



JURISK!

June 2012

Vol 8 Issue 2

Risk Management Quarterly

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

NATURE OF CLAIMS UNVEILED:

CAUSE: DISHONESTY

SUB-CAUSATION: EMPLOYEE EMBEZZLEMENT



CONTENTS

- P2 CHAIRPERSON'S MESSAGE
- P3 A DOT OF INK
- P4 PII DID YOU KNOW?
- P5 HOW TO SPOT A FRAUDSTER
- P6 EMPLOYEE EMBEZZLEMENT - CASE STUDIES
- P8 20 TIPS TO AVOID EMBEZZLEMENT
- P10 PII TAHUKAH ANDA?
- P11 MENGENALPASTI SEORANG PENCURI
- P12 PENGELAPAN WANG - KAJIAN KES
- P14 20 TIP MENGELAK DARIPADA PENGELAPAN PEJABAT

Chairperson's Message

LEARNING OUR WEAK LINKS TODAY TO STRENGTHEN OUR SCHEME FOR TOMORROW

Reaching out to Members has always been a major priority of the Professional Indemnity Insurance (PII) Committee as well as the Risk Management (RM) Department. And every year we are faced with the same difficulty: apathy amongst the profession.

The prevalent attitude amongst Members who firmly believe that they will forever be safe from legal suits is an attitude that we can all do without. Our claims' history has shown that even the best of law firms have fallen wayside to lawsuits. We need to eliminate the mentality of "This will never happen to me! My firm is rock solid!! My firm is claims'-proof!!!"

Regrettably, this very same attitude has cast negative results on the on-going PII & RM Survey. The results show dismal attitude by Members towards the Scheme:

1 36% of Members do not know what their yearly premium amount is.

Most of these Members are lawyers employed in firms where all managerial tasks such as Bar Council applications and Indemnity Insurance applications are completed by the firm's staff. By having these procedures completed for them by a management team, they end up having no idea as to how the Scheme works. Some young lawyers polled were even surprised that there was such coverage available to them!!

2 42% think that claims' loading is imposed on them when they notify the broker of possible claims.

This essentially means that many Members who experience possible claims' circumstances do not notify the Broker for fear of being charged claim's loading. This translates to meaning Insurers refusing to accept the claim on grounds of late notification.

3 51% of Members are unaware of the suite of practice tools the PII & RM Department produce.

The PII & RM Department have produced books, CD-ROMs, checklists, newsletters and calendars that aide a lawyer in his everyday work. The publication of these materials is advertised extensively through Bar Council Circulars, web reports and even adverts in Jurisk! We are never too old, or too worldly to continue educating ourselves. In fact, it is when we stop learning do we truly fall behind in life. So take the extra effort to read emails sent by Bar Council and be in the know of the various tools that can save you and your practice.

4 47% of Members do not know about the Litigation and Conveyancing Checklists.

The use of checklists can help a lawyer wade through a tedious litigation case or a highly procedural conveyancing matter. Why leave to chance when the possibility of missing vital steps are ever present? Furthermore, the constant and correct use of checklist provide an indicator to the Insurer that you take considerable effort in respect of risk management practice.

With this Survey, the Committee and the Department know where we stand. We understand the need for more to be done, in particular, raising awareness and instilling the culture of risk management into every law firm practice. We only hope that apathy among Members towards the Scheme can be further reduced – so that everyone will benefit fully from what it can offer.

Ragunath Kesavan
PII Committee Chairperson, Bar Council

Inside This Issue...

...we shine the spotlight on the PII Claims' sub-causation of employee dishonesty. Fraud, theft and dishonesty by employees have worryingly spiked in the claims' statistics as more and more notifications of this nature have been received by the broker.

Embezzlement in any workplace is always damaging, and it robs you and your firm of more than just money. Your firm's integrity is at stake when an employee steals hundreds of thousands of your client's money. Sometimes, the amounts embezzled are so great that the firm is left with no other choice other than to close the doors of its practice permanently.

We hope to raise awareness with the articles in this issue so that sole proprietors and partners alike can know firstly, how these crimes are perpetrated, and secondly, the type and nature of employees who do so.

It is estimated that 80% of organisations experience fraud, theft or dishonesty in some manner, and in varying degrees. Equip yourself with the tools to avoid becoming part of that statistic.

Happy reading.

The Jurisk! Team

Have you submitted your PII Survey? Members who respond to this survey will receive a token of appreciation from us. A copy of the survey can be downloaded from the Malaysian Bar website (Circular No 294/2011: Complete the "2011 Have Your Say Survey" to Receive a Freebie). Alternatively, you can call the department at 03-2032 4511 and we will be happy to email or fax you a copy.

The department continues to organise two series of risk management workshops - **Getting Started!** and **Risk Management for Staff**. Have you or your staff attended any of our workshops? If yes, what do you think of them? Your views and comments are very much appreciated. Send us your thoughts by fax at 03-2031 6124 or email to pirm@malaysianbar.org.my.

Events held in March and April 2012

22 Mar 2012: **My Professional Indemnity Insurance Workshop**, Kuala Lumpur

Held annually, the workshop explains the Certificate of Insurance for the year. This workshop gave Members a chance to engage in discussions with the broker on PI Insurance related matters.

30 Mar 2012: **Getting Started! Express Workshop**, Malacca

This half-day event featured two sessions from the full day Getting Started! workshop and is catered for the outstation Members.

19 Apr 2012: **Getting Started! Workshop**, Kuala Lumpur

This full day workshop consists of five sessions, each rounded-up with Q&A session. Participants were given the opportunity to interact with the speakers and a chance to network with other Members.

To read the web report of our past events, log on to www.malaysianbar.org.my and type in your search.

If you would like to know more about our risk management workshops, call the department at 03-2032 4511.

STRESS, THE TIME SNATCHER!

Stress – a state of mental or emotional strain or tension resulting from adverse or demanding circumstances (Oxford Dictionary).

