by the insured, and such person shall be deemed to be an insured for the purposes of indemnity in terms of this policy subject to the terms, limits and conditions thereof.

8. SCHEDULE A

Insurer: Attorneys Insurance Indemnity Fund
(Non-profit company)
(Reg. No. 93/03588/08)

8.1 Master Policy: No. AIIF/MP/06/11

8.2 Period of 1 July 2011
Insurance: 30 June 2012
(both days inclusive)

8.3 Situation risk: World-wide (subject to exceptions 5.1.6 and 5.2.2)

8.4 Limit of Indemnity:

8.4.1 The limit of indemnity in respect of 1.1 and 1.2 is determined by the number of partners or directors of the firm, partnership or incorporated practice referred to in 2.5.1 (b) on the date on which the event or occurrence occurred which gives rise to a claim against the insured in accordance with the following schedule:

No. of partners/directors	Limit of indemnity per period of insurance
1 (Sole practitioner)	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

8.4.2 The limit of indemnity in respect of 1.3 is 25% of the limit of indemnity specified in the Schedule against 8.4.1.

8.5.1 The deductible:

8.5.2 The deductible is determined by the number of partners or directors of the firm, partnership or incorporated practice referred to in 2.5.1(b) on the date on which the event or occurrence occurred which gives rise to a claim against the insured and the type of matter which gave rise to the claim in accordance with the following schedule:

No. of partners/ directors	Column A	Column B
	Prescribed MVA claims Deductible	Other claims Deductible
1 (Sole practitioner)	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

8.5.2 In the case of a claim for loss or damage in respect of bodily injury or death caused by, arising from or in any way connected with the driving of a motor vehicle (being a motor vehicle as defined in the Road Accident Fund Act 56 of 1996 or any predecessor or successor of the aforementioned Act) at any place within the Republic of South Africa, which has become prescribed in the hands of the insured, the deductible set out in 8.5.1 (Column A) will apply. Provided that if **Prescription Alert** a computerised diary system available to the insured has not been utilised or adhered to by the insured, the deductible as specified in 8.5.1 (Column A) will be increased by an additional 15%;

8.5.3 If a claim arises for reasons other than those set out in 8.5.2 the deductible set out in 8.5.1 (Column B) will apply.

8.6 Agreed reduction in limit of indemnity and deductible:

8.6.1 It is recorded that prior to the inception of this policy, certain firms, partnerships or incorporated practices referred to in 2.5.1 (b) entered into agreements with the insurer in terms of which such firms, partnerships and incorporated practices accepted a reduced limit of indemnity of 50% or 25% (as the case may be) of the indemnity otherwise afforded in terms of 8.4.1, on condition that such firms, partnerships or incorporated practices, would be liable for 50% or 25% (as the case may be) of the deductible specified in 8.5.1, for all claims made by these firms, partnerships or incorporated practices in terms of this policy.

8.6.2 Notwithstanding anything else contained in this policy, the terms of the agreements referred to in 8.6.1 shall be binding on the insurer and the firms, partnerships or incorporated practices concerned.

Attention: The Senior Partner/Director

ATTORNEYS FIDELITY FUND PROFESSIONAL INDEMNITY INSURANCE SCHEME

OPTIONS REGARDING PROFESSIONAL INDEMNITY COVER WITH EFFECT FROM 01 JULY 2011

The Attorneys Fidelity Fund Professional Indemnity Insurance Scheme affords a certain level of free professional indemnity cover to all attorneys practising in South Africa in terms of the Attorneys Act 53 of 1979 (as amended). The liabilities of this scheme are underwritten by the **Attorneys Insurance Indemnity Fund**.

The details of the cover are contained in an annually renewable policy document, which comes into force on **1 July** of each year and expires on **30 June** of the following year.

The limits of indemnity and deductibles (excesses) are determined by the number of partners that constitute the insured practice on the date that the alleged cause of action arose, in accordance with the schedule to the applicable policy document.

A number of practitioners have expressed the concern that the existing deductibles are high particularly in respect of practitioners who are not at risk for claims which are likely to require high levels of professional indemnity cover.

