



# JURISK!

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## DID YOU KNOW?

Sir Tim Berners-Lee, the British computer scientist credited with creating the World Wide Web in 1989 admits that he should have designed World Wide Web http addresses without the double forward slashes, his decision to include those annoying forward slashes in http addresses was made on a whim!

[http://www.time.com/time/specials/packages/article/0,28804,1930653\\_1930654,00.html#iczz0jdNv7kyj](http://www.time.com/time/specials/packages/article/0,28804,1930653_1930654,00.html#iczz0jdNv7kyj)

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## 2010: THE YEAR IN REVIEW

2010 highlights include:

- ✓ Reduction of the base premium for 2011 to RM1,200.
- ✓ 2011 PII terms and conditions remain as per 2010 expiring terms.
- ✓ 'Setting Up Practice' and 'Accounting for Lawyers' Booklets launched.
- ✓ Edu-video on office management developed for law firms, and
- ✓ The first ever Workshop for law firm staff was organised at Bar Council.

When the Bar Council's Risk Management Programme began in 2005, we had one publication, our risk management newsletter, Jurisk!, then known as the Risk Management Quarterly (RMQ) and a module at the pupils in chambers ethics lectures.

Since then we have expanded our programme to include Workshops, Best Practice Booklets, Practice Area Checklists, edu-videos etc, all aimed at increasing productivity and minimising risks. Read more about our efforts and Practice Tools in the '2010 RM Programme Highlights' on page 4.

There is one thing from the Report that I would like address here, ie, Members' apathy. It continues to be an uphill battle for us to reach Members. Awareness and usage of our RM tools remains very low. At the Risk Management Roadshow held from April to July 2010, we met about 100 Members (less than 1% of the profession). The Roadshow in Kuala Lumpur had to be cancelled due to poor response. This small turnout and low usage of our practice tools is very discouraging.

### **WHY the emphasis on Risk Management?**

The basis of Insurers dictating terms are based on the claims experience of our Members ie the Malaysian legal profession as a whole. This means that one Member's actions will affect everyone else. Hence, the more each Member places emphasis on risk

management, the higher the likelihood that we reduce the number of claims each year. Further, and more importantly, a successful law practice is one that emphasises robust risk management and practices it daily.

The PII Committee's aim is for our Risk Management Programme to support Members in achieving this. To do that, we need Members to participate and provide feedback to develop tools that are useful; we need Members to introduce and share these tools with your staff. It can only encourage efficiency and minimise risk in your firm.

We have a dedicated PII & Risk Management Department with a full time risk manager based at the Bar Council Secretariat to attend to your queries and to provide assistance. As such, it is our sincere hope that more Members will take advantage of this resource and contact us.

In the meantime, I hope you enjoy this issue of Jurisk!, our very first information technology "IT" issue. Special features include our centrespread 'Who Moved My Blackberry' on the emerging 'crackberry' malaise, an article on the 'Top #17 Social Networking Don'ts' and also 'Partnerships of (In)convenience – You're Liable Too' that warns Members of the pitfalls of practising in "partnerships of convenience".

*Ragunath Kesavan President/ PII Committee Chairperson, Malaysian Bar*

**Client Confidentiality:****Should I Handcuff My Laptop to My Wrist?**

If you're constantly on the go, the information you store in your laptop (or PDA) is as valuable (sometimes more so) than the computer itself.

An American Survey in 2006 showed that 15 million people lost sensitive data (including employee and client data) in incidences of lost laptops.

Whilst we do not recommend handcuffing your laptop to your wrist, you can minimise such risk (and your firm's potential liability) with the following steps.

**DO NOT:**

- Leave your laptop unattended, whether in the office, a restaurant or a client's office.

- Leave your laptop in your car, it's not safe, even in the boot – thieves have the tools to detect it.

- Put your laptop on the floor when checking in or in other crowded locations e.g. LRT stations.

**DO:**

- Back up your laptop data regularly.

- Consider packing your laptop in an ordinary-looking briefcase, not a laptop bag.

'Should You Handcuff Your Laptop to Your Wrist?', Steven M. Berwick, CPA, February 2008, <http://www.abanet.org/lpm/lpl/articles/tch02082.shtml>

**Open Sesame :****Passwords**

We all have more passwords than we can easily remember, which means we have all been guilty of using (or thought about using) "password" or "1234" as our password at some point.

More often than not, because we resort to using obvious passwords, they can be easily guessed. We compound this problem often by writing them down and/or sharing them with others.

**HERE'S HOW TO UP YOUR PASSWORD ANTE:**

- Never use your name, "password" or "1234" as your password!

- Change your password(s) every two – three months.

