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Dear Members,

Inside this issue...

... we bring you details of conveyancing scams, which the Bar Council had also informed Members of the Bar about, in Circular No 158/2017 dated 19 July 2017, entitled "Fraud Alert: Know Your Office Manager". While these scams affect law firms involved in conveyancing practice, the risk avoidance measures shared in this issue should be considered by all lawyers.

Conveyancing scams are real, and lawyers should take care to avoid falling victim to such scams. A general observation regarding the modus operandi and the triggering point that prompted affected law firms to make a notification is shared in the case study section. Members will find it surprising that the scam was reported as a simple demand letter for negligence, which then escalated into something even more serious.

This issue also features the benefits of having a top-up that is equivalent to the work a law firm undertakes, and how the Insurer views claims as "One Claim".

On a lighter note, do read our health article on how to manage stress better, and follow the easy steps suggested.

We would like to apologise to all our readers who were expecting this newsletter in 2017.

If you have any feedback or queries, do reach out to the PII and Risk Management Department officers directly by telephone at 03-2032 4511, or by email at pirm@malaysianbar.org.my.

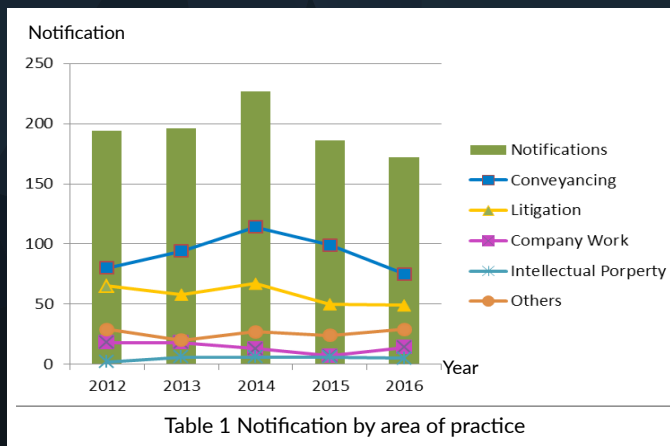
Happy reading!

The *Jurisk!* Team

Chairperson's Message

Dear Members of the Bar,

We are under attack by rogues. They claim they can help your conveyancing practice. They claim they have clients for you and give you “work” to prepare sale and purchase agreements of subsale properties. They position themselves between you and third parties (eg bank and developer). Since 2011, there have been 27 such notifications against 8 firms. These could cost the PII Scheme over RM5.0 million. A larger number of unnotified cases are believed to exist. The quantum of claims is expected to be huge.



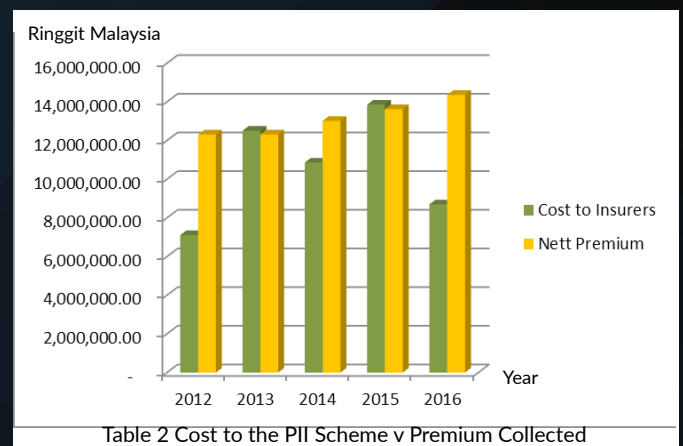
Before the introduction of a mandatory PII Scheme, practitioners signed individual indemnity policies. Each firm carries their own risks. When a firm was sued for, say, RM1.0 million, insurers increased the following year's premium manifold. Every practitioner in the concerned firm were compelled to pay premium between RM10,000.00 to RM75,000.00. These lawyers were considered 'high risk'. When they left and joined other firms, the latter firm's premium increased dramatically. Some firms shut down; many lawyers left practice altogether.

To protect the members, the Bar established an indemnity group scheme in 2002. Since then the entire Bar carries the collective burden of every claim.

All is not well. We have uncovered a shocking practice among certain banking law firms. In exchange for work, they sign away their rights by executing blanket indemnity undertakings with banks. When the claim triggers, it sabotages the entire Bar's pool. The number and quantum of these claims rise. Confronted with increasing losses year on year, premiums increase. Should we then remove such 'blanket indemnity lawyers' from the PII Scheme?

Should we risk negating cover where deserved? Or should we increase the premiums charged to the Scheme members? Should we allow a group of “bad” lawyers to mess with our collective risk profile, managed responsibility, on the whole, by honourable, hard-working members? Should we uncomplainingly carry the burdens of the negligent, the heedless, the fraudulent and the greedy? Or should we draw the line in the sand and say 'And no farther'?

These are the questions that the PII Committee faces. We fight tooth and nail to stave off premium increases. Yet only so much we can do in the face of surmounting losses, and the callous and cavalier attitude of some irresponsible practitioners.



Hard decisions shall have to be made. The only way forward is vigilance. Let us not prejudice over 17,500 members in the PII Scheme with losses that can be avoided through risk management, and elimination of rogues, and 'blanket indemnity' lawyers. Articles in this issue will shed some light on how you can safeguard your, and ultimately, all of our interests.

GK Ganesan Kasinathan
Chairperson
PII Committee
Bar Council Malaysia

A Big Thank You

Ragunath Kesavan

For 13 years, Ragunath Kesavan rendered signal service as Chairperson of Professional Indemnity Insurance Committee ("PII Committee") since 2004. Ragu did this while he was an Office Bearer of Bar Council for seven continuous years (2004 to 2011). During this time, he served as President of Malaysian Bar for two terms: (2009 to 2011). Although faced with a frenetic schedule, Ragu made the protection of members his highest priority. During his tenure as Chairperson of the PII Committee, he hassled, harried and hounded brokers and insurers, to give protection to troubled members.

When he began his work in 2004, there were 11,300 members at the Bar. Thirteen years later, in 2017, that had increased by 55% to 17,535. Similarly in 2004, the number of notifications made against the indemnity scheme was 193; the total incurred amounted to RM3.6 million. Fast forward 2017, the number of notifications per annum were 188, however the total incurred increased to some RM10.7 million in 13 years: an increase of 100%.

Similarly in 2004, the base premium per advocate and solicitor was RM1,500.00. By the time he left in early 2017, premium was down to RM1,190.00, a reduction of 20%. Even during the challenging years whilst the number of notifications escalated, Ragu successfully kept the premium low.

In 2006, Ragu established the Joint Claims Committee ("JCC"). The JCC reviewed the then existing insurer's reasons for the rejection of claims, and their unreasonable claims loading. The JCC negotiated with appeals to insurers on behalf of the affected members with much success. After that terrible episode and with determination not to have the same problems in future, he began negotiations with a new set of insurers and reinsurers. He set up the Claims Sub Committee ("CSC") to review rejected claims. Since 2014, the CSC has argued to reinstate indemnity protection for deserving claims. Some 117 rejections reviewed, and a handful reinstated.

In the past 13 years there have been 2,643 notifications and the total incurred is RM106.95 million. Nevertheless this did not stop Ragu from continuously challenging and demanding from the insurers the best protection, with a wider coverage for a reduced premium in order to ensure that the best interests of members were looked after.

As the figures show, it was Ragu who made our PII Scheme one of the best managed professional indemnity scheme in the world. Now, Ragu has decided to step down from his position as Chairperson but he continues to remain as a member of the PII Committee.

Yet no one has ever stopped Ragu, on his way to court, to show appreciation or to thank him for all of his efforts. It is time we did.

Thank you, Ragu. This inadequate farewell must suffice.

RAGUNATH KESAVAN



Dear Ragu, thank you for dedicating the best years of your life to the PII Scheme, for your single-minded protection of the Members of the Bar, for your empathy, for your unremitting labour in making the Malaysian Bar PII Scheme one of the very best indemnity schemes in the world.

Conveyancing FRAUD

By Chris Harris

This article is amended to suit Malaysia's conveyancing environment in light of Bar Council's circular of a possible scam against lawyers involved in conveyancing practice (Circular No 103/2016 dated 28th April 2017). The article first appeared in 'Property in Practice', the quarterly magazine of the UK Law Society's Property Section. Copyright © 2013 Law Society Gazette. Reprinted with permission.

Every good conveyancer should be aware of the risk of conveyancing fraud. In the UK, the media featured many alarming cases, but the Solicitors Regulation Authority in March 2012 released a warning notice about bogus firms and identity theft, stating that conveyancers cannot rely on the SRA database of solicitors to confirm that a firm is legitimate.

There are two aspects for firms to consider in relation to this type of fraud. The first is how to avoid sending money to criminals pretending to be legitimate firms, and the second is how to prevent your brand from being hijacked by criminals for the purpose of duping other conveyancers. There are commercially available solutions to address the first of these aspects, so I will concentrate on the second.

Conveyancing fraud can occur in many ways, including:

- creating a fake practice (Orient Solicitors, not a genuine firm, in 2010);
- creating a fake branch of a business (Rothschild) in *Davisons Solicitors v Nationwide Building Society* [2012] EWCA Civ 1626;
- cloning a legitimate firm (Acorn Solicitors in 2010);
- solicitors or nonlegal staff (eg paralegals, clerk, despatch, office manager) infiltrating firms on behalf of organised crime (although few firms are prepared to admit this) as notified in Circular 158/2017 Fraud Alert: Know Your Office Manager dated 19th July 2017; or
- a firm being sold or an arrangement being reached with incoming partners, often as partners retire, which is not above board.

For a criminal, hijacking a firm like yours is ideal because you represent a respected and legitimate conveyancing brand, and it will be easier for the criminal to convince others that they are 'safe' to send money to 'you' or have you attend to the necessary documents. The impact on you could, however, be significant. If your firm is cloned, copied or infiltrated, you may be accused of being involved, which may result in lenders removing you from their panels while they investigate, and brand damage. It can go as bad as having a negligent claim against you for not adopting proper measures that could have avoided a loss to the claimant.

How can you protect yourselves from being used as the brand through which the purchasers' solicitor or lender is conned?

All of these points help to ensure that you have the most important weapon a law firm can have against fraud: a culture of vigilance. Frauds committed internally or externally cost the industry dearly, undermine the solicitor brand, and damage solicitor relationships with lenders and insurers.

- Check your website regularly for bogus information added by criminals, and make sure it has all the appropriate regulatory information on it necessary for another firm to confirm your legitimacy.
- Acquire domain names similar to your own. The SRA issued a warning to their members that www.aplinslaw-uk.com (bogus) is not the same firm as www.aplins.co.uk (legitimate). Both sites remained live well into the new year, and the two look nearly identical.
- Check the Bar Council's website, LinkedIn, Facebook and lenders' information at regular scheduled intervals. From the UK experience, criminals can be sophisticated and dupe the SRA into listing a fake branch office. They will try to create a facade of legitimacy across the web, and may try to con lenders into creating fake branch offices for your firm. Set up Google alerts. This is simple and you will then receive an email every time Google finds something on the internet that refers to your brand. It is not foolproof, but it is an easy way of finding web pages relating to your brand. It is also, incidentally, a good way to look out for good and bad online customer reviews of your firm.
- Claim your Google Places for Business, so your business location will show up on a map search in Google. If you do not take this step, criminals could claim your location, creating legitimacy for what they are doing.
- Make your compliance officer for legal practice available to third-party solicitors.
- Don't let staff work from phones or email accounts which are not your own.
- Train your receptionists and clerks to be cautious and to raise alarms when clients ask for branch offices or staff that you do not have.
- Complete full career checks before taking on staff.
- Lock down your requisitions in your case management system, so staff cannot alter the client account number to which purchase funds are sent.

Chris Harris is a solicitor and consultant. He created the *Today's Conveyancer* website (todaysconveyancer.co.uk) and the anti-fraud service *Lawyer Checker* (lawyerchecker.co.uk)

Conveyancing Scams In Malaysia

Recently it has been reported that well planned conveyancing scams primarily targeting financial institutions are on the rise. Bar Council had previously issued an alert on this issue vide its Circular (Circular No 103/2016 dated 28 April 2016), where members were reminded to take heed of these scams and to always be vigilant.

