

# RISKALERT

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## RISK MANAGEMENT COLUMN

### A NOTE FROM THE EDITOR

Welcome to the first edition of the *Bulletin* in 2018. We wish all practitioners the best for 2018 and a claim free year.

As you plan for 2018, you must consider the appropriate risk management measures to be incorporated into your practice in line with your strategic plan for the year. It is imperative that you take time to assess the internal and external environment applicable to your firm, scan the environment and assess all the risks applicable within your own unique circumstances. Should any of the risks materialise, these could have an impact on the achievement of your strategy and business goals for the year. The potential impact of each risk must be assessed and appropriate response measures documented. The risks, the potential impact thereof and the response measures can be listed in a risk schedule/ matrix which may include:

- a description of the risk;
- its potential impact;
- the value of the inherent risk;
- the likelihood description;
- whether or not controls are present in the firm to address the risk;
- a description of the controls that can be implemented;
- the effectiveness of the controls;
- the value of the residual risk; and



Thomas Harban,  
Editor

- any other information you may consider relevant.

We will gladly give our assistance to any law firm requiring assistance in developing a risk matrix and risk management plan. The risk management plan must address the unique circumstances of the law firm. In order to gain the maximum value from a risk management plan, this should not be treated as 'tick-box' exercise. The risk management plan must be cascaded to all levels of staff and included in the firm's training regime. Remember that not all risks are negative and that some may have positive (upside) implications for the firm.

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#### DISCLAIMER

Please note that the Risk Alert Bulletin is intended to provide general information to practising attorneys and its contents are not intended as legal advice.



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## RISK MANAGEMENT COLUMN continued...

# RISK MANAGEMENT, PRACTICE RULES AND THE LEGAL PRACTICE ACT 28 OF 2014

The practice rules which came into operation on 1 March 2016 include a number of provisions requiring attorneys to develop and implement risk management measures in their firms. These include rule 35.13.7 which provides that:

35.13.7 A firm shall ensure:

### Internal controls

35.13.7.1. that adequate internal controls are implemented to ensure compliance with these rules and to ensure that trust funds are safeguarded; and in particular to ensure –

35.13.7.1.1 that the design of the internal controls is appropriate to address identified risks; 35.13.7.1.2 that the internal controls have been implemented as designed;

35.13.7.1.3 that the internal controls which have been implemented operate effectively throughout the period ;

35.13.7.1.4 that the effective operation of the internal controls is monitored regularly by designated persons in the firm having the appropriate authority.

Though this rule relates specifically to accounting to clients, the internal controls referred to therein can be extended to all areas of the practice. These internal controls must be documented (for example in the minimum operating standards/ standard operating procedures) and all staff in the firm should be trained thereon. Needless to say, appropriate sanctions should be put in place for non-compliance with the internal controls. Failure by a practitioner to comply with the rules of professional conduct will amount to unprofessional and/or dishonourable conduct (see rule 39).

### Engagement management

In previous editions of the *Bulletin* (accessible at <http://www.aiif.co.za/risk-management-2/risk-management/>) engagement management and the use of letters



of engagement have been extensively addressed. In preparing letters of engagement, practitioners should also have regard to section 35 (7) to (12) of the Legal Practice Act and incorporate those considerations into the letter of engagement. These include:

- On receipt of the first instruction or as soon as practically possible thereafter, providing the client with a written cost estimate notice specifying all particulars relating to the envisaged costs of the legal services (the terms of a contingency fee agreement could be included-see section 35(12))
- Verbally explaining to the client every aspect contained in the notice, as well as any relevant aspect relating to the costs of the legal services to be rendered
- The client must, in writing, agree to the envisaged legal services and the incurring of the estimated costs
- Non-compliance with section 35 constitutes misconduct

Rules 36 to 38 of the practice rules list the specific rules applicable to investment

practices. These could also be included in the letter of engagement, where applicable. It must be noted that clause 16 (e) of the AIIF policy excludes claims:

e) arising from or in connection with the provision of investment advice, the administration of any funds or taking of any deposits as contemplated in:  
(i) the Banks Act 94 of 1990;  
(ii) the Financial Advisory and Intermediary Services Act 37 of 2002;  
(iii) the Agricultural Credit Act 28 of 1996 as amended or replaced;  
(iv) any law administered by the Financial Services Board and or the South African Reserve Bank and any regulations issued thereunder;  
(v) the Medical Schemes Act 131 of 1998 as amended or replaced;

Remember that a proper record of the engagement will assist you and your clients in properly understanding your relationship and also recording your respective expectations and obligations and will assist in the event of a dispute.

