



JURISK!

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Risk Management Newsletter

A biannual publication of Professional Indemnity Insurance Committee, Bar Council Malaysia



ESTABLISH! ENHANCE! IMPROVE!
OR RISK FALLING THROUGH

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Make Risk Management Your Priority!

Dear Members,

We are now in the midst of negotiations with the Insurers through our broker for the terms and pricing for 2016. Although the Malaysian Bar Professional Indemnity Insurance ("PII") Scheme is pretty stable, we have not been spared from the escalating costs of maintaining the Scheme, increase in number of claims and higher payouts and inflation.

We have not had any increase in premium for the last four years. In fact we have done well to negotiate more favourable terms and conditions whilst maintaining steady premiums. We have managed to ensure that there will not be any increase in premiums for 2016 but we may have to look at higher premiums in the years to come going forward.

In order to arrest the increasing number of claims, we have to intensify our risk management efforts and every Member must exercise utmost caution and inculcate good risk management methodology in running their practice.

If you are not familiar with how to run a conveyancing practice, please be careful. Learn the processes, and the law and be aware of what is necessary to complete a transaction. Conveyancing is like any other area of practice; it requires expertise, knowledge and the capacity and support to ensure best practices are carried out.

Do not only rely on your clerical support to get things done. If there is a slip up, you will pay for it. Our policy provides cover but it does not cover gross negligence which can amount to misconduct and

there is a higher base excess for conveyancing claims in some situations. Please utilise the various checklists that we have produced to assist you. You can access these tools at www.praktis.com.my. These tools are available at no cost to you.

In the last year, there have been some changes to the Scheme. For starters, and definitely the most important, are the changes that have been made to the 2015 Certificate of Insurance ("COI"). Clause 11 has been amended and the risk management requirements that were provided for previously in Clauses 11(e)(i) to (iv) have been removed. In the last couple of years, during the period that the requirements were in place, several notifications by Firms were rejected by the Insurer due to Insurers strict adherence of the clause.

It is for this specific reason that the Committee has managed to convince Insurers to do away with the provisos. If we begin to place the idea of risk management into a rigid box, we start asking for trouble. Risk management should never be that rigid; it is a culture that should seep into the firm from top to bottom. What risk management procedures that may work for a sole proprietorship may not work for a medium sized firm, and what does work for the latter would not necessarily work for a large practice.

You can read about this and other minor changes to the COI in this issue on page 20. We also have five case studies that further illustrates the need to have the above amendments made. However, it does not mean that risk management is not important. We could all learn from the lack of risk management in these firms that lead to the Insureds being denied cover. There are also examples of firms with good risk management who were prepared when misfortune fell upon them. The case studies are on page 5.

The PII Committee is always looking at ways to improve the PII Mandatory Scheme for Members of the Malaysian Bar. The COI is one way to ensure that Members get the best protection possible. This is one reason the COI has remained fluid over the years and it will continuously adapt to changes in the profession and to protect against new threats.

This however, is almost the full extent the Bar Council can go in protecting Members in their time of need. What Members can do in return is to continue managing their practice and conducting their profession with legal precision, ethical work principals and exemplary client care.

Members who don't see the need for adequate risk management practices, or who are knowingly and consistently reckless, careless and worse, fraudulent, will fall foul of the Scheme's main intent which is to provide for Members who have made truly honest mistakes.

If you are a new lawyer, or if you are in the process of starting your own firm and wish to know more about inculcating good risk management practices, you can speak to Officers at the PII and Risk Management Department, Bar Council. They are well equipped to get you started. Aside from this, there are also many publications, tools like checklists and various other aides to help you. Visit our very own dedicated risk management website (www.Praktis.com.my) for updates and articles on risk management and PII. The Department also organises a host of risk management workshops for you to attend.

The push for greater and better risk management is a high priority for the Committee more than ever, especially when the proposed Self-Insured Fund ("SIF") comes into place.

I end this message the way I always do: If you are in need of any assistance with regards to your PII, do reach out to us. If your notification has been declined by the Insurers, reach out to us as well. We are not promising to solve all your problems, but we will definitely try. Do give the Officers of the PII and Risk Management Department a call, or you can contact me directly if you wish.

I would like to take this opportunity to thank my fellow PII Committee Members who have been with the Scheme for many years. Together we have gone through some of the most difficult years of the Scheme where premiums were a burden to Members, and claim notifications were at an all-time high, but together we managed to build a better and workable PII Scheme that we have today.

Ragunath Kesavan

Chairperson

PII Committee

Email: ragunath@kesavan.com.my

Telephone: 03-2095 2299

Premium Comparison By Year

YEAR	NUMBER OF LAWYERS	PREMIUM PER LAWYER (RM)	Number of Notifications
2006	12,200	1,500	171
2007	12,152	1,425	201
2008	12,596	1,300	181
2009	12,627	1,300	185
2010	13,348	1,300	165
2011	14,000	1,200	164
2012	14,920	1,200	193
2013	15,331	1,140	191
2014	15,730	1,140	216
2015	16,410*	1,140	24*

*As at 31 March 2015

a dot of ink •

what do you think?

Dear Members,

Inside this issue...

... we bring you details of the latest changes to your 2015 Certificate of Insurance ("COI"). Members of the Bar were informed of these changes through Circular No 095/2015 dated 12 May 2015, which is reproduced on page 20 in this issue. The changes made to COI directly affect all Members and, in particular, the way in which risk management is practised in law firms.

In light of these changes, we highlight five recent Professional Indemnity Insurance ("PII") claims as case studies on page 5. These case studies are extremely useful as they outline actual past claims in scenarios that can potentially unfold in your own firm. It is hoped that by reading and understanding past mistakes, Members will be more adept at spotting the weaknesses in their risk management practices.

We also have a special article, Firm Basics in this issue for lawyers who plan to set up their own practice. Firm Basics can be found on page 18, and it is an almost-complete checklist of what a lawyer needs to put thought into, and action on, before starting his/her own practice. The highly recommended step is to attend our Getting Started! workshop, which is held periodically at Bar Council. We hope you enjoy this issue of *Jurisk!*. If you have any feedback or queries, you may contact the PII and Risk Management Department officers directly by telephone at 03-2032 4511, or by email at pirm@malaysianbar.org.my.

Happy reading!

The *Jurisk!* Team

Manage your practice the smart way

Whether you are a sole proprietor or in a partnership, (or thinking of setting up a practice or joining a partnership), there are many things to consider and implement. From a business plan, partnership agreement (if in a partnership), budgeting to retirement plans.

By not considering the few things mentioned above, be prepared to face the unwanted possibilities to your firm.

A good lawyer should also keep abreast of current issues relating to practice and running a firm. Be sure to register yourself on www.Praktis.com.my for Bar Council updates and latest risk management articles that could help you and your firm.

Attend talks and seminars related to your area of practice, and attend for an update on what's new and what's not. These sessions are platforms for lawyers to get off-hand advice from senior lawyers and consultants, and sharing of knowledge with other lawyers within the community. If you are into risk management talks and seminars, the PII and Risk Management Department conducts workshops that you could attend for a minimal fee.

Billing & Collections – The new workshop introduced late last year is suitable for lawyers who want to make sure their finances are in the pink. The senior lawyers who present at these sessions will share with you (among others), tips on ensuring your clients pay promptly, managing your billable hours and avoiding financial pitfalls.

Getting Started! – Get the insight on legal practice from senior lawyers and consultants. Learn key points to start your practice and to keep it running smoothly. This is a workshop not to be missed even if you have already started your practice.

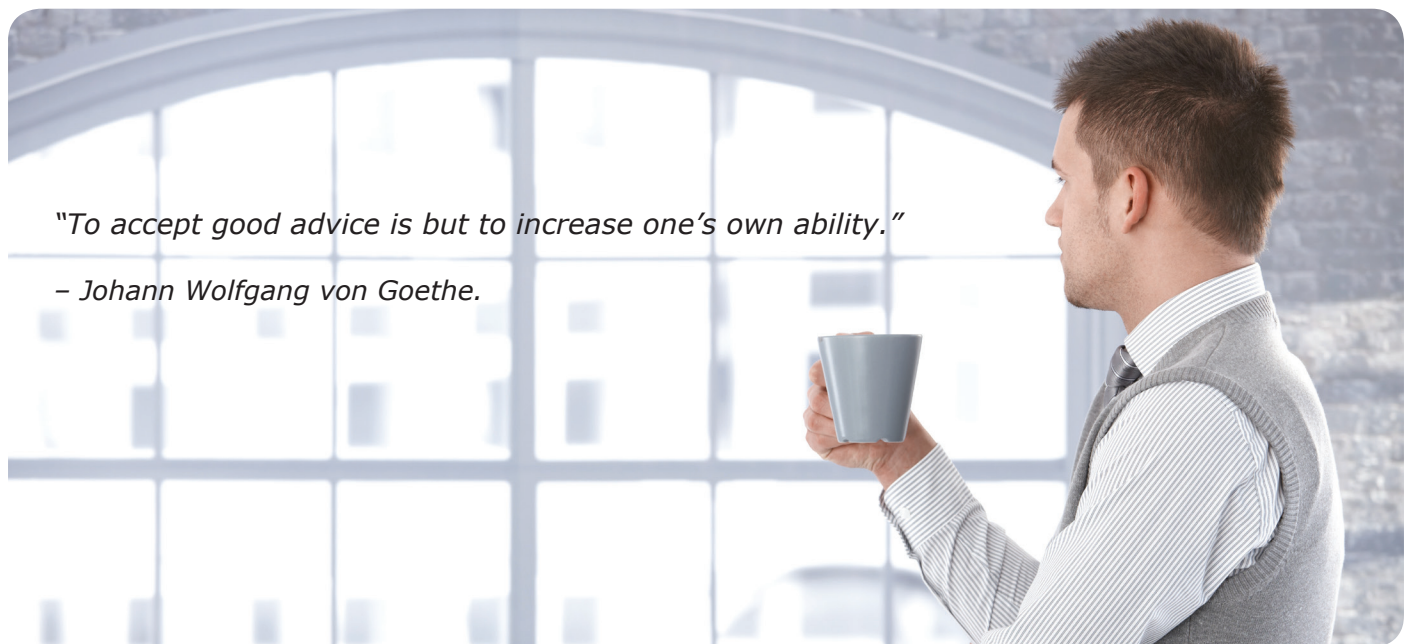
Risk Management for Staff – Why not send your staff to be trained by senior lawyers and specialised consultants? The one-day workshop is specially catered for staff of legal firms. This workshop is also suitable for sole proprietors managing their own firms, or lawyers from firms with fewer than five lawyers.

