

BROCHURE : PROFESSIONAL INDEMNITY INSURANCE FOR BROKERS / FSP

An exclusive product for you!

The challenging and new legislative environment wherein brokers work, makes it imperative to protect them against claims that clients may, for specific reasons, institute against them.

It is against this background that a unique professional indemnity (PI) product was developed. Compass Insurance and various syndicates of Lloyds, the insurers of the product, use the underwriting expertise of Camargue Underwriting Agency, while Snyman & van der Vyver are responsible for all the administrative processes.

What is covered?

Your PI cover kicks in when a third party (client) claims from you for a financial loss that he/she has suffered, due to your negligent act, error or omission in your work performed for the client.

The policy, in general terms, covers you against:

- Your costs to defend a claim against you.
- to pay the claim if you are wrong and the claim succeeds
- all legal costs – even those of the other party if so ordered

What constitutes a claim under a Professional Indemnity Insurance Policy?

The purpose of the policy is to indemnify the insured broker if and when certain events occur. There are, however, certain criteria that must be met even before the merit of the specific claim is investigated and the PI policy is activated:

- **There must be a third party**

We use the term “third party” to indicate an entity that is not related to the insured broker or insurer. Think of the insurer and the insured (broker) as being the first and second parties. The claimant must therefore be another party unrelated to the first two parties – thus a third party – typically a client of the insured broker.

- **The third party must have suffered damages**

The third party must be able to prove that they have suffered damages and the damages must be measurable (or awarded by the courts).

- **There must be a direct link between the damages and a negligent act of the broker (Causal Connection)**

The damages suffered by the third party must arise out of a negligent **act, error or omission** in the work performed by the insured broker during the scope of their business as defined in the policy. An accurate description of the insured broker’s business activities is thus very important and the broker will also only be covered for that business authorised under his FSP License.

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- **The insured broker must be legally liable**

The insured broker can only be held liable if he/she is liable in accordance with SA law. The insured broker may deny liability and insurers may defend the claim. The insured broker may simply in certain instances not be legally liable. The measure is that the insured broker should have acted as could be expected of a “reasonable man” in similar circumstances.

- **The third party must institute a claim**

There is no claim if the third party does not demand compensation from the insured broker. There, however, may then be an “incident” that can lead to a claim later, and any such incident should also be reported to the insurer.

- **The claim must arise out of work performed subsequent to the retroactive date**

If the insured broker has never been insured before, underwriters will automatically quote the retroactive date as the inception date of the policy. For a claim to be successful, the claim must first be made on the current policy (claims made basis), and the incident, giving rise to the claim, must also have happened whilst cover was in force for the broker – thus after the retroactive date. Claims arising out of work performed prior to the retroactive date on the policy, are excluded, even if a policy is in force when the claim is made now.

Example:

Policy started 1/1/2008 and retroactive date on schedule thus 01/01/2008.
Claim reported on 15/2/2014.

Test:

(a) Is a policy in force when claim instituted? **Yes.**

(b) When did the incident/error happen that gave rise to the claim? If after 1/1/2008, then the claim is valid. If before 1/1/2008, then there will be no claim under this policy. If you should increase your Limit of Indemnity at any given time (usually on renewal) such increased limits will only be available for work performed after the date of increase, for any incident or claim arising from it.

- **The claim or circumstances must be reported during the current period of insurance**

If a claim is reported after the policy has expired, there is also no cover. One can buy so-called “run off” cover to protect you if you should stop practising as a broker.

- **The claim may not result from an incident the insured broker was aware of and did not disclose to the Insurer.**

The insured broker who signs the proposal form or renewal form must ask his employees if they know of any circumstances, incidents or possible claims, when completing the relevant section of the proposal. If not disclosed, a claim arising from such circumstances may be rejected.

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Particulars of your PI Insurance for FSP's/brokers

What is the nature of the cover that is provided?

The PI Policy is issued in the name of the FSP and is linked to the official FSP license number and authorities so granted by the FSB.

Comprehensive cover is provided to the brokers, partners, directors and all employees of the insured FSP for all activities performed as per the FSP's license. (Please note that there will be no cover for advice or work performed for products etc., not authorised by FSP license.)

The policy is for financial advisors and intermediaries and will cover the normal professional services conducted by the FSP. This can include: assurance brokers, investment advisors, financial planning consultants, healthcare advisors, unit trust advisors and short term insurance brokers. It will include all products normally associated to such business, but only those products that are registered by the FSB, regulated as such, and can be linked to your authorities granted under your license. (See wording for specific products excluded.) The cover will include the drawing up of wills and completing of tax returns, but only for your own clients (and not as a 3rd party practitioner of such services).

