Risk Management Newsletter

JURISK!

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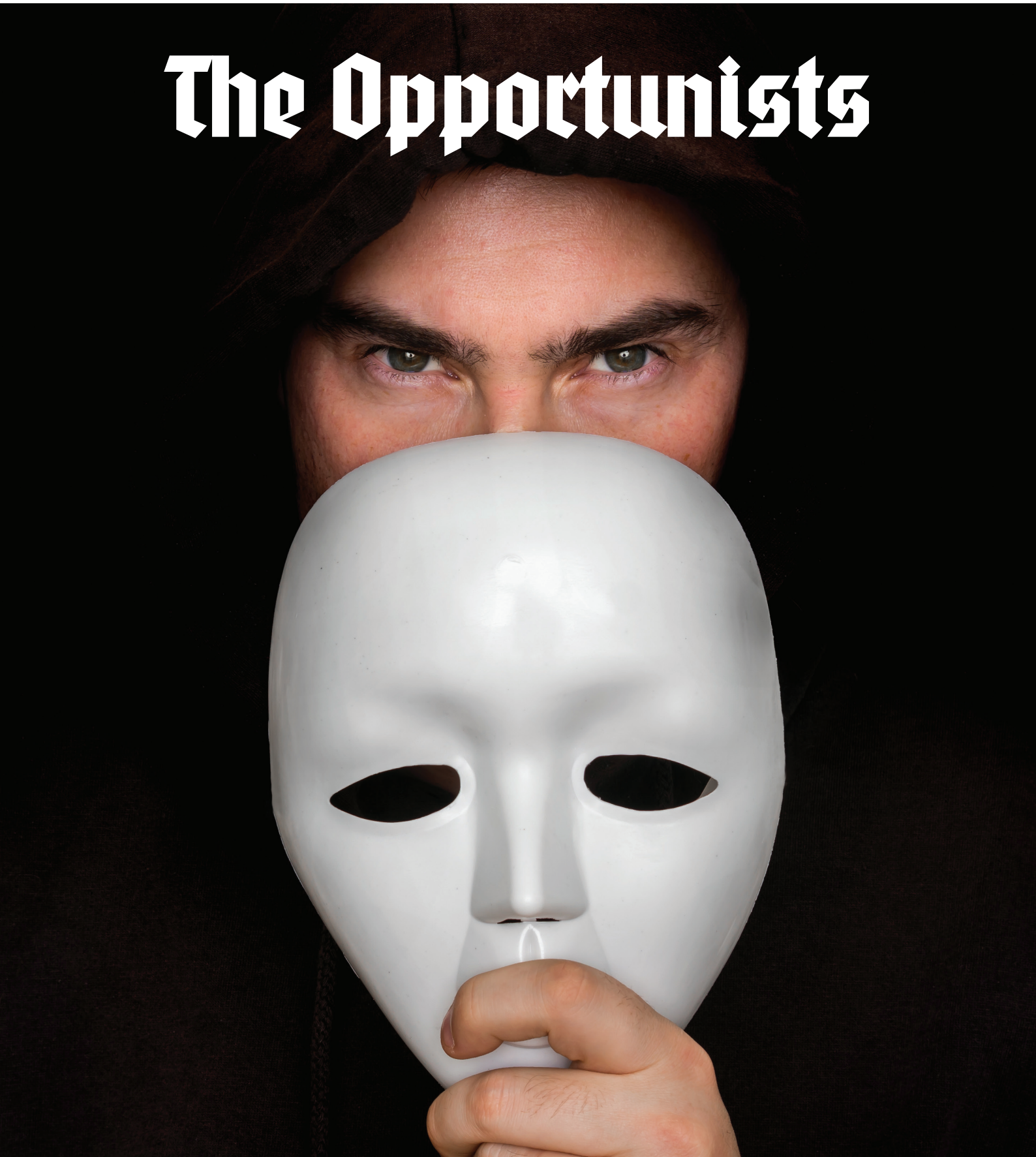
The Opportunists



CHAIRPERSON'S MESSAGE

Dear Members of the Bar,

The much-anticipated year 2020 is finally upon us. While the excitement of the new decade dawns on us, we are sure that it will bring with it, a new set of challenges and problems. Therefore, in the wake of this new year and the making of many personal resolutions, perhaps the legal profession too should make resolutions; in particular to pay attention to and to shore up our risk management efforts.

For a start, Members can look back at the past year and analyse the effectiveness of risk management policies and procedures in the firm. Members should also read *Jurisk!* issues which highlights the types of claims received by the PII Scheme. In doing so, Members will be able to avoid the pitfalls and identify loopholes of the process and procedure they have in place, and can look to improve or intensify risk management in their firms.

This *Jurisk!* issue focus on *Opportunists* - those who take advantage of situation and circumstances to enrich themselves. These opportunists might even be an internal party who is working in the firm, such as employees and partners who are entrusted to manage the firm and clients. Of course, they can also be an external party who was authorised to handle the management of the firm, employees and clients. Notifications received by the Professional Indemnity Insurance Scheme (PII Scheme) show that in either cases, these opportunists are most likely to strike when there is a less than stellar effort at risk management.

Members are also advised to have a look at Circular 201/2019 reproduced at page 37 of this issue to further understand the seriousness of these cases and to adopt an intuitive approach towards risk management in firms.

Also included in this issue is a brief report on the program *Risk Aware!* A Review of Your Firm that was conducted in 2019 in six states with the participation of 16 law firms. As Members are aware, this program involves a one-on-one study of law firms with an objective to review and suggest improvements in the firm to avoid the possibility of a claim. We strongly encourage and welcome more Members to join in this initiative.

Lastly, in view of the increasing notifications in respect of money laundering which have affected several law firms, we have included in this issue Bank Negara AML/CFT Informative Guide and Reporting Obligations (see pages 39 to 42). It is hoped that from reading this, Members will become more aware of what is required of Members under the Anti-Money Laundering, Anti-Terrorism and Proceeds of Unlawful Activities Act 2001.

Let us all carry a progressively enhanced Risk Management resolution through 2020 and the years beyond.

Enjoy your reading.

Kuthubul Zaman Bukhari
Chairperson
PII Committee 2019/2020
Bar Council Malaysia

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Dear Members,

In this issue...we present to you:

Details on Notifications Resulting from Fraud and Dishonesty
Learn how law firms fall prey to opportunists such as employees, partners, third parties as well as money launderers. An in-depth analysis of the notifications received by the Professional Indemnity Insurance ("PII") Scheme Insurer in respect of cases involving fraud and dishonesty will educate Members on the risk measures that law firms must employ.

Case studies on notifications related to conveyancing matters that were received by the PII Scheme Insurer, and tips to avoid or minimise risks are also included in this issue.

Risk Aware! A Review of Your Firm
Read about the Risk Aware! Programme that was conducted in 16 law firms in six different states. Understand the risks and pitfalls that were found.

Practice Management
A highlight of a recent court decision resulting from misappropriation of client's monies is given to remind Members of their professional duty to their clients. Also included in this section are essential content for a trial letter.

Health
There is also health write-up by a clinical psychologist which debunks stress. A mindfulness exercise is featured for Members to try and apply to remain unaffected in the hustle and bustle of life.

Feedback Or Queries
If you have any feedback or queries, please reach out to the PII and Risk Management Department officers directly by telephone at 03 2698 4511 or by email at pirm@malaysianbar.org.my.

Happy Reading!

Jurisk! Team

THE ANATOMY OF OPPORTUNISTS – A LOOK AT THE CURRENT TREND OF CLAIMS ARISING FROM FRAUD AND DISHONESTY

by Dennis Goh, Echelon Claims Consultant Sdn Bhd

Lawyers tend to underestimate the risks of becoming victim of fraud and dishonesty.

THE reality is that legal firms, particularly sole proprietorships and small firms that do conveyancing matters are highly vulnerable to fraud and dishonesty. Not only do these firms handle significant amount of money in their client accounts, they are also at risk of being used to launder money. Falling victim to fraud could lead to a claim against your Professional Indemnity Insurance policy, while a case of dishonesty will lead to criminal proceedings.

165 cases involving fraud and dishonesty were reported to the PII Scheme from 2014 to 2018. 52 of these cases involved dishonesty by partners or staff who had abused their position of trust and misappropriated clients' monies whilst 113 cases involve fraud perpetrated against lawyers by clients or third parties holding and using stolen identities to facilitate their fraudulent activities.

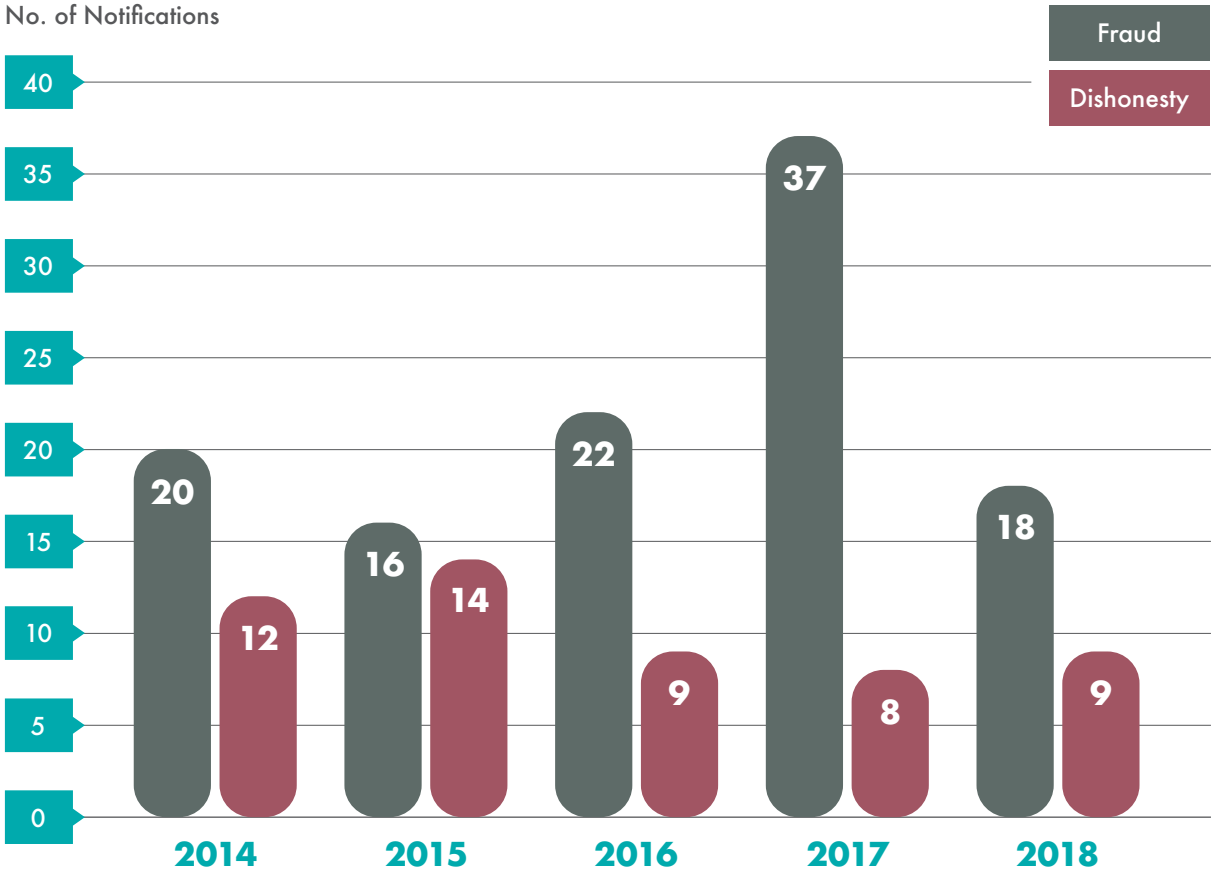


Table: Notifications received for fraud and dishonesty from 2014 - 2018

Based on review of these cases, the root causes for fraud and dishonesty were:

- lack of supervision;
- no risk management systems in place to prevent, detect and respond to fraud and dishonesty;
- unqualified persons or third parties were allowed to deal with clients and manage files independently or with minimal supervision;
- poor financial and accounting controls, especially firms with branches that operate independently without any check and balances;
- pre signing of blank cheques and allowing non signatories (employees or third parties) to hold onto the firm's cheque books and access the firm's office and client accounts.

TYPES OF FRAUD AND DISHONESTY

Fraud and/or dishonesty can be broadly divided into two types:

- internal fraud and/or dishonesty; and
- external fraud.

Internal Fraud and/or Dishonesty

Internal fraud and/or dishonesty is the most difficult to detect because it is often committed by either partners in the firm or by senior and respected staff who have detailed knowledge of the firm's operations. It involves the misappropriation of monies from client accounts or the office account, misuse of pre signed blank cheques and/or forgery of documents. It can also take place indirectly, where there is improper use of the firm's properties such as letterheads to carry out private work which is charged for independently and obscured from the firm's principals and discovered only after a claim against the firm is received.

