

**LEGAL PRACTITIONERS LIABILITY COMMITTEE  
CONTRACT OF PROFESSIONAL INDEMNITY INSURANCE  
2004/2005  
(AGREED EXCESS FOR 20+ PARTNER FIRMS OF SOLICITORS)**

SUM INSURED: \$1,500,000.

PERIOD OF INSURANCE: 1 July 2004 to 30 June 2005.

**INSURING CLAUSES**

**1. Civil liability**

The Insurer will indemnify the Insured against any civil liability in connection with the Firm's legal practice in respect of which a claim is first made against any Insured -

- (a) during the period of insurance; or
- (b) during or after the period of insurance and arising from a reported circumstance.

**2. Defence costs**

The Insurer will also indemnify the Insured against defence costs:

- (a) for any claim referred to in clause 1; or
- (b) relating to any reported circumstance.

**LIMITS AND EXCESSES**

**3. Limit of liability**

The limit of the Insurer's liability for any one loss (including defence costs) is the sum insured specified above.

**4. Aggregate limit for run-off directors and officers cover**

The limit of the Insurer's liability (under this contract and every other contract underwritten by the Insurer for any period of insurance commencing on or after 1 January 1993) in the aggregate for all losses arising from Insureds acting as directors, secretaries or officers of bodies corporate (other than the Firm or a service, administration, trustee or nominee company referred to in paragraph (d) of the definition of 'Insured') is \$500,000.

**5. Excess**

The Insured will bear the first amount of each and every loss up to the agreed amount. The excess applies to defence costs.

**6. 'Loss'**

For the purposes of this section and this contract unless the context otherwise requires, 'loss' is the aggregate of all amounts paid or payable in respect of a claim or a reported circumstance, including payments for defence costs, and –

- (a) all claims against the Insured arising from one act or omission, one series of related acts or omissions or the same or similar act or omission in a series of related matters or transactions will be regarded as one loss;
- (b) all claims against the Insured arising from one matter or transaction will be regarded as one loss;
- (c) all claims against the Insured arising from the arranging of a contributory or nominee investment scheme, including a contributory or nominee mortgage, and all contributions to, withdrawals from and amendments and variations of the scheme will be regarded as one loss;
- (d) all claims arising from all dishonesty or fraud of any one person or any two or more people acting in collusion will be regarded as one loss; and
- (e) otherwise, each claim will be regarded as a separate loss.

**SPECIAL CONDITIONS****7. Non-disclosure/misrepresentation**

The Insurer may not avoid this contract or reduce its liability under this contract by reason of any failure to comply with the duty of disclosure or by reason of any misrepresentation (whether that failure or misrepresentation was fraudulent or not).

**8. No cancellation**

This contract must not be cancelled other than if (and with effect from the date upon which) the Firm ceases its legal practice during the period of insurance.

**9. Breach of conditions**

The Insurer will not refuse liability or reduce its liability (or delay any settlement with or payment to a claimant) by reason of a breach by any Insured of -

- (a) a condition of this contract; or
- (b) any duty to the Insurer (including the duty of utmost good faith but excluding the duty of disclosure)

but each principal of the Firm when the act or omission giving rise to the loss occurred will jointly and severally indemnify the Insurer to the extent that the Insurer's interests were prejudiced as a result of any such breach and will pay interest on the amount outstanding to the Insurer from time to time calculated daily at the rate specified by the *Penalty Interest Rates Act 1983*.

**10. No set off**

Any amount payable by the Insurer to indemnify any Insured against civil liability to a claimant will be paid only to the claimant (or at the claimant's direction) and the Insurer may not set off against any such amount any payment due to it by any Insured (whether for premium, in respect of a breach of the conditions of this contract or otherwise).

**11. Related parties**

The Insurer will not refuse liability or reduce its liability (or delay any settlement with or payment to a claimant) by reason of the claimant being, or claiming a loss suffered by –

- (a) a relative of a principal; or
- (b) an associated enterprise,

but -

- (i) that principal will indemnify the Insurer to the extent of each payment which the Insurer makes to that relative or to compensate the loss suffered by that relative; or
- (ii) each principal with a related interest in the associated enterprise (or whose relative has an interest in the associated enterprise) will indemnify the Insurer to the extent of the defined proportion of each payment which the Insurer makes to that associated enterprise, the defined proportion being the proportion that the related interest bears to the total of all interests in that enterprise; and
- (iii) each such principal referred to in (i) or (ii) will pay interest on the amount outstanding to the Insurer from time to time calculated daily at the rate specified by the *Penalty Interest Rates Act 1983*.

A principal is not liable to indemnify the Insurer under this clause -

- (A) in respect of an external matter or transaction which was not handled or supervised, in whole or in part, by that principal; or
- (B) in respect of an act or omission which occurred at a time when the Firm was insured other than by the Insurer.

For the purposes of this clause, an 'external matter or transaction' is a matter not related to the formation, composition or dissolution of the Firm or the ownership or conduct of the Firm's legal practice.

