



# JURISK!

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Risk Management Quarterly

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## *Welcome to the December 2008 issue of Jurisk!*

In keeping with the global financial climate, our aim is to bring focus to emerging risks for members:

1. **Fraud.** In recent months, the PII Scheme has experienced an increase in fraud claims. Following on from the Practice Alert issued in Jurisk! Mar & Jun 2008, we will be issuing a second Practice Alert on "Misconduct" in Jan 2009.
2. **Deposit Insurance.** A Practice Alert on Deposit Insurance was emailed to all members on 11 Nov 2008 (see Bar Council Circular 283/2008). Members should note that all bank deposits, including client accounts of legal firms are now fully guaranteed by the Government until Dec 2010.

Related articles on the global financial climate in this issue of Jurisk! are a SIF article and *Managing Succession Risks*. The SIF piece reports the advantages of a move to a SIF Scheme in today's financial climate whilst *Managing Succession Risks* (1) articulates why properly managing succession risks is critical and (2) illustrates how it can be incorporated into your firm's strategic planning. The New Year is however not forgotten, we have in this issue a special centre spread, *7 Things Every Lawyer Should Do to Avoid Mishaps* for your reading pleasure.

The 2009 PII Renewals proceeded smoothly. We are happy to report that the revamped Online Proposal Form Submission system saw an improvement of **96.24%** on the 2008 Renewals. **1090** submissions were received online (as @ 19 Dec 2008)! This is indeed a positive development for the Scheme, and the PII Committee will use this to drive future efforts in improving and streamlining existing IT systems.

Our long-term goal now is to extend our reach to all members through a network of online programmes specific to our PII Scheme and RM Programme. A work in progress is an online interactive "self-audit" system. Members will be introduced to practice risks and risk management through case studies, videos and Q&As. We anticipate launching this project by the 2nd Quarter of 2009. To read more about our 2008 risk management endeavours, see the *Risk Management (RM) Programme Highlights 2008* on Page 3.

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Of note in the 2008 RM Programme was the launch of the *Practice Area Checklist Series II CD* in Nov 2008. Complete with Step-by-Step and Snapshot Checklists, it is designed for young and senior lawyers. You should also have received the *Risk Management Table Calendar 2009* by now. Featuring case studies and targeted risk solutions, it is hoped that the Calendar will prove useful in your daily practice!

The SIF Feasibility Study has steadily progressed: draft SIF Rules have been prepared and reviewed; a meeting with the Attorney-General's (A-G) Chambers has been arranged for late Dec 2008 to gain the A-G's feedback and approval; the Scheme's claims statistics and information are being reviewed and details on the SIF structures for the Scheme are being finalised.

2008 saw the fruition of our efforts in the last three (3) years. 2009 will mark a new direction for the PII Scheme as we prepare for a possible move to a SIF Scheme. Hence, maintaining this productivity, growth and momentum is crucial.

We will keep you updated via Jurisk! and Bar Council Circulars. It is our hope that members will continue to support us in our various endeavours and write us with your feedback, ideas and thoughts.

*Ragunath Kesavan* Vice President / PII Committee Chairman, Malaysian Bar

## HAPPY NEW YEAR!

"BE ALWAYS AT WAR WITH YOUR VICES, AT PEACE WITH YOUR NEIGHBOURS,  
AND LET EACH NEW YEAR find you A BETTER PERSON." BENJAMIN FRANKLIN

**With Best Wishes and Sincere Regards  
from the Bar Council**

# RISK MANAGEMENT RM PROGRAMME HIGHLIGHTS 2008

Focus this year was to fine-tune and improve on the 2007 RM Programme, i.e. (1) increase awareness and usage of RM practice tools, and (2) target RM projects to claims-prone practice areas, e.g. conveyancing and litigation.

## PUBLICATIONS



Complete with a new look and format, the PII & RM Department (PRD) commenced the 2008 edition with a Mar & Jun special issue.

Articles chosen for Jurisk! 2008 were to meet specific needs of the Malaysian Bar - gleaned from review and analysis of claims statistics.

Topics included employee dishonesty, litigation, conveyancing, conflict of interest as well as file transfers. Effort was made to provide case studies to better illustrate problems and solutions.



Practice Alert 1/2008 was on employee embezzlement. Case studies were included in the alert to inform members of possible *modus operandi* in embezzlement cases.

In response to growing concerns about the global financial crisis, an alert pertaining Deposit Insurance was issued to members in Nov 2008 informing of a blanket guarantee by the Government on deposits until Dec 2010.



