



JURISK!

September 2011 Vol 7 Issue 2
Risk Management Quarterly

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

LPA 1976

BAR COUNCIL MALAYSIA

RENEWALS 2012

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CHAIRPERSON'S MESSAGE

Premiums Maintained For 2012!

Achieving a sustainable, stable and equitable Professional Indemnity Insurance ("PII") Scheme has been a long-term objective of the Bar Council. Accordingly, we are pleased to announce that the 2012 PII premium has been successfully maintained at RM1,200 per lawyer, the same rate as the 2011 premium.

After the reduction in premium from RM1,300 to RM1,200 for 2010 and 2011, the PII Committee and Bar Council decided, in the best interest of all Members, to cap the figure at RM1,200 even though the insurers have reduced their rates annually over the last two years. It is also the Bar Council's decision to channel the excess balance towards the Bar Council's PII Fund. This Fund will prove vital to all Members in difficult times when the global insurance market hardens due to regional or worldwide financial crises, global catastrophes and/or unforeseen circumstances.

Salient details of the 2012 PII renewals were circulated to all Members via Bar Council Circular No. 179/2011 on 18 Aug 2011. I urge all Members to read the Circular to gain further insight into the negotiations with the insurers and to understand its terms and conditions. Amongst other things highlighted in the Circular are insurers offering the Malaysian Bar a three-year agreement (2012 – 2014). This was done in recognition of our efforts in improving the PII Scheme, as well as our consistent risk management initiatives.

To that effect, we must as a profession, continue to improve ourselves professionally and maintain a risk management work culture that is both proactive and continuously evolving in our respective practices. To support this, the PII & RM Department has produced various publications, from Jurisk! to easy-to-use checklists as well as organising events for Members, their law firms and support staff.

As part of our initiative to understand Members' needs better, the "Have Your Say" survey campaign was launched in mid-2011. Please take some time in responding to the Survey that was sent to you with Jurisk! Mar & June 2011 issue. Your answers will only help us improve the PII Scheme; its development would entail enhanced resources for you in the future. To illustrate my point, we learnt from past surveys that were conducted, about Members' needs for bilingual

publications. As such, Jurisk! now contains a Bahasa Malaysia segment.

Inside This Issue...

...we complete our Special on Files with two articles; the first of which looks at the adoption of a quality management system within a firm and the benefits it brings. The second article focuses on the various elements of closing your case files, from the retention period of each file to the options of file storage and finally, to its eventual destruction.

We've prepared a special Pullout (pages 5 – 8) on renewing your PI Insurance as well as your *Sijil Annual* & Practising Certificate complete with additional help-notes on how to survive the renewals season with your sanity intact! This Pullout comes in both Bahasa Malaysia and English.

We hope you enjoy this issue. Do send us your feedback on Jurisk!, or any other PII or Risk Management query for that matter.
We'd love to hear from you!

The Jurisk! Team

I want to urge Members to complete their PII renewals early to avoid the last minute rush come October 2011 and I strongly encourage firms to complete their PII renewals online. It is highly convenient and very user-friendly. See our Special '**Bar Council Renewal Process**' Pullout on page 5 for more information.

I do hope you enjoy this issue of Jurisk! If there is anything the PII & RM Department can help you with, please do not hesitate to get in touch with our officers, their contact details are listed on page 12.

Ragunath Kesavan,
PII Committee Chairperson, Bar Council

The Case For Quality

There are obvious risks such as the meeting of deadlines, data storage and backup or succession planning and defection of partners. Perhaps, one of the most pertinent risk is that of *quality and ethical services* provided by lawyers of the firm. Such risks take on greater significance given its intangible nature.

