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Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

# **POLICY ON MANAGEMENT OF STATE LITIGATION CONTINGENT LIABILITY**

**POLICY DEVELOPED PURSUANT TO SECTION 3(4) OF THE STATE ATTORNEY  
AMENDMENT ACT, 2014  
(ACT 13, 2014)**

**INITIATED BY:  
OFFICE OF THE SOLICITOR-GENERAL  
DEPARTMENT OF JUSTICE & CONSTITUTIONAL DEVELOPMENT  
MARCH 2022**



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## TABLE OF CONTENTS

### CHAPTER 1

<b>1</b>	<b>INTRODUCTION</b> .....	<b>5</b>
1.1	DEFINITIONS.....	5
1.2	LEGISLATIVE MANDATE.....	7
1.3	BACKGROUND.....	7
1.4	PROBLEM STATEMENT.....	8
1.5	SCOPE OF APPLICATION.....	9

### CHAPTER 2

<b>2</b>	<b>POLICY AIMS AND OBJECTIVES</b> .....	<b>9</b>
----------	-----------------------------------------	----------

### CHAPTER 3

<b>3</b>	<b>ROLE PLAYERS</b> .....	<b>10</b>
3.1	SOLICITOR- GENERAL.....	10
3.2	ACCOUNTING OFFICERS OR ACCOUNTING AUTHORITIES.....	10
3.3	STATE ATTORNEY.....	10
3.4	STATE DEPARTMENTS.....	11

### CHAPTER 4

<b>4</b>	<b>MECHANISM FOR MANAGEMENT OF THE STATE LITIGATION</b> .....	<b>11</b>
----------	---------------------------------------------------------------	-----------

#### **CONTINGENT LIABILITY**

4.1	MATTERS CONSIDERED AS CONTINGENT LIABILITY.....	11
4.2	STAGE FOR CONSIDERING A CLAIM AS CONTINGENT LIABILITY.....	11
4.3	PROCEDURE FOR DETERMINATION AND QUANTIFICATION.....	11
	OF CONTINGENT LIABILITY QUANTUM	
4.4	APPORTIONMENT OF DAMAGES.....	13
4.5	EXCLUSION OF MISJOINDER CLAIM.....	13
4.6	LETTER OF DEMAND.....	14
4.7	DORMANT CLAIM.....	14

4.8	AMENDED CLAIM QUANTUM.....	14
-----	----------------------------	----

**CHAPTER 5**

5	<b>CONTINGENT LIABILITY CENTRAL DATABASE AND TIME FOR RECORDING</b> .....	15
5.1	ESTABLISHMENT OF CONTINGENT LIABILITY CENTRAL DATABASE WITHIN THE OFFICE OF THE SOLICITOR - GENERAL .....	15
5.2	TIME FOR RECORDING CLAIMS.....	16

**CHAPTER 6**

6	<b>IMPLEMENTATION, MONITORING AND EVALUATION</b> .....	16
6.1	IMPLEMENTATION.....	16
6.1.1	SOLICITOR-GENERAL.....	16
6.1.2	ACCOUNTING OFFICER OR ACCOUNTING AUTHORITY.....	17
6.2	MONITORING AND EVALUATION.....	17

**CHAPTER 7**

7	<b>REPORTING OF STATE LITIGATION CONTINGENT LIABILITY</b> .....	18
---	-----------------------------------------------------------------	----

**CHAPTER 8**

8	<b>CLOSING OF FILES AND REMOVAL OF CLAIMS FROM THE CENTRAL DATABASE</b> .....	18
---	-------------------------------------------------------------------------------	----

**CHAPTER 9**

9	<b>NON COMPLIANCE AND DISPUTE RESOLUTION</b> .....	20
9.1	NON COMPLIANCE.....	20
9.2	DISPUTE RESOLUTION.....	20

**CHAPTER 10**

**10 APPROVAL OF THE POLICY.....21**

**CHAPTER 11**

**11 REVIEW AND AMENDMENT OF THIS POLICY.....21**

**CHAPTER 12**

**12 SHORT TITLE AND COMMENCEMENT.....21**

## CHAPTER 1

### 1 INTRODUCTION

#### 1.1 DEFINITIONS

For purposes of this policy, unless the context indicates otherwise-

**“Accounting Officer** means an accounting officer as defined in Section 36 of the Public Finance Management Act, 1999 (Act No. 1 of 1999) and Section 60 of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003).