**12. Known circumstance**

If:

- (a) a claim in respect of which the Insured is entitled to be indemnified by the Insurer under this contract arises from a circumstance which occurred prior to the period of insurance; and
- (b) a principal became aware of that circumstance prior to the period of insurance; and

- (c) a reasonable person in the position of that principal would have considered that the circumstance may give rise to a claim against any Insured; and
- (d) the circumstance was not reported to the Insurer or to the then primary insurer prior to the period of insurance;

then the Insurer will not refuse liability or reduce its liability (or delay any settlement with or payment to a claimant) in respect of that claim, but that principal (or each such principal) will indemnify the Insurer to the extent of -

- (i) the difference between the Insurer's liability under this contract and the liability it or the then primary insurer would have incurred under the contract for the period of insurance during which the principal first became aware of the circumstance (had the circumstance been duly reported then); plus
- (ii) the amount that fairly represents the degree to which the loss could have been mitigated if the circumstance had been notified to the Insurer or to the then primary insurer at the time that the principal first became aware of it.

### **13. Indemnity**

Any Insured who -

- (a) committed; or
- (b) permitted (whether knowingly or recklessly) -
  - (i) the witnessing (or purported witnessing) of the signing or execution of a document without seeing the actual signing or execution of it; or
  - (ii) the making of a representation (including, but not limited to, a representation by way of a certificate, acknowledgment or other document) which was known at the time it was made to be false; or
  - (iii) dishonesty or a fraudulent act or omission; or
  - (iv) the provision of a financial service in respect of which a financial services licence or authorisation was known to be required under Chapter 7 of the *Corporations Act 2001* and was known to have not been obtained -

will indemnify the Insurer against any amount payable by the Insurer arising from such witnessing, representing, dishonesty, act or omission or such financial service. The Firm will retain (to the extent permitted by law) any property, remuneration or benefit belonging to that Insured and will deal with it as the Insurer requires.

## **GST NEUTRALITY**

### **14. Intention**

The intention of this contract is that, to the extent possible, as between the Insured and the Insurer, neither is to be adversely affected or advantaged by the operation of GST. If any party requires a tax invoice or the assistance of any other party to obtain an input tax credit, the other party will provide such invoice or assistance promptly upon being requested to do so.

### **15. 'GST' and other expressions**

For the purposes of this section, 'GST' means tax payable under *A New Tax System (Goods & Services Tax) Act 1999* and, unless the context otherwise requires, other expressions used in this section have the meanings given to those expressions in that Act.

## **EXCLUSIONS**

### **16. General**

The Insurer will not indemnify any Insured against any liability (or defence costs) as follows.

### **17. Death or bodily injury**

Arising from the death or bodily injury of any person.

### **18. Property damage**

Arising from any damage to or destruction or physical loss of property.

### **19. Trading debts**

For any trading or personal debt of any Insured.

### **20. Prior matters**

Arising from any -

- (a) actual or possible claim; or
- (b) circumstance

notified prior to the period of insurance to the Insurer or to any other insurer of a contract of professional indemnity insurance covering that Insured.

### **21. Contractual undertaking**

Arising from an express warranty, guarantee, indemnity or other contractual undertaking to the extent that -

- (a) it extends a duty of any Insured beyond exercising the standard of care and skill reasonably to be expected in the circumstances; or

- (b) it increases the compensation or damages for which any Insured is liable for breach of duty beyond the amount payable in tort.

(For the avoidance of doubt, it is not intended that this exclusion apply where the insured's liability for breach of contract exceeds liability in tort solely because, as a matter of law, contributory negligence is not available as a defence.)

**22. Fraud or dishonesty**

Arising, in whole or in part, directly or indirectly from, or brought about by -

- (a) the dishonesty or fraudulent act or omission of any Insured on or before 31 December 1997; or
- (b) a defalcation as defined in the Act [including a defalcation referred to sub-section 208(3)] or as defined in applicable, corresponding legislation in another State or Territory of Australia.

**23. Insured versus Insured**

To any Insured, other than liability to any principal or employee arising from any matter or transaction which -

- (a) did not relate to the formation, composition or dissolution of the Firm or to ownership or conduct of the Firm's legal practice; and
- (b) was not handled or supervised, in whole or in part, by that principal or employee.

**24. Geographical**

- (a) Arising from any act or omission which occurred both during the period of insurance and when the Firm's legal practice was conducted wholly outside the State of Victoria; or
- (b) Arising from any act or omission which occurred outside the State of Victoria and the Firm is insured or required to be insured other than under this contract against that liability.

**25. Insured's charges**

To refund, account for, or pay damages calculated by reference to, any fee or disbursement charged or incurred by any Insured.

**26. Advice on insurance cover**

Arising from any representation to a claimant of, or failure to correctly advise a claimant of, the extent of insurance cover available (or not available, as the case may be) to indemnify any Insured under this contract.

**27. Related SMICs**

- (a) To a Related SMIC; or

- (b) Arising from any -
- (i) investment; or
  - (ii) advice, representation, recommendation, endorsement or opinion favouring investment
- in any Related SMIC, including investment by way of a deposit with or loan to a Related SMIC; or
- (c) Arising in any way from the operations of a Related SMIC.

**28. Directors and officers liability**

Arising from any Insured acting after 31 December 1992 as a director, secretary or officer of a body corporate other than the Firm or a service, administration, trustee or nominee company referred to in paragraph (d) of the definition of 'Insured'.

