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FSP 35482

## PASSENGER LIABILITY & PERSONAL ACCIDENT (PAX & PA)

Insurer: Western National Insurance Company Ltd. FSP No. 9465

This brochure is an informative document and is always superseded by the specific Policy Wording

## PREMIUM & UNDERWRITING

The premium for this product is determined by a number of factors:

- 1) Limit of indemnity
- 2) Type of vehicle: Sedan/SUV ( $\leq 9$  seats), Minibus (10-19 seats), Bus (20 + seats)
- 3) Territorial limits (RSA only or Cross-Border)
- 4) Number of vehicles (10 + vehicles qualify for fleet discount)

## PASSENGER LIABILITY

### Overview

Passenger Liability Insurance is a commercial insurance policy which protects a business in instances where it may be legally liable in terms of the law for their alleged wrongful act, resulting in injury or death of passengers, transported in a vehicle or bus, for a fare paying trip. The insured can elect the limit of indemnity they require.

Factors that might influence the limit of cover can include, amongst others, the number of people that the vehicle can carry and the countries where the client's transport business travels to.

### Cover Provided

The Insurer will indemnify the Insured in the event of an incident occurring during the Period of Insurance caused by or through or in connection with any Insured Vehicle against the Insured's legal liability to pay damages and claimants' costs in connection therewith in respect of injury to any persons carried in or upon or entering or getting onto or alighting from any vehicle.

## WHY IS PASSENGER LIABILITY INSURANCE REQUIRED?

### 1) If the RAF is unable to pay the claim

The current status of the RAF greatly enhances their inability to pay out resulting in claims against the policy.

Current legislation could be contested in court.

If common law rights are reinstated retrospectively, companies would effectively have to have had an ongoing policy from 2008 to cover any potential losses to date.

According to the Attorney General, the fund's contingency liability for outstanding and future claims could be in the region of R300bn. ([Timeslive](#) 02 October 2022)

### 2) If the claim is for secondary emotional shock

There are ample court cases dealing with secondary emotional shock in our judicial system and the act is very clear that in this instance the wrongdoer may be held legally liable to pay. This type of claim is not known until the claim is made against the wrongdoer (the insured). The costs lie in the investigation and defence of the lawsuit as well as the potential settlement amount awarded to the claimant. Case law: Swartbooi vs RAF.

### 3) If claim arises on private property

There is clear case law indicating that this could be something which needs to be defended and the costs incurred are high.

### 4) In respect of foreigners not governed by RSA law

Passenger Liability provides cover for claims originating from foreigners in terms of defence costs and also for compensation when the insured becomes legally liable to pay.

### 5) For cross border destinations where common law rights apply to road accidents

Each foreign country has their own Road Accident compensation laws which vary from country to country. Our cover extends to African countries including south of the equator.

Countries which do not have a RAF include Zimbabwe, Malawi, Swaziland, Lesotho, Botswana, Zambia, Angola, Mozambique, Tanzania, DRC

### 6) Local and International Tour Brokers requiring proof of cover from local Service Providers

### 7) Litigation & Investigation

Any litigation arising in connection with accidents involving an insured bus, including frivolous summonses which will never succeed but need to be dealt with to get the correct ruling in Court. You could still be sued in much the same way as companies have been sued for occupational injuries in spite of the indemnity provided under the COID Act. This may at least involve you in legal expenses which are high and have a huge impact on companies.

Claims requiring investigation even though there is no valid claim.

### 8) Additional examples of claims paid by the policy

(We cannot divulge specific claims which have been settled out of court)

- Injuries sustained while on a bus where there is no driver negligence, but injuries are sustained by a passenger, e.g. slipping on broken steps, falling out of bus
- Glass pane being blown out and injuring passenger
- Seat breaking causing injury
- Passenger getting burned by coffee on bus
- Overhead compartment falling on passenger

❖ These examples are not exhaustive

### 9) What RAF Pays

RAF pays compensation to any person who is injured in a road accident within SA whether as driver, passenger or pedestrian. The RAF pays direct medical costs plus loss of earnings and General Damages (under some circumstances). You cannot claim if you were 100% responsible for your injuries. In other words, the percentage payable by RAF will be reduced in proportion to your own contributory negligence.

### 10) Additional benefits of the policy

The passenger liability policy is a combination policy which includes up to R150,000 death cover, which includes up to R30,000 funeral costs, payable irrespective of the RAF and liability.