- Use at least eight characters.

- Your password should contain at least one character from each of the following groups: upper and lowercase letters (A,B,C... a, b, c...), numerals (1, 2, 3...) and symbols (~, @, #, \$...)

- Do not reuse old passwords.

- Do not use the same password for everything.

- Do not let your browser remember your website passwords.





## 2010 RM PROGRAMME HIGHLIGHTS

In recent years, we have moved progressively and innovatively. 2010, as such, has been a productive year with improvements made to existing projects as well as new ideas to enhance the Risk Management ("RM") Programme. This statement reflects the views of the PII Committee and the handful of Members who made the effort to provide feedback on RM initiatives. Whilst we believe that our RM Programme supports Members' needs, we cannot be certain as feedback from Members have been lacking.

Therefore, in 2010, a concerted effort was made towards engaging Members, gathering data and feedback to ensure that the practice tools and information we provide to all Members are relevant in their daily work and not just claims-prone practices.

We also felt that there was a need to extend our reach to non-practitioners, in particular law firm staff, a group of individuals who although not law firm frontliners, often do the majority of the work in a law firm.

**In summary, our activities and projects for the year-in review are as follows:**

### Events/Workshops

1. *RM Roadshow*, April – July 2010
2. RM and You Workshop on Practical Skills, 21 May 2010
3. *Getting Started!* Workshop, 13 June 2010 & 21 Oct 2010
4. *Risk Management for Staff* Workshop, 22 Oct 2010

### Publications

1. PII & RM Calendar of Events 2010, March 2010
2. Best Practice Guides, December 2010
3. Jurisk!, every quarter
4. Practice Alert – Risk Watch, ad hoc
5. 2011 RM Calendar, January 2011

### Other Projects

1. RM Survey – "We Create. You Rate.", March 2010
2. Edu-video on Office Management, October 2010

## Events/Workshops

### 1. RM Roadshow, April – July 2010

At the 2009 PII Scheme Stakeholders' Workshop, various ideas were considered in increasing awareness and gathering feedback. One idea was to go on a *RM Roadshow*.

With the able assistance of the various State Bars, the 2010 *RM Roadshow* was organised in five states, namely Malacca, Pahang, Kedah, Penang and Johore from 9 April to 16 July 2010; we touched base with approximately 100 Members.

Entitled '*Risk is Not a Four Letter Word*', the Roadshow presentation consisted of three sessions: RM, PII and a dialogue with Members. The Dialogue session was essential to us finding out if Members:

- (a) know about our tools?;
- (b) find our tools useful?; and
- (c) want practice tools that are in Bahasa Malaysia as well?

We hoped also through the *RM Roadshow* to debunk certain ideas about RM. Our message was simple: *"RM is not a one time event, it is a culture innate to every firm; it is not only about systems and processes, it is the people, their mindsets and their work processes; it is the difference between a successful firm and a struggling practice. More importantly, it is a law firm's first defence against a claim, not PII."*

Whilst the number of Members we met was small; feedback received will nonetheless be compiled and used in our RM programme plans moving forward.



### 2. RM & You Workshop on Practical Skills, 21 May 2010

This one-day RM workshop, entitled "*3 Workshops on Practical Skills*" was organised on 21 May 2010 in collaboration with LeMessurier Harrington Consulting, a specialist firm in risk education.



... RM & You Workshop on Practical Skills, 21 May 2010

The aim of this Workshop was to highlight common risks that Members face in daily practice. All three sessions covered the key areas where there are pitfalls that can give rise to PII claims: critical dates, retainers and technology.

The speaker, Sue Harrington, a partner of LeMessurier Harrington Consulting, was warmly received.

Feedback received from participants was very positive; they had found the Workshop useful and productive. Participants were also given the opportunity to share their views and experience in group discussions and a question-and-answer session.

Held successfully in 2009, the 2010 Workshop disappointingly only had 13 participants. Consideration will be given as to whether this Workshop should continue in 2011.

### 3. Getting Started! Workshop, 13 June 2010 & 21 Oct 2010

2010 was a year to travel and meet outstation Members. On 13 June, we successfully organised our second out-of-town *Getting Started!* Workshop in Kota Bharu, Kelantan, with assistance and support from the Kelantan Bar Committee and Legal Aid Centre.

**Getting Started!** For Lawyers  
thinking of setting up firms, just setting up firms,  
needing a refresher, joining a partnership, etc.

This one-day intensive workshop, designed specifically for lawyers setting up their own law firms or joining a partnership, was attended by 23 participants, ranging from junior to senior practitioners and including both sole proprietors and partners.

