



JURISK!

December 2011 Vol 7 Issue 3
Risk Management Quarterly

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

SPECIAL PULLOUT: Billing & Collection

Chairperson's Message: Recapping A Productive Year Page 2

2011 Risk Management Programme Highlights Page 3

Malaysian Bar Mandatory PII Scheme: Did You Know? Page 6

Email Scams And Fraudulent Schemes By Unauthorised Persons Page 6

Skim Mandatori PII Badan Peguam Malaysia: Tahukah Anda? Page 15

Pick A New Year's Resolution Page 16

CHAIRPERSON'S MESSAGE

Recapping a productive year

We kicked off 2011 with the unveiling of START, Bar Council's first ever legal starter kit – a condensed resource of vital tools for new lawyers and newly established legal practices. A proud production of the PII Committee, the START Kit is provided free of charge to these two target groups. Contact our PII & RM Department (the Department) officers if you have not received your Kit.

The Department got a chance to reach out to many more Members this year through events organised at the various State Bars including Terengganu and Kedah. Although Member apathy is a plight the Department continues to work against, out of state visits such as these gave Members a chance to interact with the Department's officers and vice versa. We hope to visit more State Bars in 2012, as well as to organise our key events – **'Getting Started!'** and **'Risk Management For Staff'** at more State Bars.

Another key highlight of the year was the positive negotiations with our insurers and the favourable terms they have agreed with Bar Council (see Circular 179/2011 for the salient details). Clearly, insurers are satisfied with Bar Council's Risk Management programme. Through the combined efforts of all parties involved – the PII Committee and the Department, insurers and brokers, along with Members who wish to better themselves and their practice – the scheme and the RM programme will continue seeing successes.

I am also happy to announce that renewals of the PI Insurance for 2012 proceeded smoothly. More importantly, we are happy to report that more firms have submitted their Proposal Forms online this year. We hope you continue to do so next year, and if you have not renewed your PII online before, we urge you to give it a go at the next renewals.

Inside This Issue...

Every law firm relies on clients for its bread and butter; without clients there would be no cases to work on, no bills to issue and no fees to collect. Thus, it should come as no surprise to learn that billing and collection is a vital part of every law practice. Accordingly, we have included two articles in this issue to help you bill more efficiently and collect your fees more expediently!

This issue also contains a recap of 2011's highlights: the Bar Council Professional Indemnity Insurance and Risk Management ("PII & RM") Department's "vanity card" of its accomplishments for the year. With that said, the PII & RM Department aims to only do better in 2012! Keep sending us your thoughts, feedback and ideas by email to pirm@malaysianbar.org.my for our further improvement. We always love hearing from our Members!

The Jurisk! Team

In line with renewals, our broker, Jardine Lloyd Thompson Sdn. Bhd. (JLT) will be mailing out your firm's PII policy documents in early 2012. The Master Policy and Certificate of Insurance are for your safekeeping, and before you put them away securely, do spend some time reading both documents. Alternatively, you can attend our annual PII Briefing where JLT provides a summary of the policy terms and conditions and answer Members' queries. The event is tentatively scheduled for March 2012; do look out for the Bar Council Circular.

The PII Committee and the Department wish you all the best for 2012. To celebrate, every Member will be receiving a complimentary copy of the 2012 Risk Management Calendar; it is packed with more information and checklists to assist you and your staff. We hope you make full use of it!

Ragunath Kesavan,
PII Committee Chairperson, Bar Council

2011 Risk Management (RM) PROGRAMME HIGHLIGHTS

Our focus in 2011 was practitioners and support staff. Six Workshops were organised successfully nationwide for 115 lawyers and 158 law firm staff; we launched 'START', the Malaysian Bar's first ever legal starter kit in February 2011; *Jurisk!* now includes a Bahasa Malaysia segment and the 'PII: Did You Know' segment was introduced to further familiarise Members with policy terms and conditions.

To maintain the programme's pace whilst ensuring the quality of projects, two Risk Officers were appointed, Melissa Anne Kraal (publications) and Mysahra Shawkat Ali (events). Both Melissa and Mysahra have greatly value-added to the 2011 risk management initiatives thus far.