In the midst of a busy life as a lawyer, do remember to take a break and think about your health and your loved ones. A tired and stressed lawyer will not be able to give his/her 100%. Proper rest, good eating habits and a healthy lifestyle is key to a better you!

It is never too late to better manage your practice and YOU!

How Did It All Go So Wrong?

BY LOONG SHENG LI, JARDINE LLOYD THOMPSON SDN BHD



"To accept good advice is but to increase one's own ability."

– Johann Wolfgang von Goethe.

The age old adage of Murphy's Law states, "Anything that can go wrong, will go wrong". This should be the rule of thumb to keep in mind when it comes to achieving world-class risk management standards in your law practice. With such mentality, lawyers would at all times be on their toes to reduce the frequency or severity of losses in relation to claims against their legal practice.

In 2015, the Certificate of Insurance ("COI") for Bar Council's ("PII") Scheme underwent a change with the removal of Clause 11(e). In general, Clause 11 of the 2015 COI provides "indemnity to the firm and its employees against any claim arising out of misconduct excluding indemnity to any person(s) or employees who were party to or condoned such misconduct relating to the claims". However, there are a number of provisos to this clause including Clause 11(e) where firms must prove that they have complied with certain specific risk management procedures in order to be indemnified.

Having reviewed a number of notifications and issues arising from the interpretation of this clause, Bar Council felt that there was a risk that firms with sound risk management procedures in place being unfairly denied cover. Furthermore, with online banking becoming more mainstream, these provisions were

increasingly outdated. As a result, Bar Council and the Insurers have agreed that the proviso in Clause 11(e) be removed.

With the removal of Clause 11(e), the question would then be, "Is risk management still relevant and required in my legal practice?"

The answer to this question is a resounding, "YES".

Despite the removal of Clause 11(e), both Bar Council and Insurers will closely monitor the impact and future trends. If as a result trends begin to deteriorate unreasonably then coverage reductions or limitations will need to be considered so that a balance of suitable and cost effective coverage for the majority is maintained. It is therefore imperative that the burden of good risk management is adopted by firms in order to try to avoid unforeseen losses before a claim on the insurance policy is required.

In this issue of *Jurisk!*, our case studies explore the importance of risk management and the various unfortunate events law firms experience due to poor implementation of risk management. Besides that, we highlight essential tips that all lawyers ought to apply in their legal profession and working environment.



Messrs King & Partners was established in 2007 by Anna King and her partner, Henry. In 2009, Anna decided to further her studies in Australia, leaving the firm under the care of Henry and their accounts clerk, Teri.

As part of checks and balances, Anna delegated her husband and sister to watch over the finances of the firm. Teri, who is in charge of managing disbursements and payments to or on behalf of the clients will then instruct Anna's sister to issue the cheques as the chequebooks are in the latter's safekeeping. Anna's husband acts as the sole signatory of the cheques for both Office and Clients' Accounts. This is bizarre as Henry, who is a partner of the firm, is not made one of the signatory to either of the firm's accounts.

When Anna returned in 2010, she had an unfortunate surprise welcome from a client. This client had threatened to bring legal action against the law firm if they fail to release the stakeholding money owed to him, further stating that prior cheques issued to him have been declined by the bank on several occasions.

Puzzled, Anna investigated the matter and found discrepancies in the firm's Clients' Account. When questioned, Teri affirmed that she did all the necessities to issue the cheque for disbursement but it was the bank that stopped the payment to the client. Unsatisfied by Teri's vague explanation, Anna paid a visit to the bank to speak to the person-in-charge whom Teri said she dealt with. However, Anna was informed by the bank manager that there was no such person at the bank.

Running out of loopholes and lies, Teri confessed to Anna that it was she who had stopped the payment to the client due to insufficient funds in the Clients' Account. Teri had forged the signature to stop payment by using Anna's husband's signature in pre-signed cheques and photocopying the same to send to the bank. Teri also admitted that she misappropriated money from the Clients' Account resulting in insufficient funds in that account. The following day, Teri did not show up for work and she could no longer be contacted via telephone. In addition, Anna does not know of Teri's whereabouts or any of her personal information as it was not provided to her during Teri's employment.

It was only then that Anna lodged a police report and notified the Insurers of this matter. A loss adjuster was appointed by the Insurers to ascertain the total damage caused by Teri's embezzlement. When Anna's sister was interviewed by the loss adjuster, she admitted that blank cheques have been issued to Teri when she was unsure to whom the cheques were payable to. Anna's sister also mentioned that she did not check on the sum requested by Teri or parties to be paid because she trusted Teri.

The Insurers repudiated King & Partners' coverage on the grounds of the partners' gross negligence in handling the firm's Clients' Account. In addition to this, by allowing a non-partner and non-employee of the firm to manage the firm's accounts, Anna and Henry are in breach of the Legal Profession Act and the Solicitors' Account Rules.¹

¹ Rule 8.01 of Rules and Ruling of the Bar Council Malaysia.

Word to the Wise



1 Employers must properly supervise their employees. Lack of supervised authority given to the employee is a recipe for disaster. It is advisable to have weekly staff or division meetings in order to keep track of employees' conduct and progress.

2 Trust should not dictate when it comes to financial matters. Lawyers are often stakeholders' of large sums of money. It is imperative for partners to cross-check details of payments and disbursements made from the law firm's bank accounts.

3 Signatories to Clients' Account must be a lawyer who is either a sole proprietor or a partner of a law firm.² This capacity cannot be entrusted to any other persons. There are no exceptions granted, even to the partners' family members. If a legal assistant is a signatory to the Client Account, this must be expressly authorised by all partners of the law firm.



4 Prevention is still better than cure – as best practice, it is highly encouraged to have more than one signatory to the Clients' Account (provided that it is not a sole proprietorship) in order to prevent the possibility of dishonesty of a partner in a law firm.

5 In regards to payments made from the Clients' Account, a comprehensive guideline detailing delegation of duties, with emphasis on verification of payment by another partner as a safeguard, should be formulated.



6 Cheques should never be pre-signed and left incomplete. To embezzlers and fraudsters, blank cheques and pre-signed cheques are bait in a trap but in this case, the innocent party falls into it.

7 Employees' personal information is vital in an organisation. This should be updated every six months and filed in safekeeping. In times of distress, this information is vital in order to mitigate the problem.



8 All partners in a firm, are jointly and severally liable under the Partnership Act 1961. This does not exclude partners who are not signatories to the firm's financial accounts. Always be aware of your firm's activities, particularly financial ones. Be wary of suspicious transactions and do not leave financial decisions solely onto another partner or employee's responsibility.



² Rule 7A of Solicitors' Account Rules 1990.



RIDING OUT THE STORM WITH RISK MANAGEMENT

Connor & Partners was established by Olivia and Peter Connor in 2003. They are a law firm that specialises purely in conveyancing matters. One day, Olivia visited the Inland Revenue Department ("IRD") to get a stamp for her client's documents, and whilst there she was informed by a staff of the IRD that the prior stamps her firm obtained on previous Sale and Purchase transactions were counterfeits and therefore rendering the contracts invalid and unenforceable.

Astonished by this revelation, Olivia sought clarification from the IRD officer, who notified Olivia that there have been many reports of ongoing stamp duty fraud in the past week. The officer educated Olivia on how to distinguish the differences between the authentic stamp by IRD and the fake stamp used by the scammers. Anxious that other conveyancing files her law firm were currently handling may have fallen into the scam, Olivia and Peter scrutinised every file to sift out the ones with the fake stamp duty.

To their dismay, a total of 70 files were affected by the fake stamp duty scam. Olivia and Peter were mindful that their clients' interests must be protected. In order to avoid the delay of transactions in the clients' files which would result in larger losses and possible legal suits against them for negligence, they forked out money from their personal accounts to re-stamp all the documents the following day.

In all, Olivia and Peter absorbed a total of RM120,000 for re-stamping the affected documents. Aside from that, they both made separate police reports and also notified the Insurers of the situation, fearing that

there may be files affected that were undetected and any potential claims arising from this fraud. "Fearing that there may be files affected that were undetected and any potential claims arising from this fraud, they both made separate police reports and also notified the Insurers of the situation as required under the COI".

When questioned by Insurers on how their law firm manages the process of stamp duty clearance, the Insurers discovered that Connor & Partners have a precise and detailed procedure. This extends to the preparation of a payment voucher for the issuance of a bank draft which requires both Olivia and Peter's approval beforehand. Once the bank draft is purchased and handed to the lawyer-in-charge, a receipt of acknowledgement is given. Furthermore, a large part of the law firm's internal policy helped rectify the problem and all documents were easily found when needed.

This enabled Olivia and Peter to track their actions, and easily identify the perpetrator of the stamp duty fraud whom turned out to be the law firm's despatch staff, Max. Peter explained that Max had failed to show up for work for 3 days a month prior, and thus was immediately assumed to have resigned. Upon investigation of the perpetrated fraud, it was learnt that Max had sold the law firm's bank draft to a syndicate which operates to steal money from stamp duty transactions between the IRD and law firms.

Due to Olivia and Peter's quick thinking and their ensuing "damage control" which managed the situation, no claims have been made against the law firm or to the partners to date.

Word to the Wise

1 First things first in a conveyancing file: Always conduct a land and bankruptcy search to review details of the property and parties involved. Ensure that any encumbrances on the land are immediately identified and conveyed to the client.

2 All letters sent via post, email and hand must be photocopied and filed into the respective files. Create or make duplicates of each correspondences and documents as backup.

3 Filing of documents must be done in a proper and timely manner. This is to ensure that any information related to the file is easily found when needed to rectify an issue at hand. Create a list of documents available for each file for easy reference.

4 “Damage control” is all part of a well-rounded and efficient risk management procedure. When armed with information, lawyers are able to make better and swift decisions. It is evident from this case study that the efficient decision making was key in mitigating any possible severe consequences.

5 Systematic internal procedures allows for proper disclosure and reporting within the law firm when a potential problem is identified. Aside from the usual prerequisite of adhering to policies and procedures, lawyers should initiate their own risk mitigation strategies that are relevant to their firm.