Another *Getting Started!* Workshop followed in Kuala Lumpur on 21 Oct 2010. Held at the Bar Council Auditorium, senior lawyers and an accountant spoke to 79 participants on the business of legal practice, accounting, Bar Council Rules and Rulings, litigation and conveyancing.

### 4. Risk Management for Staff Workshop, 22 Oct 2010

This latest addition to the RM Training Series, *Risk Management for Staff* is a tailor-made programme with talks by senior lawyers and consultants on RM practices and good work culture.

111 participants, ranging from office managers to clerks, and including lawyers, attended the event. Topics covered include office administration, communication, accounting and RM. This Workshop is an event we intend to organise annually in our aim to cultivate a risk aware profession.

**Risk Management  
for Staff** ■■■

Cultivate good practices for your  
Office Managers, Paralegals, Secretaries,  
Clerks and Support Staff

## Publications

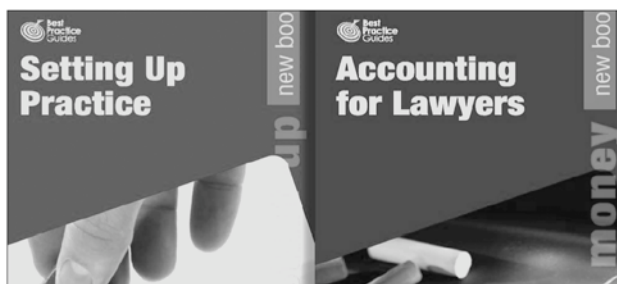
### 1. PII & Risk Management Calendar of Events 2010

Distributed at the March 2010 AGM and via mail to all Members with Jurisk! March 2010, this Calendar of Events was to provide Members with 'advance notice' of our projects for the year. The Calendar of Events doubled telephone enquiries to the PII & RM Department.



## 2. Best Practice Guides, December 2010

We added two new titles to the Best Practice Guides Series. 'Setting Up Practice' and 'Accounting for Lawyers' were launched in December 2010.



These two titles were developed to provide practising lawyers with some introductory knowledge on basic accounts, accounting practices in running a legal firm and to address challenges faced by lawyers when setting up a new practice. Both Booklets also serve to identify potential risks that stem from poor accounting practices and from starting a new endeavour.

Together with the 'Time Management for Lawyers' and 'Law Practice Management. Increasing Productivity and Profit' booklets, the Best Practice Guides Series is proving popular with lawyers (senior and young). We aim to continue building the Series to include other relevant practice areas.

## 3. Jurisk!, every quarter

Targeted at all lawyers, Jurisk!, our newsletter is published and sent to all Members quarterly. It provides regular practice updates and solutions to daily practice conundrums.

Highlights for the year include our 'Big Give' issue in March to celebrate Jurisk!'s fifth year in print. 'Big Give' vouchers with rebates and discounts for RM events and tools were sent to all Members.

In June, we published a "green" issue entitled *Legally Green* in conjunction with World Environment Day. In keeping with the 2011 PII renewals, September was the month for our claims issue. We wrap up the year with this special 16-page information technology December issue.

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

## 4. Practice Alert – Risk Watch

Aimed at keeping Members updated on emerging risks and new practice traps, Practice Alerts are circulated via email to Members and published in Jurisk!.

This year, two Practice Alerts were circulated, on:

- (i) Employees Provident Fund fraudulent withdrawals (June 2010).
- (ii) the dangers of practising in 'partnerships of convenience' (December 2010).

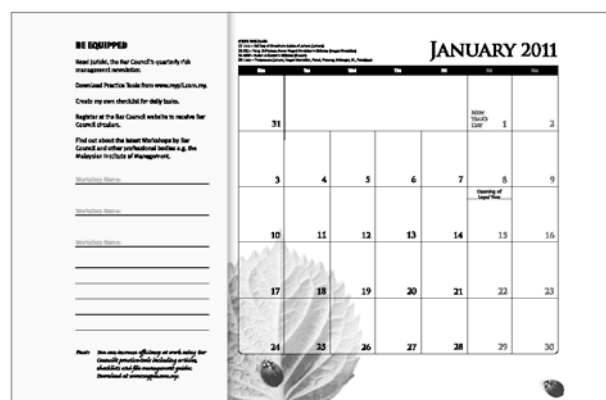
**RISK WATCH** Keep in touch with current trends and emerging risks.

Aimed at keeping members updated on emerging risks and new practice traps, Practice Alerts are circulated via email to members and published in Jurisk!.