**Accounting Authority”** means an accounting authority as defined in Section 49 of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

**“Amount claimed”** means any monetary claim pending in a court of law instituted by way of statement of claim or summons against the State department that seeks the State department to compensate or repay a particular amount of money.

**“Claim”** means a claim against the State which arises from any loss or damage suffered by another person as a result of an act or omission by the State department’s employee/s.

**“Central database”** means a computerised system or a manual register that record the State litigation contingent liability.

**“Constitution”** means the Constitution of the Republic of South Africa, 1996.

**“Contingent liability”**<sup>1</sup> In this policy, contingent liability shall refer to a quantum of claims intimated either by way of a statement of claim or summons against the State and to which claims the State is obliged to make financial provision to cater for a possible liability.

**“Court”** means any court in the Republic as defined in Section 166 of the Constitution of the Republic of South Africa 1996.

**“Computerised system”** means an electronic system that records the State litigation contingent liability of all civil claims.

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<sup>1</sup> A contingent liability is a possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the department” (Definition from National Treasury Departmental Financial Reporting Framework Guide Chapter 8 Pg. 3)

**“Department or State Department”** in relation to an Organ of State, includes any such department, or institution in the national, provincial, local spheres of government and State-owned enterprises.

**“Dormant Claim”** means a claim which the plaintiff is not prosecuting and/or there is no significant or material progress on the case for a period of more thirty-six (36) months from date of the last action taken as per the court file.

**“Head of Office”** means the Head of Office and/or a person responsible for the overall management of the Office of the State Attorney.

**“Manual Register”** means a prescribed register that records the State litigation contingent liability of all civil claims.

**“Minister”** means the Cabinet Minister responsible for the administration of justice.

**“Quantum”** means amount claimed in the statement of claim/summons or a just and equitable amount determined and quantified terms of provisions of paragraph 4.3 to 4.8 of this policy.

**“State Organ”** means an organ of State as defined in Section 239 of the Constitution of the Republic of South Africa.

**“Solicitor-General”** means the incumbent appointed in terms of Section 2 of the State Attorney Amendment Act, 2014 (Act No. 13 of 2014).

**“State”** means the territorial entity that enjoys sovereignty and governed by the constitution of the Republic of South Africa.

**“State Attorney”** means any person who is an attorney appointed in terms of the State Attorney Act, 1957 (Act. 56 of 1957) as amendment by Act No. 13 of 2014).

**“State legal services”** means legal units within State department or organs of State that are tasked with the responsibility of providing any form of legal advice, litigation, provision of legal opinions, drafting of legal documents or representation of State department and the provision of any legal service that requires a legal qualified person.

**“State litigation”** means work performed for and on behalf of organs of State that requires the services of State Attorneys, Advocates, Litigation Officers, Notaries and Conveyancers.

**“State-owned company”** means a company registered in terms of the Company Act, 2008 (Act 71 of 2008) or is listed as a public entity in Schedule 2 or 3 of the

Public Finance Management Act, 1999 (Act No. 1 of 1999); or is owned by a municipality, as contemplated in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

## **1.2 LEGISLATIVE MANDATE**

The provisions of this policy are based on the principles and values espoused in the:

- (a) Constitution of the Republic of South Africa, 1996.
- (b) Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005).
- (c) Institution of Legal Proceedings Against Certain Organs of State Act, 2002 (No 40 of 2002).
- (d) Legal Practice Act, 2014 (Act No. 28 of 2014)
- (e) Municipal Finance Management Act, 2003 (Act 56 of 2003).
- (f) Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (g) Public Service Act, 1994 (Proclamation No. 103 of 1994).
- (h) State Attorney Amendment Act, 2014 (Act No. 13 of 2014).
- (i) State Liability Act, 1957 (Act No. 20 of 1957).
- (j) Treasury Regulations for Departments, Constitutional Institutions and Public Entities issued in terms of the Public Finance Management Act No 1 of 1999.