### 11) Proof of Passenger Liability insurance for Operator's Licence

- [National Land Transport Act 2009](#), page 38, 62 (f)
- [Department Transport – Application Requirements: Accreditation & New Operating Licence](#), clause 14
- [National Public Transport Regulator – Tourism Operating Licence Applications Handbook](#), clause 5.1.2
- [SATSA \(Southern Africa Tourism Services Association\) - National Public Transport Regulator \(NPTR\) Types of Applications and Forms](#), Supporting Documents Guide clause 13
- [KZN Transport - Office of the KwaZulu-Natal Provincial Regulatory Entity – Application For New Operating License](#), page 11 Checklist of Required Documents, clause
- [Western Cape Government - Requirement for Processing: Application for New Operating License](#)



## EXCLUSIONS

- Bodily injury to any person in the employ of the Insured arising from and in the course and scope of such employment or being a member of the same household as the Insured
- Any claim arising out of any judgement, award or settlement made within countries which operate under the laws of the United States of America or Canada (or any order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part.

## PERSONAL ACCIDENT

If, during the Period of Insurance, any Insured Person sustains Bodily Injury by Accident whilst being carried in or upon or entering or getting onto or alighting from a Specified Vehicle which directly and independently of all other causes results, within twenty four months of the Accident, in Death, Permanent Disability or Hospitalisation as specified under Circumstances set out in the Schedule to this policy, the Insurers agree to pay to the Insured on behalf of any Insured Person or his Estate the compensation stated in the Schedule.

OPTION 1	COMMUTER BUSES
<b>Death Limit (Motor Vehicle accident)</b>	R 15,000
<b>Hospital Days Limit (Motor Vehicle accident)</b>	R 2,000 per insured person per day limited to a maximum of 25 days (not necessarily consecutive).
<b>Permanent Total Disability (Motor Vehicle accident)</b>	R 50,000
<b>Territorial Limits</b>	Whilst traveling in the specified insured vehicle within the Republic of South Africa
<b>Basis of Cover</b>	24-hour, 7 day a week basis applies
<b>Time Exclusions</b>	Hospitalisation: 48 Hours
<b>Accumulation Limit *</b>	R 3,000,000 per policy, per annum

\* **Accumulation Limit** means the amount stated in the Schedule which represents the **maximum liability** for **all claims** under any and all benefits from all Insured Persons arising from the same (**accident, event or occurrence** or series of related accidents, events or occurrences) AND/OR (location), and if at any time the total value of unpaid claims would, if paid, result in the Accumulation Limit being exceeded (even if the Sum Insured is not) then the individual benefits attributable to those outstanding claims shall be reduced pro rata as necessary to ensure that the Accumulation Limit is not exceeded.



<b>OPTION 2</b>	<b>TOURIST BUSES, SCHOOLS, LIMOUSINES, SHUTTLES, METER TAXIS</b>
<b>Death Limit (Motor Vehicle accident)</b>	R 150,000
<b>Ages 0 to 5 (incl. 5)</b>	Maximum R 10,000
<b>From 6 to 13 (incl. 13)</b>	Maximum R 30,000
<b>Hospital Days Limit (Motor Vehicle accident)</b>	R 2,000 per insured person per day limited to a maximum of 25 days (not necessarily consecutive).
<b>Permanent Total Disability (Motor vehicle accident)</b>	R 150,000
<b>Territorial Limits</b>	Whilst traveling in the specified insured vehicle within the Republic of South Africa
<b>Basis of Cover</b>	24-hour, 7 day a week basis applies
<b>Time Exclusions</b>	Hospitalisation: 48 Hours
<b>Accumulation Limit *</b>	R 5,000,000 per policy, per annum

\* **Accumulation Limit** means the amount stated in the Schedule which represents the **maximum liability** for **all claims** under any and all benefits from all Insured Persons arising from the same (**accident, event or occurrence** or series of related accidents, events or occurrences) AND/OR (location), and if at any time the total value of unpaid claims would, if paid, result in the Accumulation Limit being exceeded (even if the Sum Insured is not) then the individual benefits attributable to those outstanding claims shall be reduced pro rata as necessary to ensure that the Accumulation Limit is not exceeded.



## **FUNERAL BENEFIT**

The Funeral Benefit covers funeral costs and is included in the Death Benefit. The Funeral Benefit may be paid out without the Claimant being the Representative or Executor of the Deceased Estate. The Funeral costs payable is limited to the amount indicated in the Schedule as the Death Benefit but not greater than R30,000 (Thirty Thousand Rand).