In one case, a lawyer's nightmare began when he returned from a holiday. Before he left, he entrusted the firm's cheque book and all accounts files to the custody of his trusted accounts clerk of over 20 years. The clerk took advantage of this situation, forged the lawyer's signature on the cheques and embezzled up to RM100,000 from the firm's accounts.

In another case, a firm's senior conveyancing clerk had secretly worked in tandem with a real estate agent to do work on conveyancing files without the knowledge of the Partners. In doing so, the clerk used the firm's letterheads and forged the partners signatures on them. It was only when the firm was served with a writ did the partners discover the dishonest and/or fraudulent acts.

The Office Manager Scam

There is also a series of on-going 'office manager' scams perpetrated by an individual ("the individual") whereby several firms have fallen victim. In this scam, the individual would entice small firm practitioners with promises of bringing in steady stream of conveyancing files or debt collection work. All the firm had to do was:

- to employ the individual as an office manager; or
- to set up a branch and provide the individual with pre signed blank cheques or give the individual access to the firms' client account.

The individual would then deal with clients and run files independently - perpetrating numerous conveyancing frauds.

The scam is not new. When it first occurred, Bar Council had in 2017 issued a Circular alerting lawyers[1].

Today, the scam has made a come back. The PII Scheme has again started receiving increasing number of notifications which resulted from the scam. Bar Council has issued another Circular pursuant to this.[2].

[1] See Bar Council Circular No. 158/2017 dated 19 July 2017.

[2] See Bar Council Circular No. 201/2019 dated 26 Sept 2019 at page 37.

External Fraud

External fraud by third parties; ie someone external to the firm, includes a diverse range of scams involving different techniques. The intelligence and capabilities of these fraudsters are considerable, enabling them to abuse the services rendered by unsuspecting lawyers in perpetrating their fraud against the public and also banks.

Conveyancing Fraud

A vast majority of external fraud cases reported to the PII Scheme involves land frauds where unwary lawyers are engaged by fraudsters masquerading as land owners to act in land transactions. These 'clients' produce stolen identities of true land owners as their identity documents. When the fraud is discovered (much after the damage was done), the true land owners would then sue, both the subsequent innocent purchaser as well as the lawyer who handled the transaction.

Vast majority of firms that were scammed were small firms that do conveyancing matters in major cities in the Peninsula. Presumably, scammers target these firms because of the value of land in these cities are higher thus 'profiteering' optimises quicker. In most instances, risk management systems in the affected firms were lacking when compared to larger firms. It was also observed that lawyers who fell victim to such frauds are usually experienced conveyancing lawyers who never imagined they would fall for such a scam.

So what went wrong? Based on our review of the external fraud cases reported to the PII Scheme, the short fall was often due to lack of "Know Your Client" procedures (see box below) employed by legal firms in verifying their client's ownership of land. In essence, apart from just comparing the client's identity with that on the land title, it is also prudent for a lawyer to obtain secondary verification such as quit rent receipts and utility bills to further verify ownership.

Secondly, when confronted with a client who produces a power of attorney or purports to be acting as an agent or representative of a company, it is prudent for a lawyer to verify with the donor or the company, on such power given or appointment made. This would greatly minimise the risk of lawyers being duped into handling transactions based on forged documents.

Money Laundering

Apart from land frauds, legal firms are also targeted by people who want to launder the proceeds of crime. The process simply involves the firm being used to purchase property with illicit funds or to receive money into the firm's client account thereafter transferring it elsewhere

thereby 'laundering' it. Conveyancing practices are particularly at risk of this because property sale/purchase transactions are best way to legitimise transfer of large sums of money. Firms may also be instructed to prepare unnecessarily complex agreements to give a façade of genuineness to what is in effect a money laundering transaction. Failure to detect this is not only a breach of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 but can also lead to criminal prosecution against lawyers and parties involved.

Cyber attacks

Cyber-attacks on legal firms have also become frequent. This is where the firm's computer systems are hit with malware attack and infected with viruses making it vulnerable for hackers to hack in and steal confidential information stored in it. Criminals can also commit theft through 'social engineering', where they manipulate people into performing actions or divulging confidential information. From several cases reported to the PII Scheme, it was found that lawyers had received emails purportedly from their clients instructing the firm to remit money to a bank account that is different from that was provided by the client earlier. It was discovered later, that this new bank account was in actual fact under the fraudster's control. In reverse instances, clients received emails purportedly from the lawyer requesting the client to transfer funds, say for example on a property transaction.

The best way to avoid falling victim to these kinds of attacks is nothing more than being diligent and having eye for detail. When clients through email instruct you to transfer funds, it is good practice to speak personally with the client to confirm the instruction.

CONCLUSION

Fraud and dishonesty are real and present danger to legal firms in Malaysia, especially in conveyancing matters. The best defence is to practice defensive lawyering, ie, adopt a risk-based approach in handling your legal work. Implement policies and procedures to minimise errors and omissions. Review the policies and procedures regularly and ensure that everyone in the firm complies with it. Promote fraud awareness and anti-fraud training to all in firm.

Conduct random file checks periodically and be alert of colleagues who may be suffering from stress of financial problems – but remember that most fraud is based on transactions or behaviours which can have a legitimate cause. It is your job to distinguish these from fraudulent ones.

★ **conduct thorough identification checks**
example of identity documents: copy of NRIC, bankruptcy searches, quit rent receipts, tax returns (where appropriate).

If you spot any discrepancies in these identity documents, raise a red flag and proceed with extra diligence.

★ **conduct background checks**
take time to get to know the client.

If you find the client seem vague or uninterested in the details of the matter or alternatively, in a rush to complete the transaction, this should also raise a red flag.

MISAPPROPRIATION OF CLIENT'S MONIES WILL RESULT IN DISBARMENT

by Dennis Goh, Echelon Claims Consultant Sdn Bhd

Solicitors know that it is wrong to 'steal' from clients. However, being a fiduciary requires that a solicitor do more than 'avoid stealing'. It requires the solicitor to act in the greatest degree of loyalty, good faith and faithfulness towards his or her client.

ONE common way solicitors get into trouble over client funds is when they "borrow" funds held in the client account, intending to repay the money once they receive their next fee. Despite the absence of the intention to steal or to permanently misappropriate money from the client per se, the act of "borrowing" funds from the client account is an act of serious professional misconduct, a breach of trust and stakeholding.

Recently, in Bar Council Malaysia v LYY [2018], the Federal Court reaffirmed the Court of Appeal's decision to disbar the Solicitor who had used client's money for personal gain. This in effect reaffirmed the Advocates & Solicitors Disciplinary Board ("Disciplinary Board")'s decision (from where the appeal originated) to disbar the Solicitor notwithstanding the fact that the Solicitor convinced the client to withdraw the complaint and thereafter reimbursed the client of monies owed.

The Case of LYY

LYY, a solicitor was going through tough financial times. When LYY failed to secure any loan or credit facility from banks due to bad credit rating, LYY made a difficult decision to mortgage the family property. LYY's financial situation deteriorated further and LYY defaulted on mortgage instalments which resulted in a foreclosure proceeding taken by the Bank. To avoid risking the family home from being repossessed, LYY opted to "borrow" from the firm's client account to repay the outstanding instalments to the Bank. When it was time remit money to the client, LYY could not do so as there were insufficient funds in the client account.

A disciplinary complaint was duly lodged by the client with the Disciplinary Board, who later withdrew the same upon being convinced that LYY had no intention to cheat and will repay the

money owed in due time. LYY duly repaid the client 3 months later. Notwithstanding the above, Bar Council intervened and pursued the complaint. The complaint was dealt with summarily, and the Disciplinary Board ordered LYY to be disbarred.

Dissatisfied with the severity of the decision, LYY appealed to the High Court. Having found that there was no dishonesty on the part of LYY's and that restitution had been made to the client, the High Court substituted the striking off for a 3 year suspension.

Following an appeal by Bar Council Malaysia to the Court of Appeal, the Court of Appeal reversed the order of the High Court and reaffirmed the decision of the Disciplinary Board. In doing so, the Court of Appeal held, among others, that:

- LYY's financial difficulties is no excuse for LYY to dip hands into the client account and misappropriating money for personal use;
- the requirement of strict adherence to undertakings given by a solicitor is a strict rule which is borne out of necessity;
- A breach of such an undertaking undermines public confidence in the legal profession as well as in the system of professional undertakings given by solicitors;
- A stakeholder is a trustee and a breach of stakeholding term is not just a breach of undertaking but it is also a breach of trust.

In regards to the fact that LYY eventually made full restitution to the client, the Court of Appeal held that, that is nothing more than returning to the client what is due. The act of restitution does not detract from the seriousness of the professional misconduct committed by a solicitor having misappropriated client money in breach of trust.

"...the Court of Appeal held that...the act of restitution does not detract from the seriousness of the professional misconduct committed by a solicitor having misappropriated client money in breach of trust."

RISK AWARE!

A REVIEW OF YOUR FIRM

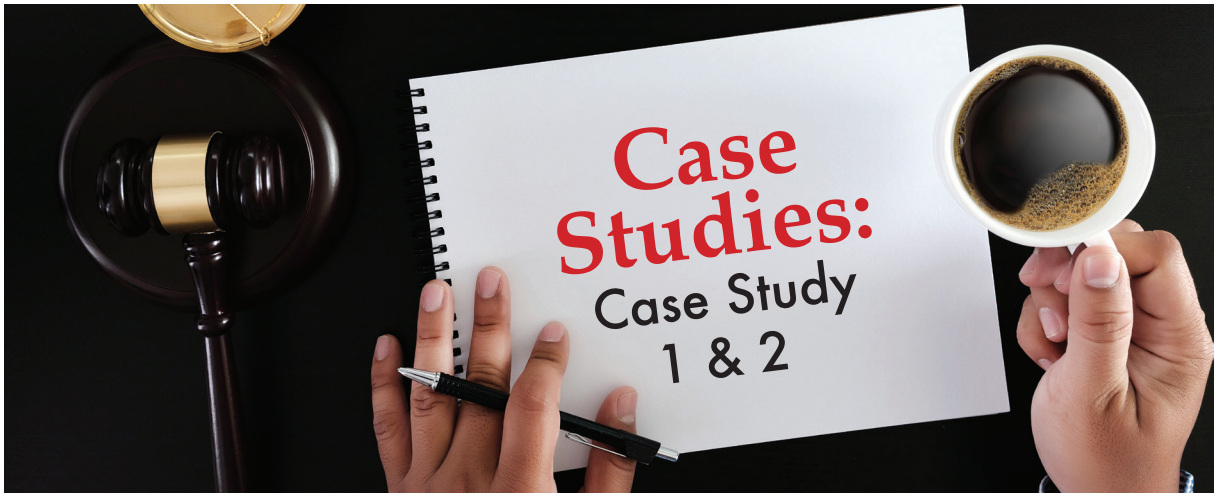
THE yearly risk management initiative, *Risk Aware!* A Review of Your Firm ("Review") for 2019 has just been concluded. The Review's aim is to document the risk management processes and procedures that are present in legal firms; identify weak or risk areas within the firm; and to provide suggestions for improvements.

From July 2019 to October 2019, 16 law firms from 6 different states, namely, Perlis, Kedah, Penang, Perak, Pahang and Negeri Sembilan participated in the Review.

This short write up is to bring to attention of Members on the common shortfalls that were found at the Reviews. They were:-

(1) too much reliance on staff / non supervision of staffs;
(2) assigning work to staffs who have no training/ no prior knowledge of the work received;
(3) pre signing of cheques;
(4) no proper safe custody of original documents such as original titles, cheques books for clients and office account;
(5) insufficient number of land searches conducted; and
(6) partnership issues such as:
    (a) there being no Partnership agreements;
    (b) partners, whilst being in partnership, unaware of their duties, responsibilities and liabilities;
    (c) partners adopting a hands off approach when separate client accounts are set up in accordance to each Partner's portfolios (eg partner A who handles conveyancing matters maintains one client account and the partner B who does litigation matters maintains another client account);
    (d) partners remain in a Partnership in name but do not actively practice, ie lending name merely to fulfil a criteria for securing work in a specific area of practice;
    (e) only one signatory required for client and office accounts.

Members are advised to take note of the findings stated above and to take steps they may deem appropriate.



CASE STUDY 1

Adibah and Azizah were partners in a firm. Adibah handled Litigation matters whilst Azizah handled conveyancing matters.

After the first 2 years together, Adibah noticed a sudden behavioural change in Azizah. She was always coming in late to office and looked rather sombre. Adibah approached Azizah to ensure everything was well. However, Azizah just shrugged saying that she has some personal issues which is under control. Thinking there was nothing greatly wrong, Adibah went on with work as usual.

Few weeks later Azizah informed that she want to leave the partnership and left abruptly.

Couple of months later, Adibah received a letter of demand from a client alleging that:-

- the Firm had delayed in completing the Sale and Purchase Agreement ("SPA"); and
- as a result the tenant/purchaser had to pay hefty rental sum to the landlord/vendor until the SPA was completed.