Case in point, a lawyer in Singapore was initially convicted for helping a client make a false court claim.¹ Although the conviction was eventually appealed and overturned after a five-year legal battle, the damage to his reputation had already been done. Firms have typically leaned heavily upon existing legal regulation to guide the behaviour of their lawyers. However, scholars and commentators on legal ethics have suggested that one major drawback of legal profession regulation and ethics is that the focus continues to remain on individual lawyers alone.²

There have been cases where firm-level policies and procedures create economic and social incentives for unethical individual conduct, or at least where firm management systems and cultures do not do enough to make ethical conduct regular and systematic.³ Thus, although lawyers are given great autonomy in their interactions with clients, increasingly it cannot be denied that putting in place appropriate management systems in the firm will go a long way towards ensuring that the firm mitigates the risk of non-compliance with ethical and quality obligations.

Quality Management Systems

Several quality management standards have been developed which are designed to help institutionalise quality processes within firms to reduce these risk exposures. One standard that has gained wide adoption is the ISO 9000 series of quality standards, which according to the International Organisation for Standardisation, *"represents a tried and tested framework for taking a systematic approach to managing the organisation's processes so that they can consistently turn out products (and services) that satisfies customer expectations"*.

Quality Matters

There is a myriad of books on quality management for various professions including the legal profession. Accordingly, this article does not set out to provide a one-fits-all solution but to highlight the benefits of implementing a Quality Management System in a law firm. The starting point would be for a designated partner/manager to push for the change of mind set in order to implement and secure the benefits of a quality management system.

by Martin Goh and Kelvin Wu, JLT Risk Consulting Asia

In view of the potentially hazardous nature of work that lawyers engage in (and we are not just referring to the lengthy hours involved), a number of law societies have developed similar practice standards for its member firms in order to improve their quality, efficiency and competitiveness. These standards take their origin from generic international quality standards such as the ISO 9000 series but have been refined and tailored to meet the specific needs of legal practices. These practice standards aim to enhance the firm's management of risks that can impact on its provision of legal services to client, eg:

Quality Practice Standard (QPS)

Law Society of Western Australia

Lexcel Scheme

Law Society of England and Wales

Primelaw

Law Society of Singapore



The benefits of implementing such measures to manage the risks associated with the delivery of quality legal services are both tangible and varied. For example, in the Law Society of England and Wales 2004 Annual Report, it was reported that "Lexcel firms had, on average, 2 open complaints per 10 fee earners, while the non Lexcel firms had 3.5."⁴ This means that Lexcel accredited law firms had at least 40% fewer complaints at the Law Society than other firms. Ultimately, this translates to an overall lower total cost of risk and a positive impact on the bottom line.

Getting Started

There are broad principals and parameters that need to be fulfilled for a firm to be 'quality certified'. For example, the ISO 9001:2008 requires that a firm's quality management system exhibit the following attributes:

- ★ Demonstrates its ability to consistently provide products/services that meet customer and applicable statutory and regulatory requirements, and
- ★ Aims to enhance customer satisfaction through the effective application of the system, including processes for continual improvement of the system and the assurance of conformity to customer and applicable statutory and regulatory requirements.

In order for your firm to embark on the quality journey, a simple quality management technique such as the **PLAN-DO-CHECK-ACT** or **PDCA**⁵ cycle can be used to improve your firm's quality capabilities:



Plan Establish a project plan or initiative to improve the firm's processes and procedures incrementally using a relevant quality framework or practice standard. Identify the project objectives and resources and seek outside advice from regulatory or industry bodies or consultant if necessary. Develop simple processes and relevant documentation (such as feedback sheets, diary schedules and case file logs/registers) to help monitor the process.

Do Implement the new process through a pilot project. The implementation should be done on a small scale first to establish 'quick wins' and allow the firm to learn from the experience of implementing a new process. Invest time for the objectives and rationale of the new process to be communicated to the relevant personnel prior to implementation. A rule of thumb to pilot a new process is around three to six months.

Check Compare the outcomes to baseline requirements by checking if required processes and procedures have been implemented according to the new initiative. Seek feedback and comments from affected staff members concerning their experience.

Act Analyse any implementation gaps and determine the root cause for any issues. Rectify the situation by developing and implementing an improvement action plan. Repeat the process again and gradually expand the scope of new practices to be implemented.