**! practice ALERT!**

## 5. 2011 RM Calendar!

Spurred by the success of our 2010 Checklist Calendar, in 2011, we have developed a 'reminder' Calendar. Complete with a KIV-list of important to-dos and critical dates for the year, it has four sections, one for 'Bar Council', eg pay subscription; 'Daily Law Firm Tasks', eg bill clients; 'RM', eg update diary regularly; and 'PII' eg renew PII before 15 Oct 2011. Space is also allocated for Members to pen in their own deadlines and important dates/information.





## Additional Projects

### 1. RM Survey – “We Create. You Rate.”, March 2010

We conducted our annual survey under the “Your Opinion Matters” Campaign to collect Members’ feedback on the RM Programme and our practice tools. Various questions pertaining our practice tools including Jurisk!, Best Practice Guides and the Practice Area Checklist CD were listed.

Only **five** Members out of 13,000 responded to the Survey. This lackadaisical response is unacceptable and will

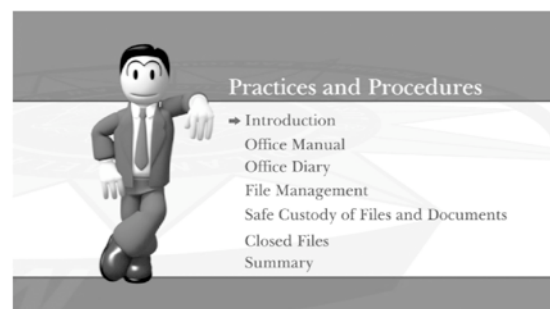
unfortunately only serve to hold back our efforts to improve the Scheme and tailor the RM Programme to meet Members’ day-to-day needs.

**WE  
CREATE.  
YOU RATE.**

“Your Opinion Matters” Campaign. It’s your Risk Management Programme. Tell us how we’re doing and what you need.

### 2. Edu-video on Office Management, October 2010

An animated 8-minutes video on office management developed for all law firms – this edu-video includes tips and advice on RM within a firm including file management, safe custody of files and documents, Office Diary, etc. Suitable for both lawyers as well as non-practitioners, this DVD will be available in English and Bahasa Malaysia and will be distributed to all firms in 2011 free of charge.



To conclude, legal practice must be fulfilling. More importantly, it should be successful, it is after all why we set up practice and run our business. The general perception is that well-run successful firms are those that work hard and do not get sued. This is rarely the reality. Being sued is a matter of ‘when’ and no lawyer can say with any certainty that he/she will never be sued.

Our PII Scheme was established to protect against such situations, and has been improved over time to cover as many contingencies as possible eg cover for innocent partners in cases of misconduct and against employee dishonesty.

However, PII is only a tool to resolve a problem that has occurred. The best solution is still prevention ie active RM. Accordingly, we want to support you in this through development of a RM Programme that meets your law firm’s needs and to provide solutions in risky areas of daily practice.

It is therefore important that we hear from you that we are on the right track – and in this vein we invite your feedback, support and participation at our various initiatives. Your input and participation will ensure the tools and information we provide is as relevant to you and your needs as we can make it.

**For any enquiries, please email: [lcwong@malaysianbar.org.my](mailto:lcwong@malaysianbar.org.my)**

# Who Moved My BlackBerry?

by Wong Li Chih

If you look around you, chances are that 3 out of 5 people are probably on their blackberries.<sup>2</sup> Since their arrival, blackberries have revolutionised the way we live and work. They provide flexibility and the ability for anyone to connect with anybody and work from anywhere instantly. In theory, this supposedly makes us more productive!

**Does it?** What is clear is that any person managing this non-stop onslaught of information (and associated nagging feeling that you've missed something), is likely to end up being less productive.

The advantage of a blackberry is that you can work anywhere, anytime. The disadvantage is precisely the same.

A whole new generation, mobile professionals, we call them, have their own culture, lingo, pace and now, "addictions". We have now "crackberries" aka blackberry addicts and even a repetitive stress situation called "blackberry thumb". Yet, we are as wired to our blackberries as ever. If you own a blackberry and disagree, just take this simple test.

## Have you found yourself doing any of the following things to or with your blackberry?

- : You sleep with it (and yes, having it on your bedside table counts).
- : You automatically reach for it the moment you hear it or feel it vibrate (generally stopping a conversation or even mid-sentence).
- : You sometimes imagine hearing it or feeling it vibrate.
- : You feel compelled to check it constantly, ignoring those around you.
- : You automatically reach for it the moment you get any information e.g. names, dates, etc.
- : You get angry, feel strong anxiety if you're away from it or think you have misplaced it.
- : You've named it.
- : You talk to or pat it when you think no one is watching.