Upon checking the file in question, Adibah found that the payment of stamp duty due to the Land Office was delayed for a year.

This prompted Adibah to immediately conduct an audit on all files left behind by Azizah. By the time this was completed, Adibah identified 3 potential claims files. She immediately notified the insurers.

This claim could have been avoided if:-

- there was an exit policy in the firm which obliges a lawyer or staff leaving the firm, to:-
  - ensure all files handled are updated;
  - prepare a list of files handled;
  - review the files with the partner or other lawyers in the Firm to assess its status and identify any outstanding tasks;
  - pick out any deadlines, limitation period issues, KIV, mention dates;
  - prepare a summary for outstanding tasks of each file;
  - ensure all important dates and deadlines are diarised accordingly.

- there was a guidance policies in place where a lawyer or staff are faced with problematic files, they are to bring the same to the attention of the partner(s) or superior for assistance / direction;
- there was a checklist used. The checklist must include critical timelines such as date of SPA, completion date of SPA, submission of real property gains tax returns with the Inland Revenue Board, release of loan sum by the Purchaser's financier and payment of the balance purchase price to the Vendor;
- a weekly file reviews amongst lawyers and staffs is conducted in the Firm; and
- staffs to whom work is delegated are monitored / supervised regularly.

CASE STUDY 2

Word was out in the property market that a huge plot of land located nearby an upcoming highway project is up for sale ("land sale"). The registered owner of the land was Toggle Development Sdn Bhd ("Toggle").

Aunty Julie, one of the 5 directors in Toggle, requested her niece, Simmy of Messrs Simmy, Song & Co ("the Firm") to handle all matters pertaining to the land sale. Simmy agreed. All directors in Toggle were closely related to each other and also related to Simmy. At this stage, so as not to offend her aunt or other relatives, Simmy did not obtain a warrant to act.

On getting news on the land sale, a prospective purchaser, Rich Money Sdn Bhd ("Rich Money") contacted the Firm to enquire if they act for Toggle in respect of the land sale. Upon receiving an affirmative reply, Rich Money conveyed to

the Firm its offer price for the land. Simmy duly informed Aunty Julie and sought instructions.

A few days later, Aunty Julie instructed Simmy that all directors in Toggle are happy with the price and to accept the offer. Simmy conveyed the acceptance of the offer to Rich Money.

Soon after, through their solicitors, Messrs Yummy, Yip & Co ("the Solicitors"), Rich Money forwarded to the Firm a cheque for earnest deposit ("the first Cheque"). They also forwarded a draft Sale & Purchase Agreement ("SPA") for the Firm to revert with comments. The Firm held the earnest deposit as stakeholder and gave their comments on the SPA to the Solicitors.

Thereafter, Simmy prepared the necessary documents for the directors to sign. At Simmy's request, Aunty Julie arranged a meeting for Simmy to meet with the directors in Toggle to get the documents signed.

It was only during the meeting Simmy realised that one of the directors objected to the sale of the land. Following the issues raised by this director, other directors followed pursuit and decided against the sale of the land.

Pursuant thereto, the Firm communicated to the Solicitors that Toggle no longer wish to sell the land and returned the cheque for the first cheque.

In a desperate move, Rich Money instructed the Solicitors to press for the sale of the land. Accordingly, the Solicitors sent back to the Firm, the first Cheque and also forwarded a second cheque for the balance deposit together with fair copies of SPA that were executed by Rich Money. The Firm refused to accept service of these documents and wrote back informing the Solicitors that they no longer act for Toggle.

Outraged, Rich Money filed a negligence suit against the Firm and Toggle.

Rich Money alleged that the Firm gave a false warranty to it that it had authority to act for Toggle when in actual fact it did not. As a result of this Rich Money was induced into entering the agreement.

Against Toggle, Rich Money sought specific performance for the execution of the SPA.

Claim against the Firm could have been avoided if:-

- the Firm acquired Toggle's resolution appointing the Firm as lawyers in respect of the sale and to act on its behalf in respect of the sale;
- correspondences were sent out to Toggle confirming instructions;
- Toggle was kept in the loop on the progress of the matter; and
- the Firm had calculated risk of any issue of conflict of interest that may arise in the future and therefore acquire a waiver from its client.

THE TRIAL LETTER

by Shamine Parisamy, Legal Risk Junior Counsel, Bar Council Malaysia

AS trial dates approach, it is prudent for lawyers to forward to clients a trial preparation letter **("the trial letter")** informing clients to be ready for trial.

The content of this letter should send the right message to the clients namely triggering client to make necessary preparations in anticipation for trial. For lack of a better word, that they need is to buckle up and sit down to do their trial-prep work. This preparatory work will go a long way towards assisting clients to lift off their case with enchanting ease during the trial.

The said trial letter should contain the following essential information:-

1. Bundles of Pleadings and Bundles of Documents

The trial letter should refer to the copies of the bundles of Pleadings and Bundle of Documents that were progressively forwarded to the clients and remind them again to go through the said bundles.

(a) Bundles of Pleadings

For Bundles of Pleading, the clients must be reminded to be:-

- clear as to what the claims or defences are;
- clear as to the statements and facts as stated in the Statement of Claim or Defence;
- clear that they are bound by the facts or statements made in the Statement of Claim or Defence, and any departure from the same will affect their credibility and/or prejudice their claims or defences.

Although this is to be avoided too near to the trial, clients must also be reminded to immediately notify you should they come across any glaring inaccuracies or factual errors in the statements

or facts asserted in the Statement of Claim or Defence. Immediate steps can be taken to address the inaccuracies or factual errors.

(b) Bundles of Documents

Clients are to be reminded to peruse the bundles carefully to ensure that all the documents which they propose to rely on to substantiate the facts and statements raised in their Statement of Claim or Defence has been included in the bundles. They need to immediately bring to your attention of any documents that is found to be missing or previously omitted.

Highlight to the clients:-

- the segments of the bundles in which crucial documents are placed, namely in Parts A, B or C;
- the significance of the said placements, as well as how the evidence will be led accordingly;
- the importance to familiarise themselves with the contents of the documents which they wish to rely on as evidence;
- the need for them to effortlessly cross refer documents in the bundles with the facts pleaded in the pleadings, and also to be able to recall and efficiently locate crucial documents in the bundles; this can only be done with an intimate familiarity with the said bundle;
- how the evidence will be led and the likelihood of them being subjected to rigorous cross-examination by the opposing lawyers as to the same; and
- to bring along to the trial, the original documents that they intend to rely on and the effect of not producing the same.

2. Witness(es)

Inform the client to advise the witness(es) concerned to also read and familiarise themselves with the contents of the documents set out in the bundles of documents which the client wishes to rely on. Witnesses must also be reminded on the importance of doing so, to enable them to recollect all material facts and testify lucidly for the trial to proceed expeditiously.

3. Fix appointment to meet lawyer to prepare for trial

Advise client to contact the Firm to make an appointment to meet with the lawyer in charge of the case. During this meeting, the lawyer should go through the pleadings with the clients and ensure that the client is able to recollect the facts pleaded and claims made.

4. Trial Dates, Time and Place, Name of Judge, Court Number etc...

Inform client the following details regarding the trial:-

- trial dates;
- time;
- full name and address/location of the court at which the client's attendance is required;
- name of the judge and the court number; and
- name and contact details of the lawyers that will be appearing in court on the trial dates.

5. Possibility of Settlement During Trial

Today, judges constantly make their best efforts to help clients to settle a matter before or during trial. Do make clients aware of this practice and advise them to be ready with possible scenarios and mandates for settlement, if any.

6. Fees

This would be a good juncture to remind clients to make payment towards the professional fees and disbursements. Clearly state that payment is required to be made before appearing at trial.

STRESS: Fact & Fiction

by Joel Low, PhD, Director & Clinical Psychologist, The Mind Psychological Services and Training

WE welcomed the birth of our second child a couple of weeks ago, and as you can imagine, it's been an interesting journey so far. And what I can tell you is this, anyone who's ever said to us that your second would be a breeze after your first, they've lied. Days blurring into night, managing the older child as she cries out for attention after 4 years of being the sole object of our focus, sandwiching the numerous hospital visits common with a newborn, stress has been a staple of our little family's diet in the past month.

S.T.R.E.S.S. That evil six letter word that is often spoken about in the harshest of terms. More often than not, when we hear of programs and workshops being conducted, it's about the ills of stress, and how we can combat, change, or reduce our exposure to it.

But is it really that bad? The honest to goodness answer is both yes and no. Stress in on it's own is a good thing if you really think about it. Imagine yourself as one of our caveman ancestors from centuries ago. You're wandering around the forest looking for some berries for dinner, or maybe even a nice prehistoric chicken. Now imagine if you're traipsing through dinosaur territory. Anyone of us would have your senses on high alert, and you would be hyper-aware to any possible sounds or signs that one of those giant dinosaurs may come and have you for dinner instead. That hyper-awareness occurs because we're stressing about the possibility of being eaten, and we prepare our bodies and mind to stay alive.

So we've established stress is a good thing. When we're stressed, our body goes into a state of fight or flight to prepare us to fight off or flee a danger point so that we stay alive. So if it's a good thing, how does it turn bad? And the answer to that is prolonged stress. Our bodies are meant to be stressed only for short bursts, hence fight or flight. Once we are able to fight off what stresses us, or

run away from it, the source of stress is removed and we're back to being normal and comfortable again.

Nowadays, our stressors are more permanent. For example, Malaysians face the stress of not knowing what to eat, traffic jams and bosses. And what's the one common factor for all this stressors? The fact that they won't be going anywhere anytime soon, resulting in us facing stress perpetually because we can neither run away, nor fight them off, legally anyways.

So when we can't change or remove our sources of stress, what we can change is ourselves then, or rather, or reaction towards the stressors. This forms one of the key foundations for stress management. Instead of seeing a stressor as doom and gloom, if we can change our perspectives about them, we are able to turn a stressor into something much more palatable. Not knowing what to eat stresses you eat? Look at is as an opportunity to have a food adventure for the day. Stuck in a traffic jam? Download an audiobook or podcast, and make your daily commute an educational one. As the cliché goes, behind every cloud is a river lining, and in this case, behind ever stressor is an opportunity.

Something else that you can do to manage your stress is to practice mindfulness. Mindfulness is one of the buzzwords that are thrown around nowadays to manage our stress, and is often made out to be more difficult than it actually is. A really simple way to do this would be to engage all of your 5 senses, here's how.

Sit in a quiet place where you won't be disturbed.

Put your phone on silent for next five minutes.

Close your eyes.

Imagine yourself in the room that you're in.

Can you build a scene in your mind of the room?

Starting with the door or windows, down to the colour of the floor or carpet, and the couch or chair you're sitting in.

Next, tune in to your ears, and have a listen to the sounds that are around you, followed by any smells that might be wafting through.

Following that, think about what you're feeling around you, like the clothes that you have on your back, or the couch that you're sitting on.

And to cap it all off, grab a drink of water or beverage of your choice, and really experience the taste of it on your mouth.

All of this should take about 5 minutes.

If you've done it all, congratulations!

You've just done mindfulness.

So remember, stress isn't as bad as people claim it to be. It really is a matter of perspectives, and how we want to deal with the stressors that we have. More often than not, we'll have stressors that can have some silver lining behind them. As for me, for every dirty diaper that we have to change, or 3.00 am feeds that I have to give, I'll always have that cute little giggle and smile waiting for me right after.

MALAYSIAN BAR
Mandatory PII SCHEME
DID YOU KNOW?

PII: DOES IT COVER CLAIMS INVOLVING FOREIGN LAW?

In the wake of globalisation, increasing number of Malaysian firms have begun to provide legal services to international clients on both local and international law. In doing so, the risk inherent in their practice increases – as they may be sued abroad in the unfortunate event things go south. Further, there is also risk of non compliance with the anti-money laundering and anti-terrorism financing regulations as now, it may be more difficult to carry out sufficient identification and background checks on the relevant parties.

In managing these risks, lawyers must:

- rely on good judgment and common sense to decide whether to take on inter jurisdictional or foreign work;
- look out for red flags to ensure that the transaction undertaken is not illegitimate;
- not cut corners in their due diligence processes; and
- decline to act if the work is beyond their competence or where their engagement in the matter defeats common sense.

The Mandatory PII Policy only provides indemnity against civil liability and costs arising from legal proceedings in Malaysia. Therefore, it is crucial for firms that venture into the global markets and act locally for international clients to purchase the optional World Wide Extension cover. This add on cover extends coverage to suits filed in courts outside of Malaysia, on condition that the work done or legal advice given does not involve foreign law.

If you would like to receive more information about the World Wide Cover, receive a quote or have any questions, please contact Jardine Lloyd Thompson Sdn Bhd at 03 2723 3388 or through email at mbar@jltasia.com.

Note: 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 are for guidance only. In the event of inconsistency between the English version and the Bahasa Malaysia version, the English version will prevail.