6 Use a standard checklist for clients’ files to avoid missing deadlines or omissions. Our Risk Management website, www.Praktis.com.my provides an extensive conveyancing checklists which could be used as a guide.

A DICEY SITUATION: BETWEEN A ROCK AND A HARD PLACE



Jack Alastair, the sole proprietor of The Law Chambers of Alastair, notified Insurers of a possible employee embezzlement in his law firm. In his notification, Jack apprises that his accounts officer, Elena, had committed criminal breach of trust by failing to bank in their clients' money into the law firm's Clients' Account but instead into her personal bank account.

What Jack Discovered of Elena

Jack's story goes as follows – he perceived that there was a shortfall of funds in his Clients' Account when he attempted to disburse funds following a client's instruction but was informed by the bank that there was insufficient amount for the transfer. This came as a surprise to Jack as he thought the accounts were well managed and duly audited.

As Elena had absolute control over the law firm's bank accounts, Jack questioned her on this matter. Elena explained that she was unaware of this and that the insufficiency of funds may be due to unrecorded transfers of monies from the Clients' Account since the ledger was last updated nine months ago.

Still unsuspecting of Elena, Jack instructed her to form an internal investigation to identify the source

of the issue and if there were any discrepancies along with it. Indubitably, the investigation failed to determine the cause.

Jack became suspicious of Elena's conduct because her investigation report was vague and evasive in its details. He decided to hire an external auditor. From this, Jack learned that Elena has been siphoning money from the Clients' Account. The auditor's report indicated that Elena has been sporadically failing to bank-in the clients' money over the past two years despite issuing receipts to the clients. Upon lodging a police report against her, Jack found that there has been a report made against Elena from her previous employment. The previous report was for an alleged embezzlement of company's funds.

What Insurers Discovered of Jack and His Law Firm

A loss adjuster was appointed by the Insurers to assess Elena's alleged embezzlement. What the adjuster found turned the tables on Jack's half-truth as it unveiled more issues with the firm's accounts. It was discovered that Elena's embezzlement seemed to have occurred as an opportunity from Jack's ill practice of withdrawing large sums of money from the Clients' Account for undisclosed purposes.

In the adjuster's final report, it was submitted that the balance available in the Clients' Account would have been sufficient for Jack's attempted disbursement. The insufficient funds were due to the issuance of two cheques, each for RM150,000, by Jack as payment to the same reference number of a "client's file".

Further investigations found that these monies were being transferred to individuals and companies who were not clients of the law firm, but for personal loans and as funding for a separate business that Jack has interests in.

The Insurers declined this claim due to the Insured's misconduct of mismanagement of Clients' Account and non-compliance of proper risk management procedures set out in the COI.

Word to the Wise

1. Rules 7 and 8 of the Solicitors' Account Rules 1990 specifically states on the drawing of money from the Clients' Account. Any withdrawal besides the stated is strictly prohibited. Lawyers are strongly advised not to meddle with funds in the Clients' Account until and unless consent is given by the specific client.
2. Law firms must maintain a separate account ledger for each client's money held in trust (a simple spread sheet with relevant information would suffice). This is to ensure that specific funds can be identified accordingly.
3. If you wish to avoid the hassle of manually updating your account ledgers, there are more tech-savvy methods such as practice management software available. Research shows that the usage of practice management software in law firms save billable hours and operates more efficiently.
4. A breach of the Solicitors' Account Rules 1990 could render the Insured Practice's Professional Indemnity Insurance to be repudiated as indemnity does not extend to a lawyer's misconduct.
5. Lawyers have a professional duty of notifying their clients of how and when the clients' funds are being used. It is important that the law firm keep an accurate and detailed record of this. As best practice, the law firm's invoice should include an accounting summary of the client's trust funds entailing details such as total work done, outstanding payment amount and remaining client trust balance.
6. Lawyers are accounted for their actions and inactions to their law practice. Their misconduct could contribute to financial loss. Partners of a law firm especially must realise that they are the first line of defence in preventing and detecting employee embezzlement.
7. Monthly account statements must be reviewed carefully every month to ensure that there are no discrepancies. Early detection of any inconsistencies may help rectify the issue with little to no repercussions.
8. Employers must properly supervise their employees. Avoid extending full control to subordinates without proper supervision. It is your company and your reputation on the line!

HAVING AN ACE UP YOUR SLEEVE IN ROUGH TIMES

Every fortnight at Kerry & Associates, partners of the firm would select clients' files at random to check if there are any discrepancies in them. This practice acts as a risk management measure to find any discrepancies in a file as well as to avoid fraud and misappropriation of money. During one such exercise, Kerry, the managing partner, found several irregularities in a payment request by one of their clerks, Sandra, who was on leave that very day. Kerry immediately alerted the other partners of a possible predicament.

Upon scrutinising the details in the payment form, Kerry found that certain items were erased and replaced with handwritten figures. She scrutinised the signature purportedly belonging to her but noticed the dissimilarities in the forged signature. Furthermore, she does not remember signing off on such a distinctive payment request.

Kerry cross checked the details of the payee with the firm's client reference database. The results showed that the payee was not a client of the firm. This revelation set off Kerry's warning bells further and she made the choice to call for a meeting with the other partners and lawyers in her department. They concluded that all files that were or may have been handled by Sandra are to be checked for anomalies.

The following day, Kerry questioned Sandra on the inconsistencies. With Sandra's consent, Kerry recorded their conversation and after a bout of

evasive responses, Sandra succumbed and confessed to forging Kerry's signature on not only payment request forms and cheques, but misappropriating money from the Clients' Account in six other files.

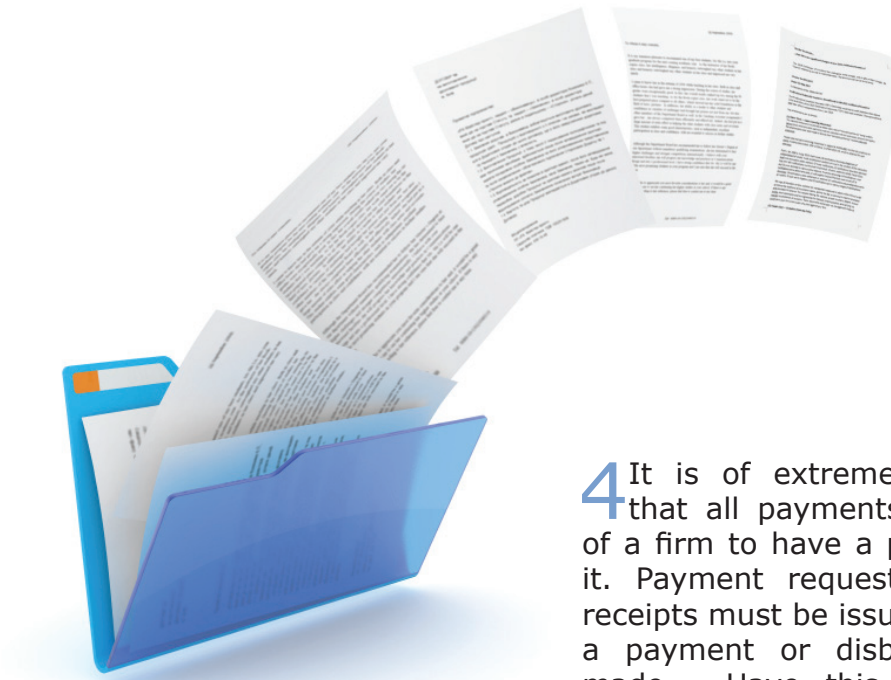
Knowing this may lead to potential claims against her or the firm, Kerry notified the Insurers of the situation. Along with her notification, she was able to submit a list of all disbursements made, each with its own specific reference number, date of payment made and categorised by purpose of payment.



Adding to the corporate liability nightmare, investigations on Sandra's background showed that she fabricated her qualification documents and has misconduct records reported against her in prior legal firms. It was also discovered that Sandra had made multiple falsified claims on behalf of Kerry's expenses by reusing receipts that were returned once a claim had been reimbursed.

In lieu of Sandra's impropriety, partners of Kerry & Associates immediately brainstormed on how to rectify the loopholes that enabled the embezzlement. Due to their efficient and accurate decision-making, the firm was able to mitigate the loss and recover the embezzled money from Sandra.

Word to the Wise



1 Risk management is a continuous process. Random audits should be conducted on clients' files to ensure proper implementation of internal procedures. Follow up audits should be overseen by a partner or the assigned senior lawyer to prevent collusion within the firm.

2 Do not use stationaries which are easily erasable to prevent tampering of documents. Forms, especially in regards to payment, should be electronically printed to pre-empt information from being rigged.

3 Legal firms are encouraged to implement the usage of a practice and case management software. This would act as a convenient and efficient method for lawyers to manage their clients' records, billing and accounts of the firm, and calendaring.

4 It is of extreme importance that all payments in and out of a firm to have a paper trail to it. Payment request forms and receipts must be issued whenever a payment or disbursement is made. Have this rectified by a senior lawyer or partner to avoid wrongful enrichment of an unlawful party.

5 Receipts submitted for claims reimbursements should not be returned to the claimant for the sole reason of preventing repetitive claims on the same expense. Record the details of the receipt, such as the transaction number, to catch duplicates.

6 You never know when it may be a rainy day – establish back up plans and procedures in the event there is an unfortunate incident. Swift and correct decisions in dire times may save you from more trouble.

7 Be careful of whom you hire – run checks and conduct extensive interviews before you decide to hire someone. It is advisable to contact the applicant's previous employment as any red alert signs would likely arise from their last workplace.



The Insurers received a notification from Chloe, on behalf of Messrs Mark & Partners. Chloe, a partner in the firm, notified the two letters of demand that she received from her firm's clients alleging breach of stakeholders' duty by her former partner, Mark. Her story reads as follows:

From the start of Mark & Partners' establishment, there had been signs of trouble. Mark, the managing partner, had asked Chloe to join the law firm as a salaried partner. Upon Chloe's acceptance of the partnership, she drafted an agreement of the same to be executed between Mark and herself. However, Mark consistently avoided signing the agreement with the excuse of, there not being a need for one. Although there is no formal partnership agreement, Chloe was still portrayed as a partner on the firm's letterhead.