## **1.3 BACKGROUND**

- 1.3.1 The general principle laid down in both the provisions of Treasury Regulation 13.1.4 and Section 40 of the Public Finance Management Act is that Accounting Officers are responsible for reporting all known contingent liabilities of the departments on annual reports.
- 1.3.2 This policy does not seek to absolve or usurp accounting officers' responsibility to report all known contingent liabilities on their departmental annual reports as required by Treasury Regulations and Public Finance Management Act.
- 1.3.3 The Office of the Solicitor-General is mandated to develop policies for, *inter alia*, coordination and management of State litigation from which litigation State contingent liability arises.
- 1.3.4 The State has no dedicated litigation contingent liability central database that record all civil litigation claims as well as matters relating to consumption of State legal services. Poor management of State litigation contingent liability and its challenges are amongst other things triggered by:

- (a) lack of policies for management and monitoring of State litigation contingent liability;
- (b) lack of uniform standards in complying with Treasury Regulations and prescripts in relation to management of State contingent litigation liability;
- (c) lack of cooperation and support from stakeholders in relation to management of State litigation and prescripts relating to consumption of State legal services;
- (d) lack of coordination, information sharing and consolidation of data relating to State contingent liability; and
- (e) failure to comply with directives issued by the Auditor-General in relation to Treasury Regulations pertaining to consumption of State legal services.

1.3.5 Since the dawn of democracy, State litigation contingent liability is quantified at several billions of Rands<sup>2</sup>. This globular amount relating to litigation contingent liability is likely to rise exponentially if procedures for managing same are not put in place.

1.3.6 This policy is developed in terms of Section 3(4) of the State Attorney Act, 1957 and it is intended to ensure uniform management, assessment and recording procedures in State litigation contingent liability and also to have a central database that will record State litigation claims.

#### **1.4 PROBLEM STATEMENT**

1.4.1 State Departments or Organs of State are inconsistent in managing, assessing, recording and reporting of contingent liability claims triggered by litigation and other legal claims preferred against the State.

1.4.2 Desired future to be created by this policy is to enable consistencies and uniform standard procedure for managing, assessing, recording and reporting State litigation contingent liability.

1.4.3 The effective implementation of the policy is intended at proper recording; reporting and reduction of litigation contingent liability.

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<sup>2</sup> As at end of FY2020/2021, the Auditor General quantified contingent liability relating to litigation at approximately R147 billion.

## **1.5 SCOPE OF APPLICATION**

- 1.5.1 The provisions of this policy apply to all State departments in the national, provincial and local spheres of government including State Owned Enterprises.
- 1.5.2 All accounting officers of State departments and State owned enterprises must ensure and observe the import of the policy and to align their internal processes with the provisions of this policy and to any standards and directives that shall be issued in the implementation of the policy.

## **CHAPTER 2**

### **2 POLICY AIMS AND OBJECTIVES**

The objectives of this policy are to-

- 2.1 develop uniform guidelines in respect of all civil litigation contingent liability claims made against State departments as well as all other matters relating to consumption of State legal services.
- 2.2 establish within the Office of the Solicitor General a single contingent liability central database for all State departments.
- 2.3 provide for a substantive mechanism that *inter alia* shall serve to monitor and control the recording of litigation contingent liability as well as matters relating to consumption of State legal services into a single central database.
- 2.4 avoid double recording of civil claims.
- 2.5 assist in identification of dormant files and withdrawn claims.
- 2.6 reduce global amount of litigation contingent liability by closing of dormant files and withdrawn claims and by removing their amounts from litigation contingent liability central database/register.
- 2.7 ensure complete and accurate reporting of all contingent liability claims made against State departments.

## **CHAPTER 3**

### **3 ROLE PLAYERS**

#### **3.1 SOLICITOR- GENERAL**

##### **3.1.1 The Solicitor General-**

- (a) is responsible for coordination and management of all litigation in which the State is involved,
- (b) has the responsibility to develop strategies for reduction of State contingent liability, and
- (c) is responsible for reporting the status of State contingent liability to cabinet.

