

RISK ALERT

APRIL 2020 NO 2/2020

IN THIS EDITION

RISK MANAGEMENT COLUMN

- The coronavirus pandemic: Risk management considerations for South African legal practitioners

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RISK MANAGEMENT COLUMN

THE CORONAVIRUS PANDEMIC: RISK MANAGEMENT CONSIDERATIONS FOR SOUTH AFRICAN LEGAL PRACTITIONERS

**CORONA VIRUS OUTBREAK 24-HOUR
HOTLINE NUMBER: 0800 029 999**

Legal Practitioners' Indemnity Insurance Fund: Thomas Harban, General Manager, 1256 Heuwel Avenue, Centurion 0127 • PO Box 12189, Die Hoewes 0163 • Docex 24, Centurion • Tel: 012 622 3900 Website: www.lpiif.co.za • Twitter handle: @AIIFZA

Prescription Alert, 2nd Floor, Waalburg Building, 28 Wale Street, Cape Town 8001 • PO Box 3062, Cape Town, 8000, South Africa, Docex 149 • Tel: (021) 422 2830 • Fax: (021) 422 2990 E-mail: alert@aiif.co.za • Website: www.lpiif.co.za

Legal Practitioners' Fidelity Fund, 5th Floor, Waalburg Building, 28 Wale Street, Cape Town 8001 • PO Box 3062, Cape Town, 8000, South Africa, Docex 154 • Tel: (021) 424 5351 • Fax: (021) 423 4819 E-mail: attorneys@fidfund.co.za • Website: www.fidfund.co.za

DISCLAIMER

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

Introduction

In the first quarter of 2020, the unrivalled focal point of international interest, and the leading cause of worldwide fear and anxiety, has been the rapid spread of the coronavirus. The pandemic arises as the legal profession is still trying to grapple with the new risks - such as cybercrime - which have emerged in the past decade. In this article I will:

- attempt to show the potential risk that the pandemic poses for the legal profession in South Africa (SA);
- highlight the measures that other jurisdictions have implemented in order to ensure that the administration of justice continues - even on a limited scale - in the face of the pandemic; and
- suggest measures that legal practices can consider implementing in order to deal with this new risk.

On 11 March 2020 the Legal Practice Council (the LPC) issued an advisory which reads: 'Coronavirus disease (COVID-19) In light of the Coronavirus outbreak, the Legal Practice Council



Thomas Harban,
Editor
and General Manager
LPIIF, Centurion
Email: thomas.harban@lpiif.co.za
Telephone: (012) 622 3928

(LPC) urges all legal practitioners planning to attend international conferences or workshops and also planning to welcome visitors from around the country and globally to ensure that they follow all the guidelines that have been set out by the Department of Health (DOH), the National Institute of Communicable



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SOUTH AFRICA

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Diseases (NICD) and the World Health Organisation.

The DOH has confirmed seven cases of Coronavirus in South Africa to date and it has given assurance that the country has adequate resources to deal with the outbreak and has called for calm.

Reliable, credible information on Coronavirus is available from the WHO website and social media pages, the NICD website and social media pages and the Department of Health website and Social Media Pages.' (see <https://lpc.org.za/> accessed 12-03-2020)

It is apposite to make a few general comments about the coronavirus before dealing with its potential risk impact on legal practices in SA.

The SA Department of Health and other organisations in the country have published a myriad of information on the coronavirus. As the impact and severity of the pandemic grow, so the information is being constantly updated. Regard can be had to the dedicated pages on the websites of the Department of Health (www.health.gov.za, accessed 10-03-2020) and the World Health Organization (WHO) (www.who.int accessed 10-03-2020) for extensive information on the pandemic. The coronavirus is scientifically known as COVID-19. The WHO has declared the pandemic to be a Public Health Emergency of International Concern (PHEIC) (Andrew McDonald, 'Coronavirus and Bushfires Rekindle Interest in "Force Majeure"', <https://insight.thomsonreuters.com.au>, accessed 10-03-2020)).

The need to act

As the principal in your practice, like any other risk, the responsibility will fall on you to ensure that the practice has an appropriate risk management plan in place to deal with the effects of the pandemic. Apathy in the face of the pandemic is not an option. The required risk management plan will require leadership from the top. The pandemic introduces risks for legal practices in a number of ways.