Case Scenario

A Malaysian firm represented several Tahitian clients (purchasers) to purchase properties in the United Kingdom. The firm provided advise to its clients on English land laws that governed. Later, when the transfer of the properties could not be effected due to the firm's negligence to apply and obtain the proper consent documents, the client filed a suit against the firm in the English courts. The firm duly notified the Insurer of the PII Scheme. Coverage was however excluded, as the work undertaken by the firm did not involve Malaysian law but foreign law ie English law. On the other hand, cover could have been provided if the properties were located in Malaysia and the transaction involved Malaysian law even though the suit against the Malaysian firm was filed in the English courts.

WORLD WIDE COVER: QUICK INFO

No.	Item	Description
1.	**Coverage**	• Anywhere in the world (except USA / Canada). • Must have valid practicing certificate in accordance with the Legal Profession Act 1976. • Subject to the insured practising Malaysian law and bound by all other terms and condition of the mandatory Certificate of Insurance ("**COI**").
2.	**Mandatory Limit & Base Excess**	• Limit of cover is as per the firm's Mandatory Limit for the year (excluding Top-up limit). • Base Excess applicable is as stated in item 9 of the Mandatory Schedule to COI. • Sub limits and increased base excess is applicable as stated in COI.
3.	**Premiums**	• To be assessed by Insurers subject to the completion and submission of the World Wide Cover Proposal Form.
4.	**Exclusions**	• Work performed or suits filed in USA / Canada and its protectorates (unless additional coverage is purchased for these jurisdictions is). • Work or legal advice involving foreign law. • Insured who are called to the Bar or its equivalent of another jurisdiction and: o maintains a practice in such foreign jurisdiction; o employed in another practice in such foreign jurisdiction; or o receives instruction in his capacity as a Member of the Bar or its equivalent of such foreign jurisdiction. • Other exclusions as listed in the COI.
5.	**Notification of claims and/or circumstances**	• To notify JLT immediately upon awareness of: o any Circumstances that may lead to a claim; or o a Claim; or o a Letter of Demand • To comply with the COI and notify claims/circumstances to JLT as soon as practicable but no later than **60 days**.

ANATOMI OPPORTUNIS - TREND TUNTUTAN TERKINI YANG BERPUNCA DARIPADA FROD DAN KETIDAKJUJURAN

oleh Dennis Goh, Echelon Claims Consultant Sdn Bhd

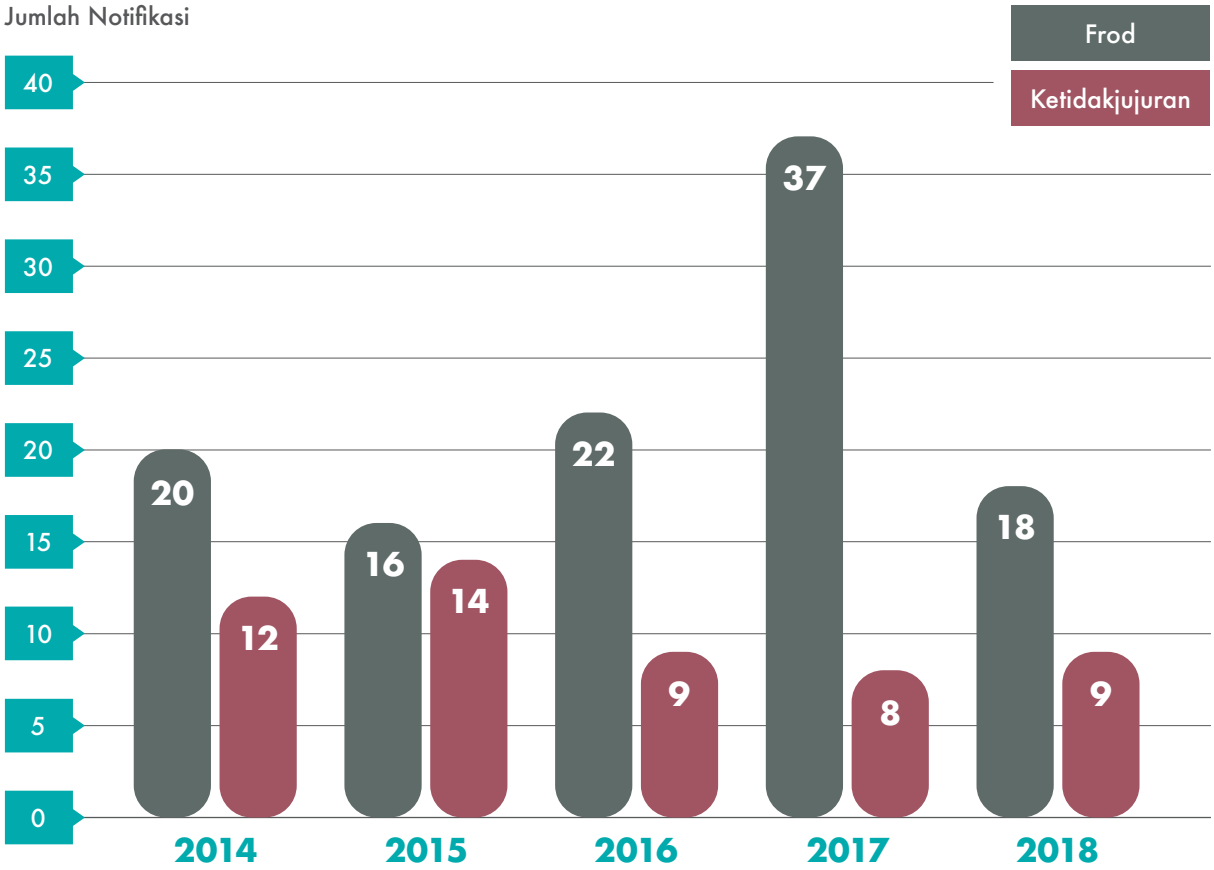
Peguam juga berkemungkinan menjadi mangsa frod dan ketidakjujuran, namun kebarangkalian ini sering dipandang remeh.

HAKIKATNYA, kebanyakkan firma guaman yang menjadi mangsa frod dan ketidakjujuran adalah firma guaman pemilikan tunggal dan firma guaman kecil yang menjalankan transaksi pemindahhakan. Terdapat juga risiko firma-firma guaman ini digunakan untuk pengubahan wang haram. Menjadi mangsa frod boleh menyebabkan polisi PII anda dituntut, manakala ketidakjujuran boleh menjurus kepada pertuduhan jenayah.

Dari tahun 2014 hingga 2018, sejumlah 165 kes melibatkan frod dan ketidakjujuran telah dilaporkan kepada Skim PII. 52 daripadanya adalah disebabkan oleh ketidakjujuran rakan kongsi atau pecah amanah oleh kakitangan firma. Sebanyak 113 daripadanya melibatkan frod yang dilakukan oleh klien atau orang ketiga yang menggunakan dokumen pengenalan yang dicuri untuk melakukan aktiviti penipuan.

Berdasarkan kajian kes, didapati bahawa, punca frod dan ketidakjujuran adalah disebabkan:

- kekurangan pengawasan;



Carta : Notifikasi yang diterima bagi frod dan ketidakjujuran dari tahun 2014 - 2018

- tiada sistem pengurusan risiko untuk mencegah, mengesan dan respon kepada frod dan ketidakjujuran;
- orang yang tidak berkelayakan atau pihak ketiga dibenarkan untuk berurusan dengan klien dan mengendalikan fail sendirian atau tanpa penyeliaan;
- kawalan kewangan dan perakuanan yang lemah di mana cawangan-cawangan firma beroperasi tanpa sebarang penyeliaan; dan
- pra menandatangani cek-cek dan membenarkan kakitangan atau pihak ketiga mendapat akses kepada akaun-akaun klien dan akaun-akaun firma.

JENIS-JENIS FROD DAN KETIDAKJUJURAN

Frod dan/atau ketidakjujuran boleh dibahagikan kepada dua jenis:

- frod dalaman dan / atau ketidakjujuran;
- frod luaran.

Frod Dalaman dan/atau Ketidakjujuran

Frod dalaman dan/atau ketidakjujuran adalah yang paling sukar dikesan kerana kebiasannya ia dilakukan oleh rakan kongsi atau kakitangan tertentu yang telah berkhidmat lama serta yang mempunyai pengetahuan mendalam tentang operasi firma. Ia melibatkan penyelewengan wang daripada akaun klien atau akaun firma, penyalahgunaan cek yang telah ditandatangani dan/atau pemalsuan dokumen. Ia juga boleh berlaku secara tidak langsung, dimana barangan milik firma seperti kepala surat firma disalahgunakan untuk membuat kerja peribadi dimana kerja itu dikenakan bayaran tanpa pengetahuan firma. Selalunya, perkara sebegini hanya ditemui selepas suatu tuntutan diterima oleh firma.

Terdapat satu kes di mana mimpi buruk seorang peguam bermula setelah kembalinya dari percutian. Sebelum bercuti, peguam telah mengamanahkan kerani firma yang telah berkhidmat bersama lebih 20 tahun untuk menyimpan buku-buku cek dan fail-fail akaun. Kerani tersebut pula telah mengambil kesempatan dengan ketiadaan peguam untuk memalsukan tandatangan peguam tersebut pada cek-cek dan telah menyeleweng wang berjumlah RM 100,000 dari akaun-akaun firma.

Dalam suatu lagi kes, seorang kerani pemindahhakan di sebuah firma telah bersuhabat dengan seorang agen hartanah dan mengendalikan fail-fail pemindahhakan tanpa pengetahuan rakan-rakan kongsi yang lain. Kerani tersebut telah mengeluarkan surat dengan menggunakan kepala surat firma tersebut dan memalsukan tandatangan rakan-rakan kongsi. Ketidakjujuran dan/atau frod itu hanya ditemui oleh rakan-rakan kongsi selepas firma menerima writ saman.

Skim Penipuan Pengurus Pejabat

Firma-firma guaman juga turut menjadi mangsa kepada satu siri skim penipuan (sehingga kini) yang dilakukan oleh seorang individu. Dalam skim penipuan ini, individu tersebut akan memberi jaminan untuk membawa fail-fail pemindahhakan atau fail pengutipan hutang. Firma hanya perlu:

- melantik individu tersebut sebagai pengurus pejabat; dan
- membuka suatu cawangan firma dan memberikan individu tersebut cek yang telah ditandatangani atau memberi akses kepada akaun klien firma.

Seterusnya, individu tersebut akan berurusan dengan klien dan mengendalikan fail-fail secara berasingan – yang membolehkannya melakukan pelbagai jenis frod pemindahhakan.

Skim penipuan ini bukanlah baru. Badan Peguam telah pun memberi amaran kepada peguam-peguam tentang skim ini melalui surat perkeliling pada tahun 2017[1].

Kini, skim penipuan ini berlaku kembali dimana Skim PII telah sekali lagi mula menerima notifikasi-notifikasi baru yang menyusur akibat skim penipuan ini. Badan Peguam telah sekali lagi mengisu surat perkeliling sehubungan dengan perkara ini[2].

Frod Luaran

Frod luaran yang dilakukan oleh pihak ketiga adalah melibatkan pelbagai penipuan yang

[1] Sila lihat Surat Perkeliling Majlis Peguam No. 158/2017 bertarikh 19 Julai 2017.

[2] Sila lihat Surat Perkeliling Majlis Peguam No. 201/2019 bertarikh 26 Sept 2019 di mukasurat 37.

merangkumi teknik yang berbeza. Kepintaran dan kebolehan penipu-penipu ini adalah pelbagai, di mana mereka menyalahgunakan perkhidmatan guaman untuk melakukan frod terhadap orang awam dan juga pihak bank. Lebih buruk lagi, peguam pula langsung tidak mengesyaki apa-apa.

Frod Pemindahhakan

Sejumlah besar frod luaran yang telah dilaporkan kepada Skim PII melibatkan frod hartanah dimana peguam (tidak sedar) telah terlibat dengan penipu yang menyamar sebagai pemilik tanah. 'Klien-klien' tersebut menggunakan identiti pemilik sebenar sebagai dokumen identiti mereka. Selepas menyedari berlakunya frod, pemilik sebenar akan menyaman pembeli tidak bersalah dan juga peguam yang telah mengendalikan transaksi tersebut.

Firm-firma guaman kecil yang beroperasi dibandar-bandar semenanjung dan menjalankan aktiviti pemindahhakan adalah yang sering dijadikan sasaran. Ini berkemungkinan kerana nilai hartanah dibandar adalah lebih tinggi maka 'keuntungan' dioptimumkan lebih cepat. Kajian juga menunjukkan bahawa peguam-peguam yang menjadi mangsa frod adalah mereka yang berpengalaman dalam transaksi pemindahhakan. Peguam-peguam ini juga langsung tidak menyangka mereka boleh menjadi mangsa kepada skim penipuan sebegitu.

