Risk Management Newsletter

JURISK!

A publication of Professional Indemnity Insurance Committee, Bar Council Malaysia

Volume 17
Issue 1
February 2022

YOUR LAW

PRACTICE

Dear Members of the Malaysian Bar,

As the country slowly rebuilds its economy after two years of COVID-19, we are hoping that it will bring in more opportunities to lawyers as providers of legal services. Even when we are working under the new norm, risks in legal practice will continue to exist and will not disappear. Like COVID-19, we have to learn to live with it (risks in legal practice) and practice good risk management to avoid the possibility of a negligent suit against us.

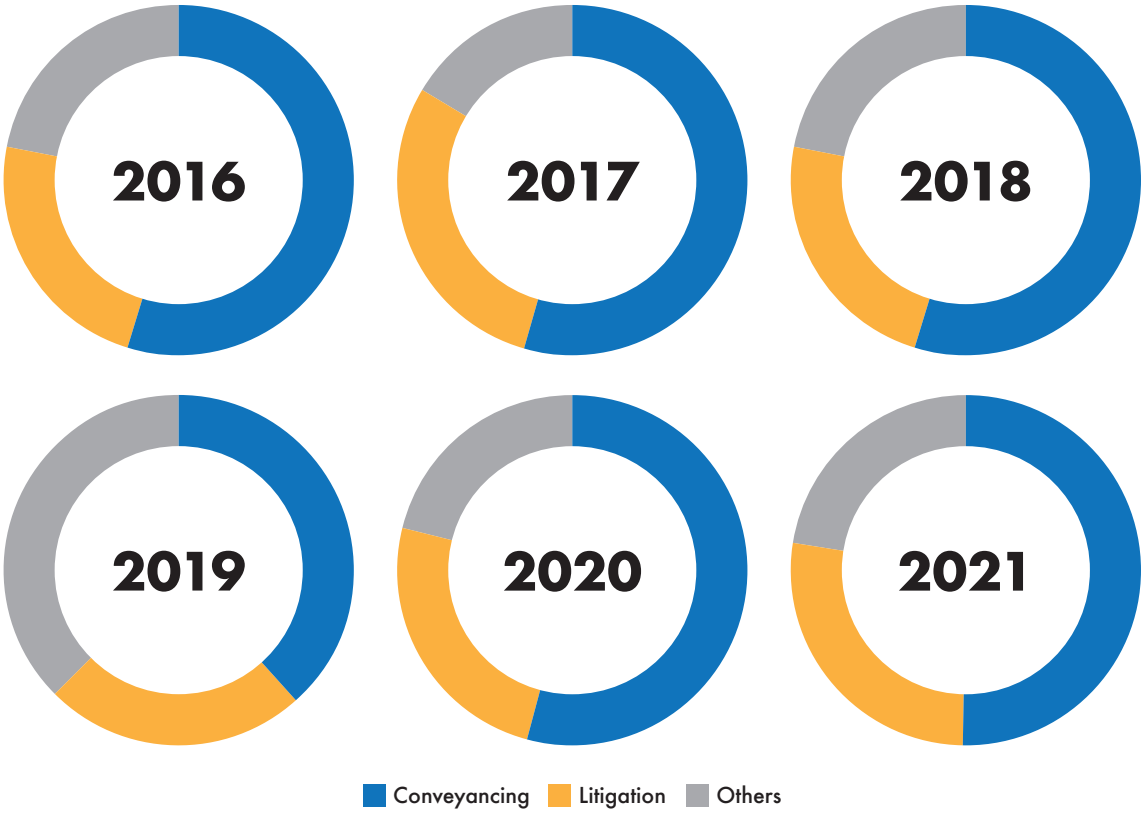
Bar Council PII Committee have been reminding members to constantly be vigilant and adopt good risk management practices. It is even more so as the Bar prepares to move to a Self-Indemnity Fund ("SIF") Scheme, which was first discussed at the 2008 AGM of the Malaysian Bar. SIF is necessary to continue the need for compulsory indemnity that benefits both lawyers and clients. Why? Because the SIF can...

1. Lower the cost of obtaining professional indemnity for lawyers;
2. Give comfort to members that indemnity is available to all Members of the Bar despite their claim's history; and
3. Provide indemnity to clients if their lawyer is found negligent.

The cover provided under the SIF Scheme will be similar to that of the PII Scheme, but under a SIF Scheme, the Bar will be managing its own risk. Hence, the need to make sure adequate and efficient risk management is in place in every law practice, and instilled in every lawyer and non-legal staff. Every lawyer and non-legal staff must understand the value of risk management and stay committed to improve the practice of providing legal services.

In the past six years, the PII Scheme Insurer received an average of 190 notifications. While the number looks small compared to the number of law practices and lawyers, the incurred cost to the Insurer is not small in value.

While we can evaluate and estimate the financial cost of a claim, we cannot give an estimate on the impact it will bring to our mental and emotional wellbeing upon receiving an allegation of negligence, and going through the process of the claim, the loss of time that could be well spent on hours earning income, and not to mention reputational loss.



Cost incurred by the PII Scheme Insurer by year (as at 7 May 2021)

If you have your own law practice or having thought of setting up your own law practice, the articles in this issue of *Jurisk!* will trigger you to consider areas where risk is always overlooked. It is never too late to make a change for the better – which could help you avoid an unwanted situation in the future.

Risk management is not a temporary measure. It is a continuous process, and we need to stay agile to keep up with the changes and risks associated with legal practice. While we strive to provide best practices based on claims that were reported to the PII Scheme for lawyers to avoid being in a similar situation, the effort will be wasted if they are not implemented in the law practice and followed by every lawyer and non-legal staff.

The Bar Council PII Committee will continue to spread awareness on risk management for the benefit of Members of the Malaysian Bar. We encourage you to attend to our curated risk management talks, and read the bi-annual newsletter *Jurisk!* and monthly newsletter I-RiskSpot for updates on risk management for the legal profession.

We welcome feedback on our risk management initiatives. Let us know what else we can bring to you, or if you would like to contribute to the risk management initiative, feel free to email us at pirm@malaysianbar.org.my.

If you have issues with your claim, the services of the insurance broker or the insurer, or if you need assistance on risk management and PII, do reach out to us at pirm@malaysianbar.org.my.

In the meantime, continue to stay safe and be vigilant.

Thank you.

Burhanudeen b Abd Wahid
& Kuthubul Zaman b Bukhari
Co-Chairpersons
PII Committee 2021/2022
Bar Council Malaysia

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Dear Members,

***Jurisk!* February 2022 | Your Law Practice**

In this issue, we discuss risks that are often overlooked by lawyers, especially by those managing their own law practice.

The Set-Up of a Law Practice and Estate Management

For lawyers who intend to set up their own law practice, there are many structures available to choose from – sole proprietorship, partnership, or joining forces with other law practices to form a group law practice. While every lawyer has an idea of the structure and management of their law practice, there is also a need to think about the consequences in the event of the death of the sole proprietor or a partner of the law practice.

If you worry about getting sued after tirelessly preparing a matter for your client, then you should practice effective risk management!

Maintaining Confidentiality

The subject of confidentiality in a law practice is not limited to client-lawyer relations. It can also be in a situation where a lawyer leaves to join a new law practice. In such an event, we will discuss how best to avoid confidential matters from being accidentally shared, and how to avoid a potential conflict of interest.

Policy Cover and the "Legal Practice"

Read the case study to know the best practices to implement if you intend to undertake work relating to foreign law.

The Basic Details of Your Professional Indemnity Insurance (PII) Cover

Understand the basic details of your PII cover and the standard policy conditions that apply.

Contact Us

If you have any feedback or queries, please reach out to the Professional Indemnity Insurance and Risk Management Department officers directly by telephone at 03-2050 2001 or by email at pirm@malaysianbar.org.my.

Happy reading!
The *Jurisk!* Team

Law Firm Estate Management

By Azwa Afifah Binti Abd Harith and Nor Adilah Binti Mohamad Puzi, Advocates & Solicitors

> Today, many are interested in estate management as they have understood the importance of managing their own assets. As legal professionals, we provide legal advice to clients who seek our assistance. It is a responsibility for every advocate and solicitor to provide the best advice to their clients. For this reason, anyone who is concerned about his/her assets would visit a lawyer's office to seek for advice that best suits them, in order to manage his/her assets, before or after his/her death, in the most optimal way possible.

Estate management is commonly associated by real estate lawyers with instruments such as *hibah*, wills, trusts, and more. However, advocates and solicitors themselves take asset management-related matters for granted, and do not themselves "prepare" their firms for instances of death – of themselves or partners.

Sole Proprietorship Firms

A sole proprietorship is wholly owned and operated by a single individual, with no partners. The legal status of a sole proprietorship can be defined as the owner of a firm and the firm being one legal entity, and the firm owner being solely responsible for the firm's assets and liabilities. Therefore, when the owner of a sole proprietorship dies, the entire setup of the firm together with the firm's assets and liabilities will be managed accordingly as the estate of the deceased. The firm will also be liquidated with the death of its owner.

In order to avoid a total liquidation of the sole proprietorship from happening, it is advisable for the owner of the firm to prepare a will, which would clearly state the name of an appointed person to manage the firm if the owner dies. With the appointment of an executor or trustee, the firm

owner may state in the will regarding uncollected outstanding debts or payments, personal protection compensation, and any other messages to be communicated to the executor. Bear in mind that monies in the firm's clients account do not belong to the firm's owner and this should be clearly stated in the will, so that the relevant beneficiaries are well aware of the status of the monies.

There are several things to be dealt with in the event that a sole proprietorship owner passes away, such as file management procedures – whether there are active file records, account management of office accounts and clients account, and the firm's closure procedures. The owner should appoint a "Lawyer Manager" from advocates and solicitors practising nearby or who can be trusted to manage such matters. Therefore, in the event of death, the Bar Council would receive a notification or early notice. This is because the Bar Council will be responsible to manage the clients account of the advocate and solicitor practising under his/her name or a sole advocate and solicitor in a firm name. This is provided for under section 92 of the Legal Profession Act 1976.

Furthermore, if the owner of the firm has appointed someone to manage matters pertaining to the firm, it will be much more convenient for many parties, especially the beneficiaries, in the event of death. Section 91 of the Legal Profession Act 1976 states that a personal representative is liable for the actions of an advocate and solicitor after his/her death. This representator will manage the estate as if he/she was the advocate and solicitor. Should there be any conduct of dishonesty or delay on the part of the representative in managing the administrative works of the advocate and solicitor, or anything entrusted to him/her, he/she will be subject to action.

Group Law Practices

A group law practice is a practice consisting of two to five firms as its members. These firms have no more than five advocates and solicitors, and all these firms share a premise at a common address and facilities under a group law practice name. However, even if these firms cooperate with each other, they are not partners and they are required to obtain approval from the Bar Council before practising as group law practice. To ensure the smooth running of group firms, Rule 13 (of the Legal Profession (Group Law Practice) Rules 2018) was introduced to ensure that the management of the firm can continue in the event of incapacity or death of a sole proprietor in the group law practice.

This particular Rule also explains that in relation to a sole proprietorship, the sole proprietor shall appoint in writing another firm in the same group law practice to act in his/her stead in the event of his/her incapacity or death and such appointment, shall be subject to the permission of the Bar Council.

Partnership Firms

Managing a law firm run by partnership has its set of different challenges, including maintaining and developing it. However, a bigger and more challenging situation, especially from a personal and professional standpoint arises when one of the partners passes away. Therefore, it is necessary for every partnership to be prepared from all aspects, including inserting the relevant items in the clause of a Partnership Agreement, encompassing the instance of the death of a partner.

This is because a Partnership Agreement, although not mandatory, acts as an important guide in assisting to enable the continuity of operations of a law firm, as well as helps with the arrangements of the requirements relating to the respective relationships, roles, responsibilities, and rights of members of the firm. If a Partnership Agreement already exists, like a will, it may be reviewed from time to time, and if necessary, amended after taking into account any changes or situations in the partnership. In fact, the Bar Council will not interfere in this matter.

Section 35(1) of the Partnership Act 1961 provides that a partnership may be dissolved or terminated by the death of any partner subject to any other agreement between the partners. This means, law firms run by partnership may continue to operate as long as there are specific terms set out in the Partnership Agreement that the surviving or continuing partner(s) can decide to continue its operations. Similarly, the amount of capital to be contributed and the benefits that each partner will earn should be clearly stated in the agreement. This

also includes how relationships, liabilities as well as responsibilities, capital or profit benefits, will be managed upon the death of a partner.

Section 45 of the Partnership Act 1961 also provides that the part of the deceased partner payable by the surviving or continuing partner(s) shall be a debt accrued at the date of the partner's death, and the deceased partner's representative or beneficiary shall be entitled to claim such rights. This principle is also clearly stated in *Teknologi Cerucuk Pertama (M) Sdn Bhd v Ooi Hung Nee and Ors* [2010] 1 LNS 708. The rights of the deceased in profit will be given to his/her beneficiaries.

In line with section 8 of the Partnership Act 1961, all partners are bound by actions relating to the firm's operation. This means that case files and clients account can be transferred to other partners to continue, and the law firm holds the responsibility to proceed with the cases as if the deceased partner was still around. However, the client has the right and the option to proceed with the same firm, or to seek another lawyer or other law firm to handle his/her case.

The High Court, in the case of *Teoh Swee Hee v Tio Hock Thye & Ors* [1996] MLJU 409, in following the result of the Indian case of *Kasi v Ramanathan Chettiar and PM Ramakrishna Iyer v P Muthusami Iyer and Others* AIR 1929, Madras 456, had decided that no one can carry out his/her selection effectively without having a clear knowledge of the funds or property or rights in which he/she should choose. This means that each partner needs to examine his/her choice and rights before deciding or agreeing to what is provided for in the Partnership Agreement.

There are several alternatives to the estate management of a law firm when a partner dies which can be considered by parties before entering into and signing the Partnership Agreement.

The first option that most partners use is choosing to pass on their share of the profits to the beneficiaries. This means that the shared part of the deceased will keep going and continue as if the partner was still alive, and the beneficiary will get a share of the deceased's profits at the rate of the specified portion. However, this does not mean that the beneficiary will be the new partner to the law firm, because as stated in section 4(c)(iii) of the Partnership Act 1961, when the beneficiary receives by way of annuity a portion of the profits made in the business of the deceased partner, he/she is not, by reason only of such receipt, a partner or has responsibility in the business. However, it is the discretion of the surviving or continuing partners to consider the beneficiary as a new partner to replace the deceased partner after looking at the criteria, capabilities, talents, and skills of the beneficiary in line with the provision of section 26(g) of the Partnership Act 1961.

Section 44 of the Partnership Act 1961 also provides guidance on profit management rights in the event of death of a partner, as well as the continuity of the firm's matters. In this regard, the beneficiary of the partner is entitled to obtain any share of the profits earned which will be calculated from the date of the partner's death due to the use of his/her share of the partnership assets, or to interest at the rate of 8% per annum on the amount of his/her share in the partnership assets. The portion will be evaluated based on the date of realisation, and not at the date of death of the partner, after taking into account the partnership assets, profits and losses, and the ratio of sharers.