After running into professional legal troubles, Mark ceased practice a year later. Chloe only knew this when she received a letter from Bar Council informing her that she

is now the sole proprietor of Mark & Partners. Since the letter, Mark did not show up at the law firm but had contacted Chloe via telephone to inform her that he will return to practice soon.

It should be highlighted at this juncture that Mark acted as the only signatory to both the Office and Clients' Accounts of the firm. Whilst he has ceased practice, Mark continued to control the funds of the law firm. Chloe, who did not have any extensive knowledge about the funds held in the Clients' Account or the details to it, disclosed that all accounting documents and bank statements are kept in a room of the firm which is locked. Only Mark and his sister had access to that room.

Chloe suggested to Mark that she should open a new Clients' Account under her signatory, but said that Mark threatened her against it. When queried on the reason she continued the law practice under such circumstances, she asserted that she "as the sole proprietor of the firm, she had no choice, and had existing files to handle". Chloe

also alleged that she had written a formal complaint to Bar Council on Mark's conduct but claims that she lost copies of those documents.

Chloe continued to run the firm for a further six months without the knowledge that Mark has been embezzling monies from the firm's Clients' Account. It was only when the Bar Council informed her that Mark has been struck off the rolls for misconduct in a previous firm and receiving the letter of demands from her clients, that Chloe realised the severity of the situation.

With clients threatening legal action against Chloe and her firm, it was only then she decided to lodge a police report to protect herself against Mark's misconduct. Due to the mismanagement of clients' funds, Chloe is unable to renew her practising certificate as she could not pass the obligatory Accountant's Report, as well as having disciplinary proceedings against her lodged by former clients.

Word to the Wise

1

"Get it in writing" – These are words commonly uttered by lawyers, for good reason. The formation of a legal firm is not a handshake business. Complications revolving around a "he said, she said" dispute can be resolved if there is a written contract.



2

Ambiguous partnerships agreements make risk management difficult. It is critical that all employment contracts are in writing for the extent of liability to be ascertained and in many cases, limited.



3

It is expected for every legal practice to have good documentation. With proper documentation process, client and stakeholders' requirements will be met effectively and any defects are likely to be found quickly. Correspondences that affect any part of your professional practice must be retained and easily identifiable when needed.



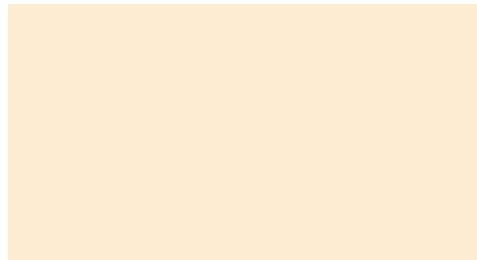
4

All partners are jointly and severally liable for partnership debts. Before deciding to venture into a partnership, decide that your potential partner is someone who you can trust. Ask questions if you feel that there is something amiss.



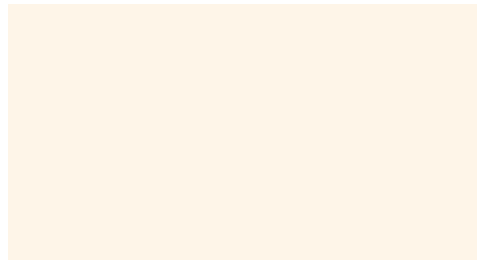
5

Your firm's Clients' Account can only be controlled by a partner or a legal assistant expressly authorised by a partner of your firm. Partners who have left the firm should not be given any authority over the Clients' Account.

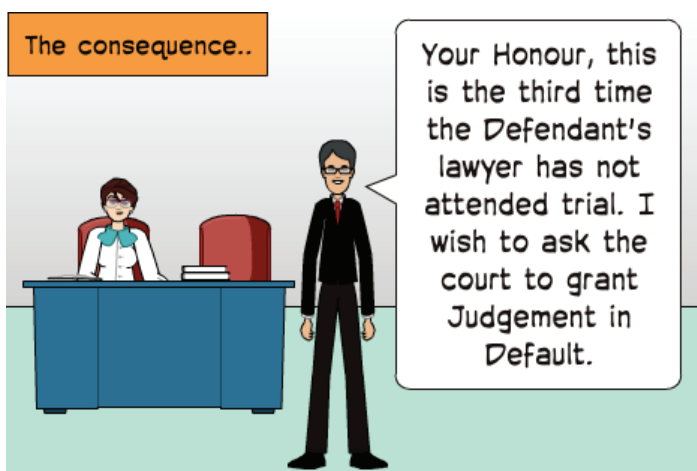


6

Any mismanagement or acts against the Solicitors' Account Rules 1990 beyond your prevention must be reported to Bar Council and/or a police report must be made. Do not wait for repercussions before deciding to act on it – remember – prevention is always better than cure!



NOTIFIABLE CIRCUMSTANCES & THE PLAUSIBLE CONSEQUENCES





1. Unforeseen circumstances may arise on a court date. Lawyers should set target dates in order to plan ahead and ensure no omissions or errors are discovered at the very last minute.

2. Using checklists and diaries are vital in a legal practice to avoid claims against your law firm.

POINTERS



3. Following Clause 2(b) and Clause 14 of the COI 2014, a notifiable circumstance must be notified to the Insurers as soon as any lawyer is aware of it.

4. Late notification is one of the leading causes of claims being rejected by the Insurers. Avoid this pitfall and get the coverage you're entitled to. (*Subject to the terms and condition of the Policy).

WHEN YOU HAVE TO NOTIFY US

Clause 13 of the Certificate of after Insurance

Claims or Notifiable Circumstances

(a) as a condition precedent to liability you must notify us in writing as soon as reasonably practicable but no later than 60 days, of any claim first made against you during this Period of Insurance;

(b) You must notify us in writing as soon as reasonably practicable but no later than 60 days of any notifiable circumstances of which you first become aware of during the Period of Insurance. We shall treat any subsequent claim arising from the same originating cause as the circumstances notified in accordance with this Clause as if it had been made against you during this Period of Insurance.

(c) Notice under this Policy shall be given in writing addressed to:

Jardine Lloyd Thomson Sdn Bhd
Suite 10.2 10th Floor
Faber Imperial Court
21A Jalan Sultan Ismail
50250 Kuala Lumpur

Telephone No: +603 2723 3241
Facsimile No: +603 2723 3301

Firm Basics

When you start your own practice, you are responsible for everything, from sourcing new clients to managing the practice and the most important of all, overseeing the financial aspects and day-to-day running which can take up a vast portion of your day. Running a law firm is not just about practising your brand of law, it is about running a business.

Anyone can start their own practice. New and seasoned lawyers alike. There are no restrictions to starting one's own law practice on the basis of experience. This can be a downfall if one does not fully appreciate every facet of running their own law firms.

We list here key pointers you should keep in mind when planning to establish a law firm. Have you thought about all of these pointers?

You can also join our Getting Started! Workshop that cater specifically for new lawyers, and lawyers wishing to establish their own law Firms.

Planning & Considerations

- Set up website
- Update contact details with Bar Council
- Join lawyers networking groups

Accounting

- Learn to read Balance Sheets, Income statements, Cash Flow Statements
- Hire a reputable accountant, or accounting firm
- Tax Filing
- Accountant's Report

Note:

1. Always practice law within the spirit of the Legal Profession Act 1976, Rules and Ruling of the Bar Council.
2. Visit www.Praktis.com.my for more information.
3. Read Setting Up Practice published by Bar Council.

Office Operations & Human Resources

- Need for office manager
- Decide on staff strength
- Create SOPs for office management
- Hire and train specialised staffing

Bar Council Regulations

- Bar Council Annual Subscription and Levies
- Sijil Annual / Practising Certificate renewal
- Professional Indemnity Insurance renewal and premium fees

Finances

- Conduct a financial health check
- Learn to set budgets
- Have a concise business plan
- Don't forget overheads, running costs and salaries
- Open necessary bank accounts
- Hire experienced finance staff

Office Security & Safety

- Insurance coverage for fire and theft
- Adequate locks and safety alarms
- First Aid medical supply
- Ensure safe working environment

File Management

- Set up physical filing methodology
- Procure a safe for important documents
- Develop checklists for when files are worked on
- Offsite file management service providers for closed files' retention
- Consider Document Management System softwares

MALAYSIAN BAR Mandatory PII SCHEME DID YOU KNOW?

...that there are significant changes to your 2015 Certificate of Insurance?

The 2015 Certificate of Insurance has undergone some changes, and in light of these changes, Bar Council released a circular to notify Members. The entire circular can be found below:

Circular No 095/2015

Dated 12 May 2015

To Members of the Malaysian Bar

Professional Indemnity Insurance: Amendments to the 2015 Certificate of Insurance

The Professional Indemnity Insurance ("PII") Committee would like to notify Members that clauses 11(e) and 32(n) of the 2015 Certificate of Insurance ("COI") have been amended. These amendments shall take effect retrospectively from 1 Jan 2015.

The amendments are as follows:

(1) Clause 11(e) — Claims Involving Misconduct

This clause is removed in its entirety as there were risks of "innocent partner(s)" being unfairly denied cover when the other partner(s) had not complied with the provisions set out in the policy. The amendments have been made to ensure that "innocent partner(s)" receive adequate protection.

Please note that claims involving misconduct is capped at RM350,000. For the full conditions on claims involving misconduct, refer to Clause 11 of the 2015 COI, which is attached for your reference.

From 1 Jan 2008 to 4 Aug 2014, there were 146 notifications involving allegations of embezzlement of clients' funds (employee or partner) or fraud in the conduct of the transaction itself (not necessarily stolen monies). Of these notifications, 32 notifications have been declined: five were late notifications; two involved misconduct; 12 were unable to satisfy Clause 11(e); and 13 were declined for various other reasons. From the remaining 114 notifications: nine notifications were settled and paid; 11 suits against Insured Practices were struck off or dismissed; 19 notifications were withdrawn or resolved; 27 notifications are pending documents or reports; 25 suits are in litigation; and 23 notifications are in various stages of development.

We urge all Members to have suitable risk management measures in place in their firms in order to reduce the likelihood of misconduct claims, and for the Bar to continue to have a sustainable and equitable PII Scheme. This includes having, for example, proper vouchers, ledgers, account books, bank statements and two signatories for cheques (where possible), and carrying out regular reconciliation of accounts. These documents and proper risk management measures could save your firm in the event of a claim against your firm.

