



Frequently Ask Questions regarding PI for Quantity Surveyors

PIFRS is honoured to be the official broker to the ASAQS Professional Indemnity Scheme endorsed as the preferred PI Insurance supplier to ASAQS. Even if you are not a member of ASAQS we can assist you with your PI insurance.

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.
- Design & Construct, LSTK, EPCM and other Construction Contracts. What to look out for and what to do.
- Project Specific – Single Project Professional Indemnity including “Top- up” PI.

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,

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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) |

- ✓ Defamation,
- ✓ Loss of Documents,
- ✓ Copyright Infringement,
- ✓ Regulatory Defence Costs i.e. Breach of the Quantity Surveying Profession Act and other Codes applied by ASAQS,

What are some of the other Benefits of being a policyholder under ASAQS - PIFRS Scheme?

- Free legal advice on contractual matters related to risk and insurance,
- No Claims Bonus of 10% for all renewals of existing policyholders effective from 1st October 2014.
- For NEW policyholders we will allow the same No Claim Bonus when you sign-up with PIFRS
- 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 review” processes do you have in place?
- What types of Projects do you undertake? For example are they;
 - * Residential, Commercial or Industrial Buildings,
 - * Civil Engineering Projects, Mechanical or Electrical Projects
 - * Process and other Industrial Plants,
- Do you use any “proto – type” on untested methodologies,
- What is the average and maximum construction values of the Projects?
- What services do you provide e.g.;
 - * Estimating, Cost Planning, Feasibility studies,
 - * Project management,
 - * Tendering and Contractual arrangements,
 - * Dispute resolution/advice,
 - * Financial and cost management and control,
 - * Economic feasibility,
 - * Any services outside the scope of standard QS services?
- What sort of Clients do you have e.g.; are they Property Developers, Corporate/ Industrial, Foreign or of a litigious nature?
- What Contract Conditions do you utilise? Can you limit your liability?
- Do you engage in JVs and do you protect your Liability to the Client and JV partners? Never accept “joint and severable liability” clauses on face value?
- 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 ASAQS - PIFRS 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 then your Limit of Indemnity could be exhausted.

Unless you specifically ask for it, Insurers will in most cases apply the “In the Aggregate” basis (except for the ASAQS – PIFRS Scheme).

Retroactive Date

What is the Retroactive Date? - 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 ASAQS-PIFRS provided you do not allow your policy to expire. If you are a new policyholder transferring to the ASAQS-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.

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 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, QSs, 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 in order 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.”

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 your policy.

Eligibility for Membership to the ASAQS PI scheme

In order to qualify to become a policyholder you must be;

- Registered with the SACQSP
- A Member of ASAQS.

If you are not a member please contact us for assistance.

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Design & Construct, Lump Sum Turn-key, EPCM and other Construction Contracts or Projects.

Where you are engaged, either directly or as part of a JV, in the actual construction or building contract then you need to consider the following Risks and Insurances and what arrangements are being made to protect your interests. This will include the situation where you are required to verify and/or monitor the Insurances arranged by either the Contractor or Owner/Developer.

- i. Who is responsible for arranging the Insurance and verifying the adequacy and security thereof,
- ii. What Insurances are necessary, for example;
 - * Contractors All Risks,
 - * Public/Third Party Liability,
 - * Project Delay,
 - * Lateral Support,
 - * Transit/transportation by land, sea or air of materials and equipment,
 - * Professional Indemnity – is Project Specific PI required or preferred? See below.
 - * SASRIA,
 - * Political Risks – CEND for contracts outside of South Africa.

If the insurances are not properly arranged and a claim is not settled then there is a strong likelihood that your Fees will be jeopardised. For example, if you are on a Fixed Fee or LSTK Contract and the Project is delayed because of damage and there is no Project Delay Insurance in place, then you could have difficulty in recovering the Fees for extra or extended work.

Contact PIFRS for advice and obtain an appropriate Contract/Project questionnaire if required.

Project Specific, Top-up and Single Project Professional Indemnity coverage: “SPPI”

For many Contracts/Projects particularly large, complex, international and or multi-disciplinary an SPPI policy is more appropriate protection both for the Owner/Developer and the Professional team. The main benefits are, inter alia;

- The Owner/Developer is assured that adequate (by his judgement) coverage is in place for as long as he requires (up to 10 years),
- The premiums are lower than is the case when each Professional has to individually provide the cover up to the Limit the Owner/Developer requires,
- Disputes regarding liability for claims between the Insurers of the individual Professionals are avoided,
- The Owner/Developer can elect to buy a “top-up” policy over the cover provided by the Professional in terms of his annual policy (assuming he has one).

Contact PIFRS for advice and a Project Questionnaire if required.

Contact details

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