1. "Convicted Lawyer Cleared of Wrong Doing", (Singapore) *The Straits Times*, 16 July 2010 | 2. "Regulating Law Firm Ethical Infrastructure: An Empirical Assessment of the Potential for Management-Based Regulation of Legal Practises", Christine Parker, Tahlia Gordon and Steve Mark | 3. *ibid.* | 4. "Independent Commissioner Researches Lexcel", *The Lexcel Team Quarterly Newsletter*, The UK Law Society. | 5. The PDCA cycle is an interactive four-step problem solving process used in business process improvement. It was developed by a renowned quality guru named Dr. W. Edwards Deming.

Changing Attitudes

Adopting a prescriptive approach towards change is never going to be easy. Well-intentioned initiatives when enforced solely by prescriptive rules might be viewed as an administrative hassle, which diverts attention from a lawyer's primary fee-earning activities. Thus even with the successful completion of the PDCA cycle mentioned previously, the battle is only half won. Total commitment towards a quality management system requires not only the implementation of policies and procedures, but a change in attitude amongst the firm's employees such that they themselves embrace the change.

For this to happen, strong and visible buy-in from the firm's senior management is of high importance. Clear and consistent messages supported by the firm's senior management leading by example are critical to the success of any enterprise-wide change initiative. The aim is to cultivate a culture of quality and ethical awareness within your firm, such that it increases the ability of an individual to make the right decision in any given circumstances, with or without supervision. As Henry Ford once said, "Quality means doing it right when no one is looking".

Conclusion

Implementing any form of quality management system will invariably require the commitment of effort and resources, though the benefits of doing so would certainly outweigh the initial effort. At the same time, adopting a mindset for continuous improvement is also important so that the firm can strive to improve its quality capabilities as the practice matures such that it becomes second nature. "Quality," as Aristotle said, "is not an act, it is a habit".

Quality processes not only represent another layer of defence to mitigate risk exposures, they also serve to keep clients satisfied in order to keep their patronage. A quality management system that is consistently applied and accepted by your staff will help your law firm achieve a high standard of client service, and continuous improvement in communication, training and procedures. Without satisfied customers, the risk of a firm's ability to survive in the long term will become a clear and present danger.

So, don't wait for the unexpected complaint, censure or scandal to threaten your firm's future. Embrace quality as a risk management tool to protect your firm's value now.





MAJLIS PEGUAM

PROSES PEMBAHARUAN

“Pin-up” untuk
papan notis



Panduan yang boleh ditarik keluar ini menekankan langkah-langkah utama yang wajib bagi proses lengkap pembaharuan SAMP dan boleh dijadikan panduan kepada semua peguam.

Pembaharuan Insuran Indemniti Profesional (PII)

Penyerahan Dalam Talian

Berkuat kuasa tahun 2011, firma yang pernah menghantar *Proposal Form* (PF) secara dalam talian tidak akan menerima salinan cetak PF.

1. Log masuk > www.mypii.com.my atau www.praktis.com.my;
2. Klik > 2012 Proposal Form Submission Form untuk mula;
3. Di laman utama, klik > Here to start dan masukkan *Firm Code* dan *Certification Number* dan klik **Verify**. Masukkan butiran alamat, tanda kotak ruangan persetujuan Terma dan Syarat, dan anda akan dibawa ke PF;
4. Isi butiran yang berkaitan. **Nota:** Semua firma mempunyai butiran yang telah diisi. Gunakan fungsi “Copy” dan edit maklumat yang perlu sahaja;
5. Faks dan pos muka surat terakhir (muka surat tanda tangan) PF sahaja kepada JLT.

Penyerahan Salinan Cetak

1. Firma yang tidak pernah menghantar secara dalam talian akan menerima *Renewal Pack* daripada JLT pada bulan Ogos. *Renewal Pack* ini mengandungi Surat Pengiring PF, PF dan Panduan kepada PF.
* Firma boleh memilih untuk melengkapkan PF salinan cetak atau dalam talian yang lebih cepat dan mudah digunakan.