Next, the second option is through a sale and purchase agreement among the surviving or continuing partners, and the proceeds of the sale will be the estate, which will be distributed to the beneficiary. This is to ensure that beneficiaries are given equitable compensation, while other partners can continue with the affairs of the law firm. Such

an option also provides relief to the family of the deceased partner, and alleviates their stress. This option is also an ideal solution especially for Muslim partners, as the share and profits of the deceased are considered as movable property of the deceased which should be distributed among legal and entitled beneficiaries according to *Faraid* rule. This is based on the *Fiqh* method of the *Shafi'i* mazhab or school, where the deceased's inheritance and its growth and development belong to the beneficiaries according to their respective allocations. (See *al-Mausu'ah al-Fiqhiyyah al-Kuwaitiyyah; 11/216, al-Majmu'; 16/53*)

Section 44 of the Partnership Act 1961 also states that after an option is given to the surviving or continuing partners to purchase the interest of a deceased partner, and the option is used accordingly, the beneficiary of the estate of the deceased partner shall no longer be entitled to any further share of profits or other profits. This is because the profits from the sale of the deceased partner's portion have already been handed over to the beneficiary and the deceased's share no longer exists in the firm, as a result of being purchased by the other firm partners.

The Partnership Agreement should clearly outline the sale and purchase of parts of the partnership, formulas and rates, as well as its terms, including the evaluation process that makes it legal and binding. However, there are some problems that may arise from the sale and purchase agreement as the surviving or continuing partners who wish to purchase the deceased's share are required to prepare substantial amounts of cash to enable the share to be purchased. Since death is unforeseeable and unpredictable, this may cause difficulty to the other partners who may have to save or borrow large sums of money in order to buy the share of the partnership. Thus, the partners will usually build their finances by contributing or financing plans such as insurance policies, life takaful, or any other loan schemes. The methods of saving money in order to purchase this portion of the partnership must also be clarified and stated in the Partnership Agreement. The sale and purchase process will take a long time as it has to undergo the evaluation process of the shared portion, as well as other estate management processes, such as letter of administration and so on.

Therefore, every Partnership Agreement must be carefully drafted and reviewed from time to time to cover all potential issues and problems, including having exit planning strategies if one of the partners dies. However, if there is no agreement clause on the matter, the other option available is that the partners may refer to the Partnership Act 1961, but the provisions of the law may not reflect the original intentions of the parties. Hence, while efforts to prepare a Partnership Agreement may be intricate, complicated, or tedious, it is beneficial to be done to avoid any disagreements or problems with other partners and beneficiaries in the future. Whatever decision made in the end will depend on discussions in seeking for a fair and equitable consensus among the partners. Being prepared and finding the best solution is the most ideal thing to be done for the good of the future.

On that account, it is also recommended that law firms appoint individuals or trustee bodies such as Amanah Raya Berhad or other similar bodies to ensure that fairness and equality among partners are guaranteed. This is to avoid incidents such as the possibility of inconsistencies among other partners, and executors or administrators appointed by the deceased partner, who was not aware or proficient in respect of the value of the assets or current partnership agreements.

Conclusion

In conclusion, it is recommended that all advocates and solicitors in Malaysia be familiar with estate management for the convenience of beneficiaries when they wish to make post-death estate arrangements. Lawyers may be working in this area of law, but without sufficient knowledge and guidance, beneficiaries who come to us for assistance will end up losing their way and not knowing how to manage their estates, causing the estates to become unclaimed property.

Partnership...Should I? Should I Not?

By Mak Jun Yeen, Advocate & Solicitor

When I was called to the Bar in the 1990s, the career path of a legal practitioner was fairly straightforward and simple.

I could offer my service to a law firm as a legal assistant, earning a monthly salary and work my way up to be invited to become a partner of the firm or I could open a firm of my own and become a sole proprietor.

However, as a young and inexperienced lawyer, the second option is a non-starter for me as I was new in practice and I did not have the necessary connections or reputation to attract clients.

Fortunately for me, I was retained by my Master's firm after I was called to the Bar. At that time, I could expect to work for a few years diligently in the firm trying to impress the partners with the hope of being invited to become a partner of the firm one day.

Alternatively, I could work for a few years gaining experience, reputation, and confidence before venturing out on my own either in partnership with other lawyers or as a sole proprietor.

At that time, I have vague notions of what a partner means other than a partner is one of the owners of the partnership firm and he/she possibly earns a higher income than my monthly wage.

The other aspect was the fact you could call yourself a "partner" of such and such a firm. There seemed

to be some sort of prestige attached to being a "partner" of ABC & Co. I was disabused of my rose-tinted impression after a few years in legal practice.

The Various Forms of Partnership

- Traditional Equity Firms

  The traditional form of partnership is one where the founders of a firm get together to pool their resources in the form of capital, expertise or existing client base.

  The partners all share in the ownership of the assets of the firm. They share the profits in the proportion of their equity shares in the firm. If all the partners have equal share, they all have equal say in the running of the firm; and most importantly, all have equal control over the firm's finances, including the client accounts. They also share equally the liabilities of the firm in proportion to their equity share.

  Such firms are usually governed by a partnership agreement that regulate their relationship, but during my younger years, the partners in the firm where I was working had a gentlemen's agreement. In case of dispute, the Partnership Act will govern the partnership unless evidence can be shown to the contrary.

  These traditional equity partnerships are supposed to be ideal partnerships that promote stability and cohesion as well as loyalty, by placing emphasis on group achievement and teamwork rather than competition between lawyers at the same firm. One partner may have secured the brief or client and the other partner or partners may contribute expertise, and in the end everyone benefits and are happy.

  However, as time goes by, the relationship between partners could sour. Some partners may not be satisfied with the current arrangements because they feel they have contributed more in time and effort or generate more fees for the firm that other partners would be enjoying without the same effort.

  There may be a conflict between the junior partners and the more established senior partners; the former may be more dynamic and ambitious who feel that they are not given more control over important decisions that affect the firm, especially in the area of finances. These could lead to a lot of infighting and ultimately break up for the firm.

  For a junior practitioner, being offered a partnership in such traditional firm may not be attractive. Firstly he/she would have to pay for the portion of equity offered by the other partners or he/she would have to forego a substantial chunk of future profits for many years to pay for the equity.

  Still, the junior partner would have little control over the finances of the firm or its business direction. In terms of finances, the junior partner would still have to bear his/her share of liabilities in case of dishonest conduct by the senior partners over the clients' money in the client accounts, for which the junior partners may not have the mechanism to control or check.

- The Salaried Partnership

  The young lawyer may be offered what is commonly known as a salaried partnership or non-equity partnership.

The existing equity partners in a traditional firm may not want to dilute their equity share and yet they may value your work for many years in the firm and want to prevent you from leaving the firm for greener pastures.

The firm may be afraid that after many years of service in the firm you may have built up some goodwill with the clients that you service; and if you leave, the clients may go with you. On the other hand, the firm may realise that the clients would have more confidence in dealing with you as a "partner" than as a senior associate.

The firm offers you the title of a "partner" without any equity in the firm – that is, you would not own a portion of the firms' assets, goodwill, clients, business, *et cetera*. The firm may continue to pay you a capped salary which means you would not get a yearly increment, but you will receive a monthly income.

In addition, the firm may offer you a pre-determined percentage of the firms' profits. Depending on the firms' policy, a quota of profits, say 10%, may be allocated to be distributed to the "salaried" partners. The firm may also offer to pay you commissions out of the fees collected from the clients you procure for the firm given that as a "partner" you can "market" yourself to prospective clients.

Advantages

You would gain the prestige of the partner label. Clients would be more confident in your service due to the fact that you are now a partner of the firm rather than an associate or a legal assistant.

You can procure clients for the firm, confident to present yourself as a partner.

On top of it all, you do not have to pay for the equity which would put a dent on your finances while receiving the same pay, if not more when profits are distributed.

You are not required to shoulder the firm's administrative expenses. There are times when the firm is not doing well revenue-wise, and equity partners not just have to forego their income but are expected to put in extra money to sustain the firm if necessary.

As a salaried partner, you are shielded from these problems whereby in case of bad times you may still receive an income without your allotted profits.

If you are competent with business acumen, you could attract clients on your own, and your income through the commissions on fees paid by the clients would augment your income.

The Downside

You don't really own anything in the firm. You have very little to no say in the management of the firm or its finances.

You may not be able to protest the equity partners' decisions on the allocation of profits amongst themselves or even the portion allotted to you.

Many a times you may feel that your income does not commensurate with your workload, now that you are a "partner" but receiving a capped monthly income when profits generated by the firm is low; and your extra payment from the allotted profits do not measure up to your expectation.

The most important downside you must remember is that you are liable in law to third parties or clients for liabilities due to administrative debts of the firm, or negligence of the other lawyers or your equity partners.

The most damaging liability you may have to bear is for misconduct in managing the

client accounts or clients' money of the firm or liabilities arising from the stakeholding duties of the firm. These liabilities involve large sums of money which you have to bear whereas you are just a salaried partner and did not enjoy the ownership of the firm like the equity partners.

- The Loose Partnership

A few years ago, a friend of mine entered into a partnership with an acquaintance. Let's call her Calamity Jay. Calamity Jay was laid off from another firm that had just closed down. She had been working at that firm for a number of years as a conveyancer and has a fair number of briefs and loyal clients of her own.

The acquaintance, let's call him Soh Malang. He was a very good litigator and has a very promising sole proprietary practice. Soh Malang suggested Calamity Jay to form a partnership together.

Calamity Jay was so elated. Malang already had a firm for a few years and has a profitable practice. He was not keen to share the fruit of his hard work, but he needed a partner as he was thinking of getting into the panels of a few companies and banks doing litigation of work. Calamity Jay on the other hand wanted a place to start on her own with her own clients but she does not have enough capital. She also needed to keep her panel banking clients who also preferred to give conveyancing work to partnerships.

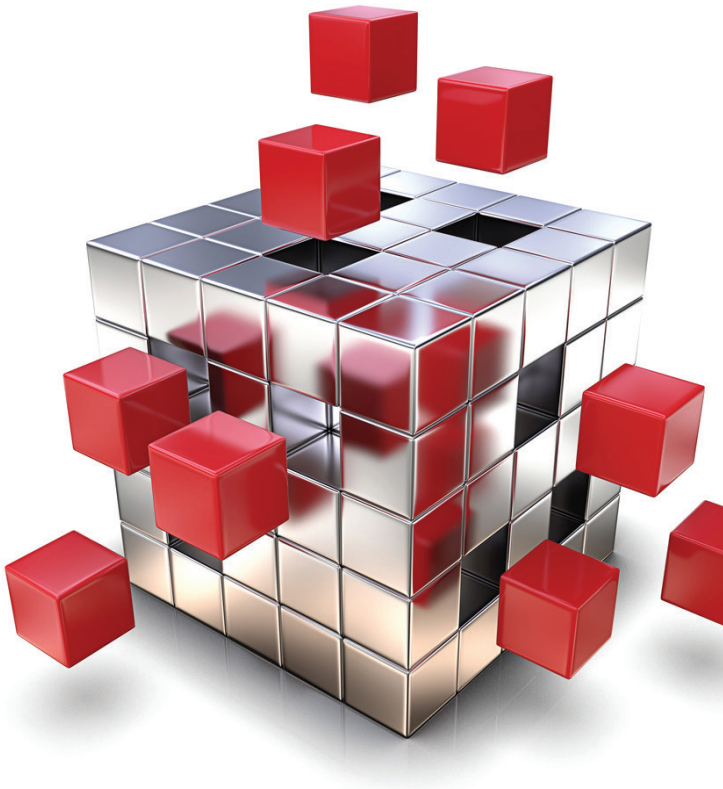
So both of them drew up an agreement and both agreed that despite joining together in a new partnership called Malang & Calamity where they practise in the same office in a town called Lumut Busuk, they each would keep their own work and separate client and office accounts. Malang would earn his keep from the fees generated by his clients whilst Calamity would earn income from fees coming from her clients.

They both separately pay for their respective staff. Calamity only had to contribute to a pre-determined portion for the rent, electricity and other administrative expenses of the firm. Calamity gets to see her name placed on the firm's title and letterhead and for the first few months things were working well with the arrangements.

Six months later another sole proprietor, Justin Foryormoney, approached Malang and Calamity to join forces. Justin Foryormoney had a partnership firm in another town called Kota Songlap, specialising in real estate developer's work.

Justin Foryormoney had a partner who left him for another firm. He needed to form another partnership to keep his corporate clients. Justin had known Malang for a few years and had referred litigation cases to Malang.

So they formed a new partnership called Malang Calamity & Foryormoney. Malang and Calamity continue to practise where they were in Busuk Lumpur and Justin Foryormoney would be based in his office in Kota Songlap.



Like the previous arrangement, they agreed to keep separate accounts managed by the respective partners independent of each other. They also keep their own income generated from their respective firms.

One year later to the surprise of Calamity, she received a letter of demand from a client of Justin demanding for the payment of a purchase price of RM1 million held in the firm's client accounts managed independently by Justin Foryormoney at the Kota Songlap office.

Malang and Calamity tried to contact Justin Foryormoney for an explanation but to no avail. Later they found out he had left the country and is untraceable. The Kota Songlap office of the firm has also closed down.

Malang and Calamity are now facing legal action from Justin Foryormoney's client for the amount of RM1 million which Justin may have embezzled. As partners in the same firm, Malang and Calamity are liable in law to the client even though they were not the culprits in the embezzlement!

The above story illustrates the dangers of a form of partnership which is very popular amongst the legal community in recent times. These partnerships are very loose partnerships, more like a marriage of convenience.

Lawyers may come to together and form partnerships which allow each individual partner the independence in managing their own work, clients, clients' money and income without interference or check and balance from the other partner.

This type of partnership could even form independent branches with the same name but are otherwise independent of each other. To the general public and in law, the "branches" are considered one and the same firm and will be treated as such. Each partner would be liable for the defaulting partners liability to clients irrespective of their so-called independence.

Although there are clear advantages with this type of partnership, there is also great risk as illustrated above, and a young practitioner ought to be cautious and take cognisance of such risk before entering into such partnerships.

One should find out the workings of the firm and scrutinise the partnership agreement before entering into such arrangements. The practitioner ought to insist on check and balance measures in managing the client accounts and that all partners should be able to access bank statements and account books of all the client accounts kept by the firm, to be able to take remedial action when red flags are spotted.

I hope the above will be of assistance to new and young legal practitioners in their future practice. Not all partnerships end up like that the one Malang and Calamity was involved in.

The majority of the legal practitioners are honest and conduct themselves with integrity and make good partners who would help you along your career path.

Nevertheless, the young practitioner should be aware of the dangers and make sure that they enter into partnerships with people they can trust.