Jadi, di manakah silapnya? Berdasarkan kajian semula kes-kes frod luaran yang dilaporkan kepada Skim PII, didapati bahawa apa yang berlaku adalah, firma-firma guaman gagal untuk menjalankan prosedur "Kenali Klien Anda" (lihat kotak di bawah). Pada asasnya, selain dari membandingkan identiti klien dengan identiti pada surat geran tanah, ia juga penting untuk peguam mendapatkan dokumen-dokumen pengesahan tambahan pemilikan, seperti resit-resit cukai tanah dan bil-bil utiliti.

Keduanya, apabila berjumpa seorang klien yang mengemukakan surat kuasa wakil ataupun menyatakan dirinya selaku wakil sebuah syarikat, adalah perlu untuk seseorang peguam mendapat pengesahan dengan menghubungi pihak syarikat terbabit sebelum urusan dijalankan. Ini akan mengurangkan risiko menjadi mangsa penipuan mahupun berurusan dengan dokumen-dokumen palsu.

Penggubahan Wang Haram

Selain daripada frod hartanah, firma-firma guaman juga turut menjadi sasaran individu yang terlibat dengan pengubahan wang haram. Proses pengubahan ini adalah di mana firma digunakan untuk membeli hartanah menggunakan dana haram ataupun untuk menerima wang ke dalam akaun klien dan seterusnya memindahkan ke tempat lain. Kegagalan untuk mengesan perkara ini bukan sahaja suatu pelanggaran akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001, namun ia juga boleh menyebabkan tindakan jenayah diambil terhadap peguam dan pihak-pihak yang terlibat.

Serangan Siber

Serangan siber ke atas firma-firma guaman telah menjadi lebih kerap. Ini adalah di mana sistem komputer diserang perisian hasad (malware) dan dijangkiti virus yang boleh mendedahkan sistem komputer kepada kecurian maklumat peribadi yang terkandung di dalamnya.

Maklumat peribadi juga boleh dicuri melalui media sosial, di mana pencuri boleh memanipulasi seseorang untuk melakukan transaksi atau membocorkan maklumat peribadi. Terdapat juga insiden di mana firma menerima emel kononnya daripada klien yang mengarahkannya menghantar wang kepada satu akaun bank lain yang diberikan klien sebelum itu. Kemudian, didapati bahawa akaun baru tersebut adalah dibawah kawalan penipu. Ataupun sebaliknya, klien menerima emel kononnya daripada peguam meminta klien untuk memindahkan wang contohnya berhubungan transaksi pemindahhakan.

Cara baik untuk mengelak daripada menjadi mangsa kepada serangan siber seperti ini adalah dengan mengambil lebih inisiatif dan menyemak semua maklumat dengan teliti semasa mengendalikan transaksi. Apabila menerima arahan klien untuk memindahkan wang, adalah amalan baik untuk menghubungi klien secara terus untuk mengesahkan arahan tersebut.

KESIMPULAN

Frod dan ketidakjujuran merupakan dua ancaman bahaya yang sedang menyerang firma guaman di Malaysia pada masa ini, terutamanya dalam urusan pemindahhakan. Cara terbaik untuk mengatasi masalah ini adalah dengan memperkukuhkan sistem pertahanan, sebagai contoh: mengenalpasti risiko sewaktu mengendalikan sesebuah kes. Pastikan polisi dan prosedur dituruti bagi mengelakkan kesalahan dan kecuaian. Semak polisi dan prosedur sekerap mungkin dan pastikan ia dipatuhi oleh semua. Pupuk kesedaran tentang frod dan berikan latihan anti frod di dalam firma.

Lakukan semakan rawak fail-fail secara berkala dan berwaspada terhadap rakan-rakan sekerja yang mungkin sedang mengalami tekanan mental atau kewangan – dan ingat, frod yang mungkin berlaku adalah dirancang dan sahih. Adalah tanggungjawab anda untuk mengesan perbezaan di antara suatu frod dan transaksi sah.

★ **jalankan semakan teliti terhadap identiti**
contoh-contoh dokumen-dokumen identiti: salinan kad pengenalan, carian bankrapsi, resit cukai tanah, pulangan cukai (yang mana berkenaan).

Sekiranya anda dapat mengesan sesuatu percanggahan dalam dokumen-dokumen identiti, teruskan dengan lebih berhati-hati.

★ **jalankan semakan latar belakang**
ambil masa untuk mengenali klien dengan lebih baik.

Sekiranya klien meragukan, tidak menunjukkan minat pada butir-butiran transaksi atau dalam keadaan tergesa-gesa untuk melengkapkan transaksi, ini adalah petanda bagi anda, juga teruskan dengan lebih berhati-hati.

PENYELEWENGAN WANG KLIEN BOLEH MENGAKIBATKAN PEGUAM DIBATALKAN DARI DAFTARAI

oleh Dennis Goh, Echelon Claims Consultant Sdn Bhd

Peguam tahu adalah salah untuk "mencuri" daripada klien. Sebagai seorang fidusiari, ia memerlukan seseorang peguam itu untuk melakukan lebih dari 'menjauhi mencuri'. Peguam seharusnya bersifat jujur, amanah dan setia terhadap klien mereka.

KEBIASAANNYA peguam terlibat dengan masalah ini apabila "meminjam" wang klien dari akaun klien dengan niat untuk membayarnya semula kemudian. Walapupun niat mencuri atau menyeleweng tidak timbul, tindakan "meminjam" wang dari akaun klien adalah salah laku profesional yang serius, pecah amanah dan melanggar prinsip pemegang amanah.

Baru-baru ini, dalam kes Majlis Peguam Malaysia v LYY [2018], Mahkamah Persekutuan telah mengesahkan keputusan Mahkamah Rayuan untuk membatalkan daftarai peguam yang telah menggunakan wang klien bagi tujuan peribadi. Pengesahan Mahkamah Persekutuan ini sekali gus mengesahkan keputusan asal Lembaga Tatatertib Peguam Bela & Peguam Cara ("Lembaga Tatatertib") untuk membatalkan nama peguam dari daftarai. Mahkamah juga menyatakan bahawa ianya tidak kira jika peguam telah meyakinkan klien untuk memulangkan wang yang diambil dan seterusnya memulangkannya.

Kes PYY

LYY, seorang peguam yang sedang mengalami masalah kewangan di mana, LYY terpaksa mencagar rumahnya apabila LYY gagal mendapatkan pinjaman bank untuk menyelesaikan masalah kewangannya. Namun, masalah kewangan LYY semakin teruk selepas itu dan bayaran balik pinjaman mula tertunggak. Ini telah mengakibatkan prosiding penyitaan diambil oleh bank. Untuk mengelak rumahnya dirampas pihak bank dan untuk membayar balik tunggakan kepada bank, LYY telah memilih untuk "meminjam" dan menggunakan wang klien dari akaun klien. Akan tetapi apabila masa tiba untuk membayar kembali wang tersebut, LYY tidak mampu berbuat demikian.

Lanjutan kepada itu, klien telah memfailkan aduan kepada Lembaga Tatatertib. Sejurus selepas itu, LYY telah berhubung dan menerangkan masalahnya kepada klien serta meyakinkan klien bahawa LYY akan membayar balik wang tersebut dengan segera dan meminta agar klien menarik balik aduan tersebut. Klien telah berbuat demikian. Seperti dijanji, LYY telah memulangkan wang tersebut dalam masa 3 bulan. Walauapapun, Majlis Peguam Malaysia telah mencelah dan meneruskan aduan tersebut. Selepas mendengar dan memutuskan aduan tersebut secara terus, Lembaga Tatatertib telah

memutuskan nama LYY dibatalkan dari daftarai.

Tidak puas hati dengan keputusan tersebut, LYY telah memfailkan rayuan kepada Mahkamah Tinggi. Mahkamah Tinggi pula memutuskan tiada ketidakjujuran ditemui pada pihak LYY dan bahawa pengembalian wang telah dibuat kepada klien. Dengan itu Mahkamah Tinggi tersebut telah menggantikan keputusan Lembaga Tatatertib dengan suatu keputusan penggantungan selama 3 tahun.

Seterusnya, Majlis Peguam Malaysia telah memfailkan rayuan kepada Mahkamah Rayuan. Mahkamah Rayuan pula telah menolak keputusan Mahkamah Tinggi dan mengesahkan semula keputusan Lembaga Tatatertib. Antara lain, Mahkamah Rayuan memutuskan:-

- masalah kewangan LYY bukanlah suatu alasan untuk mengambil dan menyalahgunakan wang dalam akaun klien untuk kegunaan peribadi;

- sebagai peraturan asas, peguam perlu patuh ketat kepada akujanji yang diberikan olehnya;

- keyakinan orang awam pada profesion undang-undang dan juga kepada sistem akujanjji profesional akan jatuh sekiranya peguam-peguam melanggar akujanji yang diberikan; dan

- seorang pemegang amanah adalah seseorang yang boleh dipercayai dan pecah amanah bukanlah sekadar perlanggaran akujanji, bahkan ia juga merupakan mengkhianati kepercayaan seseorang.

Sehubungan dengan fakta bahawa pengembalian wang kepada klien telah pun dibuat oleh LYY, Mahkamah Rayuan memutuskan bahawa ini tidak lebih daripada memulangkan apa yang patut. Pemulangan ini tidak mengurangkan keseriusan salah laku professional yang telah dilakukan oleh LYY, di mana telah pecah amanah dan menyeleweng wang klien.

“...Mahkamah Rayuan memutuskan bahawa ...pemulangan ini tidak mengurangkan keseriusan salah laku professional yang telah dilakukan oleh LYY, di mana telah pecah amanah dan menyeleweng wang klien.”

RISK AWARE!

A REVIEW OF YOUR FIRM

INISIATIF tahunan, Risk Aware! - A Review of Your Firm, untuk pengurusan risiko baru dimuktamadkan untuk tahun 2019. Tujuan kajian ini dilakukan adalah untuk mendokumenkan proses dan prosedur pengurusan risiko yang terdapat dalam firma guaman; mengenal pasti bahagian lemah atau risiko dalam firma; dan untuk memberi cadangan untuk penambahbaikan.

Sebanyak 16 buah firma guaman dari negeri Perlis, Kedah, Penang, Perak, Pahang dan Negeri Sembilan telah mengambil bahagian dalam Kajian ini yang dijalankan bermula dari bulan Julai 2019 hingga bulan Oktober 2019.

Rencana pendek ini bertujuan untuk menunjukkan kepada ahli-ahli jenis-jenis kesilapan yang kerap ditemui semasa Kajian ini dibuat. Antaranya adalah:-

(1) bergantung sepenuhnya kepada pekerja atau tiada penyeliaan terhadap pekerja;
(2) menugaskan pekerja yang tidak mempunyai latihan awal atau pengetahuan tentang kerja yang diberi;
(3) pra menandatangani cek-cek;
(4) tidak mempunyai sistem simpanan selamat bagi dokumen-dokumen asal, buku-buku cek akaun klien dan akaun firma;
(5) tidak membuat carian tanah secukupnya; dan
(6) isu-isu rakan-rakan kongsi seperti:
    (a) tiada perjanjian perkongsian;
    (b) rakan-rakan kongsi tidak peka tentang tugas, tanggungjawab dan liabiliti yang terlibat dalam sesebuah perkongsian;
    (c) rakan-rakan kongsi lepas tangan apabila akaun klien diasingkan diantara rakan-rakan kongsi, berdasarkan portfolio yang dibuat (contohnya, rakan kongsi A yang mengendalikan transaksi pemindahhakan mengekalkan suatu akaun klien dan rakan kongsi B yang membuat kes litigasi mengekalkan suatu akaun klien yang lain);
    (d) rakan-rakan kongsi dalam perkongsian adalah hanya pada nama tetapi tidak mengamalkan guaman secara aktif. Contohnya di mana rakan kongsi hanya meminjam nama untuk memenuhi sesuatu kriteria untuk mendapat fail-fail portfolio spesifik;
    (e) hanya satu tandatangan diperlukan untuk akaun klien dan pejabat.

Ahli-ahli dinasihatkan agar memberi perhatian terhadap penemuan-penemuan di atas serta mengambil langkah yang sewajarnya.

KAJIAN KES 1

Adibah dan Azizah adalah rakan kongsi disebuah firma guaman dimana Adibah mengendalikan fail pemindahhakan manakala Azizah mengendalikan fail litigasi sivil.

Selepas 2 tahun pertama, Adibah mula perasan bahawa terdapat perubahan terhadap tingkah laku Azizah di mana Azizah sering lambat ke firma dan selalu kelihatan murung. Adibah pernah cuba mendekati Azizah untuk memastikan tiada sebarang isu tetapi Azizah menyatakan bahawa tiada sebarang isu dan semuanya seperti biasa. Dengan itu, Adibah pun meneruskan kerja seperti biasa.

Beberapa minggu selepas itu, Azizah memberitahu Adibah bahawa dia ingin meninggalkan perkongsian tersebut dan pergi secara tiba-tiba.

