



**LEGAL
PRACTITIONERS
FIDELITY FUND**

SOUTH AFRICA

Motlatsi Molefe: CEO of the Legal Practitioners' Fidelity Fund

SOUTH AFRICA

AGENDA



**LEGAL
PRACTITIONERS
FIDELITY FUND**
SOUTH AFRICA

- Overview: The role of the Legal Practitioners' Fidelity Fund
- Part A: Requirements of Section 86 of the Legal Practice Act
- Part B : Recoverable and non-recoverable bank charges

Overview: The Role of LPFF in the Legal Profession



**LEGAL
PRACTITIONERS
FIDELITY FUND**
SOUTH AFRICA

The Legal Practitioners' Fidelity Fund (LPFF) is a fidelity guarantee fund, which exists in terms of the Legal Practice Act 28 of 2014 which came into effect on 1 November 2018. The LPFF exists to support consumers of legal services as well as legal practitioners by:



protecting the consumers of legal services against loss resulting from misappropriation of trust money or property entrusted to the legal practitioners in the course of their practices



this protection encourages the public to use services provided by the legal practitioners with confidence



in terms of the Act, the LPFF must financially support legal regulation and may, in the case of legal education in the country, also support such, and we continue to do so in the interests of both the public and the legal profession



the LPFF may also provide professional indemnity insurance cover to all South African legal practices in respect of claims arising from professional negligence and this cover is provided through the Legal Practitioners' Insurance Indemnity Fund NPC (LPIIF)

Overview: The Role of LPFF in the Legal Profession



**LEGAL
PRACTITIONERS
FIDELITY FUND**
SOUTH AFRICA

The Board of the LPFF consists of the following persons:



five legal practitioners, one of whom is an advocate referred to in section 34(2)(b) of the Act



two persons, designated by the Council, who, by virtue of their qualifications, expertise and experience in the field of finance, and whose names are submitted by the Independent Regulatory Board of Auditors



two fit and proper persons designated by the Minister



the new Board was constituted in November 2020

Sources of Trust Interest Income



**LEGAL
PRACTITIONERS
FIDELITY FUND**
SOUTH AFRICA

Legal Practice Act			
	Section 86(2)	Section 86(3)	Section 86(4)
Description	Money held or received on behalf of any person	Money held or received on behalf of any person - funds in the trust account - not immediately required and no mandate to invest in a section 86(4) investment	Money for a specific client for legal services rendered
Mandate	N/A	No client mandate - at the discretion of the legal firm	Client mandate required prior to investment
Interest earned	100 % of interest vests in and is due to the Fund - S86 (5)(a)	100 % of interest vests in and is due to the Fund - S86 (5)(a)	5% of interest vests in and is due to the Fund - S86 (5)(b)
	Interest paid to the Fund monthly on or before the last day of the next succeeding calendar month less recoverable bank charges	Interest accrued in respect of any period ending on the last day of February in each year shall, on or before the last day of May in that year, be paid to the Fund less recoverable bank charges	5% of interest accrued on money deposited during the course of a calendar month or on maturity shall be paid over to the Fund on or before the last day of the next succeeding calendar month. Any bank charges will be for the client's account and must be borne by the client
VAT treatment of recoverable bank charges	If a trust account practice is VAT registered the recoverable bank charges, net of VAT can be offset against trust interest. For a trust account practice not registered for VAT, the full amount of the recoverable bank charge can be offset against trust interest	If a trust account practice is VAT registered the recoverable bank charges, net of VAT can be offset against trust interest. For a trust account practice not registered for VAT, the full amount of the recoverable bank charge can be offset against trust interest. The banks rarely levy bank charges against section 86 (3) trust investments	Not applicable
Protection by the Fund	Theft or misappropriation covered by the Fund	Theft or misappropriation covered by the Fund	Theft or misappropriation covered by the Fund
Method of payment	AMTS Manual payment	AMTS – not all banks Manual payment	Automatic sweeping and NO manual payment permitted

Public Protection

According to Section 55 of Practice Act

“Liability of Fund.—(1) The Fund is liable to reimburse persons who suffer pecuniary loss, not exceeding the amount determined by the Minister from time to time by notice in the Gazette, as a result of theft of any money or other property given in trust to a trust account practice in the course of the practice of the attorney or an advocate referred to in section 34 (2) (b) as such, if the theft is committed— (a) (b) by an attorney in that practice or advocate, or any person employed by that practice or supervised by that attorney or advocate; by an attorney or person acting as executor or administrator in the estate of a deceased person; or (c) by an attorney or person employed by that attorney who is a trustee in an insolvent estate or in any other similar capacity, excluding a curator to a financial institution in terms of the Banks Act, 1990 (Act No. 94 of 1990) or a liquidator of a mutual bank in terms of the Mutual Banks Act, 1993 (Act No. 124 of 1993).”