To date a total of 49 notifications from 8 firms had been received but it is estimated that this number may increase as other firms uncover that they are also victims of these scams. Although the prime target of the scam is the financial institutions, lawyers often become the “*collateral victims*” of these grand scams due to their failure to adhere to good risk management practices.

Let's look at the Modus Operandi reported.





Scam #1 - Fictitious Transaction

In this instance the fraudsters are someone known to the lawyers or some freelance agents who had previous dealings with the Firm. These fraudsters promise to introduce prospective clients to the Firm. Excited by the prospect of potential revenue for the firm, the Firm agrees to take conduct of the transaction. Thereafter, these agents will introduce “fictitious clients” as part of this scam. They claim that these clients had purportedly signed the Sale and Purchase Agreements and had even obtained their Offer Letter for their loan. Further, these “fictitious clients” would also represent to the said lawyer that:

1. the Property was free from encumbrances;
2. the Vendor purchased the property from the Developer;
3. the Vendor opt to remain unrepresented; and
4. the Purchaser requires financing to purchase the property and had already obtained a loan facility from a bank.

Later, these agents get the said Firm appointed on an *ad hoc* basis to the financial institution's panel to prepare the loan security documentation. Upon appointment, the firm diligently embarks on its conveyancing protocol. Whilst this is going on, the agent will recommend to the Firm the services of a particular freelance despatch that the agent claims has a good rapport with the Developer. Perceiving this as an advantageous opportunity, the firm engages the services of the said freelance despatch on a part time basis not knowing that the said despatch is also a part of this grand scam.

Once all documents are in order, the Firm forwards the relevant undertakings and confirmations to the financial institution and advises them to release the balance loan sum to the Vendor which the Bank subsequently does.

However, trouble starts when the Buyer defaults on the loan and the financial institution initiates foreclosure proceedings. In the course of that, the financial institution writes to the Developer to apply for consent to sell the property and the Developer replies that they have no knowledge of such subsales and that they had never issued any letters of confirmation, undertaking or endorsement on the assignment.

As it turns out, this was the file which the agent and the freelance despatch were involved. Following this finding, the said lawyer starts to audit other files referred by the said agent and finds out that none of the ‘Vendors’ mentioned in the documents related to the subsale transactions are the actual beneficial owners of the properties. In addition the legal firms stated in the principle Sale and Purchase Agreement had closed their practice long before the sub sales came into existence. This is when the lawyer realises that he and his firm are entrapped in this cleverly orchestrated scam. Soon after, the affected financial institution sued the legal Firm to make good of their losses. They relied on the Letter of Undertaking given by the firm.

Food For Thought

Based on the aforesaid, it is evident that the lackadaisical attitude, attributed to the suit against the Firm. This could have been evaded had the Firm adhered to the following:

1. ensure proper verification is conducted;
2. call the Developer personally for confirmation;
3. not to be over reliant on your staff especially if they not your full time employee; and
4. have a checklist for each file.



Scam #2 - Unsupervised Legal Clerks

In a separate scam, the firm was not even aware that they were acting for a financial institution or for the Borrowers/Purchasers. In this instance, the firm's conveyancing clerk 'handled' the file without any of the partners' knowledge. Weeks prior to the firm being served with a writ, the financial institution's valuer contacted the firm to highlight discrepancies in the names of the Vendor and Purchaser in the Sale and Purchase Agreement.

Surprised, the partners then confronted their conveyancing clerk who admitted preparing the documents. The clerk confessed that her acquaintance, a real estate agent asked her to follow his instructions and work in tandem. She even went on to admit forging the partners' signatures for the loan documentation and had never met the purported Purchaser or Vendor. Though the Firm terminated her immediately, that did not absolve the Firm's liability for professional negligence.

In the following months, the firm was served with a writ. After conducting an internal investigation, they discovered a string of files that were unknowingly 'handled' by their former clerk. The clerk had carefully handled these files without the knowledge of the partners.

Food For Thought

In this case instead of immediately sacking the particular staff, it is prudent for the Firm to engage with staff in order for her to disclose the other files of similar nature so that due diligence exercise could have been taken to pre-empt possible claim.

Therefore do make sure that you:

1. are not overly reliant on your staff;
2. conduct reference checks before employment;
3. spend some time on each file no matter how busy you are;
4. have periodical meetings with staff;
5. request for status reports from staff who are overseeing files; and
6. have a checklist for all files.

It Can Happen To Anyone – Everyone Is Vulnerable

As at October 2017, we have a total 18,137 lawyers practising in over 5,800 law firms in Malaysia. Based on our survey we can conclude that at least 80% of firms do some form of conveyancing as part of their multi discipline practice. On average the insurance company receives a total of 54 notifications per year in respect of residential conveyancing and 36 notifications per year in respect of commercial conveyancing. Total cost incurred on average is RM5.52 million per year. These numbers make conveyancing the largest claims area of law by count and by cost.

Spending time building your practice is as important as doing the legal work. Developing and implementing good risk management is an important part of your practice and should not be ignored. At the PII and Risk Management Department we have the necessary tools to help you manage your risk. Our dedicated Counsels are ready to provide independent and confidential advice to any issues you may have. Email us with your queries at pirm@malaysianbar.org.my or call us at 03-2032 4511.



Letters of Undertakings: A Cautionary Tale

By Ryan Yap, Specialty Coordinator, Jardine Lloyd Thompson Sdn Bhd

Letters of Undertakings are an integral part of the conveyancing practice as it is a practical means by which property and loan security transactions can be carried out. However, conveyancing practitioners must appreciate the significance and consequences of giving such undertakings to financial institutions, particularly in loan transactions where property is used as collateral for the loan.

A typical clause from such undertakings by lawyers to financial institutions would read as follows:

"...In the event that the legal documentation is not in order and is incomplete and should you as the financier suffer any loss or damage by reason of security documents not being registered for reasons attributable to our acts of negligence, error, mistake or omission and/or by reason of the aforesaid security documentation not being in order, ourselves as the solicitors responsible for the preparation of the said legal documentation shall be responsible to make good to you in full all such loss and damage..."

What this means is that the issuing law firm is potentially liable in the event the bank suffers any losses or damages as a result of it acting on any information or confirmations negligently, erroneously or mistakenly obtained or given by the firm. One miscalculation is all it takes for the firm to suddenly find itself with the financial burden of making good losses which may be incurred by the financial institution.

In the case of *Kok Weng Tuck v Ambank (Malaysia) Berhad* [2017] 2 MLJ 539, David Kok and Partners ("the Firm") were appointed by Loh Yoke Pah ("the Purchaser") to prepare the Sale and Purchase Agreement for a 3 storey shop lot ("the Property"). Subsequently, the Firm was appointed by Ambank ("the Bank") to act on the Bank's behalf in the security documentation for the RM680,000.00 loan to be granted to the Purchaser to part finance the purchase of the property from one Noor Azizi bin Shanoor ("the Seller"). The Property was developed by Bandar Putra Permai ("the Developer") and as there was no issue document of title at all material times, any sale would necessarily be by way of assignment by the Developer. The firm hired a freelance despatch on the recommendation of the Seller for the

despatch of all documents between the Firm and the Developer.

After the loan was disbursed by the bank, it emerged that the real Developer did not recognise the Seller as the assignor of the property. The Purchaser, the Seller and the Freelance Despatch were all perpetrators of an elaborate scam, which the Firm had played right into. Armed with the letter of undertaking, the Bank subsequently sued the Firm for the losses it had suffered.

The case was taken to the Court of Appeal, where the Firm was held to be 100% liable for losses suffered by the bank. In essence, the learned judge considered three key points:

1. The Firm was negligent as it did not contact the developer directly to ascertain the status of the Property as instructed by the Bank, and had instead relied on a Freelance Despatch, whom it knew little about.
2. Applying the 'but for test', the Bank would not have suffered the loss that it had suffered but for the negligence of the Firm.
3. Through the Firm's negligence, the letter of undertaking which stated that it had agreed to indemnify the Bank in the event that it was found to be negligent had been triggered.

On further appeal, the Federal Court upheld the decision of the Court of Appeal.

This case makes it clear that such Letters of Undertakings are strictly enforceable. Hence, it is crucial for conveyancing practitioners to be certain of the information they seek and obtain, especially with regard to the status of the security in question.

In fact, all lawyers should take heed and draw the right lessons from these conveyancing scams – to be watchful of surrounding circumstances when completing a deal or transaction. If something seems amiss, take the extra step to investigate and clarify, lest it come back to bite you in the bottom.



Tips for Starting a New Firm

By Jeremiah Rais

You may wish to start a new practice immediately upon completion of pupillage or upon deciding to take your career in a different direction after several years of practice. Either way, the decision to start a new firm should not be made impulsively without considering a wide range of factors. This article attempts to give an overview of what should be taken into account before dipping your toe in the water.

The Lone Wolf or a Wolfpack?

When considering whether or not to start your own firm, you must first decide whether you would prefer running a sole proprietorship or forming a partnership with several other practitioners. While a sole proprietorship may give you greater decision making power over the direction of the firm, time and financial constraints may require you to err on the side of a partnership. Your capability to compete with more established firms in your areas of practice, the trust you place in your potential partner(s) and your appetite for liability for debts may be decisive factors in determining the structure of your firm.

Viability of your New Firm

While you may be busy calculating the initial start-up costs of your new practice, you should not forget to consider how you foresee the firm sustaining itself and growing over the next couple of years.

To aid you in this, it is advisable that you prepare both a business plan and financial plan.

Business Plan

Running a law practice is akin to running a business. Among other things, your business plan will outline your preferred areas of work, your plans for marketing/website design and the objectives of your proposed venture - this will help you run your firm with cohesive vision and will greatly improve your chances of success!

Spend some time determining the feasibility of your new firm and in drafting your business plan as it is a document that your banker or potential partners may wish to see.

Financial Plan

A detailed month-by-month budget will form an integral part of your financial plan and you should include all anticipated expenses (with some flexibility for the unexpected) for at least an initial 12-month period following the set-up of your practice. Compare the total expenses with your anticipated revenue based upon a historical forecast, or at the very least, upon an educated guess to calculate the required cash flow to keep your firm afloat.

Do not confuse profit with cash flow - simply put, profit is recorded when a sale is made and cash flow is recorded upon fee collection. This is integral to the success of your new firm as a profitable one can still go bust without any cash flow!

To sum it up, your financial plan should take into account:

- Establishment costs
- Profit & Loss Statement
- Cash Flow Worksheet
- Break-even Analysis Information Sheet

Location & Equipment

To a large extent, your practice areas and target clientele will determine the location of your law firm. While run-of-the-mill law practices may be sustainable in a smaller city, a firm that specialises in a niche area of law may require you to set it up in Kuala Lumpur. When short listing locations for your new practice, you should take into account:

- Rental - commercial hubs may attract more clients but do ensure that the rental is in line with your financial plan.
- Ease of access to public transportation for your clients, staff and even yourself.
- Proximity to the courthouse especially if your practice is litigation-heavy.
- Access to legal resources - start-up costs for purchasing law reports and practitioner's texts may be significantly reduced should you be located close to a well-stocked legal library, such as Bar Council or State Bar.

Lawyers looking to start up a law practice often look for the best furniture, equipment, and supplies available so as to impress their prospective clients. However, if you are just starting out and have a tight financial plan, consider purchasing used furniture and electronics as it is cheaper. It would be wise at this stage to focus on the essentials that keep your firm functioning such as desks, computers, photocopiers and the like before splurging on luxurious decorative furniture.

What's in a name?

Your firm name will play a monumental role as your firm grows and increases its reputation. Nonetheless, legal practice is still a profession and the naming of your firm is subject to stringent rulings and must be approved by the Bar Council prior to its usage. In general, the names and/or surnames of your partners and yourself may be used as the name of the firm. Variant spellings that do not appear on your identity card, misleading names or those similar to a registered firm's name are likely to be rejected by the Bar Council. It is prudent that one refers to and complies with the requirements set out in Chapter 2 of the Rulings of Bar Council before settling upon a name.

Proposed names may be rejected on the basis that:

- there are firms with similar name(s) in operation:

Pillay & Co	➡	Pillai & Co
Choong & Partners	➡	Chong & Partners
Rajen & Associates	➡	Rajan & Associates

- the firm name is misleading and confusing:

Rahman & Assoc	➡	Raman & Assoc
Hakimi	➡	Hakim
Abdul Manan	➡	Abd Manan
Subramanian A	➡	Subraa & Co

Get Physical!