## RISK MANAGEMENT RESOURCES

In response to request from practitioners, we are republishing the file audit template and the risk management self-assessment questionnaire. It will be remembered that annual completion of the risk management self-assessment questionnaire is compulsory in terms of the AIIF policy (see clauses XXIV and 23).

## RISK MANAGEMENT SELF-ASSESSMENT QUESTIONNAIRE

### IMPORTANT NOTES AND FAQ'S

*NB: If you have already completed one of these questionnaires in the year prior to notifying us of a claim/circumstance, you may submit that document and need not complete a new one.*

### WHEN MUST I COMPLETE THE QUESTIONNAIRE?

As from 1 July 2016, the questionnaire MUST BE COMPLETED AT LEAST ONCE PER YEAR. The AIIF will not provide indemnity when you have a claim, until you provide it with a copy of a questionnaire which has been completed within the past year.

You may complete the questionnaire at any time, even if your firm does not have any claims pending. In order to make it easier and save time, you might wish to complete it at the time when you complete your top-up insurance proposal or Fidelity Fund Certificate application. That way, you will have much of

the information at your fingertips.)

### WHERE DO I GET A COPY OF THE QUESTIONNAIRE?

1. You can complete a hard copy and send it to us. (You can obtain a copy from the AIIF or download it from our website ([www.aiif.co.za](http://www.aiif.co.za));
2. You can complete it online ([www.aiif.co.za](http://www.aiif.co.za)).

### WHAT IS EXPECTED OF MY FIRM?

1. Every practice MUST properly complete this assessment every year and must submit it together with the claim form to the AIIF before indemnity can be provided.
2. It must be completed by a SENIOR PARTNER/SOLE PRACTITIONER/RISK and/or COMPLIANCE OFFICER or MANAGER/CHAIR OF THE RISK COMMITTEE.
3. When answering certain ques-

tions, you will come across the following request:

*"If no, see Risk Management Tips on Website [www.aiif.co.za](http://www.aiif.co.za)." If you do not have access to the internet and would like a copy of these tips, we can send you one by e-mail on request.*

### SOME OF THE QUESTIONS DON'T REALLY APPLY TO ME AS I AM A SINGLE PRACTITIONER WITH NO STAFF/FEW STAFF. WHAT SHOULD I DO?

The questionnaire is aimed at practices of all sizes and types. Inevitably, there will be some questions that are not applicable to your practice. If that is the case, by all means answer "n/a".

NB: If you have already completed one of these questionnaires in the year prior to notifying us of a claim/circumstance, you may submit that document and need not complete a new one.

*Please read the following before the self-assessment is done:*

## RISK MANAGEMENT RESOURCES continued...

### WHY DO YOU WANT THE INFORMATION?

The information which we ask for in this assessment will be treated as strictly confidential. It will not be disclosed to any other person, without your practice's WRITTEN permission. It will also not be used by the AIIF in any way to affect your practice's claims records or individual cover. An analysis of information and trends revealed by your answers may be used by the AIIF for GENERAL underwriting and risk management purposes. I elaborate below:

- To assist the insurer when setting and structuring deductibles and limits of indemnity for the profession as a whole, deciding on policy exclusions, conditions and possible premium setting.
- To raise awareness about risk management and to get practitioners thinking about risk management tools/procedures for their practices.
- To obtain relevant and usable general information and statistics about workloads, staff numbers, types of matters dealt with, stress levels, risk management/practice management and claims history.
- To gain insight into which risk management/practice management procedures are in place/need to be in place in practices.

- To assist in the selection and formulation of the most effective risk management interventions.
- To assist in formulating a strategy to improve risk management/practice management at all levels.

