



# JURISK!

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## **practice ALERT!**

**Employees  
Provident  
Fund (EPF)  
Fraudulent  
Withdrawals**

Page 4

**LEGAL  
GO-GREEN  
IN MALAYSIA**

Page 6

**MALAYSIAN BAR  
PROFESSIONAL  
INDEMNITY  
INSURANCE  
(PII) SCHEME**

**RENEWALS  
FAQs**

Page 8

**It's not  
easy being  
green...  
Actually  
it is... and  
it's good for  
business!**

Page 10

## Members' Apathy Hampers Risk Management Work

Risk Management continues to be a crucial aspect of our Scheme's development and sustainability. Rising number of claims has motivated the PII Committee to actively promote Risk Management by enhancing its appeal to both sole proprietors and big firms alike.

We, however, still struggle with Members' apathy. Members often speak out about the lack of support and practice tools, yet we see very poor response at our events and receive very little feedback on our tools:

- ✗ We received less than 100 responses (0.67% response rate) on our 2009 "Your Opinion Matters" Survey. This Survey is one of the few means we have to obtain Members' feedback from the various State Bars on the PII Scheme and risk management tools.
- ✗ Our Risk Management Roadshow which has to date been organised in Melaka and Pahang, despite both State Bar Committees' best efforts, saw fewer than 45 participants attending.
- ✗ The recent *RM & You* Workshop in May 2010 on client retainers, information technology and managing critical dates, all **key** contributors to claims on the Scheme, had only 10 attendees! With approximately 7,000 lawyers in the Klang Valley, this is indeed a bleak state of affairs.

Nevertheless, we will persevere with our endeavours. You would have received our Survey forms with Jurisk! since September 2009. Alternatively, the forms are available at the Malaysian Bar website, and the respective State

Bars' and Bar Council Secretariats. Fill in our Survey today, let us know what you think and what you need. The Risk Management Roadshow will be organised in Kedah, Penang and Johor in June and July 2010. We hope more Members will make the effort to attend the Roadshow.

New additions to our Practice Booklet series, "*Accounting for Lawyers*" and "*Starting Up Practice*" will be published this July. These new Booklets provide practical guidance and tips for setting up a practice, accounting and managing finances for new practitioners. Supported by illustrations, proformas and to-do lists, these Booklets are a must read. They can be purchased from Bar Council at RM3.00 per copy from July 2010 onwards.

We cannot emphasise strongly enough the importance of practice tools in good risk management. In fact, we believe Practice Tools should be **an integral part** of any firm. It is our hope that Members will fully utilise The Big Give Vouchers that was sent out with Jurisk! March 2010 to attend our Workshops and purchase our practice tools, including the Practice Area Checklist CD and Booklets.

Educating Members on PII and risk management continues to be our passion and it is our goal to carry on developing and sharing our tools and knowledge with you. In this issue, we challenge Members to take this a step further by adding a little green to your law practice.

Happy reading!

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

## Legally Green!

We devote this special issue of Jurisk! to legal green-ing. Going green is no longer a fad but a way of life and we here at Jurisk! fully embrace this. It is our hope that by publishing an annual Green issue, we can encourage the Malaysian Bar to start being legally green!

We have approximately 5,000 law firms in Malaysia. If each firm takes one small green step today, e.g. print on both sides, our ecological footprint would be significantly reduced and it will help minimise the impact on our environment.

On a practical note, going green is also fast becoming a valuable marketing tool for attracting business and



corporate clients, particularly those who are jumping on the 'green' bandwagon themselves. Read 'It's Not Easy Being Green...' on page 10 to see how implementing green initiatives can save your firm money and add value for your clients.

Another worthy read in this issue is Americk Sidhu's humorous 'Legal Go-Green in Malaysia' centrespread. Bet it'll make your day.

We hope you enjoy this issue. If you have any thoughts or comments on risk management, our practice tools or Jurisk!, write to us. You can either fax Bar Council at 03 2031 6124 or email [pirm@malaysianbar.org.my](mailto:pirm@malaysianbar.org.my).

We'd like very much to hear from you.

## Go green!

Do your part and 'recycle'! Pass Jurisk! along to a colleague, staff or a client.

