



## *Practice Resources – Have You Got Yours?*

Since 2007, the PII Committee has actively developed practice resources for members. Our focus is on members who are either sole proprietors or in small practices. Usage of these resources has however been dismal. To help us understand why, we pose you three (3) questions:

1. **Have you heard of the Bar Council's practice tools?**
2. **Do you know what these tools are?**
3. **Do you need them?**

We need your feedback to help us serve you better, so call or write us! We have two (2) full time officers based at the Bar Council who are happy to talk to you about risk management, practice resources, and to hear your feedback on what tools can be developed to assist you and your practice.

We would like to highlight some practice resources we have developed specially for lawyers, regardless of years in practice:

- I. **Practice Booklets on Time Management and Increasing Profit & Productivity.** Providing an unabashed view of practice life, these booklets, through illustrations and hard facts, can help your firm increase efficiency, productivity and profits.
- II. **Practice Area Checklist CD.** Containing 10 (comprehensive and summary checklists) on litigation and conveyancing, this CD will assist your firm tremendously in tracking timelines, ensuring no steps are missed when managing large numbers of files, supervising work, and ensuring a uniformed approach to files.

We have enclosed a leaflet with more information on the Booklets and Checklist CD in this issue of Jurisk! You can either purchase the Booklets and CD at the Bar Council secretariat or complete the order form and we will mail them to you!

Other practice resources available include:

- i. **File Transfer Checklist.** An essential tool when handling referred, transferred or inherited files. It lists key questions you can ask yourself to minimise handover time and determine your plan of action on the file.

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- ii. *Everyday Risk Management for Lawyers e-Guide*. A unique flowchart guide on how to identify file 'traps' and to stay on top of work.
- iii. *Practice Alert*. Our very own risk watch where members are kept updated on emerging risks and practice traps.
- iv. *Previous issues of Jurisk!* where checklists for conflicts, file transfers, and even tips on how to deter potential fraudsters have been featured.

The above resources are available free of charge online. Simply go to [www.mypii.com.my](http://www.mypii.com.my) or the Resource Centre at the Malaysian Bar website to download your copy.

We emphasise use of these practice resources time and time again, as it is vital not only for your firm's development but to ensure best practices in our profession. To illustrate, our PII Scheme is presently experiencing a steady increase in dishonesty claims. If not checked, it may affect our profession's reputation, your firm's bottom line and eventually your premium rates. Prevention is always better than cure, so start today, rigorously implement risk management in your firm by improving your office controls.

The PII Committee will continue in our efforts to raise the bar on practice standards through our risk management programme. This makes your support and feedback evermore critical; so do write us with your queries/feedback.

Till next issue, happy reading!

*Ragunath Kesavan* President/PII Committee Chairman, Malaysian Bar

## *A Note from the Jurisk! Team*

We are proud to present our very first GREEN issue of Jurisk!

Following Earth Hour on 28 March 2009 when it was lights off for 88 countries and more than 4,000 cities, the Jurisk! team was inspired to publish our very own Green issue. To make it special, we have lined up a couple of 'Green' goodies for the month of June in celebration of World Environment Day, 5 June 2009:

### 2 GREEN articles:

- *The Irrelevance of Climate Risks to Your Firm*. Author Martin Goh draws a link between going Green and how it can affect your firm's bottom line! Read his article on page 3 for this unusual link.
- *6 Important Things a Lawyer Can Do to Help the Environment*. Our special centrespread where we share 'Green your routine' tips to help the environment.

With the economic downturn, greening your routine may be harder, particularly when you're focused on staying in the black. We've decided to nevertheless honour World Environment Day that has been ongoing since the 1970s and hope that you will do the same, even if it's just attaching a green message to your email, switching off your monitor before you go home or buying a RM2.00 reusable bag. See page 12 for more information.

# The Irrelevance of Climate Risks to Your Firm

By Martin Goh,  
Echelon Risk  
Consulting Asia Pte Ltd

## Setting the Scene

Managing risks, increasing profitability and going 'green' – Objectives that can converge to help your firm be more successful or is that simply wishful thinking?