This cover includes:

- Professional indemnity
- All defence costs
- Loss of documents (5% of the Limit of Indemnity)
- Libel and Slander

Are there certain activities that are specifically excluded?

Yes, and this has mainly to do with work which is not part of a normal Category I registered broker.

The following activities are not covered:

- Actuarial Consultants
- Trustees (of any kind)
- Executors of Estates
- Legal/Accounting work
- Pension fund Administration
- Pension fund Benefit Consulting to the fund (however Pension Fund Brokers who give advice to individual members on their benefits or retirement, is covered)
- Any other activities not authorised by your FSP license.

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Should you be registered as an Investment Manager Category II with the FSB, will you be covered?

Acting as an investment manager (category II broker), is not regarded as part of the normal activities of a broker for the purposes of this PI cover if income from these activities are more than 5% of total income. You can get your own stand-alone policy and a quotation for such special cover can be provided. If income is not more than 5% such work will be covered by the scheme.

Will cover be retroactive?

Should you have existing PI cover, insurers will pick up the existing retroactive date (the date your PI cover first started), provided there has been no gap in the cover. If this is the first time you are applying for PI cover, the cover will be effective from the inception date of the policy.

Reinstatement of PI cover

PI cover is provided on the assumption that claims would be the exception, rather than the rule! For this reason, the limit is an aggregate limit per annual period of insurance. It is possible however, that one claim could expunge the entire limit - i.e. a policy with an aggregate limit of R3m could pay out a claim for R 3m early in a year and no cover would be available for any subsequent claims during that year.

You have the opportunity to purchase one reinstatement to be added to your policy at an additional premium of 10% of the basic premium or you can purchase two reinstatements at an additional premium of 15% of the basic premium.

It is highly recommended that you purchase such cover to ensure that you have **double or triple** your chosen limit available during a policy year.

How does reinstatement work?

The policy has an option where the insured broker can at inception or renewal, at a small extra premium, ensure that the insured amount elected as cover, will be reinstated in the year to meet further claims on the policy. This reinstatement is available for any new and subsequent claims and effectively increases the aggregate amount available in a year to double the cover amount. BUT, the reinstatement cover will not pay out if **one** claim is more than the initial cover selected.

Example A:

Cover level: R3m (plus 1x reinstatement)
Cover for year: R6m available
Claim payable: R3,5m

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Only R3m is paid (maximum cover) and the reinstatement cover of R3m is then available for any **new** claims. (In this example the insured broker will be liable for the extra R500 000 not covered by the policy.)

Example B:

Claim: R1m

The R1m claim is paid, and from the second pool of R3m, an amount of R1m is “transferred” to the Limit of Indemnity, so that a full R3m is available again for any new claim.

Are there any other additional extensions available?

You can select the following additional extensions to form part of the covers on your policy:

- **Director’s & officers Liability**

This cover is very applicable should you operate your FSP in a Company or CC. This cover will pay damages and legal costs if the company’s directors or managers are sued in their personal capacity, as directors / officers for not running the company properly. The changes to the Company Act have increased the risks which a company’s management face. Third parties, including shareholders, creditors, suppliers, authorities, etc., can hold the management liable for bad decisions. (There are certain exclusions – see policy wording.)

- **Liability following employee dishonesty**

This is not the classic Fidelity cover, but liability for a clients’ loss following any dishonest, fraudulent or malicious act by an employee. (These types of claims not claimable under the normal PI cover.) You can get this extension at a premium of 5% of the basic premium per month.

- **Cyber Risks: Data Protection extension**

Provides cover for liabilities caused by a breach of privacy regulations, including unauthorised disclosure of information or failure to protect network. It will also cover the costs to defend you against such claims.

It thus deals with loss of information and data of clients’ info – which can lead to claim against the FSP, in line with the new POPI Act.

You have the option to purchase various limits – see application or renewal form.

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What limits are available?

The limit chosen will depend on the individual needs of every broker. A general maximum limit of R15m aggregate (R30m with one reinstatement) will apply on the Scheme, but individual quotations for amounts exceeding this limit can be requested and will be individually priced. A quotation for up to R7,5m cover can be issued immediately, while higher amounts will be quoted by Camargue.

How much cover should a broker take?