Always remember the words of Ronald Reagan, former President of the United States: Trust and verify.

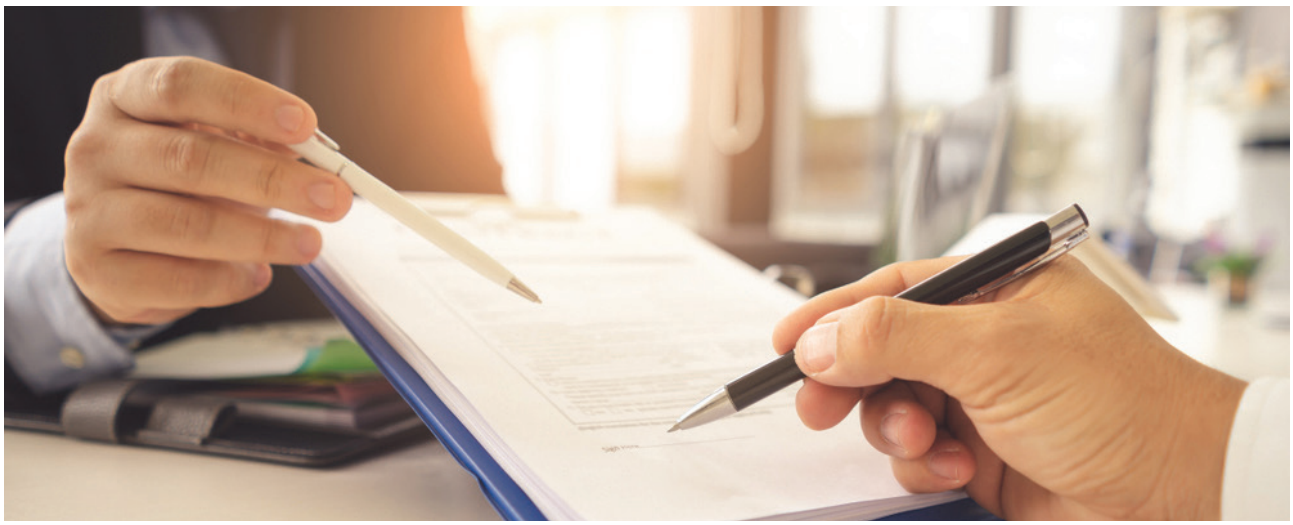
Policy Cover and the "Legal Practice"

By Loong Sheng Li

Joe of Messrs XYZ was appointed to act as the "buyer's solicitor" in a sale and purchase agreement for a residential property ("Property") based in the United Kingdom ("UK"). The buyers were Malaysian individuals while the seller, who allegedly owns the subject property, was a property development company established and based in the UK. At all material times, Joe was a qualified advocate and solicitor in Malaysia with no additional qualifications to practise foreign law.

The parties did not know each other personally. Joe was first approached by the seller via email proposing for him to act on behalf of the buyers in the Property transaction which was subject to English law. In addition, Joe was informed by the seller that his legal fees will be paid by the seller at the conclusion of this matter. As Joe does not possess the proper qualifications to practise English law, he was guided and given instructions by the seller on how the sale and purchase agreement was to be executed, and payment to be made.

Joe agreed to act on behalf of the buyers. He introduced himself via email and thereafter issued an engagement letter to the buyers. In the course of the Property transaction, Joe had provided legal advice to the buyers on the terms of the sale and



purchase agreement, in particular on the ownership of the Property upon full payment. A week later, the sale and purchase agreement was executed and exchanged between the parties via email in accordance with English law. The buyers thereafter paid the required deposit to the seller.

It was subsequently discovered by the buyers that they were unable to acquire legal ownership of the property as the seller was not the legal proprietor thereof. The buyers sought for the refund of their deposit, however they were unsuccessful in doing so. As a result, the buyer commenced a legal claim against Joe and Messrs XYZ for misrepresentation and negligence on the basis that Joe was not qualified under English law to have represented them in the sale and purchase agreement of the property.

Joe immediately notified the claim to his professional indemnity insurers.

Tips & Pointers

- Before undertaking work relating to foreign law, ensure that you / your legal practice have the appropriate professional indemnity insurance which covers the relevant jurisdiction in which your firm practises.
- Avoid leaving yourself exposed to uninsured loss which may have serious financial consequences on you / the legal practice.
- Assess whether the minimum level of coverage (as set out by the Malaysian Bar Council Professional Indemnity Insurance Scheme) is sufficient for your legal practice. Take into consideration factors such as your practice's claims history, size of your practice, likely level of exposure to claims, and nature of work undertaken to establish to level of cover you require.
- Do not dabble in areas outside your field of expertise. It is not a risk worth taking, and often results in disgruntled clients, potential claims against your practice and subsequently an increase in your insurance premium.
- When dealing with a new prospective client, take precautionary measures to ensure that you are definitely dealing with who you think you are dealing with. Minimise your risk by conducting searches of the company's name, individual's name, and employees, to see if there is anything to suggest a false identity or corporation.
- Beware of acting in conflict of interest. Always check for potential conflicts at an early stage and do not take on the prospective client if there is a risk.

It Is a Risky Business — Managing Risks in Hiring Process

By Shafiq Sobri

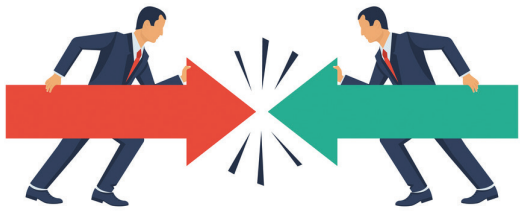
It is common practice for law firms to hire associates from another firm, whether it is due to an expansion of the firm or simply to fill in vacancies left by former associates. While is it important for law firms to get the right fit for the right role, it is equally important that a certain standard of risk management is applied in the hiring process to avoid any potential issues that may arise during and after the hiring process. Two of the most common risks are conflict of interest and confidentiality.

Most firms have mechanisms in place to avoid conflict of interest when accepting or advising new clients, such as conflict check and due diligence. However, the hiring process for associates is often overlooked, and if the risks of conflict of interest and confidentiality are not addressed and managed at the earliest stage of the hiring process, it may put the firm in a sticky situation when it is already too late to redress issues. Is a questionnaire regarding an associate's previous work experience and former firm(s) sufficient? Is having an information barrier or the Chinese wall in the office alone a foolproof risk management mechanism to prevent unauthorised disclosure of confidential information?

Conflict of Interest

It is trite that lawyers should always avoid conflict of interest when acting or advising clients – past, present or future. Chapter 6 of the Bar Council's Rules and Rulings specifically deals with conflict of interests which provides for situations of conflict where lawyers can or cannot act.

When hiring an associate, conflict of interest may arise when the candidate brings a client to the new firm whose interest may conflict with an existing client of the firm. Another case in point is that a client will stay with the candidate's former firm but the new firm is unable to act for a client whose interest conflict with the candidate's client in the former firm.



Here are some steps that firms can take to identify potential conflict of interest during the hiring process:[1]

- Ask for the current curriculum vitae so that you can review the background of the transferring lawyer. You will want to look back at least five

[1] Dan Pinnington, "A checklist for avoiding conflicts on lateral lawyer transfers", *Slaw: Canada's online legal magazine* (27 February 2012), www.slaw.ca/2012/02/27/a-checklist-for-avoiding-conflicts-on-lateral-lawyer-transfers/.

years, or to the time of article if this was less than five years ago.

- Check with the lawyers in your firm, or search within your conflicts system if it has the data to identify any matters on which the transferring lawyer's previous firm was on the other side.

- Ask the transferring lawyer for a list of major clients and the matters he or she has worked on (but not any confidential information, including the identity of clients if that is confidential) and have your firm's conflicts person run these names through your firm's conflicts database.

- In an interview (not in writing), ask the transferring lawyer if he or she is aware of any potential conflicts due to work done while at his or her previous firm.

- Ask the transferring lawyer if he or she sits on any boards, and if so, have your firm's conflicts person run this information through your firm's conflicts database, including, ideally, the name of the entity, the directors and officers.

Confidential Information

It is important for the hiring firm to have sufficient information to complete an internal conflicts check while at the same time making sure that no confidential client information is disclosed by either the new associates or the new firm. During the hiring process, law firms should implement certain measures in deciding the amount of information that they require from the candidate. During the hiring process, active steps should be taken to ensure that no confidential information was asked as part of the hiring process and to remind the candidate not to give such information.

The following are some of the steps that firms and the new hire can take to minimise the risk of disclosure of confidential information during the hiring process:[2]

- Ask and disclose client information in stages. Initially, identify only certain clients and provide only limited information. Provide a complete client list and more detailed financial information only at later stages.

- Ask and disclose only basic information, such as:

  - the identities of clients or other parties involved in a matter;

  - a brief summary of the status and nature of a particular matter, including the general issues involved;

  - information that is publicly available;

  - the lawyer's total book of business;

  - the financial terms of each lawyer-client relationship; and

  - information about aggregate current and historical payment of fees (such as realization rates, average receivables, and aggregate timeliness of payments).

- Limit disclosure to those at the firm who are directly involved in clearing conflicts and deciding whether the lateral hire will proceed.

- Agree not to disclose financial or conflict information outside the firm during and after the hiring negotiation.

While firms may have a certain set of internal risk management mechanisms in place to avoid conflict of interest and manage confidential information, identifying and managing the risks at the first opportunity during the hiring process is always a good risk management practice, as it allows the firm to reassess its position on any potential risks that the new hire may bring.

[2] New York Rules of Professional Conduct R1.6, www.nysba.org/WorkArea/DownloadAsset.aspx?id=50671.

Law Firm Accounts

Whether you intend to practise as a sole proprietor or as a partnership, you will eventually have to deal with your finances in order to keep the law firm running. This means you will need to manage your office and keep track of income and expenses.

Set up your law firm accounts properly from the start. You can do this either manually or computerised, for both your Office Account and Client Account.

It is essential to maintain a record of:
- Client Account Receipt Books
- Day Book (Cash Book)
- Disbursement Record
- Client Ledger
- Vouchers issued

Although it is not mandatory and depending on your legal practice, all law firms generally will maintain at least one Office Account and one Client Account.

Client Account Receipt Book

Ideally there should be three copies,
- Original goes to the client;
- Second copy is in the file; and
- Third remains in the receipt book.

Use a numbered receipt book to make it easier to keep track.

It is advisable for the receipt book to carry the reference number of the respective files. Only monies held as stakeholders or trust must remain in the Client Account. However, some law firms will also deposit the SST amounts collected from client into Client Account as transit before payment is made to the Royal Malaysian Customs Department.

Disbursement Record

When dealing with disbursements, take note:
- All disbursements expenses are taken up correctly;
- All figures are taken up in an invoice as income and is inclusive of disbursements;
- If disbursements are paid directly from the Client Account, it would/ might not be reflected in the Office Account causing a higher exposure to tax.

Disbursements should not be paid out from the Client Account but from the Office Account with the exception of Stamp Duty that requires it being issued and paid via a Client Account cheque.

Vouchers

A voucher is drawn up for payment out of the Client Account. The voucher is an authorisation for payment, it should bear the:
- Date;
- Name of the client;
- Name of the payee;
- Purpose of the payment;
- Signature of the person requisitioning;
- Person authorising; and
- Recipient.

Best Practice

- ✓ If you have more than one office, make sure all bank statements are sent by the bank directly to the principal office and branch office(s).
- ✓ Reconcile bank statements, payment vouchers and ledgers on a regular basis.
- ✓ Cheque chits should match all transactions in the bank statement.
- ✓ Where transaction involves client bank accounts, have two signatories.
- ✓ Adequate risk management procedures should be in place if a firm utilises e-banking. Eg username and password should never be disclosed to staff, and the requester and approver are different people and would have checked the file before approving payment.

What is a Client Account?

Client's money is defined in rule 2 of the Solicitors' Account Rule. Basically, it means money received on account of a person for whom the lawyer is acting as:

- A lawyer,
- In relation to his practice as a lawyer,
- Agent,
- Bailee,
- Stakeholder.

The list also includes solicitor trust money. This would include disbursements and monies payable to third parties by the client. It does not include fees payable to the lawyer.

A Client Account is used only for client's money. If you do not receive clients money in your practice, you do not need to open a client trust account.

Client trust accounts are the accounts you use to:

- Deposit money received from clients to be paid to another party;
- Deposit money received from other parties on behalf of your clients;
- Deposit money received from clients for future legal services and disbursements;
- Disburse money as directed by your client;
- Reimburse your law firm for proper expenses that the law firm has made on behalf of your client.

What is an Office Account?

Office money is the money received by the law firm in return for services which have been rendered and for which a bill or invoice has been issued.

The general understanding is – whatever amount deposited into Office Account shall be deemed income for the law firm until proven otherwise.

Money that belongs to the firm is to be paid into the law firm's office account. This office account is the law firm's operating account and also the law firm's income account. As such, the amounts in the Office Account shall attract tax payable to Inland Revenue Board.

Office accounts deals with:

- Payments received from clients that have been billed for completed legal services;
- Payments for the law firm's expenses, eg rent, office supplies, salaries and bank charges;
- Pay disbursements on behalf of your clients.

Best Practice

- ✓ Be familiar with the Solicitors' Accounts Rules 1990, including those related to Solicitors' Accounts (Deposit Interest) Rules 1990.
- ✓ Hire good accounts staff/support - have good experienced staff and monitor the staff carefully.
- ✓ Get support from your external auditors, if necessary.
- ✓ Keep minimal number of client accounts with banks.
- ✓ Keep your accounts system and records simple and uncomplicated.
- ✓ To avoid problems, do regular and independent reconciliation of your receipts and payments.
- ✓ Spot check files regularly.

MALAYSIAN BAR
MANDATORY PII SCHEME
DID YOU KNOW?

The Basic Details of Your PII Cover

The predicament of a claim or lawsuit to a law firm that has ceased practice can be as costly and complicated as any other legal claim. However, the Malaysian Bar Professional Indemnity Insurance ("PII") mandatory insurance scheme provides indemnity to former Members of the Malaysian Bar. This article explores further details of the scheme for members' better understanding of their coverage.

The Legal Profession Act 1976 ("LPA") requires Members of the Malaysian Bar to have PII to obtain their Sijil Annual / Practicing Certificate. The PII Scheme insures its members against civil liability for claims arising out of the legal practice for work customarily and legitimately performed by lawyers in Malaysia which include damages payable to claimants including claimant's costs and defence costs. It is underwritten by Pacific & Orient Insurance Co Berhad ("P&O").

Details Of The Policy

The PII policy is issued in the name of the law firm and indemnifies all lawyers in the firm (subject to terms) for civil liability (of damages and defence costs) in claims made against the firm and/or any of its lawyers arising from the conduct of their legal practice in accordance with the LPA.