On the surface it would seem that the above objectives are uncorrelated. However, that would perhaps be jumping to a somewhat presumptuous conclusion. Let's look at the issue at hand in a little more detail, try to extrapolate a thread of commonality through the objectives and see how/if they apply to your firm.

## Impact of Climate Change and Risk Management

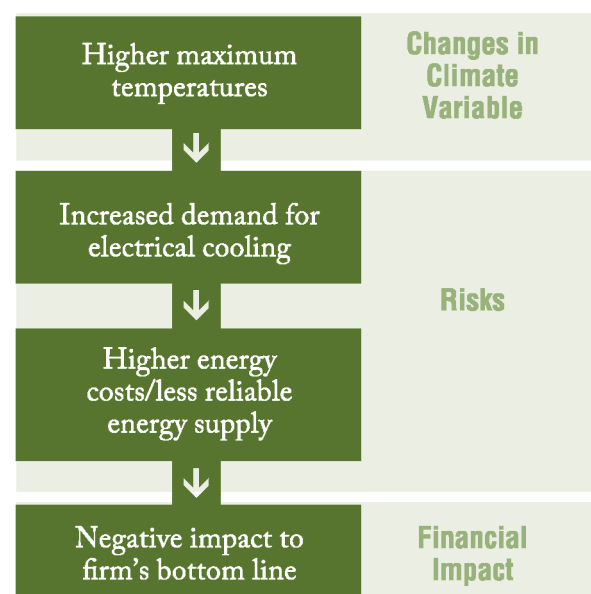
It's been well reported that we are facing a daunting and ever more critical climate crisis. As economist Nicholas Stern pointed out,<sup>1</sup> 'We need strong international agreement to deal with the climate crisis... The longer we delay, the more the greenhouse gasses build up, the more difficult the starting point for action becomes'. It's perhaps tempting to think that such statements about the environment relate more to Greenpeace or companies that engage in oil exploration than the legal practice.

Before we get too carried away though, let's keep in mind that the environment is everyone's problem. Let's face it: If the environment (and the earth) goes down the toilet, then we will be going down with it. Unless you have plans to move to Mars, now is as good a time as any to get serious about going 'green'.

It is reasonable to conclude that risks (to an organisation) associated with climate do not necessarily arise directly from changes to climate but from consequences that may directly affect

the organisation's capacity to serve its clients or stakeholders. Such a perspective certainly makes the risks associated with climate change and its potential effect on your firm more salient. This is the perspective that frames the guide published by the Australian Greenhouse Office, in the Department of the Environment and Heritage – 'Climate Change Impacts & Risk Management – A Guide for Business and Government'.<sup>2</sup>

The guide seeks to provide organisations with a framework to identify, assess, prioritise and mitigate risks associated with climate change that would be relevant to their business. It advises businesses to examine links between climate change and risk and how these causal links affect their organisation. The figure below shows an example of the link between climate change, risk and organisational impact:





The guide states that climate change is likely to have pervasive effects that will be felt in some way by every person and every organisation, and at all levels, from strategic management to operational activities. The effects will impact across environmental issues, economic performance, social behaviour, infrastructure and other aspects of human existence.

This alludes to what must be an obvious realisation – Our actions or inactions can contribute to dramatic changes in climate variables that will have drastic implications to our business and more importantly, our lives. So if you still think climate change risk management has little to do with the legal practice, maybe it's time for a paradigm shift.

Case-in-point: Arnold & Porter, a law firm in Washington, D.C, found out through an informal survey in 2006 that annual paper use per attorney (in the US) ranges from about 20,000 to about 100,000 sheets.<sup>3</sup>

Producing paper is very energy-intensive – According to the web site of the ABA-EPA Climate Challenge, 'The life-cycle of one ton of office paper, from production to disposal in a landfill, results in the release of about 11 tons of carbon dioxide-equivalent gases, which contribute to global climate change; as well as other air and water pollutants'.

Would you fancy having significantly higher electricity bills during the next economic downturn?

## Going 'Green'

So how do we start going 'green'?

You can choose to take a formalised and structured approach, as suggested by the Australian Greenhouse Office, and use the AS/NZS 4360 Risk Management Standard.

