



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

Managing Risks in 2010

Through Jurisk!, Bar Council Circulars, and more recently PI Bulletins, we have consistently been reinforcing our concerns that an increase in claims will eventually put pressure on the PII Scheme, especially on premium stability.

This message is often lost as we have kept the premium rate stable since 2008. Fact is, between a volatile global market and insurance cycles, this may *not* always be achievable. Our move to the Professional Indemnity Fund (PIF) may mitigate this but not completely; the PIF will still have to purchase insurance from the global market to protect the Scheme against large or accumulation of claims.

Hence, good risk management is more important than ever. It is the surest way to maintain a stable, sustainable Scheme with the possibility of reduced premiums in the future. The point we would like to stress is that good risk management need *not* be onerous; it is largely a matter of working at the fundamentals, e.g. good office management, effective communication with clients, and diligent time and practice management.

On this note, we have every reason to be optimistic. Members are keen, they are listening and we have made efforts to provide you with the necessary tools. Whilst these tools have been developed in line with risk-prone practice areas, for it to work, we need *you* to tell us what you need. Feedback received on the 2009 PII Scheme Survey (sent out in October 2009) has been helpful but minimal.

We intend to boost this feedback with a Risk Management (RM) Roadshow in early 2010. The PII & RM Department Officers will travel to a number of State Bars to promote the Programme, our tools and ask Members what *you* need. It is my hope that State Bars and Members alike will support and actively participate in our RM Roadshow as feedback received will be used to spur the Programme forward.

New practice tools are being lined up for Members as well in 2010 – Workshops, in-house seminars and new publications will be organised/ disseminated throughout the year, so do look out for our leaflets and circulars.

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To start, this issue of Jurisk! has been packed with new risk prevention ideas and suggestions. The 'New Year Risk Resolution' piece by author Martin Goh challenges you to go forth and get serious about risk management. Start your practice year with a new (risk aware) culture through Martin's practical risk suggestions.

Another noteworthy piece is 'Don't Be a Victim of Identity Fraud' on Page 10. It is hoped this article with its Checklist will assist Members in arresting rising fraud risk. It functions as a quick-guide to identifying and reducing identity fraud. Whilst not the final word on fraud risk, it is a useful tool to screen new clients. Members are actively encouraged to use it on every file. Write and let us know if you find the Checklist useful or how we can further improve it.

Ask any lawyer about the deductible on their motor insurance and the likelihood is that they will know it. Say Base Excess, and most Members would not be familiar with the term. In this issue, we put the spotlight on this relatively unknown topic in 'Base Excess: Explained'. Here, Base Excess is dissected; the "when and how" explored.

Our year in review will be available for Members' information this coming February in our 2009/10 Annual Report. However, we thought it apt to provide Members a quick summary of key endeavours in this issue:

→ **PII 2010.** In spite of increased claims and a hardening market, we successfully negotiated and maintained the 2009 expiring terms, the enclosed PI Bulletin reports key 2009 PI and SIF activities.

→ **Risk management.** Slowly but surely, we are making headway in raising awareness amongst the Profession. Read about our progress in the '2009 Risk Management Programme Highlights' on Page 3.

As is custom, the Bar Council is publishing our '2010 Risk Management Calendar'. Similar in concept to the 2009 Desk Calendar (which had favourable reviews), the 2010 Calendar will feature Mini Checklists as practice aids for the busy lawyer. Subjects tackled range from delegation to fraud to admitting mistakes. You should receive your Calendar by end January 2010. If not, do drop by the Bar Council and collect your copy from the PII & RM Department (3rd Floor). Alternatively, contact the Department and a copy will be sent to you (while stocks last). Online copy of the Calendar will also be available for download from end January 2010 onwards.

I would like to take this opportunity to thank those Members who have steadfastly supported the Risk Management Programme. To those who attend our Workshops, who read our publications and also those who use our Practice Tools, we hope you'll continue to do so as well as encourage your peers and staff to do the same.