3.1.2 The cooperation of all State departments in furnishing the office of the Solicitor-General with relevant information relating to consumption of State legal services and litigation matters is therefore mandatory.

3.1.3 State departments shall be required to comply with standards, directives and requests for information intended at quantifying State contingent liability.

3.1.4 State attorneys are required to observe and comply with all the standards and directives issued by the Solicitor General in relation to management and coordination of State litigation.

#### **3.2 ACCOUNTING OFFICERS OR ACCOUNTING AUTHORITIES**

The Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA) and the Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA) provides for the designation of both Accounting Officers or Accounting Authorities and vests specific powers and responsibilities in such incumbents. These incumbents must be central figures, in consultation with their Executive Authorities, in ensuring that their institution's litigation is managed, as near as it is possible, in accordance with this policy.

#### **3.3 STATE ATTORNEY**

3.3.1 State Attorneys are professional public sector legal practitioners reporting to the Office of the Solicitor-General and their function is *inter alia* to provide legal services to State departments.

3.3.2 The work of the Offices of State Attorney is regulated by the Legal Practice Act, 2014 (Act No. 28 of 2014) and the State Attorney Act, 1957 (Act No. 56 of 1957) as amended.

3.3.3 State attorneys must ensure that information and pleadings for litigious matters are available to the State departments.

#### **3.4 STATE DEPARTMENTS**

3.4.1 State departments are departments, institutions or sectors within Organs of State in the national, provincial, local sphere of government including State owned enterprises, whose litigation must be coordinated and managed through the Office of the Solicitor-General.

3.4.2 Upon approval of this policy by Cabinet, all state departments shall be required to develop their own guidelines in relations to management of state contingent liability which guidelines shall not be inconsistent with the provisions contained in this policy.

### **CHAPTER 4**

#### **4 MECHANISM FOR MANAGEMENT OF THE STATE LITIGATION CONTINGENT LIABILITY**

##### **4.1 MATTERS CONSIDERED AS CONTINGENT LIABILITY**

For the purposes of this policy, all civil claims sounding in money against State departments must be considered as litigation contingent liability for purpose of recording the contingent quantum in the register/central database.

##### **4.2 STAGE FOR CONSIDERING A CLAIM AS CONTINGENT LIABILITY**

State departments shall consider a claim as contingent liability upon receipt of either a statement of claim or summons issued by a court of law or other tribunals. Each State department is responsible for determination and quantification of its own contingent liability quantum that must be recorded on the register designated for that purpose within a department.

##### **4.3 PROCEDURE FOR DETERMINATION AND QUANTIFICATION OF CONTINGENT LIABILITY QUANTUM**

4.3.1 The general procedure for determination and quantification of litigation contingent liability is that the amount in the statement of claim or summons intimated as a

claim against the State constitutes the quantum for which the State department requires to make contingent provision in its records.

- 4.3.2 For purposes of recording the contingent quantum on the register and updating the central database, State departments shall record the quantum as claimed, unless where the State department is of a view that the quantum of the amount as claimed is unjustifiable or unreasonable, in which case the State department shall record a just and equitable quantum.
- 4.3.3 An overstated or inflated claim is a claim which is unreasonable and unjustifiable. The claim quantum may not be supported by material facts and case law in the plaintiff's claim.
- 4.3.4 The State department may estimate a reasonable quantum which the court is likely to grant against the State department or is likely to settle on.
- 4.3.5 Quantum claims that are either overstated, inflated or cannot be justified are not to be recorded in the departmental registers. If and in that event, the department shall record or post to the register only the portion that objectively is deemed as just and reasonable. The figure that objectively is deemed as just and reasonable shall then be recorded on the central database as an equitable estimate of the quantum.
- 4.3.6 To determine a reasonable quantum estimate, the State department(s) may be guided by previous similar matters decided against the State department(s). All evidence must be considered as well as the strength and weakness of the State department(s) case against the claim.
- 4.3.7 Where a plaintiff (claimant) in the claim is praying for the State department to be jointly and severally liable with another defendant or State departments, the State department may not record on the register the total quantum claimed in the statement of claim/summons.
- 4.3.8 In that event, a State department must determine the quantum that the department is likely to be liable for by dividing the quantum claimed equally amongst the defendants who are sued jointly and severally.
- 4.3.9 The quantum so divided shall be regarded as a reasonable quantum for litigation contingent liability provided, however, that where it appears to the Office of the Solicitor-General that the division or provision made by the department to meet the claim is understated, the Solicitor-General may, after consultation with the Accounting-Officer concerned perform a re-determination and revision of the quantum so stated by the department.