Challenges to Public protection in South Africa



**LEGAL
PRACTITIONERS
FIDELITY FUND**
SOUTH AFRICA

○ **Legislative challenge**

- Purpose and application of Fund.—(1) Subject to the provisions of this Act, the Fund must be utilised for the following purposes: (a) (b) (c) (d) (e) (f) Meeting the liability of the Fund referred to in section 55; paying expenses incurred in operating the Board and the Fund, including the payment of remuneration or allowances and other service benefits to employees; paying expenses incurred by the Board in investigating and establishing the validity of claims contemplated in section 55; paying all expenses and legal costs incurred by the Board for the purpose of recovering money from the persons whose wrongful conduct gave rise to the claim; refunding the costs or any portion thereof incurred by a claimant in establishing a claim or attempting to recover the whole or a portion of the claim from the person whose wrongful conduct gave rise to the claim; paying legal expenses incurred in defending a claim made against the Fund, or otherwise incurred in relation to the Fund;

Challenges to Public protection in South Africa



**LEGAL
PRACTITIONERS
FIDELITY FUND**
SOUTH AFRICA

○ Legislative challenge

paying premiums in respect of contracts of insurance entered into in terms of sections 76 and 77; (h) (i) (j) (k) (l) paying allowances to members of the Board in relation to their services or their reasonable travelling and accommodation expenses incurred in relation to the affairs of the Board and the Fund to be determined in consultation with the Council; paying fees and expenses to the Council or its structures in respect of any function performed as agents for the Fund; making an annual appropriation to the Council in terms of section 22 (1) (b); paying costs relating to the detection or prevention of theft of trust money; and paying interest in relation to section 55. (2) Subject to the provisions of this Act, the Fund may be utilised for the following purposes: (a) (b) (c) (d) refunding the bank charges or any portion thereof paid by any attorney or an advocate referred to in section 34 (2) (b) in relation to the keeping of a trust account referred to in section 86 (2) and (3); paying expenses relating to any function performed in terms of this Act; paying the audit and inspection costs or a portion thereof incurred by an attorney or advocate in relation to the obtaining of a Fidelity Fund certificate; and paying bursaries and loans to students, candidate legal practitioners and legal practitioners for the purposes of legal education and research.

Legal Profession Subvention



**LEGAL
PRACTITIONERS
FIDELITY FUND**
SOUTH AFRICA

- According to Section 22 (1) (b) : Finances, expenditure and accountability of Council.—(1) The funds of the Council consist of—
- an annual appropriation made by the Fund, the amount of which is determined by the Board after consultation with the Council.

Legal Profession Subvention

With respect to Section 76 and 77: Re-insurance.—(1) The Board may, in its discretion, enter into a contract with any person or corporation carrying on fidelity insurance business in terms of which the Fund will be indemnified to the extent and in the manner provided in that contract against liability to pay claims under this Act. (2) A contract referred to in subsection (1) must be entered into in respect of legal practitioners referred to in section 84 (1). (3) A claimant against the Board does not have any right— (a) of action against any person or corporation with whom a contract of indemnity has been entered into in terms of this section; or (b) to any money paid by the insurer in accordance with that contract. (4) Any money paid by an insurer in accordance with a contract of indemnity must be paid into the Fund for appropriation by the Board.

Legal Profession Subvention



**LEGAL
PRACTITIONERS
FIDELITY FUND**
SOUTH AFRICA

- Section 77 of the Act Provision of insurance cover and suretyships.—
(1) The Board may— (a) acquire or form and administer a public company; or (b) together with any other person or institution, establish a scheme, underwritten by a registered insurer, in order to provide insurance cover, subject to the provisions of the Short Term Insurance Act, 1998 (Act No. 53 of 1998), to legal practitioners referred to in section 84 (1) in respect of any claims which may arise from the professional conduct of those legal practitioners. (2) The Board may enter into a contract with a company or scheme referred to in subsection (1), or any company carrying on professional indemnity insurance business, for the provision of group professional indemnity insurance to legal practitioners referred to in section 84 (1) to the extent and in the manner provided in the contract.

Legal Profession Subvention



**LEGAL
PRACTITIONERS
FIDELITY FUND**
SOUTH AFRICA

- (3) The Board may enter into deeds of suretyship to the satisfaction of the Master of the High Court having jurisdiction in order to provide security on behalf of an attorney in respect of work done by that attorney as— (a) (b) (c) (d) executor in the estate of a deceased person; a trustee in an insolvent estate; a curator to the person or property in the case of a person who is unable to manage his or her own affairs; or in case of any other similar capacity, by any other person in such capacity where an attorney acts as agent for the person concerned. (4) The Board may levy premiums and fees for the provision of any insurance or security through any scheme established or public company administered by it in terms of the provisions of this Act or legislation repealed by this Act.

Additional Challenges to Public protection in South Africa



**LEGAL
PRACTITIONERS
FIDELITY FUND**
SOUTH AFRICA

- Investigation follow after the effect
- The public loses interest in prosecution after the claim is settled
- Fund income is a function of prevailing interest rate.
- Incremental claims against the Fund in both quantum and numbers.
- Scarcity of man power in regulatory environment
- Poor visibility of the Fund and its service offering to the public
- Tardiness in disciplinary processes against offending practitioners
- Meeting statutory requirement on solvency of the Fund.

THANK YOU VERY MUCH



**LEGAL
PRACTITIONERS
FIDELITY FUND**
SOUTH AFRICA

QUESTIONS