The following is a summary of the various activities and initiatives that the PII & Risk Management Department continued and/or conceptualised, developed and implemented for the benefit of Members in 2011:

EVENTS

- Six Workshops were successfully organised from July to November 2011.
- Trained 115 lawyers and 158 law firm staff [non-practitioners] nationwide.
- Workshops organised in Kuala Lumpur, Pahang, Kedah, and Terengganu.

Getting Started!



Now in its fourth year, the *Getting Started!* Workshop continues to be a mainstay in the Programme. Three sessions were planned this year:

(a) Kuala Lumpur, 23 June 2011 (b) Terengganu, 12 Nov 2011 (c) Kuala Lumpur, 20 Oct 2011

The latter two Workshops were successfully organised with **89 participants**. The first Workshop was cancelled due to poor response.

The format of the Workshop was maintained with five core sessions on crucial aspects of starting up eg managing accounts, litigation and conveyancing practices. The Workshop kit was given a facelift to better participants' *Getting Started!* experience and to enhance the brand further. Overall, **89.3%** of participants found the Workshop useful in their new practice; **93.9%** would encourage their peers to attend.

Getting Started! EXPRESS



To increase the outreach of *Getting Started!* to outstation Members, we launched the *Getting Started! Express* Workshop (which features two to three sessions from the main Workshop).

A pilot Workshop was held on 15 July 2011 in Kuantan, Pahang. 41 participants attended, of which **88%** said they would attend the full day Workshop.

Whilst a second Express session was planned for Malacca on 7 Oct 2011, it had to be cancelled due to poor response. Nevertheless, we are looking to organise more Express sessions in 2012.

Risk Management for Staff

Training for law firm staff.



The *Risk Management for Staff* Workshop, first launched in October 2010 was further refined and organised three times to very positive feedback in 2011:

(a) Kuala Lumpur, 21 July 2011 (b) Kedah, 29 Sept 2011 (c) Kuala Lumpur, 24 Nov 2011

158 participants from around Malaysia including Sarawak, Johore, Penang, Kedah etc attended the full day Workshops. **80.9%** found the Workshop Kit useful; **93.1%** felt that the Workshop met their expectations and, would encourage their peers to attend the Workshop.



Targeting past participants of risk management events, our aim with this Series is to provide a platform for young and senior lawyers to dialogue regularly on targeted practice areas.

Two pilot sessions were planned for Johore and Penang. Both sessions however had to be cancelled as less than five Members registered for both Sessions.

PUBLICATIONS

- START – first ever legal starter Kit.
- *Jurisk!* is now dual-language – Bahasa Malaysia articles featured in every issue.
- Best Practice Guides on Time and Practice Management reprinted.
- 2012 RM Calendar featuring checklists on law firm practice management.



Launched in February 2011, the main objectives of the START Kit are to:

(a) educate lawyers in their formative years on the relevant regulations, rules and rulings, risk management, and PII; and (b) raise the standards of the profession in order to reduce instances of claims on the PII Scheme.

Provided free of charge to all first time Sijil Annual/Practising Certificate applicants and new law firms (wef 1 Jan 2011), the Kit is divided into four sections: 'Start', 'Best Practices', 'Office Management' and 'For Me'. Each section provides an array of tools packed with advices on practice essentials.

Approximately 1,000 Kits were prepared for the above target group. Disappointingly, more than 90% of START Kits remain uncollected, despite web articles, numerous letters and reminders (for Members to collect their Kits from Bar Council/State Bar secretariats).

Additional effort was made to boost awareness of this valuable resource pack (and facilitate collection of the START Kit) by distributing a copy of the unique START Planner (which forms part of the Kit) to all law firms in May 2011; all to no avail. It is our hope that more Members will come forward to collect their Kits in 2012. *For more information, please contact the Department's Officers at 03-2032 4511.*

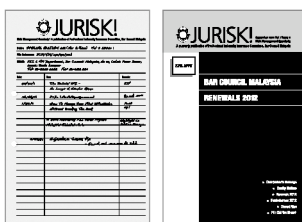
2012 RM CALENDAR



This use of a calendar format to create awareness on PII and risk management continues to garner positive feedback from Members. We maintain this unique project with a 'Legal Checklist' Calendar in 2012.

JURISK!