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## Practice Self-Assessment Form

**THIS ASSESSMENT MUST BE COMPLETED ANNUALLY BY ONE OF THE FOLLOWING:**  
**A SENIOR PARTNER/SOLE PRACTITIONER/RISK MANAGER/COMPLIANCE OFFICER/CHAIR OF THE RISK COMMITTEE**

### SECTION 1

#### 1. General practice information:

- I. Name under which practice is conducted
- II. Practice number
- III. Law Society membership
- IV. Is your practice a Sole Practice/Partnership/Incorporated Company?
- V. Have there been any significant changes to the constitution of your firm during the past three years? YES/NO

If yes, please provide details of these changes

#### 2. Principal office details:

- I. Address and postal code
- II. Telephone
- III. Email
- IV. Docex
- V. Website
- VI. Details of any other physical address at which the practice will be carried on and name of practitioner in direct control

#### 3. Contact details of person completing this assessment.

- I. Capacity: Select one of the following: Senior Partner/Risk Manager/Chair of Risk Committee/Compliance Officer:
- II. Telephone
- III. Cell phone
- IV. E-mail address

#### 4. Composition of the practice.

Number of:

- I. Partners/directors
  - II. Associates
  - III. Candidate Attorneys
  - IV. Paralegals
  - V. Other staff including secretaries
  - VI. Total
- VII. DOES YOUR PRACTICE HAVE ANY LEGAL PROCESS OUTSOURCING (LPO) ARRANGEMENTS WITH OFFSHORE COMPANIES OR FIRMS OF ATTORNEYS?**  
YES/NO

If yes, please provide details of these arrangements and the



## RISK MANAGEMENT RESOURCES continued...

numbers of professional staff and support staff involved

VIII.(For practices with fewer than 10 directors/partners) in the table below, list all partners/directors by name, together with their number of years in practice and their areas of specialisation.

Partner/ director's name	Partner's practice no	Years in practice	Area of specialisation

5. For the past financial year, please provide approximate percentages of total fees earned in the following categories of legal work:

- i. Conveyancing
- ii. Commercial
- iii. Criminal
- iv. Debt collection
- v. Estates – trustees executors administrators
- vi. Insurance
- vii. Investments
- viii. Liquidations
- ix. Marine
- x. Matrimonial
- xi. Patents & Trademarks
- xii. Personal injury MVA
- xiii. Medical malpractice

xiv. General litigation

xv. Legal Process Outsourcing (LPO)

xvi. Other (please specify any type of work that makes up a significant percentage of your fees)

## SECTION 2

### Risk Management Information

6. Does your practice have a specific individual responsible for risk management and/or quality control within the practice? YES/NO

If this is someone other than you, please give name, position, qualifications and contact details. That person should complete the Risk Management Section below, or assist you in completing it.

7. When engaging new employees, does your practice always require and check references carefully? YES/NO/n/a

7.1 Do you check for unexplained gaps in employment history? YES/NO/n/a

7.2 Do you include criminal checks? YES/NO/n/a

8. Does your practice have in place Minimum Operating Standards (MOS) or a uniform set of standards of best practice for staff? YES/NO

If no, see Risk Management Tips on Website [www.aiif.co.za](http://www.aiif.co.za)

If yes:

I. are they (choose the correct one) for professional staff only/administrative staff only/both professional and administrative staff?

II. are they reduced to writing and available to staff in either electronic or hard copy? YES/NO

III. do you have a system in place to measure and ensure compliance with your MOS? YES/NO

9. Do you know your clients? Do you have systems and checks in place to ensure that FICA requirements are always followed before any work is done or any deposit is taken from a prospective client or money is paid out to a third party? YES/NO

If no, see The Financial Intelligence Centre Act 38 of 2001/FIC website [www.fic.gov.za/LSSA](http://www.fic.gov.za/LSSA) website and Risk Management Tips on AIIF Website [www.aiif.co.za](http://www.aiif.co.za)

10. Many claims arise out of practices having taken on “problem” clients. Does your practice screen prospective clients before taking on a mandate? YES/NO