A primary concern is that guarding against infection by practitioners, their staff, clients, their respective families and the public at large. Coronavirus is primarily a worldwide public health issue. Appropriate support will have to be given to those already infected or affected by the pandemic. A secondary concern is impact on the administration of justice and commercial activity, in general, face with the potential for significant disruption over an extended period. It cannot be business as usual. These risks must be addressed. The nature and extent of the risks will differ from one legal practice to another. With the impact on the movement and the potential health risk to themselves, their staff, clients and other stakeholders, legal practitioners will need to take steps to assess and address the potential risks in their individual practices, as they will need to do in order to safeguard themselves from infection.

There may be individual SA law firms, and their risk advisors, who have been diligent in updating their business continuity management and risk response plans in order to manage the outbreak and spread of the pandemic. The disruptions (actual and potential) that the coronavirus causes to commercial activity, travel and every other aspect of human activity will affect the legal profession as well. In developing a risk management framework, legal practitioners must take cognisance of the internal and external environments in which their practices are conducted. It submitted that the coronavirus pandemic is a risk that legal practitioners in SA must consider in the assessment of the risks facing their practices. The potential impact of the pandemic on legal practice may, in certain circumstances, be severe in the event that there is no appropriate risk response plan.

It is trite that the coronavirus pandemic will affect almost every facet of human activity in one way or another. Travel bans and/or restrictions are already in place in numerous jurisdictions and

a number of major public gatherings and sporting events around the world have either been banned, cancelled, postponed or the attendance of spectators has been prohibited. This has extended to conferences aimed at the legal profession. For example, abroad, the International Bar Association (IBA) has postponed 8 conferences scheduled for Europe and Asia (see www.ibanet.org, accessed 10-03-2020) and, domestically, the board of The International Association of Restructuring, Insolvency and Bankruptcy Professionals (Insol International) announced the cancellation of a conference scheduled for 17 to 19 March 2020 at the Cape Town International Convention Centre (see www.news24.com, accessed 10-03-2020) at which lawyers and accountants are reported to have been the expected delegates. The content of the advisory issued by the LPC speaks for itself.

Several reports give an analysis of the negative impact the coronavirus has had on the global economy. See, for example:

- 'How the coronavirus outbreak might affect your business contracts: Legal considerations that businesses should bear in mind when faced with common contractual issues' see <https://home.kpmg/cn/en/home/insights/2020/02> accessed 10-03-2020.
- 'Why the Coronavirus Could Threaten the U.S. Economy Even More Than China's' www.nytimes.com, accessed 10-03-2020.
- The World Economic Forum's report: 'The economic effects of COVID-19 around the world' www.weforum.org, accessed 10-03-2020.
- The Organisation for Economic Co-operation and Development's Interim Economic Assessment: 'Coronavirus: The world economy at risk' www.oecd.org, accessed 10-03-2020.

Reports on the impact on the SA economy are available at www.aa.com and www.pwc.co.za, accessed 10-03-2020.

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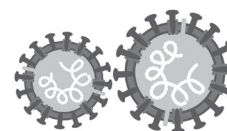
The potential impact on the legal profession

Though the full impact of the pandemic on the legal profession will only become known with time, a few general comments and observations can be made.

The vast majority of legal practitioners in SA are sole practitioners. Some of these practices operate in economically depressed geographical areas and do not have access to the resources and infrastructure required to deal with a pandemic of the magnitude of the coronavirus. In the unfortunate event that a sole practitioner is affected by the coronavirus and is thus unable to practice for an extended period, this will have major consequences for the continued existence of the legal practice, its employees and clients. Small practices may offer legal services in areas such as criminal law and litigation which, by their nature, necessitate that there be regular face-to-face contact with clients and other practitioners and they also spend a lot of time in the courts. Small practices may also not have access to the resources to manage the risks posed by the pandemic or to survive after an extended period of disruption.