Positive feedback on the 2008 Calendar spurred the development of a table calendar for 2009. The aim was for the Calendar to be a functional and educational tool to raise awareness on risk management.

Hence, key was to relate the Calendar's content to the everyday challenges that legal firms face. The case studies featured were chosen to that purpose.

# CHECKLISTS



The Practice Area Checklist Series that started with three (3) Checklists in 2006 was updated and expanded to include new Checklists in 2008. To cater to the new Checklists, production of the Checklist Series in CD format was considered the best way forward: it would be compact and accessible to all members.

The 2008 Checklist CD contains ten (10) Checklists: Sub Sale of Property with Title/Without Title (Purchaser and Vendor), and Litigation (including Appeals). The Checklists are in two (2) formats: Step-by-step and Snapshots. This was to cater the Checklists to both young and senior lawyers. A semi-interactive Checklist Roadmap was also incorporated into the CD to guide users.

Feedback thus far on the Checklist Series, which went on sale @ RM8.00 in Nov 2008, has been positive. Requests for the CD are coming from east Malaysian lawyers also.

# WORKSHOPS



With the Malaysian Bar growing at a rate of 10% annually, the continuance of the **Getting Started!** Workshop was viewed as essential to assist new practitioners and lawyers setting up practice.

Two Workshops were successfully held in Kuala Lumpur on 23.5.08 and 7.11.08. Both Workshops attracted a total of 94 participants from across peninsular Malaysia. Sessions were informal and included topics like Accounting and Tax, Business of Legal Practice, Litigation, Conveyancing and Bar Council Rulings and Rules. Business solution providers were also invited to the Workshops to complete the “one-stop” experience for **Getting Started!** participants. Amongst products/solutions provided were accounts and file management software, insurance, telecommunications etc.

A **Getting Started!** Workshop planned for Penang on 18.10.08 was cancelled due to poor response. Although disappointing, an outstation **Getting Started!** for 2009 will nonetheless be planned.

# REVIEWS



Due to logistic reasons, the PRD did not conduct Practice Reviews in 2008. However, the knowledge sharing exercise with our broker, JLT's e-solutions subsidiary, JLT Interactive Pte Ltd, Singapore continued. Automation of the Practice Review system on a web-based platform is near completion. This new platform will allow for automatic generation of reports/statistics and essential data mining for future practice reviews.

An Online Self-Audit (e-Practice Review) for members is a work-in-progress. It is being developed as an interactive self-audit module where practice risks are highlighted and the importance of risk management emphasised through case studies, illustrations and Q&As. We anticipate launching the e-Practice Review by the second quarter of 2009.

# SURVEY



As a PI Scheme service provider, we seek feedback on our projects and services annually. This year, the Survey was conducted online. Response to the online Survey was dismal. The small number of responses received to-date (less than 60) will definitely hamper the PRD's efforts in addressing members' practice concerns and improving on the content and delivery of our RM projects.

## CONCLUSION

With a move from the present "Commercial-insurer PII" Scheme to a "Self Insured Fund" Scheme imminent, the greater the need there is for a comprehensive RM programme that engages our members. 2009 will see us continue these efforts to engage the profession as well as grow the current programme to one where the profession's needs and targeted solutions are core. By Wong Li Chin @ 18 Dec 2008

# 7 THINGS EVERY LAWYER SHOULD DO TO AVOID MISHAPS

By Corrinne Wong



The Bar Council regularly emails members with news, reminders, announcements, new practice directions, etc. Make sure you receive these emails by registering with the BC's IT Department.

## EMAILS

### You avoid:

Enduring a "lawyer & the light bulb" joke, feeling unsupported.

It is worth every billable minute to expound great customer service in your firm. It assures you that there'll be business in these lean times and a smaller likelihood of claims.



## CLIENTS

### Risks:

Incur client's wrath, hauled in to see The Boss, visits to the Disciplinary Board...



The Malaysian Bar website should be saved on your 'Favourites' folder. Get up-to-date news and read what happens in the legal fraternity around the world.

[www.malaysianbar.org.my](http://www.malaysianbar.org.my)

**Risk:** Contracting 'katak di bawah tempurung' syndrome.

## SELF IMPROVEMENT



Both the Professional Standards & Development Committee and the PII & RM Department organise value for money courses. Spend RM250.00 and learn something that'll save you RM250,000.00 in return!

