



PENSION FUND TRUSTEES LIABILITY INSURANCE POLICY

Subject to the terms, exclusions and conditions (precedent or otherwise) and in consideration of, and conditional upon the prior payment of the premium by or on behalf of the Insured and receipt thereof by or on behalf of the Insurers, the Insurers agree to indemnify the Insured in respect of the defined events occurring during the period of insurance and as otherwise provided under the policy up to the limit of indemnity specified.

CONDITIONS

1. Conditions Precedent to Liability

Insofar as they relate to anything to be done or complied with by the Insured, the due observance and fulfilment of the following conditions and stipulations and of any further conditions and stipulations that may be endorsed hereon or added hereto is a condition precedent to any liability of the Insurers under this policy and no waiver of any of the terms, conditions or stipulations of this policy shall be valid unless made in writing upon this policy and signed on behalf of the Insurers. The head notes to any paragraph are for reference purposes and shall not effect the interpretation of the policy.

2. Claims Notification

Notification of any claim or circumstance which may give rise to a claim shall be given in writing as soon as is reasonably possible, with the fullest information thereof. The Insured shall also furnish all such information and assistance as the Insurers may require.

If the Insured, or any representative of the Insured to whom is entrusted the duty of superintendence or audit, suspect or become aware of the negligence or dishonesty of an officer, they shall report such negligence or dishonesty as soon as possible.

3. Prosecution

The Insured shall, if and when required by the Insurers, and at the expense of the Insurers, use all diligence in prosecuting the officer to conviction for any criminal act which he/she shall have committed and in consequence of which a claim shall have been made under this policy and shall, at the Insurers' expense, give all information and assistance to enable the Insurers to sue for and obtain reimbursement from the officer or his/her estate of any monies which the Insurers shall have become liable to pay hereunder.

4. Litigation costs

The Insurers agree to pay litigation expenses in prosecuting or defending any claim where such litigation expenses are incurred with the written consent of the Insurers. Such payment to be part of and not in addition to the limit of indemnity.

5. Admission of Liability

The Insured shall not, without the written authority of the Insurers, voluntarily incur any liability (including litigation expenses) or voluntarily give any undertaking to make any payment, or settlement of or admission of liability for, any event for which the Insurers would be liable under this policy.

6. Access to the Fund's Records

The Insurers or its duly authorised representative shall have reasonable access to the Insured's records and books after receiving notice of a loss and may call for sworn declarations by the Insured or their representative in support of any claim submitted.

7. Subrogation

When a loss has been made good by the Insurers, a discharge thereof shall be made by the Insured and the Insured shall, when required by and at the expense of the Insurers, assign to the Insurers claims and rights of action competent to the Insured against the persons concerned in respect of the loss sustained. However, this shall not apply to any natural person(s) acting as an officer where they are indemnified under defined event 1.

8. Assets of Officer Held by Insured

Any sum of money, estate or effects which shall come into the possession or power of the Insured for or on account of any person whose act or acts give rise to a claim under defined events 2 or 3 shall, insofar as it is competent for the Insured to do so, be realised by the Insured to the best advantage and the proceeds shall be accounted for by the Insured to the Insurers and treated as a deduction from the loss.

9. Control of Proceedings

The Insurers shall be entitled to undertake the conduct and control of all or any proceedings in respect of any claim for which the Insurers may be liable under defined event 1 which may be commenced by or against the Insured, and to use the name of the Insured to enforce, for the benefit of the Insurers, any order made for costs or otherwise and to make or defend any claim for indemnity or damages against any person or insurers or for any other purpose connected with this policy.

9.1 The Insured shall not be required to contest any legal proceedings unless counsel (to be mutually agreed upon by the Insured and the Insurers) shall advise that such proceedings should be contested.

9.2 The Insurers shall not settle any claim without the consent of the Insured. If however the Insured shall refuse to consent to any settlement recommended by the Insurers, and shall elect to contest or continue any legal proceedings in connection with such claim then the Insurers' liability for the claim shall not exceed the amount by which the claim could have been so settled plus the costs, charges and expenses incurred with their consent up to the date of such refusal, and then only up to the limit of indemnity.