With the pandemic having had a significant impact on international organisations, governments, corporate entities of all sizes and locations and private citizens, so are legal practices affected as part of the global community. After all, at the core of any legal practice are human beings who are part of the broader global community. The pandemic will, in some way or another, affect legal practices and all other stakeholders - including the legal practitioners, their staff, clients, service providers, the courts and all other aspects of the administration of justice and the civil service. In the same way that the general population cannot go about its social and economic activity in the way that it did prior to the outbreak of the pandemic, similarly legal practitioners cannot go

CORONAVIRUS 2019-nCoV



SYMPTOMS



FEVER



COUGH



SHORTNESS OF BREATH

HOW IT SPREADS



SYMPTOMS MAY SHOW UP 2-14 DAYS LATER



THERE IS NO VACCINE YET

PREVENTION



WASH HANDS WITH WATER AND SOAP/SANITIZER, AT LEAST 20 SECONDS



AVOID CONTACT WITH SICK PEOPLE



DON'T TOUCH EYES, NOSE OR MOUTH WITH UNWASHED HANDS



DON'T EAT RAW FOOD, THOROUGHLY COOK MEAT AND EGGS

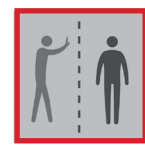


AVOID CONTACT WITH ANIMALS AND ANIMAL PRODUCTS

IF YOU ARE INFECTED



STAY AT HOME



AVOID CONTACT WITH OTHERS



COVER YOUR NOSE AND MOUTH WHEN SNEEZING



KEEP OBJECTS AND SURFACES CLEAN



WEAR A SURGICAL MASK

TRAVEL ADVICE



AVOID TRAVELLING TO AFFECTED AREAS UNLESS NECESSARY



MAKE SURE YOU HAVE ALL NECESSARY VACCINATIONS AND TRAVEL MEDICATION



SEEK ADVICE FROM YOUR HEALTHCARE PROVIDER



DON'T TRAVEL IF YOU HAVE FEVER AND COUGH



IF YOU BECOME SICK WHILE TRAVELLING SEEK MEDICAL CARE IMMEDIATELY

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about the pursuit of legal practice as if they are immune to being infected or affected by it.

The areas of concern raised by practitioners globally are that the pandemic will affect how they conduct their legal practices on a day to day basis. There are a number of reports available in the internet on the closure by some firms of their offices in some jurisdictions, travel bans within firms as well as firms making provision for staff to work remotely. The firms which have reported on their contingency plans are mainly large commercial firms practising in advanced economies. Some of the areas of practice that legal practitioners are reported to have highlighted (see the checklist from the Law Firm Management Committee below) as being most affected by the outbreak of the pandemic are- meeting the submission deadlines for the filing of documents with the courts and other regulatory bodies (such as the US Securities and Exchange Commission), merger and acquisition activities and criminal defence work. Failing to meet a deadline for the filing of documents can have serious consequences for the practitioners and their clients alike- the prescription of a claim in the hands of a practitioner or a fine imposed on a client for a failure by the legal practitioner to file documents on time can lead to damages in a substantial amount being claimed from the practitioner.

Lessons from other jurisdictions

In considering the development of appropriate response to the pandemic, the legal profession in SA can take some learnings from the measures developed in other jurisdictions to ensure that the judicial and administrative machinery still functions in the face of the pandemic. Admittedly, some of the other jurisdictions affected by the pandemic have more developed economies than SA, significant technological infrastructure and operate in a very different constitutional structure and

administration of justice framework to that of SA. SA also has unique socio-economic challenges which may exacerbate the impact of the pandemic. This, however, does not detract from the fact that we can take some learnings from each of those jurisdictions and adapt them to the domestic conditions. I submit that it would be advisable for the SA government, in developing a comprehensive response plan to the pandemic, to take proactive steps to address the manner in which the administration of justice and other services - such as those provided by the respective offices of the Master of the High Court, the Registrar of Deeds and the magistrate's courts- will continue to be provided in the event that the pandemic reaches the proportions that it has reached in other jurisdictions. Many citizens utilise these services daily and an extended closure will have a huge negative impact on them.