2 bulan selepas Azizah meninggalkan perkongsian tersebut, Adibah menerima surat tuntutan daripada seorang klien di mana klien tersebut mendakwa bahawa:-

- firma lambat dalam melengkapkan transaksi Perjanjian Jual Beli ("PJB"); dan
- berpunca dari situ, penyewa/pembeli terpaksa membayar jumlah sewa yang besar kepada pemilik/penjual sehingga transaksi PJB dilengkapkan.

Adibah telah menyemak fail klien tersebut dan mendapati bahawa bayaran duti setem kepada Pejabat Tanah telah terlambat selama setahun.

Ini menyebabkan Adibah menjalankan audit ke atas semua fail yang ditinggalkan oleh Azizah. Setelah selesai, Adibah mendapati terdapat tiga fail tuntutan yang berpotensi dan Adibah telah dengan segera memberi notifikasi kepada syarikat Insurans.

Tuntutan ini boleh dielakkan, sekiranya:-

- terdapat 'polisi berhenti kerja' di firma yang menerangkan kepada seseorang yang meninggalkan firma untuk:-
  - memastikan kesemua fail telah dikemaskini;
  - menyediakan senarai fail yang telah dikendalikan;
  - menganalisa fail-fail dengan rakan kongsi atau peguam lain di firma untuk mengetahui status dan mengenalpasti tugas yang belum selesai;

- menyediakan senarai tugas yang belum selesai bagi setiap fail;
- memastikan tarikh akhir, tempoh sesuatu isu, tarikh untuk diperhatikan atau tarikh-tarikh sebutan;
- memastikan bahawa semua tarikh penting telah dimasukkan dan dikemaskini;

❇ terdapat panduan di firma untuk rujukan peguam atau kakitangan sekiranya berhadapan dengan fail-fail bermasalah. Mereka juga perlu memaklumkan kepada rakan-rakan kongsi atau penyelia untuk arahan seterusnya;

❇ terdapat senarai semak (untuk manfaat peguam dan kakitangan) yang mengandungi tarikh-tarikh akhir dan penting seperti, tarikh PJB, tarikh penyelesaian, tempoh masa untuk penyerahan untuk pulangan cukai keuntungan harta tanah kepada Lembaga Hasil, tarikh pelepasan pinjaman bank dan tarikh bayaran baki jualan kepada Penjual;

❇ firma menjalankan analisa fail-fail yang dikendalikan oleh para peguam dan pekerja di dalam firma setiap minggu; dan

❇ kakitangan yang ditugaskan dipantau dan diselia dengan kerap.

KAJIAN KES 2

Terdapat suatu hartanah besar berdekatan suatu projek lebuh raya yang sedia untuk dijual ("hartanah tersebut"). Penjual hartanah tersebut adalah sebuah syarikat bernama Toggle Development Sdn Bhd.

Makcik Julie, salah seorang daripada lima pengarah dalam Toggle telah meminta anak saudaranya, Simmy daripada Tetuan Simmy, Song & Co ("firma tersebut") untuk mengendalikan segala perkara berhubung penjualan hartanah tersebut. Kelima-lima pengarah di Toggle

mempunyai pertalian saudara antara satu sama lain termasuklah dengan Simmy. Simmy setuju untuk bertindak bagi pihak Toggle. Pada peringkat ini, bagi tidak menyinggung hati Makcik dan juga saudaranya, Simmy tidak mendapatkan waran untuk bertindak.

Selepas mendengar khabar jualan hartanah tersebut, seorang pembeli prospek, syarikat Rich Money Sdn Bhd ("Rich Money") telah menghubungi firma tersebut untuk pengesahan jualan. Selepas pengesahan, Rich Money telah membuat tawaran untuk membeli hartanah tersebut. Simmy pula telah memaklumkan tawaran tersebut kepada Makcik Julie.

Beberapa hari selepas itu, Makcik Julie memberi arahan kepada Simmy bahawa kesemua pengarah Toggle setuju dengan tawaran tersebut dan meminta Simmy untuk menerima tawaran tersebut.

Sejurus selepas itu, Rich Money, melalui peguamcaranya, Tetuan Yummy Yip & Co ("peguamcara tersebut") telah mengemukakan kepada firma tersebut, cek untuk deposit awal ("cek pertama") serta suatu draft Perjanjian Jual Beli ("PJB") untuk mendapatkan komen-komen firma tersebut.

Simmy telah menyediakan segala dokumen untuk ditandatangani oleh pengarah-pengarah Toggle. Atas permintaan Simmy, Makcik Julie telah mengatur perjumpaan diantara Simmy dan pengarah-pengarah Toggle untuk menandatangani semua dokumen-dokumen yang disediakan.

Hanya semasa perjumpaan, Simmy mendapat tahu bahawa salah seorang daripada pengarah Toggle membantah penjualan hartanah tersebut. Berikutan isu-isu yang dikemukakan pengarah ini, pengarah-pengarah lain pun membuat keputusan untuk tidak menjual hartanah tersebut.

Seterusnya, Simmy telah memaklumkan peguamcara tersebut bahawa Toggle tidak lagi ingin untuk menjual hartanah tersebut dan telah memulangkan cek pertama tersebut.

Dalam satu langkah terdesak, Rich Money telah mengarahkan peguamcara tersebut untuk mendesak Toggle menjual hartanah tersebut. Maka, peguamcara tersebut telah menghantar balik cek pertama tersebut serta suatu cek deposit kedua bersama-sama PJB yang dimuktamadkan dan dilaksanakan kepada firma tersebut. Akan tetapi firma tersebut enggan menerima dokumen-dokumen ini dan telah mengisu surat menyatakan bahawa firma tersebut tidak lagi bertindak untuk Toggle.

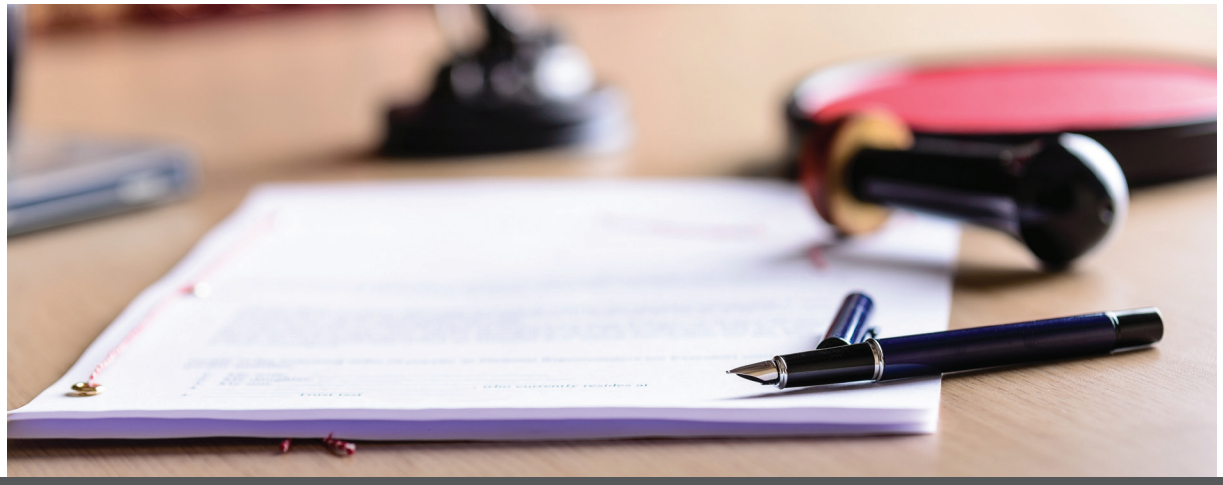
Rich Money marah dengan perkara ini telah memfailkan tindakan Mahkamah terhadap firma tersebut dan Toggle.

Antara lain, Rich Money mendakwa bahawa firma tersebut telah memberinya jaminan palsu bahawa ia mewakili Toggle sedangkan ia tidak. Rich Money juga mendakwa bahawa berikutan jaminan palsu ini, Rich Money telah mendorongnya untuk memasukki PJB tersebut.

Terhadap Toggle, Rich Money memohon suatu perintah spesifik untuk Toggle melaksanakan PJB tersebut.

Tuntutan ini boleh dielakkan sekiranya:-

- firma tersebut meminta Toggle memberikan resolusi syarikat yang melantiknya sebagai peguam yang mengendalikan penjualan hartanah tersebut;
- surat dihantar kepada Toggle untuk mengesahkan arahan;
- Toggle dimaklumkan dari masa ke semasa berhubung perkembangan fail tersebut;
- Firma tersebut menjangka kemungkinan isu konflik kepentingan muncul di masa depan dan untuk mengurangkan risiko ini, firma tersebut mendapatkan surat pengecualian daripada Toggle.



SURAT PERINGATAN PERBICARAAN

oleh Shamine Parisamy, Penasihat Risiko Undang-undang, Majlis Peguam Malaysia

APABILA tarikh perbicaraan menghampiri, adalah penting untuk peguam menghantar surat peringatan perbicaraan ("surat tersebut") mengingatkan klien agar bersedia untuk perbicaraan.

Isi kandungan surat ini perlu menghantar mesej yang betul kepada klien, contohnya, mengingatkan mereka bersedia untuk menghadapi perbicaraan. Kerja-kerja persediaan ini amat penting bagi membolehkan klien bergerak untuk memulakan kes mereka dengan baik serta melancarkan proses semasa perbicaraan.

Surat tersebut perlu mengandungi maklumat penting berikut:-

1. Ikatan Pliding dan Ikatan Dokumen

Surat tersebut perlu merujuk kepada salinan Ikatan Pliding dan Ikatan Dokumen yang telah dikirimkan secara progresif kepada klien sebelum ini, dan mengingatkan mereka untuk menelitinya sekali lagi.

(a) Ikatan Pliding

Klien perlu diingatkan untuk meneliti dan membiasakan diri dengan isi kandungan Ikatan Pliding. Klien perlu diingatkan agar:-

- jelas mengenai tuntutan atau pembelaan yang dibuat;
- jelas mengenai pernyataan-pernyataan dan fakta-fakta yang dibuat dalam Pernyataan Tuntutan atau Pernyataan Pembelaan; dan
- jelas bahawa kes mereka tertakluk kepada pernyataan-pernyataan dan fakta-fakta dalam Pernyataan Tuntutan atau Pernyataan Pembelaan dan faham bahawa sebarang penyimpangan darinya boleh memberi kesan buruk kepada kredibiliti mereka dan/ atau memprejudis tuntutan atau pembelaan mereka;

Klien hendaklah juga diingatkan untuk segera memberitahu peguam sekiranya mereka atau saksi mereka mendapati bahawa terdapatnya sebarang ketidaktepatan yang besar atau kesalahan dalam pernyataan-pernyataan atau fakta-fakta yang dinyatakan dalam Pernyataan Tuntutan atau Pembelaan. Walapupun ini adalah sesuatu yang patut dielakkan dibuat semasa tarikh perbicaraan semakin hampir, tetapi ianya perlu, supaya langkah segera boleh diambil untuk meminda Pernyataan Tuntutan atau Pernyataan Pembelaan.

(b) Ikatan Dokumen

Klien hendaklah diingatkan untuk meneliti dokumen dalam Ikatan Dokumen untuk memastikan semua dokumen yang ingin mereka kemukakan untuk membuktikan pernyataan-pernyataan atau fakta-fakta yang ditimbulkan dalam Pernyataan Tuntutan atau Pembelaan telah dimasukkan dalam ikatan tersebut. Mereka perlu segera memaklumkan kepada peguam sekiranya sebarang dokumen penting tercicir atau tertinggal dari ikatan tersebut.

Berikut perlu dibawa kepada perhatian klien:-

- dalam bahagian mana (bahagian A, B atau C) Ikatan Dokumen sesuatu dokumen penting telah diletakkan;
- kepentingan meletakkan dokumen-dokumen di setiap bahagian serta cara mana keterangan akan dikemukakan;
- pentingnya mereka membiasakan diri dengan isi kandungan dokumen-dokumen yang hendak disandarkan sebagai bukti;
- keperluan mereka merujuk dokumen-dokumen dalam ikatan merujuk silang fakta-fakta dalam pliding, dengan pantas dan efisien, serta keperluan untuk mereka mencari dokumen penting dalam ikatan dengan efisien; semua ini hanya boleh dilakukan dengan pengetahuan peribadi yang jelas;
- cara mana keterangan akan dipimpin dan kemungkinan ia disoal balas semasa pemeriksaan silang oleh peguam menentang; dan
- untuk membawa bersama mereka semua dokumen-dokumen asal yang disandarkan dan kesannya jika tidak mengemukakan dokumen-dokumen berikut.

2. Saksi- Saksi

Minta klien memaklumkan saksi-saksi mereka untuk turut membaca serta membiasakan diri dengan isi kandungan dokumen-dokumen yang hendak disandarkan, dan juga untuk mengingati fakta-fakta kes supaya saksi-saksi boleh memberi keterangan secara jelas dan perbicaraan dapat berjalan dengan lancar.