**29. Penalties & etc.**

For any civil penalty or for any punitive, exemplary or like damages or for any fine, costs or expenses incurred or ordered to be paid by any Insured in connection with any complaint against, or investigation into the conduct of, any Insured.

**30. Insurance intermediaries**

Arising from any Insured acting as an insurance intermediary, other than by arranging insurance in connection with a matter or transaction conducted by the Firm.

**31. Orders for costs**

Under an order for costs in any proceeding other than:

- (a) a proceeding against any Insured in respect of which the Insurer is liable to indemnify the Insured against defence costs; or
- (b) an order resulting from negligence by or on behalf of any Insured in the course of acting as the legal practitioner for a party to that proceeding.

**32. Claims by liquidators etc**

To a liquidator, administrator or trustee in bankruptcy to account for any preferential payment or to make any payment in respect of a void or voidable transaction.

**33. Responsible Entities**

As a Responsible Entity.

**34. Financial Services**

Arising from any insured providing a financial service in respect of which that Insured was licensed or authorised under Chapter 7 of the *Corporations Act 2001*.

## **GENERAL CONDITIONS**

### **35. Notice of claims and circumstances**

The Insured will give immediate notice in writing to the Insurer of any -

- (a) claim first made against any Insured during the period of insurance; or
- (b) circumstance of which any Insured first became aware during the period of insurance.

### **36. Cooperation and assistance**

The Insured will give the Insurer and any investigators or solicitors appointed by the Insurer all information they reasonably require, and full cooperation and assistance in the conduct of the investigation, defence, settlement, avoidance or reduction of any actual or possible claim or any proceeding. The Insured agrees to waive any claim for legal professional privilege to the extent only that the privilege would otherwise prevent any legal representative from disclosing information to the Insurer.

### **37. Reasonable steps and precautions**

If a Principal becomes aware of a circumstance which may give rise to a claim against any Insured, the Insured will thereafter take all reasonable steps and precautions to avoid or minimise any liability or costs and expenses arising from that circumstance. Each principal of the Firm as at commencement of the period of insurance will jointly and severally indemnify the Insurer against any defence costs incurred by the Insurer to which the excess applies.

### **38. Conduct of any proceeding**

The Insurer may at its option take over and conduct in the name of any Insured any proceeding arising out of or relating to any claim in respect of which the Insurer is liable to indemnify any Insured. Each principal of the Firm as at commencement of the period of insurance will jointly and severally indemnify the Insurer against any defence costs incurred by the Insurer to which the excess applies.

### **39. No admission of liability**

The Insured will not admit liability for or settle any claim in respect of which the Insurer is liable to indemnify any Insured without the prior consent of the Insurer. If the Firm wishes a claim to be settled but the Insurer refuses consent, the Insurer will brief Queen's Counsel (to be mutually agreed or, in default of agreement, to be selected by the President of the Law Institute of Victoria) to advise on whether or not the claim against the Insured is likely to succeed. If counsel's advice is that the claim is likely to succeed, the Insurer shall take such steps as are mutually agreed to settle the claim on terms to be mutually agreed and, in default of agreement, such steps and such terms as counsel advises having due regard to the interests of both the Insured and the Insurer. Counsel's fee will in each case be payable by the party against whose contention counsel advised.

**40. Consent to settlement**

The Insurer will not settle any claim against any Insured without the prior consent of the Firm, but if the Firm does not accept any recommendation for settlement by the Insurer, the Insurer's liability will be limited to the amount of the settlement recommended plus costs and expenses up to the date upon which the recommendation was made.

**41. Subrogation**

If any payment is made by the Insurer in respect of a claim against any Insured, the Insurer will be subrogated to all rights of indemnity, contribution or recovery of the Insured in relation thereto. The Insured will not surrender any right, or settle any claim for indemnity, contribution or recovery, without the prior consent of the Insurer. The Insurer will not subrogate any rights against any employee except to the extent that the employee is liable to indemnify the Insurer under clause 13.

**DEFINITIONS AND INTERPRETATION****42. General**

In this contract, unless the context otherwise requires -

- (a) the singular includes the plural;
- (b) the male gender includes the female, and vice versa;
- (c) the words 'arising from' (and similar expressions) where used in this contract imply a factual connection and not necessarily a causal connection;
- (d) headings are merely descriptive and not to aid interpretation; and
- (e) words and expressions used in this contract have the meanings set out in this section and in the Act.

**43. 'The Act'**

The Act is the *Legal Practice Act* 1996.

**44. 'Agreed Amount'**

The agreed amount is the amount which the Firm and the Insurer agreed to be the excess for this contract.

**45. 'Associated enterprise'**

Associated enterprise means any firm, company, trust or other entity in which any related interest is held.

**46. 'Circumstance'**

A circumstance is an incident, occurrence, fact or matter which may or does give rise to a claim.

**47. 'Claim'**

A claim is a demand for, or an assertion of a right to, civil compensation or civil damages in connection with the Firm's legal practice or an intimation of an intention to seek such compensation or damages.