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# practice ALERT!

## Employees Provident Fund (EPF) Fraudulent Withdrawals

By Amanda Soo and Shyamala Manoharan

### Facts:

A syndicate, possibly involving EPF members/third parties submit false documents on behalf of an EPF Member to facilitate the approval of withdrawals from the member's funds in Account II (Housing).

The third party offers a desperate EPF member fast cash in exchange for commission from the EPF withdrawal or the EPF member themselves attempt to defraud EPF.

### Modus Operandi: How Legal Firms Get Involved

The syndicate prepares Sale and Purchase Agreements (SPA) and housing loan offer letters in the name of existing legal firms to facilitate EPF withdrawals.

- ! Syndicate usually adopts the name of an active legal firm, usually a sole proprietorship or a small/medium partnership but the contact details are changed to that belonging to the syndicate.
- ! When EPF contacts either developers, banks or legal firm to verify the withdrawal, it is then that EPF usually learns that:
  - (a) there was no property sale transaction nor housing loan agreement with this 'Purchaser';
  - (b) the 'Purchaser' is not a client of that legal firm.

### What Can You Do?

It is quite difficult for you to know if the syndicate has 'adopted' your firm's name.

- ✓ Ensure that all partners, lawyers and staff are aware of this. Be alert to the most recent scams reported and share with your lawyers and staff.
- ✓ Talk to staff about this issue, have them report any such incidences to a partner immediately.
- ✓ Do not ignore calls from EPF, better if a partner can attend to such calls.
- ✓ Full cooperation with EPF is crucial.
- ✓ You can call and check with EPF on whether your firm's name is on their KIV list.
- ✓ Make a report through EPF anti-fraud hotline 03-26162121 Monday to Friday.
- ✓ Keep and update your register of clients.

**Should Bar Council receive information that a firm's name/identity is being used, we will inform you immediately. In those circumstances, immediately lodge a police report.**

# practice ALERT!

## Case Study

1. **Application to EPF made with a false SPA, carrying a real legal firm's name but false contact details. Upon investigation by EPF, the bank confirmed that the applicant did not apply for a housing loan. EPF could not contact the firm as the details were false so they contacted Bar Council to get the correct contact details. It transpired that legal firm DID NOT prepare the SPA and that the applicant is not a client of the firm. EPF lodged a police report against the applicant.**
2. **A similar false application was made to EPF by a member. This time the SPA stated a legal firm's name carrying a Kajang address and a lawyer's name. When EPF did their investigation it transpired that the firm exists but they are ONLY in Batu Pahat, they do not have any branches and they definitely do not have a lawyer with that name.**

**Lawyers are generally NOT AWARE that their firm name is being used until they receive that call from the EPF!**

## DID YOU KNOW?

- ? Under Section 59 Employees Provident Fund Act 1991, punishment for fraudulent withdrawal (including attempt) is a maximum jail sentence of three years or a RM10,000.00 fine, or both.
- ? More than 902 police reports were lodged from 2008 to 2010 and in 2009, 96 court summons were filed. 35 EPF members have been found guilty to date.

### References:

[http://www.kwsp.gov.my/index.php?ch=p2news&pg=en\\_p2news\\_press&ac=2942](http://www.kwsp.gov.my/index.php?ch=p2news&pg=en_p2news_press&ac=2942)  
Bar Council Circular No. 271/2009

# LEGAL GO-GREEN IN MALAYSIA

By Americk Sidhu

**1** Don't file anymore appeal records. Just ask the bench to take your word as to what was said in the court below. This should be no problem because we are all members of a noble profession and we don't ever lie.

**2** No more written submissions in quintuplicate. Just write down a few salient points on the back of your hanky in washable ink and hand it to the bench. Please resist the urge to blow in it first. Then take your hanky back and wash it for the next appeal.

**3** Send all Judges on one of those courses they spend so much time at except this one will be with a difference. It's called the 'learning to read over the shoulder of your fellow Judge' course. The idea here is that you will then only need to submit one hanky in the Court of Appeal and Federal Court, for sharing.