1. Not to be confused with the novel of the same name by Lucy Kellaway.  
2. For the purposes of this article, we use the term "blackberry" in its generic sense. Just like certain other brand names. It denotes the breed of cell phones that include what used to be called PDA (personal digital assistant) and add the functionality of email, calendar, contacts, web browsing, etc. The purpose of such phones is essentially the same and we will use the term "blackberry" to describe those devices.

## DECIDE WHEN YOU CAN USE IT

Even if you check it as often as every 15 minutes, once an hour, or once every two hours, you'll find that having a schedule helps. Stifle the urge to check and respond to every email or message instantly.

A University of London study done several years ago found that checking emails/instant messages as they come in, thereby letting it become a distraction and interrupt your flow of concentration, results in greater loss of IQ than smoking pot!

Hence, if your interval for check and response time is immediate, then you will be continually distracted (and likely to lower your IQ); and there is a possibility, in your rush to answer you are more likely to make a mistake. True, you will get through your emails faster, but what else will you have accomplished?

## BE A MONO-TASKER

Researchers at the University of Michigan estimate that we lose 20 – 40% of efficiency as a result of multitasking, which wastes up to two to three hours per day.

When distracted (multitasking), you increase the likelihood of making a mistake e.g. sending an email to the wrong recipient or dialling the wrong date, which may have severe consequences involving court attendances or contract deadlines. This means time is wasted 'cycling back' to correct the error or damage control and, more time wasted later, reorienting to other pending tasks.

Remember, it is better to do one thing well than to do many things poorly. If your client is paying for your time, shouldn't they get the benefit of your undivided attention?

## DISCUSS EXPECTATIONS WITH COLLEAGUES AND CLIENTS

Being connected allows us to do more and do it faster. With this increased speed comes more opportunity for mistakes. However, is this 'on-call' mentality really necessary?

## In summary, YOU need to decide what's right for YOU.

This article simply suggests that you stop and think about what your blackberry means and how you use it. After all, what's the worst possible thing that could happen if you do not respond to an email instantly at 11.30 PM.?

REFERENCES:  
"How to Regain Control From Your Blackberry" – Ivin Kim, March 2006, <http://www.abandon.org/for/blackberry/1003081.shtml>  
"Computers, Tablets and Hand Gears – Controlling Technology So It Doesn't Control You", Thomas W Shurtan IV, <http://www.abandon.org/for/blackberry/1003081.shtml>  
"Crackberry addicts: Why the Workers Who Can't Switch Off Are Busting Their Employees" – Sophie Goodchild and Martin Hodgson, The Independent, 1 Oct 2006, <http://www.independent.co.uk/news/technology/blackberry-addicts-why-the-workers-who-cant-switch-off-are-busting-their-employees-416306.html>

## SET BOUNDARIES

Technology-like blackberries and the internet has made the world a smaller place. However, this ability to connect with others on a virtually unlimited basis has eroded our sense of personal space and time. We are expected to be available at all hours and even whilst on vacation.

So, discipline yourself, have "blackberry free zones" in your home and specify time when you "unplug". If you are not expecting any extraordinary piece of news or information take a day off from your blackberry. You may experience a certain amount of withdrawal but this can teach you a lot about how much you use it.

If your particular situation doesn't allow for time off from your blackberry, then on weekends, or while on vacation, carve out some time for yourself – to rejuvenate and to spend uninterrupted time with your family.

## BLACKBERRY ANONYMOUS

Crackberry.com, the self described #1 site for BlackBerry Users (and Abusers) has developed "13 Steps To Breaking a Crackberry Addiction".

Step 11 reminds that "the world actually functioned before BlackBerries and that people managed to survive with ancient tools like phones and desktop computers...."

Step 6 poignantly suggests that the abuser "make a list of all persons we have harmed through our rudeness, inconsideration and pretentious self-involvement, and make amends to them all."

Do not assume a sender's expectations on response time.

With some exceptions, most people do not expect instant turnaround on a query/issue.

Try to check every two hours or when you are making a transition between tasks. This will enhance your workflow and productivity.



# PARTNERSHIPS OF (IN)CONVENIENCE – YOU'RE LIABLE TOO

By Shyamala Manoharan and Wong Li Chin

**Partnership**/pahrt-ner-ship/ (noun):

The relation which subsists between persons carrying on business in common with a view of profit.<sup>1</sup>

In West Malaysia, there are 5,786<sup>2</sup> law firms in operation, 48.75% are partnerships.

Of late, some cases reported under the mandatory PII scheme have brought to light certain alarming practices by law firms and partnerships. To illustrate our point, we include here two case studies.<sup>3</sup>



## CASE STUDY 1

Firm W notified three claims to the Insurer in 2008. All three claims arose from three files that were handled by W's Johor Bahru branch (JB branch).