If no, see Risk Management Tips on Website [www.aiif.co.za](http://www.aiif.co.za)

If yes,

I. does your practice have any uniform system in place for this? YES/NO

II. does this include a conflict of interest check? YES/NO

## RISK MANAGEMENT RESOURCES continued...

- III. does this include any checks whether other attorneys have previously been instructed on respect of the same matter? YES/NO
- IV. does this include obtaining comprehensive contact details for the client and family or employers? YES/NO (see *Mlenzana v Goodricke & Franklin Inc* 2012 (2) SA 433 FB)
11. Claims sometimes arise out of practitioners' having acted for family/ friends/ acquaintances. Does your practice have any policy that regulates acting for them? YES/NO
12. Does your practice have a policy that formal Letters of Engagement must be signed by clients? YES/NO
- If yes:
- I. Is your policy strictly enforced? YES/NO
- II. Does the format ensure that, prior to taking on the mandate, client's requirements are clearly identified and can be met by your practice? YES/NO
- III. Does it deal fully with your billing rates and policies? YES/NO
- IV. Does your policy include amending the letter of engagement as circumstances change? YES/NO
- V. Does your policy include the use of letters of non-engagement? ( letters sent to prospective clients confirming that you have not accepted the mandate eg. where there is a conflict) YES/NO
- If no, see Risk Management Tips - Letters of Engagement on website [www.aiif.co.za](http://www.aiif.co.za)
13. Does your practice use Checklists for matters where appropriate? YES/NO
14. Does your practice have a policy that requires staff to draw up a Working Plan (plan on steps to be taken to implement and manage their planned strategy) for their matters? YES/NO
- If yes:
- does the policy stipulate that the Working Plan should be updated as circumstances change? YES/NO
  - does the policy provide that the Working plan should be communicated to client? YES/NO
- If no, see Risk Management Tips on Website [www.aiif.co.za](http://www.aiif.co.za)
- 15.
- Is all advice confirmed in writing? YES/NO
  - Are all instructions confirmed in writing? YES/NO
- If no, see Risk Management Tips on Website [www.aiif.co.za](http://www.aiif.co.za)
16. Claims can arise out of matters having been transferred from one attorney to another (either within or from outside the practice.) Does your practice have a policy dealing with this situation? YES/NO
- If yes, briefly describe your system
- If no, see Risk Management Tips on Website [www.aiif.co.za](http://www.aiif.co.za)
17. Claims against practitioners sometimes arise out of ineffective delegation. Does your practice have policies in place with regard to delegation? YES/NO/n/a
- If yes, describe them
- If no, see Risk Management Tips on Website
18. Many claims against practitioners arise out of a lack of or poor supervision.
- 18.1 Does your practice have policies in place with regard to the supervision of all staff including attorneys, support staff and candidate attorneys? YES/NO/n/a
- If yes, describe them
- If no, see Risk Management Tips on Website
- 18.2 Do you allow candidate attorneys, paralegals or newly-qualified attorneys to handle their own matters without close supervision? YES/NO/n/a

## RISK MANAGEMENT RESOURCES continued...

18.3 Do they have authority to “sign-off” advice to client? YES/NO/n/a

If yes, is the advice checked by a partner/director before it is conveyed to client? YES/NO/n/a

18.4 Do you impose fee targets on your candidate attorneys? YES/NO/n/a

If yes, are you satisfied that they are able to deal with the personal pressure of these targets? YES/NO/n/a

18.5 Does your firm have a substantial debt collection practice? YES/NO

If so, is it run by a director/partner/associate with a minimum of 2 years’ experience? YES/NO

If not, is it supervised by a director/partner/associate with a minimum of 2 years’ experience? YES/NO

If yes, specify whether the matters are run by a candidate attorney / paralegal.

19. Does your practice have a policy in place with regard to the drafting of documents? YES/NO

If yes, describe it

*If no, see Risk Management Tips on Website*

20. Does your practice have a policy in place for training of;

- professional staff? YES/NO

- support staff? YES/NO

If yes, does it include the following?