If you feel that this is too daunting or perhaps not applicable for your practice, you can start small and simply choose to make a difference with practical steps such as:

- Turning off electrical devices that you are not using – e.g. Lights in the offices where no one is working, appliances that don't need to stay on at night and computers not in use.
- Take advantage of digital media to keep electronic files (where possible). With today's technology, documents can be scanned, emailed, posted to the web, downloaded, and carried anywhere with the help of a laptop or flash drive.
- Utilise natural light – Proper windows with open shades or curtains allow enough light into the office so that you use less artificial light.
- Recycle.
- Set goals. For example, you might set a goal to lower your monthly electric bill by 10%. Contests and rewards can be set up for achieving such 'green' goals, and going above and beyond expectations.
- Use energy-saving light bulbs – Compact Fluorescent Light Bulbs (CFLs) require 75% less energy and last ten times longer than conventional ones.<sup>4</sup>



## A Dose of Inspiration

Sometimes going 'green' can be met with skepticism, obstacles and maybe even a belief that it's all talk and no company in the real world is actually doing it. The following might help:

**DLA Piper<sup>5</sup>** Introduced global sustainability initiative to reduce the impact of the firm's operations on the environment.

This includes installing more energy-efficient lights and machines in offices, encouraging more recycling and duplex printing and copying of documents.

The firm is also offering USD 2,000 to employees – excluding partners – who purchase hybrid cars and USD 1,500 to those who lease them.

**MantaCole<sup>6</sup>** A US law firm that has implemented a paperless system that saves an estimated 12 trees per year.

MantaCole's paperless system has allowed attorneys to deliver all their services in a more streamlined and productive manner, which has resulted in double-digit increases in growth since the company opened in 2004.

### The Equator Principles<sup>7</sup>

Based on the policies of the World Bank and its private sector arm, the International Finance Corporation, the Equator Principles serve as a financial industry benchmark for determining, assessing and managing social and environmental risk in project financing.

Project financiers may encounter social and environmental issues that are both complex and challenging.

Equator Principles Financial Institutions (EPFIs) have consequently adopted these Principles in order

to ensure that the projects they finance are developed in a manner that is socially responsible and reflect sound environmental management practices.

By doing so, negative impacts on project-affected ecosystems and communities should be avoided where possible, and if these impacts are unavoidable, they should be reduced, mitigated and/or compensated for appropriately.

So far, 67 financial institutions have adopted the Equator Principles, including companies such as Bank of Tokyo-Mitsubishi UFJ, Citigroup, HSBC, ING Group and Standard Chartered Bank.

## Concluding Thoughts

I hope this article has shed some light on how managing risks, increasing profitability and going 'green' can converge as worthy objectives to be easily and simultaneously pursued.



Let's be frank though – The motivation behind going 'green' for most businesses is as much about saving the world as it is about the bottom line – Attracting new clients and hires, saving costs on paper and energy bills.

So altruism takes a little bit of a back seat, but does that matter in the bigger picture? Going 'green' is the right thing to do, it's perceived well by clients, it's mostly low cost, adds to the bottom line (and possibly top line) and yes, it helps save the world at the same time.

Don't want to consider going 'green' because climate risks are irrelevant to your firm? Now that's wishful thinking...

#### Notes

- 1 Connecting climate change and economic recovery - Economist Nicholas Stern discusses the downturn and its effect on the climate change agenda. The McKinsey Quarterly, March 2009.
- 2 Available online at <http://www.climatechange.gov.au/impacts/publications/pubs/risk-management.pdf>
- 3 Debra Cassens Weiss, ABA Journal, 19 September 2007.
- 4 US Department of Energy (Energy Star).
- 5 Maria Kantzavelos, Firms Taking Steps To Reduce Environmental Footprints, Chi. Law., September 2007.
- 6 Libby Vinson, ABS (Association Business Solutions, Inc) News Centre Blog, 26 September 2008.
- 7 The "Equator Principles", July 2006.

# 'Green' is in and since we tend to spend huge chunks of our lives in the office, here are: 6 IMPORTANT THINGS A LAWYER CAN DO TO HELP THE ENVIRONMENT

by Wong Li Chin

## Be PC Savvy Switch Off!

Your computer may be your lifeline at work but it doesn't need to be switched on 24-7!