(2) Clause 32(n) — Exclusions from the Policy

The amendment to this clause was necessary to ensure that the language around the exclusion is simplified, and that the interpretation of the wording reflects the policy intention, which is to not respond to pure commercial arguments over fees. Clause 32 of the 2015 COI states: "We will not indemnify you under this insurance for:"

Clause 32(n) of the 2015 COI (before amendment) states:

"any liability directly or indirectly, wholly or in part caused by or contributed to by or arising from or in respect of dispute over your professional fees, charges, disbursements and other incidental costs."

The revised Clause 32(n) reads as follows:

"any claims for refund of your professional fees, charges, disbursements and other incidental costs."

If you have purchased top-up cover from outside the PII Scheme, please ensure that your insurer makes the necessary amendments, as well as provides cover based on the amended 2015 COI.

We also advise Members to understand and confirm the type of cover that is provided by their top-up Insurer and/or Broker. Some Members have been denied cover by their top-up Insurer even when the mandatory Insurer agreed to provide cover for the claim.

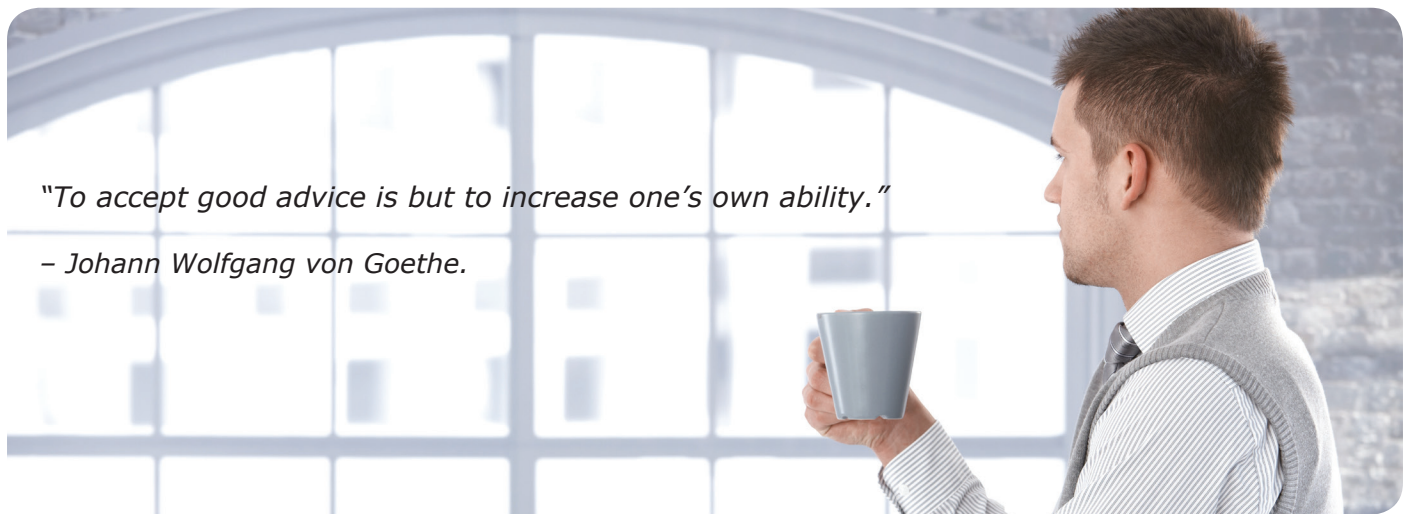
Should you have any enquiries or issues regarding PII, claims and risk management, please contact the PII and Risk Management Department at 03-2032 4511 for assistance.

Thank you.

Ragunath Kesavan
Chairperson
Professional Indemnity Insurance Committee

Dimanakah Silapnya?

BY LOONG SHENG LI, JARDINE LLOYD THOMPSON SDN BHD



"To accept good advice is but to increase one's own ability."

– Johann Wolfgang von Goethe.

Pepatah tua daripada *Murphy's Law*, "Anything that can go wrong, will go wrong," ("Apa-apa yang boleh berlaku, akan berlaku."). Ini sepatutnya menjadi amalan biasa yang perlu diingat untuk mencapai piawaian pengurusan risiko bertaraf dunia dalam amalan undang-undang anda. Dengan pemikiran sebegini, peguam akan lebih peka untuk mengurangkan risiko kerugian yang lebih teruk terhadap amalan undang-undang mereka.

Pada tahun 2015, Majlis Peguam membuat perubahan kepada Fasal 11(e) Certificate of Insurance ("COI") 2015 dengan mengeluarkannya daripada Skim Insurans Indemniti Professional ("PII"). Secara umumnya, Fasal 11 daripada COI 2015 menyatakan *"indemnity to the firm and its employees against any claim arising out of misconduct excluding indemnity to any person(s) or employees who were party to or condoned such misconduct relating to the claims"*. Walau bagaimanapun, terdapat beberapa proviso kepada fasal ini termasuk Fasal 11 (e) di mana firma perlu membuktikan bahawa mereka telah mematuhi prosedur pengurusan risiko tertentu yang khusus untuk ditanggung rugi.

Setelah mengkaji beberapa pemberitahuan dan isu-isu yang timbul daripada tafsiran fasal ini, Majlis Peguam berpendapat bahawa terdapat risiko firma-firma yang mempunyai prosedur pengurusan risiko yang mantap dinafikan perlindungan dengan tidak adilnya. Tambahan pula, dengan adanya perbankan dalam talian yang kini lebih banyak digunakan,

peruntukan ini semakin ketinggalan zaman. Kesimpulannya, Majlis Peguam dan Syarikat Insurans telah bersetuju untuk mengeluarkan proviso dalam Fasal 11 (e).

Dengan pengeluaran Fasal 11 (e), persoalannya kini, "Adakah pengurusan risiko masih relevan dan diperlukan dalam amalan undang-undang saya?"

Jawapan kepada soalan ini adalah, "YA".

Walaupun Fasal 11 (e) dikeluarkan, kedua-dua Majlis Peguam dan Syarikat Insurans akan memantau kesan dan trend masa depan. Jika pantauan menunjukkan trend yang tidak munasabah, maka pengurangan perlindungan atau had perlu dipertimbangkan supaya keseimbangan liputan yang berkesan dan kos yang sesuai untuk melindungi semua peguam dapat dikekalkan. Oleh itu, pengurusan risiko yang baik adalah penting untuk diterima pakai oleh firma sebagai langkah untuk cuba mengelakkan kerugian yang tidak dijangka sebelum tuntutan ke atas polisi insurans diperlukan.

Dalam isu *Jurisk!* ini, kajian kes kami meneroka kepentingan pengurusan risiko dan pelbagai peristiwa malang yang dialami firma undang-undang berikutan kekurangan pelaksanaan pengurusan risiko. Selain itu, kami mengetengahkan tip-tip penting yang sepatutnya digunakan oleh semua peguam dalam profesion undang-undang dan persekitaran kerja mereka.



Tetuan King & Partners telah ditubuhkan pada tahun 2007 oleh Anna King dan rakan kongsi, Henry. Pada tahun 2009, Anna mengambil keputusan untuk melanjutkan pelajaran di Australia, firma itu ditinggalkan di bawah jagaan Henry dan kerani akaun mereka, Teri.

Sebagai satu cara kawalan, urusan mengawal kewangan firma diwakilkan kepada suami dan kakak Anna. Teri, yang bertanggungjawab menguruskan pengeluaran dan pembayaran kepada atau bagi pihak klien akan mengarahkan kakak Anna untuk mengeluarkan cek kerana buku cek berada dalam simpanannya. Suami Anna bertindak sebagai satu-satunya penandatangan cek untuk kedua-dua Akaun Klien dan Pejabat. Perancangan sebegini adalah ganjil kerana Henry, yang merupakan rakan kongsi firma itu, tidak dijadikan sebagai salah seorang penandatangan untuk kedua-dua akaun syarikat.

Apabila Anna kembali pada tahun 2010, dia dikejutkan dengan berita tidak baik daripada kliennya. Klien tersebut telah mengancam untuk mengambil tindakan undang-undang terhadap firmanya jika gagal untuk melepaskan wang pegangan kepentingan yang dihutang kepadanya, klien tersebut juga menyatakan bahawa cek-cek yang dikeluarkan kepadanya sebelum ini telah ditolak oleh bank beberapa kali.

Dengan rasa hairan Anna menyiasat perkara itu dan mendapati perbezaan dalam Akaun Klien. Apabila ditanya, Teri bertegas bahawa dia telah melakukan semua keperluan untuk mengeluarkan cek bayaran tetapi pihak bank yang mengehentikan pembayaran kepada klien. Tidak berpuas hati dengan penjelasan yang diberikan Teri, Anna pergi ke bank untuk bercakap dengan orang yang dikatakan berurusan dengan Teri. Walau bagaimanapun, Anna terkejut apabila dimaklumkan oleh pengurus bank bahawa tidak ada orang yang dimaksudkan bekerja di bank itu.

Selepas insiden tersebut, baharulah Anna bahawa dialah yang sebenarnya menghentikan bayaran kepada klien kerana dana yang tidak mencukupi di dalam Akaun Klien. Teri telah memalsukan tandatangan untuk menghentikan pembayaran dengan menggunakan tandatangan suami Anna atas cek yang telah ditandatangani tetapi masih tiada penerima dan membuat salinan fotokopi untuk dihantar kepada bank. Teri juga mengakui bahawa dia menyalahgunakan wang daripada Akaun Klien yang mengakibatkan dana tidak mencukupi di dalam akaun itu. Pada hari berikutnya, Teri tidak muncul ke tempat kerja dan dia tidak lagi boleh dihubungi melalui telefon. Anna pula tidak tahu dimana Teri atau mempunyai sebarang maklumat peribadinya kerana tidak diberikan semasa mengambil Teri bekerja.

Kemudian baharulah Anna membuat laporan polis dan memberitahu Syarikat Insurans perkara ini. Seorang pelaras kerugian dilantik oleh Syarikat Insurans untuk mengenalpasti jumlah kerugian yang disebabkan oleh penyelewengan Teri ini. Apabila pelaras kerugian menemuramah kakak Anna, dia mengakui bahawa cek kosong telah diberikan kepada Teri walaupun tiada butiran pembayaran cek tersebut. Kakak Anna juga menyebut bahawa dia tidak memeriksa jumlah wang yang diminta oleh Teri atau pihak-pihak yang perlu dibayar kerana percayakan Teri.