- 4.3.10 In the event where there are no sub-claims specified and the claim is also not jointly and severally, the summons quantum should be split between the defendants.
- 4.3.11 Where a claim has alternative claims, the bigger claim quantum must be recorded on the central database as contingent liability.
- 4.3.12 Where the claimant's claim in the statement of claim or summons is comprised of sub-claims in which the total quantum claimed is incorrectly calculated, the incorrect total quantum cannot be recorded on the central database.
- 4.3.13 In such cases a correct quantification should be done and be recorded on the central database. The correct total quantum calculated will be recorded as contingent liability even though it differs from the total quantum appearing on the plaintiff's summons.
- 4.3.14 Where the State department cannot make quantification of the matter, the State departments shall refer the matter to the office of the Solicitor-General for determination of what is fair and reasonable.
- 4.3.15 For avoidance of any doubt, in all instances where there is uncertainty on the part of a department about the amount required to be recorded as constituting contingent liability provision or alternatively where a department is uncertain about the quantum to be recorded on the register in relation to claims where more than one department or defendants are involved, the department shall consult with the Office of the Solicitor-General for assistance in the determination of the quantum.

#### **4.4 APPORTIONMENT OF DAMAGES**

- 4.4.1 In order to assess the quantum which the court is likely to grant or settle on, the provisions of the Apportionment of Damages Act No. 34 of 1956 must be applied. The quantum claimed in the statement of claim or summons must be reduced by the percentage the State department may deem just and equitable after having considered the degree in which the claimant contributed to the damages.
- 4.4.2 The balance of the quantum after deduction of apportionment may be recorded as contingent quantum on the register.

#### **4.5 EXCLUSION OF MISJOINDER CLAIM**

- 4.5.1 Where a State department is joined in a claim in which it ought not to have been joined because it was not involved in the transaction or event giving rise to a claim to arise, such claim should not be recorded on the register and ought not to be passed onto the central database. This provision is applicable even under circumstances

where the claimant's claim quantum is claimed jointly and severally against State department(s).

4.5.2 A misjoinder may also occur in a sub-claim in which the claimant is claiming payment against the State department whereas the State department was not involved in the transaction or event giving rise to a claim.

4.5.3 In such a case, the quantum of any such sub-claim should be subtracted from the claimed quantum and be excluded from the contingent register.

#### 4.6 **LETTER OF DEMAND**

A letter of demand or notice in terms of Section 3(1) of the Institution of Legal Proceedings Against Certain Organs of State Act No 40 of 2002 should not be regarded as constituting or triggering a contingent liability.

#### 4.7 **DORMANT CLAIM**

4.7.1 Where a claim recorded on the register and posted onto the central database becomes dormant, the quantum so claimed shall not be calculated in the total of the State department's contingent liability. It must be indicated in the register that the claim is dormant and provision should be made for recording the dormancy status on the central database.

4.7.2 The claim may be regarded as dormant if there has not being any significant or material progress in the case for a period of more than thirty-six (36) months from date of the last action or steps taken in the prosecution of the matter.

#### 4.8 **AMENDED CLAIM QUANTUM**

4.8.1 Once the claimed quantum is amended or varied, the State attorney should within five (5) days of receipt of the notice of amendment (variation) of the quantum, in writing inform and give the State department concerned of the fact of the amendment.

