



# JURISK!

March 2013

Vol 9 Issue 1

**Risk Management Quarterly**

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

## YOUR COI EXPLAINED



## CONTENTS

WHO IS INSURED

WHAT IS INSURED

WHEN YOU HAVE TO NOTIFY THE INSURER

HOW MUCH WE INSURE YOU FOR

YOUR BASE EXCESS

MISCONDUCT CLAIMS

YOUR DUTY TO CO-OPERATE

INSURERS HAVE THE RIGHT TO TAKE CONDUCT OF THE CLAIM

DECIDING WHETHER TO PROCEED TO HEARING OR SETTLE

ONE CLAIM

PREMIUMS

## Chairperson's Message

# Enhance Your Practice

We are embarking on a new legal year in so far as the Bar Council is concerned and we are looking forward to some changes structurally to enable Members to access information and best practice guides to assist in their practice.

We have instructed our broker, Jardine Lloyd Thompson Sdn Bhd ("JLT") to conduct a thorough review of our Risk Management Programme. The Risk Management Programme has by far and large, been carried out by the Professional Indemnity Insurance ("PII") Committee and as well as the PII and Risk Management Department.

We intend to centralise and coordinate all our guides and information in one accessible website for easier access and we are in the process of collating all our past circulars and notices on one site so that any lawyer can access all relevant information in a much easier manner than what we have currently.

We have circulars issued in 2008 or earlier which may be relevant but if you are a lawyer called to the Bar in 2012/13 you will not know about it unless you are told by your senior or you invariably make a mistake and you are sued for negligence!!

We hope to centralise all information so that a conveyancing practitioner need only go to one web site or web page to access all relevant and useful (some would say useless) information.

We have completed negotiations with the Insurer and the terms for the 2013 Certificate of Insurance have been updated, with amendments to some clauses, and inclusions of new clauses that will be seen as very favourable for Members. Firms should already receive their Master Policy and Certificate of Insurance. If you have not yet received it, please contact JLT.

This issue of *Jurisk!* focusses on the Master Policy and the Certificate of Insurance. We are attempting to simplify the terms therein with examples and illustrations to assist Members to understand the protection and extent of cover provided under the policy.

Clauses that have undergone amendments and clauses that we feel Members need to pay special attention to are discussed in depth in the issue. Apart from reading the thorough discourse available here, I strongly urge Members to read their Master Policy, Certificate of Insurance and its various attachments to have a better understanding.

I would also like to take this opportunity to thank the PII Committee Members for 2012/13 for their strong support, hard work and tremendous contributions throughout the years. The Committee Members are as follows:

Member	Committee Member since
George Varughese	2007
Arthur Wang	2004
Balbir Singh	2009
David Ng Siong Yee	2012
Dhinesh Bhaskaran	2004
Felix Raj Arokiasamy	2009
G Balakrishnan	2004
GK Ganesan	2007
Harikannan Ragavan	2009
Lawrence Pereira	2001
Ng Seng Kiok	1995
Rao Suryana bt Abdul Rahman	2009
Razlan Hadri Zulkifli	2005
Richard Kok Chi Wei	2009

If at any time you need assistance with your PII, or any other matters pertaining to the Scheme and the Risk Management Programme, do not hesitate to contact me, or the Officers of the Department.

**Ragunath Kesavan,**

PII Committee Chairperson, Bar Council

Email: [ragunath@kesavan.com.my](mailto:ragunath@kesavan.com.my)

Tel: 03-2095 2299

Notice: The "Dealing With Complaints" and "Managing Practice Risks" articles that appeared in *Jurisk!* December 2012 were reproduction of the articles of the same titles that appeared in the Risk Management Quarterly September 2006 and June 2006 issues respectively; these articles in turn, were reproduced with permission from its original authors, AFP Consulting and Bizibody Technology Pte Ltd respectively. Our oversight in overlooking the issuance of rightful acknowledgments to these original authors in the *Jurisk!* Dec 2012 issue is deeply regretted.

### Inside This Issue.

Our feature article in this issue focusses on the main terms and conditions of the 2013 Certificate of Insurance ("COI"). Jointly contributed by the Malaysian Bar's Mandatory Professional Indemnity Insurance ("PII") Scheme's Broker and Insurer, the article highlights the more important clauses of the COI, complete with explanation and reasoning, illustrations and best practice tips.

Members should also take note that there are some changes to this year's COI – new and amended clauses have been included in the article and explained in depth. The new and/or amended clauses are Clause 7, Clause 12, Clause 36(l), Clause 38 and Clause 39.