Risk Management Quarterly



Jurisk! remains the Department's main channel in providing lawyers with risk management information. This year, we had three issues:

- March & June (Files. Files. Files.):** Key aspects of file management including how long to keep closed files were discussed and risk management tips provided.
- September (2012 Renewals):** Important "to-dos" for the Sijil Annual/Practising Certificate and PII renewal process.
- December (Show Me The Money):** An issue dedicated to the financial aspects of a law firm eg bookkeeping, billing, etc.

New to *Jurisk!* is the 'PII: Did You Know' series (to increase Members' awareness on policy terms and conditions) as well as Bahasa Malaysia articles. Both features were introduced based on Members' feedback received in 2010.



With approximately 3,000 copies distributed to date, the 2007 *Best Practice Guides* on *Time Management* and *Law Practice Management* were both comprehensively redesigned for easier reading this year.

The booklets' content which feature practice advice and tips on core principles of a law practice ie productivity, time and profit remain relevant today and, a popular read with senior and young lawyers.

It is our aim to continue to grow the *Best Practice Guides* series in coming years to include other practice areas eg running a successful conveyancing practice.

ADDITIONAL PROJECTS

POSTCARD: RM Calendar of Events

Conceived in 2010, this Postcard was to provide Members with "notice" of upcoming risk management events and publications. In 2011, it was disseminated with *Jurisk!* March & June to all Members with the same purpose and to inform of the Department's move to new premises.

Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec

WEBSITE: Revamped MyPII



Revamped and renamed, the *myPII* website now known as 'www.praktis.com.my' was launched on 7 Sept 2011. Members can expect a more interactive and user-friendly website complete with the PII Scheme's policy documents, FAQs, *Jurisk!* in ebook format, risk management and PII articles.

SURVEY CAMPAIGN:

Have Your Say

Sent via post in July 2011 to all Members, only 120 lawyers have responded (0.88% of Members) to date. Efforts to boost feedback via visits to the Courts in Kuala Lumpur and Terengganu were met with both apathy and lackadaisical responses.

Notwithstanding, we remain steadfast in our goal to obtain as many Members' feedback as possible. To aid this endeavour, all Survey participants will receive a complimentary incentive.* Members can either fill in the Survey form manually or go to 'www.praktis.com.my' to complete the online survey form.



* Subject to stock availability

Getting the requisite buy-in from Members continues to be an uphill battle. We are nevertheless confident, based on individual feedback obtained at events and meet-and-greet with Members, that the RM Programme is moving in the correct direction ie achieving our goals of becoming both relevant to the Bar and one that effectively manages and reduces Members' claims.

Does your firm's PII Policy provide cover against dishonesty?

Public policy dictates that only an innocent partner/s can seek indemnity of any form. Clause 12, Certificate of Insurance 2011 [COI] protects and indemnifies the innocent partner/s for any claim arising from the dishonest or fraudulent acts of a partner/s, legal assistant/s or employee/s of the firm.

This cover is however subject to the firm showing:

- (a) they have specific risk management procedures (See Clause 12(e), COI). Examples of these risk management procedures include ensuring:
 - (i) compliance with the relevant Bar Council Rules and Rulings including the Solicitors' Accounts Rules 1990;
 - (ii) bank statements of client accounts and office account of each branch office are sent by its bank direct to the principal office as well as the branch office; and,
 - (iii) that all transactions involving client bank accounts must have two signatories except to stop operation of an account or the cancellation of any transaction where only one signatory will suffice, etc.
- (b) the partnership is genuine ie the partner who committed the misconduct was practising as a genuine principal of and carrying on practice in common with other partners in the firm.

If the above criteria is met, cover provided under the COI is:

- (a) **limited** to RM350,000 or the firm's mandatory limit of indemnity, whichever is lower; and
- (b) applicable in the aggregate, towards any 'one claim' (See Clause 36(l), COI).

Illustration I:

Employee embezzled RM100,000 over a period of three years by collecting cash payments from clients and issuing forged receipts. Firm was later unable to continue work on some files and a client initiated a claim against the Firm. Subject to the firm meeting policy terms and conditions, particularly Clause 12, COI, Insurers will indemnify the law firm for the claim.

Illustration II:

Firm M is a three-lawyer partnership. The operation of Firm M's Client Accounts requires only one signatory. One of the partners embezzled approximately RM3 million in addition to buying numerous luxury cars and houses. When the firm was unable to continue work on files, a number of clients instituted claims against Firm M. The innocent partners will have to show that they can satisfy the requirements set out above in order to be covered under the PII Policy.