The administration of justice and the functioning of the court system is one area where the pandemic could potentially impact the public at large, in general, and, legal practitioners particularly. After all, it is in this area where members of the public and their legal practitioners rely on the state to provide the judicial and administrative machinery to have disputes adjudicated. Chapter 8 of the Constitution sets out the provisions relating to courts and the administration of justice. The constitutionally enshrined rights include those of access to courts, the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum (s 34 of the Constitution) and the right to just administrative action (s 33 of the Constitution). Alternate dispute resolution measures, arbitration and mediation may not be readily accessible, affordable or appropriate for certain disputes. The question regarding whether the pandemic could be regarded as a natural disaster (s 37(1)(a) of the Constitution) justifying

the imposition of a state of emergency (s 37 of the Constitution) would, in my view, not arise in the current circumstances in SA. We also need to guard against being alarmist and/or speculative in our approach to the pandemic.

Other jurisdictions have ensured that judicial services - though on a limited scale in some instances - continue to be provided in the face of the pandemic.

In China, the epicentre of the pandemic, for example, the manner in which litigation and court appearances are conducted has been adapted to allow the litigation process to proceed without face-to-face appearances in courts. The Supreme People's Court of the People's Republic of China has issued guidance for the court hearings and judgement enforcement amid the pandemic (see <http://english.court.gov.cn>, accessed 10-03-2020). The measures include appearance by the use of technology, including video channels, and the proactive guidance of litigants to settle their disputes through mediation (see 'Chinese courts go on cloud amid virus epidemic' <http://english.court.gov.cn> and 'Courts make use of online platforms amid epidemic' <http://english.court.gov.cn>, accessed 10-03-2020).

In Hong Kong, the judiciary announced a 'General Adjourned Period' (GAP) which is expected to cease on 22 March 2020. (The announcement by the judiciary was issued on 6 March 2020 and is accessible at www.judiciary.hk. See also the announcement issued on 27 February 2020 accessible at www.info.gov.hk.) The lifting of the GAP will see a staggered and progressive resumption of proceedings in courts and registries. Some measures, including access control and temperature screening, will remain in place while in the interests of public health.

The reports on the measures taken in other jurisdictions include appearances by video link, firms temporarily closing their offices in some affected locations or allowing staff to work remotely (see www.law.com, accessed

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10-03-2020). The COVID-19 Emergency Bill in the United Kingdom aims to allow court proceedings to be conducted via telephone or video links (see 'Coronavirus: Emergency bill planned to extend court video links' at www.lawgazette.co.uk, accessed 10/03/2020). Similar legislative, executive and judicial (court management) measures have been announced in other jurisdictions as well.

The absence of appropriate technology and resources in many parts of SA will create a challenge in respect of the implementation of remote participation in court proceedings. However, this should not deter the exploration of solutions to the potential disruption of the court system.

The role of the regulators

One of the most important stakeholders in the legal profession is the regulators. This is the LPC in the SA context. Members of the profession will increasingly look to the regulator for guidance on how to respond to the effects of the pandemic on the practice of law. The Department of Justice will also be required to play a key role in developing and implementing any solutions. The regulators of the legal profession in other jurisdictions have also had to take steps to deal with the impact of the pandemic on the administration of justice and also on the functions falling within their regulatory mandate. The Law Society of New South Wales has, for example, had to consider its responses to the pandemic, including postponing the 31 March 2020 due date for the completion of Mandatory Continuing Professional Development (CPD) as face-to-face interaction may not be possible. That Law Society has also announced that it is 'considering what options are available and further information will be communicated to the profession as it comes to hand' (see www.lawsociety.com.au, accessed 10/03/2020). We will learn in time whether the LPC will postpone the admission, conveying and notarial exams. The pan-

demie also has the potential to affect the training period of candidate legal practitioners. After all, we do not know how much longer the world is still going to be faced with the pandemic. Legal practitioners will have to keep a look out for communication, if any, from the LPC and/or the Department of Justice in this regard.