10. Recoveries Where a Loss Exceeds the Limit of Indemnity

In the case of recovery on account of any loss covered under this policy the amount recovered, after deducting the actual cost of obtaining or making such recovery but excluding the Insured's own labour and/or establishment costs, shall be applied in the following order:

10.1 To reimburse the insured in full for that part, if any, of such loss that exceeds the amount of coverage provided by this policy (disregarding the amount of any first amount payable);

10.2 The balance, if any, or the entire net recovery if no part of such loss which exceeds the amount of coverage by this policy, to reduction of that part of such loss covered by this policy, or if payment thereof shall have been made, to the reimbursement of the Insurers;

10.3 Finally, to that part of such loss sustained by the Insured by reason of any first amount payable.

11. Signing of Proposal

It is understood and agreed that knowledge in respect of any act or acts which may have been committed by the person signing any proposal form or giving renewal or other instructions shall not prejudice any claim under this policy.

12. First Amount Payable

The Insurers shall not be liable for the first amount payable stated in the schedule, which shall apply separately in respect of each and every claim.

13. Fraudulent Claims

If any claim under this policy is in any respect fraudulent, or if any fraudulent means or devices are used by the Insured or anyone acting on their behalf or with their knowledge or consent to obtain any benefit under this policy, or if any event is occasioned by the wilful act or with the connivance of the Insured, the benefit afforded under this policy in respect of such claim shall be forfeited.

14. South African Jurisdiction

This policy shall be governed by the laws of the Republic of South Africa whose courts shall have jurisdiction in any dispute arising hereunder.

15. Cancellation

This policy may be cancelled at any time by the Insurers giving 30 days' notice in writing to the Insured, or by the Insured giving immediate notice. The Insured shall be entitled to a refund of premium for the unexpired period of insurance.

DEFINED EVENTS

1. Negligence

Any claim first made against any officer during the period of insurance resulting from any wrongful act committed by an officer anywhere in the world but not in respect of any judgement, award or settlement made within countries which operate under the laws of the United States of America or to any order made anywhere in the world to enforce such judgement, award or settlement in whole or in part.

If, during the period of insurance, written notice of a claim against the Insured has been given to the Insurers, then any claim which is subsequently made against the Insured and reported to the Insurers alleging, arising out of, based upon or attributable to the facts alleged in the claim of which such notice has been given or alleging any wrongful act which is the same, related, continuous or repeated wrongful act alleged or contained in such claim, shall be considered made against the Insured and reported to the Insurers at the time such notice of such claim was given.

If, during the period of insurance, or during the discovery period (if applicable) the Insured shall become aware of any circumstances which may reasonably be expected to give rise to a claim being made against the Insured and shall give written notice to the Insurers of the circumstances and the reasons for anticipating such claim, without full particulars as to dates and persons involved, then any claim which is subsequently made against the Insured and reported to the Insurers alleging, arising out of, based upon or attributable to such circumstances or alleging any wrongful act which is the same, related, continuous or repeated wrongful act alleged or contained in such circumstances, shall be considered made against the Insured and reported to the Insurers at the time such notice of such circumstances was given.

2. Theft, Fraud and Dishonesty

2.1 Loss of money and/or other property belonging to the Insured or for which they are responsible, which is stolen or removed without the Insured's authority by an officer;

2.2 Direct financial loss sustained by the Insured as a result of fraud or dishonesty of an officer and which results in dishonest personal financial gain for the officer concerned;

all of which occurs during the period of insurance or after the retroactive date and which is discovered during the period of insurance or within 12 months of the termination of this policy.

The term "money" shall include securities, derivative instruments, cheques, bills of exchange, investments, certificates of deposit, shares, letters of credit or orders upon public treasuries, promissory notes, currency notes, coins and bonds.