4.8.2 In other words, where quantum intimated in the claim(s) is amended, the office of State Attorney should in writing communicate the fact of the amendment to the accounting officer against whom the matter relates at an earliest opportunity but in any event within five (5) days from date upon which the office of the State Attorney became aware of the amendments to the pleadings.

4.8.3 Simultaneously with notifying the Accounting Officer(s) as envisaged in clause 4.8.1 and 4.8.2 (above), the State Attorney shall also notify the Office of the Solicitor-

General of the fact of the amendment so that a corresponding entry is effected onto the central database.

- 4.8.4 Upon receipt of the amendment of the claim quantum, the State department shall amend the quantification in the contingent register in line with the notice of amendment.
- 4.8.5 The amended contingent quantum so recorded in the register shall be deemed to constitute a reasonable quantum that is likely to be offered in *lieu* of settlement of the matter or alternatively an order granted by a court.

## **CHAPTER 5**

### **5 CONTINGENT LIABILITY CENTRAL DATABASE AND TIME FOR RECORDING**

#### **5.1 ESTABLISHMENT OF CONTINGENT LIABILITY CENTRAL DATABASE WITHIN THE OFFICE OF THE SOLICITOR - GENERAL**

- 5.1.1 It is recorded that in terms of Treasury Regulations and/or prescripts, each department within the State is required to have a contingent liability register relating to consumption of State legal services and litigation.
- 5.1.2 It is further recorded that the various contingent registers are not sufficiently streamlined and/or coordinated to enable the office of the Solicitor General to have a clear line of sight of the consolidated State exposure in relation to contingent liability relating to litigation and litigious matters.
- 5.1.3 The office of the Solicitor-General is responsible for the establishment of a central contingent liability central database. The central contingent liability central database<sup>3</sup> shall be comprised of all contingent liability registers drawn from the various State departments.
- 5.1.4 In order to achieve the objectives of this policy, the State shall be required to provide a modernised, seamless and agile portal<sup>4</sup> that is capable to automation and is anchored on a digitalised and/or computerised platform.
- 5.1.5 It shall be incumbent on the Office of the Solicitor-General to develop a business case and a strategic plan that will create digital platform for warehousing data in relation to the contingent liability as envisaged in this policy.

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<sup>3</sup> It is good practice that a seamless and agile process that is possible of automation and is anchored on a digitalised and/or computerised platform offers a modernised contingent management solution. For this reason, any modernised contingent management solution, capable of interrogating information should be hosted or anchored on a digitalised platform (as opposed to manual data recording and storage).

<sup>4</sup> The State must to invest in a modernised and digitalised contingent management solution.

## **5.2 TIME FOR RECORDING CLAIMS**

- 5.2.1 On or before the last working day of the month, each State department shall be required to record and update its own contingent liability register.
- 5.2.2 The office of the Solicitor-General shall develop a standard reporting template that will be used by State departments in updating the central database in relation to State departments own contingent liability registers.
- 5.2.3 Accurate contingent liability information as updated shall before the 07<sup>th</sup> day of the next quarter following on the last month of the previous quarter be remitted to the office of the Solicitor-General.
- 5.2.4 The office of the Solicitor-General shall on or before the end of the first month of every quarter update the consolidated central database relating to State contingent liability.
- 5.2.5 The office of the Solicitor-General shall keep record of non-compliance by State departments with the provisions of this clause, which records non-compliance shall be shared with National Treasury and the Office of Auditor-General.

## **CHAPTER 6**

### **6 IMPLEMENTATION, MONITORING AND EVALUATION**

#### **6.1 IMPLEMENTATION**

The role players are responsible for the implementation of this policy in their respective capacities as follows:

##### **6.1.1 SOLICITOR-GENERAL**

The Solicitor-General must play a leading role in the implementation of this policy, and to this end, must-

- (a) develop and create a central database for collation, registration and updating information feed from the contingent liability registers;
- (b) provide clarity and guidelines to State departments on the proper interpretation, implementation and application of this policy;
- (c) develop strategies for intervention where challenges are encountered;

- (d) foster on-going intervention with stakeholders in respect of these objectives; and
- (e) develop and populate a business case, strategy and digital platform for storage of information relating to State contingent liability central database within the Office of the Solicitor-General.