What happens if a member who has ceased practice, and then become aware of a claim/circumstance? The Malaysian Bar PII Scheme provides indemnity to former Members of the Malaysian Bar including his/her estate in the event of death. Pertinent to note that the policy terms and conditions are applicable including Base Excess.

Examples:

a. Lawyer A ceased practice at the end of 2017. In 2021, lawyer A becomes aware of a claim for legal work done prior to 2017. Lawyer A can notify to obtain PII Coverage (subject to terms of the policy in 2021); or

b. Lawyer B passed away in 2017. In 2021, person C who is lawyer B's estate administrator, received a writ and statement of claim ("SOC") from lawyer B's client for legal work done, person C can notify to obtain PII coverage (subject to terms of the policy in 2021).

Standard Policy Conditions

The mandatory limit of indemnity for each firm is determined by the number of lawyers in the firm at inception of the policy. A firm of only 1 lawyer has a mandatory limit of RM250,000 for each and every claim. Each additional lawyer will increase the firm's mandatory limit by RM50,000 up to a maximum of RM2,000,000.

If a claim is made against the firm and/or any of its lawyers (eg receive a Letter/Notice of Demand ("LOD") or served a writ/summons/Third Party Proceedings/Counter Claim

etc), or if there is any circumstance, event or fact which may reasonably be expected to give rise to a claim in the future (circumstance), the firm/lawyer should:

- urgently notify the PII Scheme Insurance Broker, Marsh Insurance Brokers (M) Sdn Bhd at mbar@marsh.com enclosing the LOD and/or cause papers etc, with contact details of the lawyer in charge, no later than 60 days after becoming aware of the claim or circumstance;

- make full and timely disclosure of all facts, circumstances and documents related to the claim;

- not to admit liability or negotiate any kind of settlement/compromise or incur any unreasonable expenses without the Insurer's prior written consent. As the Insurer providing the indemnity, P&O shall have conduct of the assessment and defence of the claim through their appointed panel solicitor;

- take note that they must bear any damages and/or defence costs incurred in the claim up to the Base Excess amount stated in the applicable policy, which is determined by the number of lawyers in the firm at the inception of the policy. Any balance damages and/or defence costs shall then be borne by the Insurer subject to policy terms; and

- understand the applicable exclusions in the terms, where the Insurer shall not provide any indemnity. For example, the policy shall not indemnify any misconduct (fraud/ dishonesty) by the firm, partners or employees. However, partners who were not involved nor condoned the misconduct, are given a sub-limited cover of RM 350,000 or the policy limit in aggregate, whichever is the lower. An already known fact to take note, partners are jointly and severally liable for liability of their firm and/or fellow partners.

At the next PII renewal, premium will only be affected by a claims loading **IF** the Insurer have started paying for damages and/or defence costs in the claim, which is above the firm's Base Excess. Only then will a claims loading of 5% of the damages and/or defence costs paid by the Insurer or 5 times the renewal premium (whichever the lower), be applied during renewal within 5 years from the date the claim or circumstance is first notified.

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

The Bahasa Malaysia translation on page 41 relating to the Master Policy, Certificate of Insurance and illustrative examples are for guidance only. In the event of inconsistency between the English version and the Bahasa Malaysia version, the English version will prevail.

Pengurusan Harta Pusaka Firma Guaman

Oleh Azwa Afifah Binti Abd Harith dan Nor Adilah Binti Mohamad, peguambela dan peguamcara

> Kini, sudah ramai yang berminat dengan pengurusan harta pusaka kerana mereka mula memahami kepentingan untuk menguruskan harta mereka. Sebagai seseorang yang bekerja dalam profesion undang-undang, adalah menjadi tanggungjawab setiap peguam untuk memberikan nasihat undang-undang terbaik kepada klien mereka. Oleh kerana itu, mereka yang mengambil berat tentang perkara ini, akan datang ke pejabat peguam untuk meminta nasihat yang sesuai dan terbaik agar harta mereka terurus sama ada sebelum berlakunya kematian atau pun selepas kematian.

Lazimnya, apabila dikaitkan dengan pengurusan harta pusaka, banyak alternatif yang sering dinyatakan di dalam perbincangan peguam-peguam hartanah seperti instrumen hibah, wasiat, amanah dan sebagainya. Namun begitu, masih ramai peguam bela dan peguam cara yang mengambil enteng akan isu pengurusan harta ini dan tidak membuat persediaan untuk pengurusan firma sekiranya berlaku kematian ke atas diri mereka sendiri ataupun rakan kongsi.

Firma Kepemilikan Tunggal

Firma guaman pemilikan tunggal adalah firma yang dimiliki dan dikendalikan oleh seorang individu sahaja tanpa rakan kongsi. Status undang-undang pemilikan tunggal boleh ditakrifkan sebagai pemilikan di mana pemilik firma dan firma tersebut adalah satu entiti undang-undang, dan pemilik firma itu sendiri bertanggungjawab sepenuhnya ke atas aset dan liabilitinya. Oleh itu, apabila pemiliknya

meninggal, seluruh struktur firma berserta aset dan liabiliti firma tersebut akan diuruskan dengan sewajarnya sebagai harta pusaka si mati. Firma tersebut juga akan terbubar dengan kematian pemilik tersebut.

Bagi mengelakkan hal ini terjadi, adalah disarankan agar pemilik-pemilik firma untuk membuat wasiat di mana ianya ada menyatakan siapakah pihak yang terlibat untuk menguruskan firma sekiranya kematian berlaku. Dengan pelantikan seorang wasi atau pemegang amanah, maka seorang pemilik firma bolehlah menyatakan sekiranya terdapat hutang-hutang tertunggak atau bayaran yang masih belum dikutip, pampasan perlindungan diri dan segala jenis hajat atau pesanan yang perlu dimaklumkan kepada pihak yang masih hidup. Adalah penting untuk diingatkan bahawa wang di dalam akaun klien firma bukanlah menjadi harta pusaka pemilik firma dan ini perlu diterangkan agar waris-waris sedia maklum dan faham akan keadaan dan status wang-wang tersebut.

Terdapat beberapa perkara yang perlu diurus tadbir sekiranya pemilik firma tersebut meninggal dunia, antaranya prosedur pengurusan fail – sama ada terdapat rekod fail-fail yang masih aktif, pengurusan akaun (akaun pejabat dan klien) dan juga pengurusan penutupan firma. Pemilik sewajarnya melantik "Peguam Pengurus" seperti peguam bela dan peguam cara yang beramal berdekatan atau yang dipercayai untuk menguruskan hal-hal tersebut. Oleh itu, sekiranya berlakunya kematian, pihak Majlis Peguam Malaysia akan mendapat notis atau makluman awal. Ini adalah disebabkan apabila berlaku kematian, Majlis Peguam adalah pihak yang bertanggungjawab untuk menguruskan akaun klien bagi peguam bela dan peguam cara yang beramal atas namanya sendiri atau sebagai seorang peguam bela dan peguam cara tunggal atas suatu nama firma. Ini diperuntukkan di bawah Seksyen 92 Akta Profesion Undang-Undang 1976.

Tambahan pula, sekiranya pihak pemilik firma telah melantik seseorang untuk menguruskan hal berkaitan firma tersebut, ianya akan memudahkan ramai pihak terutamanya ahli waris apabila kematian berlaku. Seksyen 91 Akta Profesion Undang-Undang 1976 juga telah memperuntukkan bahawa wakil diri bertanggungjawab bagi perbuatan peguam bela dan peguam cara selepas kematiannya. Wakil diri ini akan menguruskan firma yang telah ditinggalkan seolah-olah beliau merupakan peguam bela dan peguam cara. Oleh itu, apa-apa kesalahan atau kelewatan wakil diri ini dalam menguruskan hal ehwal pentadbiran peguam bela dan peguam cara atau apa-apa amanah baginya, dia boleh dikenakan tindakan.

Amalan Undang-Undang Berkumpulan

Amalan undang-undang berkumpulan ini ialah suatu amalan yang terdiri daripada dua hingga lima firma sebagai ahlinya. Firma-firma tersebut mempunyai tidak lebih daripada lima peguam bela dan peguam cara dan kesemua firma tersebut berkongsi premis di alamat yang sama dan kemudahan di bawah nama amalan undang-undang berkumpulan. Namun begitu, walaupun firma-firma ini bekerjasama antara satu sama lain, firma-firma ini tidaklah menjadi rakan kongsi dan mereka perlu mendapat kelulusan dari Majlis Peguam sebelum menjalankan amalan Undang-undang berkumpulan. Bagi menjamin kelancaran firma-firma berkumpulan ini, maka Kaedah 13 (Profesion Undang-Undang (Amalan Undang-Undang Berkumpulan) 2018) diperkenalkan agar pengurusan firma boleh dijalankan walaupun berlaku ketidakupayaan atau kematian tuan punya tunggal dalam amalan undang-undang berkumpulan.

Kaedah 13 turut menjelaskan peruntukkan bahawa firma dalam amalan undang-undang berkumpulan yang merupakan pemilikan tunggal hendaklah melantik secara bertulis firma lain dalam amalan undang-undang berkumpulan yang sama untuk bertindak bagi menggantikannya sekiranya berlaku ketidakupayaan atau kematiannya, dan pelantikan tersebut adalah tertakluk kepada kebenaran Majlis Peguam.

Firma Perkongsian

Ini berbeza dengan firma yang dibuka secara perkongsian di mana membuka firma guaman secara perkongsian mungkin memberikan seribu satu onak dan duri apatah lagi untuk mengekalkan serta mengembangkannya. Namun masalah lebih besar dan mencabar akan timbul sekiranya salah seorang daripada pekongsi meninggal dunia terutamanya

dari sudut peribadi dan profesionalisme. Oleh itu, adalah perlu bagi setiap perkongsian untuk sentiasa bersiap sedia dari segenap aspek serta memasukkan perkara-perkara ini di dalam klausa Perjanjian Perkongsian termasuk berkenaan apa yang akan berlaku selepas kematian.

Hal ini demikian kerana Perjanjian Perkongsian, walaupun bukanlah satu mandatori, merupakan satu dokumen panduan yang amat penting untuk meneruskan pengoperasian firma guaman dan menyusun atur segala keperluan berkaitan perhubungan, peranan, tanggungjawab, serta hak masing-masing. Sekiranya Perjanjian Perkongsian telah pun wujud, seperti mana wasiat, ia boleh dikaji semula dari masa ke semasa, dan sekiranya perlu, dipinda selepas mengambil kira setiap perubahan atau situasi dalam perkongsian tersebut. Malah, Majlis Peguam Malaysia tidak akan masuk campur dalam urusan ini.

Seksyen 35(1) Akta Perkongsian 1961 memperuntukkan bahawa perkongsian boleh terbubar atau terhenti dengan kematian mana-mana pekongsi tertakluk kepada perjanjian lain antara pekongsi. Ini bermakna firma guaman tersebut boleh terus beroperasi selagi mana terdapat terma-terma spesifik yang dinyatakan di dalam Perjanjian Perkongsian bahawa pekongsi yang menakat atau berterusan (*"surviving or continuing partner"*) boleh memutuskan untuk meneruskan perniagaan. Sama juga seperti jumlah modal yang perlu disumbangkan serta faedah-faedah yang bakal diperolehi oleh setiap pekongsi hendaklah dinyatakan dengan jelas dalam perjanjian. Ini juga termasuk hubungan, liabiliti dan tanggungjawab, modal mahupun faedah keuntungan yang akan diuruskan apabila berlakunya kematian seseorang pekongsi.

Seksyen 45 Akta Perkongsian 1961 juga memperuntukkan bahawa bahagian pekongsi yang telah mati yang perlu dibayar oleh pekongsi yang menakat atau yang berterusan hendaklah menjadi suatu hutang yang terakru pada tarikh kematian dan wakil atau waris pekongsi yang telah meninggal dunia itu berhak menuntut hak tersebut. Prinsip ini juga jelas dinyatakan di dalam *Teknologi Cerucuk Pertama (M) Sdn Bhd v Ooi Hung Nee and Ors* [2010] 1 LNS 708. Hal ini demikian kerana hak atas kepentingan si mati dalam keuntungan akan diberikan kepada waris-warisnya.

Selari dengan Seksyen 8 Akta Perkongsian 1961, semua pekongsi adalah terikat dengan tindakan yang berkait dengan urusan firma itu. Ini bermaksud fail kes dan akaun klien boleh dipindahkan kepada pekongsi-pekongsi yang lain untuk disambung atau diteruskan dan firma memegang tanggungjawab untuk melaksanakan amanah bagi meneruskan kes tersebut seolah-olah seperti pekongsi yang meninggal tersebut masih ada. Walaubagaimanapun, klien mempunyai hak serta pilihan untuk meneruskan atau mencari peguam atau firma guaman lain bagi mengendalikan kesnya.

Mahkamah Tinggi di dalam kes *Teoh Swee Hee v Tio Hock Thye & Ors* [1996] MLJU 409 mengikut keputusan kes di India, *Kasi v Ramanathan Chettiar* dan *P M Ramakrishna Iyer v P Muthusami Iyer and Others* AIR 1929, Madras 456, telah memutuskan bahawa tiada sesiapa yang dapat melaksanakan pemilihannya dengan berkesan tanpa mempunyai pengetahuan yang jelas mengenai dana atau harta atau hak di mana dia harus memilih. Ini bermakna setiap pekongsi perlu meneliti pilihan dan haknya sebelum mengambil kata putus atau bersetuju dengan apa yang telah diperuntukkan di dalam Perjanjian Perkongsian.

Terdapat beberapa alternatif bagi pengurusan harta pusaka firma guaman apabila pekongsi meninggal dunia yang boleh diambil kira oleh pihak-pihak sebelum memasuki dan menandatangani Perjanjian Perkongsian.

Pilihan pertama yang selalu digunakan oleh kebanyakan pekongsi adalah memilih untuk mewariskan bahagian keuntungannya kepada pewaris. Ini bermakna bahagian pekongsi yang meninggal akan tetap berjalan dan berterusan seolah-olah pekongsi tersebut masih hidup. Manakala, ahli waris akan tetap mendapat bahagian keuntungan pekongsi yang meninggal dunia mengikut kadar bahagian yang ditetapkan. Namun ini tidak bermaksud ahli waris tersebut akan menjadi pekongsi yang baru kepada firma guaman tersebut kerana berdasarkan Seksyen 4(c)(iii) Akta Perkongsian 1961 menyatakan bahawa apabila mereka menerima melalui anuiti suatu bahagian daripada keuntungan yang diperoleh dalam urusan pekongsi yang telah meninggal dunia, bukanlah menjadikan penerima tersebut sebagai seorang pekongsi atau bertanggungan dalam urusan perniagaan itu. Walaubagaimanapun, adalah menjadi budi bicara pekongsi-pekongsi yang menakat dan yang berterusan untuk mempertimbangkan ahli waris dijadikan sebagai pekongsi baru menggantikan pekongsi yang telah meninggal dunia setelah melihat kepada kriteria, kemampuan, bakat dan kemahiran ahli waris tersebut selari dengan peruntukan Seksyen 26(g) Akta Perkongsian 1961.