2. Isi borang dengan lengkap, faks dan pos kepada JLT.

Pemohonan (dalam talian atau salinan cetak) akan diproses dan invoice akan dihantar melalui faks/inisil kepada firma anda. Setelah bayaran dibuat, *PII Schedule* akan dihantar melalui faks dan pos kepada firma sebagai rekod.

PERHATIAN

Perlindungan PII anda adalah wajib untuk memproses permohonan SAMP. Rancang dari awal dan elakkan saat akhir.

Terma PII 2012

Baca Pekeliling Majlis Peguam No 179/2011 yang berkaitan kemuncak pembaharuan PII 2012, terma, penentuan harga premium dan lain-lain.

Bijak Bajet

Ketahui premium, anggaran kos firma untuk memperbaharui polisi (contohnya, RM1,200 x bilangan peguam) ditambah dengan peningkatan sebanyak 10% dan masukkan dalam belanjawan tahunan.

Insurans Top-up

Adakah firma anda memerlukan insurans *top-up*?
Tentukan sama ada firma anda memerlukan insurans *top-up*.
Terokai pasaran untuk kadar yang kompetitif.
Pastikan perlindungan yang diperoleh mematuhi polisi wajib anda.

Hantar Tangan

Alternatif yang cepat kepada faks/pos. *PII Schedule* akan dikeluarkan dengan serta merta setelah bayaran premium dijelaskan.



RENEWAL PROCESS

This **PULLOUT** is a guide for every lawyer and it highlights mandatory steps for the SA/PC renewal process to be complete.

Professional Indemnity Insurance Renewal

In August, Bar Council's (BC) PII Scheme's broker, Jardine Lloyd Thompson Sdn. Bhd. (JLT) emails all firms requesting the firm to nominate a user and email address to receive their Firm Code and Certification Number to access the online system. If you do not respond to the nomination email, the Code and Number will be sent to the firm's default email address, if any.

Online Submission

Firms that have previously submitted their Proposal Form (PF) online will no longer receive any hardcopy PF w.e.f. 2011.

1. Login > www.mypii.com.my or www.praktis.com.my;
2. Click > **2012 Proposal Form Online Submission** to start;
3. On the Welcome Page, click > **Here to start.**
Enter your Firm Code and Certification Number, and verify. Enter your contact details, check the tick box to accept the "Terms and Conditions" and gain access;
4. Fill in your firm's relevant details. **NB:** All firms will have their details pre-populated. Use the time saving "Copy" function and you will only need to edit information if any changes are necessary;
5. Fax and post **only the last page (signature page) of the PF to JLT.**

Hardcopy Submissions

1. Firms that have never submitted online will receive their Renewal Packs from JLT in August. These Packs contain the Covering Letter, PF and Guide to PF.
* You can opt to complete the hardcopy PF OR access the easy-to-use online version.
2. Fill up the PF accordingly, fax and post it back to JLT.
Your application (online or hardcopy) is then processed with an invoice faxed to your firm. Upon receipt of your payment, your firm's PII Schedule will be faxed and posted to your firm for record purposes.

ATTENTION

PII coverage is mandatory to process your SA/PC application. Plan early and avoid any last minute rush.

2012 PII Terms

Read BC Circular No. 179/2011 which highlights the 2012 PII renewals, terms, premium pricing, etc.

Budget Ahead

Know your premiums, anticipate firm's cost to renew policy (eg RM1,200 x number of lawyers) plus a 10% increase and include in your annual budget.

Top-up Insurance

Does your firm need top-up insurance?
Explore the market for competitive rates.
Ensure cover obtained is follow-form of your mandatory policy.

Submit By-Hand

A quick alternative to faxing/posting. Your PII Schedule will be issued on the spot upon payment of premium.

SA/PC Renewal

No More Receipts

You will no longer be required to submit any receipts for Item (2) of 'Supporting Documents', BC Secretariat can now track all payments made.