Wishing all Members a happy, prosperous but foremost healthy 2010!

Ragunath Kesavan President/PII Committee Chairman, Malaysian Bar

2009 Risk Management Programme Highlights

In implementing our three-year Risk Management (RM) Programme (2007 – 2009), the main objective was to engage the profession through education and raising awareness. In this time, we have grappled with apathy and had difficulty reaching Members particularly those outside Kuala Lumpur and Selangor. Whilst there appears to be interest, our risk management message still takes a back seat to busy practice life.

At the tail end of this endeavour now, we estimate that we have reached less than 15% of Members. We are hopeful that this number will increase as the Programme develops. The intention is to expand, improve and consolidate our practice tools in tandem with Members' needs. Whilst we will continue with the existing risk management tools, our 2010 Programme's focus will almost exclusively be on gathering feedback on Members' practice needs.

TARGETING RISKS. CREATING SOLUTIONS.

"Your marketing has improved tremendously and members are better informed."

In tackling the apathy issue, a new dimension was added to the Programme this year: marketing. Practice tools were re-introduced to Members through leaflets, advertisements and website banners. The aim was to let Members know what tools and programmes are on offer.

The 'Targeting Risks. Creating Solutions.' Leaflet was first distributed at the Mar 2009 AGM and later circulated with

Jurisk! Mar 2009. Its purpose was to showcase our practice tools to Members. Based on the concept of 'building rewards and seeing success', the Leaflet advocates equipping your firm with the right practice knowledge and tools. It has yielded small successes – telephone enquiries to the PII & RM Department (PRD) doubled following distribution of the Leaflet; distribution of the Checklist CD and Practice Booklets increased slightly.

A second leaflet promoting our "Improve Your Practice" Kit was sent out with Jurisk! June 2009. This Kit contains the Practice Booklets, Checklist CD and Eco Bag.



Another novel project for the PRD – we launched our own line of Eco Bags this year. Available in three different colours (blue, maroon and black) it was to boost the 'Targeting Risks. Creating Solutions.' Campaign and to coincide with the Jurisk! Green issue. To date, more than 1,000 Eco Bags have been distributed.

Publications

JURISK! Risk Management Quarterly

"Well crafted and useful to all practitioners of the law..."

2009 was about finding the right balance between hard-hitting articles and light pieces. Important also was to keep Jurisk! current so as to appeal to young lawyers. Two new features, the Centrespread and a Green issue were added to Jurisk!

The Centrespread serves two purposes. One, to illustrate the lighter side of risk management; two, a useful 'pull-out' feature

for Members to post on their Firm Notice Boards/desks or to share with their staff. Top things to do, stress relief tips and New Year resolutions were amongst topics the Centrespread touched on this year.

The Jurisk! Green issue was initiated in recognition of World Environment Day. To complement the very first Green issue, we created three green e-signatures and our very own Eco Bag (see above). The green e-signatures received 10,000 hits in its first week. We intend the Green issue to be a permanent addition to Jurisk!



Two Practice Alerts were published in 2009: fraud and cheque forgery.

Fraud. We highlighted the profession's growing fraud problem (PI claims were up by 20% compared to 2008, with conveyancing/fraud claims at the forefront). Methods to reduce fraud exposure and case studies on modus operandi of fraudsters were included for illustrative purposes.

Cheque Forgery. This Practice Alert put the spotlight on the amended Section 73A Bills of Exchange Act 1949 which limits a bank's liability in cases of cheque forgery.



"The 2009 Calendar is very informative.... Future handout such as the above [sic] is much appreciated..."

We are pleased to report that the Bar Council Risk Management Calendar continues to garner support from Members. The 2009 Table Calendar was "sold out" by Feb. Hence, this Project will be continued in 2010 following a similar concept. This time around, we present mini checklists for the busy lawyer: quick aide memoires for everyday tasks in a legal firm.

Workshops

Getting Started!

"All the sessions were educational, insightful and handled with professionalism by the speakers..."