#### **6.1.2 ACCOUNTING OFFICER OR ACCOUNTING AUTHORITY**

The accounting officers are responsible for compliance and implementation of this policy by ensuring that-

- (a) there is compliance with the policy in their respective departments;
- (b) officials' capture accurate information of all civil litigation cases instituted against the department;
- (c) timeframes referred to in the policy are complied with;
- (d) information on the contingent register is up to date; and
- (e) cooperate with the office of the Solicitor-General in attainment the policy prescripts and objectives.

#### **6.2 MONITORING AND EVALUATION**

6.2.1 The achievement of the objectives entailed in this policy is an on-going process and successful implementation of the policy depends on effective monitoring and evaluation on an on-going basis.

6.2.2 The office of the Solicitor General must play a leading role in the monitoring, evaluating and implementation of this policy by-

- (a) always checking the State departments' compliance with the provisions of the policy;
- (b) identify and call upon State department to remedy the breach, where there is breach;
- (c) timeously attend to disputes and queries arising from implementation of this policy;
- (d) document progress and causes of failure and possible weaknesses of this policy;

- (e) analyse the contingent liability central database on a quarterly basis;
- (f) identify weaknesses or loopholes of this policy on its implementation process;
- (g) assess the achievement of the objectives of the policy and weakness or loopholes in the implementation of the policy;
- (h) provide regular feedback to all stakeholders on the efficacy of this policy in reduction of State contingent liability;
- (i) ensure that the State attorneys play their part and provide regular updates on the contingent liability register and to departments; and
- (j) engage role players and stakeholders in gauging progress of this policy in achieving the objectives on management of State contingent liability.

## **CHAPTER 7**

### **7 REPORTING OF STATE LITIGATION CONTINGENT LIABILITY**

- 7.1 The Solicitor-General, as an executive officer of the offices of State Attorney, shall be responsible in ensuring that there is complete and accurate reporting of contingent liability claims instituted against State department (the State).
- 7.2 The Solicitor-General must report on all litigation contingent liability of the State in the Solicitor's-General or State Attorney's annual report in terms of applicable Treasury Regulations and prescripts.
- 7.3 The Solicitor-General may from time to time issue regular reports but in any event at least once every quarter on the status of State litigation contingent liability and to assist in relaying this information to Cabinet.

## **CHAPTER 8**

### **8 CLOSING OF FILES AND REMOVAL OF CLAIMS FROM THE CENTRAL DATABASE**

- 8.1 Active files<sup>5</sup> may be closed and the claim quantum in relation thereto shall be removed from the State department contingent register as well as from the central database. The procedure for removal of a matter from the register shall be in line with what is outlined hereunder.

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<sup>5</sup> The word active files shall also include dormant matters. Dormant files are claims which the plaintiff is not prosecuting and/or there is no significant or material progress on the case for a period of more thirty-six (36) months from date of the last action taken as per the court file.

8.2 Removal of files from the contingent register and the central database as envisaged in paragraph 8.1 shall be made under any of the circumstances listed below:

- (a) Where the claimant abandons a matter previously intimated as a claim sounding in money against the State or indicates in writing that he/she will no longer be pursuing the claim.
- (b) Where the claimant for a period of over three (3) years fails to pursue a claim.
- (c) Where it appears clear that the claimant for a period of over three (3) years is no longer replying to pleadings, notices or correspondences.
- (d) Where the parties enter into a settlement agreement.
- (e) Where a claimant in a personal injury claim relating to general damages dies.<sup>6</sup>
- (f) Where the court has granted an order<sup>7</sup> and there is no pending *lis*, appeal or review proceedings as between the claimant and the State.
- (g) Where the Solicitor-General declares that any such matter should be categorised as dormant, finalised or closed.

8.3 Once any of the listed circumstances occur:

8.3.1 The State department may inform the State Attorney handling the matter of its intention to certify the matter as dormant; closing the file and removing same from its contingent register.