Seksyen 44 Akta Perkongsian 1961 turut memberikan panduan berkenaan hak pengurusan keuntungan apabila berlakunya kematian pekongsi di samping kelangsungan urusan firma itu masih diteruskan. Dalam hal ini, waris kepada pekongsi berhak untuk mendapatkan apa-apa bahagian keuntungan yang diperoleh yang akan dikira sejak dari tarikh kematian pekongsi disebabkan oleh penggunaan bahagiannya dalam aset perkongsian itu, atau kepada faedah pada kadar lapan peratus (8%) setahun atas amaun bahagiannya dalam aset perkongsian itu. Bahagian itu akan dinilai berdasarkan pada tarikh realisasi dan bukannya pada tarikh kematian pekongsi setelah mengambil kira aset-aset perkongsian, keuntungan dan kerugian serta nisbah pembahagian terhadap pekongsi.

Seterusnya, pilihan kedua adalah melalui perjanjian jual beli bahagian kepada pekongsi-pekongsi yang menakat dan yang berterusan dan hasil jualan tersebut akan menjadi harta pusaka untuk dibahagikan kepada ahli waris. Ini bagi memastikan ahli waris mendapat pampasan serta habuan yang adil manakala pekongsi-pekongsi lain boleh meneruskan urusan firma guaman sedia ada. Hal ini juga dapat memberi kelegaan sekaligus mengurangkan tekanan kepada keluarga pekongsi yang meninggal dunia. Pilihan ini juga merupakan jalan penyelesaian yang sangat ideal terutamanya kepada pekongsi yang beragama Islam. Hal ini demikian kerana bahagian serta keuntungan peninggalan pekongsi tersebut adalah dianggap sebagai harta alih peninggalan si mati yang patut dibahagikan kepada ahli waris yang sah dan berhak mengikut hukum Faraid. Ini adalah berdasarkan kaedah Fiqh dalam mazhab Syafi'i iaitu harta peninggalan si mati serta pertumbuhannya dan perkembangannya adalah menjadi milik ahli

waris mengikut bahagian masing-masing. *(Lihat: al-Mausu'ah al-Fiqhiyyah al-Kuwaitiyyah; 11/216, al-Majmu'; 16/53)*

Ini juga turut disebut di dalam Seksyen 44 Akta Perkongsian 1961 bahawa setelah suatu pilihan diberikan kepada pekongsi yang menakat atau yang berterusan untuk membeli kepentingan seseorang pekongsi yang telah mati, dan pilihan itu digunakan sewajarnya, waris harta pusaka pekongsi itu tidak berhak lagi kepada apa-apa bahagian keuntungan selanjutnya atau keuntungan lain. Hal ini demikian kerana hasil keuntungan jualan bahagian tersebut telahpun diserahkan kepada ahli waris dan bahagian pekongsi yang meninggal dunia itu telah tidak wujud lagi dalam firma tersebut hasil pembelian oleh pekongsi yang lain.

Perjanjian Perkongsian perlu menggariskan secara jelas berkenaan urusan jual beli bahagian perkongsian, formula dan kadar, serta terma-termanya termasuklah proses penilaian untuk menjadikannya sah dan mengikat. Walaubagaimanapun, terdapat sedikit masalah yang bakal timbul dalam perjanjian jual beli ini kerana pekongsi-pekongsi yang menakat atau yang berterusan yang berhasrat untuk membeli bahagian pekongsi yang meninggal dunia dikehendaki menyediakan jumlah wang tunai yang besar bagi membolehkan bahagian tersebut dibeli. Oleh kerana ajal dan maut adalah suatu perkara yang tidak dapat dijangkakan serta berkemungkinan untuk berlaku pada bila-bila masa, maka ini akan menyebabkan kesusahan dan kepayahan kepada pekongsi lain untuk menyimpan wang atau berhutang wang bagi membeli bahagian perkongsian tersebut. Oleh itu, kebiasaannya pekongsi-pekongsi akan menyimpan wang dengan cara mencarum atau membiayai pelan dengan polisi insurans, takaful hayat atau sebarang skim pinjaman lain. Kaedah penyimpanan wang bagi membeli bahagian perkongsian ini turut perlu diperjelaskan dan dinyatakan di dalam Perjanjian Perkongsian. Proses jual beli ini juga akan mengambil masa yang panjang kerana perlu melalui proses penilaian bahagian perkongsian serta proses pengurusan harta pusaka yang lain seperti surat kuasa mentadbir dan sebagainya.

Oleh itu, setiap Perjanjian Perkongsian perlulah dirangka dengan teliti dan dikaji dari semasa ke semasa bagi memastikan bahawa semua isu dan masalah telah disentuh sepenuhnya termasuk strategi keluar atau *exit planning* apabila berlakunya kematian pekongsi. Namun, jika tiada klausa perjanjian berkenaan perkara tersebut, pilihan lain yang ada ialah pekongsi boleh merujuk kepada Akta Perkongsian, namun peruntukan undang- undang tersebut mungkin tidak mencerminkan niat asal pihak tertentu. Usaha-usaha penyediaan Perjanjian Perkongsian ini mungkin leceh, rumit atau membosankan, namun ianya sangat bermanfaat bagi menghindari sebarang perselisihan atau masalah terhadap pekongsi-pekongsi lain serta ahli waris di masa akan datang. Apa jua keputusan pada akhirnya adalah bergantung kepada perbincangan dalam mencari kata sepakat yang adil dan saksama sesama pekongsi. Menjangkakan perkara buruk dan mencari jalan penyelesaian terbaik adalah perkara paling ideal yang boleh kita lakukan sekarang demi kebaikan masa depan.

Justeru itu, adalah disyorkan juga supaya firma guaman melantik individu atau badan pemegang amanah seperti Amanah Raya Berhad atau lain-lain badan untuk memastikan keadilan dan kesaksamaan dalam kalangan pekongsi-pekongsi adalah terjamin. Ini adalah bagi mengelakkan kejadian seperti kemungkinan berlakunya ketidaktelusan pekongsi-pekongsi lain dan wasi atau pentadbir yang dilantik oleh pekongsi yang meninggal dunia tidak mengetahui atau mahir berkenaan dengan nilai aset atau perjanjian perkongsian semasa.

Kesimpulan

Kesimpulannya, adalah disarankan agar semua peguam bela dan peguam cara di Malaysia untuk membiasakan diri dengan pengurusan harta agar kita boleh memudahkan ahli waris apabila mereka ingin membuat urusan harta pusaka setelah kematian. Walaupun kita bekerja di dalam bidang ini, tanpa sebarang panduan dan maklumat, ini akan menyebabkan ahli waris kita hilang arah dan tidak tahu bagaimana untuk menguruskan harta pusaka kita dan akhirnya ianya akan menjadi sesuatu harta yang tidak dituntut.

Perkongsian...Patutkah Saya? Tidak Patut?

Oleh Mak Jun Yeen, Peguambela & Peguamcara

Ketika saya dipanggil ke Bar pada tahun 1990-an, laluan kerjaya saya sebagai seorang pengamal undang-undang agak mudah dan teratur.

Saya menawarkan perkhidmatan saya kepada firma undang-undang sebagai pembantu peguam, dibayar gaji bulanan dan bekerja dengan tekun sehingga saya ditawarkan untuk menjadi rakan kongsi firma, atau saya boleh membuka firma saya sendiri dan menjadi pemilik tunggal.

Akan tetapi, sebagai peguam yang masih muda dan tidak berpengalaman ketika itu, pilihan kedua adalah bukan permulaan yang tepat buat saya kerana saya agak baru dalam amalan guaman dan saya tidak mempunyai kenalan penting atau *connection* mahupun reputasi yang diperlukan untuk menarik klien.

Nasib saya baik, saya dikekalkan oleh firma *Master* saya selepas saya dipanggil ke Bar. Pada masa itu, saya hanya ingin bekerja dengan tekun selama beberapa tahun di firma tersebut, di samping cuba menarik perhatian rakan kongsi lain dengan harapan saya akan ditawarkan untuk menjadi rakan kongsi firma itu suatu hari nanti.

Sebagai alternatif, saya boleh bekerja selama beberapa tahun untuk mendapatkan pengalaman, reputasi, dan keyakinan sebelum meneroka sendiri sama ada dengan perkongsian bersama peguam lain atau sebagai pemilik tunggal.

Pada waktu itu, tanggapan saya masih kabur tentang apa yang dimaksudkan dengan rakan kongsi. Adakah mereka hanyalah salah seorang pemilik firma perkongsian dan mungkin memperoleh pendapatan yang lebih tinggi daripada gaji bulanan saya.

Aspek lain adalah di mana anda boleh menggelar diri anda sebagai "rakan kongsi" di sekian-sekian firma tertentu. Ia kedengaran seakan prestij yang anda bawa untuk dikenali sebagai "rakan kongsi" di ABC & Co. Saya seakan dikaburi dengan pandangan yang cantik selepas beberapa tahun dalam amalan undang-undang.

Pelbagai Bentuk Perkongsian

- Firma Ekuiti Tradisional

  Bentuk perkongsian tradisional adalah apabila pengasas-pengasas firma berkumpul untuk mengumpulkan sumber mereka dalam bentuk modal, kepakaran atau pangkalan klien yang sedia ada.

  Rakan kongsi berkongsi pemilikan kesemua aset firma. Mereka berkongsi keuntungan dalam perkadaran saham ekuiti mereka dalam firma tersebut. Sekiranya semua rakan kongsi mempunyai bahagian ekuiti yang sama, mereka akan mempunyai hak yang sama dalam pengoperasian firma; dan yang paling penting, semua mempunyai kawalan yang sama ke atas kewangan firma, termasuk akaun klien. Mereka turut sama berkongsi liabiliti firma berdasarkan bahagian ekuiti masing-masing.

  Firma seperti ini biasanya dilaksanakan mengikut perjanjian perkongsian yang mengawal hubungan mereka, tetapi sewaktu tahun muda saya sebagai rakan kongsi di firma di mana saya bekerja, terdapat satu perjanjian yang dikenali sebagai *'gentlemen's agreement'*. Sekiranya terjadi pertikaian, Akta Perkongsian akan mengawal perkongsian melainkan ada bukti menunjukkan sebaliknya.

  Perkongsian ekuiti tradisional ini sepatutnya menjadi perkongsian ideal yang menggalakkan kestabilan dan perpaduan serta kesetiaan, dengan memberi penekanan kepada pencapaian kumpulan dan kerja berpasukan. Ia bukannya persaingan antara peguam di firma yang sama. Seorang rakan kongsi mungkin berjaya mendapatkan klien dan rakan kongsi yang lain mungkin boleh menyumbang kepakaran mereka. Pada akhirnya semua orang mendapat manfaat dan senang hati.

  Walau bagaimanapun, sebagaimana bertukarnya waktu, hubungan antara rakan kongsi juga boleh bertukar menjadi keruh. Sesetengah rakan kongsi mungkin tidak berpuas hati dengan aturan yang telah di buat kerana mereka merasakan mereka telah menyumbang lebih banyak dalam masa dan usaha atau menjana lebih banyak bayaran guaman buat firma, di mana ini semua akan dinikmati oleh rakan kongsi lain tanpa melakukan usaha yang sama.

  Mungkin terdapat konflik antara rakan kongsi muda dan rakan kongsi senior yang sudah stabil; si senior mungkin lebih dinamik dan bercita-cita tinggi namun merasakan bahawa mereka tidak diberi lebih banyak kawalan ke atas keputusan penting yang boleh mempengaruhi firma, terutamanya kewangan. Ini boleh membawa kepada banyak salah faham dan akhirnya perpecahan buat firma.

  Bagi peguam muda, tawaran untuk menjadi rakan kongsi di dalam firma tradisional itu mungkin tidak menarik. Pertamanya, dia perlu membayar sebahagian ekuiti yang ditawarkan oleh rakan kongsi yang lain atau dia perlu melepaskan sebahagian besar keuntungan yang bakal diperolehi selama bertahun-tahun hanya untuk membayar ekuiti.

  Namun, rakan kongsi muda hanya diberikan sedikit kawalan ke atas kewangan firma atau arah operasi firma. Dari segi kewangan, rakan kongsi muda masih perlu menanggung liabiliti sekiranya ada rakan kongsi senior yang melakukan penipuan ke atas wang klien di dalam akaun klien, di mana rakan kongsi junior mungkin tidak mempunyai mekanisme untuk mengawal atau memeriksa.

- Perkongsian Bergaji

Peguam muda mungkin ditawarkan dengan apa yang dikenali sebagai perkongsian bergaji atau perkongsian bukan ekuiti.

Rakan kongsi berekuiti sedia ada di dalam firma tradisional mungkin tidak mahu mencairkan bahagian ekuiti mereka namun mereka mungkin menghargai hasil kerja anda selama bertahun-tahun di firma dan ingin menghalang anda daripada meninggalkan firma untuk sesuatu yang lebih baik.

Rakan kongsi di firma itu mungkin khuatir kerana setelah bertahun-tahun anda berkhidmat, anda mungkin telah membina *connection* dengan klien, dan jika anda pergi, klien mungkin akan turut pergi bersama dengan anda. Sebaliknya, firma itu mungkin menyedari bahawa klien akan lebih yakin untuk berurusan dengan anda sebagai 'rakan kongsi' bukan sebagai peguam senior.

Firma itu kemudiannya menawarkan anda gelaran 'rakan kongsi' tanpa sebarang ekuiti dalam firma – iaitu, anda tidak akan memiliki sebahagian daripada aset, muhibah, klien firma, perniagaan, dan sebagainya. Firma itu boleh terus membayar gaji yang dihadkan yang bermaksud anda tidak akan mendapat kenaikan tahunan, tetapi anda akan menerima pendapatan bulanan.

Di samping itu, firma itu boleh menawarkan peratusan keuntungan firma yang telah ditentukan. Bergantung kepada polisi firma, kuota keuntungan, katakan 10%, boleh diperuntukkan untuk diagihkan kepada rakan kongsi 'bergaji'. Firma itu juga boleh menawarkan untuk membayar komisen hasil yuran yang dikutip daripada klien yang anda dapatkan untuk firma itu memandangkan sebagai "rakan kongsi" anda boleh kelihatan lebih menonjol kepada bakal klien.

Kelebihan

Anda akan mendapat prestij label sebagai rakan kongsi. Klien akan lebih yakin dengan perkhidmatan anda kerana anda kini sudah menjadi rakan kongsi firma dan bukannya rakan sejawat ataupun pembantu peguam.

Anda boleh mendapatkan klien untuk firma itu, dan berkeyakinan untuk memperkenalkan diri anda sebagai rakan kongsi.

Di samping itu, anda tidak perlu membayar ekuiti yang akan menjejaskan kewangan anda walaupun menerima jumlah gaji yang sama, jika tidak melebihi jumlah keuntungan yang diagihkan.