**48. 'Defence costs'**

Defence costs are legal costs and disbursements and related expenses reasonably and necessarily incurred in -

- (a) defending any proceeding;
- (b) conducting any proceeding for indemnity, contribution or recovery; or
- (c) investigating, avoiding, reducing or settling any claim:

incurred by -

- (i) the Insured with the consent of the Insurer after reporting the claim or the circumstance to the Insurer; or
- (ii) the Insurer after it has assumed conduct of any such proceeding.

Defence costs do not include any internal or overhead expenses of the Firm or the cost of any Insured's time.

**49. 'Employee'**

Employee means any person who is, or becomes during the period of insurance, or at any time was -

- (a) employed or otherwise engaged in the Firm's legal practice including, without limitation, as a solicitor, lawyer, articled clerk, consultant, associate, locum tenens or office or clerical staff member;
- (b) seconded to work in the Firm;
- (c) seconded by the Firm to work elsewhere;

but does not mean any independent contractor who provides or provided services to the Firm including, without limitation, auditing, accounting, advisory or consulting services.

**50. 'The Firm'**

The Firm means, where the Firm's legal practice is or was carried on by -

- (a) an incorporated practitioner - that incorporated practitioner;
- (b) a firm - the firm as constituted from time to time; and

- (c) a sole practitioner – that practitioner,

provided that insurance has been arranged under this contract for that practitioner or firm with the Insurer for the period from 1 July 2004 to 30 June 2005.

**51. 'The Firm's legal practice'**

The Firm's legal practice means the legal practice which, as at the date of commencement of the period of insurance, was carried on by the Firm and includes any legal practice which was earlier merged into that practice or which is merged into that practice during the period of insurance.

**52. 'Insured'**

The Insured is -

- (a) the Firm;
- (b) each principal;
- (c) each employee;
- (d) each service, administration, trustee or nominee company to the extent that it provides services to the Firm, other than a Responsible Entity, a SMIC or an entity which provides services to clients other than the Firm and invoices those clients in the entity's own name;
- (e) each director or officers of an entity referred to in paragraph (d); and
- (f) the estate or legal personal representative of any person referred to in paragraphs (b), (c) or (e).

'Any Insured' means any one or more of the Insured.

**53. 'The Insurer'**

The Insurer means the Legal Practitioners Liability Committee established under the Act.

**54. 'Interest'**

Interest means any share, shareholding, entitlement or other financial interest, other than an interest of less than 10% of the total of all such interests in the relevant firm, company, trust or other entity.

**55. 'Legal practice'**

Legal practice means private legal practice and includes the administration of trusts. Legal practice does not mean practising as a corporate practitioner.

**56. 'The period of insurance'**

The period of insurance means the period from 00.01am on 1 July 2004 to midnight on 30 June 2005.

**57. 'Principal'**

Principal means a person who is, or becomes during the period of insurance, or at any time was, where the Firm is or was -

- (a) an incorporated practitioner - a director or an employee of that incorporated practitioner with the right to participate in any distribution of the profits of that incorporated practitioner;
- (b) a partnership - a partner of that firm, whether or not entitled to a share of the profits of the Firm's legal practice; and
- (c) a sole practitioner – that practitioner.

**58. 'Related interest'**

Related interest means any interest beneficially held (whether directly or indirectly through any firm, company, trust or other entity) by or on behalf of any one or more of:

- (a) the Firm;
- (b) any principal;
- (c) any relative of any principal.

**59. 'Related SMIC'**

Related SMIC means a SMIC:

- (a) in which any related interest is held; and/or
- (b) of which any principal or employee is a director.

**60. 'Relative'**

Relative means any spouse, defacto spouse, parent, child, or any parent or child of a spouse or defacto spouse.

**61. 'Reported circumstance'**

A reported circumstance is a circumstance first reported by any Insured to the Insurer during the period of insurance.

**62. 'Responsible Entity'**

Responsible Entity means a responsible entity of a managed investment scheme under Chapter 5C of the *Corporations Law*.

**63. 'SMIC'**

SMIC means a member of The Association of Solicitors' Mortgage Investment Companies Inc.

**LEGAL PRACTITIONERS LIABILITY COMMITTEE  
CONTRACT OF PROFESSIONAL INDEMNITY INSURANCE  
FOR SOLICITORS: 2004/2005**

SUM INSURED: \$1,500,000.  
PERIOD OF INSURANCE: 1 July 2004 to 30 June 2005

**INSURING CLAUSES**

**1. Civil liability**

The Insurer will indemnify the Insured against any civil liability in connection with the Firm's legal practice in respect of which a claim is first made against any Insured -

- (a) during the period of insurance; or
- (b) during or after the period of insurance and arising from a reported circumstance.

**2. Defence costs**

The Insurer will also indemnify the Insured against defence costs:

- (a) for any claim referred to in clause 1; or
- (b) relating to any reported circumstance.

**LIMITS AND EXCESSES**

**3. Limit of liability**

The limit of the Insurer's liability for any one loss (including defence costs) is the sum insured specified above.

**4. Aggregate limit for run-off directors and officers cover**

The limit of the Insurer's liability (under this contract and every other contract underwritten by the Insurer for any period of insurance commencing on or after 1 January 1993) in the aggregate for all losses arising from Insureds acting as directors, secretaries or officers of bodies corporate (other than the Firm or a service, administration, trustee or nominee company referred to in paragraph (d) of the definition of 'Insured') is \$500,000.