3. Computer Crime

Loss resulting directly from fraudulent or dishonest

3.1 entry of data into, or

3.2 change of data or programmes within

the officer's computer system, provided such entry or change causes

- (i) property to be transferred, paid or delivered;
- (ii) an account of the Fund, or of its member(s) to be added, deleted, debited or credited;
- (iii) an unauthorised account or fictitious account to be debited or credited

all of which occurs during the period of insurance or after the retroactive date and which is discovered during the period of insurance or within 12 months of the termination of this policy.

Provided that

- (a) Renewal of this insurance from period to period or any extension of any period of insurance shall not have the effect of accumulating or increasing the liability of the Insurers beyond the limit of indemnity stated in the schedule.
- (b) The Insurers' total aggregate liability under all defined events together shall not exceed the limit of indemnity shown in the schedule.
- (c) The Insured shall be responsible for the first amount payable shown in the schedule. Such first amount payable is to apply without aggregation to each and every claim hereunder.
- (d) The liability of the Insurers is limited to losses incurred by the Insured relative to pension / provident / disability / trust monies in respect of past, present or future employee benefits.

DEFINITIONS

The following definitions shall have the same meaning throughout the policy where ever they appear.

1. Officer

Any of the following who provides services to or for the Insured:

a present or past committee member, individual, manager, trustee, administrator, third party service provider, controller, principal officer, treasurer, clerk, employee or agent of the employer company.

2. Wrongful Act

Any actual or alleged breach of duty, statutory duty or trust, neglect, error, misstatement, misleading statement, omission, defamation, *injuria*, unintentional breach of confidentiality or other act wrongfully committed, omitted or attempted by an officer and which arises by reason of their being an officer of the Insured other than as insured under defined event 2 or 3.

3. Insured

The fund described in the schedule.

4. Fund

Any fund declared to the Insurers which was, on or prior to the inception of the policy, established and maintained for the benefit of the past, present and future employees of the employer company or their respective beneficiaries.

5. Loss

5.1 Damages, judgements or settlements;

5.2 Costs and expenses awarded against any Insured through any claimant or claimants;

5.3 All other costs and expenses incurred with the written consent of the Insurers including but not limited to

- (i) Insurers' costs and expenses

- (ii) costs, charges and expenses of legal representation.

Wherever the terms "loss" or "claim" are used in this policy it is understood to mean any losses or series of losses arising out of the same event.

A loss, losses or series of losses caused by wrongful acts of, or involving any one person whether acting alone or in collusion, whether with one of the officers of the Insured or not, or wrongful acts in which any one person whether acting alone or in collusion is concerned or implicated, shall be deemed as being the same event.

6. Dishonesty

6.1 Theft as provided for in defined event 2.1;

6.2 Fraud as provided for in defined event 2.2.

"Dishonesty" shall not include gain by an officer in the form of salary, salary increases, fees, commissions, bonuses, promotions or other emoluments.

EXTENSIONS AND CLAUSES

1. Discovery Clause

In the event that the Insurers refuse to renew this insurance then subject to all the terms, exceptions and conditions of this policy the Insurers agree to extend the period during which the Insured may report a claim for a period of 12 months (hereinafter referred to as the discovery period) provided that:

- (a) the Insurers shall not be liable for wrongful acts which occurred after the period of insurance;
- (b) any such reported claim shall be treated as if it had been reported on the last day of the period of insurance;
- (c) the total amount payable by the Insurers for a claim reported during the discovery period shall not have the effect of increasing the limit of indemnity under the policy;
- (d) the Insured has not obtained insurance providing substantially the same cover as granted under this policy.

2. Claims Preparation Costs

The insurance under the policy is extended to include costs reasonably incurred by the Insured in producing and certifying any particulars or details required by the Insurers in terms of Condition 2 or to substantiate the amount of any claim provided that the liability of the Insurers for such costs in respect of any one claim shall not exceed 2% of the limit of liability or the amount stated in the schedule whichever is the greater amount.