Anda tidak perlu memikul perbelanjaan pentadbiran firma. Ada kalanya firma tidak mampu menjana pendapatan, ini menyebabkan rakan ekuiti bukan sahaja perlu menyumbang wang gaji mereka tetapi mungkin juga perlu memasukkan wang tambahan bagi menstabilkan firma itu jika perlu.

Sebagai rakan kongsi yang bergaji, anda dilindungi daripada masalah ini di mana sekiranya berlaku masa-masa buruk anda masih boleh menerima pendapatan tanpa keuntungan yang diperuntukkan.

Sekiranya anda mahir dengan selok belok perniagaan, anda boleh menarik klien anda sendiri, dan pendapatan anda melalui komisen atas yuran yang dibayar oleh klien mampu meningkatkan pendapatan anda.

Kelemahan

Anda tidak benar-benar memiliki apa-apa di firma. Anda juga tidak mempunyai suara dalam pengurusan firma atau kewangannya.

Anda mungkin tidak dapat membantah keputusan rakan kongsi ekuiti mengenai peruntukan keuntungan di antara mereka sendiri atau bahkan bahagian yang diperuntukkan kepada anda.

Anda mungkin akan sering merasakan bahawa pendapatan anda tidak sepadan dengan beban kerja anda, sekarang anda adalah "rakan kongsi" tetapi pendapatan bulanan yang diterima adalah terhad apabila keuntungan yang dihasilkan oleh firma itu rendah; dan bayaran komisen anda juga tidak seperti yang diharapkan.

Kelemahan yang paling penting yang perlu anda ingat ialah anda bertanggungjawab kepada pihak ketiga atau klien untuk liabiliti yang disebabkan oleh hutang pentadbiran firma, atau kecuaian peguam lain atau rakan kongsi anda.

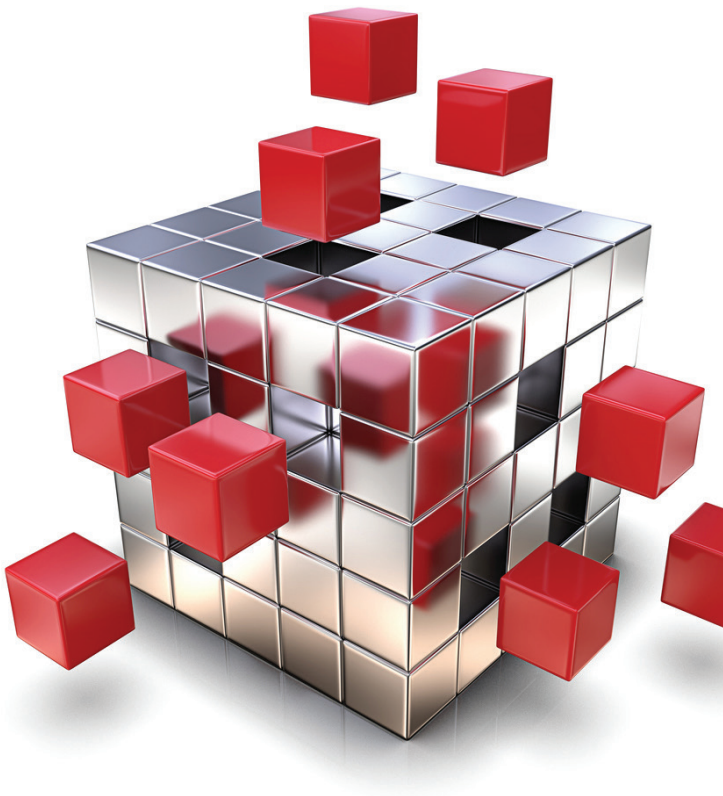
Liabiliti yang paling merosakkan yang mungkin perlu anda tanggung adalah untuk salah laku dalam pengurusan akaun klien, wang klien atau liabiliti yang timbul daripada tugas sebagai pemegang saham firma. Liabiliti ini melibatkan sejumlah besar wang yang perlu anda tanggung sedangkan anda hanya rakan kongsi bergaji dan tidak menikmati kelebihan sebagai pemilik firma seperti rakan kongsi ekuiti.

- ### Perkongsian Longgar

Beberapa tahun yang lalu, seorang rakan saya menubuhkan firma perkongsian dengan seorang kenalan. Kita namakan dia sebagai Sih Malapetaka. Sih Malapetaka diberhentikan dari firma lain yang baru saja ditutup. Dia telah bekerja di firma itu selama beberapa tahun sebagai peguam pemindahhakan dan mempunyai sejumlah kes dan klien tetap sendiri.

Kenalannya, kita namakan dia sebagai Soh Malang. Dia adalah peguam cara yang sangat baik dan mempunyai amalan pemilikan tunggal yang sangat kukuh. Soh Malang mencadangkan Sih Malapetaka untuk membentuk perkongsian bersamanya.

Sih Malapetaka begitu gembira. Soh Malang sudah mempunyai firma selama beberapa tahun dan mempunyai amalan yang menguntungkan. Dia tidak berminat untuk berkongsi hasil kerja kerasnya, tetapi dia memerlukan rakan kongsi kerana dia bercadang untuk menyertai panel beberapa syarikat dan bank untuk menjalankan kerja-kerja litigasi. Sih Malapetaka sebaliknya mahukan tempat untuk menjalankan kerja dengan kliennya sendiri tetapi dia tidak



mempunyai modal yang cukup. Beliau juga perlu mengekalkan klien dari panel perbankannya yang lebih memilih peguam pemindahhakan dari firma perkongsian.

Oleh itu, kedua-dua mereka membuat perjanjian dan kedua-duanya bersetuju bahawa walaupun bekerjasama dalam perkongsian baru yang dipanggil Malang & Malapetaka di mana mereka beramal di pejabat yang sama di sebuah bandar yang dipanggil Lumut Busuk, masing-masing akan menjalankan kerja mereka sendiri dan menguruskan akaun klien dan pejabat sendiri. Soh Malang akan mendapat pendapatan daripada yuran yang dijana oleh kliennya manakala Sih Malapetaka akan mendapat pendapatan daripada yuran yang datang daripada kliennya.

Mereka berdua membayar gaji staf masing-masing secara berasingan. Sih Malapetaka hanya perlu membayar jumlah tertentu untuk sewa, elektrik dan perbelanjaan pentadbiran lain firma. Sih Malapetaka melihat namanya terdapat pada nama firma dan kepala surat. Untuk beberapa bulan pertama, semuanya berjalan lancar seperti mana yang telah diaturkan.

Enam bulan kemudian seorang lagi pemilik tunggal, Justin Deuitkamoo, mendekati Soh Malang dan Sih Malapetaka untuk bekerjasama. Justin Deuitkamoo mempunyai firma perkongsian di bandar lain yang dipanggil Kota Songlap, khusus dalam kerja-kerja pemaju hartanah.

Justin Deuitkamoo mempunyai rakan kongsi yang meninggalkannya untuk firma lain. Dia perlu membentuk perkongsian lain untuk menjaga klien korporatnya. Justin Deuitkamoo telah mengenali Soh Malang selama beberapa tahun dan telah merujuk kes-kes litigasi kepada Soh Malang.

Jadi mereka membentuk perkongsian baru yang dipanggil Malang Malapetaka & Deuitkamoo. Soh Malang dan Sih Malapetaka terus beramal di mana mereka berada di Busuk Lumpur manakala Justin Deuitkamoo akan berpusat di pejabatnya di Kota Songlap.

Sepertimana aturan sebelum ini, mereka bersetuju untuk menyimpan akaun berasingan yang diuruskan oleh rakan kongsi masing-masing. Mereka juga mengasingkan pendapatan yang diperolehi mengikut firma masing-masing.

Setahun kemudian, Sih Malapetaka menerima surat tuntutan daripada salah seorang klien Justin Deuitkamoo yang menuntut pembayaran harga pembelian sebanyak RM1 juta yang disimpan dalam akaun klien firma itu yang diuruskan

secara berasingan oleh Justin Deuitkamoo di pejabat Kota Songlap.

Soh Malang dan Sih Malapetaka cuba menghubungi Justin Deuitkamoo untuk mendapatkan penjelasan tetapi tidak berjaya. Kemudian mereka mendapati dia telah meninggalkan negara dan tidak dapat dijejaki. Pejabat Kota Songlap firma itu juga telah ditutup.

Soh Malang dan Sih Malapetaka kini berdepan tindakan undang-undang daripada klien Justin Deuitkamoo berjumlah RM1 juta yang mungkin telah digelapkan oleh Justin. Sebagai rakan kongsi dalam firma yang sama, Soh Malang dan Sih Malapetaka bertanggungjawab secara undang-undang kepada klien walaupun bukan mereka yang menggelapkan wang tersebut!

Kisah di atas menggambarkan betapa bahayanya perkongsian firma yang sangat popular di kalangan komuniti undang-undang sejak kebelakangan ini. Perkongsian ini adalah perkongsian yang sangat longgar, lebih kurang seperti perkahwinan kontrak.

Peguam boleh bersama-sama membentuk perkongsian dan membolehkan setiap rakan kongsi bebas dalam menguruskan kerja mereka sendiri, klien, wang klien dan pendapatan tanpa gangguan atau semakan baki dari rakan kongsi yang lain.

Jenis perkongsian ini juga boleh membentuk cawangan bebas dengan nama yang sama tetapi sebenarnya tidak berkait antara satu sama lain, hanya sekadar nama. Buat orang awam dan dari segi hukum, "cawangan" dianggap sebagai satu dan firma yang sama dan akan terus dianggap sedemikian. Setiap rakan kongsi akan bertanggungjawab terhadap liabiliti rakan kongsi yang ingkar terhadap klien walau apa pun aturan awal mereka.

Walaupun terdapat kelebihan dengan jenis perkongsian ini, terdapat juga risiko yang besar seperti yang digambarkan di atas, dan peguam muda harus berhati-hati dan menyedari risiko sebelum menyertai perkongsian sebegini.

Ambil tahu mengenai kerja-kerja firma dan teliti perjanjian perkongsian sebelum bersetuju dengan perjanjian tersebut. Peguam perlu lebih tegas dalam meneliti semak dan imbang ketika menguruskan akaun klien. Kesemua rakan kongsi juga harus dapat melihat penyata bank dan buku akaun semua akaun klien yang disimpan oleh firma, bagi melakukan langkah yang sepatutnya ketika 'bendera merah' mula kelihatan.

Saya berharap perkara di atas akan membantu pengamal undang-undang baru dan muda untuk masa depan amalan mereka. Tidak semua perkongsian berakhir seperti apa yang dihadapi oleh Soh Malang dan Sih Malapetaka.

Kebanyakan pengamal undang-undang adalah jujur dan berintegriti. Memperolehi rakan kongsi yang baik akan banyak membantu anda sepanjang perjalanan kerjaya anda.

Walau bagaimanapun, pengamal muda perlu lebih peka akan bahaya dan pastikan anda menyertai perkongsian firma dengan orang-orang yang boleh dipercayai.

Ingat kata-kata yang dipetik dari Ronald Reagan, bekas Presiden Amerika Syarikat ini, 'Percaya dan sahkan'.

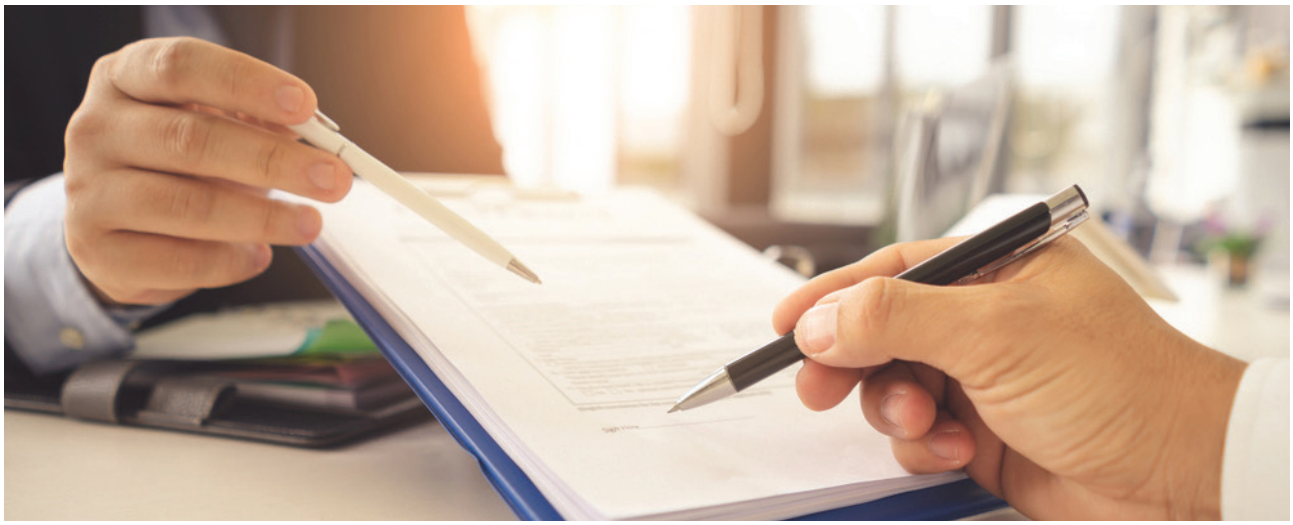
Perlindungan Polisi dan Amalan Undang-Undang

Oleh Loong Sheng Li

Joe dari Tetuan XYZ dilantik sebagai "peguam cara kepada pembeli" dalam perjanjian jual beli untuk harta kediaman ("Hartanah") yang berpusat di United Kingdom ("UK"). Pembeli adalah sekumpulan individu dari Malaysia manakala penjual, yang mengaku sebagai pemilik hartanah tersebut, adalah syarikat pembangunan hartanah yang ditubuhkan dan berpusat di UK. Hampir setiap masa, Joe adalah peguam bela dan peguam cara yang berkelayakan di Malaysia namum tidak mempunyai kelayakan tambahan untuk mengamalkan undang-undang asing.

Kedua belah pihak tidak mengenali antara satu sama lain. Kali pertama Joe didatangi oleh penjual adalah melalui e-mel yang mencadangkan agar dia mewakili pihak pembeli dalam transaksi jual beli harta yang tertakluk kepada undang-undang Inggeris. Penjual turut memaklumkan Joe bahawa yuran guamannya akan dibayar oleh penjual setelah perkara ini selesai. Oleh kerana Joe tidak begitu mahir dengan undang-undang Inggeris, dia dibimbing dan diberi arahan oleh pihak penjual tentang bagaimana perjanjian jual beli itu akan dilaksanakan, dan cara pembayaran akan dilakukan.

