



Your PRACTICE RESOURCES – Are you taking advantage of them?

2009, as predicted, is shaping up to be a challenging year. Globally, the effects of the financial crisis are taking its toll on Asian economies. On the home front, we are faced with economic and political uncertainty, retrenchment, pay cuts.

These factors, will definitely impact us lawyers. These factors also underscore the importance of equipping ourselves with the requisite knowledge and tools on good practice management.

The Bar Council has specifically developed a suite of Practice Tools – booklets, checklists, etc. for this very purpose! Developed from members' feedback and claims information, these Practice Tools are invaluable assets for any firm. Our surveys, however, show that only a small number of members are utilising these Tools in their daily practice.

We strongly encourage members to find out what practice resources are available and introduce them in your practice. These resources if utilised, can only benefit your firm – lawyers and staff alike will become more efficient and effective. This, in the long term will translate into increased profits for your firm! To this end, we have enclosed a Leaflet, 'Targeting Risks. Creating Solutions.' with information on our suite of Practice Tools. If you haven't received one, please contact the PII & RM Department for your copy.

The focus in this issue of Jurisk! is to equip members with information to meet practice challenges particularly in this economic slowdown:

- a. 'Risk Manage to Position Your Firm for What's To Come'. This article considers risk management as an alternative to traditional cut-back/cost cutting measures in managing the current economic slowdown.
- b. 'Fraud... Are You Next?' highlights the profession's growing fraud problem, methods to reduce your fraud exposure and case studies on *modus operandi* of fraudsters.

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DID YOU KNOW?
Jurisk = Juris + Risk
= LawRisk!

On matters PII, the Bar Council tabled a Motion to establish a Self-Insurance Fund (SIF) as an alternative to the current PII Scheme at the March 2009 AGM. We are pleased to inform that the Motion was carried unanimously. A short write-up on the SIF can be found on Page 11. More information on the SIF will be disseminated to members in the coming year to keep you updated on progress made.

To commemorate this proposal to set up a SIF, the Jurisk! Team had a tête-à-tête with the first PII Committee Chairman, Dato' Dr. Peter Mooney to talk about the PII Scheme's roots, his experiences when the Scheme first began and to find out his thoughts on the Scheme's development since 1992. The excerpt is on Page 6.

To end, I would like to express my gratitude to the PII Committee for their support and contribution particularly on the SIF Transition Project. In recognition of their dedication, we present below the 2008/09 PII Committee members.

Thank you and happy reading!

Ragunath Kesavan President/PII Committee Chairman, Malaysian Bar

PII COMMITTEE MEMBERS 2008/09



Standing: Razlan Hadri Zulkifli |
Dhinesh Bhaskaran | Amardas
Jethanand | G Balakrishnan |
Arthur Wang

Sitting: Ragunath Kesavan |
G K Ganesan | Lawrence
Pereira | Ng Seng Kiok |
George Varughese

Individual pictures: Murelidaran
Navaratnam | Lee Leng Guan

‘The time has come for members to take control of their own PII Scheme.’ G K Ganesan

‘Our goal for the PII Scheme is to balance protection for Bar members (when they have a claim) with public protection.’ Ng Seng Kiok

‘Self-insurance the way forward for greater security and stability.’ Lawrence Pereira

‘Be safe and not ever sorry.’ Arthur Wang

~Risk Manage to Position Your Firm for What's to Come

By Martin Goh Echelon Risk Consulting Asia Pte Ltd



Beyond Survival~

As we navigate through what many are calling the worst economic recession since the Great Depression of the 1930s, law firms would not have been spared the widespread impact of the current economic crisis.

Whilst survival and cost cutting might be the name of the game now, it is perhaps a good idea, with the application of foresight, hindsight and sound management practice, to look beyond survival. How should your firm start thinking about emerging from the current economic slump well-positioned to capitalise on opportunities and the unexpected?

Effective risk management should play a key role in such a process.

How to Leverage Risk Management~

Let's define risk management success by looking at what happens when risk management is effectively executed. Case in point: J.P. Morgan.