**5. Excess**

The Insured will bear the first amount of each and every loss (other than a loss to which the deterrent excess applies) up to the amount of \$3,500 multiplied by the number of relevant principals, up to a maximum of \$50,000. The excess does not apply to defence costs.

**6. Deterrent excess**

The Insured will bear the first amount of each and every loss up to the amount of \$7,000 multiplied by the number of relevant principals up to a maximum of \$100,000, arising from any of the following:

**(a) Limitation periods**

The failure by any Insured to issue any proceeding within a period of limitation;

**(b) Multiple parties or interests**

Any matter or transaction in respect of which the Firm acted for or represented more than one party or interest;

**(c) Outside Australia**

Any act or omission which occurred outside the Commonwealth of Australia, other than loss arising from advising on:

- (i) Australian Law (the law of the Commonwealth or of a State or Territory of Australia);
- (ii) a matter or transaction the proper law of which was Australian Law; or
- (iii) a matter or transaction conducted from an office of the Firm in Victoria;

**(d) Related interests**

Any -

- (i) obligation in connection with;
- (ii) investment in; or
- (iii) advice, representation, recommendation, endorsement or opinion favouring investment in

any fund, scheme, business, arrangement or entity in which at any relevant time there was a related interest, including investment by way of a loan to any such fund, scheme, business, arrangement or entity;

**(e) Unacceptable mortgage loans**

The making of an unacceptable mortgage loan.

**(f) Professional Conduct & Practice Rules 2000**

Any matter or transaction in relation to which any Insured acted in breach of Rule 10(6), (7) or (8) of the *Professional Conduct & Practice Rules 2000* or any corresponding rule with which that Insured was required to comply.

**(g) False execution or representations**

Any -

- (i) Insured purporting to witness the signing or execution of a document without seeing the actual signing or execution of it; or
- (ii) representation by any Insured (including, but not limited to, a representation by way of a certificate, acknowledgement or other document) which that Insured knew at the time it was made was false.

**7. 'Loss'**

For the purposes of this section and this contract unless the context otherwise requires, 'loss' is the aggregate of all amounts paid or payable in respect of a claim or a reported circumstance, including payments for defence costs, and -

- (a) all claims against the Insured arising from one act or omission, one series of related acts or omissions or the same or similar act or omission in a series of related matters or transactions will be regarded as one loss;
- (b) all claims against the Insured arising from one matter or transaction will be regarded as one loss;
- (c) all claims against the Insured arising from the arranging of a contributory or nominee investment scheme, including a contributory or nominee mortgage, and all contributions to, withdrawals from and amendments and variations of the scheme will be regarded as one loss;
- (d) all claims arising from all dishonesty or fraud of any one person or any two or more people acting in collusion will be regarded as one loss; and
- (e) otherwise, each claim will be regarded as a separate loss.

### **SPECIAL CONDITIONS**

#### **8. Non-disclosure/misrepresentation**

The Insurer may not avoid this contract or reduce its liability under this contract by reason of any failure to comply with the duty of disclosure or by reason of any misrepresentation (whether that failure or misrepresentation was fraudulent or not).

#### **9. No cancellation**

This contract must not be cancelled other than if (and with effect from the date upon which) the Firm ceases its legal practice during the period of insurance.

#### **10. Breach of conditions**

The Insurer will not refuse liability or reduce its liability (or delay any settlement with or payment to a claimant) by reason of a breach by any Insured of -

- (a) a condition of this contract; or
- (b) any duty to the Insurer (including the duty of utmost good faith but excluding the duty of disclosure)

but each principal of the Firm when the act or omission giving rise to the loss occurred will jointly and severally indemnify the Insurer to the extent that the Insurer's interests were prejudiced as a result of any such breach and will pay interest on the amount outstanding to the Insurer from time to time calculated daily at the rate specified by the *Penalty Interest Rates Act 1983*.

#### **11. No set off**

Any amount payable by the Insurer to indemnify any Insured against civil liability to a claimant will be paid only to the claimant (or at the claimant's direction) and the Insurer may not set off against any such amount any payment due to it by any Insured (whether for premium, in respect of a breach of the conditions of this contract or otherwise).

#### **12. Related parties**

The Insurer will not refuse liability or reduce its liability (or delay any settlement with or payment to a claimant) by reason of the claimant being, or claiming a loss suffered by -

- (a) a relative of a principal; or
  - (b) an associated enterprise,
- but -

- (i) that principal will indemnify the Insurer to the extent of each payment which the Insurer makes to that relative or to compensate the loss suffered by that relative; or
- (ii) each principal with a related interest in the associated enterprise (or whose relative has an interest in the associated enterprise) will indemnify the Insurer to the extent of the defined proportion of each payment which the Insurer makes to that associated enterprise, the defined proportion being the proportion that the related interest bears to the total of all interests in that enterprise; and
- (iii) each such principal referred to in (i) or (ii) will pay interest on the amount outstanding to the Insurer from time to time calculated daily at the rate specified by the *Penalty Interest Rates Act 1983*.

A principal is not liable to indemnify the Insurer under this clause -

- (A) in respect of an external matter or transaction which was not handled or supervised, in whole or in part, by that principal; or
- (B) in respect of an act or omission which occurred at a time when the Firm was insured other than by the Insurer.