### Or:

Spend time bemoaning "...I should have done..." in times of mistakes, worry about possible claims.



## DATES

Remember these dates:

**14 Mar:** The Bar's 63rd AGM at the Legend Hotel, KL.

**30 Jun:** Your Bar Council subscription is due.

**30 Nov:** It's the last day to drop off your ballot for the Bar Elections.

**31 Dec:** Your Sijil Annual/Practice Certificate expires.

### You risk:

Fines, penalties... disciplinary action, stress...

**Miss the feel-good factor?**  
Feeling dissatisfied & unrewarded?  
Due your pay-back to the community?



## GIVING BACK

Legal Aid turns 37 in 2009. Have you contacted them lately? They are always happy to accept new volunteers.



## HAVE YOUR SAY

You are one of 12,800 voices in the legal profession – make it count!

- ✓ Join a Bar Council or State Bar Committee.
- ✓ Join the Malaysian Bar website forum!
- ✓ Take part in Bar Council Surveys.

**The mishaps:**  
Unhappy, unheard, isolated.

# Managing Succession Risks

By Martin Goh, Echelon Risk Consulting Asia Pte Ltd



## The Risks & Their Implications

Succession risk is perhaps more salient for companies in today's economy, with the need for sound leadership and business continuity taking on increasing importance.

Mukesh and Anil Ambani's public battle over succession to India's Reliance Group provides a glimpse into the implications of not properly managing succession risks. In contrast, McDonald's appointment of Charles Bell as CEO within hours of news of James Cantalupo's passing in 2004 bears testimony to well-managed succession risk.

Lara Dodo, vice-president, Robert Half Legal, states that legal firms with no succession plans run a tremendous risk of business failure.<sup>1</sup> Dodo is also clear that succession risks apply to large firms and smaller companies with sole founders<sup>1</sup> – Partners or people can leave at any age/time, with potentially devastating consequences without a well-developed and executed succession plan.

<sup>1</sup> Firms must focus on succession planning or risk future consequences' - The Lawyers Weekly, 9 February 2007.



## Managing Succession Risks in the Real World

In order to provide a perspective on effective management of succession risks, it is perhaps apt to begin with a working illustration of some of the concepts presented below.

Berkshire Hathaway provides us with such an example. The following is an excerpt of Warren Buffet's 2007 letter to Berkshire Shareholders:

“ As I have told you before, we have for some time been well-prepared for CEO succession... We have three outstanding internal candidates. The board knows exactly whom it would pick if I were to become unavailable, either because of death or diminishing abilities. And that would still leave the board with two backups.

Last year I told you that we would also promptly complete a succession plan for the investment job at Berkshire, and we have indeed now identified four candidates who could succeed me in managing investments. All manage substantial sums currently, and all have indicated a strong interest in coming to Berkshire if called. The board knows the strengths of the four and would expect to hire one or more if the need arises. The candidates are young to middle-aged, well-to-do to rich, and all wish to work for Berkshire for reasons that go beyond compensation. ”

As you approach your own plan, it might be worth keeping in mind the following lessons that can be drawn from Berkshire Hathaway's approach to succession risk management:

- User-friendly succession systems that are non-bureaucratic, consistent and objective.
- Succession strategies/plans that are developmentally oriented rather than replacement oriented.
- Active engagement and involvement of top management within the organisation.



## Guidelines for Managing Succession Risks

The AS/NZS 4360 Australian Risk Management Standard presents a risk management process that you might consider using as a guide to managing your succession risk:

AS/NZS 4360	Suggested Considerations/Applications
Establish Context	<ul style="list-style-type: none"> <li>● What are the significant challenges your firm is likely to face over the next few years?</li> <li>● What are the implications of succession failure to your firm in light of these challenges?</li> </ul>
Identify Key Risks	<ul style="list-style-type: none"> <li>● What are the key positions/functions in your firm?</li> <li>● This might not just be a partner or senior executive. It could also include critical functions such as a finance manager, a key administrative staff or IT manager.</li> </ul>
Assess Risks	<ul style="list-style-type: none"> <li>● What would be the potential impact if there is a succession failure at each of the identified key positions?</li> </ul>
Evaluate Risks	<ul style="list-style-type: none"> <li>● Evaluate against internally set criteria and set appropriate priorities – e.g. Which functions are most critical and require immediate attention in terms of succession planning?</li> </ul>
Treat Risks	<ul style="list-style-type: none"> <li>● This would involve determining the skills that are required for each key function and developing appropriate succession solutions.</li> <li>● Examples include proactive development of internal executives, identifying potential external candidates and developing well-defined transition plans.</li> </ul>
Monitor Developments	<ul style="list-style-type: none"> <li>● Continuous improvement and refinement to keep succession plans current and relevant.</li> </ul>



## Concluding Thoughts

Like many disciplines within the broad remit of risk management, managing succession risks should form part of sound business process and strategic planning. Don't let succession failure be a hindrance to the success of your firm.