Track It!

Track the status of your SA/PC Application online – no more repeated telephone calls! Refer BC Circular No. 143/2011 for more details.

Collection Letters

BC Secretariat will inform all law firms in writing when your SA/PC are ready for collection.

Application Forms

Obtain your Application Forms in three ways:

1. Download the attachments that come with BC Circular No. 185/2011 on Sijil Annual 2012; or
2. Download from the Malaysian Bar website under the About Us > Membership > Sijil Annual tab; or
3. Collect a copy from your respective State Bar Committee.

Supporting Documents The following are the required supporting documents to be attached along with your Application Forms:

1. SA Application 2012 Checklist;
2. Cheques for Annual Subscription, BC Compensation Fund, BC Discipline Fund, Building Fund, Legal Aid Fund, BC Sports Fund and BC LawCare Fund **if the payments have not been made;**
3. Cheque for RM450 if penalty payment is due;
4. Application Form for Practising Certificate 2012;
5. Form of Application for Sijil Annual 2012;
6. State Bar Committee Certificate(s) for Main Office and Branch Office(s) [only applicable to sole proprietor/partner with branch office(s)];
7. Statutory Declaration by:
a. Sole Proprietor/Partner; or
b. Legal Assistant/Consultant;
8. Accountant's Report 2010 [applicable to sole proprietor/partner for Main Office and Branch Office(s)];
9. Anti-Money Laundering and Anti-Terrorism Financing Act 2001 Compliance Report for Legal Firms Confirmation Form;
10. Areas of Practice Form;
11. LawCare: Malaysian Bar Member's Beneficiary/Trustee Nomination Form.

ATTENTION

For SA/PC 2012 Renewals, refer BC Circular No. 185/2011. Deadline for submission of duly completed Application Forms and supporting documents is 17 Oct 2011.

Dates

KIV all relevant deadlines into your firm's diary system.

Checklist

Use the SA Application Checklist as a guide to ensure all forms and documents are in order.

Partner-Control

Assign the renewal process to a partner and/or a senior management staff.

Filing & Records

Keep all relevant renewals documents in a central, easy-to-locate area to enable quick reviews and for reference.

Bar Council Subscription

The RM450 BC subscription is to be paid by 30 June annually. If payment is made after 30 June, an additional RM450 penalty will be imposed. **No appeals will be entertained.**

Accounting Report Requirements

See BC Circular No. 104/2011 for a more in-depth guide to completing your Accountant's Report.

SA/PC not renewed in time

Unable to practice and appear in court. May result in disciplinary and/or injunction proceedings by BC.

For further information/enquiries, please contact the relevant departments listed below:

SA/PC Forms & Membership Enquiries:
03-2050 2050 Press 1 For Membership

Payments/Accounts Enquiries:
03-2050 2050 Press 3 for Accounts Department

Renewals/Proposal Form Enquiries (JLT):
03-2723 3370 / 3367 / 3354
for Ms. Sona / Mr. Fazliee

Pembaharuan SA/PC

Borang Permohonan

Dapatkan Borang Permohonan melalui tiga cara berikut:

1. Muat turun lampiran yang datang dengan Pakejling Majlis Peguam No. 185/2011 mengenai Sijil Annual 2012; atau
2. Muat turun dari laman sesawang Badan Peguam di bawah kata kunci About Us > Membership > Sijil Annual; atau
3. Dapatkan salinan dari Jawatankuasa Peguam Negeri masing-masing.

Dokumen Sokongan Berikut adalah dokumen-dokumen sokongan yang perlu dilampirkan bersama-sama dengan Borang Permohonan anda:

- Tiada Lagi Resit**
Anda tidak perlu lagi menyerahkan resit untuk perkara (2) bahagian Dokumen Sokongan Urusetia; Majlis Peguam dapat menjejak status pembayaran anda.
- Jejak Status!**
Jejak status permohonan SA/PC anda secara dalam talian – tidak perlu lagi menelefon berulang kali! Rujuk Pakejling Majlis Peguam No 143/2011 untuk maklumat lanjut.
- Surat Pemberitahuan**
Urusetia Majlis Peguam akan memaklumkan secara bertulis kepada semua firma apabila SA/PC sedia untuk dituntut.

