WHAT ARE TRUSTEES' DUTIES ?

Trustees

owe a duty of due care.
must act in good faith.
may not have a conflict of interest.
must act in the interests of the fund and its members only.
must be impartial.
have a fiduciary duty to ensure funds' assets are protected.

WHY IS COVER NEEDED ?

Trustees are personally liable for any loss suffered by the fund.
Trustees are jointly and severally liable for any breach of duty.
Trustees can delegate tasks but remain responsible.
Trustees' liability is personal and UNLIMITED.
The Act requires that each fund is protected by a policy of insurance.

WHAT IS THE SCOPE OF COVER ?

The Policy will only respond if a claim is made against the Fund. A claim should be made against the Fund on the wrongful act by a 3rd Party on the error, omission, misstatement, dishonest act, wrongful act i.e. it must be a legitimate claim by a 3rd Party against the Fund.

Fraud or dishonesty of any Officer

Any direct financial loss sustained by the fund as a result of the fraud or dishonesty of an Officer.

Theft by any person

Any loss of money or property belonging to the fund or for which the fund is responsible stolen or removed by any person.

Error and Omission

Any claim made against an Officer for a wrongful act committed by an Officer.

Trustees' extension

If a claim is made directly against an Officer for a wrongful act, the insurers will pay the claim on his/her behalf.

This extension gives the trustee who is personally liable, direct access to the policy without having to wait for the fund to submit a claim on his/her behalf.

Computer Crime

Theft fraud and dishonesty by any means is covered, there are no computer crime limitations.

Claims made basis of cover

This basis means that the limit of indemnity applicable at the time the loss is discovered (and the claim is made) applies rather than the limit applicable when the wrongful act was committed. This means today's limit applied to today's claim ensuring that present day limits will apply.

Retroactive cover

Any act giving rise to a claim which occurred since inception will be covered. After renewal, this period extends by each year the policy is renewed.

DEFINITIONS

NEGLIGENCE means any loss arising from a **WRONGFUL ACT**.

A **WRONGFUL ACT** means any actual or alleged breach of a duty, breach of a statutory duty, breach of trust, neglect, error, misstatement, misleading statement, omission, libel, slander, unintentional breach of confidentiality or other act wrongfully committed or omitted by an **OFFICER**

An **OFFICER** means any past or present member of a committee appointed to manage the affairs of the fund or any individual so appointed or any manager, trustee, administrator, third party service provider, controller, principal officer, treasurer, clerk employee or agent.

HOW TO SUBMIT A CLAIM

The date of the event is not the deciding factor, it is the *date on which the Fund became aware of the incident*, and the Fund then reasonably anticipated that it might lead to a claim against the Fund or the trustees.

Notification should be made to AFI when the Fund (the administration division and not only the board of trustees) become aware of circumstances which might reasonably be expected to result in a claim being made against the Fund, regardless of when such claim is likely to arise. Failure to do this is in fact a breach of policy conditions.

- Circumstances of the loss
- When discovered i.e. when has the Fund became aware of the loss
- When has it happened
- Amount of loss

WHY HAVE A POLICY DEDICATED TO THE FUND ?

An Employers' Fidelity Guarantee policy :

- may cover employee trustees. What if a trustee is not an employee?
- may be used up by a claim leaving the fund uninsured.
- has an excess / deductible, can trustees afford this?
- covers fidelity but not errors and omission.
- is designed to protect the employer.
- may not have 5 years retroactive cover.
- will indemnify the employers. What if a trustee is sued personally and directly?

If a loss occurs affecting the employer and the fund, who has first benefit? Who will resolve the dispute?
The fund and its trustees need their own specifically designed protection.
The Retirement Fund Policy is wider than the employer's.

MORE ABOUT THE HONESTY INDEX

The honesty index is based on a formula published by the Surety Association of America. The formula produces an Exposure Index from which a suggested minimum limit is derived. This formula has been used since the early 1980's and has recently been adopted by the Institute of Retirement Funds

We recommended that the Honesty Index is used to ascertain the **MINIMUM** limit of indemnity necessary. This ensures compliance with the recommendations. However, trustees have the onerous duty of ensuring their fund is adequately protected.

Factors which should be considered when setting the policy limit:

- What internal systems of control are in place?
- How regularly are the funds audited?
- The Honesty Index is geared towards Fidelity losses not Errors & Omission, what could a mistake cost?
- How much protection do the trustees believe is adequate before they put their personal assets at risk?
- Trustees would be personally liable for failure to purchase adequate insurance

The recommendations of the Institute of Retirement Funds are:

Delegated administration arrangements
Twice the level of cover prescribed by the Honesty Index with a minimum of N$500 000.

Valuation exempt funds which provide no risk benefit
The level prescribed by the Honesty Index, no minimum.

Self-administered Funds
Subject to further investigation before recommendations are made.

CALCULATION OF REQUIRED COVER

FIDELITY INSURANCE FORMULA

Total Fund Assets	....	
X20%		....
Total Annual Contributions	....	
X10%		....
		________
FIDELITY EXPOSURE INDEX		________

Suggested minimum amounts of Fidelity Insurance

FIDELITY EXPOSURE INDEX		AMOUNT OF FIDELITY INSURANCE	
FROM N$	TO N$	FROM N$	TO N$
Up to	25,000	15,000	25,000
25,000	125,000	25,000	50,000
125,000	250,000	50,000	75,000
250,000	500,000	75,000	100,000
500,000	750,000	100,000	125,000
750,000	1,000,000	125,000	150,000
1,000,000	1,375,000	150,000	175,000
1,375,000	1,750,000	175,000	200,000
1,750,000	2,125,000	200,000	225,000
2,125,000	2,500,000	225,000	250,000
2,500,000	3,325,000	250,000	300,000
3,325,000	4,175,000	300,000	350,000
4,175,000	5,000,000	350,000	400,000
5,000,000	6,075,000	400,000	450,000
6,075,000	7,150,000	450,000	500,000
7,150,000	9,275,000	500,000	600,000
9,275,000	11,425,000	600,000	700,000
11,425,000	15,000,000	700,000	800,000
15,000,000	20,000,000	800,000	900,000
20,000,000	25,000,000	900,000	1,000,000
25,000,000	50,000,000	1,000,000	1,250,000
50,000,000	87,500,000	1,250,000	1,500,000
87,500,000	125,000,000	1,500,000	1,750,000
125,000,000	187,500,000	1,750,000	2,000,000
187,500,000	250,000,000	2,000,000	2,250,000
250,000,000	333,325,000	2,250,000	2,500,000
333,325,000	500,000,000	2,500,000	3,000,000

Illustration by means of an Example

Total assets of the Fund	N$20,000,000	
x20%		N$4,000,000
Total Annual Contributions	N$ 1,500,000	
X10%		N$ 150,000
Fidelity Exposure Index		N$4,150,000
Cover required		N$ 348,530

Extension

Reinstatement

The policy limit is an annual limit which reduces by the amount of any claim paid.
Reinstatement means the annual limit can be maintained following a loss but insurers will only be liable up to a maximum of twice the annual limit.

e.g. Limit N$500 000 each and every loss but N$1 000 000 any one year

Deductible

No deductible applicable.