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

The translation on page 15 relating to the Master Policy, Certificate of Insurance and illustrative examples is for guidance only. In the event of inconsistency between the English version and the Bahasa Malaysia translation, the English version will prevail.

IMPORTANT**Email Scams and Fraudulent Schemes by Unauthorised Persons**

Bar Council is concerned about the growing number of reports and complaints received in relation to persons who hold themselves out as being authorised to offer legal services to the general public, or who masquerade as advocates and solicitors registered with Bar Council. Amongst the reports received are related to:

- 1** Inheritance of monies via email scam:
 - (a) Preparation of Sale and Purchase Agreements for the purpose of withdrawal of funds from the purchasers' Employees Provident Fund accounts;
 - (b) Issuance of Letter of Demand by unauthorised persons;
- 2** Misuse of a firm's particulars on unauthorised letterheads/office stationeries; and
- 3** Unauthorised individuals passing themselves off as advocates and solicitors.

We urge all Members to be wary of such scams and to verify the identity and status of the lawyer or legal firm they are dealing with by consulting the Malaysian Bar Website at <http://www.malaysianbar.org.my>, or by contacting the Bar Council Secretariat by telephone at **03-2050 2050**, or by email at council@malaysianbar.org.my. Members are also advised to lodge police reports in relation to these scams and forward the reports to Bar Council for further action.

Tony Woon Yeow Thong ~ Secretary, Malaysian Bar, 11 May 2011



Billing

Tracking and billing time to clients is an important and inevitable part of working in a law firm. Now more than ever, billing and collection are processes that practitioners must master if they are to manage their practices effectively and profitably.

To be able to bill a client thoroughly for work done, lawyers must religiously maintain a record of their time spent for each and every work hour. Studies conducted in the past have shown that lawyers who consistently maintain a record of their time garner significantly higher income (more than 10%) than their peers who do not.

The idea behind timekeeping is quite academic. If a lawyer can, at any given time, total up the number of hours or days spent working on a particular client's case; he will be able to generate better, detailed bills in timely fashion to produce to the client.

The quicker a bill is generated after completion of work done, the higher the chance of the client making prompt payment. Billing a client after a particularly successful turn in the case will result in the bill reaching a very grateful, content and happy client – a good combination, which would probably result in quick payment of your bill.

The lawyer that records his time will also have a better understanding of his own self-worth. At the end of the year (or any given period), a recap of his records will provide him with a detailed self-assessment. A lawyer will be able to gauge his performance on key cases and how he handled his time ie how he was efficient and thorough in seeing the case through in a timely manner.

This record will also open the lawyer's eyes to the types of cases that are less profitable to him and the firm. An analysis of his timekeeping may show that his expertise are not well suited for other areas of law ie where he took longer than usual in completing the case work due to being unfamiliar with the law. This may either spur him on to improve his skills in this area through training or lectures on that area of law or it can be used as a yardstick for the lawyer in avoiding taking on those types of cases as the lack of expertise will hamper his efficiency and reduce the overall profitability of the firm.



Billing

TOP 5 PRACTICAL TIPS

Collection

1 Avoid Lump-Sums



Itemise your bills along with the time spent on each piece of work done. Viewing this in detailed lists will make the client more appreciative of the work you have put in. You would also avoid time consuming telephone calls from clients who would want to know what you are charging them for, if you do not detail it enough.

2 Keep The Bill Simple



Make the bill as clear as possible. Include enough detail to be certain that the client knows what was done. Its format should be structured and easy to read. Avoid the use of legalese. Be as thorough as you can be, but in a language laypersons will understand easily.

3 Avoid Errors On The Bill



There is no excuse for any type of error on an invoice, especially simple errors of miscalculation. An error on an invoice will cause a client to question the entire bill and will cause them to question all past and future bills.

4 Bill The Right Person



Ensure that the bill is addressed and directed to the person who is responsible for reviewing and paying the bills. Nothing slows the payment process more than sending the invoice to the wrong person.

5 Do Not Overuse Billing Descriptions



Clients do not like the overuse or, in some cases, misuse of billing descriptions such as 'Conference' or 'Telephone'. When using these descriptions, be as specific as possible.

Keep in mind that none of these tips will guarantee that your clients will pay their bills quickly. You must still make certain that you provide quality work, communicate with your client, mail invoices timely and monitor your receivables constantly.