Shut down your PC when you head out for meetings, lunch or home.

**Saves energy.  
Cuts down electricity bills.**



Set your PC to "Hibernate" or "Sleep". It powers down your monitor to about 5 watts of energy and your PC to 2-3 watts.

## Conserve Energy Go Natural

Work using natural light where possible.

Switch off some or all unneeded office lights.

Use low-wattage high efficiency light bulbs.

**Reduces CO2 greenhouse gas emissions.  
Saves money!**

Studies done in America show that artificial lighting consumes some 40% of electricity in a typical office building.

## Reduce Emissions Cycle to Work...

We're kidding! Unless you live within a 5 km radius of work, carpooling is best.

Studies show that carpooling can reduce stress!

**Preserves our ozone layer.  
You'll be happier and healthier.**



The average Malaysian spends a staggering 2 1/2 days in traffic jams every month. This translates to one month of our daily lives every year!

## Hug a Tree Go paper -LESS

The legal profession uses huge amounts of paper.

Make a change now: send emails, review documents on-screen, invest in a good document management system.

**Saves trees!  
Reduces costs to store, manage, move & protect your files.**

500 sheets of paper (1 ream) uses 6% of a tree. So, if you reduce your usage by just 17 reams a month, you will save 12 trees every year!



## Get your Free & trendy Eco Bag

Simply send us an email and tell us "Juriski is a must read because....",

## Spread your own Green Message

Send a green message with your emails. Download your FREE messages from [www.malaysianbar.org.my](http://www.malaysianbar.org.my) (See page 12 for more information).

## Hug another Tree Print Smart

If printing is inevitable, PRINT WISELY and recycle paper.

Print on both sides.

Use all misprints as your notepaper.

**Animals get to keep their habitats!  
Lower overheads for the firm.**

One species is pushed to the brink of extinction every 20 minutes.

So print smart and use recycled paper.



## Reduce Waste Recycle!

Get recycling bins for your firm.

Encourage staff to recycle used plastic, toners, paper, aluminium cans, etc.

**Less thrash, less landfills.  
Boost staff morale.**

Organise a gotong-royong for the office. Donate old binders, books and magazines. Electronics can also be recycled at any best buy.



## Think Green Go Green!

**Preserves resources for future generations.**

Persuade your firm's partners to adopt at least one of these environmentally friendly (and cost-effective) policies!



Reference websites:  
[www.conservatree.com/learn/EnviroIssues/Trees.shtml](http://www.conservatree.com/learn/EnviroIssues/Trees.shtml)  
[www.conservation.org](http://www.conservation.org)

\* The Juriski team bears no liability/responsibility for any inaccuracies in information/statistics stated in this article or any loss arising from implementing the above steps.



# FORGERY OF CHEQUES

## HOW TO REDUCE RISK OF FORGERY OF CHEQUES?

Ask yourself these 10 questions about your firm's financial and accounting practices.

### Do you or your partners:

- Regularly ask for status reports from your accounts staff?
- Exercise separation of duties i.e. one to receive cash and one to issue receipts?
- Have an easy to audit (paper trail) system to support all monetary transactions within the firm?
- Issue receipts for ALL payments received from clients?
- Cross-check payment of cheques and vouchers against the relevant file?
- Check that all payments issued are recorded on file?
- Reconcile receipts with bank statements at least once a month?
- Have a "two to sign" policy, if you are in partnership?
- Monitor frequency of requests for cheque books and cheques issued?
- Store the firm's cheque books in the office safe at the end of every working day?

## DID YOU KNOW?

**Under the amended Section 73A, Bills of Exchange Act 1949 (Act 204), banks are not strictly liable in cases of forgery of cheques.**

### How does this affect my law firm?

Where it can be shown that:

1. The bank exercised caution and
2. There was negligence on the cheque holder's part, the bank will not be held fully liable for losses on the forgery.



## ILLUSTRATIONS OF NEGLIGENCE

- ✗ Firm's cheque books kept by accounts staff, not partners.
- ✗ Leaving cheque books in the care of staff whilst on leave.
- ✗ Pre-signing blank cheques.
- ✗ Signing cheques without being fully appraised of the file/purpose of payment/checking the payment voucher details.