The broker selects the limit of liability. In selecting the amount of cover to purchase, the following can be taken into account:

- The limit of liability includes all payments in respect of legal costs, claims preparation, and cost of recoveries, etc. The cover must make provision for it and this can run up to several hundreds of thousands of Rand.
- The broker must analyse his practice and evaluate the exposure, likelihood of mistakes, likely value of mistakes, etc. He should then provide realistically for such mistakes to occur.
- The possible risks should be weighed up against the measures in place to minimise risks.
- Please also remember that the limit selected, will be the maximum available for any one claim.
- No broker should (in view of the above) consider an indemnity of less than R2m.

Important:

If the claim amount is higher than the indemnity limit, the rest of the claim amount may be claimed from the insured broker in his personal capacity!

May brokers conduct business as a Close Corporation or Private Company apply for PI cover?

Yes. PI cover is provided to the legal entity as registered as FSP. Even if you have different contracts in more than one legal entity (or even in your spouse's name), cover for all of them is provided on one single policy. The aggregate amount will however also be applicable to all of them.

What does an aggregate limit mean?

A R2m aggregate limit means that this is the maximum amount that will be paid out for any one claim or any one annual period of insurance. The limit may be used up by one claim of R2m or several claims totalling R2m during any one annual period of insurance.

If the insured FSP is a Close Corporation or Private Company, the limit will also apply to all members or directors in the aggregate. (Please see above re the reinstatement option.)

Is a distinction made between brokers who sell predominantly long- or short-term products?

Yes. Different rates will apply to brokers who are predominantly short - or long-term brokers.

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Are there anything that the broker warrants under the policy or conditions that apply?

Yes, you warrant, by the information as supplied by you on the proposal forms, and as described in the conditions of the policy, the following:

- That there has not been a material alteration in your business activities which will affect your risk.
- That there has been no non-disclosure or misrepresentation of any facts.
- You will pay the premium in full as due.
- You will take reasonable precautions and exercise care in your duties to minimise risks.
- That you will not make a fraudulent claim under the policy.
- You will allow the insurer to subrogate against any other party to recover losses where applicable.
- You will not insure your deductible under any other policy (excess waiver).
- You will inform the insurer within 30 days of claim/incident about it and provide full details.
- You will not admit liability, make a payment or incur legal costs without the insurer's written consent.

Are there any exclusions to the PI cover?

Yes. The exclusions are fully explained in the policy wording.

The following GENERAL EXCLUSIONS apply:

- Sonic Bangs
- Radio-active contamination and nuclear risks
- War, government action and terrorism
- Total asbestos exclusion.

The following specific exclusions will apply where the insurer will not be liable for a loss or claim resulting from the following:

- Actual or alleged anti-trust violation, restraint of trade or unfair competition;
- Death or bodily injury or illness of any employee;
- Damage to property;
- Injury to any third party;
- A breach by you of a personal duty owed solely in the capacity of a member; director, secretary or officer of a Body Corporate;
- Arising out of any binding authority;
- Claim by Underwriter or Insurance Company;
- For taxes, fines or penalties or any claim deemed uninsurable by law;

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- Any fraudulent, criminal or dishonest acts;
- Arising out of your insolvency or bankruptcy;
- Due to ownerships of land, property or other goods;
- If loss is notified to or covered by any other policy;
- Any trading losses;
- Any claim from USA or Canadian-courts;
- The use of an illegal or improper agreement;
- Any mechanical failure of electricity or telecoms;
- Insolvency or administration of insurance company or product provider;
- Seepage or pollution;
- Out of express or implied warranty given re investment returns;
- Work performed as actuarial consultants, trustees, Pension fund administrators or pension fund benefit consulting;
- Known to insured at start of policy;
- Any event that happened prior to the retroactive date of policy;
- Any work performed outside the FAIS license or for categories not authorised;
- Any breach of the Banks Act;
- Any involvement in unlisted or non-FSB approved property investments or for companies involved in rental or managing commercial property. (Property syndication, or advice thereon, thus not covered)
- Any loss or failure to appreciate of any investments.
- Any offshore investments, unless through a SA LISP or MANCO
- Any withdrawal by a client, unless you have verified the client's identity with at least a telephone call.

The Insurer may also exclude any known events declared by the insured broker on inception or at renewal. A claim, which would normally succeed, may also be rejected if the insured does not comply with the policy conditions; eg: failure to notify insurer, acknowledge guilt, make payment without consulting insurer, etc. It is therefore extremely important to notify the Insurer immediately about events/circumstances, before doing anything else!