Syarikat Insurans menolak perlindungan untuk King & Partners dengan alasan kecuai dalam mengendalikan Akaun Klien firma. Di samping itu, Anna dan Henry melanggar Akta Profesion Undang-Undang dan Solicitors' Account Rules 1990 dengan membenarkan orang yang bukan rakan kongsi dan bukan peguam di firma itu untuk menguruskan akaun syarikat.¹

1 Peraturan 8.01 daripada Rules and Ruling of the Bar Council Malaysia.

Peringatan Bernas

1 Majikan perlu menyelia pekerja mereka dengan baik untuk mengelak sebarang perkara yang tidak diingini. Adalah dinasihatkan untuk mengatur mesyuarat mingguan dengan kakitangan atau jabatan-jabatan bagi memahami tingkah laku dan kemajuan pekerja.



2 Apabila berkaitan dengan isu kewangan, amanah tidak boleh dijadikan penentu keadaan. Peguam sering menjadi pemegang kepentingan untuk jumlah wang yang banyak. Penting bagi semua rakan kongsi membuat semakan butiran pembayaran dan pengeluaran yang dibuat daripada akaun-akaun bank firma undang-undang.



3 Penandatanganan Akaun Klien mestilah seorang peguam yang sama ada tuan punya tunggal atau rakan kongsi firma undang-undang.² Kuasa ini tidak boleh diamanahkan kepada mana-mana orang lain. Tiada pengecualian diberikan, walaupun kepada ahli keluarga. Jika pembantu undang-undang adalah penandatanganan kepada Akaun Klien, semua rakan kongsi perlu memberi kuasa ini kepadanya dengan nyata dan jelas.

4 Pencegahan adalah lebih baik daripada mengubati - sebagai amalan terbaik, adalah sangat digalakkan untuk mempunyai lebih daripada satu penandatanganan kepada Akaun Klien (tidak termasuk firma milikan tunggal) untuk mengelak kebarangkalian ketidakjujuran rakan kongsi firma undang-undang.



6 Cek tidak sepatutnya ditandatangani terlebih dahulu tanpa maklumat yang lengkap. Bagi penggelap wang dan penipu, cek kosong dan pemeriksaan cek yang ditandatangani terlebih dahulu adalah umpan di dalam sebuah perangkap tetapi dalam kes ini, pihak yang tidak bersalah jatuh ke dalamnya.

5 Dalam hal pembayaran yang dibuat dari Akaun Klien, satu garis panduan komprehensif perlu digubal yang memperincikan delegasi tugas, dengan memberi penekanan kepada pengesahan pembayaran oleh rakan kongsi lain sebagai perlindungan.

7 Maklumat peribadi pekerja adalah penting dalam sesebuah organisasi. Kemaskini maklumat ini setiap enam bulan dan failkan dengan cermat. Sekiranya terdapat kecemasan, maklumat ini adalah penting untuk mengurangkan masalah.

8 Di bawah Akta Perkongsian 1961, semua rakan kongsi dalam firma bertanggungjawab secara bersama dan berasingan di bawah perkongsian itu. Ini termasuk rakan-rakan kongsi yang bukan penandatanganan kepada akaun kewangan firma. Sentiasa ambil tahu aktiviti firma anda, terutamanya a aktiviti yang berkaitan dengan isu kewangan. Berhati-hati dengan transaksi yang mencurigakan dan jangan meletakkan keputusan kewangan khusus kepada rakan kongsi lain atau dipertanggungjawabkan kepada pekerja.



² Peraturan 7A daripada Solicitors' Account Rules 1990.



MENYUSURI RIBUT DENGAN PENGURUSAN RISIKO

Connor & Partners telah ditubuhkan oleh Olivia dan Peter Connor pada tahun 2003. Mereka adalah sebuah firma undang-undang yang arif dalam pemindahhakan. Pada suatu hari, Olivia pergi ke Jabatan Hasil Dalam Negeri ("LHDN") untuk mendapatkan setem bagi dokumen kliennya, dan dia dimaklumkan oleh kakitangan LHDN bahawa setem sebelumnya yang diperolehi firma itu untuk transaksi Jual dan Beli adalah palsu. Disebabkan itu, semua kontrak adalah tidak sah dan tidak boleh dikuatkuasakan.

Olivia yang terperanjat dengan pendedahan ini meminta penjelasan daripada pegawai LHDN. Dia diberitahu bahawa terdapat banyak laporan mengenai penipuan duti setem yang berlaku pada minggu lalu. Pegawai tersebut menunjuk kepada Olivia bagaimana untuk membezakan antara setem yang sah oleh LHDN dan setem palsu yang digunakan oleh penipu. Cemas dengan kemungkinan fail-fail pemindahhakan lain yang sedang dikendalikan firmanya terjejas, Olivia dan Peter meneliti setiap fail untuk menapis keluar fail yang dikhuatiri mempunyai setem duti yang palsu.

Apa yang lebih mengecewakannya, sebanyak 70 fail telah terjejas dengan penipuan duti setem palsu. Olivia dan Peter menyedari bahawa kepentingan klien mereka mesti dilindungi. Untuk mengelakkan kelewatan transaksi pada fail klien yang akan mengakibatkan kerugian yang lebih besar dan kemungkinan tindakan undang-undang terhadap mereka kerana kecuai, mereka menggunakan wang daripada akaun peribadi untuk menyetem semula semua dokumen pada hari berikutnya.

Secara keseluruhan, Olivia dan Peter membelanjakan sejumlah RM120,000 untuk menyetem semula dokumen-dokumen yang terlibat. Khuatir dengan kemungkinan terdapat fail lain yang terjejas yang

tidak dapat dikesan dan apa-apa tuntutan yang mungkin timbul daripada penipuan ini, mereka membuat laporan polis yang berasingan dan juga membuat pemberitahuan kepada Syarikat Insurans seperti yang diperlukan dalam COI.

Apabila disoal oleh Syarikat Insurans bagaimana firma undang-undang mereka menguruskan proses pelepasan duti setem, Syarikat Insurans mendapati Connor & Partners mempunyai prosedur yang tepat dan terperinci. Ini meliputi penyediaan baucar bayaran bagi pengeluaran bank draf yang memerlukan kelulusan daripada Olivia dan Peter terlebih dahulu. Setelah bank draf yang dibeli diserahkan kepada peguam yang menyelia fail itu, akaun penerimaan diberikan. Tambahan, sebahagian besar dasar dalaman firma undang-undang ini telah membantu membetulkan masalah ini dan semua dokumen mudah didapati apabila diperlukan.

Ini membolehkan Olivia dan Peter untuk mengesan tindakan mereka, dan dengan mudah mengenal pasti pelaku penipuan duti setem yang rupa-rupanya merupakan kakitangan penghantaran firma undang-undang itu, Max. Peter menjelaskan bahawa Max gagal muncul ke tempat kerja selama tiga hari pada bulan sebelumnya, dan dengan itu sertamerta dianggap telah meletakkan jawatan. Setelah siasatan dilakukan, didapati Max menjual bank draf firma undang-undang kepada sindiket yang beroperasi untuk mencuri wang daripada urus niaga setem duti antara firma undang-undang dan LHDN.

Disebabkan oleh tindakan pantas Olivia dan Peter dalam menangani keadaan ini, tiada tuntutan dibuat terhadap firma undang-undang atau rakan-rakan kongsi sehingga kini.

Peringatan Bernas

1 Perkara pertama yang perlu dibuat untuk setiap fail pemindahhakan: Sentiasa jalankan carian tanah dan kebankrapan untuk menyemak butiran hartanah dan pihak yang terlibat. Pastikan sebarang bebanan ke atas tanah dikenal pasti dengan serta-merta dan disampaikan kepada klien.

2 Semua surat yang dihantar melalui pos, emel dan dengan tangan hendaklah difotokopi dan difailkan ke dalam fail masing-masing. Buat salinan setiap surat-menyurat dan dokumen sebagai sandaran.

3 Pemfailan dokumen perlu dilakukan dengan cara yang betul dan tepat pada masanya. Ini adalah untuk memastikan bahawa apa-apa maklumat yang berkaitan dengan fail tersebut mudah didapati apabila diperlukan untuk membetulkan isu yang sedang dihadapi. Sediakan senarai dokumen bagi setiap fail untuk dijadikan rujukan mudah.

4 “*Damage control*” adalah sebahagian daripada prosedur pengurusan risiko yang serba boleh dan cekap. Sekiranya maklumat penting ada dalam tangan, peguam boleh membuat keputusan yang cekap bagi mengurangkan sebarang kesan buruk yang boleh berlaku.

5 Prosedur dalaman yang sistematik membolehkan pendedahan yang wajar dan laporan dilakukan dalam firma undang-undang apabila masalah yang berpotensi dikenal pasti. Selain daripada syarat biasa untuk mematuhi dasar dan prosedur, peguam harus memulakan strategi pengurangan risiko mereka sendiri yang berkaitan dengan firma mereka.

6 Gunakan senarai semak yang standard untuk fail klien bagi mengelakkan tarikh akhir atau kesalahan/ketinggalan. Laman web Pengurusan Risiko kami, www.Praktis.com.my menyediakan senarai semak pemindahhakan yang boleh digunakan sebagai panduan.

APALAH NASIB: SUDAH JATUH DITIMPA TANGGA



Jack Alastair, pemilik tunggal The Law Chambers of Alastair, membuat pemberitahuan kepada Syarikat Insurans mengenai kemungkinan satu penyelewengan yang dilakukan oleh pekerja dalam firma undang-undangnya. Dalam pemberitahuan itu, Jack memaklumkan bahawa pegawai perakaunanya, Elena, telah melakukan pecah amanah kerana gagal memasukkan wang ke Akaun Klien firma undang-undang itu, tetapi sebaliknya ke dalam akaun bank peribadinya.

Apa yang Jack Ketahui Tentang Elena

Cerita Jack adalah seperti berikut - dia merasakan bahawa terdapat kekurangan dana dalam Akaun Kliennya apabila dia cuba mengagihkan dana berikut atas arahan klien, tetapi dimaklumkan oleh bank bahawa terdapat jumlah yang tidak mencukupi untuk membuat pemindahan. Jack terkejut dengan berita ini kerana difikirkan akaun-akaunnya telah diurus dengan baik dan diaudit dengan sewajarnya.