2009 saw the highest number of participants since *Getting Started!* was launched. Three Workshops were organised, including one at the Johor Bar. Two sessions were held on 14 Apr and 23 Oct 2009 respectively in Kuala Lumpur and on 19 June 2009 at Johor Bar.

We met approximately 130 participants, with some travelling from Kelantan, Terengganu and Pahang to attend. Sessions on Accounting and Tax, Business of Legal Practice and Practice Areas were popular with participants. Business solution providers were included again for participants' benefit this year.

2009 marked our very first outstation *Getting Started!*, held in Johor. With 16 participants made up of a mix of senior and young lawyers, feedback on the Workshop was minimal but useful – it gave the PRD a little insight into problems and issues faced by lawyers in other States which at times differ from those faced by lawyers in Kuala Lumpur/Selangor. A new panel of Speakers gave fresh perspective to the *Getting Started!* modules.

Overall, most *Getting Started!* participants found the sessions practical and informative – 72% would recommend the Workshop to their peers. We hope to grow the *Getting Started!* Series to include topics for senior lawyers and staff training.

Risk Management & You

"Enjoyed the hands-on discussion of case studies, followed by risk management tips helpful to reinforce points..."

One of the main causes of claims in our PII Scheme is missed hearing dates and time barred matters. With this in mind, the PRD organised a targeted one-day Workshop on 5 May 2009 with focus on managing critical dates, the art of delegation and supervision and, pressures firms face in economic hard times.

The speaker, Ms. Sue Harrington worked for more than 10 years with the South Australian PII Scheme and was involved in the development of their risk management education programme.

Participants were guided using a mix of presentation, videos and written materials. In floor discussions, participants were encouraged to share practice tips and their experiences. All 26 participants had a fruitful Workshop, with some participants suggesting that similar courses be run bi-annually for Members.

Annual Survey

**YOUR
OPINION
MATTERS!**

A disappointingly small pool of responses was received on the 2008 Survey, less than 1% of Members responded. Whilst in-depth analysis of the result would not be beneficial, we report here briefly the statistics we have in hand.

The RM Programme is generally viewed favourably. Jurisk! remains one of our most popular practice resource. The Checklist CD and Practice Booklets remain relatively unknown. 86.67% responded that they would attend Risk Management Seminars. This is however not reflected in practice, as the number of participants at our Workshops above suggests that less than 1% of the profession attend Risk Management Seminars annually.

Effort will be put into understanding this lackadaisical attitude – whether it stems from the Risk Management Programme itself or lack of awareness on Members' part. To start, we would like to see feedback on the 2009 Annual Survey increase. The Survey this year has been segmented and incentivised to boost participation. Survey on the Risk Management Programme and tools will be distributed in Mar 2010.

Conclusion

"I do not need risk management because I have not been sued!!"

This perception is the biggest problem we face in educating Members. Another perception about risk management is that it is about systems and processes.

The PII Committee aims to gradually change these perceptions through our Programme and tools. Risk management, in practice, is more than systems and processes; it is about building a culture and it should be implemented consistently, not just when a problem arises! Implemented well, it can change the way we conduct our practice so that it is efficient, cost effective and most importantly, profitable.

The quality and scope of the Bar Council's Risk Management Programme can only be as good as Members' support and feedback. We look forward to seeing and hearing more from you in 2010. This will assist in building a relevant and useful Risk Management Programme for the Malaysian Bar.

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New Year Risk Resolution

By Martin Goh, Echelon Risk Consulting Asia Pte Ltd

Making a New Year's resolution? Are you thinking about making a New Year's resolution to get serious about risk management? Inspired perhaps by all the articles you've read in Juriski this year? Well then... This is for you!

Some key things you should consider: According to FranklinCovey Products' Fourth Annual New Year's Resolution Survey for 2009, more than 75% of respondents will break their New Year's resolutions within 3 months because they are not committed to them and/or they have too many other things to do.