Joe bersetuju untuk mewakili pembeli. Dia memperkenalkan dirinya kepada pihak pembeli melalui e-mel dan kemudian mengeluarkan surat



ikatan kepada pembeli. Semasa urus niaga hartanah dijalankan, Joe telah memberikan nasihat undang-undang kepada pembeli mengenai terma perjanjian jual beli, khususnya tentang pemilikan hartanah setelah pembayaran penuh. Seminggu kemudian, perjanjian jual beli telah dilaksanakan dan ditukar antara pihak-pihak melalui e-mel mengikut undang-undang Inggeris. Pihak pembeli selepas itu membayar deposit yang diperlukan kepada penjual.

Tidak lama kemudian, pihak pembeli mendapati bahawa mereka tidak memperolehi pemilikan sah hartanah tersebut kerana penjual bukan pemilik sebenar. Pihak pembeli meminta bayaran deposit mereka dikembalikan, namun tidak berhasil. Oleh kerana itu, pembeli memulakan tuntutan undang-undang terhadap Joe dan Tetuan XYZ kerana kesalahan dan kecuaian atas alasan Joe tidak memenuhi kelayakan di bawah undang-undang Inggeris untuk mewakili mereka dalam perjanjian jual beli hartanah itu.

Joe segera membuat notifikasi tuntutan itu kepada syarikat insurans indemniti profesionalnya.

Tip dan Cadangan

- Sebelum menjalankan kerja yang berkaitan dengan undang-undang asing, pastikan anda / amalan undang-undang anda mempunyai insurans indemniti profesional yang sesuai dan merangkumi bidang kuasa yang berkaitan, di mana firma anda beroperasi.
- Elakkan daripada membiarkan diri anda terdedah kepada kerugian yang tidak diinsuranskan, di mana ia boleh mendatangkan masalah kewangan yang serius terhadap anda / amalan undang-undang.
- Pastikan jumlah perlindungan minimum (seperti yang ditetapkan oleh Skim Insurans Indemniti Profesional Majlis Peguam Malaysia) adalah mencukupi untuk amalan undang-undang anda. Ambil kira faktor seperti sejarah tuntutan amalan, saiz amalan, risiko terjadinya tuntutan, dan jenis kerja yang dijalankan, bagi menentukan jumlah perlindungan yang anda perlukan.
- Jangan libatkan diri dengan perkara di luar bidang kepakaran anda. Risiko seperti ini sangat tidak berbaloi untuk diambil dan boleh menyebabkan klien tidak berpuas hati, kemungkinan menerima tuntutan terhadap amalan anda dan seterusnya meningkatkan premium insurans.
- Apabila berurusan dengan klien baru, ambil langkah berjaga-jaga untuk memastikan bahawa anda sedang berurusan dengan individu yang sepatutnya berurusan dengan anda. Kurangkan risiko dengan menjalankan carian nama syarikat, nama individu, dan pekerja, bagi memastikan sekiranya terdapat perkara-perkara yang menjerumus ke arah identiti atau syarikat palsu.
- Berhati-hatilah dengan konflik kepentingan. Sentiasa semak potensi konflik pada peringkat awal dan jangan terus berurusan dengan klien anda jika terdapat risiko.

Berhadapan dengan Risiko – Mengurus Proses Pengambilan Pekerja Baru

Oleh Shafiq Sobri

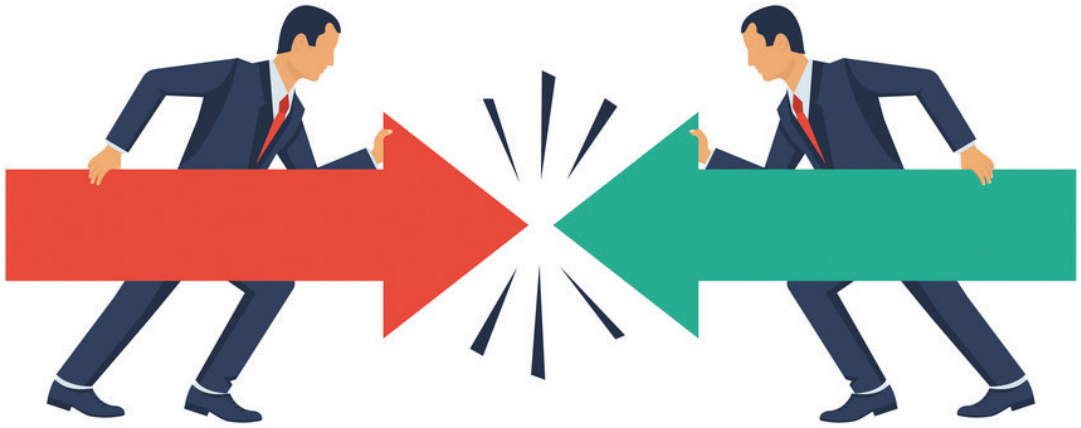
Sudah menjadi kebiasaan bagi firma guaman untuk mengambil peguam dari firma lain, sama ada disebabkan oleh firma yang berkembang mahupun sekadar mengisi kekosongan jawatan yang ditinggalkan. Walaupun penting bagi firma guaman untuk mendapatkan individu yang bersesuaian dengan peranan tertentu, standard pengurusan risiko juga penting untuk digunakan ketika proses pengambilan pekerja. Ini bertujuan untuk mengelakkan sebarang isu yang berkemungkinan terjadi semasa dan selepas proses pengambilan pekerja. Dua risiko yang sering berlaku adalah konflik kepentingan dan kerahsiaan.

Kebanyakan firma mempunyai mekanisme untuk mengelak konflik kepentingan apabila menerima atau memberi nasihat kepada pelanggan baru, seperti semakan konflik dan ketelitian wajar. Walau bagaimanapun, proses pengambilan peguam seringkali diabaikan. Jika risiko konflik kepentingan dan kerahsiaan tidak ditangani dan diuruskan pada peringkat awal semasa proses pengambilan, ia boleh membahayakan firma dan mungkin sudah terlambat untuk diselesaikan. Adakah mencukupi dengan hanya menjalankan soal selidik tentang pengalaman kerja dan firma terdahulu? Adakah dengan adanya pelindung maklumat atau 'tembok besar Cina' di firma sahaja sudah mengukuhkan mekanisme pengurusan risiko bagi melindungi maklumat sulit yang tidak boleh didedahkan?

Konflik Kepentingan

Sudah menjadi kemestian bagi seseorang peguam untuk mengelak dari berlakunya konflik kepentingan ketika menjalankan tugas atau memberi nasihat kepada klien – dulu, kini dan akan datang. Bab 6 daripada *Rules and Rulings of the Bar Council* secara khususnya memperuntukkan tentang konflik kepentingan yang menjelaskan situasi konflik yang boleh atau tidak boleh diteruskan oleh peguam.

Ketika mengambil peguam untuk bekerja, konflik kepentingan yang mungkin terjadi adalah apabila



individu tersebut membawa klien dari firma lama mereka ke firma baru di mana boleh menimbulkan konflik. Satu lagi keadaan adalah apabila klien tetap dengan firma lama calon tersebut tetapi firma baru tidak dapat mewakili klien yang lain kerana terdapat kepentingan konflik calon itu sendiri ketika bekerja di firma yang lama.

Berikut adalah beberapa langkah yang boleh diambil oleh firma untuk mengenal pasti kemungkinan konflik kepentingan semasa proses pengambilan pekerja:[1]

- Minta vitae kurikulum terkini supaya anda boleh menyemak latar belakang peguam yang diambil bekerja. Anda perlu melihat sekurang-kurangnya rekod lima tahun ke belakang, atau pada masa artikel ditulis jika ini kurang daripada lima tahun yang lalu.

- Semak dengan peguam di firma anda, atau lakukan carian di dalam sistem konflik anda jika terdapatnya sebarang data berkaitan kes tertentu di pindahkan bersama peguam yang kini bekerja di firma baru.

- Minta senarai klien utama dari peguam yang bakal berpindah dan perkara-perkara yang telah dia kendalikan (tetapi bukan maklumat sulit, termasuk identiti klien jika itu sulit) dan minta jalankan carian konflik ke atas nama-nama di pangkalan data konflik firma anda.

- Dalam temu bual (bukan secara bertulis), tanya peguam yang bakal berpindah jika dia menyedari sebarang kemungkinan konflik berkaitan kerja yang dilakukan olehnya semasa di firma terdahulu.

- Tanya peguam yang berpindah jika dia duduk di mana-mana lembaga, dan jika ya, jalankan carian konflik untuk mendapatkan maklumat melalui pangkalan data konflik firma anda, termasuk, nama entiti, pengarah dan pegawai terlibat.

Maklumat Sulit

Adalah penting bagi firma yang mengambil peguam untuk mempunyai maklumat yang mencukupi bagi menyelesaikan pemeriksaan konflik dalaman dan pada masa yang sama memastikan bahawa tiada maklumat sulit pelanggan didedahkan kepada peguam yang baru mahupun firma itu sendiri. Semasa proses pengambilan peguam baru, firma guaman harus melaksanakan langkah-langkah tertentu dalam memastikan jumlah maklumat yang mereka perlukan dari calon adalah mencukupi. Semasa proses ini juga, langkah-langkah aktif perlu diambil untuk memastikan bahawa tiada maklumat sulit diminta sebagai sebahagian daripada proses

[1] Dan Pinnington, "Senarai semak untuk mengelakkan konflik mengenai pemindahan peguam sisi", *Slaw: Majalah undang-undang dalam talian Kanada* (27 Februari 2012), www.slaw.ca/2012/02/27/a-checklist-for-avoiding-conflicts-on-lateral-lawyer-transfers/.

pengambilan peguam dan mengingatkan calon untuk tidak memberikan maklumat tersebut.

Berikut adalah beberapa langkah yang boleh diambil oleh firma dan peguam baru untuk meminimumkan risiko pendedahan maklumat sulit semasa proses pengambilan ini:[2]

- Minta pendedahan maklumat klien secara berperingkat. Kenal pasti hanya klien tertentu sahaja dan hadkan maklumat yang diberi. Sediakan senarai klien yang lengkap dan maklumat kewangan yang lebih terperinci hanya pada peringkat seterusnya.

- Minta pendedahan maklumat asas sahaja, seperti:

  - identiti klien atau pihak lain yang terlibat dalam sesuatu perkara;

  - ringkasan status dan latar belakang perkara tersebut, termasuklah isu-isu umum yang terlibat;

  - maklumat yang boleh didapati secara umum;

  - jumlah fail di firma peguam;

  - terma kewangan setiap hubungan peguam-klien; dan

  - maklumat mengenai pembayaran yuran semasa dan sejarah agregat (seperti kadar realisasi, penghutang purata dan ketepatan masa agregat pembayaran).

- Hadkan pendedahan kepada mereka di firma yang terlibat secara langsung dalam menyelesaikan konflik dan memutuskan sama ada pengambilan akan diteruskan.

- Bersetuju untuk tidak mendedahkan maklumat kewangan atau konflik di luar firma semasa dan selepas rundingan pengambilan peguam baru.

Walaupun firma mungkin mempunyai satu set mekanisme pengurusan risiko dalaman tertentu untuk mengelakkan konflik kepentingan dan menguruskan maklumat sulit, mengenal pasti dan menguruskan risiko ketika saat pertama semasa proses pengambilan peguam sentiasa menjadi amalan pengurusan risiko yang baik, kerana ia membolehkan firma menilai semula kedudukannya terhad.

[2] Peraturan Kelakuan Profesional New York R1.6Diww.nysba.org/WorkArea/DownloadAsset.aspx?id=50671.

Perakaunan Firma Guaman

Sama ada anda berhasrat untuk beramal sebagai pemilik tunggal mahupun perkongsian, anda sememangnya perlu menguruskan kewangan anda bagi memastikan firma guaman tetap beroperasi. Ini bermakna anda perlu menguruskan hal-hal pejabat serta mengurus pendapatan dan perbelanjaan firma anda.

Sediakan akaun firma guaman anda dengan betul dari awal. Ini boleh dilakukan secara manual atau berkomputer, bagi kedua-dua Akaun Pejabat dan Akaun Klien anda.

Adalah mustahak untuk menyimpan rekod:
- Buku Resit Akaun Klien
- Buku Harian (Buku Tunai)
- Rekod Pembayaran
- Buku Klien
- Baucar dikeluarkan

Walaupun tidak wajib dan bergantung pada jenis amalan undang-undang, semua firma guaman pada umumnya akan menyimpan sekurang-kurangnya satu Akaun Pejabat dan satu Akaun Klien.

Buku Resit Akaun Klien

Secara idealnya tiga salinan diperlukan,
- Salinan asal diberikan kepada klien;
- Salinan kedua disimpan di dalam fail; dan
- Salinan ketiga kekal di dalam buku resit.

Gunakan buku resit yang bernombor untuk memudahkan penyemakan. Sebaiknya resit dikeluarkan mengikut turutan nombor dan ada dicatatkan nombor rujukan fail. Hanya wang yang dipegang sebagai pihak berkepentingan atau amanah diletakkan di dalam Akaun Klien. Walau bagaimanapun, terdapat juga beberapa firma guaman yang akan mendepositkan jumlah SST yang dikumpulkan dari klien ke dalam Akaun Klien sebagai transit sebelum pembayaran ke Jabatan Kastam Diraja Malaysia dibuat.

Rekod Pembayaran

Semasa melakukan pengeluaran, pastikan:
- Semua perbelanjaan pengeluaran dibuat dengan betul;
- Semua jumlah pada invois adalah sebagai pendapatan, termasuklah pengeluaran;
- Sekiranya pengeluaran dibayar terus dari Akaun Klien, ia akan/mungkin tidak direkodkan di dalam Akaun Pejabat yang menyebabkan cukai yang lebih tinggi akan dikenakan.
- Pembayaran tidak boleh dibuat melalui Akaun Klien tetapi melalui Akaun Pejabat, kecuali Duti Setem yang diwajibkan pengeluaran daripada dan dibayar melalui cek Akaun Klien.

Baucar

Baucar disediakan untuk pembayaran yang dibuat melalui Akaun Klien. Baucar adalah kebenaran untuk melakukan pembayaran, ia harus mengandungi:

- Tarikh;
- Nama klien;
- Nama penerima bayaran;
- Tujuan pembayaran;
- Tandatangan pemohon;
- Pengesahan; dan
- Penerima

Amalan Terbaik

- ✓ Sekiranya anda mempunyai lebih dari satu pejabat, pastikan semua penyata bank dihantar oleh bank terus ke pejabat utama dan pejabat cawangan.
- ✓ Selaraskan penyata bank, baucar pembayaran dan lejar secara berkala.
- ✓ Keratan cek hendaklah sepadan dengan semua transaksi dalam penyata bank.
- ✓ Apabila transaksi melibatkan akaun bank klien, sebaiknya terdapat dua penandatangan.
- ✓ Prosedur pengurusan risiko yang mencukupi harus dilaksanakan sekiranya firma menggunakan *e-banking*. Contohnya nama pengguna dan kata laluan tidak boleh didedahkan kepada staf, pemohon serta orang yang meluluskan permohonan adalah orang yang berbeza, dan fail perlu diperiksa sebelum meluluskan pembayaran.

Apa itu Akaun Klien?