Ruling 7.03 stipulates that office premises may be shared only if the premises are partitioned off with separate and distinct entrances with no connecting doors while Ruling 7.04 states that an advocate & solicitor may practice from residence should all other Rulings be complied with.

Law firms operating through virtual offices are in breach of Ruling 7.03 as concerns arise in respect of confidentiality and safekeeping of information, including files and documents.

Simply put, your law firm must be operated out of an actual, physical and tangible premise!

Bar Council Approval

Once you've decided on the essentials, it is finally time to make your law firm a reality! Notify the Bar Council in the form of a written notice of intention to set up your practice. When doing so, do not forget to include:

The Bar Council may respond by issuing either a "Letter of Objection" (usually due to a failure to comply with Bar Council Rulings) or a "Letter of No Objection" where subject to the sole proprietor or partners having:

- a valid Sijil Annual and Practicing Certificate; and
- obtained the required Mandatory Professional Indemnity Insurance Cover.

In closing, it is a matter of prudence to familiarise yourself and to comply with the Bar Council Rulings to save yourself the time and expense when setting up your new practice. Among other things, you should now consider incorporating best practices into standard written procedures at your law firm with the guidance of the Bar Council's practice tools which can be obtained from www.praktis.com.my.

**The contents of this article and its illustrations have been adapted from Setting Up Practice (2nd edn, Bar Council Malaysia 2014). You may contact PII & Risk Management Department Bar Council at 03-2032 4511 to purchase a copy of this publication.*

***This article is not intended to be comprehensive nor does it constitute legal advice. We attempt to ensure that the content is accurate, but we do not guarantee its accuracy. You should seek legal or other professional advice before acting or relying on the content.*



Preparing Your Case & Preparing Yourself

1. Know the Facts

A chronology of events is a tremendous asset as you prepare a case for hearing or trial. A good chronology must cover all significant events, dates and cross-referenced to the bundle of documents. Forget full sentences or grammar. Get straight to the point with short descriptions of key facts and include enough information for it to be understood.

A good chronology can also help you see what is not there. What facts are disputed? Why are there gaps in the sequence? Is there a gap that you need to fill or explain or to exploit?

2. Know the Documents

Avoid looking unprepared before the presiding judge by knowing where you can find each and every document in the bundle of documents. For crucial or significant documents, consider tagging those documents with labelled tabs.

Alternatively, consider preparing a document index containing the location of documents in the bundles.

3. Evaluate Every Fact

Evaluate every fact and consider its implications. Once this is done, separate crucial facts from trivial ones. This will aid you in gauging the strengths and weaknesses of your case and prepare you for the opposing party's case of which you would have to answer.

4. Know the Law

Research every legal issue which may arise in your case and be aware of cases and/or legislation that support and undermine your case. This would not only prepare you in furthering your arguments and submissions during the hearing or trial, but to also enable you to raise or answer any objections that may arise.

If you are unsure of an answer to a question the Judge asks, be honest with the Judge. Request for time to research on a particular question of law that is in issue and come back with an answer.

5. Know the Judge

Apart from knowing which court, day and time for your trial, you can eliminate surprises and reduce anxiety by understanding the rules and idiosyncrasies of each courtroom and finding out from other lawyers about the style, manner and unique practices of the judge that is hearing your case.

If the Judge had made a previous ruling on a particular issue that is favourable to your case, make sure you emphasize why your case is similar. If the rulings are not in your favour, be prepared to explain and convince the Judge to distinguish your case.

"Remember, the key to being a successful advocate is knowing your case better than your adversary. You don't have to be the smartest, the most experienced or the most eloquent. You just have to be the most prepared."

...how Insurers group various related claims (as "One Claim")

There is an interesting YouTube clip from the movie "Bridge of Spies" where 'Tom Hanks Explains Insurance Liability'. It is both a helpful and amusing way to understand why and how Insurers look at grouping together various related claims or incidents as "One Claim" under a policy.

What does "Each & Every Claim" and "Aggregate" mean?

If you have a number of unrelated claims, your firm's Mandatory Policy Limit of Indemnity ("Limit") is normally applied to Each & Every Claim ("EEC") when they are separate claims or unrelated events. For example, if your Limit is RM250,000 EEC and you have four separate and different claims, the Limit would be up to RM250,000 for each of those four claims.

However, generally most non-scheme Professional Indemnity policies offered by other Insurers tend to give coverage on an "Aggregate" (or Total) basis, which means the total Limit of all claims in any policy year is limited to RM250,000 for all 4 claims ie regardless of any number of claims.

What is "One Claim? And what is meant by a "related claim"?

Although each of the four claims may involve different claimants/plaintiffs and in the case of a conveyancing matter, perhaps different underlying properties, **the key issue is, did those claims arise from the same or similar series of act(s)/omission(s).**

As an example:

- a partner/employee (perhaps in a particular branch office), over a period of time siphoned/dissipated stakeholder monies involving different clients files. The subsequent legal action brought by each of those clients against the firm will for the purposes of the Limit be treated as One Claim since each arose from the same or similar fraudulent/dishonest acts by that same partner/employee; or
- if a third party or someone outside the firm (eg as an independent/freelance agent/intermediary), fraudulently convinced the firm to handle the transfer and/or loan documentation on four different properties of four clients, and it was later found out that all those transactions were part of a coordinated scam and each of the aggrieved parties commence separate legal proceedings against the firm, all such actions against the firm will be treated as One Claim as each had arisen from the same or similar fraudulent/dishonest acts by that same person.

It is important to note that the firm will on the other hand benefit from only having to bear a single applicable policy Base Excess across all four legal actions. Insurers can't have it both ways!



The relevant clause in the Certificate of Insurance is Clause 35(r) which provides that:

“One claim” means all claims by one or more claimants that arise from:

1. one act or omission; or
2. one series of related acts or omissions; or
3. the same act or omission in a series of related matters or transactions; or
4. similar acts or omissions in a series of related matters or transactions; or
5. misconduct of any person whether or not within the firm acting alone or in collusion with others,

such claims shall be regarded as attributable to one underlying cause and treated as one claim.”

In summary, what is the impact if a group of claims is deemed as “One Claim”?

1. The Limit applies once and in total for all “related” claims. As opposed to having the benefit of a Limit applying to each claim separately.
2. If the total of all claims is larger than the Limit, then the balance is not covered by the Mandatory Insurance – you would need to have had sufficient Top-up Insurance or you would need to bear the balance directly.
3. You will only be responsible for a single Base Excess – this can be of considerable benefit to you in a situation when you’re involved in multiple small claims.

NB: Under the Mandatory PII Scheme, cover is always subject to terms, exclusions, limitations and conditions of the relevant Certificate of Insurance. The Bahasa Malaysia translation on page 35 relating to the Master Policy, Certificate of Insurance and illustrative examples is for guidance only. In the event of inconsistency between the English version and the Bahasa Malaysia version, the English version will prevail.



ARE YOU HAVING A STRESSFUL DAY...?

By Dr Yvette Jaramillo, MD,
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Stress within your comfort zone can help you perform under pressure, motivate you to do your best, even keep you safe when danger looms. But when stress becomes overwhelming, it can damage your mood and relationships, and lead to a host of serious mental and physical health problems. The trouble is that modern life is so full of frustrations, deadlines, and demands that many of us don't even realize how stressed we are. By recognizing the symptoms and causes of stress, you can take the first steps to reducing its harmful effects and improving your quality of life.

What Is Stress?

Stress is your body's way of responding to any kind of demand or threat. When you feel threatened, your nervous system responds by releasing a flood of stress hormones that includes adrenaline and cortisol, rousing the body for emergency action. Your heart pounds faster, muscles tighten, blood pressure rises, breath quickens, and your senses become sharper. These physical changes increase your strength and stamina, speed your reaction time, and enhance your focus.

When stress is within your comfort zone, it can help you to stay focused, energetic and alert. In emergency situations, stress can save your life - giving you extra strength to defend yourself, for example, or spurring you to slam on the brakes to avoid an accident. Stress can also help you rise to meet challenges. Stress is what keeps you on your toes during a presentation at work, sharpens your concentration when you're attempting the game-winning free throw, or drives you to study for an exam when you'd rather be watching TV. But beyond your comfort zone, stress stops being helpful and can start causing major damage to your mind and body.

Stress Tolerance: How Much Stress Is Too Much?

We're all different. Some people seem to be able to roll with life's punches, while others tend to crumble in the face of small obstacles or frustrations. Some people even thrive on the excitement of a high-stress lifestyle.

Unfortunately, many of us try to deal with stress in ways that only compound the problem. We consume too much alcohol to unwind at the end of a stressful day, fill up on comfort food, zone out in front of the TV for hours, consume pills to relax, or lash out at other people. However, there are many healthier and more effective ways to cope with stress and its symptoms.

You may not be able to control the stressors in your world - but you can alter your reaction to them. You also can develop effective strategies for managing those experiences in your life that you do find stressful. **Prioritizing, breaking down complicated tasks into smaller, simpler projects, and effective time management** strategies are just a few of the ways to reduce stress.

Time management is the ability to plan and control how you spend the hours in your day to effectively accomplish your goals. Poor time management can be related to procrastination and problems with Self-Control. Time Management Skills include planning for the future, setting goals, prioritizing tasks and monitoring where your time actually goes.

You could also try...



Get moving – Exercise

This is something you can do right now to help yourself start to feel better: Exercise. Activities that require moving both your arms and your legs are particularly effective at managing stress. Rhythmic exercises such as walking, running, swimming, dancing, and aerobic classes are good choices, especially if you exercise mindfully (focusing your attention on the physical sensations you experience as you move).



Connect To Others

The simple act of talking face to face with another human can trigger hormones that relieve stress when you're feeling uncomfortable, unsure, or unsafe. Even just a brief exchange of kind words or a friendly look from another human being can help calm and soothe your nervous system. Being helpful and friendly to others delivers stress-reducing pleasure as well as providing great opportunities to expand your social network.



Engage Your Senses

Another fast way to relieve stress is by engaging one or more of your senses - sight, sound, taste, smell, touch, or movement. The key is to find the sensory input that works for you. Does listening to an uplifting song make you feel calm? Or smelling ground coffee? Or maybe petting an animal works quickly to make you feel centred? Everyone responds to sensory input a little differently, so experiment to find what works best for you.



Set Aside Relaxation Time

Relaxation techniques such as yoga, meditation, and deep breathing activate the body's relaxation response, a state of restfulness that is the opposite of the fight or flight or mobilization stress response.



Eat A Healthy Diet

Eating a healthy diet isn't about eating bland food, adhering to strict dietary limitations, or depriving yourself of the foods you love. But by re-examining your existing diet and experimenting with new ways of eating that promote mental health, you can find an eating plan that not only helps to relieve stress, but also boosts your energy, improves your outlook, and stabilizes your mood.



Get Your Rest

Feeling tired can increase stress by causing you to think irrationally. At the same time, chronic stress can disrupt your sleep. Whether you're having trouble falling asleep or staying asleep at night, there are plenty of ways to improve your sleep so you feel less stressed and more productive and emotionally balanced.

AMALAN TERBAIK

Apakah yang berlaku di dalam firma? Adakah mereka mempraktikkan sebarang bentuk pengurusan risiko?

Kebanyakan firma yang menjadi mangsa penipuan pemindahhakan yang melibatkan peguam-peguam pemindahhakan kebelakangan ini didapati telah mempraktikkan beberapa langkah pengurusan risiko. Sekiranya mereka lebih teliti dan mengambil beberapa langkah tambahan, perkara sebegini mungkin dapat dielakkan.

Secara dasarnya, tiada kesalahan yang dilakukan oleh firma-firma berkenaan pengendalian fail, dan sebahagian besar surat tuntutan hanyalah tuduhan. Namun, kecuaian firma-firma membenarkan pihak ketiga mempunyai akses terhadap firma-firma untuk menguruskan penghantaran surat-menyurat, dan menerima segala dokumen yang dialamatkan ke firma-firma berkenaan tanpa melakukan pengesahan lanjut telah membuatkan mereka terdedah dengan penipuan tersebut.

Sudah tiba masanya firma-firma bertindak luar dari kebiasaan bagi memastikan keselamatan firma anda. Berikut adalah langkah-langkah yang boleh dipelajari bagi menjauhkan diri dari aktiviti penipuan ini...