The Prudential Authority is located within the South African Reserve Bank structure and has certain regulatory functions over the insurance industry in terms of the Twin Peaks regulatory model (see ch 3 of the Financial Sector Conduct Act 9 of 2017). The Prudential Authority has issued a questionnaire that was distributed to insurers

in relation to the coronavirus. In my view, with a few amendments, a similar questionnaire should form the basis of an assessment of the readiness of legal practices in SA to deal with the pandemic and to focus the attention of the legal practitioners on the potential risk within their practices. I suggest that, as part of the self-assessment of their readiness for the coronavirus risk, legal practitioners should complete the questions posed in the questionnaire (but not for submission to Prudential Authority!) and to assess the level of confidence they then have in their readiness to deal with this new risk. The questionnaire issued by the Prudential Authority is as follows:

COVID-19 (CORONAVIRUS) QUESTIONS

Entity name:	
Has your institution [legal practice] conducted a review or put something in place in relation to COVID-19	
Do you have a pandemic plan that has been developed and is in place? Has your pandemic plan been tested? Have any portions of your pandemic plan been triggered?	
How does your pandemic plan fit in with your Business Continuity Planning?	
At what level are you monitoring and how are you monitoring the situation at the moment?	
Have you considered a possible step up process if this had to be reported in your environment, ie, have you reflected on scalability in terms of 1 reported case, versus more?	
Consideration of geographical location, i.e. head office, [branch office/s], call centre or offices elsewhere in the country and the concentration of staff?	
Third party reliance - interactions/engagements/critical discussions/material service/ outsource	

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The proactive approach taken by the Prudential Authority in assessing (even on a limited basis) the position of the insurers in respect of the coronavirus is commendable for several reasons, including that:

- (i) the regulator of an industry (insurance) which plays a crucial role in the financial and risk transfer sectors is focusing the attention of the regulated entities (insurers) on the risk/s posed by the coronavirus; and
- (ii) the questions posed will, it is hoped, lead to insurers who have not developed mature risk management plans to deal with the risk posed by the pandemic to take action urgently and put the necessary measures in place.

International Bar Association (IBA) recommendations

The Law Firm Management Committee of the IBA has published a coronavirus/COVID-19 Checklist for Law Firms (see www.ibanet.org, accessed 10/03/2020). This checklist is also very useful and is well worth quoting in full. It reads:

‘The following is a simple checklist to stimulate thought and action. All law firms will be affected differently and need to consider their own plan and strategy.

1 Take immediate action to determine whether any staff have been to an affected area or spent time with people from an affected area. In cases of doubt, any such individuals should be quarantined – probably for at least 14 days. This will probably mean working from home as a minimum. Review the advice from your local health authorities.

2 Consider the health and welfare of your staff both physically and mentally. What additional measures should be taken, for example, sanitisers within the office and the provision of masks. Lead on this issue to maintain the confidence of staff that the

law firm is on top of the issue.

3 Develop a strategy around visitors (external and from other offices). Are you going to close to visitors? Are you going to interrogate visitors to see where they have recently visited and/or people they have been in contact with? Are you going to take the temperature of visitors? It is also important to track visitors more carefully than usual in case they need to be contacted. Will you shake hands?

4 Immediately check your business continuity plan and in particular, make sure you have up to date contact details of all staff. If you urgently have to move to home working you need to know where your staff are. Is your IT system ready for this?

5 Events. Consider whether to postpone events or to hold them in a different manner, for example, switch to webinar. Show thought leadership on this. Do not wait for your guests simply not to turn up. Is there PR around this that needs managing?

6 Consider, and more importantly, talk to and listen to your clients. Approach to client meetings; do they want to meet? What are the issues they are facing given the virus and how can you help them? Issues might include:

- o Supply chain disruption
- o *Force majeure* events
- o M&A opportunity
- o Distressed situations being both a threat and an opportunity
- o Stock Exchange notifications
- o Employment issues, such as enforced ‘holidays’

7 Do you need to notify your insurers?

8 Initiate discussions with regulators/judiciary about court hearings and other procedures.

9 Urgently establish a travel policy. Are you going to permit people to continue travelling or impose restrictions on where they can travel?

10 How will you make home working work? Will you keep the office open? Can everyone work from

home or do you need some people in the office? How are you going to persuade people to come into the office, for example, split teams on alternate days? Do you need to address any employment law issues? Communication and training. How to move to ‘business as usual’ as soon as possible – do you need additional measures, such as variable hours.