Disebabkan Elena mempunyai kawalan mutlak ke atas akaun bank firma undang-undang, Jack menyoalnya mengenai perkara ini. Elena menjelaskan bahawa

dia tidak tahu-menahu mengenai hal ini dan berfikir bahawa kekurangan dana mungkin disebabkan oleh pemindahan tanpa rekod wang daripada Akaun Klien memandangkan kali terakhir lejar dikemaskini adalah sembilan bulan yang lalu.

Jack masih belum mencurigai Elena, sebaliknya mengarah Elena untuk membuat siasatan dalaman bagi mengenal pasti punca masalah ini dan jika terdapat sebarang percanggahan. Sudah pasti, tiada masalah ditemui sewaktu siasatan dijalankan.

Kini Jack menjadi curiga terhadap kelakuan Elena kerana laporan siasatan itu adalah samar-samar dan mengelak butiran terperinci. Beliau memutuskan untuk mengupah seorang juruaudit luaran. Dengan ini, Jack mengetahui bahawa Elena sekali-sekala telah gagal memasukkan wang klien dalam tempoh dua tahun yang lalu walaupun resit dikeluarkan kepada klien. Selepas laporan polis dibuat terhadap Elena, Jack mendapati terdapat laporan yang pernah dibuat terhadap Elena dari majikan sebelumnya. Laporan sebelum ini adalah berkaitan penyelewengan dana syarikat.

Peringatan Bernas

1. Peraturan 7 dan 8 daripada Solicitors' Account Rules 1990 secara khusus menyatakan mengenai pengeluaran wang daripada Akaun Klien. Sebarang pengeluaran selain yang dinyatakan adalah dilarang sama sekali. Peguam dinasihatkan supaya tidak mengusik dana di dalam Akaun Klien sehingga dan melainkan jika kebenaran diberikan oleh klien tersebut.
2. Firma undang-undang mesti mempunyai lejer akaun berasingan untuk setiap wang klien yang dipegang sebagai amanah (spread sheet mudah dengan maklumat yang relevan mencukupi). Ini adalah untuk memastikan dana khusus dapat dikenal pasti dengan sewajarnya.
3. Jika anda ingin mengurangkan kerumitan mengemaskini lejar akaun secara manual, terdapat kaedah berteknologi seperti perisian pengurusan amalan yang sedia ada. Kajian menunjukkan bahawa penggunaan perisian pengurusan amalan di firma-firma undang-undang menjimatkan masa kerja yang dibayar dan beroperasi dengan lebih cekap.
4. Pelanggaran Solicitors' Account Rules 1990 boleh menyebabkan PII Amalan Yang Diinsuranskan ditolak kerana indemniti tidak meliputi salah laku peguam.
5. Peguam mempunyai tanggungjawab profesional memberitahu klien mereka bagaimana dan bila dana klien akan digunakan. Adalah penting untuk firma undang-undang menyimpan rekod ini secara tepat dan terperinci. Sebagai amalan terbaik, invois yang dikeluarkan firma undang-undang perlu mengandungi ringkasan perakaunan wang amanah klien dengan butiran seperti jumlah kerja yang dilakukan, jumlah bayaran tertunggak dan jumlah baki wang pendahuluan klien.
6. Tindakan aktif dan pasif seseorang peguam dalam firma undang-undang diambil kira. Salah laku mereka boleh menyumbang kepada kerugian kewangan. Rakan kongsi firma undang-undang terutamanya perlu sedar bahawa mereka adalah barisan pertahanan pertama dalam mencegah dan mengesan penyelewengan pekerja.
7. Penyata akaun bulanan hendaklah disemak dengan teliti setiap bulan untuk memastikan tiada percanggahan. Pengesanan awal sebarang ketidakkonsistenan boleh membantu membetulkan isu ini dengan sedikit atau tiada kesan.
8. Majikan perlu menyelia pekerja mereka dengan betul. Elakkan daripada memberi kawalan penuh kepada orang bawahan tanpa pengawasan. Ini adalah syarikat anda dan reputasi anda dalam pertimbangan!

Apa yang ditemui Syarikat Insurans terhadap Jack dan Firma Undang-undangnya

Pelaras kerugian telah dilantik oleh Syarikat Insurans untuk menilai dakwaan terhadap penyelewengan yang dilakukan oleh Elena. Pelaras kerugian telah berjaya membongkarkan lebih banyak masalah yang terdapat dalam akaun-akaun firma. Didapati penyelewengan Elena ini telah berlaku disebabkan amalan buruk Jack mengeluarkan sejumlah wang yang besar dari Akaun Klien tanpa sebarang butiran.

Dalam laporan akhir pelaras kerugian, telah dikemukakan bahawa baki yang ada dalam Akaun Klien sepatutnya mencukupi untuk bayaran yang ingin dibuat oleh Jack. Walaubagaimanapun, dana yang tidak mencukupi adalah disebabkan oleh pengeluaran dua cek, setiap satu untuk RM150,000, oleh Jack sebagai bayaran kepada "fail klien" yang mempunyai nombor rujukan yang sama.

Siasatan lanjut mendapati bahawa wang tersebut telah dipindahkan kepada individu dan syarikat-syarikat yang tidak berkaitan dengan firma undang-undang tersebut, tetapi diberi sebagai pinjaman peribadi dan pembiayaan untuk perniagaan yang berasingan dimana Jack mempunyai kepentingan.

Syarikat Insurans menolak tuntutan ini disebabkan oleh salah laku menyalah urus Akaun Klien dan tidak mematuhi prosedur pengurusan risiko yang betul seperti yang ditetapkan dalam COI.

SENANTIASA BERSEDIA DALAM APA JUA KEADAAN

Setiap dua minggu di Kerry & Associates, rakan-rakan kongsi firma akan memilih fail klien secara rawak untuk diperiksa jika terdapat sebarang percanggahan di dalamnya. Amalan ini bertindak sebagai langkah pengurusan risiko untuk mencari sebarang percanggahan dalam fail dan juga untuk mengelakkan penipuan dan penyelewengan wang. Dalam salah satu latihan itu, Kerry, rakan kongsi berjawatan pengurus, menjumpai beberapa perkara yang tidak mengikut peraturan dalam permintaan pembayaran oleh salah seorang kerani mereka, Sandra, yang bercuti pada hari itu. Kerry segera memberitahu rakan-rakan kongsi yang lain mengenai suatu kemungkinan.

Setelah meneliti butiran dalam borang pembayaran, Kerry mendapati bahawa beberapa perkara telah dipadam dan digantikan dengan tulisan tangan. Kerry meneliti tandatangan yang kononnya milik beliau tetapi dapat melihat ketidaksesuaian di dalam tandatangan palsu itu. Tambahan pula, dia tidak ingat menurunkan tandatangan untuk permintaan pembayaran yang seperti itu.

Kerry memeriksa butiran penerima dengan pangkalan data rujukan klien firma. Hasil kajian menunjukkan bahawa penerima bukan dikalangan klien firma itu. Pendedahan ini membuatkan Kerry risau dan dia membuat keputusan untuk mengadakan mesyuarat dengan rakan-rakan kongsi dan peguam lain dalam jabatannya. Mereka membuat kesimpulan bahawa semua fail yang telah atau mungkin telah dikendalikan oleh Sandra hendaklah diperiksa untuk sebarang anomali.

Pada hari berikutnya, Kerry menyoal Sandra berkaitan ketidakkonsistenan itu. Dengan

persetujuan Sandra, Kerry merekod perbualan mereka dan selepas mengelak untuk memberikan jawapan, Sandra akhirnya mengaku telah memalsukan tandatangan Kerry bukan sahaja dalam borang permintaan pembayaran dan cek, tetapi menyalahgunakan wang dari Akaun Klien dalam enam fail lain.

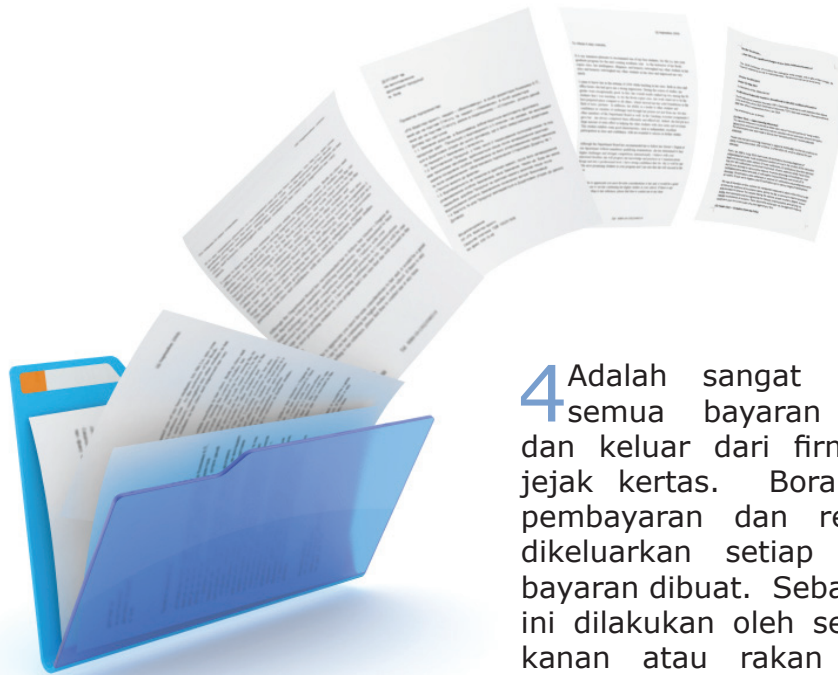


Mengetahui bahawa ini boleh membawa kepada suatu tuntutan yang berpotensi terhadap Kerry atau firma itu, Kerry memberitahu keadaan tersebut kepada Syarikat Insurans. Bersama-sama dengan pemberitahuan itu, Kerry mengemukakan senarai nama semua pengeluaran yang dibuat, masing-masing dengan nombor rujukan tertentu sendiri, tarikh bayaran dibuat dan dikategorikan mengikut tujuan pembayaran.