# SIF1 BAR COUNCIL'S WORK TO DATE

At the Mar 2009 AGM, Members voted unanimously in favour of the motion authorising the Bar Council to establish a Self-Insurance Fund (SIF) to form a key part of the Mandatory Professional Indemnity Scheme (PI Scheme). As a target, if the Bar Council deems it appropriate, the SIF would be created from 1 Jan 2010.

A number of concerns were however raised by the Members at the Mar 2009 AGM including the ability/knowledge of the Bar Council to come to an informed decision on the SIF. To this end, the Bar Council will publish a series of FAQs and will organise a SIF Dialogue on 11 Jul 2009 to address Members' concerns/questions.

We begin the FAQ Series with an overview of the PII Committee's initiatives to date in reviewing the SIF. Separately, we would strongly recommend that Members refer to the SIF Working Paper in the 2008/09 Annual Report which provides a description of the SIF.

## 1. When did the SIF initiative begin?

It can be said that the PII Committee has been working on this initiative since 1991! The then PII Committee assisted in the design and structure of Section 78A of the Legal Profession Act 1976 (LPA) such that it would allow the Malaysian Bar to establish a SIF at some point in the future.

Over the years, we have fine-tuned our PII Scheme – improved terms, increased coverage, gained a better understanding of it. These efforts have allowed the Bar Council to comprehensively consider the SIF as an alternative to our present arrangements.

## 2. What was the catalyst for this proposed move to a SIF?

The Nov 2005 PII Workshop we organised in Kuala Lumpur. This workshop was the first ever of its kind and it drew representatives of other Commonwealth Law Societies, as well as insurers and brokers.

At the Workshop, we heard success stories of the Australian and Canadian self insurance schemes, and also the SIF experience of the Law Societies of Hong Kong and England & Wales. We learnt that we were not very different from other Schemes – we faced similar issues/problems – self insurance was a natural step forward.

We capitalised on this knowledge and began a 3-year feasibility plan, a cornerstone of which was to consider the viability of a SIF based on the principles of sustainability, equity and affordability.

## 3. How is the Scheme so different now that we can confidently move to a SIF?

Today, the Bar Council has become more involved in the management of the Scheme which provides us greater control over the Scheme's design. For example, the Confidentiality Clause was successfully removed in 2006, which allowed us access to statistical claims data/information (previously not available). This enabled us to better assist and ensure equity for Members.

A Department with three (3) full time officers including a Risk Manager was established at the Secretariat to ensure Members have access to information on the Scheme/risk management.

Another milestone in the management of the Scheme was the appointment of a dedicated Third Party Claims Administrator to the PI Scheme (Echelon Claims Consultants Sdn. Bhd.), which has significantly improved the administration of claims under the Scheme.



#### 4. What steps have been taken by the PII Committee to evaluate the SIF?

In late 2007, following an open tender process the Bar Council appointed the specialist consultant Echelon Risk Consulting Asia Pte Ltd (SIF Consultant) to advise on the feasibility and implementation of a SIF. To date, they have submitted various reports/papers on the SIF to the PII Committee for evaluation (see SIF Reports/Papers Table below).

A legal opinion on Section 78A LPA was obtained and it confirmed that the LPA allows for the establishment of a SIF subject to the approval of the Attorney General.

A SIF Workshop was also organised in Dec 2008, where Ms. Miranda Milne, CEO Legal Practitioners' Liability Committee (LPLC), Victoria Australia, on invitation, came for a knowledge-share Workshop. She shared with us the LPLC experience and her views on our proposed SIF and its structure.

SIF Reports/Papers	Explanation	
SIF Feasibility & Implementation Study	Feasibility of the SIF evaluated with detailed financial projections, proposed retention structures, etc.	
Financial Projections Paper	Financial analysis of envisaged SIF, including projections, consultant's analysis and assumptions.	
Capitalisation and Investment Strategies Review	Investment Strategies for the SIF reviewed. Capitalisation Options & Strategies for the SIF considered.	
SIF Management and Operational Structure Paper	Proposed management structure and role of the SIF stakeholders (Bar Council, Committees, PII & RM Department, External Advisors & Consultants).	
Draft Standard Operating Procedures (SOPs)	Detailed mechanics of how the SIF would operate on an annual and day-to-day basis.	
Draft Guidelines on Appointment of Members to SIF Committees	Guide on appointment, responsibilities and resignation of SIF Committee Members.	