3. Membuat janji temu dengan peguam untuk bersedia bagi perbicaraan

Nasihatkan klien untuk menghubungi Firma dan membuat janji temu perjumpaan dengan peguam yang mengendalikan kes. Semasa perjumpaan, peguam yang mengendalikan kes perlu menelaah Ikatan Pliding bersama-sama klien dan memastikan klien boleh mengimbas kembali fakta-fakta yang diplidkan dan tuntutan-tuntutan yang dibuat.

4. Tarikh Bicara, Masa, Tempat, Nama Hakim, Nombor Mahkamah dan lain-lain...

Beritahu klien perkara-perkara berikut berhubung bicara:-

- tarikh-tarikh bicara;
- masa;
- nama penuh dan alamat/lokasi Mahkamah di mana klien perlu hadirkan diri;
- nama Hakim dan Nombor Mahkamah; dan
- nama dan butiran informasi peguam yang mewakili klien pada tarikh-tarikh bicara.

5. Kemungkinan kes diselesaikan

Kini, hakim-hakim berusaha untuk menyelesaikan kes sebelum atau semasa perbicaraan. Maklumkan praktis ini kepada klien dan minta klien bersedia dengan senario rundingan serta mandat untuk penyelesaian.

6. Yuran

Ini adalah waktu terbaik untuk mengingatkan klien untuk membuat bayaran terhadap yuran guaman dan disbusmen. Nyatakan dengan terang bahawa bayaran perlu dibuat sebelum peguam hadir Mahkamah.

TEKANAN: Fakta & Fiksyen

oleh Joel Low, PhD, Pengarah dan Psikologi Klinikal, The Mind Psychological Services and Training

KAMI baru sahaja menyambut kelahiran anak kedua kami beberapa minggu lepas. Sepertimana yang boleh dibayangkan, ia adalah suatu perjalanan istimewa setakat ini. Dan saya boleh jamin ini, sesiapa yang menyatakan kepada kami bahawa bersalin untuk kali kedua adalah lebih senang dari yang pertama, adalah menipu. Hari menjadi kabur ke malam kerana tanggungjawab kami kini adalah untuk memberi perhatian secukupnya kepada anak pertama kami yang sering menangis untuk perhatian dan pada masa yang sama pula, perlu membawa anak baru lahir pergi balik ke hospital untuk pemeriksaan kesihatan. Ini bukanlah sesuatu yang mudah dilakukan.

TEKANAN. Satu perkataan yang kerap dilaungkan sebagai kejam, lebih-lebih lagi apabila kita mengikuti program atau seminar yang memberi kesedaran berkenaan bahayanya tekanan dan bagaimana ia boleh dilawan, diubah, atau dikurangkan.

Tetapi, adakah tekanan sebenarnya satu benda yang buruk? Jawapan jujurnya, ya, benar dan tidak benar. Tekanan itu sendiri sebenarnya bagus jika apa yang kita fikirkan adalah baik. Bayangkan begini: anda berada di zaman dahulu kala, berabad lamanya, anda sedang berkelana di hutan mencari beri untuk makan malam, ataupun ayam. Sekarang bayangkan anda melintas melalui wilayah dinasor. Deria anda akan menjadi lebih peka kepada bunyi di sekeliling anda, mana tahu dinasor pula yang akan makan anda untuk malam itu. Kesedaran melampau ini berlaku kerana kita tertekan dengan kemungkinan anda dimakan, maka untuk mempertahankan diri kita, kita menyediakan diri dan minda kita dalam posisi sedia.

Dengan ini, kita telah berfikir bahawa tekanan adalah suatu perkara yang baik. Apabila kita terasa tertekan, kita akan menyediakan diri kita untuk berlawan atau lari daripada bahaya, untuk terus selamat. Maka, sekiranya tekanan adalah suatu perkara yang baik, bagaimanakah ia bertukar menjadi buruk?

Kini, jenis tekanan yang kita hadapi adalah lebih kekal. Contohnya, di Malaysia tekanan am yang

biasa adalah berhubung menu untuk makan, kesesakan trafik dan bos. Jadi apakah faktor am bagi kesemua jenis tekanan ini? Kenyataan bahawa faktor-faktor sebegini tidak akan hilang dengan segera, mengakibatkan kita berhadapan dengannya secara berterusan, kerana kita tidak boleh lari ataupun melawannya, melalui undang-undang.

Jadi, walaupun punca tekanan tidak boleh ditukar, namun apa yang boleh ditukar adalah diri kita sendiri, ataupun respons diri kita terhadap jenis-jenis tekanan ini. Inilah asas bagi mengurus tekanan. Adalah lebih baik jika kita memberi pandangan perspektif yang positif kepada jenis-jenis tekanan selain daripada melihatnya di bawah cahaya takdir dan suram. Tidak perlu untuk terasa tertekan jika tidak ada idea apakah hidangan hari ini. Lebih baik anda menukar situasi ini kepada pengalaman makan untuk hari itu. Tersangkut dalam kesesakan trafik? Anda boleh menjadikan perjalanan harian anda kepada suatu yang lebih berpendidikan dengan memuat turun buku audio atau 'podcast'. Seperti kata ungkapan "ada pelangi selepas hujan".

Mempraktikkan kesedaran minda adalah satu perkara lain yang anda boleh lakukan. Kesedaran minda adalah suatu dengungan perkataan yang telah menjadi kebiasaan pada masa kini. Ia juga telah dijadikan suatu yang lebih sukar daripada realitinya. Satu cara yang senang untuk mempraktikkan kesedaran minda adalah dengan melibatkan kelima-lima deria anda. Inilah caranya.

DUDUK di tempat yang sepi di mana anda tidak akan diganggu.

TUKAR mod telefon bimbit anda kepada senyap untuk lima minit.

TUTUP mata anda.

BAYANGKAN anda berada di dalam bilik di mana anda berada.

Bolehkah anda membina suatu senario bilik itu dalam minda anda?

Bayangkanlah perkara-perkara dalam bilik itu seperti, pintu, tingkap, warna lantai atau warna karpet, dan juga kerusi yang anda duduk atas.

Seterusnya, gunakan deria dengar anda dan dengar bunyi-bunyi di sekitar anda.

Selepas itu, gunakan deria hidu anda dan cuba hidu sebarang bau di sekeliling anda.

Kemudiannya, sentuh dan rasa persekitaran anda, seperti rasa baju pada badan anda, kerusi yang anda duduki.

Sebagai konklusi, ambil dan minum segelas air atau minuman kesukaan anda; rasai keenakan minuman tersebut.

Kesemua ini tidak akan mengambil masa lebih dari 5 minit.

Jika anda telah melakukan latihan ini, Tahniah!

Anda telah mempraktikkan kesedaran minda anda.

Jadi ingatlah, tekanan bukanlah sesuatu yang buruk sepertimana yang didakwa. Ia adalah berhubung perspektif, dan bagaimana cara kita ingin menguruskan faktor-faktor tekanan. Terdapat faktor-faktor yang boleh ditukar jadi manjadi positif. Bagi setiap lampin kotor yang perlu ditukar ataupun bagi setiap penyusuan 3 pagi yang perlu dibuat, sama sahaja. Saya tetap akan mendapat satu anugerah senyuman terindah yang menanti selepas itu.

SKIM Mandatori PII
BADAN PEGUAM MALAYSIA
TAHUKAH ANDA?

PII: ADAKAH IA MELIPUTI TUNTUTAN BERHUBUNG UNDANG-UNDANG ASING?

Makin banyak firma guaman di Malaysia telah mula menawarkan perkhidmatan perundangan bagi klien antarabangsa. Ini adalah sejajar dengan pembangunan globalisasi. Namun demikian, risiko pasti wujud – kerana peguam boleh disaman di luar negara jika terdapat sebarang kesilapan dalam memberi perkhidmatan perundangan. Juga terdapat risiko ketidakpatuhan peraturan pencegahan penggubahan wang haram dan pencegahan pembiayaan keganasan kerana kini ia akan menjadi lebih sukar untuk menjalankan semakan pengenalan dan latar belakang pihak-pihak berkenaan.

Dalam menguruskan risiko-risiko ini, peguam-peguam perlu:

- bergantung kepada budi akal dan budi bicara untuk memutuskan samada untuk membuat sesuatu kerja yang melibatkan bidang kuasa asing;
- berwaspada untuk memastikan transaksi yang dilakukan bukanlah sesuatu yang tidak sah;
- tekun dan tidak mengkompromi proses kerja;
- menolak untuk bertindak sekiranya kerja itu di luar kecekapan peguam atau penglibatan peguam dalam kerja itu tidak masuk akal.

Polisi Mandatori PII hanya meliputi indemniti bagi liabiliti sivil dan kos bagi tindakan guaman yang diambil di Malaysia. Dengan itu, adalah penting bagi firma-firma di Malaysia yang berusaha untuk masuk ke pasaran sejagat dan bertindak untuk klien-klien antarabangsa untuk membeli opysen perlindungan tambahan antarabangsa. Perlindungan tambahan ini mengambil kira tindakan guaman yang difailkan di negara asing. Syaratnya adalah, kerja yang dibuat atau nasihat guaman yang diberi tidak melibatkan undang-undang negara asing.

Sekiranya anda ingin tahu lebih lanjut mengenai manfaat suatu polisi Perlindungan Insuran Antarabangsa, sila hubungi Jardine Lloyd Thompson Sdn Bhd di 03 2723 3388 atau secara emel di mbar@jlt.com.

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.

Senario

Sebuah firma di Malaysia telah merepresentasi beberapa klien (pembeli) dari Tahiti untuk membeli hartanah-hartanah di United Kingdom. Firma tersebut telah memberi nasihat kepada klien-kliennya berhubung undang-undang tanah negara United Kingdom. Seterusnya, apabila transaksi pembelian tidak dapat dimuktamadkan disebabkan kecuaian firma tersebut untuk memohon dan mendapatkan dokumen persetujuan pihak berkenaan, klien-kliennya telah memfailkan tindakan guaman kecuaian terhadap firma tersebut di mahkamah United Kingdom.

Firma tersebut telah memberi notifikasi kepada Skim Mandatori PII. Namun, perlindungan insuran terpaksa ditolak kerana kerja yang dibuat oleh firma tidak melibatkan undang-undang Malaysia tetapi undang-undang negara asing, iaitu undang-undang negara United Kingdom.

Sebaliknya, sekiranya tindakan guaman telah difailkan terhadap firma tersebut di mahkamah United Kingdom dan jika hartanah-hartanah yang terlibat berlokasi di Malaysia dimana transaksi melibatkan undang-undang Malaysia, Perlindungan Insuran Antarabangsa boleh diberi.

MAKLUMAT RINGKAS: PERLINDUNGAN INSURAN ANTARABANGSA

No.	Item	Penerangan
1.	**Liputan**	• Di mana-mana di seluruh dunia (kecuali Amerika/Canada) • Perlu ada sijil pengamalan yang sah di bawah Akta Profesion Undang-Undang 1976. • Tertakluk kepada IP mengamalkan undang-undang Malaysia dan terikat kepada terma-terma dan syarat dalam Sijil Insuran Mandatori.
2.	**Had Mandatori & *Base Excess***	• Had perlidungan adalah sama seperti dalam limit Mandatori firma bagi sesuatu tahun (kecuali limit *Top-Up*) • *Base Excess* yang terpakai adalah sepertimana dicatatkan dalam perkara 9 Sijil Insuran Mandatori. • Had sub dan *Base Excess* lebih yang terpakai adalah sepertimana dicatatkan dalam Sijil Insuran Mandatori.
3.	**Premium**	• Akan ditaksir oleh syarikat Insuran bersyarat kepada firma melengkapkan dan mengemukakan borang Perlindungan Insuran Antarabangsa.
4.	**Pengecualian**	• Kerja yang dibuat atau guaman yang difailkan di Amerika / Canada dan protektoratnya (hanya terpakai jika liputan tambahan dibeli untuk bidang kuasa negara-negara ini) • Kerja atau nasihat yang diberi adalah berhubung undang-undang negara asing. • IP yang layak mengamal guaman undang-undang di Malaysia atau di luar Malaysia, dan o menjalankan amalan guaman di negara asing dalam bidang kuasa asing; o bekerja di suatu firma di negara asing dan bidang kuasa asing; o menerima arahan dalam kapasiti ahli Badam Peguam atau sama dengan bidang kuasa negara asing; • lain-lain pengecualian yang dicatat dalam Sijil Insuran.
5.	**Notifikasi tuntutan dan/ atau sebarang kebarangkalian yang boleh membawa kepada tuntutan**	• Memberi notifikasi kepada JLT dengan segera berhubung: o sebarang kebarangkalian yang boleh membawa kepada tuntutan; atau; o Tuntutan; atau o Surat Tuntutan • Patuhi Sijil Insuran dan memberi notifikasi/kebarangkalian kepada JLT secepat mungkin, tetapi tidak melebihi **60 hari.**

Bar Malaysia
Malaysian Bar

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Circular No 201/2019
Dated 26 Sept 2019

To Members of the Malaysian Bar

ALERT: Members Must Be Constantly Vigilant to Prevent Internal Fraud

We have been informed by the Broker for the Malaysian Bar Professional Indemnity Insurance ("PII") Scheme, Jardine Lloyd Thompson Sdn Bhd ("JLT"), that the number of internal fraud and embezzlement cases within law firms has been increasing significantly. The fraud generally involves theft of cash, misuse of pre-signed blank cheques, and forgery of documents and signatures because of misplaced trust by principals of the firm in their staff and partners.