The PII Committee and the PII and Risk Management Department continuously stress the importance of reading and understanding your policy documents. These documents include the Master Policy, COI and Schedules attached. It is our understanding that most lawyers are not aware of the Policy terms and condition; therefore we urge all Firms who have received their copies to share the same with all lawyers in their Firms.

The Best Practices segments within the article feature key risk management initiatives that Firms and lawyers alike can implement in their practice to minimise claims' exposure. Whilst we have tried to cover as wide a base as possible, Firms are urged to merely use these tips as guidance to further enhance their own risk management framework. A good starting point would be past issues of *Jurisk!* that can be read for free, anytime, online at [www.praktis.com.my](http://www.praktis.com.my).

We hope Members will spare a few minutes to read the article. Members with queries and comments on PII and risk management can contact the Department's officers directly at 03-2032-4511 or email [pirm@malaysianbar.org.my](mailto:pirm@malaysianbar.org.my). Happy reading!

The *Jurisk!* Team

## Risk Management Workshop Schedules 2013

### Getting Started! Workshop

The *Getting Started!* Workshop is a full-day workshop comprising of core sessions on crucial aspects of starting up one's own practice: managing accounts, litigation practice as well as conveyancing practice. This Workshop is conducted by accounting professionals and senior legal practitioners. Comprehensive workshop kits are provided to all participants. Attending Members of the Bar will qualify for CPD points.

The Department will be organising the following *Getting Started!* Workshop in Kuala Lumpur:

1. 20 May 2013
2. 5 Sept 2013

Raja Aziz Addruse Auditorium, Bar Council Secretariat, Kuala Lumpur

### Risk Management For Staff Workshop

The *Risk Management for Staff* Workshop has been conducted since 2010, and covers communication, law firm accounts, office administration, and file and time management. The Workshop has been attended by office managers, paralegals, clerks as well as a few Members of the Bar and pupils in chambers. The main aim of the Workshop is to help law firm staff improve themselves in their daily job requirements. In addition, the Workshop exposes the risks emanating from the staff's daily routines, and highlights pitfalls to avoid, and offers workable strategies to keep in place.

The Department will be organising the following *Risk Management for Staff* Workshops at these venues:

*Risk Management for Staff*, Penang  
30 May 2013

[Kindly contact Penang Bar directly at 04-2615 669 for registration details]

*Risk Management for Staff*, Kuala Lumpur

1. 20 June 2013
2. 21 Nov 2013

Raja Aziz Addruse Auditorium, Bar Council Secretariat, Kuala Lumpur

**If you would like to pre-register for either workshop, please contact the Department as soon as possible. We encourage early registration in order to avoid disappointment as seats are limited, and sell out fast.**

## An Explanation of Some of the Main Terms of the 2013 Certificate of Insurance

### WHO IS INSURED

**Clause 1, COI:** We agree to insure you being the **Firm**; and:

- a) each **principal**;
- b) each **employee**; and
- c) the estate and legal representative of each person referred to in (a) and (b) above.

Under the COI heading of “Definitions”, the following terms are defined:

1. The **Firm**: The person(s) and/or Firm Name listed in Item 4 of the Schedule and includes a prior practice which is not more specifically insured under any current or run-off whether enforceable or not.
2. A **Principal**: A person who was at any time is or was a partner or a person who is the sole practitioner.
3. An **Employee**: A person who is employed or engaged by the Firm and they are Legal Assistants, Articled Clerks, Pupil-in-Chambers, Consultants, Office and Clerical Staff (non-legally qualified staff).

**NB: Employee would include part time employees.**



#### Best Practices

- ✓ Ensure the Broker is kept informed at all times with respect to lawyers and staff joining and leaving the Firm.
- ✓ Designate a member of your staff to oversee your Firm's observations of Bar Council's regulatory matters such as Annual Subscriptions, Sijil Annual/Practising Certificate and PII renewals.

### WHAT IS INSURED

**Clause 2, COI:** We agree to indemnify you against civil liability for a claim that:

- a) arises from your **legal practice**; and
- b) is first made against you during the **Period of Insurance**.

A Legal Practice is defined to mean the provision of such services as are provided in the normal course of carrying on the profession as a legal practitioner in private practice anywhere in Malaysia as governed by the Legal Profession Act 1976 (“LPA 1976”), as amended.

The cover under this PII policy is for civil liability that arises out of work performed for and on behalf of your Legal Practice. It is for work assumed or undertaken by the legal practitioner including *pro bono* work as allowed under the LPA 1976. It does not cover work that is performed by a practitioner independent of the Legal Practice.