In order to accommodate these concerns and in an attempt to meet the requirements of **all** practitioners, the Attorneys Insurance Indemnity Fund has agreed to again offer practitioners a choice of one of the following three options for the **2011/2012** year:

OPTION 1. Current Limits of Indemnity and Deductibles

Principals in practice	Limits of indemnity	Deductible	Deductible MVA
1	1 562 500	20 000	35 000
2	1 562 500	36 000	63 000
3	1 562 500	48 000	84 000
4	1 562 500	60 000	105 000
5	1 562 500	72 000	126 000
6	1 562 500	84 000	147 000
7	1 640 625	96 000	168 000
8	1 875 000	108 000	193 000
9	2 109 375	120 000	210 000
10	2 343 750	132 000	231 000
11	2 578 125	144 000	252 000
12	2 812 500	156 000	273 000
13	3 046 875	168 000	294 000
14 and above	3 125 000	180 000	315 000

OPTION 2. 50% Reduction on Current Limits of Indemnity and Deductibles

Principals in practice	Limits of indemnity	Deductible	Deductible MVA
1	781 250	10 000	17 500
2	781 250	18 000	31 500
3	781 250	24 000	42 000
4	781 250	30 000	52 500
5	781 250	36 000	63 000
6	781 250	42 000	73 500

Principals in practice	Limits of indemnity	Deductible	Deductible MVA
7	820 312	48 000	84 000
8	937 500	54 000	94 500
9	1,054 681	60 000	105 000
10	1,171 875	66 000	115 500
11	1,289 062	72 000	126 000
12	1,406 250	78 000	136 500
13	1,523 437	84 000	147 000
14 and above	1,562 500	90 000	157 500

OPTION 3. 75% Reduction on Current Limits of Indemnity and Deductibles

Principals in practice	Limits of indemnity	Deductible	Deductible MVA
1	390 625	5 000	8 750
2	390 625	9 000	15 750
3	390 625	12 000	21 000
4	390 625	15 000	26 250
5	390 625	18 000	31 500
6	390 625	21 000	36 750
7	410 156	24 000	42 000
8	468 750	27 000	47 250
9	527 344	30 000	52 500
10	585 938	33 000	57 750
11	644 531	36 000	63 000
12	703 125	39 000	68 250
13	761 719	42 000	73 500
14 and above	781 250	45 000	78 750

Note: Limits of Indemnity are on the basis of an aggregate amount per practice (i.e. maximum amount of cover per practice per year), with applicable deductibles per practice in respect of every claim.

(It should be noted that, as before, if **Prescription Alert** has not been utilised and adhered to by the practitioner, the applicable MVA deductible will be increased by an additional 15%.)

In selecting one of the options it is important to note that the limit of indemnity afforded by the scheme is provided on an aggregate basis and does not apply individually to each and every claim made against a particular legal practice. This means that practitioners who decide to take advantage of option two or three must be prepared to assume the risk that the sum total of all the claims made against them in the forthcoming year of insurance may exceed their reduced limit of indemnity.

The relevant option must be exercised prior to **30 July 2011** and will only apply to claims dealt with in terms of the policy applicable to the period **01 July 2011 to 30 June 2012**.

ATTORNEYS INSURANCE INDEMNITY FUND

(Non-Profit Company) (Reg. No. 93/03588/08)

Should your firm wish to avail itself of options 2 or 3, then you are requested to **complete and sign the form** below and return it to the managers of the Attorneys Fidelity Fund Professional Indemnity Insurance Scheme.

The details of the scheme managers are as follows:

Aon Professional Risks

PO Box 2544
Randburg
2125

Docex 34
Randburg

Fax no.: (011) 329 1984

Telephone no.: (011) 329 1140 (Thomas Harban)
(011) 329 1364 (Karen Makara)

Kindly note that the form below should only be completed if you wish to choose either option 2 or 3.

If you decide not to exercise either option 2 or 3 then the existing limits of indemnity and deductibles in option 1 will automatically apply to any claim made during the currency of the forthcoming year of insurance.