**4** Allow all lawyers and learned counsel (purposely disjunctive), to disrobe in court and instead get into some snazzy speedos. This will obviate the necessity for air conditioning so you can throw all the windows open instead. Invite the bench to do the same. Biodegradable sick bags will be provided.

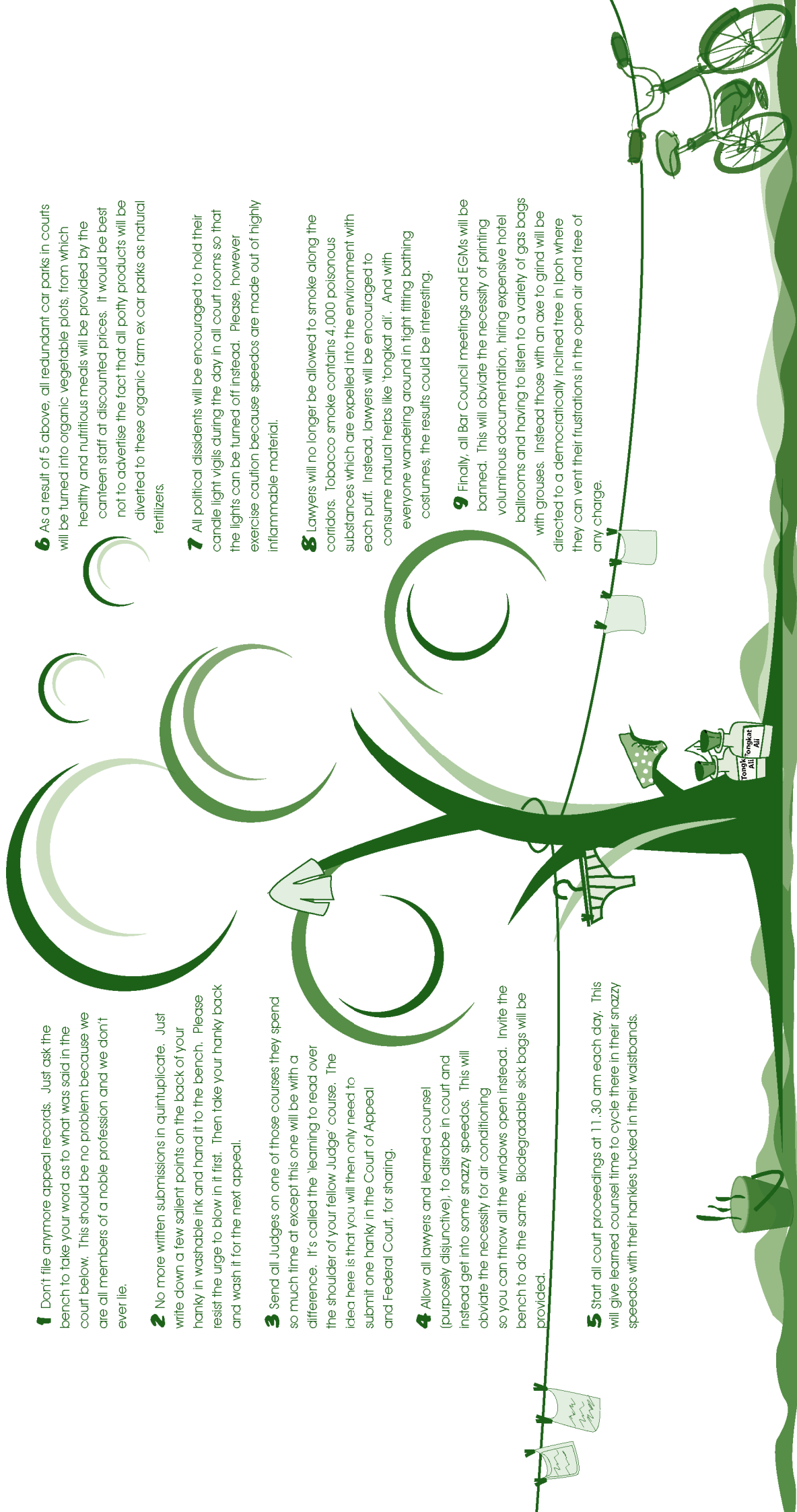
**5** Start all court proceedings at 11.30 am each day. This will give learned counsel time to cycle there in their snazzy speedos with their hankies tucked in their waistbands.