1

Monitor Collections Daily

Know which clients have promised to pay and when. You can use MS Outlook to keep an automatic list of when payments are due. Have a dedicated staff enter the information and the date the payment is due and set reminders.



2

Develop A Collection Policy

This policy should outline what needs to be done when a client goes past 30 days, 60 days and 90 days eg sending a letter after 30 days to gently remind the client. Alternatively, instil a policy of having the office manager contact a client to speak to them personally.



3

Bill More Regularly

Interim bills have much lower amounts than one regular bill would. By billing this way the client "witnesses" work done as the case progresses and the impact of your legal work will be fresh in their minds. Clients will also not be put off by the smaller amounts reflected on the bill.



4

No Money, No Work

There is no point in continuing work on a case if the client has not been making regular payments to the interim bills you have been issuing them. By letting your client know that work will not progress if payment is not forthcoming, they would be forced to pay up.



5

Speak To Your Clients

Put aside some time during the month to engage with your clients who have fallen behind on their payments. Do not avoid discussing the matter with them, in fact, be frank about the legal services you have provided so far and that you are charging them fairly and reasonably. Your honest frankness would "embarrass" some clients into paying up.



Even if your firm's billing system is top notch, collecting the fees due to you from your clients is a whole other matter altogether. Statistics show that as much as 30% of billed fees by law firms remain

uncollected at the end of the year. This is attributed in part to the lawyer's and/or law firm's improper practices or languid attitudes in fee collection. The other part is credited to clients themselves.

Collection



While good client-paymasters exist, there are other types of clients who drag their feet when it comes to making payment. Some of these clients even hope for a discount in fees, whilst others berate the lawyers at what they deem to be a king's ransom for a bill!

There are a number of things that a lawyer and the firm can do in ensuring better, more efficient collection of fees, the foremost of which is the simple act of monitoring your accounts receivable, and being able to, at any one point, determine the following:

1. How much work (in billable hours) has already been done on a file?
2. How much of the work done has the client been billed for?
3. How much of the billed fees have been paid by the client and collected by the firm?

If the lawyer or the law firm is able to answer all of the above, it is clear that they have full control of their accounts receivable. That would be half the battle won. The other half is finding out ways and means best suited to your practice to ensure timely payments by clients.

Consider varying forms of pre-payment for the work that you do:

- A. **Up-Front Retainers** – The most common type of pre-payment, the money collected will be utilised by the law firm to cover their services and expenses as the case moves along. The up-front payment probably will not cover all the legal work and expenses, but it will mean that a substantial amount has already been collected.
- B. **Security Retainers** – This retainer is not to be used to finance the legal work or expenses as it should be kept in the firm's trust account to be utilised only as security. This arrangement, if put into practice must be communicated to the client. The client will continue to be billed separately as the work progresses. Should the client default on these bills, the security retainer will kick in. Subject to ethical discourse, the lawyer must clearly communicate to the client – in writing complete with an acknowledgement of receipt – that the lawyer will be halting work unless further payment is made.



by Melissa Kraal



Pengebilan

Mengesan dan mengebil masa kepada pelanggan adalah penting dan perlu dilakukan dalam sesebuah firma. Bagi memastikan kelancaran dan

keuntungan firma, bil dan kutipan adalah satu proses yang perlu dikuasai dengan sebaik mungkin.

Bagi menyediakan bil pelanggan yang lengkap dan teliti bagi kerja yang telah dilakukan, anda perlu menyimpan rekod masa yang digunakan untuk setiap jam kerja. Kajian menunjukkan bahawa peguam yang menyimpan rekod masa dengan teliti dapat menjana pendapatan yang jauh lebih tinggi (lebih dari 10%) daripada mereka yang tidak menyimpan rekod sedemikian.

Idea di sebalik penjagaan masa adalah agak akademik. Jika seorang peguam boleh menjumlahkan bilangan jam atau hari yang dihabiskan untuk kerja yang dilakukan bagi kes pelanggan, bil yang lebih baik, terperinci dan tepat pada masanya dapat dikemukakan kepada pelanggan tersebut.

Lebih cepat bil disediakan selepas kerja selesai dilakukan, lebih tinggi peluang bagi pelanggan tersebut membuat bayaran dengan segera. Pelanggan yang baharu memenangi kesnya adalah pelanggan yang bersyukur dan gembira – kombinasi yang sesuai untuk memastikan pembayaran bil yang cepat.