Untuk maklumat lanjut/pertanyaan, sila hubungi jabatan-jabatan yang berkaitan seperti yang disenaraikan di bawah:

Pertanyaan Borang SA/PC & Keahlian:
03-2050 2050 Tekan 1 untuk *Membership Department*

Pertanyaan Bayaran/Akaun:
03-2050 2050 Tekan 3 untuk *Accounts Department*

Pertanyaan Pembaharuan/Borang Permohonan (JLT):
03-2723 3370 / 3367 / 3354; Ms. Sona / Mr. Fazilee

PERHATIAN

Untuk Pembaharuan SA/PC, rujuk Pakejling Majlis Peguam No 185/2011. Tarikh akhir penyerahan Borang Permohonan yang lengkap dan dokumen sokongan adalah pada 17 Okt 2011.

Tarikh

SDP semua tarikh akhir yang berkaitan ke dalam sistem dari firma anda.

Senarai Semak

Gunakan Senarai Semak Borang Permohonan SA sebagai panduan untuk memastikan semua borang dan dokumen sokongan adalah tersusun.

Dikawal Rakan Kongsi

Tugaskan proses pembaharuan di bawah tanggungjawab seorang rakan kongsi dan/atau seorang kakitangan kanan pengurusan.

Memfail dan Merekod

Simpan semua dokumen berkaitan pembaharuan di tempat penyimpanan pusat dan mudah dicapai untuk membuat rujukan.

Langganan Majlis Peguam

Langganan sebanyak RM450 perlu dibayar pada 30 Jun setiap tahun. Jika bayaran dibuat selepas 30 Jun, RM450 tambahan akan dikenakan sebagai bayaran penalti. Sebarang rayuan tidak akan dilaikan.

Keperluan Laporan Perakaunan

Lihat Pakejling Majlis Peguam No 104/2011 untuk mengetahui lebih lanjut panduan melengkapkan Laporan Akauntan anda.

Pembaharuan SA/PC tidak menepati masa

Tidak boleh menjangkakan praktik dan hadir di mahkamah. Boleh dikenakan tindakan tatatertib dan/atau injuksi oleh Majlis Peguam.

Closed FILES

How Long Should I Keep Them For?

In our previous issue, we discussed file closure in “*Case Closed: What Do I Do With the File Now?*”. We now move on to consider file retention, an important aspect of file management that should go hand in hand with any operating procedures your law firm already has (or intend to implement).

FILE RETENTION

Most lawyers generally elect to keep their client files forever (or at least for the duration of their practice/s). Whilst this would seem prudent, the reality however is that your firm becomes a permanent repository for client files, with its associated recurring costs that will increase every year.

Accordingly, you need to develop a file retention policy that suits your practice. Aside from the ethical, professional and legal issues, consider economic and practical aspects of retaining such a large number of files, when developing your policy. The type of clientele you have; the budget available and feedback from your firm’s lawyers and staff should also be considered.

Retention Period

Chapter 19, *Rules and Rulings of the Bar Council Malaysia* provides a **general guide** to determine the retention period for files as follows:

There is no hard and fast rule governing the period for retention of files by Solicitors before destruction. However, the Bar Council recommends the following guidelines. See Table I.

	FILES	RETENTION PERIOD (YEARS)
a.	Conveyancing	12
b.	General Litigation	6
c.	Litigation: Unenforced judgment	12 (from date of judgment)
d.	Probate and administration	12
e.	Family matters	6
f.	General matters	6

Table I

Notwithstanding guidelines, **personal judgment** by the lawyer, on a file by file basis is very important. Lawyers who work on a matter would understand the client better, know the case’s nuances and is in the best position to decide on a file’s retention period. See ‘File Retention Essentials’ on page 11 for main considerations when deciding how long to retain a file.