8.3.2 If and in the event that the State Attorney becomes aware of any circumstances listed above, then and in that event the State Attorney shall inform the State department of the procedure that should be followed in declaring the claim or file to be dormant and the fact of closure of the file and removal of the matter from the contingent register.

8.3.3 It is mandatory that the notification and process envisaged in 8.3.1 and 8.3.2 (whichever is the case) should be performed within seven (7) days from date of knowledge of the circumstance triggering certification and/or declaration of dormancy.

8.3.4 In either of the events listed in 8.3.1 and 8.3.2 the information should be in writing and should be brought to the attention of the Office of the Solicitor-General which shall within fourteen (14) days of notification cause the central contingent central database to be amended.

8.3.5 In certain circumstances the Solicitor-General may, at the request of or with the consent and specific approval of any Accounting-Officers and within Treasury

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<sup>6</sup> Subject to case law developments in relation to this principle.  
<sup>7</sup> And the State has fulfilled its obligations in terms of that order

Prescripts, call for the appointment of a high impact team<sup>8</sup> for the interrogation and reduction of contingent liability pertaining to any specific department.

## **CHAPTER 9**

### **9 NON COMPLIANCE AND DISPUTE RESOLUTION**

#### **9.1 NON COMPLIANCE**

9.1.1 Where the State department fails to comply or is in breach of the provisions of this policy, the Office of the Solicitor General will immediately inform the accounting officer or accounting authority of such breach or non-compliance.

9.1.2 The accounting officer or accounting authority will be requested to remedy the fact of non-compliance within thirty (30) days and failure to do so will be regarded as dispute.

9.1.3 In all instances of non-compliance and/or non-cooperation with the office of the Solicitor-General, the Solicitor-General shall without detracting from any provision contained in this policy, inform or alert National Treasury or the Auditor-General and/or both of the fact of non-compliance and of non-cooperation.

#### **9.2 DISPUTE RESOLUTION**

9.2.1 The Office or the Solicitor-General and a department must make every reasonable effort to settle a dispute between them amicably through conciliation and negotiations within 30 days after the aggrieved party gave written notice to the other party.

9.2.2 If a dispute cannot be so settled or the subject-matter of the dispute necessitates finality before the expiry of the 30 day-period, either party may refer the matter to the Accountant-General at National Treasury for mediation.

9.2.3 All disputes arising from issues concerning administration and implementation of this policy will be addressed in terms of provisions of the Intergovernmental Relations Framework Act No 13 of 2005.

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<sup>8</sup> The High Impact Team envisaged in the clause shall include, but is not limited to, a multi-disciplinary team comprised of individuals and professionals with varied skills such as accountants and lawyers possessing relevant skills and competencies to interrogate litigation data and trends and to assist the State in reducing contingent liability relating to litigation.

## CHAPTER 10

### 10 APPROVAL OF THE POLICY

- 10.1 As required by Section 3 of the State Attorneys Amendment Act 2014, this policy must be approved by Cabinet and tabled in Parliament by the Minister of Justice and Constitutional Development for noting.
- 10.2 The provisions of this policy shall be read in conjunction with the other policies developed pursuant to the provision of Section 3(4) of the State Attorneys Amendment Act, 2014 (Act 13 of 2014).

## CHAPTER 11

### 11 REVIEW AND AMENDMENT OF THIS POLICY

- 11.1 This policy shall be reviewed every five (5) years or as soon as the circumstances dictate.
- 11.2 Any amendment of this policy must be approved by Cabinet and tabled in Parliament by the Minister of Justice and Constitutional Development as envisaged in Section 3(5) of the State Attorneys Amendment, 2014 (Act 13 of 2014).

## CHAPTER 12

### 12 SHORT TITLE AND COMMENCEMENT

This document is called Policy on Management of State Litigation Contingent Liability and shall become effective from date of Cabinet approval and shall become operational within thirty (30) days from date of tabling before Parliament.

### ENDORSEMENT OF THE POLICY

Initiated by:	Approved By:	Date Approved
Office of the Solicitor-General	Signature: 	19/04/2022
	<b>Mr. E O Lamola, (MP)</b> Minister of Justice and Correctional Services	