How do you institute a claim or report an incident?

There is, unfortunately, no standard claim form or set of requirements when dealing with a PI claim or incident, as the nature of such claims can vary so much in range. All PI claims or incidents are thus dealt with on a case-by-case basis.

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The following process will be followed in dealing with a claim or incident:

- 1.** The insured broker must as soon as they become aware of a claim or incident, notify Camargue Underwriting Agency (Camargue) immediately about a possible claim. Provide a full description of the event as comprehensive as possible. Refer the claim to them via Romé Tallie at Snyman & van der Vyver, (021- 940 8001) or
- 2.** piclaims@svdv.co.za, whereupon the claim will immediately be reported to the underwriter Camargue.
- 3.** The insured broker must provide copies of all relevant documentation as well as recordings of relevant telephone conversations available and all information at hand in respect of the possible claim. If a Summons is issued against a broker, it must urgently be forwarded to SvdV.
- 4.** It is of utmost importance to advise SVDV / Camargue of a claim or “circumstance” as soon as they become aware of it in order to prevent repudiation based on late notification.
- 5.** Camargue will open a claim file and allocate a claim number. They will also correspond with SvdV regarding any additional information requirements and SvdV will relay this to the broker.
- 6.** Camargue will assess the merits of the case.
- 7.** Camargue may appoint an attorney or loss adjustor to deal with the claim. They will then deal directly with the claimant. You may not appoint your own attorneys or run up legal costs without the prior consent of Camargue. You may also not admit liability or guilt as this will prejudice Camargue.
- 8.** The process may take months to settle, depending on the availability of information and/or merits of the case. You must please understand that once the claim has been reported and registered, Camargue also need to do their own further investigations and they always require detailed information in order to finalise their investigations.

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9. Snyman & van der Vyver will liaise with Camargue re the progress and will keep the insured broker informed.
10. Camargue is responsible for the final decision on all claims and once Camargue has made a final decision, the decision will immediately be conveyed to the insured broker.
11. In the event of a pay-out, an Agreement of Loss will be sent to the broker to accept. This will be for the settled amount less the excess payment. The broker is then responsible to pay the third party who claimed the full amount, including the excess, out of his own pocket.

The responsibilities of the insured broker

- The insured broker must consider the appropriate level of cover very carefully.
- The person signing the proposal/renewal form must ask the employees about any possible claim or circumstances before completing the no claim declaration section.
- The insured broker must notify the Insurer immediately about circumstances that may lead to a claim (do not judge the facts yourself!).
- The insured broker may not admit liability, make a payment or incur legal costs without the prior written consent of the Insurer.
- The insured broker must familiarise himself with the policy document and all the details. Please speak to SVDV if anything unclear.
- The insured broker must complete documentation timeously, especially the renewal proposal form, so that cover does not lapse and the retroactive cover is the lost.

What rates are charged?

Rates are charged according to the categorisation of the broker to be insured. On completion of a proposal form, a quotation will be provided to you.

The aim is to keep the premiums level, but this is influenced by the claims experience. For this reason, premiums cannot be guaranteed for longer than 1 year from inception date of the policy. At each year's renewal, a new quote will be supplied.

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What method of payment may be used?

Premiums may be paid monthly by using a bank debit order or annually by cash transfer. Should a premium be unpaid, a double deduction will take place the next month. If unpaid again, the policy will lapse, all benefits and the retroactive date will be lost, unless the FSP then commits to an annual policy paid in lump sum upfront. The policy will also lapse if three separate unpaid debit orders occur within a 12-month policy period.

Where can you view the policy document?

The policy wording will be electronically sent to the FSP with the certificate and all documentation.

How do you go about requesting a quotation?

The following process should be followed:

- Complete the required request for a quotation / proposal form which will be sent to you by e-mail. (Queries in this regard to: Michele (021) 940-8003)
- Fax it to Michele at (021) 940-8090 or direct at 0866284299 or email it to her at michele@svdv.co.za.
- A quotation will be prepared and sent to you within 2 working days.
- Once you accept the quotation, it must be sent back immediately to enable us to issue the policy.

If you have further questions, what do you do?

Questions may be addressed to Michele Jordaan at (021) 940-8003 during office hours

OR e-mail: michele@svdv.co.za

Disclaimer

This document is a summary of certain important aspects of the policy. The insured broker must study the full policy wording and certificate to make sure that **all** aspects are known and adhered to. Snyman & van der Vyver cannot be held liable if an insured broker acts on this brochure alone.