Apa Yang Firma Lakukan..	Langkah Tambahan...
Berkomunikasi dengan Pemaju (melalui surat) mengenai status Penjual.	• Menghubungi pemaju bagi mengesahkan penerimaan surat/emel/faks. • Jika terdapat keraguan, segera ke pejabat pemaju.
Menugaskan seorang penghantar surat/dokumen kepada pemaju.	• Pastikan penghantar surat adalah staf yang bekerja untuk firma. • Hubungi pemaju untuk mengesahkan penerimaan surat yang dihantar.
Menggajikan seorang kerani untuk menguruskan fail-fail pemindahhakan.	• Lakukan pemeriksaan latar balakang kerani terbabit ditempat kerja sebelum ini. • Sediakan buku log untuk merekod setiap fail yang dibuka dan nama staf yang mengendalikan fail berkenaan.
Menerima dan menggunakan carian dokumen yang diberikan untuk sesuatu transaksi.	• Jangan bergantung pada carian yang dibuat oleh orang lain. • Lakukan carian sendiri untuk mendapatkan maklumat yang terkini.
Menerima urus niaga yang diberikan oleh seseorang yang mendakwa sebagai ejen hartanah.	• Sahkan maklumat kerja 'ejen hartanah' terbabit dengan syarikat tersebut dan/atau sahkan kewujudan syarikat berkenaan.
Memberi akses sistem dokumentasi pinjaman bank dalam talian kepada kerani pemindahhakan yang bertugas.	• Tukar kata laluan secara kerap. • Semak setiap dokumen yang disenaraikan di dalam sistem dengan salinan keras dan buku log.
Menjawab surat tuntutan dari pihak bank.	• Semak fail yang mempunyai persamaan, contohnya, ejen hartanah yang sama. • Maklumkan kepada Syarikat Insurans secepat mungkin untuk tindakan lanjut.

BEST PRACTICES

What went wrong? Did the firms practice any form of risk management?

Firms that were affected by the recent conveyancing scams against conveyancing lawyers had mostly adopted some form of risk management. However, if they were prudent and practised an additional step, they could have avoided being a victim of the conveyancing scam.

The firm didn't do anything wrong while handling the files, and most of the letters of demands were mere allegations. However, it was the firm's negligence in allowing a third party access to the firm, trusting a third party to despatch letters, or by simply accepting documents produced to the firm without conducting their own checks was what made them susceptible to the scam.

It is time for firms to go beyond the norm to ensure the safety of your firm. Let's look at what we can learn to keep scammers at bay....

What The Firm Did....	That One Additional Step...
Communicated with Developer (by letter) on the status of Vendor.	• Call the developer to confirm receipt of letters/ emails/faxes. • If in doubt, visit the developer's office.
Assigned a despatch to send letters to developers.	• Use only despatch or staff that is formally employed by the firm. • Call developer to confirm receipt of letter(s).
Employed a clerk to handle conveyancing files.	• Run a background check with the clerk's previous employment. • Maintain a log book of files opened by the firm and staff assigned to handle file.
Accepted search documents provided for the transaction.	• Do not rely on searches provided by someone else. • Conduct own searches for more current information.
Accepted work brought by someone claiming to be a property agent.	• Verify employment of the person with the property agent company and/or check the existence of the company.
Gave conveyancing clerk access to the bank's online loan documentation system.	• Change password at frequent intervals. • Check documents listed in the system against those of hard copies and log book.
Responded to letters of demands by banks.	• Check files which could have similarities, eg same introducer (property agent). • Notify the Insurer as soon as possible for further assessment.



HAS THIS HAPPENED TO ME?

Was the firm approached by a character who promised/desperate to “work” with the firm?

Has the firm received any letters of demands from banks?

Does the firm use the services of any freelance despatch?

Have any of the firm’s clerks leave/asked to leave due to possible embezzlement?

Check for similarities of files managed by the firm, ie same developer, property details, where the firm prepared SPA and loan documents.

If I had a log book it’d be easier to check – **START NOW!**

**START
DOING
NOW!**

1. Use conveyancing checklist for each file!
2. Conduct all relevant searches.
3. File caveats to protect client’s interest.
4. Delegate and supervise staff.
5. Frequent staff meeting for update on files.
6. Record keeping.
7. Maintain log book of files opened.
8. Follow up with a phone call after sending letter by post/courier/fax or email.



PERNAHKAH INI BERLAKU KEPADA SAYA?

Pernahkah firma didekati oleh seseorang yang berjanji/terdesak untuk “bekerja” dengan firma anda?

Pernahkah firma menerima surat tuntutan dari pihak bank?

Adakah firma menggunakan khidmat penghantar dokumen bebas?

Kerani yang meninggalkan firma atau memohon cuti atas kemungkinan melakukan penyelewengan?

Semak persamaan fail-fail yang dikendalikan oleh firma, lebih-lebih lagi jika melibatkan butiran yang sama seperti pemaju, butiran hartanah, dokumen pinjaman dan firma yang menyediakan SPA.

Sekiranya buku log saya sentiasa dikemaskini, adalah lebih mudah untuk disemak – **MULAKAN SEKARANG!**

BERTINDAK SEKARANG!

1. Gunakan senarai semak pemindahhakkan untuk setiap fail yang dibuka!
2. Lakukan segala carian yang berkaitan.
3. Faillkan kaveat untuk melindungi kepentingan klien.
4. Beri tugas dan awasi staf.
5. Kerap membuat perjumpaan dengan staf untuk mengemaskini fail.
6. Menyimpan rekod.
7. Sediakan buku log untuk merekod setiap fail yang dibuka.
8. Buat semakan melalui panggilan telefon selepas surat dihantar sama ada melalui pos/kurier/faks atau emel.

FROD

Pemindahhakan

Oleh Chris Harris

Artikel ini telah dipinda sesuai dengan situasi amalan pemindahhakan di Malaysia berdasarkan Pekeliling Majlis Peguam (Pekeliling No 103/2016 bertarikh 28 Apr 2017) yang membabitkan penipuan terhadap peguam. Artikel ini pertama kali diterbitkan dalam majalah suku tahunan UK Law Society dengan tajuk "Property in Practice" di ruangan Hartanah. Hak cipta © 2013 Law Society Gazette. Dicitak semula dengan izin.

Peguam pemindahhakan harus peka dengan risiko penipuan pemindahhakan. Media di UK telah memaparkan pelbagai kes-kes penipuan pemindahhakan yang membimbangkan. Pada Mac 2012, Solicitors Regulation Authority ("SRA"), telah mengeluarkan amaran tentang kewujudan firma-firma palsu dan kejadian mencuri identiti serta menekankan bahawa peguam pemindahhakan tidak boleh bergantung kepada data SRA untuk pengesahan sesebuah firma guaman.

Firma perlu mengambil kira dua aspek frod dalam perkara seperti ini. Pertama, bagaimana untuk mengelak dari memindahkan wang kepada firma palsu. Kedua, bagaimana untuk mengelak daripada identiti firma dicuri dan digunakan oleh penjenayah bagi tujuan menipu peguam-peguam pemindahhakan lain. Terdapat pelbagai penyelesaian komersil untuk menangani aspek pertama, maka artikel ini akan menumpukan perhatian kepada perkara kedua sahaja.

Frod amalan pemindahhakan boleh berlaku dengan cara:

- kewujudkan firma palsu (Orient Solicitors, bukan sebuah firma tulen, pada 2010);
- kewujudkan cawangan firma palsu (Rothschild) dalam *Davisons Solicitors v Nationwide Building Society* [2012] EWCA Civ 1626;
- pengklonan firma (Acorn Solicitors pada 2010);
- kakitangan bukan perundangan (contohnya paralegal, kerani, penghantar surat dan pengurus pejabat) yang menyusup dalam firma bagi pihak penjenayah (walaupun hanya segelintir firma bersedia untuk mengaku perkara ini) seperti yang diberitahu melalui *Pekeliling Majlis Peguam 158/2017 Fraud Alert: Know Your Office Manager* bertarikh 19 July 2017; atau
- firma yang dijual atau wujudnya perjanjian untuk mengambil rakan kongsi baru, yang biasanya ketika rakan kongsi sedia ada akan bersara, dan tidak beramal secara sah.

Bagi penjenayah, firma guaman adalah sasaran terbaik untuk mencuri dan mengguna nama firma (yang sah) kerana ini dapat menyakinkan pihak lain bahawa pemindahan wang mereka adalah selamat atau untuk menguruskan dokumen-dokumen relevan yang lain. Namun, impaknya adalah sangat besar. Anda boleh dituduh bersubahat sekiranya firma anda telah diklonkan, ditiru atau diselipai. Akibatnya, pihak bank akan mengugurkan firma daripada menjadi panel sementara siasatan dijalankan. Pada masa yang sama, nama firma juga akan tercemar. Lebih teruk lagi, suatu tuntutan kecuaihan boleh dibuat terhadap firma atas alasan tiada langkah-langkah pengurusan risiko yang sewajarnya dilakukan yang mana sekiranya telah diambil mungkin boleh mengelakkan kerugian kepada penuntut.

Bagaimana untuk melindungi identiti firma daripada digunakan oleh penjenayah?

Fakta berikut dapat memupuk budaya berwaspada untuk melindungi firma daripada menjadi mangsa frod. Frod yang berlaku, sama ada dalaman atau luaran boleh mengakibatkan kerugian besar kepada industri guaman, memburukkan nama baik firma dan merosakkan hubungan profesional peguam dengan peminjam dan pihak insurans.

- Buat pemeriksaan kerap keatas laman sesawang firma untuk memastikan tiada informasi palsu dimasukkan oleh penjenayah. Pastikan laman web mengandungi semua maklumat pengawalseliaan yang diperlukan bagi membolehkan firma guaman lain membuat pengesahan mengenai kesahihan firma anda.
- Dapatkan nama-nama domain yang serupa dengan nama firma anda. SRA telah mengeluarkan amaran kepada ahli-ahlinya bahawa www.aplinslaw-uk.com (palsu) dan www.aplins.co.uk (sah) adalah firma yang berlainan. Kedua-dua laman web yang seakan serupa ini masih kekal sehingga kini.
- Buat pemeriksaan rawak berjadual di laman sesawang Majlis Peguam, LinkedIn, Facebook dan informasi peminjam. Dari pengalaman UK, penjenayah siber kini semakin canggih dimana mereka menggunakan pelbagai helah untuk menipu SRA dengan menyenaraikan cawangan firma palsu. Cawangan firma palsu itu kelihatan tulen diseluruh laman sesawang dan digunakan untuk menipu. Buat isyarat Google ("Google alerts"). Ia mudah dilakukan dan anda akan menerima emel setiap kali Google mendapati sesuatu di internet yang merujuk kepada identiti/jenama firma anda. Walaupun tidak 100% efektif tetapi ia adalah cara mudah untuk mencari laman sesawang yang berkaitan dengan jenama anda. Ia juga dapat memberi ulasan mengenai perkhidmatan guaman anda.
- Tuntut lokasi firma anda dengan 'Google Places for Business' bagi memastikan lokasi firma anda keluar dalam carian peta di Google. Sekiranya tidak dilakukan, penjenayah siber boleh menuntut lokasi firma dan mewujudkan andaian palsu bagi tujuan frod identiti yang dilakukan.
- Pastikan peguam dalam firma anda boleh dihubungi oleh peguam pihak ketiga.
- Jangan biarkan kakitangan anda melakukan kerja dengan menggunakan telefon atau akaun emel selain kepunyaan firma.
- Latih penyambut tetamu dan kerani untuk selalu berwaspada dan segera memberitahu sebarang pertanyaan berkenaan cawangan firma anda yang tidak wujud.
- Semak latar belakang kerjaya bakal kakitangan.
- Kunci sistem pengurusan kes anda supaya kakitangan tidak dapat menukar informasi di akaun klien (penerima wang berkenaan).

Chris Harris adalah seorang peguamcara dan perunding. Beliau telah menubuhkan laman web bernama *Today's Conveyancer* (todaysconveyancer.co.uk) dan servis anti-fraud, *Lawyer Checker* (lawyerchecker.co.uk)

SKIM

Penipuan Amalan Pemindahhakan di Malaysia

Baru-baru ini telah dilaporkan peningkatan penipuan pemindahhakan terancang yang menyasarkan institusi kewangan. Majlis Peguam telah mengeluarkan amaran berkenaan isu ini melalui Pekeliling 103/2016 bertarikh 28 April 2016, di mana kesemua ahli diingatkan untuk berwaspada terhadap penipuan ini dan lebih berhati-hati.