Partner A of Firm W set up the JB branch in July 2006 pursuant to a profit sharing arrangement with his lawyer friend, X. Up till then Lawyer X had been a partner of Firm Q, he told A that he no longer got along with his partners and wanted a new set up. X explained to A that the branch (in Firm W's name) was his best solution, as it would ensure he maintained his bank panelship opportunities.

The Insurers received and managed the three claims but appointed an adjuster to investigate the set up of the JB branch. It was discovered that

- ☒ Lawyer X's Practising Certificate had actually expired in January 2006 and could not be renewed as he was by then already struck off the rolls;
- ☒ Lawyer X closed Firm Q in August 2006, he was a sole proprietor, there was no partnership;

- ☒ Once the JB branch was operating, Lawyer X allowed two property brokers/agents to conduct their business from the branch and also to manage conveyancing work at the branch;
- ☒ The JB branch was set up in the same premises where Firm Q was located;
- ☒ In Firm W's application to Bar Council to set up the JB branch, Lawyer N was named as the solicitor in charge. Investigations showed that Lawyer N seldom attended office;
- ☒ Lawyer N only went in to the branch office when his services were needed e.g. sign or attest documents. He signed a declaration admitting to this when located by the adjuster;
- ☒ Lawyer N also did not meet clients; two clerks would verify clients' identities. These two clerks were actually "employed" (paid) by the property brokers/agents; and
- ☒ The three claims arose because Lawyer X and the two agents siphoned out monies paid to the branch by clients.

<sup>1</sup> Section 3(1), Partnership Act 1961 (the Act).

<sup>2</sup> As at 31 Dec 2009.

<sup>3</sup> Whilst there are various breaches of Bar Council Rulings in both case studies, we touch only on the relevant PII Policy Clauses in this article.

Upon completion of their investigation, Insurers repudiated all three claims. All partners in Firm W, including partners who were not aware of the

arrangement in the JB branch were not covered under the PII Policy.

#### TOOLS FOR THOUGHT:

In participating and allowing the above arrangement, Partner A's conduct was found to amount to **misconduct** under Clause 36(i), Certificate of Insurance (COI).<sup>4</sup>

The facts showed clear breaches of Bar Council Rulings and that the branch was **not** a genuine legal practice – not only was it managed by non lawyers but neither Firm W nor any of its partners had any management or supervisory control over the branch.

Firm W's Partners had collectively failed to review and determine the propriety of the arrangement and ensure that proper risk management procedures were exercised in the branch. They put their firm, reputation and clients at risk.



#### CASE STUDY 2

S and E were both partners at Firm J. Both were sued after leaving Firm J and setting up new (separate) practices.

Suit stemmed from work done by Firm J in respect of a sale and purchase of a property, and the subsequent loan agreement to finance the purchase. Investigations revealed that the whole transaction and both agreements were handled by Partner S for the claimant and the borrower. Partner S readily admitted to this and stated that Partner E was not involved at all in this work.

Upon notification, Partner E informed the Panel Solicitor that his defence should be different than that of Partner S as he had neither knowledge nor involvement in the above transactions!

Investigations revealed that:

- ☒ The partnership between S and E at Firm J was not a normal partnership – it operated based on an understanding that each partner, S and E worked independently of each other.

- ☒ They had separate client registers and separate office and client accounts whilst sharing the same premises.
- ☒ They did not share or exchange records with each other.
- ☒ Client account statements from the bank were sent to separate addresses for both partners.
- ☒ The whole transaction was a sham; it was planned by a syndicate with the intention to induce the bank into lending over the value of the property. Partner S advised the bank to release the monies knowing that the sale and purchase agreement was a sham and before the charge was presented for registration.

Insurers repudiated the claim for breach of Clause 12(e), COI.

<sup>4</sup> Clause 36(i), COI defines 'misconduct' as dishonest or fraudulent conduct in the discharge of an advocate and solicitor's duties.

### TOOLS FOR THOUGHT:

Even though Partner E did not have any knowledge of this transaction he was denied PII cover as he was in a partnership that was not genuine and he could not satisfy the provisions of Clause 12.

Under Clause 12, COI, whilst cover is provided for innocent partners in the event of **misconduct**,<sup>5</sup> the proviso in Clause 12(d) qualifies this by stating that the lawyer must be practising as a genuine principal of and carrying on practice in common with other principals of the firm.

In addition, Clause 12(e) requires compliance with risk management procedures at the time of such misconduct. These include *inter alia* a two-to-sign policy and compliance with Bar Council Rulings on client and office accounts.