11 If schools close, will this mean your staff will stay at home to look after children? Are there alternatives?

12 Many people are concerned about public transport. Can you provide alternatives?’

Any information that can empower legal practitioners to deal with the risk is welcomed. The issues raised in the checklist above overlap with those raised in several articles published on the impact of the coronavirus on the legal profession.

Suggested risk management measures

A useful starting point for legal practitioners is to get as much credible information as possible on the virus and its potential impact. All members of the firm should also be educated on the pandemic, the risks it poses and the measures that can be taken to avoid or mitigate the risk of infection.

The team at the Risk Management Monitor suggests that the following measures be implemented to protect the workforce and help ensure its continued productivity (see www.riskmanagementmonitor.com, accessed 11/03/2020):

- ‘Establish a strategy that enables employees to continue to function without endangering them.
- Have a plan to isolate employees should the threat of possible infection arise.
- Ensure employees can effectively work from home.
- Verify that you have the tools, technology, capacity, and securi-

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ty measures in place to support a large remote workforce.

- Review your HR policies to ensure employees will not be personally impacted if they must be quarantined for an extended period and modify any policies as appropriate to give greater flexibility to normal working arrangements.
- Determine your priorities and the minimum staffing requirements to support these priorities, in case you need to function with a significantly reduced workforce.
- Identify key employees and ensure other staff members have received appropriate training to comprehensively cover their absence.
- Create a communications plan that includes providing employees and other stakeholders with regular situation updates as well as actions taken'.

Legal practitioners can also consider the following suggested measures:

- Reviewing their risk management plans in order to ensure that the risks associated with the coronavirus are properly considered and documented. The likelihood, potential impact and severity of the risk materialising must be taken into account. There are four risk treatment options - avoidance, reduction/ mitigation, sharing/ transferring the risk (such as the purchase of insurance- see below) or retaining the risk (and budgeting for it). Considering the nature of the pandemic, its rapid expansion and its widespread footprint, very strong controls will need to be put in place before a firm can confidently state that it has avoided the risk.
- Introducing a system where members of the firm can work remotely - this may require an investment in appropriate IT infrastructure (if such capabilities are not in place already). Where members of the firm are working remotely, it must

be remembered that appropriate cyber security measures must be put in place as there may be additional vulnerability to cyber risks.

- Updating the business continuity management plan of the legal practice to include the effects of the pandemic as a risk. The members of the firm must be trained on the business continuity management plan, what appropriate steps to taken be are in the event that the plan has to be implemented, and to whom the occurrence of risk trigger events are to be reported.
- Updating their resource succession plans and empowering staff so that a resource is available to step in when any key person is not available. Implementing a system where the critical resources and functionaries in the firm are shadowed by another staff member will also assist with the transfer of critical skills and avoid the risk that there is a concentration of information (institutional memory, in particular) in a single person.
- Implementing measures to ensure the safety of their employees. What will the firm do in the event that an employee or the practitioner is infected by the virus? What measures are in place in respect of quarantining staff who may have been exposed to the virus?
- Developing and implementing an appropriate communication plan. All communication channels may need to be used, including social media. If deemed necessary (and with the necessary budget), the firm may procure the services of a professional public relations company
- The procurement of appropriate insurance cover.

Insurance cover

The pandemic has the potential to cause a number of different losses resulting from different underlying causes. Until the claims are report-

ed to insurers and the information analysed, we cannot say with certainty which risks will be triggered and which will be covered. There are a wide variety of potential risks that could materialise.

Consider all the insurance policies that you have in place, what is covered and the limits of such cover under each policy. Ensure that the policies are up-to-date and are readily accessible to more than one responsible person in the firm in case you are not available. Make sure that all the required people are made aware of the existence of the policies.

Obtain expert advice from a broker, underwriter or risk advisor to ensure that you have a proper understanding of what policies you have in place, which risks are covered by each policy and to what extent (the amount of cover). You must also familiarise yourself with all the policy wordings so that you are aware of the coverage afforded and also what your obligations are in respect of notifying the insurer of an actual or potential claim, when cover is triggered and what documents and information are required for a claim notification. Some policies may require that the insured mitigates any damages and/or that the insured meet certain standards, even where the insurer is still assessing the risk and policy coverage has not been confirmed as yet. Exclusions or penalties for late notification of claims may also apply.