STORING CLOSED FILES

With the advent of technology, file retention has become relatively easier. Various cost-effective solutions that will greatly help law firms with file retention issues have emerged. See Table II on page 10.



1	<p>Traditional Storage. Whilst storage is the simplest solution available, as the years go by, it will usually create a logistical and space/cost burden.</p> <p>Firms might want to consider storing files with document management companies. These companies generally barcodes files, which assists with tracking storage locations of the files and facilitates easy retrieval.</p>	<p>Do:</p> <ul style="list-style-type: none"> (a) Ensure that your closed files' storage space (and accordingly your clients' privileged and confidential documents) is secure. (b) Purchase relevant insurance eg fire and flood for the space if it's stored offsite. (c) Use a system where files are numbered and filed in numerical order. Doing so will make it immediately apparent if a file is missing and, enables easy retrieval when a file is needed. NB: If you include the year of closing as a prefix to the closed file number, files can be easily brought forward for review. 	
2	<p>Scanning is a feasible, affordable option for most firms nowadays.</p> <p>Files can be scanned and stored in almost any desired format eg CD-ROM, external hard drives, online document management systems, etc.</p>	<p>PROS:</p> <ul style="list-style-type: none"> (a) Preserves the entire file. (b) Back-ups can be maintained off-site. (c) Documents can be accessed remotely. (d) Data can be indexed and searched easily. 	<p>CONS:</p> <ul style="list-style-type: none"> (a) Technology may become obsolete and information stored becomes irretrievable. (b) Costs to sort, strip and scan the contents of a large accumulated store of files will be prohibitive! Tip: In such cases, simply pick a cut-off date to start scanning eg January 2012. (c) Scanned records are only as good as the individual/service tasked with scanning the files – should an important document be missed out and the file destroyed – the document cannot be reconstructed.
3	<p>Microfilm. A good alternative to scanning.</p>	<ul style="list-style-type: none"> (a) Records can be read without computer equipment. Software/hardware upgrades are not necessary. (b) Reduces space storage requirements by up to 95%. (c) If stored properly, microfilm has a shelf life of about 500 years. 	<ul style="list-style-type: none"> (a) No "index" or "search" function. Users have to manually wind and rewind until they find the data they require. (b) Microfilming can be costly and is susceptible to fungus in tropical climates. (c) Easily misfiled or misplaced!
4	<p>File Destruction. A low-cost way to reduce the amount of space used to retain files.</p> <p>It is crucial however that</p> <ul style="list-style-type: none"> (a) no less than 12 years should elapse between the time of closure and the date of destruction. (b) closed files are destroyed according to a predetermined policy. (c) your law firm preserves, for an extended time, an accurate index or identification of the files that has been destroyed/disposed. 	<p>A file destruction policy should include, <i>inter alia</i>, these points:</p> <ul style="list-style-type: none"> (a) Notify and obtain client permission prior to destruction. (b) Conduct one final (thorough) screening of client files; <i>At a minimum, the list of files to be destroyed should be examined by the designated partner/senior lawyer to ascertain if any file should be preserved. Something may have occurred (since the original decision to destroy) to justify further retention.</i> (c) Protect client confidences; <i>Destruction should be secure and complete eg do not recycle client files with your newspapers.</i> If you use commercial services for this purpose, ensure that they understand the importance of maintaining client confidentiality and take steps to preserve it during the file destruction process. (d) Document the file destruction for review/audit purposes, etc. <p><i>* The list above is merely examples and not exhaustive.</i></p>	

Table II



FILE RETENTION ESSENTIALS

1. Maintain
 - o a separate diary for subsequent closed files review or destruction (if applicable); and
 - o diligently update an index of your closed files which should indicate when files were stored and where they are located.
2. Assign one partner/lawyer and a staff to take charge of your closed files. They would be responsible for
 - o making sure that everyone in your firm is trained and understands your file retention policy.
 - o introducing new hires to the file retention policy as part of their orientation.
 - o addressing any deviations by lawyers/staff from the policy.
3. Your file retention policy should, *inter alia*, provide direction to lawyers and staff alike on
 - o areas of law and their relevant statutory requirements;
 - o the standard file retention period;
 - o identifying files that should be kept for a longer period of time eg if there were any peculiarities in that matter or where contractual obligations stretch over an extended period;
 - o respecting client's protocols and expectations;
 - o retrieval procedures;
 - o review periods;
 - o potential litigation and its consequences for the firm, etc.