3. Costs of recovery

If the Insured shall sustain any loss to which the policy applies which exceeds the limit of indemnity, the Insurers will in addition pay to the Insured costs and expenses not exceeding 3% of the limit of indemnity, or the amount stated in the schedule whichever is the greater, necessarily incurred with the consent of the Insurers (which consent shall not unreasonably be withheld) for the recovery or attempted recovery from the officer in regard to whom the claim is made, of that part of the loss which exceeds the limit of indemnity hereunder. All amounts recovered by the Insured in excess of the said part of the loss shall be for the benefit of the Insurers.

4. Costs of Reinstating Office Records

The policy is extended to include costs, charges and expenses incurred by the Insured in replacing and/or restoring any computer files and data media documents, manuscripts, business books, plans, design specifications or programmes destroyed, damaged or lost as a result of loss insured by this policy, provided that the liability of the Insurers shall not exceed 2% of the limit of indemnity or the amount stated in the schedule, whichever is the greater amount.

5. Reinstatement of Sum Insured

The payment by the Insurers of any loss involving one officer or any number of officers shall not reduce the Insurers' liability in respect of the remaining insured officers provided that the maximum amount payable by the Insurers for all losses (including defence costs) shall not exceed, during any one period of insurance, double the limit of indemnity shown in the schedule.

6. Extended Cover for Former Officers

Any person who ceases to be an officer shall for the purposes of the policy be considered as being an officer for a period of 30 (thirty) days after he ceased to be an officer.

7. Accountants Clause

Any particulars or details contained in the Insured's books of account or other business books or documents which may be required by the Insurers for the purpose of investigating or verifying any claim hereunder may be produced and certified by the Insured's auditors or professional accountants and their certificate shall be prima facie evidence of the particulars and details to which it relates.

8. Unidentifiable Officer Clause

If a loss is alleged to have been caused by the fraud or dishonesty of any of the officers and the Insured shall be unable to designate the specific officer or officers causing the loss, the Insured's claim in respect of such loss shall not be invalidated by their inability to do so provided the Insured is able to furnish evidence to the reasonable satisfaction of the Insurers that the loss was in fact due to the fraud or dishonesty of one or more of the officers.

9. VAT Exclusive

The sum insured is expressed on a VAT-exclusive basis and the Insurers agree to indemnify the Insured over and above the limit of indemnity for any VAT obligation the Insured may incur arising out of any claim settlement made hereunder.

10. Retroactive Date

The Insurers shall not be liable to provide indemnity hereunder for any event(s) which occurred prior to the retroactive date stated in the schedule, provided that nothing contained within this condition shall be interpreted as releasing the Insured from their obligation to reveal as a material fact all details of claims made or outstanding or events likely to give rise to a claim.

11. Increase in Limit of Indemnity

If the limit of indemnity is increased, such increased limit of indemnity shall only apply to the defined event(s) occurring after the date of such increase.

12. Fraudulent Signatory Extension

The misrepresentation or non disclosure of any matter by the Insured and/or any covered individual or entity or their agent will render the policy void. However any loss caused by the dishonest or fraudulent act(s) of any signatory to the proposal form committed whilst acting in the capacity of an officer prior to the signing of such proposal form shall not be excluded solely by the fact that such loss has not been notified to the Insurers in the proposal form.

EXCLUSIONS

The Insurers shall not be liable for any claim(s)

1. for any actual or alleged bodily injury, sickness, disease or death of any person or any actual or alleged loss or destruction of or damage to any tangible property including loss of use thereof;
2. based upon, arising out of, directly or indirectly resulting from, or in consequence of, or in any way involving actual or alleged seepage, pollution or contamination of any kind;
3. any third party claim arising from or contributed to by depreciation (or failure to appreciate) in value of any investment, including loans, securities, commodities, currencies, options and futures transactions, or as a result of any actual or alleged representation, guarantee or warranty provided by or on behalf of the insured as to the performance of any such investments where such matters are outside the influence or control of the officer;

It is agreed however, that this exclusion shall not apply to any loss due solely to negligence on the part of an officer in failing to effect a specific investment transaction in accordance with specific prior instructions.