**6** As a result of 5 above, all redundant car parks in courts will be turned into organic vegetable plots, from which healthy and nutritious meals will be provided by the canteen staff at discounted prices. It would be best not to advertise the fact that all potty products will be diverted to these organic farm ex car parks as natural fertilizers.

**7** All political dissidents will be encouraged to hold their candle light vigils during the day in all court rooms so that the lights can be turned off instead. Please, however exercise caution because speedos are made out of highly inflammable material.

**8** Lawyers will no longer be allowed to smoke along the corridors. Tobacco smoke contains 4,000 poisonous substances which are expelled into the environment with each puff. Instead, lawyers will be encouraged to consume natural herbs like 'tongkat ali'. And with everyone wandering around in tight fitting bathing costumes, the results could be interesting.

**9** Finally, all Bar Council meetings and EGMs will be banned. This will obviate the necessity of printing voluminous documentation, hiring expensive hotel ballrooms and having to listen to a variety of gas bags with grouses. Instead those with an axe to grind will be directed to a democratically inclined tree in Ipoh where they can vent their frustrations in the open air and free of any charge.



# MALAYSIAN BAR PROFESSIONAL INDEMNITY INSURANCE (PII) SCHEME

By Charles Perera, Jardine Lloyd Thompson Sdn Bhd

# RENEWALS FAQs

## How do I renew my Insurance Policy?

You need to complete and

- ▶ Submit your Proposal Form online or
- ▶ Mail the completed print copy to the Broker.

The proposal form is available online at [www.mypii.com.my](http://www.mypii.com.my) or contact the Broker for a print copy.

**Every year, all lawyers who intend to practice must purchase PII to apply for their Sijil Annual and Practicing Certificate. In this FAQ, we talk about the 'what, where and how' of PII Renewals on the Malaysian Bar Mandatory PII Scheme.**

## When do Firms usually receive their Proposal Form?

Renewals (for the following year) usually start in September of the current year e.g. 2011 PII renewals will begin in September 2010.

Firms receive the Proposal Form in two ways:

- i The Broker sends an email on 1 September for the online Proposal Form. NB: Firm code verification is required for access.
- ii Print copies of the Proposal Form are sent to Firms on 15 September.

If you did not receive the email notification in 2009, kindly contact the Broker, who may not have a record of your email address.

## I need assistance in completing the Proposal Form, where and who can I get assistance from?

**Online.** See the *Guide to Completing the Online Proposal Form* @ [www.mypii.com.my](http://www.mypii.com.my).

**Print.** The *Guide to Completing Your Proposal Form* is enclosed with the Renewal Pack that the Broker sends out each year.

Alternatively, you can contact Bar Council's PII & RM Department or the Broker for assistance.

## What happens after I submit my Proposal Form?

If the Proposal Form is in order, the Broker will invoice the Firm. Upon payment of the premium (due to Insurers), the Policy Schedule is sent to the Firm.

The Policy Schedule is required when submitting your Sijil Annual application to Bar Council.

**For the purpose of this FAQ Series, 'the Broker' refers to the Malaysian Bar PII Scheme Insurance Broker.**

**The 2010 PII Scheme Insurance Broker is Jardine Lloyd Thompson Sdn. Bhd., Suite 10.2, 10th Floor, Faber Imperial Court, 21A Jalan Sultan Ismail, 50250 Kuala Lumpur. Tel: 03 2723 3388. Fax: 03 2723 3301**

### **What is the difference between completing the Proposal Form online and the print copy?**

The online Proposal Form is a fast and efficient alternative to manually filling up the print copy.

Set as a Pro Forma Webpage, the online Proposal Form is pre-populated with each Firm's Proposal Form information from the previous year. This allows the Firm's information to be copied over at the click of a button – hassle free!

For security purposes, members must log in to access the system. Log in is by way of firm code and verification number. You can obtain this by contacting the Broker.

The log in function also allows Members to fill in the Proposal Form in stages. Members simply save the information they have filled in and continue as and when is convenient to them.