## **DEATH BENEFIT**

The benefit limit, as defined in the Policy Schedule, less Funeral Expenses (if already paid).

Assets of the deceased may only be dealt with by a person authorised by a Master of the High Court in South Africa.



## EXTENSIONS

The following extensions are included (please see Policy Wording for full description):

- ✓ Life support
- ✓ Life support equipment
- ✓ Trauma counselling
- ✓ Mobility
- ✓ Permanent disfigurement
- ✓ Rehabilitation Costs
- ✓ Repatriation



## EXCLUSIONS

The Insurers shall not be liable to pay Compensation for bodily injury in respect of any Passenger or Driver where:

- ✗ caused by suicide, or intentional self-injury or exposure to obvious risk of injury (unless in an attempt to save human life)
- ✗ caused solely by an existing medical condition, physical defect or other infirmity
- ✗ the claimant is over 70 years of age (unless otherwise provided herein)
- ✗ participating in any riot or civil commotion or public disorder
- ✗ suffering from venereal disease or Acquired Immune Deficiency Syndrome (AIDS) or AIDS related complex (ARC) howsoever this syndrome has been acquired or may be named
- ✗ participating in motor sport or informal competition of any description involving a Specified Vehicle.
- ✗ the Insurers shall not be liable to pay Compensation for bodily injury in respect of any Driver as a result of the influence of alcohol whilst driving a Specified Vehicle where the concentration of alcohol in the specimen of blood taken from the Driver exceeds the legal limit or as a result of the influence of drugs or narcotics upon the Driver unless administered by a member of the medical profession (other than himself) or unless prescribed by and taken in accordance with the instructions of a member of the medical profession (other than himself)
- ✗ Claims made against one passenger against another passenger

## Guidance Note: General documents required to process a PA claim

The following documents are required for a Claim; however, it is noted that the Insurer may require additional information and/or documents.

It is further noted that procedures and requirements in law may change from time to time and therefore this document is limited to providing general guidance and does not constitute advice of any nature.

### A. Permanent Disability Benefit

The Patient must obtain, at his own expense, a **Medical Certificate** from a duly qualified and registered Medical Practitioner.

### B. Hospitalisation Benefit

The Patient must provide a copy of the **Hospital Invoice**.

### C. Death Benefit

#### ◆ FUNERAL BENEFIT

- **The Funeral Benefit covers funeral costs and is included in the Death Benefit.**
- The Funeral costs payable is limited to the amount indicated in the Schedule as the Death Benefit but not greater than R30,000 (Thirty Thousand Rand).
- The Funeral costs may be claimed up to a maximum of 7 days after the funeral.
- **N.B. The Funeral Benefit may be paid out without the Claimant being the Master's appointed Representative or Executor of the Deceased Estate.**

DOCUMENT TYPE REQUIRED FOR EACH OF THE DIFFERENT PAYOUT TYPES	PAID TO INSURED	PAID TO A CLAIMANT OF DECEASED	PAID TO SERVICE PROVIDERS OF FUNERAL COSTS
Death Certificate	Required	Required	Required
AOL signed by the Insured	Required	Required	Required
Affidavit & Third-Party Release (signed Commission of Oaths)	Not required	Required	Not required
ID (signed Commissioner of Oaths)	Not required	Required	Not required
Invoices	Not required	Not required	Required

#### ➤ Examples of how pay-outs to service providers of funeral costs are calculated

Option 1 (R15,000 Death Limit)	Total Funeral Costs	Amount Paid	Notes
Hearse	R 14 000	R 14 000	Paid in full
Liquor	R 9 000	R 1 000	Portion paid
Funeral Parlour	R 40 000	R -	N/A
<b>Total</b>	<b>R 63 000</b>	<b>R 15 000</b>	
Total Death Limit	R 15 000		
Total Funeral Benefit Available	R 15 000		
Total Death Benefit Balance	Nil		

Option 2 (R150,000 Death Limit)	Total Funeral Costs	Amount Paid	Notes
Hearse	R 14 000	R 14 000	Paid in full
Liquor	R 9 000	R 9 000	Paid in full
Funeral Parlour	R 40 000	R 7 000	Portion paid
<b>Total</b>	<b>R 63 000</b>	<b>R 30 000</b>	
Total Death Limit	R 150 000		
Total Funeral Benefit Available	R 30 000		
Total Death Benefit Balance	R 120 000		