For the purposes of this clause, an 'external matter or transaction' is a matter not related to the formation, composition or dissolution of the Firm or the ownership or conduct of the Firm's legal practice.

### **13. Known circumstance**

If:

- (a) a claim in respect of which the Insured is entitled to be indemnified by the Insurer under this contract arises from a circumstance which occurred prior to the period of insurance; and
- (b) a principal became aware of that circumstance prior to the period of insurance; and
- (c) a reasonable person in the position of that principal would have considered that the circumstance may give rise to a claim against any Insured; and
- (d) the circumstance was not reported to the Insurer or to the then primary insurer prior to the period of insurance;

then the Insurer will not refuse liability or reduce its liability (or delay any settlement with or payment to a claimant) in respect of that claim, but that principal (or each such principal) will indemnify the Insurer to the extent of -

- (i) the difference between the Insurer's liability under this contract and the liability it or the then primary insurer would have incurred under the contract for the period of insurance during which the principal first became aware of the circumstance (had the circumstance been duly reported then); plus
- (ii) the amount that fairly represents the degree to which the loss could have been mitigated if the circumstance had been notified to the Insurer or to the then primary insurer at the time that the principal first became aware of it.

**14. Indemnity**

Any Insured who -

- (a) committed; or
- (b) permitted (whether knowingly or recklessly) -
  - (i) the witnessing (or purported witnessing) of the signing or execution of a document without seeing the actual signing or execution of it; or
  - (ii) the making of a representation (including, but not limited to, a representation by way of a certificate, acknowledgement or other document) which was known at the time it was made to be false; or
  - (iii) dishonesty or a fraudulent act or omission; or
  - (iv) the provision of a financial service in respect of which a financial services licence or authorisation was known to be required under Chapter 7 of the *Corporations Act 2001* and was known to have not been obtained -

will indemnify the Insurer against any amount payable by the Insurer arising from such witnessing, representing, dishonesty, act or omission or such financial service. The Firm will retain (to the extent permitted by law) any property, remuneration or benefit belonging to that Insured and will deal with it as the Insurer requires.

**GST NEUTRALITY****15. Intention**

The intention of this contract is that, to the extent possible, as between the Insured and the Insurer, neither is to be adversely affected or advantaged by the operation of GST. If any party requires a tax invoice or the assistance of any other party to obtain an input tax credit, the other party will provide such invoice or assistance promptly upon being requested to do so.

**16. 'GST' and other expressions**

For the purposes of this section, 'GST' means tax payable under *A New Tax System (Goods & Services Tax) Act 1999* and, unless the context otherwise requires, other expressions used in this section have the meanings given to those expressions in that Act.

**EXCLUSIONS****17. General**

The Insurer will not indemnify any Insured against any liability (or defence costs) as follows.

**18. Death or bodily injury**

Arising from the death or bodily injury of any person.

**19. Property damage**

Arising from any damage to or destruction or physical loss of property.

**20. Trading debts**

For any trading or personal debt of any Insured.

**21. Prior matters**

Arising from any -

- (a) actual or possible claim; or
- (b) circumstance

notified prior to the period of insurance to the Insurer or to any other insurer of a contract of professional indemnity insurance covering that Insured.

**22. Contractual undertaking**

Arising from an express warranty, guarantee, indemnity or other contractual undertaking to the extent that -

- (a) it extends a duty of any Insured beyond exercising the standard of care and skill reasonably to be expected in the circumstances; or
- (b) it increases the compensation or damages for which any Insured is liable for breach of duty beyond the amount payable in tort.

(For the avoidance of doubt, it is not intended that this exclusion apply where the Insured's liability for breach of contract exceeds liability in tort solely because, as a matter of law, contributory negligence is not available as a defence.)

**23. Fraud or dishonesty**

Arising, in whole or in part, directly or indirectly from, or brought about by -

- (a) the dishonesty or fraudulent act or omission of any Insured on or before 31 December 1997; or
- (b) a defalcation as defined in the Act [including a defalcation referred to in sub-section 208(3)] or as defined in applicable, corresponding legislation in another State or Territory of Australia.

**24. Insured versus Insured**

To any Insured, other than liability to any principal or employee arising from any matter or transaction which -

- (a) did not relate to the formation, composition or dissolution of the Firm or to ownership or conduct of the Firm's legal practice; and
- (b) was not handled or supervised, in whole or in part, by that principal or employee.

**25. Geographical**

- (a) Arising from any act or omission which occurred both during the period of insurance and when the Firm's legal practice was conducted wholly outside the State of Victoria; or
- (b) Arising from any act or omission which occurred outside the State of Victoria and the Firm is insured or required to be insured other than under this contract against that liability.

**26. Insured's charges**

To refund, account for, or pay damages calculated by reference to, any fee or disbursement charged or incurred by any Insured.

**27. Advice on insurance cover**

Arising from any representation to a claimant of, or failure to correctly advise a claimant of, the extent of insurance cover available (or not available, as the case may be) to indemnify an Insured under this contract.