Peguam yang mempunyai rekod masa dapat menilai dirinya dengan lebih baik. Pada akhir tahun (atau tempoh yang ditetapkan), penilaian sendiri dapat dibuat melalui rekod masa yang disimpan. Beliau dapat mengukur prestasi diri dalam setiap kes yang dikendalikan, serta kecekapan dan pengurusan masa.

Rekod masa yang disimpan juga dapat menunjukkan kes-kes yang kurang menguntungkan kepada peguam dan firma. Sekiranya analisa dibuat, kepakaran dan kesesuaian peguam tersebut mengendali sesebuah kes dapat dikenalpasti. Sebagai contoh, kurang memahami undang-undang yang berkaitan boleh menyebabkan lebih masa digunakan. Peguam tersebut boleh memperbaiki dirinya melalui latihan atau kuliah; atau juga digunakan sebagai kayu pengukur untuk tidak melibatkan diri dalam kes-kes yang sedemikian kerana kurang kepakaran akan menjejaskan kecekapan dan mengurangkan keuntungan keseluruhan firma itu.



Pengebilan Lima Petua

Elakkan mengebil sekaligus

1



Senaraikan bil anda dengan masa yang digunakan bagi setiap kerja yang dilakukan. Senarai terperinci akan membuat pelanggan lebih menghargai kerja yang telah anda dilakukan. Ini juga dapat mengelak daripada perlu berurusan sepanjang masa dengan pelanggan yang inginkan penjelasan lengkap.

Bil yang mudah difahami

2



Sediakan bil sejelas yang mungkin. Berikan maklumat yang secukupnya agar pelanggan tahu apa yang telah dilakukan. Format bil perlu berstruktur dan mudah untuk dibaca. Elak penggunaan bahasa teknikal perundangan. Berikan penjelasan yang menyeluruh dan gunakan bahasa yang mudah difahami.

Elakkan kesilapan dalam bil

3



Tiada alasan untuk sebarang kesilapan pada invoice, terutamanya kesilapan seperti pengiraan. Ralat pada invoice akan menyebabkan pelanggan mempersoalkan keseluruhan bil. Mereka juga akan mula mempersoalkan semua bil yang lepas dan akan datang.

Bil orang yang betul

4



Pastikan bil dialamatkan dan dihantar kepada orang yang bertanggungjawab untuk mengkaji dan membayar bil. Proses pembayaran mungkin terlewat sekiranya invoice dihantar kepada orang yang salah.

Perhatikan huraian bil untuk penggunaan yang berlebihan

5



Pelanggan tidak akan berpuas hati sekiranya terdapat penggunaan yang berlebihan atau penyalahgunaan seperti 'Persidangan' atau 'Telefon'. Apabila menggunakan penerangan ini, berikan huraian yang lengkap.

Perlu diingat bahawa tidak ada petua yang dapat menjamin bahawa pelanggan anda akan membayar bil-bil mereka dengan cepat. Anda masih perlu memberikan kualiti pada kerja, berkomunikasi dengan pelanggan, menghantar invoice tepat pada masanya dan sentiasa memantau bayaran yang dibuat pelanggan.

Praktikal Kutipan

Mengetahui pelanggan yang telah berjanji untuk membayar dan bila. Anda boleh menggunakan MS Outlook untuk menyimpan senarai yang boleh memberitahu secara automatik bila bayaran perlu dibuat. Tugaskan kakitangan khusus untuk masukkan maklumat dan tarikh bayaran.



1 Memantau kutipan harian

Dasar ini hendaklah menggariskan perkara yang perlu dilakukan apabila pelanggan melepasi 30 hari, 60 hari dan 90 hari. Hantar sepucuk surat selepas 30 hari sebagai peringatan kepada pelanggan. Sebagai pilihan lain juga, mulakan dasar dimana pengurus pejabat menghubungi dan bercakap dengan pelanggan secara terus.



2 Membangunkan dasar kutipan

Bil interim mempunyai jumlah yang jauh lebih rendah daripada satu bil. Dengan cara ini pelanggan dapat melihat kerja-kerja yang telah dilakukan mengikut berlangsungnya kerja kerana ia masih segar dalam ingatan. Pelanggan lebih terbuka untuk membayar jumlah yang kecil yang disebutkan dalam bil.