So before you decide on a 'risk resolution', here are some things that might be handy in helping you stand apart from the 'resolution-breakers' (not that we are in any way suggesting that you are or will be part of the 75%!):



2 Begin with the end in mind

Put simply, Stephen Covey's second habit makes the point that if you don't have a clear vision of your desired direction and destination, you are either going to go nowhere fast (and waste a lot of resources along the way) or get to the wrong destination (and waste a lot of resources getting there).

You might want to ask yourself the following questions:

- ☉ What would an effective risk management process look like for my team/firm?
- ☉ What should the risk management framework/process encompass and how should it add value to my practice?

The more details you can develop in answering these questions, the clearer your destination would be.



1 Be proactive

The first habit from Stephen Covey's 'seven habits' is about taking responsibility. Decide to take responsibility and get serious about managing risks, because it is often too late (and the consequences too dear) to react once the risk transpires. If you think that 'it won't happen to me or my firm', perhaps you should have a chat with the folks at Enron, Arthur Andersen or Lehman's.



4 Design a framework and execute

A well-designed framework that is birthed out of your objectives and vision will provide guidance and clarity to help you execute a structured risk management process. It should obviously take into account the external and internal context of your firm and will clearly articulate its objectives for and commitment to risk management.

The good news is that you don't have to start from a blank sheet – There are numerous international standards that you can use (e.g. ISO 31000:2009, AS/NZS 4360¹ and the COSO² ERM framework). There are no 'right' or 'wrong' frameworks. The key is to decide on the one that best suit the needs and resources of your firm.

If you are the 'senior management' and are struggling with this point, then please refer to Point 1.



5 Incorporate accountability

It is important to ensure that there is accountability and authority in managing risk, implementing and maintaining the risk management process and ensuring the adequacy, effectiveness and efficiency of risk controls.³ This provides clarity and ensures that risks are appropriately managed, tracked and mitigated.

6 Integration

Enough can't be said about integration. One issue that is worth reiterating is the need to gain buy-in throughout your firm. It is critical to answer the implicit 'what's in it for me' question if risk management is to gain effective firm-wide acceptance and adoption.

For example, Lori Jorgensen, Senior Director of finance-risk management at Microsoft, positions Microsoft's risk management function as a practice that seeks to add value to Microsoft's business units, creating a more tangible value to departments and explained what services she could provide to help unit managers obtain funding for mitigation strategies that would enable them to become more productive and profitable.⁴

So Go Forth... Make that New Year's resolution to get serious about your firm's risk management framework/processes.
We hope that our suggestions will go a long way towards putting a smile on your face when you review this resolution at the end of 2010.

1. The Australian/New Zealand Risk Management Standard. 2. Committee of Sponsoring Organizations. 3. ISO 31000:2009 Risk Management Principles and Guidelines, 15 November 2009. 4. Joanne Wojcik, 'Risk Management Platform Moves Far Beyond Insurance', Business Insurance, 20 April 2009.

BASE EXCESS



By Dilsher Singh, Jardine Lloyd Thompson Sdn Bhd

Almost all general insurance policies have an excess clause also known as a deductible, the common examples are motor and fire policies.

Base Excess is the amount which an Insured party (a law firm) would have to bear before any monetary benefits under an insurance policy kicks in.

BASE EXCESS AND the Malaysian Bar PII Scheme

In the Malaysian Bar Mandatory Professional Indemnity Insurance (PII) Scheme, base excess falls under Clauses 8 to 11 of your Certificate of Insurance (COI).

The base excess applicable to each Firm is dependent on the number of lawyers within the Firm. It starts from RM10,000.00 for a one-lawyer Firm up to RM250,000.00 for a Firm with more than 48 lawyers.

Once your PI policy is purchased, the base excess is a contractual obligation and must be paid under the terms of the COI when defence cost and/or damages is incurred, the former to be paid whether or not the matter has been concluded and/or successfully defended.

WHY have a base excess?

Premiums

Generally the higher the base excess the lower the premiums payable, since the Insured is taking on a larger risk. It is often argued there is no difference in premiums if the base excess

is removed particularly in a Mandatory Scheme where there is a large pool of members.