**28. Related SMICs**

(a) To a Related SMIC; or

(b) Arising from any -

(i) investment; or

(ii) advice, representation, recommendation, endorsement or opinion favouring investment

in any Related SMIC, including investment by way of a deposit with or loan to a Related SMIC; or

(c) Arising in any way from the operations of a Related SMIC.

**29. Directors and officers liability**

Arising from any Insured acting after 31 December 1992 as a director, secretary or officer of a body corporate other than the Firm or a service, administration, trustee or nominee company referred to in paragraph (d) of the definition of 'Insured'.

**30. Penalties & etc.**

For any civil penalty or for any punitive, exemplary or like damages or for any fine, costs or expenses incurred or ordered to be paid by any Insured in connection with any complaint against, or investigation into the conduct of, any Insured.

**31. Insurance intermediaries**

Arising from any Insured acting as an insurance intermediary, other than by arranging insurance in connection with a matter or transaction conducted by the Firm.

**32. Orders for costs**

Under an order for costs in any proceeding other than:

(a) a proceeding against any Insured in respect of which the Insurer is liable to indemnify the Insured against defence costs; or

(b) an order resulting from negligence by or on behalf of any Insured in the course of acting as the legal practitioner for a party to that proceeding.

**33. Claims by liquidators etc**

To a liquidator, administrator or trustee in bankruptcy to account for any preferential payment or to make any payment in respect of a void or voidable transaction.

**34. Responsible Entities**

As a Responsible Entity.

**35. Financial Services**

Arising from any Insured providing a financial service in respect of which that Insured was licensed or authorised under Chapter 7 of the *Corporations Act 2001*.

**GENERAL CONDITIONS****36. Notice of claims and circumstances**

The Insured will give immediate notice in writing to the Insurer of any -

- (a) claim first made against any Insured during the period of insurance; or
- (b) circumstance of which any Insured first became aware during the period of insurance.

**37. Cooperation and assistance**

Each Insured will give the Insurer and any investigators or solicitors appointed by the Insurer all information they reasonably require, and full cooperation and assistance in the conduct of the investigation, defence, settlement, avoidance or reduction of any actual or possible claim or any proceeding. The Insured agrees to waive any claim for legal professional privilege to the extent only that the privilege would otherwise prevent any legal representative from disclosing information to the Insurer.

**38. Reasonable steps and precautions**

If a Principal becomes aware of a circumstance which may give rise to a claim against any Insured, the Insured will thereafter take all reasonable steps and precautions to avoid or minimise any liability or costs and expenses arising from that circumstance.

**39. Conduct of any proceeding**

The Insurer may at its option take over and conduct in the name of any Insured any proceeding arising out of or relating to any claim in respect of which the Insurer is liable to indemnify any Insured.

**40. No admission of liability**

The Insured will not admit liability for or settle any claim in respect of which the Insurer is liable to indemnify any Insured without the prior consent of the Insurer. If the Firm wishes a claim to be settled but the Insurer refuses consent, the Insurer will brief Queen's Counsel (to be mutually agreed or, in default of agreement, to be selected by the President of the Law Institute of Victoria) to advise on whether or not the claim against the Insured is likely to succeed. If counsel's advice is that the claim is likely to succeed, the Insurer shall take such steps as are mutually agreed to settle the claim on terms to be mutually agreed and, in default of agreement, such steps and such terms as counsel advises having due regard to the interests of both the Insured and the Insurer. Counsel's fee will in each case be payable by the party against whose contention counsel advised.

**41. Consent to settlement**

The Insurer will not settle any claim against any Insured without the prior consent of the Firm, but if the Firm does not accept any recommendation for settlement by the Insurer, the Insurer's liability will be limited to the amount of the settlement recommended plus costs and expenses up to the date upon which the recommendation was made.

**42. Subrogation**

If any payment is made by the Insurer in respect of a claim against any Insured, the Insurer will be subrogated to all rights of indemnity, contribution or recovery of the Insured in relation thereto. The Insured will not surrender any right, or settle any claim for indemnity, contribution or recovery, without the prior consent of the Insurer. The Insurer will not subrogate any rights against an employee except to the extent that the employee is liable to indemnify the Insurer under clause 14.

**DEFINITIONS AND INTERPRETATION****43. General**

In this contract, unless the context otherwise requires -

- (a) the singular includes the plural;
- (b) the male gender includes the female, and vice versa;
- (c) the words 'arising from' (and similar expressions) where used in this contract imply a factual connection and not necessarily a causal connection;
- (d) headings are merely descriptive and not to aid interpretation; and
- (e) words and expressions used in this contract have the meanings set out in this section and in the Act.

**44. 'The Act'**

The Act is the *Legal Practice Act 1996*.

**45. 'Associated enterprise'**

Associated enterprise means any firm, company, trust or other entity in which any related interest is held.

**46. 'Circumstance'**

A circumstance is an incident, occurrence, fact or matter which may or does give rise to a claim.

**47. 'Claim'**

A claim is a demand for, or an assertion of a right to, civil compensation or civil damages in connection with the Firm's legal practice or an intimation of an intention to seek such compensation or damages.