3 Bil dengan lebih kerap

Tidak ada gunanya kerja-kerja kes diteruskan jika pelanggan tidak membuat bayaran bil interim yang telah dihantar kepada mereka. Beritahu pelanggan tersebut bahawa kerja-kerja tidak akan diteruskan jika bayaran tidak dibuat, ini 'memaksa' mereka untuk membuat bayaran.



4 Tiada bayaran, kerja dihentikan

Luangkan masa setiap bulan untuk berhubung dengan pelanggan-pelanggan anda yang telah ketinggalan dalam membuat bayaran mereka. Jangan mengelak daripada berbincang mengenai perkara ini dengan pelanggan. Sebaiknya, berterus-terang tentang perkhidmatan yang telah anda berikan dan bil yang diberi adalah adil dan munasabah. Kejujuran dan keterbukaan yang ditunjukkan akan "memalukan" beberapa pelanggan untuk membayar.



5 Komunikasi adalah penting

Kutipan



Walaupun firma anda mempunyai sistem pengebilan yang baik, mengutip bayaran daripada pelanggan masih merupakan perkara yang rumit. Menurut statistik, sebanyak 30% daripada bayaran yang ditaksir oleh firma tidak dikutip menjelang akhir tahun. Antara sebab yang dikenal pasti adalah sikap sambil lewa peguam dan/atau firma untuk menuntut bayaran. Sebab yang lain pula adalah pelanggan itu sendiri.

Walaupun terdapat pelanggan yang membuat bayaran dengan tepat, terdapat juga pelanggan yang "berat" apabila tiba masa untuk membuat bayaran. Terdapat juga pelanggan yang berharap untuk mendapat diskaun, manakala ada juga yang mencaci peguam kerana bagi mereka yuran yang dikenakan adalah terlalu tinggi.

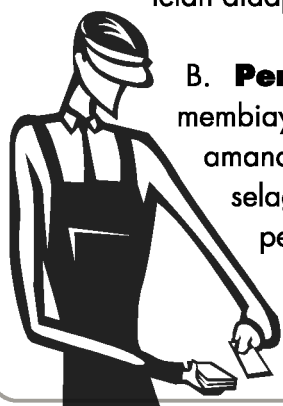
Terdapat beberapa perkara yang boleh dilakukan oleh peguam dan firma bagi memastikan kutipan yuran yang lebih baik dan cekap. Pantauan akaun penerimaan adalah penting agar anda boleh menentukan perkara-perkara berikut:

1. Kerja (dalam jam kerja yang dibayar) yang telah dilakukan ke atas fail?
2. Kerja yang dilakukan dimana pelanggan telah ditaksir?
3. Jumlah bayaran yang telah dibayar oleh pelanggan dan dipungut oleh firma?

Jika peguam atau firma mampu menjawab semua perkara diatas, adalah jelas bahawa mereka mempunyai kawalan penuh akaun penerimaan mereka. Walaupun akaun penerimaan anda dalam keadaan terkawal, anda masih perlu mengetahui cara terbaik dan sesuai untuk memastikan bayaran yang dibuat oleh pelanggan tepat pada masanya.

Pertimbangkan pelbagai bentuk pra-pembayaran untuk kerja-kerja yang anda lakukan:

A. **Bayaran pendahuluan** – Pra-pembayaran merupakan yang paling biasa. Wang yang dikutip akan digunakan oleh firma untuk perkhidmatan dan perbelanjaan yang diperlukan dari mula kes diterima. Bayaran pendahuluan mungkin tidak akan meliputi semua kerja-kerja dan perbelanjaan perundangan, ini hanya merupakan sebahagian besar wang perbelanjaan yang telah didapati.



B. **Pendahuluan Keselamatan** – Pendahuluan ini tidak boleh digunakan untuk membiayai kerja-kerja perundangan atau perbelanjaan tetapi perlu disimpan dalam akaun amanah firma sebagai cagaran. Pelanggan akan terus dikenakan caj yang berasingan selagi kerja dijalankan. Sekiranya pelanggan gagal membuat bayaran, wang pendahuluan keselamatan ini akan digunakan. Tertakluk kepada etika kerja, peguam mesti berkomunikasi kepada pelanggan (dengan jelas secara bertulis dan lengkap dengan akaun penerimaan) bahawa peguam akan menghentikan kerja melainkan jika bayaran dibuat.