In essence Partner E lost his PII protection by virtue of his (in)convenient partnership with S.

### DO NOT BE TEMPTED!

It is basic law; if your partner is liable, you are too. Regardless of your personal and internal arrangements, in law every partner is liable jointly with his co-partners and also severally for everything while he is a partner.<sup>6</sup>

Our aim in reporting the above case studies is to highlight the pitfalls that arise if you “franchise” your firm name or join a ‘partnership’ of convenience. If you choose to do so and a claim arises, one or all of these three things will occur:

1. All partners will be implicated, regardless of whether or not you were aware of what the errant partner or branch partners were doing. This applies even if you have left the firm.
2. You may not have recourse to your PII as an innocent partner if you are not able to satisfy Clause 12, COI. Pleading ignorance or the fact that you have no knowledge of what your partner was doing, or that you were not involved will **not** help your case.
3. You will be held responsible for any attendant costs related to the suit including base excess and claims loading.

**REMEMBER!!** Any arrangement or agreement you have with your partners in relation to your liability as a partner cannot be imposed on any party outside that partnership.

So, **never** agree to enter or join a partnership **unless** you have every intention of starting a genuine partnership. It's just not worth the trouble or the loss of reputation.

<sup>5</sup> Subject to other terms and conditions of the COI.

<sup>6</sup> Section 14, the Act.





## MALAYSIAN BAR PROFESSIONAL INDEMNITY INSURANCE (PII) SCHEME

By Charles Perera, Jardine Lloyd Thompson Sdn Bhd

# POLICY TERMS & CONDITIONS

All lawyers called to the Bar are required to purchase PII under the Scheme if they intend to practice. In this final instalment of the PII FAQ Series, we explore the scope of cover<sup>1</sup> provided to all lawyers under the Malaysian Bar PII Scheme.

### Our Scheme is a mandatory PII Scheme, what is it?

A mandatory scheme means exactly that i.e. every practising Advocate & Solicitor must be insured before they can practice.

Section 78A, Legal Profession Act 1976 sets out the provisions for the Bar Council to maintain a Mandatory PI Scheme.

### Who are the Brokers of the Scheme? How are they appointed?

Bar Council holds an open tender every two years to appoint our Scheme Broker. This is to ensure fairness and transparency as well as to ensure that we get the highest level of service for our members.

The broker appointment is usually for a period of two years. Presently, Jardine Lloyd Thompson Sdn. Bhd. is our broker.

### What is meant by 'each and every claim' under the Mandatory Policy?

It means that if the mandatory limit of your firm is RM250,000 then **each and every claim** notified under the policy for that year is covered up to RM250,000, regardless of how many claims are notified for that year. However, this coverage is subject to Clause 8 (base excess) and Clause 36k (the definition 'one claim').

### Who is our Insurer?

Our present Insurer is Pacific & Orient Insurance Co. Berhad.

### What is my mandatory limit of indemnity and where can I find it?

Your mandatory limit of indemnity is the maximum limit that your firm is insured for. The limit starts at RM250,000 for a one-lawyer practice and increases by RM50,000 for each additional lawyer up to a maximum of RM2 million, which is reached when a Firm has 36 or more lawyers

Your Firm's limit of indemnity is stated in Item 7 of your Policy Schedule.

### Who is covered?

The sole proprietor/partners of the Firm as well as all employees of the Firm which is defined in Clause 36(e), COI which include legal assistants, chambering students, consultants and office or clerical staff.

<sup>1</sup> See Bar Council Circular 225/2010 (dated 26 Aug 2010) for salient details of the 2011 PII terms and conditions.

### What is base excess?

It is the amount borne by the Firm at their own expense before Insurers' liability to make any payment on a claim under the policy arises. It is a contractual obligation between the firm and the insurer and is payable when either defence costs and/or damages are incurred.

Base excess is specifically referred to in Clauses 8 to 11, COI.

**NB:** Clause 11, COI refers to three instances when the base excess increases and these relate to (a) Conflict of Interest, (b) Conveyancing and, (c) Dishonesty of Partner.

*\* For more information, see 'Base Excess Explained' article in Jurisk! Dec 2009.*

### How do I know what my base excess is?

The base excess of your Firm is stated in Item 9 of the Policy Schedule attaching to the COI.

It starts at RM10,000 for a one-lawyer Firm up to RM250,000 for a Firm with more than 48 lawyers. A firm can opt to reduce their base excess but additional premium is payable.

### Dishonesty and Loss of Documents – Are these perils covered by the terms of the Insurance Policy?

Clause 2, COI indemnifies you against civil liability for a claim that arises from your legal practice. Clause 33, COI sets out what is excluded under the terms of the policy (unless specifically referred to within the other clauses of the COI).