This will ensure consistency and direction in the management of your closed files. Where there is doubt, all lawyers must consult the partner/lawyer in charge of closed files.

The advice and guidelines provided in this article are merely a guide and not meant to be exhaustive, the information does not create the standard of care for lawyers. Lawyers are advised to adapt accordingly to suit your own circumstances and to consider all other legal, professional and ethical obligations.

CONCLUSION

A well-planned and designed file retention policy can make all the difference in organising/locating closed files and keeping storage costs to a minimum. More importantly, it allows you to securely preserve information which could assist in the defence of a law suit against your firm should it ever arise.



Sources:

- 'How Long Should You Keep Your Closed Files?', Dan Pinnington, LawPRO, Volume 9, Issue 4, December 2010
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We are always looking for ways to improve this newsletter and work towards ensuring that all areas related to risk management is highlighted as appropriately.

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Have you renewed your SA/PC & PII?

See this issue's centrefold pullout to ensure you have completed the process and are aware of the KIVs.

Your firm's PII Policy provides cover for errors committed by employees?

Mistakes made by employees of a law firm that lead to claims against the firm are covered under the PII Policy. An employee is defined under Clause 36(f), Certificate of Insurance 2011 to mean a person who, at any time, is or was employed or similarly engaged by the firm (such as a legal assistant, articled clerk, chambering student, consultant, office or clerical staff).

Illustration:

Client called repeatedly with a query for his lawyer but the lawyer was not in. Upon being pressured, the paralegal who answered the client's numerous calls provided advice he thought to be correct. The client, who acted on this advice, was later sued for breach of contract and sued the firm. Upon notification, the firm will be covered under its PII Policy, subject to policy terms and conditions.

NB: Under the Mandatory PII Scheme, cover is subject always to terms, exclusions, limitations and conditions of the relevant Certificate of Insurance.

The translation below 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 translation, the English version will prevail.

Polisi PII firma anda menyediakan perlindungan atas kesilapan yang dilakukan oleh para pekerja?

Kesilapan yang dibuat oleh pekerja-pekerja firma guaman yang membawa kepada tuntutan terhadap firma itu dilindungi di bawah Polisi PII. Di bawah Fasal 36(f), *Certificate of Insurance* 2011, seorang pekerja ditakrifkan sebagai seseorang yang, pada bila-bila masa, sedang atau pernah berkerja atau terlibat sama dengan firma (seperti pembantu undang-undang, kerani artikel, pelatih dalam kamar, perunding, kakitangan pejabat atau perkeranian).

Ilustrasi:

Pelanggan berulang kali menelefon untuk bercakap dengan peguam yang tidak ada di firma. Setelah didesak beberapa kali, seorang 'paralegal' memberikan jawapan yang difikirkan betul. Pelanggan, yang bertindak atas nasihat ini dan kemudiannya didakwa kerana melanggar kontrak, menyaman firma itu. Sekiranya 'notification' dibuat, firma akan dilindungi di bawah Polisi PII, tertakluk kepada terma dan syarat polisi.

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 di atas adalah sebagai panduan sahaja, dan sekiranya terdapat perbezaan antara versi Bahasa Inggeris dan terjemahan Bahasa Malaysia, versi Bahasa Inggeris akan digunakan.

**MALAYSIAN BAR
MANDATORY PII SCHEME
DID YOU
KNOW?**

**SKIM MANDATORI PII
BADAN PEGUAM MALAYSIA
TAHUKAH
ANDA?**