#### 5. Has the Bar Council engaged any regulatory bodies on the proposed SIF?

Yes, Bank Negara Malaysia and the Attorney General's Chambers. We have organised meetings with Bank Negara to inform them of the proposed move to a SIF. Separately, we have met with the Attorney General's Chambers on the proposed amendments to the rules governing the PI Scheme, as allowed under the LPA to facilitate the transition to the SIF.

BANK NEGARA MALAYSIA (BNM)		
Two (2) Meetings with BNM	Informed BNM of Bar Council's SIF vision and objectives. To date, BNM has not raised any objections to Bar Council's move to a SIF.	
Written Updates to BNM in coordination with JLT Malaysia	Updated BNM on the specific proposed parameters of the SIF, including detailed explanation of how claims would be indemnified under the proposed SIF.	

**ATTORNEY GENERAL'S CHAMBERS (AGC)**

Proposed Amendments to Legal Profession (Professional Liability) (Insurance) Rules 1992 (1992 Rules) (Dec 2008)

Draft amendments to the 1992 Rules were prepared and submitted to the Drafting Division of the AGC.

The draft amendments are now pending review with the AGC.

**6. What about the Members, what information on the SIF has been circulated to them?**

It has been our intention to ensure that Members fully appreciate and understand the reasons behind the move to the SIF and to be kept constantly updated.

**SIF INFORMATION FOR MEMBERS**

SIF Roadshows at State Bar AGMs (Jan – Feb 2008)

The PII Committee, the PII & RM Department and the SIF Consultants organised Roadshows to State Bars to provide concept/overview of the SIF and to obtain Members' feedback.

Articles/Circulars/Annual Reports (2008 – 2009)

SIF Write-ups and Q&As distributed to all Members at the 2008 AGM.

Updates published in Jurisk! Editorials and articles. Update circulars email blitzed to Members.

SIF Progress Reports included in the PII Committee's Annual Reports 2007/08 and 2008/09.

SIF Working Paper (Mar 2009)

Detailed Paper on SIF included in the 2008/09 Annual Report for Members to better understand the proposed SIF, its objectives, structure, administration, etc.

SIF Q&A Discussion Board (Jun 2009)

Available to Members at the Malaysian Bar website to post their SIF questions and feedback.

SIF FAQs (May – Jul 2009)  
SIF Dialogue (Jul 2009)

A series of FAQs on our preparation towards the SIF and its differences from the present Scheme will be circulated to Members and posted online. To culminate in a SIF Dialogue in Jul 2009.

It is hoped that this FAQ has provided you with a better idea of the PII Committee's SIF efforts. We are confident that this move to a SIF is the correct step in our Scheme's evolution, into which much thought and work has been done. We see long term benefits for Members and hope that Members will support us by interacting with us, giving us your feedback, actively using our Q&A Discussion Board and participating at the SIF Dialogue.

## Going Green

**Being energy efficient, reducing waste, reusing and recycling** can affect your bottom line by substantially reducing operating costs, so start today! Here are some ideas:

Implement green ideas from our centrespread.

Spread your own green message. We have created cool green messages for you to append as your signatures or use as attachments in your emails. Get them for FREE @ [www.malaysianbar.org.my](http://www.malaysianbar.org.my)



### Be Energy Savvy Switch Off!

Artificial lighting consumes 40% of electricity in a typical office building.



### Save a Tree Print Smart!

Save 17 reams of paper a month and you'll save 12 trees each year!



### Love the Planet Recycle-Reduce-Reuse

70% of residential household garbage is made up of recyclable materials.

Say no to plastic bags. How? Buy a trendy Bar Council eco bag at RM2.00 only! Available in different colours – black, royal blue or maroon.



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Certificate No. 22470

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We are always looking for ways to improve this newsletter and work towards ensuring that all areas related to risk management is highlighted as appropriately.

## Professional Indemnity

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