Sehingga kini, sebanyak 49 notifikasi daripada 8 buah firma telah diterima, tetapi dianggarkan jumlah ini mungkin meningkat apabila firma-firma lain menyedari mereka turut menjadi mangsa. Walaupun sasaran utama penipuan ini adalah institusi kewangan, namun peguam juga sering menjadi “mangsa cagaran” penipuan hebat ini kerana kegagalan mereka dalam mematuhi amalan pengurusan risiko yang baik.

Mari lihat Modus Operandi yang direpot





Penipuan #1 – Transaksi Palsu

Dalam situasi ini, penipu adalah individu yang dikenali oleh peguam itu sendiri atau seorang ejen bebas yang pernah berurusan dengan firma berkenaan sebelum ini. Penipu ini kemudian berjanji untuk memperkenalkan beberapa klien yang berpotensi kepada firma. Teruja dengan keuntungan yang bakal dijana, firma bersetuju untuk menguruskan transaksi tersebut. Selepas itu, ejen terbabit akan memperkenalkan “klien palsu” bagi terus menjayakan rancangan penipuan ini. Mereka mendakwa bahawa klien ini kononnya telah menandatangani Perjanjian Jual Beli dan telah mendapatkan Surat Tawaran bagi pinjaman mereka. Kemudian, “klien palsu” ini akan meyakinkan peguam berkenaan dengan perkara-perkara berikut:

1. hartanah tersebut adalah bebas dari sebarang hutang;
2. Penjual telah membeli hartanah tersebut daripada Pemaju;
3. Penjual memilih untuk tidak diwakili; dan
4. Pembeli memerlukan pinjaman wang untuk membeli hartanah tersebut dan telah berjaya mendapatkan kelulusan daripada pihak institusi kewangan.

Seterusnya, firma tersebut akan dilantik secara ad hoc sebagai peguam panel institusi kewangan bagi menyediakan dokumen sekuriti pinjaman dengan bantuan ejen berkenaan. Setelah dilantik, firma memulakan protokol pemindahhakannya. Pada masa yang sama, ejen akan mengesyorkan firma untuk menggunakan perkhidmatan seorang penghantar bebas yang dikatakan mempunyai hubungan baik dengan Pemaju. Menganggap ini adalah peluang yang baik, firma bersetuju untuk menggunakan khidmat penghantar bebas tersebut secara separuh masa tanpa syak wasangka.

Masalah bermula apabila Pembeli tidak menjelaskan bayaran bulanan pinjaman dan menyebabkan pihak institusi kewangan memulakan prosiding rampasan harta. Dalam masa yang sama, pihak institusi kewangan menulis kepada Pemaju untuk mendapatkan kebenaran bagi menjual hartanah tersebut. Namun respon yang diterima daripada Pemaju adalah mereka langsung tidak mengetahui tentang sub jualan yang disebutkan dan mereka juga tidak pernah mengeluarkan sebarang surat pengesahan, akujanji atau pengesahan penerimaan.

Setelah disiasat, fail yang terlibat merupakan transaksi yang melibatkan ejen dan penghantar bebas tersebut. Berikutan penemuan itu, peguam tadi terus menjalankan audit terhadap kesemua fail yang dirujuk oleh ejen berkenaan. Tiada satupun ‘Penjual’ yang disebut di dalam dokumen berkaitan transaksi sub jualan merupakan pemilik sebenar hartanah berkenaan. Malahan, firma yang dinyatakan di dalam Pejanjian Jual Beli itu juga telah lama tutup, sebelum sub jualan itu wujud lagi. Ketika itulah peguam tersedar yang firmanya telah terperangkap dalam penipuan yang dirancang dengan bijak. Tidak lama kemudian, pihak institusi kewangan yang terjejas telah menyaman firma atas kerugian yang terpaksa mereka tanggung. Mereka juga bergantung sepenuhnya kepada Surat Akujanji yang diberikan firma terbabit.

Pertimbangan

Berdasarkan perkara yang disebutkan di atas, jelas menunjukkan sikap ambil mudah akhirnya memakan diri sendiri. Perkara seperti ini dapat dielakkan sekiranya firma melakukan perkara berikut:

1. pengesahan terhadap setiap dokumen dibuat dengan teliti;
2. hubungi Pemaju secara terus untuk mendapatkan pengesahan;
3. tidak terlalu bergantung kepada staf terutama sekali staf separuh masa; dan
4. mempunyai senarai semak bagi setiap fail yang dibuka.



Penipuan #2 – Kerani Undang-Undang yang Tidak Dipantau

Dalam suatu penipuan yang berlainan, firma yang menjadi mangsa langsung tidak menyedari bahawa firmanya mewakili pihak institusi kewangan atau Peminjam/Pembeli. Situasi ini berlaku apabila kerani pemindahhakan firma berkenaan 'mengendalikan' fail tanpa pengetahuan rakan-rakan kongsi. Beberapa minggu sebelum firma menerima writ, penilai dari pihak institusi kewangan telah menghubungi firma tersebut kerana terdapat percanggahan dengan nama-nama Penjual dan Pembeli dalam Perjanjian Jual Beli.

Rakan-rakan kongsi dikejutkan lagi dengan pengakuan kerani pemindahhakan yang telah mengaku bertanggungjawab menyediakan dokumen jual beli tersebut sewaktu disoal siasat. Kerani tersebut mendedahkan yang rakannya, seorang ejen hartanah telah memintanya untuk menuruti segala arahan yang diberikan dan mereka saling bekerjasama. Dia juga mengaku telah memalsukan tandatangan rakan-rakan kongsi semasa menyediakan dokumen transaksi pinjaman dan tidak pernah bertemu dengan Penjual atau Pemaju. Walaupun perkhidmatannya ditamatkan dengan serta-merta, ini tidak menyelesaikan masalah liabiliti firma bagi kecuai profesional.

Selang beberapa bulan kemudian, firma tersebut telah menerima satu writ. Selepas menjalankan siasatan dalaman, rakan-rakan kongsi telah menjumpai beberapa fail lain yang 'dikendalikan' oleh bekas kerani mereka. Kerani tersebut sangat bijak dalam memastikan setiap langkahnya tidak dapat dikesan oleh kesemua rakan kongsi.

Pertimbangkan

Dalam kes ini, daripada memecat staf tertentu secara terburu-buru, adalah lebih baik firma menyelidik dan memaksa staf berkenaan mendedahkan fail lain yang turut terlibat bagi mengambil langkah sewajarnya sebelum tuntutan dibuat terhadap firma.

Oleh itu, pastikan anda:

1. tidak bergantung sepenuhnya terhadap staf anda;
2. lakukan semakan rujukan sebelum menggaji staf anda;
3. luangkan sedikit masa untuk meneliti setiap fail walau sesibuk manapun;
4. adakan perjumpaan dengan staf secara kerap;
5. minta staf yang menguruskan fail menyediakan laporan fail untuk semakan anda; dan
6. setiap fail perlu mempunyai senarai semak.

Sesiapa Sahaja Boleh Terkena – Kita Semua Terdedah

Sehingga Oktober 2017, sebanyak 18,137 peguam dilaporkan beramal di lebih 5,800 buah firma di Semenanjung Malaysia. Berdasarkan kaji selidik yang dijalankan, didapati sekurang-kurangnya 80% dari jumlah keseluruhan firma yang ada memilih untuk mengendalikan transaksi pemindahhakan sebagai amalan mereka. Secara purata, syarikat insurans menerima sebanyak 54 notifikasi berkaitan pemindahhakan komersial dalam setahun. Jumlah kos yang ditanggung secara purata pula adalah sebanyak RM5.52 milion setahun. Ini menunjukkan bahawa pemindahhakan merupakan tuntutan yang terbanyak dari segi bilangan notifikasi mahupun kos.

Meluangkan masa untuk membina amalan anda adalah sama pentingnya dengan kerja undang-undang yang dilakukan. Membentuk dan melaksanakan pengurusan risiko yang baik dalam amalan anda adalah sesuatu yang tidak boleh diabaikan. Di Jabatan Insurans Indemniti Profesional dan Pengurusan Risiko, kami menyediakan beberapa 'alatan' bagi membantu anda menguruskan risiko yang bakal dihadapi kelak. Penasihat Risiko kami juga sentiasa bersedia untuk memberikan nasihat dan membantu anda menyelesaikan isu-isu tertentu. Hantarkan emel anda kepada pirm@malaysianbar.org.my atau hubungi kami ditalian 03-2032 4511 untuk maklumat lanjut.



Surat Akujanji: Kisah Peringatan

Oleh Ryan Yap, Penyelaras Khas, Jardine Lloyd Thompson Sdn Bhd

Surat Akujanji merupakan salah satu komponen penting dalam amalan pemindahhakan kerana secara praktikalnya, ia membolehkan transaksi jual beli hartanah dan pinjaman sekuriti dijalankan. Walau bagaimanapun, peguam-peguam pemindahhakan harus memahami kepentingan dan kesan ketika mengemukakan Surat Akujanji kepada pihak institusi kewangan, terutamanya dalam transaksi pinjaman dimana hartanah dijadikan sebagai cagaran.

Klausa lazim Akujanji yang disediakan oleh peguam kepada institusi kewangan adalah dipetik seperti berikut:

"...Sekiranya dokumentasi pindah milik tidak teratur mahupun tidak lengkap, dan anda sebagai pembiaya telah mengalami kerugian atau kehilangan disebabkan dokumen sekuriti tidak didaftarkan atas alasan kecuaiian, kesilapan, kesalahan atau peninggalan berpunca dari pihak kami dan/atau sebab sekuriti dokumen tersebut tidak teratur, kami sebagai peguamcara yang bertanggungjawab dalam penyediaan dokumentasi legal ini akan bertanggungjawab sepenuhnya kepada anda atas segala kerugian dan kehilangan..."

Ini bermakna, firma yang menyediakan Surat Akujanji ini akan bertanggungjawab sekiranya pihak bank perlu menanggung kerugian atau kehilangan yang disebabkan kecuaiian, kesilapan atau kesalahan pihak firma dalam memberi informasi mahupun pengesahan. Disebabkan hanya kerana satu kesilapan, firma boleh terikat dengan bebanan hutang yang akhirnya mengakibatkan kerugian besar, lebih-lebih lagi apabila melibatkan pihak institusi kewangan.

Dalam kes *Kok Weng Tuck v Ambank (Malaysia) Berhad* [2017] 2 MJL 539, David Kok dan Rakan-Rakan ("Firma") telah dilantik oleh Loh Yoke Pah ("Pembeli") untuk menyediakan Perjanjian Jual Beli bagi sebuah lot kedai 3 tingkat ("Hartanah"). Berikutan itu, Ambank ("Bank") telah melantik Firma berkenaan untuk mewakili pihak Bank dalam penyediaan dokumen sekuriti yang bernilai RM680,000, pinjaman kepada Pembeli untuk membiayai pembelian hartanah dari pemilik asal Noor Azizi bin Shanoor ("Penjual"). Pemaju hartanah tersebut adalah Bandar Putra Permai dan tiada isu dokumen hakmilik

dilaporkan sebelum ini, setiap penjualan diserahkan hak oleh Pemaju. Firma menggunakan khidmat penghantar bebas yang dicadangkan oleh Pemaju bagi setiap penghantaran dokumen di antara Firma dan "Pemaju".

Hanya selepas pinjaman diberikan oleh pihak bank, didapati bahawa Pemaju sebenar tidak mengenali Penjual sebagai penyerahhak hartanah tersebut. Pembeli, Penjual dan Penghantar Bebas merupakan sekumpulan penyamar yang telah memperdaya Firma. Dengan hanya menggunakan Surat Akujanji sebagai pelindung, Bank telah menyaman Firma atas kerugian yang terpaksa ditanggung.