TAHUKAH
ANDA?**Adakah Dasar PII firma anda menyediakan perlindungan terhadap ketidakjujuran?**

Dasar awam menyatakan bahawa hanya rakan kongsi yang tidak bersalah boleh mendapatkan ganti rugi dalam sebarang bentuk. Fasal 12, *Certificate of Insurance 2011* [COI] melindungi dan membayar ganti rugi kepada rakan kongsi yang tidak bersalah untuk sebarang tuntutan yang timbul daripada perbuatan yang tidak jujur atau penipuan yang disebabkan rakan kongsi, pembantu undang-undang atau pekerja firma itu.

Walaupun bagaimanapun, perlindungan ini tertakluk kepada firma menunjukkan:

- (a) mereka mempunyai prosedur pengurusan risiko (Lihat Fasal 12(e), COI). Contoh prosedur pengurusan risiko termasuk memastikan:
 - (i) pematuhan berkaitan Peraturan dan Ketetapan Majlis Peguam termasuk *Solicitors' Accounts Rules 1990*;
 - (ii) penyata bank akaun pelanggan dan akaun pejabat setiap pejabat cawangan dihantar terus ke ibu pejabat serta pejabat cawangan oleh pihak bank; dan,
 - (iii) bahawa semua urusan niaga yang melibatkan akaun bank pelanggan mestilah mempunyai **dua penandatanganan** kecuali untuk menghentikan operasi akaun atau pembatalan apa-apa transaksi di mana hanya satu penandatanganan adalah mencukupi, dan sebagainya.
- (b) perkongsian itu adalah tulen, iaitu rakan kongsi yang melakukan salah laku itu menjalankan amalan sebagai prinsipal tulen dan menjalankan amalan **sama seperti** rakan-rakan lain dalam firma.

Sekiranya kriteria di atas dipenuhi, perlindungan yang diperuntukkan dibawah COI adalah:

- (a) **terhad** kepada RM350,000 atau *mandatory limit of indemnity* firma, yang mana lebih rendah; dan
- (b) terpakai dalam agregat, untuk mana-mana 'one claim' (Lihat Fasal 36(l), COI);

Ilustrasi I:

Pekerja menggelapkan RM100,000 dalam tempoh tiga tahun dengan mengutip bayaran tunai daripada pelanggan dan mengeluarkan resit palsu. Firma itu kemudian tidak dapat meneruskan kerja ke atas beberapa fail dan seorang pelanggan memulakan tuntutan terhadap Firma tersebut. Tertakluk kepada terma dan syarat polisi, seperti yang disebut dalam Fasal 12, COI, Penanggung Insurans akan membayar ganti rugi kepada firma bagi tuntutan itu.

Ilustrasi II:

Firma M merupakan perkongsian diantara tiga peguam. Operasi akaun pelanggan Firma M memerlukan hanya satu penandatanganan. Salah seorang daripada rakan kongsi telah menggelapkan RM3 juta di samping membeli beberapa kereta mewah dan rumah. Apabila Firma itu tidak dapat meneruskan kerja ke atas beberapa fail, beberapa pelanggan memulakan tuntutan terhadap Firma M. Rakan-rakan kongsi yang tidak bersalah perlu menunjukkan bahawa mereka boleh memenuhi syarat-syarat yang dinyatakan di atas untuk mendapat perlindungan dibawah Polisi PII.

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.

..... **LOOK OUT** for your 2012 Certificate of Insurance and the Master Policy. All law firms should receive their copies before March 2012.





PII & RM DEPARTMENT

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

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

BAR COUNCIL MALAYSIA

No. 15, Leboh Pasar Besar
 50050 Kuala Lumpur, Malaysia

Tel: 03-2050 2050
 Fax: 03-2034 2825 / 2026 1313 / 2072 5818
 Email: council@malaysianbar.org.my

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

We are always looking for ways to improve this newsletter and work towards ensuring that all areas related to risk management is highlighted as appropriately.

Wong Li Chin Executive Officer
 ✉ lcwong@malaysianbar.org.my

Melissa Kraal Officer
 ✉ melissa@malaysianbar.org.my

Mysahra Shawkat Officer
 ✉ mysahra@malaysianbar.org.my