THOMAS HARBAN
CLAIMS MANAGER
ATTORNEYS INSURANCE INDEMNITY FUND
tharban@glenrandmib.co.za

OPTION TO REDUCE LIMIT OF INDEMNITY/DEDUCTIBLE APPLICABLE TO 2011/2012 ATTORNEYS FIDELITY FUND PI SCHEME POLICY

I, the undersigned

In my capacity as

Of the attorneys firm

Address (docex/postal)

Telephone fax

duly authorized hereto, hereby notify the Attorneys Insurance Indemnity Fund of the firm's acceptance of the reduced limit of indemnity/deductible option which has been made available in respect of the **2011/2012** scheme policy.

This firm presently consists of _____ (*number of partners*) partners/directors whose names are annexed hereto.

I elect to take option number 2 / 3 (**CIRCLE the chosen option**).

I understand and accept that should any professional indemnity claims be made by my firm during the currency of the abovementioned policy then my firm's entitlement to an indemnity will be restricted to the chosen portion of the indemnity set out in the schedules to the abovementioned policy. I also understand and accept that the deductible/s (excesses) applicable to my firm will be reduced proportionately.

THUS SIGNED AT ON THIS THE DAY OF 2011.

WITNESSES

1.

WHO BY HIS/HER SIGNATURE
WARRANTS HIS/HER AUTHORITY

2.

WHO BY HIS/HER SIGNATURE
WARRANTS HIS/HER AUTHORITY

Letters to the Editor

Messrs,

I have been receiving and reading your Risk Bulletin enclosed to the De Rebus every month. I have found it very inquisitive and interesting.

I would like to enquire how the Attorneys Insurance Indemnity Fund works. Is this a fund different to the Attorneys Fidelity Fund?

1. Is this an insurance that covers the Attorney?
2. How in what instances does this cover the Attorney?
3. Does this Insurance cover any other persons?
4. What are the requirements for such claims?
5. Can you take additional insurance to enable the Attorney to more cover?

Your further advices will be appreciated.

Thinus Laas

Dear Mr Laas

I am very pleased to receive your feedback on the Risk Alert Bulletin (RAB), and to answer the questions that you have raised.

In answer to your initial question, the Attorneys Insurance Indemnity Fund (AIIF) is a different fund from the Attorneys Fidelity Fund (AFF). In brief, the AIIF is a non-profit company established for the purpose of providing professional indemnity insurance to the South African Attorneys' profession and it is funded by the AFF. The AFF *inter alia* provides cover to the public for misappropriation/theft of trust money/property.

Please go onto our website at www.aiif.co.za for more detailed information about the company. You will also find our **scheme policy** on the website.

In answer to your questions:

1. Clause 2.5 of the policy defines the "insured". You will note that this insurance covers all practising attorneys (or those who were practising at the time of the occurrence of the error or omission, out of which the claim arises).
2. The insurance covers the attorney, as set out in clause 1 (the indemnity clause) for legal liability to a third party arising out of the conduct of the attorneys' profession. Liability will generally arise out of a breach of mandate or negligence in the conduct of the profession. There are certain exceptions and conditions set out in clauses 5 and 6. You will need to study these more closely.
3. This cover specifically excludes application to anyone other than the insured (as defined.) However you will note that, in terms of clause 7.1, the cover is extended to include employees of the insured. So candidate attorneys, secretaries and the like are also covered.
4. The requirements are set out in clause 6 (conditions).
5. At present, this primary layer of cover is provided to practitioners at no charge. You cannot take out additional cover (so called "top up cover") through the AIIF, but such cover is freely available in the insurance market. You would need to ensure that any broker you use had detailed knowledge of the cover provided by the AIIF and could tailor your top-up cover accordingly.

Please be aware that the AIIF does not provide any cover for theft/misappropriation of trust money (see clause 5.1.5). Please also note that the AFF only provides compensation to *clients* whose trust money/property has been misappropriated by their attorneys and only as a last resort, once the attorney and his firm have been fully excused.

You will also find answers to other questions that we frequently get from the profession, on the website under "FAQ".

Ann Bertelsmann (Risk Manager)

DISCLAIMER

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