Wang klien ada dijelaskan di dalam peraturan 2, Peraturan Akaun Peguam Cara. Pada dasarnya, ia bermaksud wang yang diterima bagi sesuatu pihak di mana peguam bertindak sebagai:

- Seorang peguam,
- Berkaitan dengan amalannya sebagai peguam,
- Ejen,
- Penjamin,
- Pihak berkepentingan.

Senarai ini juga merangkumi wang amanah peguam. Ini termasuk perbelanjaan dan wang yang perlu dibayar kepada pihak ketiga oleh klien. Ia tidak termasuk yuran yang perlu dibayar kepada peguam.

Akaun Klien hanya digunakan untuk wang klien. Sekiranya anda tidak menerima wang daripada klien dalam amalan anda, anda tidak perlu membuka akaun amanah klien.

Akaun amanah klien adalah akaun yang anda gunakan untuk:

- Wang deposit yang diterima daripada klien untuk dibayar kepada pihak lain;
- Wang deposit yang diterima dari pihak lain bagi pihak klien anda;
- Wang deposit yang diterima daripada klien untuk perkhidmatan guaman dan bayaran akan datang;
- Mengeluarkan wang seperti yang diarahkan oleh klien anda;
- Bayaran balik kepada firma guaman anda untuk perbelanjaan yang telah dibuat oleh firma guaman bagi pihak klien anda.

Apa itu Akaun Pejabat?

Wang pejabat adalah wang yang diterima oleh firma guaman sebagai bayaran untuk perkhidmatan yang telah diberikan dan untuk bil atau invois yang telah dikeluarkan.

Pemahaman umum adalah – apa sahaja jumlah yang dimasukkan ke dalam Akaun Pejabat akan dianggap sebagai pendapatan untuk firma guaman sehingga terbukti sebaliknya.

Wang yang dimiliki oleh firma itu harus dibayar ke dalam akaun pejabat firma guaman. Akaun pejabat ini adalah akaun operasi firma guaman dan juga akaun pendapatan firma guaman. Oleh itu, jumlah dalam Akaun Pejabat boleh mempengaruhi jumlah cukai yang perlu dibayar kepada Lembaga Hasil Dalam Negeri.

Akaun pejabat merangkumi:

- Pembayaran yang diterima daripada klien berdasarkan bil khidmat guaman yang telah dilaksanakan;
- Pembayaran untuk perbelanjaan firma guaman, seperti sewa, barangan pejabat, gaji dan caj bank;
- Pembayaran keluar bagi pihak klien anda.

Amalan Terbaik

- ✓ Fahami Peraturan Akaun Peguam Cara 1990, termasuklah yang berkaitan dengan Peraturan Akaun Peguam Cara (Faedah Deposit) 1990;
- ✓ Menggaji staf perakaunan/ sokongan yang baik - mempunyai staf yang berpengalaman dan pantau kakitangan dengan teliti;
- ✓ Dapatkan sokongan daripada juruaudit luar, jika perlu;
- ✓ Pastikan jumlah minimum akaun klien dengan pihak bank;
- ✓ Pastikan sistem perakaunan dan rekod anda mudah dan tidak rumit;
- ✓ Untuk mengelakkan masalah, lakukan pelarasan bagi wang masuk dan keluar secara berkala serta satu persatu; dan
- ✓ Buat pemeriksaanriksa fail secara mengejut.

SKIM MANDATORI PII
BADAN PEGUAM MALAYSIA
TAHUKAH ANDA?

Butiran Dasar Berkenaan Perlindungan PII Anda

Kesulitan tuntutan atau tuntutan mahkamah terhadap firma guaman yang sudah tidak lagi beramal boleh menjadi mahal dan rumit seperti tuntutan undang-undang lain. Walau bagaimanapun, skim mandatori insurans indemniti profesional Badan Peguam Malaysia ("PII") menyediakan indemniti kepada mereka yang pernah menjadi ahli Badan Peguam Malaysia. Artikel ini akan menjelaskan butiran lanjut tentang skim ini kepada ahli-ahli agar mereka lebih memahami perlindungan yang diberikan.

Akta Profesion Undang-Undang 1976 ("LPA") memerlukan ahli Badan Peguam Malaysia untuk memiliki PII terlebih dahulu sebelum mendapatkan Sijil Tahunan/Sijil Amalan Tahunan mereka. Skim PII menginsuranskan ahli-ahlinya terhadap liabiliti sivil untuk tuntutan yang datangnya daripada amalan undang-undang untuk kerja yang lazim dan sah dilakukan oleh peguam di Malaysia termasuk ganti rugi yang perlu dibayar kepada pihak yang menuntut, termasuklah kos penuntut dan kos pembelaan. Ia ditaja jamin oleh Pacific & Orient Insurance Co Berhad ("P&O").

Butiran Dasar

Polisi PII dikeluarkan atas nama firma guaman dan melindungi kesemua peguam di firma tersebut (tertakluk kepada terma) untuk liabiliti sivil (kos ganti rugi dan pembelaan) dalam tuntutan yang dibuat terhadap firma dan/atau mana-mana peguamnya yang timbul ketika beramalan mengikut LPA.

Apakah yang akan berlaku jika ahli yang telah berhenti beramal, dan kemudian menyedari ada tuntutan/potensi tuntutan? Skim PII Badan Peguam Malaysia memberi indeminiti kepada mereka yang pernah menjadi ahli Badan Peguam Malaysia termasuk estetnya sekiranya berlaku kematian. Perlu diingat bahawa terma dan syarat polisi adalah terpakai termasuklah *Base Excess*.

Contoh:

(a) Peguam A berhenti beramal pada akhir tahun 2017. Pada tahun 2021, peguam A menyedari tentang satu tuntutan untuk kerja-kerja guaman yang dilakukan sebelum tahun 2017. Peguam A boleh membuat notifikasi untuk mendapatkan Perlindungan PII (tertakluk kepada terma polisi pada tahun 2021);

(b) Peguam B meninggal dunia pada tahun 2017. Pada tahun 2021, individu C yang merupakan pentadbir harta peguam B, menerima writ dan pernyataan tuntutan dari klien peguam B untuk kerja-kerja guaman yang dilakukan. Individu C boleh membuat notifikasi bagi mendapatkan perlindungan PII (tertakluk kepada syarat dasar pada tahun 2021).

Syarat Dasar Standard

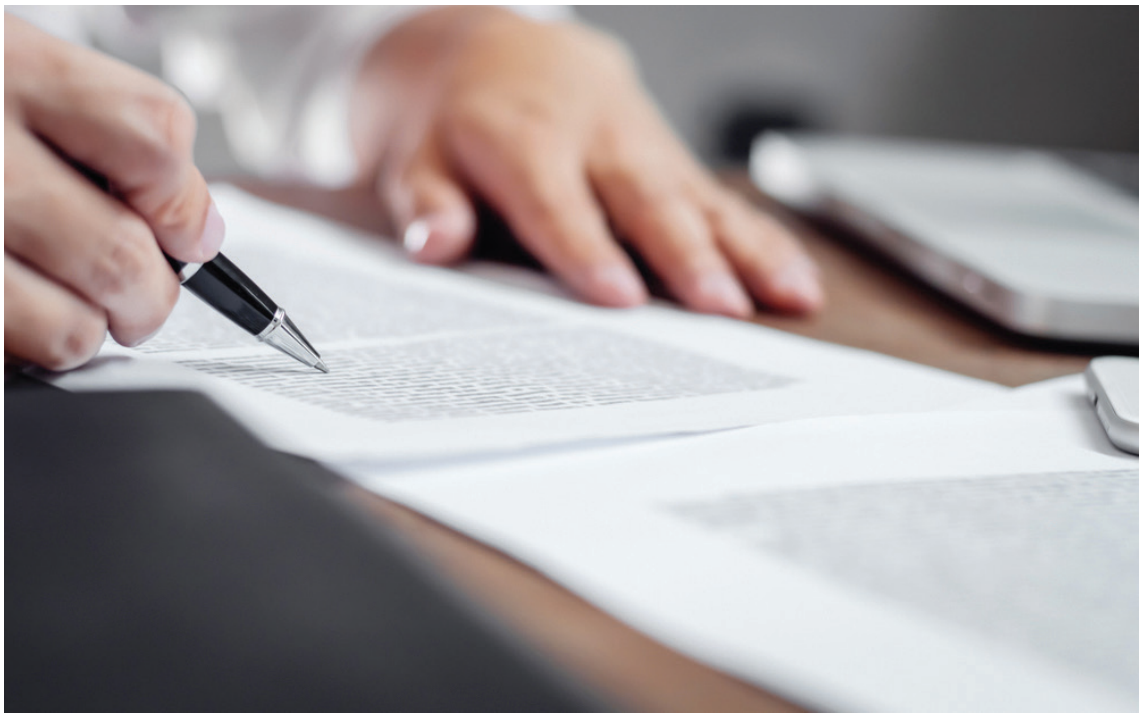
Had mandatori indemniti bagi setiap firma ditentukan oleh bilangan peguam di firma pada ketika bermulanya tarikh polisi diambil. Firma yang hanya mempunyai satu peguam mempunyai had mandatori sebanyak RM250,000 untuk setiap tuntutan. Bagi setiap tambahan seorang peguam, had mandatori firma akan meningkat sebanyak RM50,000 sehingga maksimum RM2,000,000.

Sekiranya tuntutan dibuat terhadap firma dan/atau mana-mana peguamnya (contohnya menerima surat / notis tuntutan ("LOD") atau menerima writ / saman / prosiding / prosiding pihak ketiga), atau mana-mana keadaan, peristiwa atau fakta yang secara munasabah dijangka menimbulkan tuntutan pada masa akan datang (potensi berlakunya tuntutan), firma/ peguam hendaklah:

- membuat notifikasi kepada Broker Insurans Skim PII, Marsh Insurance Brokers (M) Sdn Bhd dengan menghantar email ke mbar@marsh.com dengan segera dan lampirkan LOD dan lain-lain, beserta butiran hubungan peguam yang bertanggungjawab, tidak lewat daripada 60 hari selepas menyedari tentang tuntutan tersebut;

- membuat pendedahan segala maklumat dengan tepat, kesemua fakta dan dokumen yang berkaitan dengan tuntutan itu;

- tidak mengakui liabiliti atau berunding tentang apa-apa jenis penyelesaian / kompromi atau menanggung apa-apa perbelanjaan yang tidak munasabah tanpa persetujuan bertulis terlebih dahulu. Sebagai syarikat insurans yang menyediakan indemniti, P&O akan menjalankan penilaian dan pembelaan tuntutan melalui peguam panel yang dilantik oleh mereka;



- ambil perhatian bahawa mereka mesti menanggung apa-apa ganti rugi dan /atau kos pembelaan yang ditanggung dalam tuntutan sehingga amaun *Base Excess* yang dinyatakan dalam polisi berkenaan, yang mana ditentukan daripada bilangan peguam dalam firma pada permulaan polisi. Sebarang baki ganti rugi dan/atau kos pembelaan akan ditanggung oleh Syarikat Insurans tertakluk kepada terma-terma polisi;

- memahami pengecualian yang berkenaan dalam terma, di mana Syarikat Insurans tidak akan memberikan sebarang indemniti. Sebagai contoh, polisi ini tidak akan memberi indemniti terhadap sebarang salah laku (penipuan/ketidakjujuran) oleh firma, rakan kongsi atau pekerja. Walaubagaimanapun, rakan kongsi yang tidak terlibat atau tidak melakukan salah laku itu, diberi perlindungan terhad kepada RM350,000 atau had polisi secara agregat, bergantung kepada mana yang lebih rendah. Fakta yang perlu diberi perhatian adalah rakan kongsi bertanggungjawab secara bersama mahupun berasingan untuk liabiliti firma dan / atau rakan kongsi mereka.

Bagi pembaharuan PII seterusnya, premium hanya akan terjejas dengan *claims loading* **JIKA** Syarikat Insurans telah mula membayar ganti rugi dan/atau kos pembelaan dalam tuntutan, di mana ia telah melebihi jumlah *base excess* firma. Hanya dengan itu *claims loading* sebanyak 5% daripada ganti rugi dan/atau kos pembelaan yang dibayar oleh Syarikat Insurans atau lima kali premium pembaharuan (yang mana lebih rendah), akan digunakan semasa pembaharuan dalam tempoh 5 tahun dari tarikh tuntutan pertama kali diberitahu.

Nota: Di bawah Skim Mandatori PII, perlindungan adalah sentiasa tertakluk kepada terma, pengecualian, dan syarat yang dinyatakan di dalam Sijil Insurans yang berkaitan.

Alih Bahasa ini adalah sebagai rujukan sahaja. Sekiranya terdapat perbezaan antara versi Bahasa Inggeris dan Bahasa Malaysia, versi Bahasa Inggeris di mukasurat 18 hendaklah digunapakai.

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Risk Management Events 2022

We are delighted to share that in 2022, the risk management initiative by Bar Council Professional Indemnity Insurance ("PII") Committee will continue to provide a comprehensive package of knowledge through its series of webinars for Members of the Bar and staff of law firms. The webinars are designed to raise awareness and provide guidance to the legal community as well as encouraging good risk management practices within a law firm.

Look out for our webinar series by scanning the QR code below. The information will be updated every month.

1 Getting Started! Focus

Registration Fee – Members of the Bar: RM10
Pupils in Chambers: Free
Non-Members: RM30

- The Fundamental of Legal Practice
- Should We Be Partners?
- Accounting and Taxation
- Conveyancing in a Competitive Climate
- Billing & Collections
- Winning Ways through Civil Litigation

This webinar series covers the basics of starting a legal practice, accounting and taxation, and selected practice. The duration of each session is between 1 hour 30 minutes to 2 hours.

2 I-RiskTalk

- When the Doctor Says...
- Edisi Syariah
- Discussion on current issues

This webinar series focuses on physical and mental health, current issues and syariah law, among others. The topics discussed under the I-RiskTalk banner does not emphasise heavily on the legal side but more in general topics. Each session takes approximately between 1 to 2 hours.

3 My Professional Indemnity Insurance

This webinar explains the coverage and terms under the PII Scheme, namely the Master Policy and Certificate of Insurance ("COI"). The webinar also explains amendments made to the COI and highlights important clauses of the COI that could make void coverage.

4 My Risk Management

This one hour webinar discusses good risk management practices to avoid the possibility of a negligence suit against a practitioner and the law firm.

5 RM4Staff Focus

Registration Fee: RM10

- Connecting People
- Law Firm Accounting 101
- Office Administration: Ace It!

This webinar series, designed for staff of legal firms particularly, provides training on office skills, time management, accounting practices, workflow methods systems and procedures, file management and more. Each session takes approximately between 1 to 2 hours.

6 How Not to be a Statistic? The Conveyancing Scam

This webinar provides participants with information related to topics such as breakdown of scams reported to the PII Scheme, risks in conveyancing practice, duty of care to client, and managing conveyancing risks.