The PII policy is a “Claims Made” policy and responds to a claim which is first discovered and notified to the Insurer during that period of insurance. It is important that when you are aware of a claim or an event that could lead to a claim that you inform the Insurer.



#### Illustration 1

In Year 1, the PII Scheme was insured by GoodWill and in the following Year 2, Prosperity is the Insurer. A Letter of Demand (“LOD”) sent to you by a former client in Year 1 evolved into a suit against you in Year 2. You only notified the Insurer upon receipt of the suit in Year 2. The Year 2 Insurer will not accept the notification because you were aware of a Claim upon receipt of the LOD in Year 1. Under the claims made policy the notification will be transferred to the Year 1 Insurer, who in turn will review your notification under the terms of the PII policy as you should have notified them upon receipt of the LOD.

## WHAT IS INSURED

**Clause 3, COI:** Our indemnity also extends to:

- a) **Claimant's costs and defence costs;**
- b) **Loss Mitigation:** This Clause is only for **clients' monies** and provides indemnity in respect of any costs incurred by the Firm including all expenses which minimise the exposure of the Firm to actions against it or such other reasonable outlay incurred in otherwise mitigating the consequences of any action, omission, **misconduct** or dishonesty on the part of a **principal** or of an **employee**, which action, omission, **misconduct** or dishonesty, in the absence of such mitigation, would have given rise to a **claim** or loss which may result in a **claim** under the policy.

In addition to providing indemnity for settlements, compensation, and/or damages, the indemnity under the policy further includes:-

- 1. **Claimant's cost** is the cost awarded to the claimant in the event they are successful in their claim against you.
- 2. **Defence costs** include reasonable costs, charges, fees and expenses incurred by you or on your behalf in the investigation, defence and/or settlement of any actual or potential claim which may form the subject of indemnity under this insurance.

**Provided that the mitigating actions taken are:**

- i) Notified to us within 60 days of the first action being taken;
- ii) Subsequent actions taken after the notification aforesaid are with our prior consent;
- iii) There is no admission of liability; and
- iv) All such actions are within the spirit of the Bar Council's Rules and Rulings that govern the Profession.



## WHEN YOU HAVE TO NOTIFY THE INSURER

**Clause 14, COI:** You must notify us in writing as soon as practicable:

- a) but no later than 60 days of any **claim** first made against you during the **Period of Insurance**;
- b) but no later than 60 days of any **notifiable circumstances** of which you first become aware during the **Period of Insurance**. We will treat any subsequently resulting **claim** as if it had been made against you during this **Period of Insurance**.

- c) Notice under this Policy shall be given in writing addressed to:

**Jardine Lloyd Thompson Sdn Bhd**

Suite 10.2 10th Floor  
Faber Imperial Court  
21A Jalan Sultan Ismail  
50250 Kuala Lumpur

Telephone No : +603 2723 3388

Facsimile No : +603 2723 3301

**Below are examples that fall within Clause 14(a), COI:**

- 1. Your Firm receives any assertion of a right to seek compensation and/or damages and/or an LOD.
- 2. Your Firm receives a summons, writ, or any type of court proceedings.

**Below are examples that fall within Clause 14(b), COI:**

- 1. You receive a phone call from a very angry client who berates you about the way your Firm handled his case. He ends the call by informing you that he will appoint another lawyer to review the work done by your Firm.
- 2. During the course of checking your Clients Account, you discover irregularities and subsequently confirm there is loss of a client's money. This discovery must be notified even if the client is unaware of the loss.

\* Further explanation and Best Practices relating to Clause 14 is on following Page 6



Receipt of any court proceedings is considered as a Claim and must be notified within the 60 days.

The Insurer also considers any written assertion of a right to seek recourse or a Notice of Demand as a claim hence notification is required within the same timeframe.

In the case of notifiable circumstances, it is best that you notify the Insurer as soon as practicable so that you may benefit from an early intervention by the Insurer, which in turn may avert or prevent an expensive full blown claim against you.

**PLEASE REMEMBER THAT NOTIFICATION WILL NOT LEAD TO ANY CLAIMS LOADING BEING IMPOSED ON YOUR FIRM.**

Claims loading will only be imposed when the Insurer has made a payment towards damages and/or defence cost.



## Best Practices

- DO NOT PROCRASTINATE – NOTIFY THE BROKER IMMEDIATELY!
- Notify even if you are uncertain whether this is a matter which needs to be notified. The Broker will be able to assist you after you make the notification.
- Designate a person, preferably a Partner, to notify and to be the point of contact for further enquiries.