### **The Firm has already paid and received the Policy Schedule, but I've just realised that I made a mistake when completing the Proposal Form, what should I do?**

You should immediately write the Broker, setting out the corrections to be made to the Proposal Form.

The Broker would then attach the letter to your Proposal Form and submit it to the Insurers for their instructions, if any.

### **My policy schedule carries a wrong Bar Council number/position/name – what do I do?**

Write immediately to the Broker. They will correct the error and furnish you with a new Policy Schedule to reflect the changes.

### **Partner/Legal Assistant left the Firm in December 2010 after firm paid the premium for 2011, can I get a refund?**

If the Partner/Legal Assistant left the Firm prior to 1 January 2011. Insurers will refund the premium paid for that individual.

### **Chambering student was called in October, do I have to pay premium if I intend to retain him?**

There is no premium due for the current year's policy period but premium would be charged for the following policy period e.g. no charge on the 2010 Policy but firm will be charged for 2011 Policy.

### **Why does the Broker send me two copies of the Policy Schedule?**

One is to be kept by the Firm for record purposes and the other copy is submitted to Bar Council for renewal of the Sijil Annual.

### **I have already submitted Firm's Proposal Form and recorded that the Firm has no claims experience. In December, I receive a claim against the Firm. What should I do?**

Formally notify the Broker of the claim in writing. There is no necessity to amend the Proposal Form that you have submitted.



# It's not easy being green... By Martin Goh and Kelvin Wu, JLT Risk Consulting Asia Actually it is... and it's good for business!

## Emerging Trends

In an April 2010 survey by Ceres,<sup>1</sup> it was found that the majority of corporate risk managers are aware of and concerned about at least some aspect of climate risk. In fact, they considered regulatory, physical, competitive, and legal climate risks to be “very” or “somewhat” likely.

Amidst these growing concerns, firms that are implementing environmental friendly initiatives also have to manage the need to comply with the relevant regulatory guidelines and ensuring financial feasibility of such initiatives. After all, like all corporate initiatives, firms need to ensure that they get value for the money spent while keeping a close eye on the bottom line.

## All hope is not lost

Before you throw in the towel, it is possible to manage climate risks and go green without breaking the bank (or the rules).

A San Francisco law firm called Nixon Peabody<sup>2</sup> – one of the first law firms to be environmentally certified by the U.S. Green Building Council under its programme for Leadership in Energy and Environmental Design (LEED) - is a prime example of a firm that managed to do just.

Nixon Peabody's office has extraordinary wood flooring and clear glass walls that offer a panoramic view of San Francisco

landmarks. Before you jump to conclusions about the apparent irony of us promoting wood flooring, you should know that these wood floors are made of Forest Stewardship Council certified orchard wood - wood from walnut orchards that have finished their mission of bearing fruit. The clear glass walls also ensure that not many lights will have to be switched on during the day.

Wooden floors and panoramic views? Clearly going 'green' can be done in style then! However, your thoughts are probably already drifting towards the costs. Does green necessarily cost more? With a commitment to innovative thinking and the application of cost-benefit analysis at various stages of the project, the expenditure for Nixon Peabody's office was only 1.5% more than what they would have paid for a similar non-green office build-out. Furthermore, this will be offset by energy and water savings, both immediate and over time.

## How did they do it?

How Nixon Peabody successfully managed the risks associated with its green initiative was impressive, especially when you consider the scale and complexity of their initiative, which involved the building of a green office.

However, there are some key pointers that we can take away from Nixon Peabody which will be applicable to all regardless of the scale and complexity of your firm or the initiatives you have in mind.

1. Ceres is a national coalition of investors, environmental groups and other public interest organizations working with companies to address sustainability challenges such as global climate change. Ceres directs the Investor Network on Climate Risk, a group of more than 90 institutional investors and financial firms from the U.S. and Europe managing over \$9 trillion in assets.  
2. Jeffery S. Lesk, 'How One Law Firm Went Green', LegalTimes, 25 June 2007.  
3. Boston Consulting Group, 'Capturing the Green Advantage for Consumers', January 2009.  
4. G. Michael Maddock and Raphael Louis Vitón, 'Going Green's Unexpected Advantage', Bloomberg Businessweek, 2 February 2010.  
5. Gregor Harter and Alexander Sova, 'Going Green Addressing Untapped Consumer Potential in The Telecom Industry', Booz and Company, 2008.