However, taking an average of 200 claims reported annually under this Scheme with an average cost of RM5,000.00 per claim, this equates to an additional RM1 million incurred by Insurers, which will eventually be recovered by increased premiums the following year!

Risk Management

Base Excess Clauses are employed to ensure some form of risk management is implemented by Insureds, without which it is believed that there is an overreliance on the transfer of the risk to Insurers. The logic is the fear of an Insured who totally disregards the consequences of his actions.

DO I HAVE TO PAY the base excess if the claim is successfully defended?

The application of the base excess is not dependent on the success of the claim made against the Firm or specific partners of the Firm. It is contractual between the Firm and the Insurers and correspondingly where Insurers pay a claim/incur cost, the Firm will have to bear the base excess until it is exhausted.

Clause 8 of the COI 2009 states, "*Our liability under this insurance shall only apply to that part of any one claim which exceeds the Base Excess specified in Item 9 of the Schedule. The Base Excess shall be borne by you uninsured and at your own risk.*"

WHEN do I have to pay the Base Excess?

The payment of the base excess usually arises at the conclusion of the matter whether it is settled or successfully defended with one exception, that



is the defence cost which is addressed at Clause 10 of the COI: *"Where defence costs is payable to panel advocates and solicitors, you must pay the amount of the Base Excess specified in Item 9 of the Schedule within 45 days of the receipt of the invoice. This payment is a condition precedent to your right to renew your insurance under the Master Policy for subsequent policy periods."*

When do I have to pay INCREASED BASE EXCESS?

There are three circumstances where the Base Excess is increased

- a. Conflict of Interest – Acting for more than one party to a transaction in respect of conveyancing of land and/or buildings otherwise than in accordance with the Bar Council Rulings as amended from time to time.
- b. Conveyancing – Any conveyancing transaction involving land and/or buildings.
- c. Dishonesty of Partner – Fraud or Dishonesty committed by any Partner of the Firm.

IN CONCLUSION

It is often asked why the base excess is increased only to these three specific areas of Practice or circumstances. The simple truth is that it is based on claims data where the severity and frequency of claims together with causes and sub causes are analysed.

It should be noted that members may avoid the increased base excess for Conflict of Interest and Conveyancing matters if a written waiver is obtained from the Clients for the former and a risk management programme is in place for the latter. Note: Under the Scheme you can also opt to reduce your base excess by paying additional premiums.

In summary, base excess is *not an unusual thing* – it is common place in insurance policies, it benefits the majority of members as it achieves stable premiums for the Scheme and it assists the Bar Council and Insurance providers with their risk management initiatives.



| CIRCUMSTANCE | INCREASED BASE EXCESS | EXCEPTIONS |
|-----------------------------|--|--|
| 1. Conflict of Interest | <ul style="list-style-type: none"> • RM100,000.00 or 2 X base excess whichever is higher. • This is subject to a maximum of RM300,000.00. | Written waiver obtained from Clients. |
| 2. Conveyancing | <ul style="list-style-type: none"> • RM50,000.00 minimum. | Where there is evidence that a risk management programme was in place at the time of the act, error or omission. |
| 3. Dishonesty of Partner(s) | <ul style="list-style-type: none"> • RM20,000.00 X Number of partners in the firm. • This is subject to a minimum of RM30,000.00 and maximum of RM250,000.00 per Firm. | |

Don't Be A Victim Of Identity Fraud!

by Selva Veeriah, Advocate & Solicitor
Vazeer Akbar Majid & Co

What is identity fraud?

Identity fraud is when someone impersonates someone else in order to secure a benefit. Usually, the impostor unlawfully obtains personal identifiable information belonging to an innocent party and uses it to open bank account, apply for credit card, assert ownership over property, or obtain goods or services.

How does identity fraud affect the legal profession?