## HOW MUCH ARE YOU INSURED FOR

**Clause 6, COI:** The maximum amount we will indemnify you for any **one claim** is the amount specified in Item 7 of the Schedule, subject to the provisions of Clause 12. The maximum amount includes **claimant's** costs.

**Clause 7, COI:** We will also indemnify you for **defence costs**, which amount shall be in addition to the Limit of Indemnity specified in Item 7 of the Schedule. Any payment by us of **defence costs** shall not reduce such Limit of Indemnity. Provided however, that

- if any **one claim** exceeds the Limit of Indemnity, our liability for **defence costs** shall be restricted to such proportion thereof that the Limit of Indemnity bears to the **claim**.
- any cost recovered from the claimant will first be fully used to offset and indemnify us of any costs we may have incurred in your defence, with any balance remaining thereafter to inure to you for your benefit.

**Clause 6** states the maximum amount of coverage you are entitled to from the Insurer in respect of any one claim. Depending on the size of your Firm, your Mandatory Limit can vary. Please refer to Item 7 of your Schedule to know your Mandatory Limit.

**Clause 7(a)** explains the Insurer's share towards defence costs in instances when the claim to be paid exceeds your Mandatory Limit of Indemnity. In these cases, the well-established insurance principle that is the "condition of average", will apply. In this instance the Insurer will pay the claim only up to your Mandatory Limit and a proportion of the defence cost. Your Base Excess will still be applicable.

**Clause 7(b)** is included to clarify that should there be any award or recovery of costs upon conclusion of a claim; the Insurer will be entitled to first offset damages and/or costs that they had incurred with any balance remaining accruing to you.



## Illustration 1

A Firm was sued by Mr X. The court dismisses the suit by Mr X against you and awards cost to you. If the Insurer has paid towards the defence cost, then the Insurer will be entitled to recover this awarded cost. However the Insurer is only entitled to keep the amount that the Insurer has paid. Any excess will be paid to you. This is called the "Top Down" principle.



## YOUR BASE EXCESS

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

**Clause 9, COI:** Our liability under this insurance shall only apply to that part of the **defence costs** on account of any **one claim** which exceeds the Base Excess specified in Item 9 of the Schedule. Provided however, that the Base Excess shall only be applied once in the event **claim** and/or **defence costs** are incurred.

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

Base Excess is your contractual obligation under this PII policy. In simple terms it is the amount that you have to pay towards your notification, either for damages and/or defence cost. The Insurer will not bear your Base Excess. Your Firm's Base Excess is stipulated in Item 9 of the Policy Schedule.

The Insurer's obligation towards damages and/or defence cost only arises when your Base Excess is paid. It is similar to your car insurance, when a claim is made under your car policy the Insurer will only pay for the repairs net of your policy excess.



### Illustration 1

If your Firm's Base Excess is RM50,000, and the interim defence cost billed is RM40,000, you are required to pay the defence cost because it is within your Base Excess. This payment is condition precedent to your right to renew your insurance under this PII policy.



### Illustration 2

A five-lawyer Firm has a Mandatory Limit of Indemnity of RM450,000 and a Base Excess of RM30,500. In a suit won against the Firm, the damages payable is RM300,000. The Firm will have to pay the first RM30,500, whilst the Insurer will bear the remaining RM269,500.



### Best Practices

- ✓ Always be aware of the amount of your Base Excess. It is stated in Item 9 in your Firm's Schedule.
- ✓ To ensure efficient management of your Claim, please pay your Base Excess towards interim bills/bills/damages as requested by the Insurer.



## YOUR BASE EXCESS

**Clause 11, COI:** The Base Excess specified in Item 9 of the Schedule shall be increased to the amounts specified below in the event of any **claim** arising out of the following circumstances or events:

- (a) Conflict of Interest – RM100,000 or 2 times the Base Excess whichever is the higher subject to a maximum of RM300,000 where you have acted for more than one party to a transaction in respect of conveyancing of land and/or buildings otherwise than in accordance with Bar Council's Rules and Rulings as amended from time to time on conflict of interest, applicable at the time of transaction.  
However the Base Excess [Item 9] shall apply in the event you had obtained written waivers from the clients.
- (b) Conveyancing – RM50,000 minimum in respect of conveyancing of land and/or buildings.  
However the Base Excess shall apply in the event you had in place an implemented risk management programme at the time of the act, error or omission giving rise to the claim was committed.
- (c) Dishonesty of Partner – RM20,000 multiplied by the number of **principals** subject to a minimum of RM30,000 and maximum of RM250,000 per **Firm** in respect of **misconduct of principals**.