At the height of the credit bubble, J.P. Morgan, led by CEO Jamie Dimon, exited the business of securitising subprime mortgages when it was still booming. Identifying, assessing and effective management of risk were key to this decision and has allowed J.P. Morgan to weather the crisis far better than its rivals. From July 2007, when the crisis began, through the second quarter of 2008, J.P. Morgan took just USD 5 billion in losses on high-risk Collateralised Debt Obligations (CDOs) and leveraged loans, compared with USD 33 billion at Citi, USD 26 billion at Merrill Lynch, and USD 9 billion at Bank of America (Shawn Tully, money.cnn.com, 2 September 2008).

As Dimon demonstrates:

***...leveraging risk management
means that you effectively
execute risk management as
part of good business practice,
positioning your firm with the
ability to optimise earnings
while staying in a well-defined
risk tolerance.~***

Managing partners and/or the executive committee at every law firm should analyse the firm's risks and take proper steps to either eliminate or mitigate their effects. They would articulate the firm's risk tolerance and develop processes to keep losses within that tolerance. The question of 'what are the key risks my firm is likely to face over the next 12 months and how do we best manage those risks' should frame your approach in making risk management an integral part of management best practice.

The following pages provide an example of key risks that might be highlighted through such a process.

Example of Risk Issues**Possible Ways to Manage Risk*****Inability to Appropriately Service Clients***

- Who do/would you take on as clients?
- On what terms?
- Who would/might you reject?

Establish clear guidelines in terms of types of clients to take on, bearing in mind the impact of such decisions in terms of risks and opportunities.

Ensure that the clients you take on are appropriate in every way. Examples of considerations include:

- Their cases involve matters that you are able to handle, in terms of technical expertise and service ability.
- Be conscientious about avoiding conflicts of interest.

Client Concentration

Over-reliance on one client's billing creates a risk to the firm's overall revenues.

Strengthen relationship with client(s), while also striving to bring in additional business to lower its percentage of overall revenue.

Over-Reliance on Practice Areas

Reliance on one or two practice area(s) for revenues may have a negative impact on profits if that practice area hits a rough patch and/or key members of that practice resign.

Review possibilities for diversification of revenue stream.

Take steps to compensate practice area properly while also diversifying and growing other areas of the law firm.

Multi-Partner Defections

- There is a risk when clients associate a firm only with one partner who controls all aspects of an account.
- Significant number of and/or key partners and legal assistants departing for more autonomy, flexibility and/or compensation.

Firms could present their clients a "team" of lawyers which has the ability to provide quality service, instead of relying on the lead lawyer.

Know which partners and legal assistants are most profitable to the firm and compensating them accordingly to retain them.

Review your firm's staff development processes, working environment and/or compensation structure.

Think about investing in partners/legal assistants through various means such as education.

Example of Risk Issues**Possible Ways to Manage Risk*****Financial Impact Due to Lack of Formalised Procedures***

- What procedures are in place for calendaring, documenting and managing deadlines?
- Are fee arrangements clearly defined, transparent and effectively disseminated so that everyone knows what is expected of them?

Appropriate use of technology to accomplish these tasks.

Establish good engagement letters that are available/disseminated to lawyers so that clients are able to understand:

- Limits of the relationship.
- Billing arrangements.
- When payment is due.

Policies & Procedures ~

Interruption to Your Business

- What do you do when your office is rendered inaccessible for a period of days or months – How would you then go about providing seamless service to clients?
- What plans are in place for staffing options and reorganisations if large clients and/or key partners/legal assistants were to depart?
- Aside from the obvious income loss, you might also be faced with loss in reputation and having to deal with clients switching to competitors.

Develop robust and practical business continuity management plans that go beyond IT disaster recovery.

If you feel unsure of where to start, perhaps it is apt to look into making an investment to hire professional consultants to assist you.

Business Continuity ~

***Concluding Thoughts* ~**

We have sought to provide some insight in how risk management can be used to position your firm for success as you ride out this economic storm.

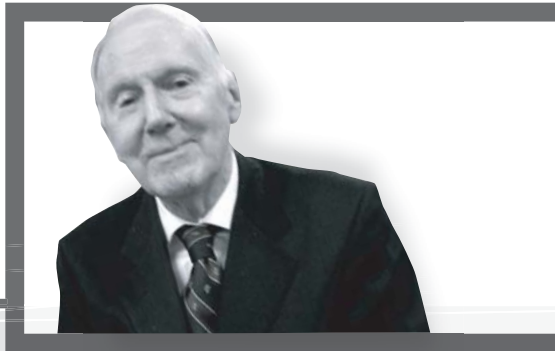
To conclude, let's we return to Jamie Dimon to take a look at an excerpt from his recent press release (15 January 2009) relating to J.P. Morgan's fourth quarter 2008 net income:

"We are doing our part to help stabilize the financial markets and hasten recovery. We assumed risk and expended resources to assimilate Bear Stearns and Washington Mutual. We continued to lend in a safe and sound manner... JPMorgan Chase's management team is working diligently to manage through this very difficult business climate, and to position the franchise to benefit when the economy eventually recovers."