Kes ini dibawa ke Mahkamah Rayuan, dimana Firma didapati bertanggungjawab 100% atas kerugian yang dialami pihak Bank. Secara dasarnya, tiga perkara yang diketengahkan oleh hakim adalah:

1. Kecuaiian Firma kerana tidak terus menghubungi Pemaju untuk mengesahkan status hartanah sepertimana yang diarahkan pihak Bank, bahkan mengharapkan penghantar bebas yang tidak dikenali Firma tersebut.
2. Menggunakan "but-for test", Bank tidak perlu menanggung kerugian yang dialami, tetapi adalah disebabkan kecuaiian Firma.
3. Seperti yang dinyatakan di dalam Surat Akujanji, Firma akan menanggung kerugian Bank sekiranya terdapat kecuaiian dari pihak Firma.

Rayuan yang dibuat kepada Mahkamah Persekutuan mengekalkan keputusan yang dibuat di Mahkamah Rayuan.

Kes ini membuktikan betapa berkuasanya Surat Akujanji. Oleh itu, adalah penting bagi pengamal pemindahhakan untuk memastikan kesahihan setiap informasi yang dicari dan diterima, terutamanya berkaitan status sekuriti yang dipersoalkan.

Para peguam, seharusnya lebih berjaga-jaga dan mengambil iktibar dari kejadian penipuan pemindahhakan ini – lebih peka dengan keadaan sekeliling ketika berurusanniaga atau membuat sebarang transaksi. Jika berasa curiga, segera lakukan siasatan dan dapatkan jawapan, ini dapat mengelakkan anda dari menjadi mangsa seterusnya.

Pengurusan Amalan

Tip Membuka Firma Baru

Oleh Jeremiah Rais

Anda mungkin merancang untuk membuka firma sendiri sejurus tamat pelatihan atau ingin membawa kerjaya anda ke tahap seterusnya selepas beberapa tahun beramal. Apa jua alasan anda, keputusan untuk membuka firma tidak seharusnya dibuat dalam keadaan terburu-buru tanpa mengambil kira beberapa faktor. Artikel ini ditulis bagi memberi gambaran tentang apa yang perlu anda pertimbangkan sebelum memulakannya.

Persendirian atau Perkongsian?

Semasa mempertimbangkan sama ada untuk membuka firma sendiri ataupun tidak, anda perlu memutuskan sama ada anda mahu bergerak sendiri ataupun secara perkongsian bersama pengamal yang lain. Sekiranya persendirian, anda mempunyai kuasa sepenuhnya dalam membuat keputusan, tetapi kekangan masa dan masalah kewangan mungkin menyebabkan perhatian anda teralih kepada perkongsian. Kemampuan anda untuk bersaing dengan firma yang lebih kukuh, kepercayaan yang diletakkan kepada bakal rakan kongsi dan kebolehan menampung beban hutang adalah antara faktor yang menjadi pengukur struktur firma anda.

Perlaksanaan Firma Baru Anda

Walaupun anda mungkin sibuk mengira kos permulaan untuk menubuhkan firma baru, pastikan perjalanan firma anda dalam masa dua atau lima tahun akan datang telah dirancang dengan baik.

Bagi membantu anda merancang dengan sempurna, adalah dinasihatkan untuk menyediakan kedua-dua pelan perniagaan dan kewangan bagi firma ini terlebih dahulu.

Pelan Perniagaan

Menjalankan firma adalah sama seperti menjalankan sebuah perniagaan. Antara lain, pelan perniagaan dapat menentukan bidang yang di pilih, rancangan pemasaran atau reka bentuk laman web, serta objektif firma itu ditubuhkan – ini dapat membantu anda menguruskan firma dengan pandangan yang lebih bermatlamat dan meningkatkan peluang untuk terus berjaya!

Luang lebih masa untuk menentukan kebolehlaksanaan firma baru anda dan juga semasa melakar pelan perniagaan, kerana dokumen-dokumen seperti inilah yang ingin dilihat oleh pihak bank mahupun bakal rakan kongsi anda.

Pelan Kewangan

Perbelanjaan bulanan yang terperinci akan menjadi komponen penting dalam pelan kewangan firma dan anda seharusnya mengambil kira segala perbelanjaan yang telah digunakan (termasuk anggaran belanja bagi perkara tidak dijangka) sekurang-kurangnya bagi tempoh 12 bulan selepas firma ditubuhkan. Bandingkan jumlah keseluruhan perbelanjaan dengan jumlah pendapatan yang diterima berdasarkan anggaran sebelum ini, atau sekurang-kurangnya anggaran minima aliran tunai yang diperlukan bagi meneruskan perjalanan firma.

Jangan campur adukkan keuntungan dengan aliran tunai – keuntungan dicatat apabila jualan dibuat dan aliran tunai dicatat apabila yuran guaman dibayar. Ini penting bagi memastikan kejayaan firma baru anda sebagai firma yang menguntungkan walaupun tanpa aliran tunai!

Secara ringkasnya, pelan kewangan anda perlu mengambil kira:

- Kos Penubuhan
- Penyata Untung dan Rugi
- Lembaran Kerja Aliran Tunai
- Lembaran Kerja Analisis Pulangan Modal

Lokasi & Peralatan

Secara amnya, bidang amalan dan sasaran kumpulan klien akan menentukan lokasi operasi firma. Walaupun pada kebiasaannya firma akan lebih stabil dibandar-bandar kecil, namun bagi firma yang fokus dalam pengkhukusan amalan tertentu mungkin Kuala Lumpur adalah tempat pilihan terbaik. Semasa menyenarai pendekkan kawasan untuk membuka firma baru, perkara yang perlu dipertimbangkan adalah:

- Sewa – hab komersil boleh menarik klien yang ramai tetapi pastikan bayaran sewa bulanan masih dalam belanjawaan yang ditetapkan.
- Terdapat kemudahan pengangkutan awam untuk klien, staf, malahan buat anda juga.
- Jarak antara firma ke mahkamah, terutamanya jika amalan anda adalah litigasi.
- Akses kepada sumber undang-undang – kos permulaan untuk membeli laporan undang-undang dan teks pengamal dapat dikurangkan sekiranya lokasi firma anda berhampiran dengan perpustakaan (berkaitan undang-undang), contohnya Majlis Peguam atau Badan Peguam Negeri.

Dapatkan Premis!

Peraturan 7.03 menetapkan bahawa premis pejabat boleh dikongsi jika premis-premis itu dibahagikan dan mempunyai pintu masuk yang berbeza tanpa pintu penghubung. Manakala Peraturan 7.04 pula menetapkan bahawa peguam boleh menjalankan amalan dari kediamannya sekiranya segala Peraturan dipatuhi.

Firma guaman yang beroperasi secara maya adalah melanggar Peraturan 7.03, ini bagi memastikan maklumat sulit disimpan dengan baik termasuklah segala fail dan dokumen klien.

Kesimpulannya, firma anda harus beroperasi dari premis sebenar, fizikal dan nyata!

Peguam yang ingin menubuhkan firma sering mencari perabut, peralatan dan barangan yang terbaik untuk mengagumkan bakal klien mereka. Namun, dengan kos permulaan yang amat terhad, untuk berjimat adalah lebih baik untuk mempertimbangkan perabut dan barangan elektronik terpakai. Apa yang lebih utama diperingkat awal ini adalah untuk memastikan keperluan asas seperti kerusi, meja, komputer, mesin fotokopi dan sebagainya sudah boleh digunakan, sebelum memikirkan untuk menghias firma dengan dekorasi mewah.

Kelulusan dari Majlis Peguam

Sebaik sahaja semua perkara penting telah diputuskan, kini tibalah masa untuk menjadikan firma anda suatu kenyataan! Maklumkan kepada Majlis Peguam secara bertulis tentang tujuan anda untuk membuka firma.

Semasa proses tersebut, jangan lupa untuk menyenaraikan:

- cadangan nama;
- nama-nama rakan kongsi (sekiranya firma perkongsian);
- alamat firma beroperasi;
- tarikh firma mula beroperasi; dan
- nombor telefon, faksimili dan alamat emel firma.

Majlis Peguam akan membalas surat anda melalui samada "Surat Bantahan" (sekiranya gagal mematuhi Arahan Majlis Peguam) ataupun "Surat Tiada Bantahan", sekiranya peguam tersebut mempunyai:

- Sijil Annual dan Perakuan Amalan yang sah; dan
- mempunyai perlindungan mandatori Insurans Indemniti Profesional.

Kesimpulannya, adalah penting untuk mengetahui dan mematuhi segala Arahan Majlis Peguam bagi menjimatkan masa dan wang semasa proses menubuhkan firma baru anda. Selain itu, anda juga boleh menggunakan contoh-contoh amalan yang baik dalam prosedur harian firma berdasarkan panduan amalan Majlis Peguam yang boleh didapati di www.praktis.com.my.

**Kandungan dan ilustrasi artikel ini telah diolah dari Setting Up Practice (2nd edn, Bar Council Malaysia 2014). Sila hubungi Jabatan Insurans Indemniti Profesional & Pengurusan Risiko, Majlis Peguam dialian 03-2032 4511 untuk i salinan penerbitan ini.*

***Artikel ini diterbitkan bukan untuk memberi pandangan menyeluruh ataupun nasihat dari segi undang-undang. Kami cuba memastikan kandungannya adalah tepat, namun kami tidak menjamin ketepatannya. Anda dinasihatkan untuk mendapatkan pandangan undang-undang ataupun profesional lain sebelum bergantung sepenuhnya dengan artikel ini.*

Ada Apa Dengan Nama?

Nama firma anda akan memainkan peranan penting semasa firma mula berkembang dan reputasi semakin kukuh. Walau bagaimanapun, sebagai bidang amalan profesional, nama firma adalah tertakluk kepada arahan yang telah ditetapkan dan mendapat kebenaran daripada Majlis Peguam sebelum digunakan. Nama dan nama keluarga rakan kongsi dan juga anda boleh digunakan sebagai nama firma. Variasi ejaan nama selain dari yang tertera di kad pengenalan anda, nama yang mengelirukan, atau nama yang seakan sama dengan nama firma yang sudah berdaftar selalunya tidak diluluskan oleh Majlis Peguam. Adalah lebih baik sekiranya anda merujuk dan mematuhi peraturan yang dinyatakan di dalam Bab 2 Kaedah dan Arahan Majlis Peguam Malaysia sebelum pilihan nama dibuat.

- Cadangan nama-nama firma boleh ditolak disebabkan:

Pillay & Co	➡	Pillai & Co
Choong & Partners	➡	Chong & Partners
Rajen & Associates	➡	Rajan & Associates

- nama firma yang agak mengelirukan:

Rahman & Assoc	➡	Raman & Assoc
Hakimi	➡	Hakim
Abdul Manan	➡	Abd Manan
Subramanian A	➡	Subraa & Co



Persediaan Kes & Persediaan Anda

1. Kenali Fakta

Kronologi peristiwa merupakan aset yang amat penting untuk anda dalam menyediakan kes untuk pendengaran atau pembicaraan. Suatu kronologi yang baik mesti meliputi semua peristiwa penting, tarikh dan semakan rujukan untuk kesemua dokumen yang terkandung dalam ikatan-ikatan dokumen. Lupakan penggunaan ayat lengkap atau tatabahasa. Penjelasan berhubung dengan fakta penting hendaklah dirumuskan secara ringkas dan mengandungi maklumat yang secukupnya untuk difahami.

Suatu kronologi yang bagus juga boleh membantu anda melihat kekurangan kes anda. Apakah fakta yang dipertikaikan? Mengapakah terdapatnya ruang dalam urutan peristiwa? Adakah terdapatnya ruang untuk penjelasan diberikan atau untuk dieksploitasikan?

2. Kenali Dokumen

Elak dari kelihatan tidak bersedia di hadapan hakim yang mendengar kes anda. Ketahui lokasi dan mukasurat dokumen-dokumen yang terkandung di dalam ikatan-ikatan dokumen. Untuk dokumen yang penting, tandakan dokumen tersebut dengan tab berlabel.

Sebagai alternatif, anda juga boleh menyediakan satu indeks dokumen yang mengandungi lokasi dan mukasurat dokumen tersebut dalam ikatan-ikatan dokumen.

3. Menilai Setiap Fakta

Buat penilaian untuk setiap fakta dan pertimbangkan implikasi fakta-fakta tersebut dalam kes anda. Selanjutnya, asingkan fakta-fakta yang penting daripada fakta-fakta yang remeh. Ini akan membantu anda dalam mengetahui kekuatan dan kelemahan kes dan dapat mempersiapkan anda untuk menjawab kes pihak lawan.