#### ◆ DEATH BENEFIT - DECEASED ESTATES GUIDE

- **The benefit limit, as defined in the Policy Schedule, less Funeral Expenses (if already paid).**
- **N.B. If paid to the Insured, only the Death Certificate is required, along with a signed AOL.**
- **N.B. If to be paid to third-party, please note all of the following:**

Where a deceased left an asset / assets in the Republic, whether or not he or she was ordinarily resident in the Republic, no person may deal with the South African assets unless authorised thereto by a Master of the High Court in South Africa (section 13(1) of the Administration of Estates Act 66 of 1965 (the Act)).

This means that a person who has received a Letter of Executorship in a country other than the Republic of South Africa will not be entitled to deal with the assets of the estate within the Republic until they are authorised by a Master in the Republic. The Master gives this authority either by issuing Letters of Representative (Deceased Estate Value Below R250,000) or Letters of Executorship (Deceased Estate Value Above R250,000) or by signing and sealing Letters issued by some other State.”

Therefore, whether the Deceased Estate involves a South African National or a Foreign National, a Claimant must be appointed as Representative or Executor, validated by the Master of the High Court.

For Foreign Nationals, all the documentation provided in the country outside of South Africa in order to obtain their Executorship should be provided to the Master in South Africa.

**The following documents must be submitted to the Master of the High Court by Claimants in order for them to apply and be approved by the Master of the High Court as a Representative or Executor of the Estate. This application is the responsibility of the family of the deceased.**

**Submission must be made in the Province in which the deceased resided.**



The Deceased Estate value must include the full value of the Death Benefit of the Policy (e.g. R15,000 or R150,000). (Below forms available from Genlib).



DECEASED ESTATE VALUE   <u>BELOW</u> R250,000		DECEASED ESTATE VALUE   <u>ABOVE</u> R250,000	
<b>NO WILL (INTESTATE)</b>		<b>NO WILL (INTESTATE)</b>	
• Form J294 Death Notice		• Form J294 Death Notice	
• Form J192 Affidavit (Particulars of Next-of-Kin)		• Form J192 Affidavit (Particulars of Next-of-Kin)	
• Form J243 Inventory		• Form J243 Inventory	
• <b>Nomination Form</b> To Act As Executor Or Master's Representative		• <b>Nomination Form</b> To Act As Executor Or Master's Representative	
• Form J155 Acceptance of Master's Directions		• Form J190 (x2) Acceptance of Trust as Executor	
• Affidavit / Declaration		• Affidavit / Declaration	
<b>WITH WILL</b>		<b>WITH WILL</b> (providing it provides for Executors – if not, then follow guideline for No Will)	
• Form J294 Death Notice		• Form J294 Death Notice	
• Form J243 Inventory		• Form J243 Inventory	
• Form J155 Acceptance of Master's Directions		• Form J190 (x2) Acceptance of Trust as Executor	
• Affidavit / Declaration		• Affidavit / Declaration	
Master will issue <b>LOA</b> (Letter of Authority) <b>Form J170</b> . Person referred to as a <b>Master's Representative</b> (not an Executor)		Master will issue <b>LOE</b> (Letter of Executorship) <b>Form J238</b> . Person referred to as an <b>Executor</b>	

**Note:**

- If the Will makes provision for Assets in the Foreign Country only, but the deceased also left Assets in SA (e.g. this Insurance pay-out), then the SA Assets devolves Intestate (i.e. No Will).
- If the Will makes provision for Assets in both the Foreign Country and SA, then the court of the First instance (i.e. where reporting of the Estate first takes place, whether in Foreign Country or SA), that court will keep the Original Will. If this occurs in the Foreign Country, a Claimant must obtain a Signed & Sealed copy of the Will and Letter of Authority or Executorship (both courts will accept same).

DOCUMENT TYPES TO BE SUBMITTED FOR FINAL CLAIM	DECEASED ESTATE VALUE   <u>BELOW</u> R250,000	DECEASED ESTATE VALUE   <u>ABOVE</u> R250,000
Death Certificate	Required	Required
AOL signed by Insured	Required	Required
ID (signed Commissioner of Oaths)	Required	Required
LOA (Letter of Authority) <b>Form J170</b>	Required	Not required
LOE (Letter of Executorship) <b>Form J238</b>	Not required	Required