Tambahan pula, siasatan latar belakang terhadap Sandra menunjukkan bahawa dia memalsukan dokumen kelayakannya dan mempunyai rekod salah laku yang dilaporkan oleh firma-firma undang-undang yang pernah dia bekerja dahulu. Siasatan juga mendapati bahawa Sandra telah membuat tuntutan berganda palsu bagi pihak perbelanjaan Kerry dengan menggunakan semula resit yang dikembalikan setelah bayaran dibuat.

Setelah mengetahui perbuatan Sandra, rakan-rakan kongsi dari Kerry & Associates segera berbincang mengenai cara untuk membetulkan kekhilafan yang membolehkan penyelewengan itu. Dengan membuat keputusan yang cekap dan tepat, firma itu dapat mengurangkan kerugian dan mendapatkan kembali dari Sandra wang yang digelapkan.

Peringatan Bernas



1 Pengurusan risiko adalah satu proses yang berterusan. Audit rawak perlu dijalankan ke atas fail klien untuk memastikan pelaksanaan prosedur dalaman yang betul. Audit susulan perlu diselia oleh rakan kongsi atau peguam kanan untuk mengelak pakatan sulit dalam firma itu.

2 Jangan gunakan alat tulis yang mudah dipadam untuk mengelak dokumen diusik. Borang, terutama dalam hal pembayaran, harus dicetak secara elektronik untuk mengelak penipuan maklumat.

3 Firma undang-undang digalakkan untuk melaksanakan penggunaan perisian amalan dan kes pengurusan. Ini adalah kaedah yang mudah dan berkesan untuk peguam menguruskan rekod, bil dan Akaun Klien mereka, dan kalendar.

4 Adalah sangat penting untuk semua bayaran yang masuk dan keluar dari firma mempunyai jejak kertas. Borang permintaan pembayaran dan resit hendaklah dikeluarkan setiap kali sebarang bayaran dibuat. Sebaiknya semakan ini dilakukan oleh seorang peguam kanan atau rakan kongsi untuk mengelak penyalahgunaan oleh pihak yang salah.

5 Resit dikemukakan untuk pembayaran balik tuntutan tidak boleh dikembalikan kepada pihak yang menuntut untuk mencegah tuntutan berulang-ulang pada perbelanjaan yang sama. Rekodkan butir-butir penerimaan, seperti nombor transaksi, untuk mengenalpasti sebarang salinan.

6 Sediakan payung sebelum hujan - sediakan rancangan sandaran dan prosedur sekiranya berlaku insiden yang malang. Keputusan pantas dan betul di waktu kecemasan boleh menyelamatkan anda dari masalah yang lebih lanjut.

7 Berhati-hati dengan orang yang diupah bekerja - buat pemeriksaan dan temuduga yang secukupnya sebelum membuat keputusan untuk mengupah seseorang. Hubungi majikan sebelumnya untuk mengetahui sekiranya terdapat perkara yang berlaku yang boleh dijadikan sebagai amaran.



JANGAN BERMAIN DENGAN API

Syarikat Insurans menerima pemberitahuan dari Chloe, bagi pihak Tetuan Mark & Partners. Chloe, rakan kongsi dalam firma itu, membuat pemberitahuan mengenai dua surat tuntutan yang diterima daripada klien firmanya yang mendakwa pelanggaran kewajipan pihak-pihak berkepentingan oleh bekas rakan kongsi, Mark. Ceritanya seperti berikut:

Dari mula penubuhan Mark & Partners, sudah ada tanda-tanda masalah. Mark, rakan kongsi berjawatan pengurus, telah meminta Chloe menyertai firma undang-undang sebagai rakan kongsi bergaji. Setelah Chloe menerima jawatan tersebut, dia merangka perjanjian penggajiannya untuk dilaksanakan antara Mark dan dirinya. Walau bagaimanapun, Mark sentiasa mengelak untuk menandatangani perjanjian itu dengan alasan tidak menjadi satu keperluan. Walaupun tidak ada perjanjian perkongsian yang formal, nama Chloe ditayang pada kepala surat firma sebagai rakan kongsi.

Selepas mengalami masalah undang-undang profesional, setahun kemudian Mark berhenti daripada beramal. Hal ini hanya diketahui Chloe apabila dia menerima surat daripada Majlis Peguam memberitahu bahawa

dia kini pemilik tunggal Mark & Partners. Sejak itu, Mark tidak muncul di firma undang-undang tetapi hanya menghubungi Chloe melalui telefon untuk memberitahu bahawa dia akan kembali beramal tidak lama lagi.

Perlu diketengahkan ketika ini bahawa Mark bertindak sebagai satu-satunya penandatangan kepada kedua-dua Akaun Pejabat dan Klien firma tersebut. Walaupun dia tidak lagi beramal, Mark masih terus mengawal dana dalam firma undang-undang tersebut. Chloe, yang tidak mengetahui mengenai wang yang berada dalam Akaun Klien atau butirannya, mendedahkan bahawa semua dokumen perakaunan dan penyata bank disimpan di dalam sebuah bilik berkunci di firma itu. Hanya Mark dan kakak kepada Mark yang mempunyai akses ke bilik itu.

Chloe memberitahu Mark bahawa dia ingin membuka Akaun Klien yang baru dimana dia akan menjadi penandatangan. Mendengarkan ini Mark telah membuat ugutan terhadap Chloe. Apabila Chloe ditanya mengapa dia masih meneruskan amalan undang-undang di bawah keadaan itu, Chloe menegaskan bahawa, "sebagai tuan punya tunggal firma itu, tiada pilihan lain, dan terdapat fail yang sedia

ada untuk diselesaikan". Chloe juga mendakwa bahawa dia telah menulis surat aduan rasmi kepada Majlis Peguam tentang kelakuan Mark tetapi mendakwa salinan dokumen tersebut telah hilang.

Chloe terus menguruskan firma itu selama enam bulan lagi tanpa menyedari bahawa Mark telah menggelapkan wang daripada Akaun Klien. Hanya setelah Majlis Peguam memaklumkan kepada Chloe bahawa Mark telah digugurkan namanya dari daftar peguam disebabkan salah laku di sebuah firma sebelum ini dan menerima surat tuntutan daripada seorang klien, baharulah Chloe menyedari betapa teruknya keadaan.

Apabila klien mengancam tindakan undang-undang terhadap Chloe dan firmanya, baharulah Chloe membuat keputusan untuk membuat laporan polis bagi melindungi dirinya terhadap salah laku Mark. Oleh kerana dana klien yang telah disalah urus, Chloe tidak dapat memperbaharui perakuan amalan tahunan (Sijil Annual) kerana tidak dapat mengemukakan Laporan Kewangan yang wajib dihantar, dan juga prosiding tatatertib terhadapnya yang difailkan oleh bekas klien.

Peringatan Bernas

1

"Dapatkan secara bertulis" - Ini adalah kata-kata yang biasa diucapkan oleh peguam untuk sebab yang baik. Pembentukan sebuah firma undang-undang bukanlah sebuah perniagaan "berjabat tangan". Komplikasi akan berlaku apabila kedua-dua pihak menunding jari dan pertikaian ini boleh diselesaikan jika ada kontrak bertulis.



2

Perjanjian perkongsian yang kabur membuat pengurusan risiko sukar. Adalah penting bagi semua kontrak pekerjaan dibuat secara bertulis untuk menentukan tahap liabiliti, dan pada kebiasaannya adalah terhad.



3

Adalah dijangkakan untuk semua perniagaan, terutama amalan undang-undang, untuk mempunyai dokumentasi yang baik. Dengan proses dokumentasi yang betul, keperluan klien dan pihak yang berkepentingan akan dipenuhi dengan berkesan dan sebarang kecacatan yang dijumpai adalah cepat. Surat yang memberi kesan kepada mana-mana bahagian amalan profesional anda mesti dikekalkan dan mudah dikenalpasti apabila diperlukan.



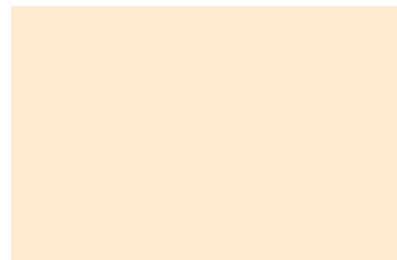
4

Semua rakan kongsi menanggung secara bersama dan berasingan bagi hutang perkongsian. Sebelum membuat keputusan untuk menceburi sebuah perkongsian, pastikan bahawa bakal rakan kongsi anda adalah seseorang yang anda boleh percayai. Bertanya jika anda mempunyai keraguan.



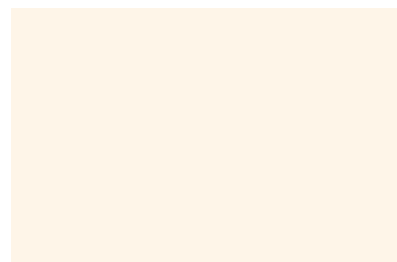
5

Akaun Klien firma anda itu hanya boleh dikawal oleh seseorang rakan kongsi atau pembantu undang-undang yang telah dibenarkan oleh rakan kongsi firma anda. Rakan kongsi yang telah meninggalkan firma tidak boleh mempunyai sebarang kuasa ke atas Akaun Klien.



6

Sebarang tingkah laku yang tidak mematuhi Solicitors Account Rules 1990 yang tidak boleh diperbaiki harus dilaporkan kepada Majlis Peguam dan laporan kepada pihak polis harus dibuat. Jangan tunggu sehingga menimbulkan kesan yang buruk untuk bertindak. Ingat, pencegahan adalah lebih baik daripada mengubati!



PI INSURANCE & RISK MANAGEMENT DEPARTMENT

Bar Council Malaysia
Suite 4.03A, 4th Floor, Wisma Maran
28 Medan Pasar, 50050 Kuala Lumpur, Malaysia

Tel: 03-2032 4511 Fax: 03-2031 6124
Email: pirm@malaysianbar.org.my

BAR COUNCIL MALAYSIA

No 15, Leboh Pasar Besar
50050 Kuala Lumpur, Malaysia
Tel: 03-2050 2050
Fax: 03-2034 2825 / 2026 1313 / 2072 5818
Email: council@malaysianbar.org.my

Mysahra Shawkat Executive Officer
✉ mysahra@malaysianbar.org.my

Kumaresan Krishnan Officer
✉ kumaresan@malaysianbar.org.my

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