What is stressful to you may not be stressful to another. Everyone has a different tolerance towards stress. It can occur in many different situations and experienced even without realising. If it is not managed well, it can cause a myriad of consequences.

Stress can affect a person's behaviour and cognitive response, both physically and emotionally. Symptoms can vary, but it ranges from poor judgement to procrastinating or neglecting a task, aches and pains to sleeping disorders. Sound familiar?

If you think that's bad, think how it would affect your relationship, productivity and well-being. No one wants a depressed, angry or frustrated person around. Let's put it this way: the negative energy does not work well with anyone. It's best to keep your stress levels under control.

Consider visiting the doctor's office for a full medical check-up or even a chat about that pain that never seems to go away. It may just be signs of stress that you did not notice and with proper consultation and medication, it can be treated and reduced.

There are other things that you can do to deal with stress such as spending time with your loved ones or picking up a hobby. Bottom line is - are you willing to make time for yourself to deal with stress?

When you are well rested and less stressed your productivity and concentration level change for the better. A more organised YOU will surface, which improves your performance – be it at work, at home or at play.

Remember, being too busy is not an excuse. It is all about managing the amount of time that you have. Whenever there is a will, there is a way. We recommend reading Best Practice Guide on **Time Management for Lawyers** for tips and advice on making the most out of the time you have. The book can be purchased at Bar Council Secretariat or delivered to you at a minimal fee. For more information, contact the department.

Stress is a natural part of life. It cannot be eliminated but can be controlled. Learn to manage it to have a better health and state of mind. Make time for yourself to make time work for you.

TARGETING RISKS.

CREATING SOLUTIONS.

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

**...innocent partners within the firm will
be protected and covered in a claim
involving misconduct?**

Dishonest and fraudulent conduct by any member of a Firm is detrimental to any law practice; even more so when it involves the misappropriation of client's money. **Misconduct** is defined in Clause 36(j) of the Certificate of Insurance 2012 (COI) to mean **a dishonest or fraudulent conduct in the discharge of his duties.**

Clause 12 COI protects the **innocent partners** of the Insured Practice (IP) against any claim arising out of misconduct subject to the following provisions:

(a) The maximum amount indemnified for misconduct-claims is RM350,000 or the Firm's Mandatory limit, whichever is the lower;

(b) The IP, at the request of the Insurer, will take all reasonable steps to obtain reimbursement from any party to such misconduct or the party's legal representatives;

(c) The IP agrees that all monies recovered is to be paid to the Insurer up to, but not exceeding the amounts paid out by the Insurer in respect of that claim;

(d) At the time of the misconduct, the principal who committed such misconduct, was practising as a genuine principal of, and carrying on practice in common with other principals of the Firm. (Clause 36(n) COI defines "principal" as a person who, at any time is or was a partner of the Firm; or a person who is the sole practitioner of the Firm.)

Furthermore, under Clause 12(e) COI, Insurers will **ONLY** indemnify a firm or its employees for claims involving misconduct **provided the following risk management procedures are satisfied:**

(i) Entries in the client cashbook and client ledger of each branch maintained pursuant to Rule 11(2) of the Solicitors' Account Rules were copied and exchanged;

(ii) Bank statements of client accounts and office account of each branch office are sent by its bank direct to the principal office as well as branch office;

(iii) All transactions involving client bank accounts must have two (2) signatories except to stop operation of an account or the cancellation of any transaction where one (1) signatory will suffice; and

(iv) In all other respects the Firm complies with the Solicitors' Account Rules 1990 and the Accountants' Report Rules (as amended from time-to-time).

Illustration

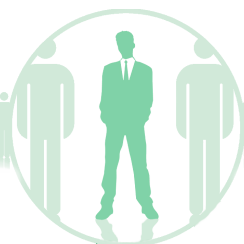
Ben & Jerry is a Kuala Lumpur law firm, with one branch office in Selangor. Ben manages the KL branch while his only partner, Jerry, manages the Selangor branch. All banking transactions, including office and client accounts are handled separately – in fact the principal KL office does not receive any copies of any banking transactions of its Selangor's branch. A claim is made against the Firm and upon investigation it is revealed that Jerry was siphoning off client's money. In order for Ben to secure coverage under Clause 12 COI he would have to demonstrate among others, compliance with Clause 12(e) COI in particular. And based on the facts *prima facie*, Ben would be in breach of Clause 12 (e)(i) & (ii) which entitles Insurers to decline the claim.

Jerry however, would not be able to seek protection under the COI as he is the party who committed the act which is against public policy and is specifically excluded under Clause 33(e) COI: *"any liability directly or indirectly caused by or contributed to by or arising from or in respect of misconduct (except as provided in Clause 12)".*

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

The translation on page 10 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.

How To Spot A FRAUDSTER



! Likes working alone

Employees that steal from firms more or less have set *modus operandi* that requires falsifying documentation, forging signatures etc. In order to successfully do so and keep their actions under wraps, they find working alone more suitable.

! Rarely takes annual or medical leave

An employee who is embezzling from you may need to make a continuous effort to conceal their misdeeds therefore they find it necessary to always be present at work to constantly monitor and cover a complicated paper trail.

! Works long after the end of work day

Most employees who are stealing from their employers choose to stay on well after most of the staff have left. They use this time to further solidify their fabricated paper trail.

! Makes 'odd' excuses when asked about discrepancy

Odd, flimsy and interchanging excuses are offered every time you have a question pertaining to the movement of your accounts. Never accept these excuses. Demand for better and more detailed answers when you question your staff and make the effort to call for the files/bank statements to ensure the reasons provided are genuine.

! Marked personality changes

There are two ways an employee who is stealing from you, can exhibit a change in personality. The first is where you see a drastic up-change in lifestyle such as purchasing new and expensive clothing, cars and electronic gadgets. The second type tend to develop a more introverted personality as they face stress-inducing problems. They steal and embezzle money primarily to finance a burden, ie, a husband's gambling addiction.

Recommended Actions When Embezzlement is Uncovered.