Note: J.P. Morgan's Full-Year 2008 Net Income was reported at USD 5.6 billion.

A TÊTE-À-TÊTE WITH DATO' DR. PETER MOONEY

The Jurisk! Team recently sat down for a tête-à-tête with the man behind the setting up of the Malaysian Bar's Professional Indemnity Insurance Scheme in 1992. The privilege afforded us insight to our PII Scheme's history and his experiences of the Scheme's formative years.



Q. Dato', you chaired the first Professional Liability Committee (as it was called then) and your Committee came up with a Memorandum dated 16 April 1992, which we all refer to as the Dato' Peter Mooney memorandum. It is still relevant today and the objectives applicable to the present PII Scheme. What were the reasons for setting up a PII Scheme for the Malaysian Bar?

The Law has become increasingly complex with a never-ending spate of Statutes and subsidiary legislation. This has greatly increased the responsibilities of the profession and the possibility of mistake or oversight in the services we give to our clients. It was clearly desirable that all our members should have some protection against claims for negligence. Some had taken on insurance but many had not. We decided to explore the possibility of setting up an insurance scheme, which would cover all members.

Q. Your Committee back then was a very small Committee, what issues/pressures did you face?

The principal issue was whether members would accept the Scheme. Before this could be put to them it was necessary to formulate the Scheme with some precision. We had no experience in this specialised field. We had to approach those who had, the international brokers who dealt with professional indemnity.

We sought these brokers out and in correspondence received their proposals and terms.

By comparing these we finally selected two (2) brokers of repute and standing. I went to London, the insurance centre of the world at that time and negotiated with the two (2) for the best scheme and terms we could get and brought these back to the Council. We invited each of the brokers, after further negotiation, to come to Kuala Lumpur and make their presentation to the Council. We selected what we thought was the better proposal, presented it to the Bar at the General Meeting and it was accepted. We then entered into detailed negotiations regarding implementation of the Scheme. This required amendments to the Legal Profession Act 1976 and the drafting of subsidiary legislation. Raja Aziz was then the President and if I remember correctly a Minister, Syed Hamid Albar, came to officially launch the Scheme.

Q. Is the PII Scheme today what you envisioned it to be?

The whole project was novel for the Bar - we had no experience; we had no statistics of claims; we were totally in the hands of our professional advisers. It was impossible for us to set up a scheme of self-insurance, which in the absence of expertise could have been financially disastrous.

However, it was in our mind from the beginning that after some years when we had accumulated figures to work on and gained experience of the administration of the Scheme we would then perhaps be in the position to consider self-insurance and by administering it ourselves we would be able to tailor it to accord closely with the wishes of the Bar, economise on the expense of running the scheme and hope to have a scheme all round more satisfactory to all members.

Q. Do you feel that the PII Scheme has positively developed since its inception?

The existing Committee has done a great deal to advance and develop the Scheme since its initial days and has progressed and is progressing in the direction, which we hoped for.

Q. What are your thoughts on the Bar Council's risk management efforts thus far?

Risk management was a largely unknown concept before the Scheme began. It rapidly became evident that protection for members required not insurance alone but education in risk management. The two go together. Awareness of the importance of risk management and setting up efficient systems in all firms greatly reduces the volume and

amount of claims on the insurance fund and this in turn enables premiums to be reduced. This, so far as I can see, is being handled by the Council and the fund should benefit accordingly.

Q. With the current global economic climate, do you foresee any issues in moving to a Self-Insurance Fund Scheme and possible ways around these issues?

The world at present is in the midst of an economic tsunami with threatening geopolitical changes. No one quite knows what is yet to come. Governments are groping in the dark and there could be considerable social and political strains. The future is far from certain. To proceed with self-insurance involves an element of risk but insurance companies also face risk.

