



15 September 2014

Architects: FAQs.

PIFRS is honoured to be the official broker to the Architectural Professional Indemnity Group Insurance Scheme “APIGIS” endorsed as the preferred PI Insurance supplier by SAIA.

PIFRS helped to create the Scheme over 15 years ago working alongside the PIA’s Ronald Remmers. See also www.apigis.co.za.

In here we discuss:

- What does the PI Scheme cover?
- What are some of the other benefits?
- What is the Limit of Indemnity – What does “Each & Every Claim” and “In the Aggregate” mean?
- What is the Retroactive Date?
- What does “Claims Made” mean?
- What is the definition of “Negligence”?
- What is “Contractual Liability” as opposed to “Delictual Liability”?
- What to do in the event of a Claim.
- Legal Expenses.
- Eligibility Criteria for Membership and prime rating.

There are some very exciting developments currently under negotiation to greatly expand the Benefits under the Scheme. These will be concluded before the end of 2014 and posted on our website and conveyed to policyholders and Members.

What does the PI Scheme cover?

It provides the widest Professional Indemnity Insurance in SA and in many cases is superior to international standards.

The policy covers you against claims instituted by Clients or Third Parties alleging Negligence or Breach of Professional Duty. It provides cover for:-

- Legal Defence and/or Settlement Costs,
- Damages if awarded against you,
- Defamation,

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firstEquity is an authorised Financial Services Provider

PI Financial Risk Services (Pty) Ltd | Directors: S Casserly | V Govender | JCS Pearson (CEO) | Reg No: 2008/026574/07 | Physical Address: First Floor, Block A, Hobart Square Office Park, 23 Hobart Rd, Bryanston, 2191 | Postal Address: PO Box 71431 Bryanston, 2021, Gauteng, South Africa | Telephone: 08611 74377 (08611 PIFRS) |

- Loss of Documents,
- Copyright Infringement,
- Fee recovery legal expenses where a Client alleges Negligence.

What are some of the other Benefits of being a policyholder under APIGIS Scheme?

- Free legal advice on contractual matters related to risk and insurance,
- Special Discounts for Members with both Regional and Corporate/National Registration.
- Large discounts for Firms with Fees over R 15 000 000 pa.

What is the Limit of Indemnity (sum insured)?

This is the maximum amount you would be covered for in the event of a claim.

What Limit should I buy?

You need to consider the profile of your Practice, the Clients you engage with and the Markets/Fields in which you operate, for example;

- How many professionals and technically qualified people are in your Firm and what “peer reviews” processes do you have in place?
- What types of Projects do you undertake? Are they mainly Residential or Commercial/Industrial? Single or Multi-storey (over 4 floors)?
- Do you use any “proto – type” on untested methodologies or designs,
- What is the average and maximum construction values of the Projects?
- What services do you provide e.g.; Stages 1 through 5,
 - Conceptual Designs/Feasibility only,
 - Final Designs Drawings,
 - Supervision,
 - Principal Agent, C.A. and I.
- What sort of Clients do you have e.g.; are they Private, Corporate, Foreign or of a litigious nature,
- Are your Fees being put under heavy pressure which may cause an inability to devote sufficient attention to the Project?

What could happen in a “worst case” scenario and what would it take to fix?

Also bear in mind that the Limit of Indemnity must be sufficient to cover Legal Fees as well. These are currently in the region of R 150 000/R 200 000 per day in court excluding pre-trial and other costs plus possibly the Plaintiff’s costs as well if you lose the action.

Many Professionals try and Limit their Liability to 2 x Total Fees on the Project but often the Client will insist on a certain Limit. Even if the Client accepts the 2 x Fees Limit, that does not prevent him claiming a higher amount in the case of alleged gross negligence or if the claim comes from another Third party who is not bound to the contractual amount.



The Limit of Indemnity can be applicable on 3 bases:-

- Each and Every Claim – which is the best and applies to the APIGIS Scheme,
- In the Aggregate for the policy period – the worst,
- In the Aggregate plus “automatic reinstatements’ – the second best.

What do the above mean?

- Each and Every Claim means that your Limit of Indemnity remains intact no matter how many claims you have,
- In the Aggregate means that the Limit of Indemnity is the TOTAL amount for which you will be covered during the policy period for all claims against you. The major problem with this is that once a claim or circumstance is reported to insurers, even if it is a spurious or an unlikely claim, insurers will “reserve” an amount against the Limit of Indemnity and you may then not be covered for a subsequent more “serious” allegation.
- In the Aggregate plus automatic reinstatements means that insurers will “reinstate” or “top-up” your Limit of Indemnity up to a pre-agreed (and pre-paid for) number of times in the event of claims. Again, if you may be subjected to multiple claims your Limit of Indemnity could be exhausted.