# UPDATE ON WORK TOWARDS A SELF INSURED FUND (SIF)

Over the past year, the PII Committee has been working to review how the Malaysian Bar can implement a sustainable Self Insured Fund (SIF), affording the future option of replacing the existing model of a commercial-insurer PII Scheme. In this issue, we review how the global financial crisis affects the decision to establish a SIF.



## Global Economic Turmoil: How Will It Affect Insurance Premiums?

The ongoing turmoil in the global financial markets is creating far-reaching consequences. Much of the media's attention has focused on the banking sector, yet the global insurance industry has also been significantly affected. The financial/economic crisis will hit insurers in three different ways:

- 1 Investment income, a key source of earnings for insurers, has dramatically reduced. This will encourage insurers to increase premiums to offset their investment losses.
- 2 Insurers are likely to incur huge losses arising from professional negligence related insurance claims made against the financial sector (banks; fund managers) and service providers to the financial sector, such as lawyers and accountants.
- 3 A global economic recession will lead to an increase in insurance claims, if it follows historically observed trends (as economies weaken, insurance claims arising from litigation and fraud correspondingly increase).

## On the Positive Side:

- ➔ Insurers are keen to maintain/grow their share of the Asian market by offering attractive pricing for large programmes such as the Malaysian Bar PII Scheme.
- ➔ The commitment in recent years of the Bar Council to establish and promote good risk management standards within the profession has improved our profile with insurers.

### **Insurance Industry Problems: Why Members Should Be Concerned.**

As many members will recall, the terrorist attacks of 9/11 heralded the onset of significant increases in PI insurance premiums. At that time, insurers explained that to cover their huge financial losses from 9/11 related insurance claims, they had to increase the cost of insurance across the board.

Clearly, the same situation could be emerging again with the gathering storm clouds of the global financial and economic crisis. This could lead to pressure to increase premium rates.

### **Is Now A Good Time to Evaluate the Self Insured Fund (SIF)?**

Clearly, we cannot again allow the situation where our premiums are subject to the insurance industry's own business challenges. For this reason, the PII Committee has been evaluating the SIF to help to provide premium and coverage stability for members.

The key objective of moving to a SIF is to reduce the current situation where the Malaysian Bar is totally reliant upon the commercial insurance market. The SIF will assist in creating an alternative to this dependency on commercial insurers.

So “yes” in answer to the question of whether it is a good time to evaluate and potentially even establish the SIF. Unlike the situation post-9/11, if insurers increase premiums from January 2010, we at least have an alternative of retaining more risk through the SIF in return for premium stability.

*NOTE: This briefing on future insurance market trends is prepared for general information only.*



As has been stated before, members need to be realistic in that their premiums will not drop from Day 1 of the SIF. The focus will be on “value for money” and affordable protection which can be greatly enhanced under the SIF.

## Increase your firm's efficiency with the 2008 Practice Area Checklist CD!

An instant aide-memoire  
Step-by-Step guide from start to finish on a file  
Practical and convenient  
Easy to read format

Providing both Step-by-Step and Snapshot Checklists on General Litigation and Real Estate Conveyancing, the 2008 Practice Area Checklist CD will be an asset in your daily practice.

Get your copy @ RM8.00 from the Bar Council Secretariat. For more details, call or email the PII & RM Department.



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The Bar Council is pleased to present the Risk Management Table Calendar 2009.

**Compact and concise, this calendar is a DEFINITE MUST-HAVE!**

### Why?

- It has case studies on routine law practice issues with easy to implement solutions;
- Crucial Bar Council dates and court holidays are highlighted;
- No more frantic searches for State Bar contact details as it's all in the Calendar; and
- It's good to look at!

You should have received your copy by now. If you haven't, or you would simply like an extra copy, drop in to see us at the Bar Council Secretariat (3rd Floor) or contact us.



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Certificate No. 22470

## HAVE YOUR SAY

We'd like to hear your thoughts and share your take on practice management, best practices and liability insurance with everyone.



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