You have just discovered an employee retaining cash paid by your clients. Or you've realised that an account's clerk has been forging your signature on the cheques that you have left in their care. You realise too, that this may just be the tip of the iceberg of a financial disaster that could be ruinous to your firm.

What you should do:

- 1 Suspend the employee for a specific period. This would allow you to conduct an investigation without the perpetrator hindering the investigation.
- 2 Lodge a police report and notify the matter to the Scheme's Broker.
- 3 If necessary arrange to appoint an auditor to investigate the potential exposure of the Firm.
- 4 The investigation would require a review of open and closed files.
- 5 If the loss relates to forged cheques, it would be necessary to write to the Bank for copies of all cheques for the loss period.
- 6 Among others, identify the payees the cheques are addressed to against your clientele / suppliers – you may discover that payments were made to parties associated to the perpetrator.
- 7 Reconcile fixed deposit receipts.
- 8 Reconcile the office and client's bank accounts – identify the loss to the specific accounts.
- 9 Loss of cash received from Clients may require the reconciliation of a number of documents:
 - a. Receipt Books.
 - b. Open / Closed files and vouchers for payments made towards the matter.
 - c. Bank deposit slips against the receipts issued.
 - d. Transfer of funds between the client's and office accounts.
 - e. Fixed Deposit receipts.

The above recommendations whilst not exhaustive, are in an ideal situation and where the documents are available to reconcile the extent of your exposure. However, there are instances where the paper trail is destroyed by the perpetrator and in these situations it may be necessary to engage your Clients on a without prejudice basis to determine the extent of the loss.

Employee Embezzlement

The following are case studies of claims notified under the Malaysian Bar PII Scheme

Case Study 1 : Misusing Trust and Authority

The firm of Howie Mandell & Co was alerted when they received a call from their bank stating that a Client of theirs was trying to cash cheque from a defunct account of their now-closed branch. When the lawyers of Howie Mandell & Co questioned their Client on where he obtained the cheque from, the Client told them that Tom, the office manager of Howie Mandell, had passed it to him in lieu of payments due to him.

Fearing the worst, the partners of Howie Mandell & Co proceeded to check through all their files to which they concluded that Tom had been misappropriating funds over the course of six years.

When questioned on their financial habits, the Partners of Howie Mandell & Co conceded that they had placed a lot of trust in Tom to the extent of leaving the financial affairs to him, including leaving the cheque books in his care. When questioned, Tom conceded that he did steal the money from the firm's Office and Client Accounts to finance some personal debts that he had.

Total amount embezzled:
RM2,500,000

Case Study 2 : Falsifying Ledger Records

Lara was a conveyancing clerk in Donald, Mickey & Co. On a day that Lara was on leave, Donald (the partner in charge of the firm's conveyancing practice) received an enquiry from a Client on the status of his purchase of a residential property. The Client informed Donald that he had already paid the requisite fees.

When Donald studied the Client's file he realised that the Client had actually paid the money and Lara had issued the Client with a receipt for the same BUT only recorded a minimal amount received into the Client's file.

Donald then perused another file that Lara was in charge off. The Client of that file had also called on the same day, wondering why a refund he was due was still not forthcoming. When Donald checked the Refund Register he noticed that refunds had allegedly been made to the Client's son. The Client's son denied receiving the money. Lara had in fact, been taking cash received from Clients and deceived the Partners into signing cheques which was traced to her.

Total amount embezzled:
RM68,000

Case Study 3 : Forged Client's Approval

Warner of Warner & Co realised something amiss when his clerk, Sue, was on leave and he received a call from a Client, Oscar, enquiring about his purchase of a property which seemed to have stalled. Warner promised to revert to Oscar after he studies the file.

In the file, Warner found cheques made out to a third party with the description of "Renovation Costs" penned into the ledger with copies of cheques made out to third parties, but not to the vendor. This transaction was supported by a Letter of Authorisation purportedly signed by Oscar. Warner recalls having relied on the Letter of Authorisation to sign the cheques prepared by Sue to release the monies.

Warner called Oscar to enquire if he had in fact, issued instructions to transfer the money to a third party. Oscar stated that he had at no time, released any authority to do so. Further investigation revealed that Sue had forged the Letter of Authorisation with Oscar's signature.

It was later ascertained that ten of Warner & Co's other files were tampered with in the same manner by Sue.

Total amount embezzled:
RM110,000

Embezzlement – Case Studies

eme. All names of people and places have been replaced to maintain anonymity.

Case Study 4 : Encashing Cheques Made Out to Cash

The conveyancing partner of Peter Pan & Co, Mr Hook, requested his staff to prepare payment for a Client from the Client Account. The clerk, Lila, was unable to do so because she was aware that there were insufficient funds in the account. It was then that Lila came clean and confessed that she had taken funds out of the Client's Account and paid it into her own account.

The Firm signed legitimate cheques for the transfer of monies from its Client's Account to its Office Accounts. But instead of making the cheques out to the Office Account, they entrusted Lila with cash cheques, believing that she will be trustworthy to transfer the requisite amounts into the Office Accounts. Instead, Lila encashed the cheques and kept the money for herself.

The Firm gathered formal confessions from Lila stating that she had misappropriated vast amounts of money over the course of three years. Most of the cheques were encashed by her husband. Both Lila and her husband were prosecuted and jailed.

Total amount embezzled:
RM300,000

Case Study 5 : Stealing Cheques

Mr Kent is sole proprietor of Clark Kent & Co, operating his law firm in Kuala Lumpur. Mr Kent employed only one other person – Ms Lois, who managed the office's day-to-day activities and handled the financial affairs of the firm – including the upkeep of the Office and Client Accounts.

Mr Kent grew suspicious that something was amiss when bank reconciliations were not prepared by Ms Lois in a timely manner. She had worked with him for over ten years and she was always reliable. Her excuse for not preparing the reconciliation was the bank had not supplied any of their accounts' statements.

Conducting his own checks, Mr Kent noticed some funds were missing from his Client's Account. Upon conducting further investigations, he came to the realisation that Ms Lois had been stealing cheque leaves and forging his signature.