- Vocational (including legal developments) YES/NO
- Risk management YES/NO
- Ethical YES/NO
- Best business practice YES/NO
- Basic legal procedures YES/NO
- Your firm’s ethos YES/NO
- Quality standards YES/NO
- Client care YES/NO
- Fraud and money laundering YES/NO
- Other (PLEASE SPECIFY)

21. Are partners, directors, professional and support staff trained to be made aware of :

- your risk management structure and procedures, YES/NO/n/a
- the chain of responsibility and authority YES/NO/n/a
- their individual responsibilities to report all issues and concerns to the responsible person? YES/No/n/a

22. 1 Many claims arise out of the failure of or non-existence of a diary system. Does your practice have an effective diary system FOR FILES in place? YES/NO

If yes, does it include;

- the use of a dual system YES/NO

- the use of a centralised system YES/NO

- the use of checks and balances to ensure that diarised matters are attended to YES/NO

- the use of Prescription Alert YES/NO

Briefly describe your system:

22.2 Does your practice have an effective diary system FOR COURT AND IMPORTANT DATES in place? YES/NO

If yes, describe it

23. Does your practice have a system of client file audits and reviews? YES/NO

If yes, do you use it effectively for:

- risk management YES/NO
- performance assessment YES/NO

Describe your system briefly

*If no, see Risk Management Tips on Website and a practical guide in Risk Alert Bulletin (May) 2/2015 p 4 or the AIIF website: <http://www.aiif.co.za/file-audits>*

24. Does your practice have regular meetings of professional staff to discuss problem matters? YES/NO/n/a

25. Does your practice have effective policies on uniform file order? YES/NO

If yes, describe them

*If no, see Risk Management Tips on Website*

## RISK MANAGEMENT RESOURCES continued...

25.2 Does your practice have policies on file storage and retrieval? (Procedures to ensure that files are not lost or misplaced or overlooked) `

If yes, describe them

26. A director of a large practice in Pretoria rightly believes that practices should promote the important principle that IF IT IS NOT IN WRITING IT IS NOT DONE!

26.1 Many claims cannot be successfully defended because of the absence of relevant file notes. Does your practice have a uniform policy on the making of file notes? YES/NO

If no, see Risk Management Tips on Website

26.2 Does your staff record all telephone discussions in writing? YES/NO/n/a

If no, see Risk Management Tips on Website

27. Does your practice have a system in place for checking all relevant incoming correspondence by a partner/director, principal or departmental head? YES/NO/n/a

If no, see Risk Management Tips on Website

28. Do you have a formal file closing procedure? YES/NO

If yes:

- does it include a formal

policy for closing/ending the mandate? YES/NO

- does it include a termination of mandate letter? YES/NO

If no, see Risk Management Tips on Website

29. Do you have effective and uniform billing policies and procedures in place? YES/NO

30. Are all your policies reduced to writing and available to staff in either electronic or hard copy? YES/NO /n/a

31. Do you have effective checks and balances in place to ensure that your policies and procedures are being complied with? YES/NO/n/a

32. Do you have a client complaints procedure in place? YES/NO

33. Do you have a fraud prevention program and policy in place? YES/NO

34. Do you have a policy that monitors and ensures control over your professionals' workloads? YES/NO/n/a

Have any actions been taken to prevent the recurrence of the claims situations that arose as set out above? YES/NO  
If yes, please elaborate

## SECTION 4

### Insurance Information

1. How did you find out about the AIIF and its functions?

2. Do you believe that the existence of the AIIF and its functions is adequately communicated to the profession? YES/NO

If no, please suggest ways in which these could become better known to the profession.

3. Do you make use of any of the AIIF's risk management interventions? YES/NO

If yes, which ones? Risk Alert Bulletin/Prescription Alert/Website/Other

4. Are there any other interventions that you would find helpful in your practice? YES/NO

If yes, please discuss

NAME :

CAPACITY:

SIGNATURE:

DATE OF COMPLETION:

## SECTION 3

### Claims Information

Please insert the required claims information into the table below:

Insurance Year	No of claims/circs notified	No of claims settled	No of claims withdrawn	No of claims still not resolved