4. Kenali Undang-Undang

Lakukan kajian terhadap setiap isu undang-undang yang mungkin akan timbul dalam kes anda. Ketahui semua kes dan undang-undang yang akan menyokong atau menentang kes anda. Ini bukan sahaja akan membantu anda bersiap sedia semasa berhujah di pendengaran atau pembicaraan, tetapi juga akan membantu anda bersiap sedia untuk menjawab sebarang bantahan yang akan dibangkitkan.

Ia juga penting untuk tidak mereka jawapan kepada soalan yang diluar pengetahuan anda apabila ditanya hakim. Dalam keadaan sedemikian, anda harus berlaku jujur dan memohon sedikit masa diberikan kepada anda untuk membuat kajian mengenai persoalan undang-undang yang ditanyakan dan kembali semula dengan jawapannya.

5. Kenali Hakim

Selain dari mengenal pasti mahkamah, hari dan masa perbicaraan, anda juga boleh mengelakkan kejutan dan mengurangkan perasaan gemuruh dengan memahami segala peraturan dan perbezaan cara bagi setiap bilik mahkamah dan mengetahui daripada peguam-peguam lain tentang gaya dan cara hakim yang akan mendengar kes anda.

Jika hakim tersebut pernah menetapkan keputusannya terhadap isu tertentu sebelum ini, pastikan anda menekankan yang kes anda juga adalah serupa. Sekiranya keputusan terdahulu tersebut tidak memihak kepada anda, bersedialah untuk menjelaskan dan menyakinkan hakim mengapakah kes anda berbeza.

“Ingat, kunci untuk menjadi seorang peguam yang berjaya adalah dengan memahami kes anda lebih baik daripada pihak lawan. Anda tidak perlu menjadi paling bijak, paling berpengalaman atau paling fasih. Anda hanya perlu menjadi yang paling bersedia.”

...bagaimana syarikat Insurans mengkategorikan pelbagai tuntutan yang berkaitan (sebagai "One Claim")

Terdapat satu klip YouTube menarik yang dipetik dari wayang "Bridge of Spies" dimana Tom Hanks menerangkan Liabiliti Insurans (*Tom Hanks Explains Insurance Liability*). Disamping memberi pemahaman mengapa dan bagaimana Syarikat Insurans mengkategorikan pelbagai tuntutan yang berkaitan atau insiden yang serupa sebagai "One Claim" di bawah polisi, klip ini juga menghiburkan.

Apakah yang dimaksudkan dengan "Each & Every Claim" dan "Aggregate"?

Sekiranya anda mempunyai beberapa tuntutan yang tidak berkait, had limit sediada mandatori firma akan digunakan bagi setiap satu tuntutan (Each & Every Claim, "ECC"), sekiranya tuntutan tersebut adalah berasingan dan tidak berkait. Sebagai contoh, sekiranya had firma adalah RM250,000 ECC dan firma mempunyai empat tuntutan yang berasingan dan tidak berkait, had yang ditetapkan adalah RM250,000 untuk setiap satu tuntutan tersebut.

Walau bagaimanapun, kebanyakan polisi PII bukan skim berkumpulan yang ditawarkan oleh Syarikat Insurans biasanya memberi perlindungan berdasarkan agregat ("Aggregate") atau jumlah. Ini bermakna jumlah had kesemua tuntutan dalam mana-mana tahun polisi adalah RM250,000 untuk empat tuntutan tadi, tidak kira berapa jumlah sebenar tuntutan yang ada.

Apakah "One Claim"? Dan apakah "tuntutan berkaitan"?

Walaupun setiap satu daripada empat tuntutan tersebut mempunyai penuntut/plaintif berlainan, sebagai contoh dalam pemindahhakan, transaksi-transaksi tersebut mungkin mempunyai perkara-perkara yang berlainan. Tetapi **adakah tuntutan tersebut berlaku berpunca daripada perbuatan/kelalaian yang sama atau serupa.**

Sebagai contoh:

- Rakan kongsi/staf (daripada sesebuah cawangan firma), melarikan sejumlah wang pemegang amanah dari fail klien yang berbeza-beza dalam suatu jangkamasa. Tindakan undang-undang yang diambil oleh setiap klien yang terlibat dengan firma tersebut akan dikira sebagai "One Claim" bagi had yang ditanggung memandangkan setiap tuntutan berpunca dari penipuan/pecah amanah yang sama atau serupa yang dilakukan oleh rakan kongsi/staf tersebut.
- Sekiranya pihak ketiga atau seseorang yang bukan terikat dengan firma (contoh ejen/orang tengah yang bekerja sambilan/bebas) berjaya menipu firma untuk menguruskan transaksi dan/atau dokumen pinjaman untuk empat klien berbeza, dan didapati kesemua transaksi tersebut adalah sebahagian daripada penipuan terancang dan setiap pihak yang teraniaya mengambil tindakan undang-undang berasingan terhadap firma, kesemua tindakan tersebut akan diambilkira sebagai "One Claim" memandangkan setiap tindakan tersebut berlaku daripada tindakan penipuan/pecah amanah dari orang yang sama atau serupa.



Firma hanya perlu membayar *Base Excess* sekali sahaja untuk kesemua empat tindakan undang-undang. Syarikat Insurans tidak boleh mengenakan lebih dari itu.

Klausa 35(r) dalam *Certificate of Insurance* menyatakan bahawa:

“One claim” means all claims by one or more **claimants** that arise from:

1. one act or omission; or
2. one series of related acts or omissions; or
3. the same act or omission in a series of related matters or transactions; or
4. similar acts or omissions in a series of related matters or transactions; or
5. **misconduct** of any person whether or not within the **firm** acting alone or in collusion with others,

such claims shall be regarded as attributable to one underlying cause and treated as **one claim.**”

Kesimpulannya, apakah impak sekumpulan tuntutan dikategorikan sebagai “One Claim”?

1. Had terpakai hanya sekali sahaja untuk keseluruhan tuntutan yang “berkait” berbanding setiap tuntutan mempunyai had yang berasingan.
2. Sekiranya jumlah keseluruhan adalah melebihi had, maka baki yang berlebihan itu tidak akan ditanggung oleh Insurans Mandatori – firma perlu mempunyai Insurans Top-up atau membayar jumlah tersebut sendiri.
3. Firma perlu bertanggungjawab untuk membayar *Base Excess* hanya sekali sahaja – ini bermanfaat kepada firma dalam situasi dimana firma terlibat dengan pelbagai tuntutan kecil.

Nota: Di bawah Skim Mandatori PII, perlindungan adalah tertakluk kepada terma, pengecualian, had dan syarat-syarat ‘Certificate of Insurance’.

Terjemahan berkaitan ‘Master Policy’, ‘Certificate of Insurance’ dan contoh ilustrasi adalah sebagai panduan sahaja, dan sekiranya terdapat perbezaan antara Bahasa Inggeris dan terjemahan Bahasa Malaysia, versi Bahasa Inggeris akan digunakan.



ADAKAH HARI ANDA SANGAT TERTEKAN...?

Oleh Dr Yvette Jaramillo, MD,
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Mengawal stres untuk sentiasa berada dalam zon selesa boleh membantu anda melakukan tugas tanpa tekanan, memberi motivasi untuk buat yang terbaik, malahan juga dapat memastikan anda selamat dari kejadian yang tidak diingini. Tetapi, sekiranya anda menanggung stres yang berlebihan, ia dapat merosakkan suasana dan hubungan anda dengan orang lain, dan seterusnya membawa kepada masalah kesihatan mental dan fizikal yang serius. Apa yang menyebabkan stres berlaku adalah kehidupan dizaman moden yang penuh dengan kekecewaan, tarikh akhir dan permintaan yang terpaksa ditanggung, di mana kadang-kadang kita sendiri tidak menyedari betapa tertekannya kita. Dengan mengenalpasti gejala dan punca stres, anda boleh mengambil langkah pertama untuk mengurangkan kesannya nanti serta mempertingkatkan kualiti hidup anda.

Apa itu Stres?

Stres adalah cara tubuh anda bertindak balas terhadap sebarang bentuk permintaan ataupun ancaman. Sekiranya anda rasa terancam, sistem saraf anda akan memberi respon dengan melepaskan sejumlah hormon stres yang merangkumi adrenalin dan kortisol di mana ia akan merangsang badan untuk melakukan tindakan kecemasan. Jantung berdegup pantas, otot menegang, tekanan darah meningkat, nafas semakin laju, dan deria anda semakin tajam. Perubahan fizikal ini akan meningkatkan kekuatan dan stamina anda, mempercepatkan masa anda bertindak balas dan fokus anda semakin jelas.

Apabila stres berada dalam zon selesa, ia dapat membantu anda untuk kekal fokus, bertenaga dan berwaspada. Dalam situasi kecemasan, stres boleh menyelamatkan anda – contohnya, memberi anda kekuatan tambahan untuk melindungi diri ataupun memaksa anda menekan brek kereta bagi mengelakkan kemalangan. Stres juga membantu anda untuk terus bertahan dalam menghadapi cabaran. Stres yang menyebabkan anda berjaya melakukan pembentangan di tempat kerja, menajamkan fokus anda untuk menang dalam permainan balingan percuma ataupun, memaksa anda mengulangkaji untuk peperiksaan tatkala anda lebih cenderung untuk menonton televisyen. Walau bagaimanapun, sekiranya stres yang anda hadapi telah menjangkau zon selesa, ia tidak akan lagi membantu anda, malah, ia akan mengakibatkan kerosakkan besar kepada minda dan tubuh anda.

Toleransi Stres: Berapa Banyak Stres adalah Terlalu Banyak?

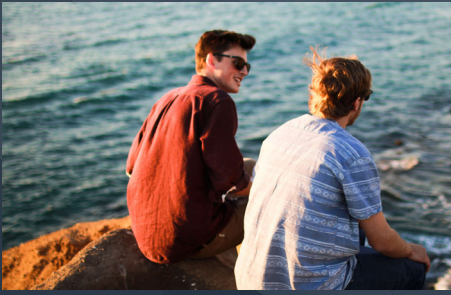
Setiap manusia dilahirkan berbeza-beza. Ada yang mampu bertahan dengan pelbagai dugaan, ada yang rapuh apabila diuji dengan sekecil-kecil masalah dan ada juga yang berjaya disebabkan keinginan untuk berada dalam golongan gaya hidup bertekanan tinggi.

Malangnya, ramai di antara kita yang cuba menghadapi stres dengan hanya menambahkan lagi masalah. Kita mengambil terlalu banyak alkohol bagi mengakhiri hari yang begitu stres, makan terlalu banyak, menonton televisyen berjam-jam, mengambil ubat penenang ataupun melepaskan marah kepada orang lain. Sedangkan terdapat banyak lagi cara yang lebih baik dan efektif bagi menangani stres dan gejalanya.

Bergerak – Lakukan Senaman

Ini adalah perkara yang patut anda lakukan sebagai permulaan. Senaman. Aktiviti yang memerlukan anda menggerakkan tangan dan kaki adalah sangat efektif dalam mengurangkan stres. Senaman berirama seperti berjalan, berlari, berenang, dan kelas aerobik adalah pilihan yang baik, lebih-lebih lagi jika anda fokus dalam setiap pergerakan.





Berhubung dengan Orang Lain

Dengan hanya berbual secara berdepan bersama seseorang, tubuh anda akan melepaskan hormon bagi mengurangkan stres ketika anda berasa tidak selesa, tidak pasti atau tidak selamat. Walaupun sekadar ucapan ringkas yang bermakna atau pandangan mesra dari seseorang, ia mampu menenangkan dan melegakan darah gemuruh anda. Sentiasa membantu dan mesra terhadap seseorang akan mengurangkan tekanan yang dihadapi individu terbabit, malahan secara tidak langsung ia turut membuka peluang untuk menambah rangkaian sosial anda.



Kenalpasti Setiap Deria Anda

Salah satu cara mudah untuk mengurangkan stres adalah dengan mengenalpasti tahap kepekaan anda bagi setiap deria yang ada – penglihatan, pendengaran, rasa, bau, sentuhan, atau pergerakan. Kuncinya adalah dengan memilih deria yang paling sensitif buat anda. Adakah dengan mendengar lagu yang bersemangat membuatkan anda berasa tenang? Atau menghidu aroma kopi yang dikisar? Atau mempunyai binatang peliharaan? Respon individu terhadap setiap deria adalah berbeza-beza, jadi lakukan ujian untuk kenalpasti deria mana yang paling bersesuaian dengan anda.