In a bid to secure better evidence and a paper trail, Mr Kent requested for scanned images of all cheques that were cashed from his Bank account. It showed that she had been making payments to third party collaborators as well as into her own account, using the Firm's cheques and forging his signature.

Total amount embezzled:
RM40,000

Case Study 6 : Cooking The Books

Corrine was the secretary cum conveyancing clerk of Wayne & Associates. Corrine was deemed a model employee by Wayne, who entrusted her with the firm's account's as well. Corrine often stayed late at the office on the pretext of completing her work. She also rarely took leave days. Due to her seniority, other staff did not question her or raise the issue with any of the Firm's lawyers when she instructed them to not deal with her files without her prior permission.

Corrine was in fact forging payment vouchers by creating fictitious "payees" on the vouchers. Whenever there was any shortfall, Corrine would resort to transferring funds between accounts to make up for it. Her actions went undetected for three years.

The embezzlement was only brought to light when Wayne uncovered discrepancies when he personally attended to a redemption for a client's charged property. Further investigations revealed that Corrine's husband was a compulsive gambler.

Total amount embezzled:
RM700,000

However well-versed your accountants and accounts staff are, the responsibility ultimately lies with the partners who are accountable. If you allow your staff too much freedom with no separation of duties and supervision, it is safe to say that temptation may lead to theft. Adopt a proactive approach! See Page 8 & 9 for important tips on how to safeguard your firm's accounts.



TO AVOID EMBEZZLEMENT

Research has shown that small to mid-size practices are often more vulnerable to fraud than their larger counterparts because they have fewer employees. Firms with fewer employees tend to have less segregation among duties, with fewer internal accounting and auditing controls. Because small and mid-size firms tend to develop closer relationship and trust, partners and staff might be less suspicious and thus more susceptible to employee fraud.



Cheque Book Security

1

Always insist on sighting supporting documentation (for example invoices, payment requisition forms, vouchers) when signing cheques to authorise payment.

2

Be vigilante when signing cheques – investigate on requests to sign cheques for vendors whose name or company name you do not recognise.

3

Never adopt the practice of using signature stamps – it is the easiest way to siphon money out of accounts if your signature stamp is left with an employee.

4

Limit the amount of petty cash you keep in the office – whenever payments need to be made using these funds, set proper procedures for reimbursement, for example, the requirement of receipts – even if it is for simple office supplies.

5

Lock up your cheque books. If you assign an account's clerk to prepare your cheques, ensure that each cheque is accounted for. Always ensure the sequential numbers of the cheques is in running order and the number of cheques issued tallies.

6

Keep office account cheque books separate from client account cheque books. This will reduce the chances of staff stealing and forging cheques from both accounts. In addition, it will eliminate the chances of writing the cheque out of the wrong account.

7

Never write cheques out to cash – even if it is either you or your trusted employee encashing it.

8

Never sign blank cheques and leave them with an employee.



The Human Factor

9

Adopt the practice of rotating the duties of your accounts' staff every six months – make this known to employees from the time they are employed. Knowing that they would not be in control of a certain portfolio will lessen the chances of fraud.

10

Assign separate staff for the key accounting structures: accounts receivable, accounts payable and billing.

11

Insist that employees who perform accounting / bookkeeping duties take a vacation every year. Ideally, this vacation should be one week long. Use this time to have an independent party or your accountant to review your books and look for discrepancies.

12

If the staff size of your firm allows it, separate responsibilities and tasks. Creating individual portfolios for your staff limit the chances of fraud.



Electronic Banking & Software



13

If your firm accepts credit cards as a means of payment, take all necessary steps to protect your client's credit card numbers from being used inappropriately, or released unknowingly by your staff to third parties for the intentions of misusing it.

14

If internet or online banking is available for these accounts as well, cancel access to any staff that currently has authority to use the online facility. Even though these options offer ease of banking, bear in mind that it is too, susceptible to fraud by staff that may use the opportunity to make unauthorised payments to their own or a third party account.

15

If your bank offers you an ATM card for your client accounts, decline them. If you already have ATM cards for your client accounts, return to the bank in writing and terminate this facility.

16

If you employ the service of an accounting software or cheque writing programme, understand two things: (a) Data can be corrupted. Protect your computers adequately from viruses and perform backups regularly. (b) If you do not take the initiative to understand your own accounting software, your accounts clerk that does understand it, can easily manipulate the software for their personal gain.



Creating The Paper Trail

17

Pull-out three active files (randomly) monthly which you know payment has been made – verify that payment received from the client was properly documented. Complete this exercise independently without the knowledge of your staff.

18

Have two separate staff attend to your accounts' receivable – one staff receives payment and records it whilst the second staff prepares the deposit slips for the bank, also creating a list of deposits. The record of payment and deposit slips should be reconciled monthly.

19

During reconciliation, examine the transactions for any irregularities. Verify that deposits have been made in timely manner.

20

When your bank statements arrive, reconcile the account. If you are a sole proprietor, do this yourself. If you are in a partnership and your partner is tasked with reconciling bank accounts, ask to examine the results of his reconciliation when he is done. A second pair of eyes can sometimes catch things that the first pair may miss.

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

... rakan kongsi yang tidak bersalah dalam firma itu akan dilindungi dalam tuntutan yang melibatkan salah laku?

Kelakuan yang tidak jujur dan penipuan oleh mana-mana anggota dalam Firma menjejaskan amalan guaman; lebih-lebih lagi apabila melibatkan penyalahgunaan wang klien. Menurut Fasal 36(j) *Certificate of Insurance 2012 (COI)*, salah laku (***misconduct***) bermaksud ***a dishonest or fraudulent conduct in the discharge of his duties***.