Lawyers often fall victim when witnessing documents for non-clients and in conveyancing transactions where they act for the purchaser and the impostor is usually the vendor. This sometimes leaves lawyers exposed to allegations that they had been negligent in verifying identity.

How is a person's identity verified?

Presently, the identity of a person is verified by sighting a primary identifier (e.g. National Registration Identity Card (NRIC) or passport) that contains personal information of the person whose identity is being verified. No other document is requested or needed.

What are the risks in relying solely on a primary identifier?

In most cases, an impostor only has to produce a forged NRIC or passport in order to establish false identity.

What can be done to reduce the risks?

There is a need to cross check personal information on the NRIC or passport against other documents that contain similar personal information, for example, a driver's licence or bank statement. This will make it difficult for the impostor to perpetrate the fraud and increase the likelihood of detection. To this end, a 100-point identity check is set out on the next page.¹

This Checklist is intended to assist lawyers or their staff in verifying identity of clients and non-clients in the course of their work.

1 This Checklist was adapted from the Australian Financial Transaction Reports Act 1988

To successfully complete the process, the person whose identity is being verified will need to provide sufficient documentation to be awarded 100 points, and allow the person undertaking the verification to confirm the personal information required under sections A and B.

How to complete this Checklist:

- Record the points scored for the checks carried out
- Total the points scored
- Take copies of the documents sighted
- Indicate if verification has or has not been achieved

100-Point Identity Check

A. Primary Document

Person being identified MUST produce ONE of the following original documents to verify:
1. NAME 2. PHOTOGRAPH 3. NUMBER (i.e. NRIC Number/Passport Number)

50 points

- | | | |
|---|--|--|
| ① | Malaysian Citizen (above 12 years): National Registration Identity Card | |
| ② | Malaysian Permanent Resident (above 12 years): National Registration Identity Card | |
| ③ | Malaysian Citizen (below 12 years): Birth Certificate | |
| ④ | Malaysian Permanent Resident (below 12 years): Birth Certificate (Note: For A3 and A4, no photograph is required) | |
| ⑤ | Foreign Citizen: Passport or Diplomatic Travel Document or Refugee Travel Document (Note: A marriage certificate must be produced if a woman wishes to use her maiden name that does not appear on the above documents) | |

B. Secondary Document

The person being identified MUST produce TWO OR MORE of the following original documents to verify
1. NAME 2. SIGNATURE 3. CURRENT RESIDENTIAL ADDRESS
(Note: It does not matter if the information on the documents overlap or how many documents are produced.
At least two documents must collectively verify name, signature, and current residential address)

25 points

- | | | |
|---|---|--|
| ① | Land Title Documents [Issued by the Land Office or Registry] | |
| ② | Utility Bills [A Telephone, Water, Sewerage, or Electricity bill issued in the last three months] | |
| ③ | Rates/Notices [Issued by Council or Municipality] | |
| ④ | Motor Vehicle Registration [Issued by Local or Foreign Government] | |
| ⑤ | Licence or Permit [Issued by the State, Federal, or Foreign Government] | |
| ⑥ | Bank Card or Deposit Book or *Bank Statement [*Issued by a Financial Institution in the last three months] | |
| ⑦ | Credit Card or *Credit Card Statement [*Issued by a Financial Institution or Credit Card Corporation in the last three months] | |
| ⑧ | Lease or Rent Agreement [With the Landlord or Estate Agent] | |
| ⑨ | Insurance Documents [Issued by an Insurer] | |
| ⑩ | Professional or Trade Membership [Issued by a Professional Body or Trade Association] | |
| ⑪ | Employee Identification Card [Issued by Private or Public Sector] | |
| ⑫ | Membership Card [Issued by a Registered Club or Association] | |
| ⑬ | Pension Card [Issued by the State or Federal Government] | |
| ⑭ | Student Card [Issued by an Education Institution] | |

C. Verification

Total points

Signed _____
Name Date

Verified: Yes / No

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free expression
and freebies.

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and get a free gift from it!

See enclosed leaflet for more information.

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