Loss of documents is not excluded under Clause 33. Thus, any claims arising from loss of documents would fall for consideration under the COI subject to all other terms and conditions. The limit of liability is the Firm's limit of indemnity as indicated in their Policy Schedule.

In respect of Misconduct (Dishonesty), Exclusion Clause 33(e) is applicable – the party committing the act and any person who condoned the act is not protected under the Policy.

However the 'innocent partner' is protected for the (dishonest) acts of a partner, legal assistant or employee of the Firm subject to Clause 12 and compliance of Clause 12(e), COI.

**NB:** Misconduct is sub-limited to RM350,000 or the Firm's limit of indemnity whichever is the lower.

### If there were to be a dispute with Insurers on whether my case should be settled or litigated. Can the Insurer's decision be contested?

Yes, Clauses 22 – 25, COI states that neither party is required to contest any legal proceedings unless a senior member of the Malaysian Bar shall advise that such proceedings could be contested with a reasonable prospect of success. Cost of such referral is borne by both parties equally.

**For the purpose of this FAQ Series, 'the Broker' refers to the Malaysian Bar PII Scheme Insurance Broker.  
The 2010 PII Scheme Insurance Broker is: Jardine Lloyd Thompson Sdn. Bhd.,  
Suite 10.2, 10th Floor, Faber Imperial Court, 21A Jalan Sultan Ismail, 50250 Kuala Lumpur.  
Tel: 03 2723 3388. Fax: 03 2723 3301.**

# SOCIAL NETWORKING DON'TS



twitter

myspace

WordPress

Technorati



DropBox

## 'Social Networking':

Generally a website (e.g. Facebook, Twitter, Myspace) where people communicate with friends through multiple means such as leaving comments on posted pictures or blogs, or perhaps sending them a message they can read when they sign into the site at a later time.

Social networking may be the best thing since sliced bread. Not only has it enabled countless old (lost) friends to reconnect, it allows family and friends to keep in touch. Nevertheless, there are certain things that are best not shared/revealed on your social network page. It could make you a victim of identity theft, cost you your job, or even break up marriages.

Depending on how tight your \*privacy settings are, your status updates, wall posts and photos could all be available for anyone to see, regardless of whether or not they are on your 'friends' list. So, learn to draw the line on what you share. See our top #17 don'ts on page 16.



**\*How to tighten your Privacy Settings?** Although different social networking sites have different features, the main privacy settings every user should exercise is to limit your 'friends' list to people you know, choose who can see the content you post on a day-to-day basis, remove yourself from the facebook public search and make your contact information private. Facebook provides a 'recommended settings' link to guide you.



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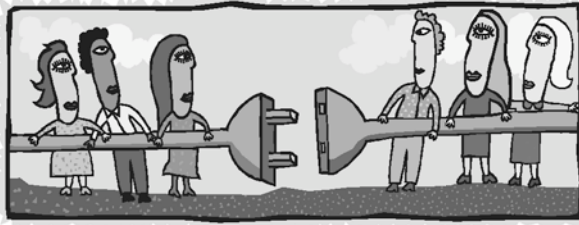
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# TOP #17 SOCIAL NETWORKING DON'TS



## CONFESSIONS

- 1** You hate your job, or company, or boss or colleagues, and want to leave. You might get your wish.. involuntarily.
- 2** You've done something stupid or worse illegal.
- 3** You are planning to take sick leave.
- 4** You are planning to not return to work after court or a client meeting.
- 5** You're working on a high profile case and you think your client is guilty!
- 6** Blow by blow account of your meeting with an unreasonable client you're representing.
- 7** The silly case your senior is making you work on whilst s/he socialises with the boss.
- 8** Your colleagues' antics and politicking at work.
- 9** You are having (or *thinking* of having) an affair with your boss or colleague.
- 10** What you're doing and where you are every second of the day – it tells your employers you're not really hard at work as you say.

YouTube

LinkedIn

flickr

del.icio.us

facebook

## SECURITY

- 11** Your personal information including your home address.
- 12** Passwords and password clues e.g. your mother's maiden name, your favourite song, etc.
- 13** You are off on holiday; the dates you are away on holiday.

## PHOTOS THAT SHOW YOU...

- 14** In various states of undress.
- 15** Doing something silly... not good for personal branding.
- 16** Inebriated or with a hand placed where it shouldn't be.
- 17** Doing something or an event that reveals that you were not sick that day you took medical leave!



**You never know who is looking at your status updates, so don't put yourself at risk. Limit the information that you share on your social network page.**