Fasal 12 COI melindungi **rakan-rakan yang tidak bersalah** dalam Amalan yang Diinsuranskan (IP) terhadap sebarang tuntutan yang timbul daripada salah laku yang tertakluk kepada peruntukan yang berikut:

((a) The maximum amount indemnified for misconduct-claims is RM350,000 or the Firm's Mandatory limit, whichever is the lower;

(b) The IP, at the request of the Insurer, will take all reasonable steps to obtain reimbursement from any party to such misconduct or the party's legal representatives;

(c) The IP agrees that all monies recovered is to be paid to the Insurer up to, but not exceeding the amounts paid out by the Insurer in respect of that claim;

(d) At the time of the misconduct, the principal who committed such misconduct, was practising as a genuine principal of, and carrying on practice in common with other principals of the Firm. (Clause 36(n) COI defines "principal" as a person who, at any time is or was a partner of the Firm; or a person who is the sole practitioner of the Firm.)

Juga, di bawah Fasal 12(e) COI, perlindungan terhadap firma atau pekerja bagi tuntutan yang melibatkan salah laku akan **HANYA** diberikan sekiranya Penanggung Insurans **berpuas hati dengan prosedur pengurusan risiko**:

(i) Entries in the client cashbook and client ledger of each branch maintained pursuant to Rule 11(2) of the Solicitors' Account Rules were copied and exchanged;

(ii) Bank statements of client accounts and office account of each branch office are sent by its bank direct to the principal office as well as branch office;

(iii) All transactions involving client bank accounts must have two (2) signatories except to stop operation of an account or the cancellation of any transaction where one (1) signatory will suffice; and

(iv) In all other respects the Firm complies with the Solicitors' Account Rules 1990 and the Accountants' Report Rules (as amended from time-to-time).

Ilustrasi:

Ben & Jerry adalah firma guaman yang beroperasi di Kuala Lumpur dan mempunyai sebuah cawangan di Selangor. Ben menguruskan pejabat utama di KL manakala rakan kongsinya, Jerry, menguruskan cawangan di Selangor. Semua urusan perbankan, termasuk akaun pejabat dan klien diuruskan secara berasingan – malah pejabat utama di KL tidak menerima salinan sebarang transaksi perbankan bagi cawangan Selangor. Tuntutan dibuat terhadap Firma dan daripada penyiasatan itu didapati Jerry telah mengambil wang dari klien. Untuk mendapatkan perlindungan di bawah Fasal 12 COI, Ben perlu membuktikan antara lain, pematuhan khususnya dengan Fasal 12(e) COI. Berdasarkan fakta *prima facie*, Ben telah melanggar Fasal 12(e)(i) & (ii) yang membolehkan Penanggung Insurans untuk menolak tuntutan itu.

Jerry pula tidak akan mendapat perlindungan di bawah COI kerana dia adalah pihak yang melakukan perbuatan yang bertentangan dengan dasar awam dan khususnya dikecualikan di bawah Fasal 33(e) COI: *"any liability directly or indirectly caused by or contributed to by or arising from or in respect of misconduct (except as provided in Clause 12)"*.

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.

Mengenalpasti Seorang **PENCURI**



Gemar bekerja bersendirian

Pekerja yang mencuri dari firma mempunyai *modus operandi* yang (lebih kurang) tetap, iaitu memalsukan dokumentasi, tandatangan dan sebagainya. Bagi menjayakan perbuatan mereka dan supaya tidak diketahui orang lain, kerja bersendirian adalah lebih sesuai.

Jarang mengambil cuti tahunan atau cuti sakit

Pekerja yang telah menggelapkan wang daripada anda perlu berterusan berusaha untuk menyembunyikan salah laku mereka. Ini adalah untuk menutup jejak kertas yang rumit.

Kerja lebih masa

Kebanyakan pekerja yang mencuri dari majikan memilih untuk kerja melebihi masa sehingga selepas kakitangan lain pulang. Mereka menggunakan masa ini untuk memperkukuhkan pemalsuan yang dibuat dan memalsukan jejak kertas.

Membuat alasan 'ganjil' apabila ditanya mengenai percanggahan

Alasan ganjil, lemah dan sering bertukar diberikan setiap kali soalan yang berkaitan dengan pergerakan akaun ditanya. Jangan terus menerima alasan sebegini. Minta penjelasan yang lebih jelas dan terperinci apabila menyoal kakitangan berkenaan dan semak sendiri fail/penyata bank untuk mendapatkan kepastian.

Mengenalpasti Penipu

Terdapat dua perubahan personaliti yang dipamerkan oleh seorang pekerja yang mencuri daripada anda. Pertama, anda melihat perubahan mendadak dalam gaya hidup seperti pakaian dan kereta, juga alat elektronik. Perubahan personaliti kedua pula lebih kepada perubahan menjadi pendiam disebabkan tekanan masalah. Sebagai contoh, mereka mencuri daripada anda untuk membiayai ketagihan suami yang suka berjudi.

Tindakan Yang Disyorkan Apabila Penggelapan Wang Terbongkar

Anda baharu mendapati seorang pekerja memegang sejumlah wang tunai yang dibayar oleh pelanggan-pelanggan anda; atau anda menyedari bahawa seorang kerani akaun telah memalsukan tandatangan anda pada cek yang ditinggalkan dalam jagaannya. Ini membuatkan anda sedar bahawa ini mungkin menjadi titik tolak bencana kewangan yang boleh memusnahkan firma anda.

Apa yang harus dilakukan?

- 1** Menggantungkan pekerja tersebut bagi suatu tempoh tertentu. Ini akan membolehkan anda menjalankan siasatan tanpa sebarang halangan.
- 2** Membuat laporan polis dan juga pemberitahuan tentang perkara itu kepada Broker Skim.
- 3** Jika perlu, lantik seorang juruaudit bagi menyiasat potensi pendedahan Firma.
- 4** Penyiasatan akan memerlukan kajian semula fail-fail sedia ada yang masih terbuka dan yang telah tutup.
- 5** Jika kerugian berkaitan dengan pemalsuan cek, tulis surat kepada bank yang berkaitan untuk salinan semua cek bagi tempoh tersebut.
- 6** Kenal pasti bayaran yang dibuat untuk cek-cek tersebut dengan senarai pelanggan atau pembekal anda - anda mungkin boleh menemui bayaran yang dibuat kepada pihak-pihak yang berkaitan dengan pelakunya.
- 7** Sesuaikan resit simpanan tetap.
- 8** Sepadankan akaun pelanggan dan akaun pejabat - kenal pasti kerugian khusus bagi setiap akaun.
- 9** Kehilangan wang tunai yang diterima daripada pelanggan menghendaki bukti berpadanan beberapa dokumen:
 - a. Buku resit.
 - b. Fail terbuka / tertutup dan baucer bagi pembayaran yang dibuat bagi perkara itu.
 - c. Padanan antara kertas deposit bank dengan resit yang dikeluarkan.
 - d. Pemindahan dana antara akaun pelanggan dan pejabat.
 - e. Resit deposit tetap.