The policy wording must be carefully studied so that the legal practitioner is aware of the circumstances where an aggregation of claims will apply. There may be more than one loss suffered and the insurer may argue that the losses arise out of the same cause of action

The insurance policies to be considered in respect of the coronavirus related risks include:

- (i) **Business interruption** (whether as a standalone policy or as part of the **property insurance** or

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- business all risks** insurance).
- (ii) **Public liability** - this policy could be important in the unfortunate event the practice faces a claim where, for example, it is alleged that a member of the firm, in the course and scope of their duties, infects another with the coronavirus.
 - (iii) **Credit/ credit risk insurance** - this insurance will cover the firm against the risk of non-payment by a party with whom the firm has entered into a contract. This type of insurance policy will be of importance where a counterparty is unable to pay a contractual debt due to disruption;
 - (iv) **Key person insurance** (known as **key man insurance**) - this policy will respond to some of the risks faced by the legal practice following on the death or extended unavailability of a key person due to illness or incapacity;
 - (v) **Death and /or dread disease cover** - the name of this type of policy speaks for itself;
 - (vi) **Loss of documents;**
 - (vii) **Employment practices liability**- in case a member of staff were to allege some or other liability on the part of the legal practice arising out of employment practices;
 - (viii) **Events**- this type of policy will be particularly important for legal practices which run events such as seminars and training. Third parties may seek to hold the firm liable for losses suffered as a result of the postponement or cancellation of the events; and
 - (ix) **Travel insurance**- travel insurance policies have been receive-

ing increased media attention following on the disruption of flights, the imposition of travel restrictions and the quarantine of those with possible exposure to the coronavirus. Though it is advisable to restrict travel as much as possible in the current conditions, the amount of cover available for **international medical treatment** on the policy should also be checked. Also check this with your **medical aid**.

Force Majeure

The legal practitioner also needs to assess whether *force majeure* (or *vis major*) will be applicable in respect of any of the contractual relationships (23/10/2019 by Mongezi Mpahlwa and Denise Durand '*Force majeure* in instances of drought' www.cliffedekkerhofmeyr.com accessed 10/03/2020. See also Andrew McDonald, 'Coronavirus and Bushfires Rekindle Interest in "*Force Majeure*"' (*op cit*). The wording of contracts must be considered in order to ascertain the circumstances under which *force majeure* can be declared. The event (the impossibility of performance) must not have been in contemplation of the parties when the contract was entered into. The party asserting *force majeure* will also have to show that it is not just a refusal to perform. In *Hersman v Snapiro & Co* 1926 TPD 367 at 372, Stratford J (with whom Tindall J concurred) said (at 373):

'Indeed, it seems clear that it is impossible to disregard the nature not only of the contract, but of the causes of impossibility, because those causes might be in the contemplation of the parties; or, again, they might be such as no human foresight could have foreseen. That distinction between different kinds of causes of impossi-

bility must be a feature to be regarded before applying this doctrine of impossibility of performance without qualification. Therefore, the rule that I propose to apply in the present case is the general rule that impossibility of performance does in general excuse the performance of a contract, but does not do so in all cases, and that we must look to the nature of the contract, the relation of the parties, the circumstances of the case, and the nature of the impossibility invoked by the defendant, to see whether that general rule ought, in the particular circumstances of the case, to be applied.'

Conclusion

While closely monitoring the ongoing development and evolution of the pandemic, locally and globally, the effects on all aspects of legal practice will need to be noted accurately. In this way, it is hoped that the relevant risk information can be gleaned so that a comprehensive risk management plan can be developed. As this stage, there is no empirical data of which I am aware relating to the impact of the pandemic on the legal profession- this data will become available in time. I am not aware of any claims made, as yet, against any legal practitioner in SA related to the coronavirus pandemic.

Legal practitioners, and the public at large, are urged to take all reasonable care to ensure their safety in the face of the pandemic.

Thomas Harban

Email: thomas.harban@lpiif.co.za

Telephone: (012) 622 3928

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