Unless you specifically ask for it, Insurers will in most cases apply the “In the Aggregate” basis. The APIGIS/PIFRS Scheme automatically provides the Each & Every basis.

Retroactive Date

What is the Retroactive Date?

Provides cover for Services rendered, Claims or Circumstances that occurred prior to the Inception date of the policy or the Renewal date?

You will never lose your Retroactive Date of Cover with APIGIS/PIFRS provided you do not allow your policy to expire. If you are a new policyholder transferring to the APIGIS/PIFRS Scheme you will keep the same Retroactive date as your previous policy.

What about Prior Acts or Services provided before the policy period?

This is covered by the provision of a RETRO-ACTIVE date.

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What does the RETRO-ACTIVE date mean?

There are 3 scenarios:-

1. When a policy is taken out for the first time the cover will be effective either from the first day of the policy period or from a RETRO-ACTIVE date that you may choose. Normally a RETRO-ACTIVE date is selected by a Professional who has been delivering services to Clients over many years and wishes to be covered for any actual or alleged errors that might have occurred prior to the first policy period but which he is not aware of at the time of taking out the insurance. There is a once-off additional premium for this.
2. When a policy is renewed or even moved to a new insurer you still benefit from the same RETRO-ACTIVE date you chose on your first policy. And this will continue for as long as you maintain your cover in force, no matter how many years back it might be.

Again, the timeous reporting of claims or circumstances is extremely important.

3. If a policy is allowed to lapse you will lose the benefit of the automatic “free” RETRO-ACTIVE date. If you wish to re-instate the cover you will have to apply for a new RETRO-ACTIVE date (if that is what you require) and there will be an additional once-off premium payable.

Claims Made

A PI Policy (as well as D&O and Malpractice) provides cover on a “CLAIMS MADE” basis.

What does “CLAIMS MADE” mean?

The policy provides cover for “claims made” (and reported to insurers) during the period of the insurance policy only.

A claim or circumstances that the insured was aware of before the policy period would not be covered. Similarly a claim after the policy period has expired would not be covered.

It is therefore of the utmost importance to report matters to insurers as soon as you become aware of them. This could be in the form of a summons, allegations of negligence, threats of legal action or even just verbal criticism.

Even if you renew your policy any known matters must be reported prior to the renewal. If you intend changing insurers this is even more important.

Once a claim or circumstance has been reported then insurers are obliged to protect the insured even though the policy period might expire and not be renewed.

What is the definition “Negligence” or “Negligent Act”?

The commonest definition is “when a person has departed from the conduct expected of a reasonably prudent person acting under similar circumstances” - he may then be accused of Negligence or guilty of a Negligent Act



In law this is termed “Delict”.

The hypothetical “reasonable person” provides an objective by which the conduct of others can be judged.

The law considers a variety of factors in determining whether the person has acted as the hypothetical reasonable person would have acted in a similar situation. These factors include:-

- The knowledge, experience and perception of the person,
- The activity the person is engaged in,
- The special skills required. If a person engages in an activity requiring special skills, education and training, the standard against which his conduct will be measured is the conduct of a reasonably skilled, competent and experienced person who is a qualified member of the group engaging in that activity – often an authorised group (by statute of law) such as Lawyers, Doctors, Engineers, Architects, Financial Services Providers and Accountants.

What is Contractual Liability as opposed to Negligence or Delictual Liability?

Contracts between Parties often impose additional obligations on Parties that go beyond what is normally contemplated in Common Law.

A PI policy will not normally cover liabilities arising under Contract (as opposed to Delict) as they extend the potential liabilities of the Parties (and their Insurers) beyond what Insurers are prepared to underwrite and accept. In certain circumstances Insurers are prepared to underwrite the Contractual Risks provided they are given all the information they require to either accept or reject the risk. For example: Warranties, Indemnities and Guarantees.

What to do in the event of a claim, accusations from a Customer or another Party or you become aware of potentially damaging circumstances?

1. Do not make any statements or admission of liability or blame.
2. Contact PIFRS immediately you are able. We will assist you.
3. Do not enter into any correspondence regarding the accusations or allegations – refer the matter to PIFRS. We will deal with it.
4. Try to stay on reasonable terms with the Plaintiff – avoid “road rage”.
5. Do not make reference (to the Plaintiff or anyone else) to the fact that you have “insurance.”

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Legal Expenses

Your PI policy will cover Legal Expenses incurred in defending or settling a claim against you.

But they must be pre-agreed by insurers and/or the matter must be handled by Insurers.

Do not incur legal costs without insurers consent in writing or they may not be recoverable under you policy.

Eligibility of Membership

APIGIS and SAIA have agreed certain criteria for Membership of the Scheme and the policy benefits.

1. Individual or Firm must be a Member of a Regional Institute or the National Institute or both,
2. Must be Registered with SACAP
3. The Scheme applies differential ratings to categories of Membership and Qualifications