Walaupun tidak menyeluruh, saranan di atas merupakan keadaan dimana dokumen boleh didapati untuk mengetahui tahap pendedahan anda. Perlu diingat, terdapat keadaan di mana jejak kertas dimusnahkan oleh pelaku dan dalam situasi sebegini, besar kemungkinan penglibatan pelanggan anda (atas dasar tanpa prasangka) adalah perlu bagi menentukan tahap kerugian.

Penggelapan Wang

Kajian kes tuntutan dimana pemberitahuan dibuat

Kajian Kes 1: Penyalahgunaan Amanah dan Kuasa

Tetuan Howie Mandell & Co mendapat panggilan daripada pihak bank berkaitan penunaian cek daripada akaun bank bagi cawangan firma yang telah tutup oleh seorang pelanggan firma tersebut. Apabila disoal, pelanggan tadi mengatakan cek itu diperolehi daripada Tom, pengurus pejabat Tetuan Howie Mandell & Co, sebagai ganti bayaran.

Rakan-rakan kongsi di Tetuan Howie Mandell & Co segera membuat pemeriksaan terhadap semua fail firma dan mendapati Tom telah menyalahgunakan wang firma selama enam tahun.

Apabila rakan-rakan kongsi di Tetuan Howie Mandell & Co disoal mengenai urusan kewangan mereka, kesemuanya mengakui bahawa mereka telah meletakkan kepercayaan penuh kepada Tom untuk mengurus, termasuk meninggalkan buku cek dalam jagaannya. Apabila pihak Insurans mempersoalkan Tom, beliau mengakui telah mencuri wang daripada Akaun Pelanggan untuk membayar hutang peribadi.

Jumlah yang digelapkan:
RM2,500,000

Kajian Kes 2: Memalsukan Rekod Lejar

Lara adalah seorang kerani pemindahhakkan di Tetuan Donald, Mickey & Co. Pada hari cuti Lara, Donald (rakan kongsi yang menjaga bahagian pemindahhakkan firma) menerima pertanyaan daripada pelanggan mengenai status pembelian harta kediaman. Donald dimaklumkan oleh pelanggan bahawa bayaran yuran yang diperlukan telah pun dibuat.

Apabila Donald mengkaji fail pelanggan itu, beliau mendapati bayaran telah dibuat dan resit yang dikeluarkan Lara adalah sama dengan amaun yang dinyatakan oleh klien TETAPI rekod dalam fail menunjukkan jumlah berbeza diterima.

Donald kemudian meneliti fail lain yang berada dibawah tanggungjawab Lara. Kebetulan pelanggan fail tersebut menelefon pada hari yang sama untuk mengetahui status bayaran balik yang belum kesampaian. Apabila Donald memeriksa Daftar Bayaran Balik, beliau mendapati bayaran telah dibuat atas nama anak pelanggan. Anak pelanggan menafikan menerima wang tersebut. Lara sebenarnya telah mengambil wang tunai yang diterima daripada Pelanggan dan menipu Rakan-rakan Kongsi untuk menandatangani cek yang telah dikesan kembali kepadanya.

Jumlah yang digelapkan:
RM68,000

Kajian Kes 3: Memalsukan Kelulusan Pelanggan

Warner dari Tetuan Warner & Co menyedari sesuatu yang tidak kena apabila keraninya, Sue, bercuti dan beliau menerima panggilan telefon daripada pelanggan, Oscar, bertanya tentang pembelian harta yang seolah-olah telah terhenti. Warner berjanji untuk kembali kepada Oscar selepas mengkaji fail.

Dalam fail, Warner mendapati cek yang dibuat kepada pihak ketiga dicatat dalam lejar sebagai "Kos Pengubahsuaian" dan salinan cek dibuat kepada pihak ketiga, tetapi tidak kepada penjual. Transaksi ini telah disokong oleh Surat Kebenaran yang kononnya ditandatangani oleh Oscar. Warner teringat akan Surat Kebenaran yang dijadikan rujukan sewaktu menandatangani cek yang disediakan oleh Sue.

Warner memanggil Oscar untuk mendapatkan penjelasan tentang arahan yang diberikan tentang pemindahan wang kepada pihak ketiga. Menurut Oscar, beliau tidak pernah sesekali pun mengeluarkan sebarang surat kuasa untuk berbuat demikian. Siasatan lanjut mendedahkan Sue telah memalsukan Surat Kebenaran dengan tandatangan Oscar.

Terdapat sepuluh lagi fail Tetuan Warner & Co yang didapati bermasalah, kesemuanya didapati berada di bawah jagaan Sue.

Jumlah yang digelapkan:
RM110,000

Wang – Kajian Kes

buat di bawah Skim Mandatori PII Bar Malaysia

Kajian Kes 4 : Penunaian Cek Tunai

Rakan kongsi bahagian pemindahhakkan di Tetuan Peter Pan & Co, Mr Hook, meminta seorang kakitangan untuk menyediakan bayaran kepada seorang pelanggan daripada Akaun Pelanggan. Kerani tersebut, Lila, tidak dapat berbuat demikian kerana akaun tersebut tidak mempunyai wang yang secukupnya. Ketika itu baharulah Lila mengaku telah mengambil sejumlah wang daripada Akaun Pelanggan dan dimasukkan ke dalam akaunnya sendiri.