## Set Clear Objectives

Setting clear objectives and identifying the constraints and priorities will enable the firm to

keep abreast of the situation and not be surprised by any unforeseen risks or budgetary constraints. Right from the beginning, Nixon Peabody was clear about their objective and 'what shade of green' they wanted to be and they identified their top priorities and constraints.

By clearly setting out the key objectives of your green initiative right from the beginning, your firm will be able to ensure that priorities and constraints are correctly identified, balanced and managed with the end in mind.



## Be Creative & Innovative

Instead of being hampered by the financial constraints of their

limited budget, Nixon Peabody saw this as an opportunity to harness their creativity and innovation to come up with different ways of achieving their goals and objectives without breaking the bank. What ensued was an affordable design that married sustainability and aesthetic beauty, something which was previously thought to be not possible.

In addition, by consciously situating their office in an optimal location which encouraged their employees to take public transportation helped contribute to their green initiative in a free and efficient manner.

Such innovation will be crucial for firms who desire to go green without breaking the bank. Creative green initiatives need not always be on the scale of re-designing the office space, but could start from something as simple as replacing all rubbish bins in the office with recycle bins and refusing to use Styrofoam containers and plastics at the workplace pantry/ cafeteria and firm functions.

Involvement of senior management and staff will ensure that all decisions are

made with everyone on the same page. Nixon Peabody did not just rely on the architects they employed to come up with a certifiably green space. The senior management, staff and everyone else were involved in the planning of the strategy and contributed to the entire process.

For firms of a smaller scale, the advantage will be that staff and senior management involvement will be easier to facilitate and just as important in order to ensure that firms maximise the impact of any green initiative they implement. Working with staff will ensure that any green initiative stands a much greater chance of success as well.



## Involve Staff & Senior Management

Nixon Peabody involved professional architects in the design stage on the structural safety of their office. Certification was sought from regulatory bodies to ensure that the firm's green initiatives met with the relevant standards.

While the aid of such professionals might not always be accessible, firms can always look to other industry-driven initiatives for help. For example, Malaysia's Green Building Index, which is a voluntary rating tool developed by Malaysian Institute of Architects (PAM) and the Association of Consulting Engineers Malaysia (ACEM), is expected to spearhead the drive towards more energy efficient and sustainable design and construction of buildings. Through this index, instead of having to re-design for a 'greener' workplace, firms can easily choose to house their practices in a building that saves energy and has less impact on the environment.

## Engage the Right Personnel

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## A 'Green' Law Firm... So What?

In a survey<sup>3</sup> of over 9,000 consumers in North America, Europe, China, and Japan by Boston Consulting Group, they found that an increasing number of consumers systematically look for green products.

This finding is echoed by an article in Bloomberg Businessweek,<sup>4</sup> 'Green is good for the consumer and our planet, but sustainability makes a key driver of innovation and carries a huge competitive advantage.'

A 2008 study<sup>5</sup> by management consulting group Booz & Company estimated that the market of "green consumers" has an estimated global potential of Euros 200 to 400 billion. These consumers enjoy above-average income and spending, and their buying decisions reflect environmental considerations. They not only exhibit a willingness to pay an environmental price premium, green consumers also exhibit higher brand loyalty and greater involvement through word-of-mouth promotion, two characteristics that companies can successfully leverage for greater market share. With globalisation, it won't be long before green culture is the norm.

Can you really take the risk of not going 'green'? Still think that going green is the reserve of tree-hugging-Greenpeace activists? Think again.

## SPREAD THE GREEN. Attach these cool e-signatures to your emails!

Get them free from  
[www.malaysianbar.org.my](http://www.malaysianbar.org.my)  
(Resource Center).



### Recycle that Mobile!

On average, Mobile phones are thrown away after 12 months. Recycling 1 million would reduce greenhouse gas emissions equal to 33 cars being off the road for a year.



### Unplug!

Standby mode is estimated to cause 1% of the world's greenhouse gas emissions.



### Reduce. Reuse. Recycle.

75% of what is thrown in the trash could actually be recycled, only 25% is.