Business is never assured or certain. If our self-insurance scheme is carefully established and managed, I do not see that it should involve greater risk than leaving our insurance in the hands of professional insurers but we will have to consider ways of limiting liability and the question of re-insurance. I have no doubt that the Committee will have given careful consideration to this.



FRAUD... ARE YOU NEXT?

“NO, IT WON’T HAPPEN TO MY FIRM! WE’RE ALWAYS CAREFUL...”

A common statement when reading articles of this nature. Nevertheless, news headlines of recent months forecast a challenging year ahead – recession is looming and with that, law firms can expect a drop in work received, difficult fees collection, employee layoffs, pay cuts.

FRAUD EXPOSURE

In these times, greed is no longer the primary cause of fraud, it is **survival** and with this, your firm’s exposure to fraud increases without exception.

It is expected that the risk of fraud would increase for different reasons:

- Those in money and having lost it will try and recover, increasing the potential for fraud.
- Those who need to make ends meet would look to lack of controls within an organisation to overcome shortfalls.

THE TREND

Previous to 2006, an average of five (5) cases were reported annually. The past three (3) years have shown an alarming **300% increase** in such claims and the amounts embezzled have **doubled**. Claims reported are not only increasing, they are growing in size!

The anticipated trend is that there will be increasing numbers of small claims and the potential for large claims to increase in quantum. Aside from direct money losses there is the potential for increased fraud claims involving Conveyancing matters.

Troubling is that most members do not know that **not** all these losses are covered under the PII Scheme.

THE THREAT FROM WITHIN – PARTNER/EMPLOYEE FRAUD

FACT:

The risk of fraud will be from within and outside your law firm, regardless of whether your practice is in Kuala Lumpur or Alor Setar, whether you work with a big/medium/small firm or on your own – you are equally a potential target for a fraudster.

WHY?

The opportunity for fraud arises where there is a lack of supervision, poor financial and accounting controls and to a larger extent misplaced trust.

HOW?

It can be direct theft of cash money, forgery of cheques, individuals masquerading as land owners, etc.





PROTECTING YOUR FIRM

THERE IS NO QUICK FIX TO AVOID FRAUD.

You must be:

1. Constantly vigilant,
2. Take control of the processes and procedures in your law firm, and
3. Exercise supervision over staff and files.

REMEMBER:

- If it seems too good to be true, it **is** too good to be true! Use your common sense and listen to your instincts. Ask detailed questions. Conduct various available searches. If you don't like the answers or search results, decline the client. Be particularly wary of the rushed retainer offering fees above your normal rate.
- Your staff are valuable assets in identifying possible fraudulent deals. Often, they receive the instructions from a 'client' for a S&P Agreement, open the file and conduct the search before you do. If they know the warning signs and look out for them, they will be able to draw your attention to possible problems early in the deal.

LOOK OUT FOR THESE WARNING SIGNS!

A client who cannot produce utility bills, assessment receipts, quit rent receipts or any other documents related to the property, except the 'title'. A real owner usually has these documents going back a few years.

A direction to pay funds from your client account to a third person who is not a party to the transaction.

Potential clients who claim that they are acting/representing a 'genuine owner', 'relative', 'parent' etc. who is too ill to come to the lawyer's office. Even if they produce a Power of Attorney, you **must** verify it independently.

For more information, read the Case Studies on the next page.

4 STEPS TO REDUCING FRAUD RISKS

Awareness is key! Complete prevention is impossible, because fraudsters will always come up with new methods as their old methods become outdated.

Be alert! Stay up to date on the most recent scams reported. Talk to fellow lawyers and your staff about these scams.

Continue to educate yourself and your staff. The more people are alert to the unusual elements in a transaction, and who are willing to ask the next question, the better position you and your firm are to avoid being a victim of fraud. Some form of 'trigger alert' method can be implemented to safeguard your firm.

Diligence. Be diligent in all aspects of your practice: obtain photo identification of borrowers/purchasers, utility bills, etc. and keep a copy of all documents obtained in your file.





CASE STUDIES – HOW DID THEY DO IT?

Old Files



Senior Conveyancing Clerk in Firm A had full run of the firm's Conveyancing files. Firm did not have a standard file review system, there was no supervision exercised over the senior clerk nor did the lawyer conduct regular spot checks. Partner would only get involved when there were high net worth clients. Conveyancing clerk began forging client's signatures on uncollected title documents. Five (5) properties were sold to unsuspecting bona fide buyers. Firm was sued for negligence.