Cek tunai yang sah ditandatangani oleh rakan-rakan kongsi dikeluarkan untuk memindahkan wang dari akaun pelanggan ke akaun firma – tetapi setelah ditunaikan, Lila menyimpan wang tersebut.

Firma yang diinsurankan mendapatkan pengakuan rasmi dari Lila yang menyatakan dia telah menyalahgunakan sejumlah besar wang sepanjang tiga tahun.

Jumlah yang digelapkan:
RM300,000

Kajian Kes 5 : Mencuri Cek

Mr Kent ialah tuan punya tunggal Tetuan Clark Kent & Co, yang mengendalikan firma guaman di Kuala Lumpur. Mr Kent hanya menggaji seorang pekerja – Cik Lois, yang menguruskan aktiviti sehari-hari pejabat dan mengendalikan hal-ehwal kewangan firma itu - termasuk penjagaan Akaun Pejabat dan Akaun Pelanggan.

Mr Kent mula curiga apabila pengesahan bank tidak disediakan tepat pada masanya oleh Cik Lois. Cik Lois telah bekerja dengan beliau selama lebih sepuluh tahun dan merupakan orang kepercayaan. Alasan yang diberikan Cik Lois kerana tidak menyediakan padanan bayaran adalah disebabkan pihak bank tidak memberikan sebarang penyata akaun.

Mr Kent membuat pemeriksaan sendiri dan mendapati sejumlah wang telah hilang daripada Akaun Pelanggan. Apabila menjalankan siasatan lanjut, baharulah beliau sedar bahawa Cik Lois telah mencuri beberapa helai cek dan memalsukan tandatangan beliau.

Dalam usaha Mr Kent untuk mendapatkan bukti yang lebih jelas dan jejak kertas yang berkaitan, Mr Kent meminta imbasan imej semua cek yang ditunaikan dari akaun bank terbabit. Bukti menunjukkan bahawa Cik Lois telah membuat bayaran dengan menggunakan cek Firma dengan tandatangan palsu kepada orang ketiga serta ke dalam akaunnya sendiri.

Jumlah yang digelapkan:
RM40,000

Kajian Kes 6 : Mengimbangi Buku-buku Akaun

Corrine adalah seorang setiausaha merangkap kerani pemindahhakkan di Tetuan Wayne & Associates. Corrine dianggap pekerja model oleh Wayne dan diamanahkan menjaga akaun firma. Corrine sering tinggal lewat di pejabat atas alasan menyiapkan kerja. Dia juga jarang mengambil cuti. Oleh kerana Corrine merupakan kakitangan kanan, kakitangan lain tidak mempersoalkan atau membangkitkan isu ini kepada mana-mana peguam Firma apabila Corrine mengarah mereka untuk tidak berurusan dengan fail tanpa kebenarannya terlebih dahulu.

Sebenarnya, Corrine membuat pemalsuan baucar bayaran dengan mereka “penerima” pada baucar. Apabila terdapat sebarang kekurangan, Corrine akan memindah dana antara akaun untuk menutup jejaknya. Tindakan beliau tidak dikesan selama tiga tahun.

Penyelewengan ini diketahui oleh Wayne hanya selepas dia mendapati percanggahan apabila dia sendiri yang menguruskan urusan penebusan bagi harta seorang pelanggan. Siasatan lanjut menunjukkan bahawa suami Corrine adalah seorang penjudi kompulsif.

Jumlah yang digelapkan:
RM700,000

Walaupun akauntan dan kakitangan akaun mahir dalam tugas mereka, tanggungjawab sepenuhnya terletak pada rakan kongsi. Jika anda memberikan kebebasan yang berlebihan kepada kakitangan tanpa pengasingan tugas dan penyeliaan, ini akan membawa kepada godaan untuk mencuri. Amalkan pendekatan proaktif! Rujuk muka surat 8 & 9 untuk tip-tip penting melindungi akaun firma anda.



MENGELAK DARIPADA PENGGELAPAN PEJABAT

Hasil penyelidikan menunjukkan bahawa amalan yang bersaiz kecil ke sederhana lebih mudah terdedah kepada penipuan daripada amalan yang bersaiz lebih besar kerana mereka mempunyai tenaga kerja yang kurang. Firma yang mempunyai sedikit pekerja cenderung untuk tidak mempunyai pengasingan tugas, kurang perakaunan dalaman dan kawalan pengauditan. Firma-firma kecil dan sederhana juga cenderung untuk menjalinkan hubungan yang lebih rapat dan meletakkan kepercayaan antara rakan kongsi dan kakitangan. Firma ini lebih mudah terdedah kepada penipuan oleh kakitangan kerana tidak menimbulkan curiga.



Keselamatan Buku Cek

1

Sentiasa bertegas untuk melihat dokumen sokongan (seperti invoice, borang pembayaran rekuisisi, baucar) apabila menandatangani cek untuk membenarkan pembayaran.

2

Berwaspada apabila menandatangani cek – semak setiap permintaan untuk menandatangani cek bagi vendor yang tidak dikenali.

3

Jangan sekali-kali mengamalkan penggunaan setem tandatangan – ini adalah cara yang paling mudah untuk mengeluarkan wang daripada akaun jika setem tandatangan ditinggalkan dengan pekerja.

4

Hadkan jumlah wang tunai yang disimpan di pejabat – sekiranya bayaran perlu dibuat menggunakan dana ini, tetapkan prosedur yang sewajarnya untuk pembayaran balik, contoh, keperluan resit – walaupun untuk bekalan pejabat yang mudah.

5

Simpan berkunci buku cek anda. Jika anda menugaskan seorang kerani akaun untuk menyediakan cek anda, pastikan setiap cek mencukupi. Sentiasa pastikan nombor cek mengikut tertib urutan dan bilangan cek yang dikeluarkan adalah selari.