**48. 'Defence costs'**

Defence costs are legal costs and disbursements and related expenses reasonably and necessarily incurred in -

- (a) defending any proceeding;
- (b) conducting any proceeding for indemnity, contribution or recovery; or
- (c) investigating, avoiding, reducing or settling any claim:

incurred by -

- (i) the Insured with the consent of the Insurer after reporting the claim or the circumstance to the Insurer; or
- (ii) the Insurer after it has assumed conduct of any such proceeding.

Defence costs do not include any internal or overhead expenses of the Firm or the cost of any Insured's time.

**49. 'Employee'**

Employee means any person who is, or becomes during the period of insurance, or at any time was -

- (a) employed or otherwise engaged in the Firm's legal practice including, without limitation, as a solicitor, lawyer, articled clerk, consultant, associate, locum tenens or office or clerical staff member;
- (b) seconded to work in the Firm;
- (c) seconded by the Firm to work elsewhere;

but does not mean any independent contractor who provides or provided services to the Firm including, without limitation, auditing, accounting, advisory or consulting services.

**50. 'The Firm'**

The Firm means, where the Firm's legal practice is or was carried on by -

- (a) an incorporated practitioner - that incorporated practitioner;
- (b) a firm - the firm as constituted from time to time; and
- (c) a sole practitioner - that practitioner,

provided that insurance has been arranged for that practitioner or firm with the Insurer for the period from 1 July 2004 to 30 June 2005.

**51. 'The Firm's legal practice'**

The Firm's legal practice means the legal practice which, as at the date of commencement of the period of insurance, was carried on by the Firm and includes any legal practice which was earlier merged into that practice or which is merged into that practice during the period of insurance.

**52. 'Insured'**

The Insured is -

- (a) the Firm;
- (b) each principal;
- (c) each employee;
- (d) each service, administration, trustee or nominee company to the extent that it provides services to the Firm, other than a Responsible Entity, a SMIC or an entity which provides services to clients other than the Firm and invoices those clients in the entity's own name;

- (e) each director or officer of an entity referred to in paragraph (d); and
- (f) the estate or legal personal representative of any person referred to in paragraphs (b), (c) or (e).

Any Insured means any one or more of the Insured.

**53. 'The Insurer'**

The Insurer means the Legal Practitioners Liability Committee established under the Act.

**54. 'Interest'**

Interest means any share, shareholding, entitlement or other financial interest, other than an interest of less than 10% of the total of all such interests in the relevant firm, company, trust or other entity.

**55. 'Legal practice'**

Legal practice means private legal practice and includes the administration of trusts. Legal practice does not mean practising as a corporate practitioner.

**56. 'Relevant principal'**

Relevant principal means, in relation to a loss, each principal of the Firm as at the date of each act or omission or each breach of duty from which the loss arose or is alleged to have arisen, (irrespective of whether any such principal has since retired, died or otherwise ceased to be a principal or whether every such principal has been sued).

**57. 'The period of insurance'**

The period of insurance means the period from 00.01am on 1 July 2004 to midnight on 30 June 2005.

**58. 'Principal'**

Principal means a person who is, or becomes during the period of insurance, or at any time was, where the Firm is or was -

- (a) an incorporated practitioner - a director or an employee of that incorporated practitioner with the right to participate in any distribution of the profits of that incorporated practitioner;
- (b) a partnership - a partner of that firm, whether or not entitled to a share of the profits of the Firm's legal practice; and
- (c) a sole practitioner - that practitioner.

**59. 'Related interest'**

Related interest means any interest beneficially held (whether directly or indirectly through any firm, company, trust or other entity) by or on behalf of any one or more of:

- (a) the Firm;
- (b) any principal;
- (c) any relative of any principal.

**60. 'Related SMIC'**

Related SMIC means a SMIC:

- (a) in which any related interest is held; and/or
- (b) of which any principal or employee is a director.

**61. 'Relative'**

Relative means any spouse, defacto spouse, parent, child, or any parent or child of a spouse or defacto spouse.

**62. 'Reported circumstance'**

A reported circumstance is a circumstance first reported by any Insured to the Insurer during the period of insurance.

**63. 'Responsible Entity'**

A Responsible Entity is a responsible entity for a managed investment scheme under Chapter 5C of the *Corporations Law*.

**64. 'SMIC'**

SMIC means a member of The Association of Solicitors' Mortgage Investment Companies Inc.

**65. 'Unacceptable mortgage loan'**

Unacceptable mortgage loan means any loan secured in whole or in part by a mortgage (whether a contributory, nominee, direct or other mortgage) over the legal title to land, unless -

- (a) the land is situated in Australia; and
- (b) the total amount of the loan and all other indebtedness secured over that land by equal or prior ranking security was not more than two thirds of the value assessed for mortgage purposes for or on behalf of the lender by a Qualified Valuer within six months of payment of the loan to or on behalf of the borrower, (a Qualified Valuer being a Licensed Valuer or an Associate or Fellow of the Australian Institute of Valuers and Land Economists).

A loan is not an unacceptable mortgage loan if –

- (i) the loan is secured by a direct mortgage;
- (ii) the borrower is not a relative of a principal; and
- (iii) before the loan was made, the Firm obtained a written acknowledgment from the lender that, in deciding to make or authorise the making of that loan, the lender did not rely upon any advice, representation, recommendation, endorsement or opinion by or on behalf of any Insured other than legal advice on the terms of a contract associated with that loan.