4. resulting from the intentional suspension of contributions to the fund by the employer company;
5. resulting from the fraud or dishonesty of any officer from the time the Insured shall become aware that such officer has committed any fraud or dishonesty indemnifiable in terms of the policy. Any wrongful act pertaining to any Insured shall not be imputed to any other Insured;
6. in respect of which the Insured is entitled to indemnity under any other policy except in respect of any excess beyond the amount which would have been payable under such policy had this policy not been effected;
7. for loss or damage caused directly or indirectly by or through or in consequence of any occurrence for which a fund has been established in terms of the War Damage Insurance and Compensation Act 1976 (No. 85 of 1976) or any similar Act operative in any territory to which this policy applies;
8. for loss of or damage to property directly or indirectly caused by or in any way related to:
 - (a) civil commotion, labour disturbances, riot, strike, lockout or public disorder or any act or activity which is calculated or directed to bring about any of the foregoing;
 - (b) war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not) or civil war;
 - (c)
 - (i) mutiny, military rising, military or usurped power, martial law or state of siege or any other event or cause which determines the proclamation or maintenance of martial law or state of siege;
 - (ii) insurrection, rebellion or revolution;
 - (d) any act (whether on behalf of any organisation, body or person or group of persons) calculated to
 - (i) overthrow or influence any State or Government or any provincial, local or tribal authority with force or by means of fear, terrorism or violence;
 - (ii) bring about loss or damage in order to further any political, religious, social, ideological or similar purpose, aim, objective or cause or to bring about any social, ideological or economic change or in protest against any State, Government or any provincial, local or tribal authority or for the purpose of inspiring fear in the public or any section thereof;
 - (e) any attempt to perform any act referred to in clause (d) above;
 - (f) the act of any lawfully established authority in controlling, preventing, suppressing or in any way dealing with any occurrence referred to in clauses (a), (b), (c), (d) or (e) of this exception.

If the Insurers allege that by reason of clauses (a), (b), (c), (d), (e) or (f) of this exception loss or damage is not covered by this policy the burden of proving the contrary shall rest on the Insured.

9. This policy does not cover
 - (a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting therefrom or any consequential loss
 - (b) any legal liability of whatsoever nature

directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exclusion only combustion shall include any self-sustaining process of nuclear fission. The indemnity provided by this policy shall not apply to nor include any loss, destruction, damage or legal liability directly or indirectly caused by or contributed to by or arising from nuclear weapons material.

10. **Special War and Terrorism Exclusion**

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, insurrection, rebellion, revolution, military or usurped power, or confiscation or nationalisation or requisition or destruction of or damage to property by or under the control of any Government or Public or Local Authority; or
- (b) directly or indirectly caused by, resulting from happening through or in connection with 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 means an act of violence or any act dangerous to human life, tangible 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.

In any action, suit or proceedings where the Insurers allege that by reason of this exclusion a loss is not covered by this insurance the burden of proving that such loss is covered shall be upon the Insured.

11. Special Computer Loss General Exclusion

Notwithstanding any provision of this policy including any special exclusion or extension or other provision not included herein which would otherwise override a general exclusion, this policy does not cover any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or consisting of or arising from the incapacity or failure of any computer, correctly or at all

- (a) to treat any date as the correct date or true calendar date, or correctly or appropriately to recognise, manipulate, interpret, process, store, receive or to respond to any date or information, or to carry out any command or instruction, in regard to or in connection with any such date or
- (b) to capture, save, retain or process any information or code 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 or
- (c) to capture, save, retain or to process any data as a result of the action of any computer virus, or other corrupting, harmful or otherwise unauthorised code or instruction including any trojan horse, time or logic bomb or worm or any other destructive code, media or programme or interference.

A computer includes any computer, data processing equipment, microchip, integrated circuit or similar device in computer or non-computer equipment or any computer software, tools, operating system or any computer hardware or peripherals and the information or data electronically or otherwise stored in or on any of the above, whether the property of the Insured or other person.