Land Titles – Reported Lost

Despatch boy in collaboration with accounts clerk would masquerade as land owners/lawyers who had misplaced their land titles. Upon obtaining new titles from the land office, they would approach potential buyers to sell the property. At least ten (10) properties were sold in this manner before the firm's partner found out what was happening; the discovery was made when a fellow lawyer telephoned regarding his client's purchase of one of the properties.



Fake Power of Attorney

A couple, with a Power of Attorney (PA) from a relative living in New Zealand approached Firm X to handle the sale of a plot of land. The relative, they claimed, was ill and unable to travel. All the details provided matched those on the title they produced. On obtaining the 10% deposit of RM500,000.00, the couple disappeared. It was later discovered that the land belonged to a Malaysian, R living in New Zealand who had been blissfully unaware of any wrongdoing and did not give a PA to anyone to sell his land. The firm was sued for negligence in not verifying the PA and not conducting proper searches.



Identity Fraud

C, claiming to be a lawyer, produced fake court orders to the land office and sought to transfer a property to G. When the real owner checked on his title a year later, the land had already been transferred to G.



MyKad or YourKad

E, requested a lawyer to handle a sale of property for his ailing mother, L, who was wheelchair-bound. Signing of documents etc. were done via E who would take the documents 'home' for L to sign. Identity matched those details on her utility bills and myKad. One year after the transaction, lawyer was sued by L, who was in fact well, and had no intention of selling the property.

A SELF-INSURANCE FUND – FORGING AHEAD

The Bar Council tabled a Motion for the setting up of a Self-Insurance Fund (SIF) as an alternative to the present PII Scheme at the 63rd AGM of the Malaysian Bar on 14 March 2009. It is our pleasure to inform Members that the Motion was carried unanimously!

This decision is a historical milestone for the PII Scheme. It validates the work and effort that has gone into developing our mandatory PII Scheme established by the then Professional Liability Committee in 1992. The building blocks put in place has since evolved and now paved the way for the Malaysian Bar to set up our very own SIF.

The PII Committee is committed to ensuring the success of the SIF and we aim to keep Members informed.

The SIF Motion was circulated via the Malaysian Bar Annual Report 2008/09, which Members would have received at end February 2009. A Working Paper was enclosed with the Motion to help Members better understand this proposal to set up a SIF.

The SIF Working Paper provides key aspects on the SIF structure and why it would prove a boon to the Malaysian Bar. The SIF will provide affordability, control and stability; and is an alternative to the existing model of a purely commercial-insured professional indemnity scheme. Additional information on the SIF is available in the 2008 Jurisk! Newsletters.

In line with views and feedback received at the March 2009 AGM, we will organise a SIF Forum later this year for Members to have a better understanding of the proposed SIF and address any issues which Members have as the PII Committee progresses towards implementing the SIF. In the meantime, information on the SIF will continue to be disseminated through Jurisk! and Bar Council Circulars.

YOU ARE INVITED TO Getting Started!

TUESDAY, 14TH APRIL 2009

KUALA LUMPUR BAR COUNCIL AUDITORIUM

An intensive one-day workshop designed specifically for lawyers setting up a law firm or joining a partnership.

DON'T MISS OUT! Registration Forms are available online at www.malaysianbar.org.my and www.myPII.com.my. For more information, please contact the PII & RM Department.

*Bar Council reserves the right to cancel or postpone the event, and to make amendments to the programme without prior notice to participants.

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ENSURE
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PROMOTE
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**Are you making the most of your time?
Need to increase your firm's profit & productivity?
Cash flow management?
Dealing with staff?**

The Guides provide:

- Useful illustrations and guidance on productivity levels, profit tracking and time management.
- Tips on managing your practice in a practical and cost-effective manner.



**Time
Management**



**Practice
Management**

TARGETING RISKS. CREATING SOLUTIONS.

This issue of Jurisk! comes with a leaflet that presents the Bar Council's suite of **practice tools for lawyers.**

It's all about employing risk solutions to enable your law firm to build rewards and see success.

RM Tools at your finger tips: Core practice tools. Reference materials. Support.



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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.