6

Buku cek akaun pejabat dan akaun pelanggan perlu disimpan berasingan. Ini dapat mengurangkan peluang kakitangan mencuri dan memalsu cek dari kedua-dua akaun. Tambahan, ini mengurangkan kebarangkalian menulis cek dari akaun yang salah.

7

Jangan sekali-kali menulis cek tunai – walaupun untuk anda sendiri atau pekerja yang dipercayai untuk menunaikan cek tersebut.

8

Jangan sekali-kali menandatangani cek kosong dan ditinggalkan dengan pekerja.



Faktor Kemanusiaan

9

Amalkan pertukaran tugas kakitangan akaun setiap enam bulan – kakitangan perlu diberitahu tentang amalan ini di awal permulaan kerja mereka. Pengetahuan awal bahawa mereka tidak akan mengawal sesuatu portfolio tertentu akan mengurangkan peluang penipuan.

10

Tugaskan kakitangan yang berasingan bagi struktur utama perakaunan: akaun belum terima, akaun kena dibayar dan bil.

11

Menegaskan kepada pekerja yang menjalankan tugas-tugas perakaunan / simpan kira untuk mengambil cuti setiap tahun. Sebaik-baiknya, cuti selama tujuh hari yang berterusan. Masa ini digunakan oleh sebuah parti bebas atau akauntan anda untuk mengkaji semula buku akaun dan mencari perbezaan.

12

Jika saiz kakitangan firma anda membenarkan, asingkan tanggungjawab dan tugas. Kewujudan portfolio individu untuk kakitangan menghadkan peluang berlakunya penipuan.



Perbankan Elektronik & Perisian



13

Jika firma anda menerima kad kredit sebagai kaedah pembayaran, ambil langkah yang sewajarnya untuk melindungi nombor kad kredit pelanggan daripada digunakan sewenangnyanya, atau dibebaskan tanpa disedari oleh kakitangan anda kepada pihak ketiga dengan niat menyalahgunakan.

14

Jika akaun-akaun ini boleh dicapai melalui internet atau perbankan dalam talian, kakitangan tidak seharusnya diberi kebenaran menggunakan kemudahan ini. Walaupun perbankan dalam talian menawarkan pelbagai kemudahan, harus diingat bahawa pendedahan kepada penipuan oleh kakitangan yang mungkin mengambil peluang untuk membuat transaksi/bayaran yang tidak dibenarkan kepada mereka sendiri atau kepada akaun pihak ketiga.

15

Jika bank anda menawarkan kad ATM untuk akaun pelanggan anda, tolak tawaran tersebut. Sekiranya anda sudah mempunyai kad ATM untuk akaun pelanggan anda, pulangkan kepada bank secara bertulis dan tamatkan kemudahan ini.

16

Jika anda menggunakan perkhidmatan perisian perakaunan atau program penulisan cek, dua perkara untuk difahami: (a) Kemungkinan data rosak. Lindungi komputer anda secukupnya daripada virus dan kerap laksanakan salinan dokumen. (b) Jika anda tidak mengambil inisiatif untuk memahami sendiri perisian perakaunan, kerani akaun anda yang memahaminya, dengan mudah boleh memanipulasi perisian untuk keuntungan peribadi mereka.



Faedah Jejak Kertas

17

Secara rawak, pilih tiga fail yang aktif tiap bulan yang anda tahu bayaran telah dibuat – pastikan bayaran yang diterima daripada pelanggan telah dicatat dengan betul. Lengkapkan latihan ini secara bebas tanpa pengetahuan kakitangan anda.

18

Dapatkan dua kakitangan yang berasingan untuk mengurus akaun penerimaan - seorang kakitangan menerima dan merekod bayaran, manakala kakitangan kedua menyediakan slip deposit bank dan menyediakan senarai deposit. Rekod slip pembayaran dan deposit perlu diselarasann setiap bulan.

19

Semasa peyelarasan, periksa transaksi bagi sebarang ketidaksamaan. Sahkan bahawa deposit telah dibuat tepat pada masanya.

20

Apabila penyata bank anda tiba, selaraskan akaun. Jika anda adalah tuan punya tunggal, lakukan sendiri. Jika anda berada dalam perkongsian dan rakan kongsi anda ditugaskan untuk menyelaraskan akaun bank, periksa keputusan penyelarasan itu apabila dia selesai. Adakalanya pemeriksa pertama terlepas pandang dan dapat dikesan oleh pemeriksa kedua.

PI INSURANCE & RISK MANAGEMENT DEPARTMENT
Bar Council Malaysia
Suite 4.03A, 4th Floor, Wisma Maran
28 Medan Pasar, 50050 Kuala Lumpur, Malaysia

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

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

Mysahra Shawkat Officer
✉ mysahra@malaysianbar.org.my

Melissa Kraal Officer
✉ melissa@malaysianbar.org.my

Disclaimer In compiling this newsletter, Bar Council Malaysia and all authorised parties have used their best endeavours to ensure that the information is correct and current at the time of publication. We do not accept responsibility for any error, omission or deficiency as all references are not meant to be exhaustive. Material in this newsletter is not intended to be legal advice. The information, which includes techniques aimed at preventing claims does not create the standard of care for lawyers. Lawyers should conduct their own legal research. PII information is to provide general information and should not be considered a substitute for the applicable PII Master Policy and Certificate of Insurance together with its Schedule. We strongly advise that you refer to the applicable Master Policy and Certificate for the full terms and conditions. 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.

Risk Management Highlights

JULY - SEPTEMBER

Jurisk! on Claims Arising From Conveyancing Files

- Find out the many ways a conveyancing file can lead to PII claims
- Read how fraud scams are becoming more prevalent
- Learn from past mistakes from our case studies, and use the tips provided to avoid those pitfalls.

Coming Soon

Getting Started! : 18 Oct 2012

A one day workshop for all lawyers who are just beginning their practice, or thinking of starting their own practice.

Start 

Have You Got Your Kit?



All our risk management practice tools in one handy resource

For more information, contact the PI Insurance & Risk Management Department at 03-2032 4511 or email pirm@malaysianbar.org.my