From 1 Jan 2018 to 31 July 2019, the PII Scheme received 23 notifications involving internal fraud, from sole proprietors and small-firm practitioners in major cities. A review of the notifications reveals that almost 50% of the fraud and embezzlement notifications are due to the habit of Members leaving their cheque books and pre-signed blank cheques, as well as entrusting the management of their office and clients, to their staff and/or third parties. In one instance, a law firm lost a sum of RM10 million from its client accounts as a result of failing to regularly conduct account reconciliation over three years.

Members of the Bar must take note that all partners are jointly and severally liable for the loss of clients' monies arising from such internal fraud. Members are advised to review Circular No 158/2017 dated 19 July 2017, entitled "Fraud Alert: Know Your Office Manager", which highlights a series of ongoing scams aimed at exploiting Members of the Bar. Please click here to view the circular.

Beware — the risks are real, and on the rise.

How to Prevent Internal Fraud

(1) Never pre-sign blank cheques. Some small firms insist on the need to do so due to pressing circumstances. The risks are clear. Vigilance may possibly help to mitigate some of those risks. Follow up with the staff immediately to sight all the proper documents for verification, eg photocopy of the cheque, cheque butt, acknowledgement of receipt of the cheque, vouchers, etc;

(2) Never entrust the management and handling of files, clients and/or accounts to employees without proper supervision by a partner / sole proprietor of the firm;

(3) Never entrust the management and handling of files, clients and/or accounts to third parties. This includes prohibiting such persons from using your firm's letterhead;

(4) All partners should be mindful of transactions involving client accounts, including those kept by other branch offices, as all partners are jointly and severally liable;

(5) Always implement "Know Your Client" measures for all clients — verify the identity and/or authority of your client and all persons you deal with, including intermediaries such as agents and brokers;

(6) Avoid paying clients' monies to third parties;

(7) Avoid accepting cash. Insist on payments by cheque or bank transfer;

(8) Confirm all instructions in writing; and

(9) Conduct your own periodic internal audit or checks on random files and accounts to ensure everything is in order. This can help detect errors and/or omissions, which will also keep all partners and employees on the alert.

Such measures can help to keep everyone in the firm — both partners and employees — on their toes, and deter some who might entertain the idea of committing fraud. Mistakes and misconduct may occur more easily when prevention or mitigation measures are not stringent enough.

Members are reminded to be constantly vigilant, and to report suspected or confirmed incidents of fraud to the Bar Council by email 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.

Salim Bashir
Secretary
Malaysian Bar

National AML CFT Compliance Programme
Comply To Protect

BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

COMPLY TO PROTECT

REPORTING OBLIGATIONS UNDER THE ANTI-MONEY LAUNDERING, ANTI-TERRORISM FINANCING AND PROCEEDS OF UNLAWFUL ACTIVITIES ACT 2001

Anti-money laundering and counter financing of terrorism (AML/CFT) regime in Malaysia is rooted from the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA), which has been incrementally invoked on various sectors including the gatekeepers, namely accountants, lawyers and company secretaries. These professionals are required to undertake AML/CFT measures as required under Part IV (Reporting Obligations) of the AMLA, its subsidiary instruments and the AML/CFT- Designated Non-Financial Businesses and Professions (DNFBPs) & Other Non-Financial Sectors (Sector 5) Policy Document.

Lawyers, accountants and company secretaries, together with other reporting institutions in the DNFBP sectors complement the financial institutions to act as the first line of defence to prevent money laundering and terrorism financing (ML/TF) activities and safeguard the integrity of the Malaysian financial system. Compliance to the AML/CFT requirements is vital for reporting institutions to protect themselves from being abused as conduits to facilitate ML/TF activities.

When does the Part IV (Reporting Obligations) apply?

Lawyers, accountants and company secretaries are subjected to AML/CFT requirements whenever they prepare or carry out the following Gazetted Activities* for their clients:

Gazetted Activities for Lawyers and Accountants

1. Buy and sell immovable property
2. Manage client's money, securities or other property
3. Manage accounts including savings and securities accounts
4. Organise contributions for the creation, operation or management of the companies
5. Create, operate or manage legal entities or arrangements (trusts) and buy and sell business entities

Gazetted Activities for Company Secretaries

1. Act as a formation agent of legal entities
2. Act as (or arrange for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal entities
3. Provide a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership, or any other legal entities or arrangements (trusts)
4. Act as (or arrange for another person to act as) a trustee of an express trust
5. Act as (or arrange for another person to act as) a nominee shareholder for another person

* Refer to Gazette Orders P.U. (A) 340/2004 and P.U. (A) 293/2006

What are the main AML/CFT preventive measures that gatekeepers must conduct when they prepare or carry out the Gazetted Activities for their clients?

Customer Due Diligence / Know Your Customer (including enhanced and ongoing due diligence)

Screening on sanctions

Customer Risk Profiling

Submit suspicious transaction report (STR)

For more information on the main AML/CFT preventive measures, please refer to the **AML/CFT Guide** which was issued by Bank Negara Malaysia (BNM) in February 2018.

For the **complete AML/CFT requirements**, in addition to the AMLA, gatekeepers are advised to refer to the **Sector 5 Policy Document** (issued in November 2013), which sets out the:

i. requirements imposed on reporting institutions in implementing a comprehensive risk-based approach in managing ML/TF risks; and

ii. roles of the reporting institutions' Board of Directors and Senior Management (where relevant) in putting in place the relevant AML/CFT measures

How does BNM supervise the reporting institutions' compliance to the AML/CFT requirements?

BNM, as the **competent authority** appointed under the AMLA, supervises DNFBP reporting institutions' compliance to AML/CFT requirements by way of engagement and on-site examinations, which are increasingly being intensified.

Beginning 2020, BNM will pursue appropriate **enforcement actions** under the AMLA, for any non-compliance identified.

Resources:

i. AML/CFT Guide:
http://amlcft.bnm.gov.my/document/AML-CFT Guide BI.pdf

ii. Sector 5 Policy Document:
http://www.bnm.gov.my/guidelines/50_others/AMLCFT(DNFBPS & Others).pdf

iii. STR forms:

- Lawyers and accountants:
http://amlcft.bnm.gov.my/document/STR/Lawyer & Accountant.pdf

- Company secretaries:
http://amlcft.bnm.gov.my/document/STR/Comp Secretaries.pdf

iv. Circular
http://amlcft.bnm.gov.my/document/Circular on Enforcement Actions_220219.pdf

Why comply?

Compliance to the AML/CFT requirements is vital for the reporting institutions to protect themselves from being abused as conduits to facilitate ML/TF activities and to safeguard the integrity of the Malaysian financial system.

BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

AML/CFT Guide

Bank Negara Malaysia (BNM) is the competent authority under the **Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA).** Among others, BNM:

- Leads national efforts in AML/CFT
- Formulates effective AML/CFT regime/policies
- Receives and analyses Suspicious Transaction Reports (STRs)

Who is this guide for?

This guide is for reporting institutions that are Designated Non-Financial Businesses and Professions and other Non-Bank Financial Institutions ("DNFBP") in Malaysia to comply with the requirements in the fight against money laundering and terrorism financing. It explains the MAIN* anti-money laundering & counter financing of terrorism (AML/CFT) requirements under the AMLA, the AML/CFT policy document issued for DNFBPs (Sector 5 Policy Document) and other relevant documents issued by Bank Negara Malaysia.

Are you a "DNFBP"?

The following businesses/professions are "DNFBPs" under the Sector 5 Policy Document:

- Lawyers
- Accountants
- Trust companies
- Company secretaries
- Dealers in precious metals or precious stones (goldsmiths, jewellers, etc)
- Real estate agents
- Casino
- Gaming institutions
- Moneylenders
- Pawnbrokers

Please refer to the First Schedule of the AMLA for the full list and more details

Bank Negara Malaysia
Jalan Dato' Onn
50480, Kuala Lumpur
Tel: 1-300-88-5465 (1-300-88-LINK)
E-mail: fied@bnm.gov.my

***For the full list of requirements, please refer to:**

- Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA)
- Anti-money laundering and counter financing of terrorism (AML/CFT) – Designated Non-Financial Businesses and Professions (DNFBPs) and Other Non-Financial Sectors (Sector 5) Policy Document

Disclaimer:
This document is intended for your general information only. It does not contain exhaustive advice or information relating to the subject matter nor should it be used as substitute for legal advice. In the event that the information on Bank Negara Malaysia's official printed documents or any Acts differ from the information contained within this document, the information on such Act and official documents shall prevail and take precedence. The information contained herein is accurate and reliable as of the date of publication, 26 February 2018.

What do you need to do?

1 Know Your Clients

Do you have all these information?

For individuals:
- Name
- IC/Passport no.
- Address
- Date of Birth
- Nationality
- Purpose of Transaction
- Beneficial owner, if any

For companies/businesses:
- Company/Business Name
- Business Registration Number
- Business Address/Registered Address
- Nature of Business
- Directors & shareholders/ beneficial owners' details

Remember! Keep a copy of the source documents e.g. copy of IC, M&A, or other relevant SSM documents.[1]

YES → 2 Screening

NO → Follow up with your client

- Client provides all information → 2 Screening
- If client refuses → Do not commence business and … → 5 Submit STR[6]

2 Screening

Do you screen your clients' names against the **MOHA[2]** and **UNHCR Sanctions Lists for Terrorism[3]** and for **Proliferation[4]** ?

IF NO NAME MATCH → Continue business as usual and conduct … → 3 Risk Profiling

IF POSITIVE NAME MATCH
- Freeze the client's funds
- Block all transactions
- Reject the client, and …

→ 5 Submit STR[6]

3 Risk Profiling

Do you conduct client risk Profiling based on the following risk factors:

1. Client
2. Product/service
3. Geographical location
4. Delivery channel

NO → Refer to Sector 5 Policy Document for more information on how to comply.

For clients assessed as normal risk → Throughout your business relationship, do you find the client suspicious?

For clients assessed as higher risk → 4 Enhanced Due Diligence

4 Enhanced Due Diligence

Do you
i) ask for their source of funds/wealth?
ii) seek approval from your senior management prior to conduct business?

NO → Refer to Sector 5 Policy Document for more information on how to comply.

YES → Throughout your business relationship, do you find the client suspicious?

YES → 5 Submit STR[6]

Fill up the Suspicious Transaction Report (STR) form and submit through
Email: str@bnm.gov.my or
Fax: +603-2693 3625

→ 7 Repeat process

Are there any changes to clients' information?

YES → 7 Repeat process

NO → Great! Continue business as usual. Remember to keep clients information up to date.

NO → Throughout your business relationship, do you find the client suspicious?

6 Record Keeping

Do you keep all KYC information, copies of ID documents, transaction details and any analysis of STRs filed/submitted?

YES → Do you keep all these for at least 6 years[5] and ensure they are easily retrievable?

- **YES** → Keep it up!
- **NO** → Well, you should start now!

NO → Well, you should start now!

[1] KYC requirements are based on the Sector 5 Policy Document issued on 1 November 2013 and subject to change following any revisions

[2] MOHA: Ministry of Home Affairs
http://www.moha.gov.my/index.php/en/maklumat-perkhidmatan/membanteras-pembiayaan-keganasan2/senarai-kementerian-dalam-negeri

[3] UNSCR: United Nations Security Council Resolutions (Terrorism)
https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list
https://www.un.org/sc/suborg/en/sanctions/1988/materials

[4] UNSCR: United Nations Security Council Resolutions (Proliferation of Weapons of Mass Destruction)
https://www.un.org/sc/suborg/en/sanctions/1718/materials
https://www.un.org/en/sc/2231/list.shtml

[5] From the date of termination of the business relationship

[6] Utmost care must be undertaken to ensure that STRs are treated with the highest level of confidentiality

If you do NOT do any of these

Section in AMLA	Non compliance with	Maximum Penalty for Each Offence
13	Record keeping requirement	Fine up to RM1 million
14	Obligation to report suspicious transactions to BNM	
16	Obligation to conduct customer due diligence i.e. KYC	
17	Requirement to retain documents for at least 6 years	Fine up to RM 3 million or jail up to 5 years or both

For further details, please refer to the AML/CFT Microsite & STR form at http://amlcft.bnm.gov.my

Intensify your readiness to take
up challenges to become
free, joyful and wise.

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