Luangkan Masa untuk Relaks

Teknik relaksasi seperti yoga, meditasi, dan pernafasan yang betul akan mengaktifkan respon relaksasi tubuh anda, untuk berasa tenang dan bertentangan dengan pertelingkahan atau respon mobilisasi.



Amalkan Diet yang Sihat

Amalan pemakanan yang sihat bukanlah sekadar mengambil makanan yang hambar, terikat dengan diet yang ketat, atau menjauhkan diri dari makanan kegemaran anda. Tetapi dengan mengkaji semula diet sedia ada dan mencuba plan diet yang baru, anda bukan sahaja dapat mengurangkan stres bahkan juga dapat meningkatkan tenaga, memperbaiki bentuk fizikal dan menstabilkan emosi anda.



Dapatkan Rehat yang Cukup

Sekiranya badan anda terlalu letih, stres akan meningkat dan anda tidak mampu untuk berfikir secara rasional. Pada masa yang sama juga, stres yang kronik akan mengganggu tidur anda. Samada anda mengalami kesukaran untuk tidur atau anda akan berjaga sepanjang malam. Walaupun begitu, terdapat pelbagai cara untuk memperbaiki mutu tidur anda bagi mengurangkan tahap stres dan menjadi lebih produktif serta mempunyai emosi yang seimbang.

Anda mungkin tidak mampu untuk mengawal stres yang anda alami, tetapi anda boleh mengawal tindak balas anda terhadap stres tersebut. Anda juga boleh membentuk strategi yang efektif untuk mengawal pengalaman-pengalaman terdahulu yang membuatkan anda tertekan. Menentukan keutamaan, memecahkan tugas yang sukar kepada beberapa bahagian, memudahkan sesuatu projek, dan pengurusan masa yang efektif adalah antara strategi-strategi yang boleh digunakan bagi mengurangkan stres anda.

Pengurusan masa adalah keupayaan untuk merancang dan mengawal hari yang anda habiskan bagi mencapai matlamat dengan lebih efektif. Pengurusan masa yang lemah wujud kerana sifat 'tunggu dulu' dan masalah dengan Kawalan-Sendiri. Kemahiran pengurusan merangkumi pelan masa hadapan, menetapkan matlamat, meletakkan keutamaan dalam sesuatu tugas, dan memantau di mana kebanyakan masa anda dihabiskan.



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Circular No 103/2017

Dated 28 Apr 2016

To Members of the Malaysian Bar

Alert: Possible Scam Against Lawyers Involved in Conveyancing Practice

It has come to the Bar Council's attention that there may be a scam being perpetrated against lawyers who are involved in conveyancing practice. This information was conveyed to us by the Insurer for the Malaysian Bar Professional Indemnity Insurance ("PII") Scheme through the Claims Administrator, Echelon Claims Consultant Sdn Bhd ("Echelon")

Currently, five firms have been identified as victims of a possible scam relating to preparation of loan documentation in respect of properties. Based on the information available, the potential scam is most likely carried out by a syndicate, and involves sub-sales of residential properties.

The similarities found between the five affected firms include:

1. Similar modus operandi;
2. Same names are repeated either as Purchaser/Borrower or Vendor ; and
3. Possibility of the same Agent (freelance real estate negotiator by the name of "Kumar" or "John", and/or same despatch).

As at 3 Feb 2016, the five affected firms have, collectively, 27 notifications amounting to approximately RM14 million or more. Each firm has its own mandatory limit, and may not have top-up insurance to cover the excess amount of the claims against them.

Modus Operandi

The general characteristics of the syndicate's modus operandi are as follows:

1. The insured practice is approached by a freelance real estate negotiator, with documents indicating that one or more banks has/have approved loans to the Purchaser/Borrower;
2. The bank then appoints the insured practice to prepare the loan documentation;
3. The insured practice relies solely on the freelance real estate negotiator and/or freelance despatch to collect documents from, or submit documents to, the relevant party;
4. The insured practice advises the bank to release the loan sum;
5. Subsequently, the Borrower default in their loan repayments; and
6. The bank then discovers that:
 - the sale and purchase transaction between the Purchaser/Borrower and the Vendor is fraudulent; and
 - the letter of undertaking and confirmation from the Developer was forged..

What Can You Do?

We urge Members to adopt good risk management and due diligence practices when handling conveyancing matters. The following is a list of recommended best practices to minimise the risk of falling prey to such potential scams:

1. Exercise extreme caution when dealing with so-called Agents or third parties;
2. Be wary if you are approached by an Agent or a third party to complete a transaction or prepare documents for a transaction;
3. If a potential transaction is brought or introduced by an Agent or a third party, deal directly with the Developer/Vendor and bank. Do not allow the Agent or third party to collect and deliver correspondence;
4. Obtain a copy of the Agent or third party's credentials (eg MyKad or real estate agent licence);
5. Identify and verify the identity of the client, Agent or third party, and Developer/Vendor. Conduct additional independent checks on the Developer/Vendor and Purchaser/Borrower (eg MyKad, or utility bills to prove that the Vendor is residing there);
6. If in doubt, and where practical, conduct a site visit;
7. Only carry out instructions that are given by the client, which should be in writing;
8. Practise due diligence at all times;
9. Alert the authorities and the Insurer of the PII Scheme, if you suspect a possible scam; and
10. Use the conveyancing checklist, available [here](#) on the Praktis website) as a tool to minimise risk.

Generally, the use of a checklist for each file will help minimise the likelihood of a claim being made against a firm. Please refer to the checklists available [here](#) on the Praktis website. If you are already using a checklist, we urge you to find time to update and improve the checklist.

Members are reminded to be constantly vigilant, and to report suspected or confirmed scams to the Bar Council by email to the undersigned at secretary@malaysianbar.org.my, with a copy to the PII and Risk Management Department at pirm@malaysianbar.org.my.

Should you have any enquiries, please contact the officers of the PII and Risk Management Department by telephone at 03-2032 4511, or by email at pirm@malaysianbar.org.my.

Thank you.

Karen Cheah Yee Lynn
Secretary
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Circular No 158/2017

Dated 19 July 2017

To Members of the Malaysian Bar

Fraud Alert: Know Your Office Manager

It has come to the Bar Council's attention that there is a series of ongoing scams aimed at exploiting Members of the Bar, and more than a few have fallen victim to it.

Generally, an individual attracts small-firm practitioners with promises of "steady income" in relation to work that consists of mostly conveyancing or debt collection matters. What the lawyers have to do – according to these fraudsters – is to merely "lend the name of the law firm", and attest documents, sale and purchase agreements or loan documentation. One typical scenario is where a fraudster says:

"I will personally bring in conveyancing business. On record you have to say you 'employ' me, for example as an Office Manager. Please pay my income in cash because... [the fraudster will provide various reasons to justify this, eg he is a bankrupt]. This way you don't have to pay any income tax, SOCSO or EPF. I will take care of everything else, including drafting documentation and correspondence. I have a team of clerks and runners who will take care of all these details. You don't have to meet the clients. I will fully manage all dealings with clients on my own. You don't have to go and check on the developers or banks or even send them letters. My team will do all that. Much better if you can please let me set up a 'Branch Office'. Let me run it for you and I will take care of everything. You don't have to be there. Because I have to advise payments out or pay over monies to clients, could I have your client account's pre-signed blank cheques left with me? Also, consequently, could I please have access to your firm's client accounts?"

When any person approaches you with this modus operandi, you are advised to decline their offer.

What Can You Do?

1. Do not leave pre-signed blank cheques with anyone;
2. Do not allow any employee to deal with clients, except under careful supervision;
3. Ensure that each branch office is carefully supervised by qualified and registered Members of the Bar;
4. Check and verify thoroughly all payments made into and from the firm's accounts – including the firm's client accounts, branch accounts, and the firm's general accounts;
5. Maintain a stranglehold over the client accounts;
6. Set a conservative threshold, and a recorded, written system of approvals. Any request for outgoing payments must be counter-checked for confirmed written instructions, identity of any authorised payee, etc;
7. Avoid issuing cash payments exceeding a specified amount;
8. Where possible, conduct background checks on all new employees, eg reference checks, bankruptcy searches, etc; and
9. Insist that staff income is paid directly into their bank accounts. Ensure appropriate and exact deductions are made for the Employees Provident Fund ("EPF"), Social Security Organisation ("SOCSO") and Inland Revenue Board payments.

Members are reminded to be constantly vigilant, and to report suspected or confirmed scams to the Bar Council, by email to the Bar Council Professional Indemnity Insurance ("PII") and Risk Management Department at pirm@malaysianbar.org.my.

Should you have any enquiries, please contact the PII and Risk Management Department by telephone at 03-2032 4511, or by email at pirm@malaysianbar.org.my.

Thank you.

Roger Chan Weng Keng
Secretary
Malaysian Bar

Which Top-up Insurance?

*By Malaysian Bar Scheme
Department, Jardine Lloyd
Thompson Sdn Bhd*

Many firms do buy Top-up Insurance to give themselves greater protection and often because it's required by a client eg a bank or property developer.

The question we would like you to consider is what are you buying and could you be wasting your premium? Obviously, a competitive premium is important especially during these difficult economic times, but are you getting your money's worth?

Many products are marketed broadly as "follow form" but unfortunately the small print is important. We've seen several examples where law firms and their claims, settlement and even coverage processes have been hammered because their Top-up coverage and notifications do not fully align. So before buying Top-up Insurance, check the quotation carefully and ask:

1. Does the Limit of Indemnity ("Limit") apply to "Each & Every Claim" ("EEC") or in "Aggregate"?

EEC gives you "more" overall cover as your limits is replenished for separate and unrelated claims (this is same basis as provided under the Malaysian Bar PII Scheme for both the Mandatory and Top-up Limits).

However, if you do purchase Top-up insurance on Aggregate basis, you just need to evaluate the cost benefits. It's best to compare cost of both options.

2. What is the Retroactive Date under my Top-up?

This is important as it determines the date from which cover applies to the work you've done. In other words, any work done before the retroactive date leading to a claim during the policy period would not be insured.

Under the Malaysian Bar PII Scheme retroactive cover is **unlimited**, which means all past work since you began practice (giving rise to claims during the policy period) are covered.

We have seen more than one example where the Malaysian Bar PII Scheme responds but the non-scheme Top-up policy declines as they're providing a reduced Retroactive cover.

3. Do any sub-limits apply to my Top-up?

While it is common to exclude claims arising from a Misconduct committed by the firm, a sub-limited cover is given for innocent partners not involved in the misconduct. Therefore if the Top-up Limit is RM1,000,000 the sub-limit for Misconduct cover specified in non-Scheme Top-up Insurance may usually be RM500,000 whereas under the Malaysian Bar PII Scheme the full Top-up Limit purchased shall apply but in Aggregate for Misconduct claims.

4. What is the basis of my defence costs under my Top-up?

For the Malaysian Bar PII Scheme, the Limit purchased goes towards any judgment/settlement while the defence costs are covered in addition to such Limit. Whereas for most non-scheme Top-up policies, the maximum payment by the Insurer for the judgement/settlement and defence costs is capped at the Limit.

5. Claims notification, handling and management?

If you buy Top-up via the Malaysian Bar PII Scheme, a notification of a claim to the insurance broker, Jardine Lloyd Thompson Sdn Bhd ("JLT"), will constitute a notification to both your Mandatory and Top-up Insurance. The claim will also be seamlessly managed by the claims administrator, Echelon Claims Consultants Sdn Bhd and a panel solicitor. However, if you effect Top-up from a non-scheme Insurer, you must notify them separately and make sure the subsequent claims process is understood and agreed by respective parties.

6. Does the Top-Up Insurance follow the same terms as the Mandatory? What is 'Follow-form'?

Although a non-scheme Top-up Insurer may advertise as being "follow-form", this can mean different things under different wordings. We have seen examples where the Malaysian Bar PII Scheme pays the full Mandatory Limit towards a claim but the non-Scheme Top-up Insurer declined to pay the balance for their own coverage differences or based on a different interpretation or application of policy clauses.

In conclusion and like many things in life, cheapest does not always equate to best value for money (or peace of mind). Therefore, please evaluate exactly what you are paying for. You can also contact JLT as they will be pleased to provide you with an impartial evaluation of the pros and cons of different market options on a "no obligation" basis.

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