The Base Excess in Item 9 of your Firm's Policy Schedule applies in all cases except in three different situations:

### Conflict of Interest

An example would be when the Firm acted for the Purchaser and then also obtained an appointment to act for the Bank that provided the loan to the Purchaser to finance the purchase of the property; but the Firm did not disclose this relationship to the Purchaser.

Should the Sales and Purchase Agreement fall through for any reason and the aggrieved Purchaser brings a claim against the Firm, unless the Firm had obtained a Letter of Acknowledgement/Waiver from the Purchaser of the dual representation, the Base Excess will be increased to minimum of RM 100,000.

**NB: The sample of the written waiver referred to in Clause 11[a] is attached at the end of this article as Appendix 1.**

### Conveyancing

The minimum Base Excess for conveyancing claims is RM50,000. However your original Base Excess may apply in the event you had in place an implemented risk management programme at the time of the act, error or omission giving rise to the claim was committed. As a suggestion, the Firm must at least prove that it has its own standard conveyancing procedures which could include:

- A system of check and balance, supervision of clerical staff, Firm's own conveyancing checklist;
- Practice of conducting at least 2 land searches – before preparation of SPA and before release of final monies;
- Entry of client's private caveat before advising your client to make any payment;
- Identity verification: depending whether parties are individuals/corporations, conduct NRIC, Passport, Companies Commission of Malaysia searches.
- To conduct a bankruptcy search;
- Second level of verification ie to check driver's license, assessment bills, electricity bills, IWK etc.

**NB. A good start will be to use the Practice Area Checklist CD-ROM for Conveyancing that is available from the Bar Council.**

### Dishonesty of Partner

The increased Base Excess stated in Clause 11(c) will apply towards cover for 'innocent Partners' for when there is Claim arising out of dishonesty of Partner. The implementation of risk management procedures such as stringent financial controls by Partners eg whether you have a sole office or branch offices, with the conduct of periodical due diligence, monitoring of staff, accounts and operations, early warning signs can be picked up and dishonest Partners/staff can be exposed.



### Best Practices

- ✓ Use the Practice Area Checklist CD-ROM (the CD-ROM can be purchased at Bar Council, or ordered through our website [www.praktis.com.my](http://www.praktis.com.my)) for conveyancing on each and every file; have the checklist printed and appended onto each case file cover.
- ✓ Have regular meetings with all Partners to discuss financials and management matters of the Firm.
- ✓ Conduct conflict search – maintain a client register either in computerised or manual form; and this data must be updated with each and every new client the Firm takes on. Data must be available to all legal practitioners. If in doubt, refer to the Sole Proprietor or a Partner.
- ✓ In cases of representing more than one party in a case, have the Letter of Acknowledgement readily available and ensure all parties agree and sign (and witnessed) before the SPA is signed off by both parties. A sample Letter of Acknowledgement is attached as Appendix 1 at the end of this article.



# MISCONDUCT CLAIMS

**Clause 33(e), COI:** We will not indemnify you under this insurance for any liability directly or indirectly caused by or contributed to by or arising from or in respect of **misconduct** (except as provided in Clause 12).

**Clause 12, COI:** Notwithstanding the Exclusion in Clause 33(e), we will indemnify the **Firm** and its **employees** against any claim arising out of **misconduct** excluding indemnity to any person(s) or **employees** who were party to or condoned such **misconduct** relating to the **claim**.

## PROVIDED THAT

- (a) The maximum amount we will indemnify you for **claims** in respect of **misconduct** is RM350,000 or the Firm's Mandatory Limit whichever is the lower. This is applicable towards any **one claim** and in the aggregate during the Period of Insurance. This Limit of Indemnity is over and above the Base Excess in Clause 9.
- (b) You shall at our request take or procure, to be taken at our expense, all reasonable steps to obtain reimbursement from any party to such **misconduct** or from his personal legal representatives.
- (c) You agree that any recovery so obtained together with any monies which but for such **misconduct** would have been due to any party to such **misconduct**, shall be paid to us up to but not exceeding the amounts paid by us in respect of such **claim** together with any expenditure reasonably incurred in obtaining such reimbursement.
- (d) You establish that at the time of the **misconduct** giving rise to the claim, the **principal** who committed such **misconduct** was practising as a genuine **principal** of and carrying on practice in common with other **principals** of the Firm.
- (e) The Firm complied with risk management procedures set out below or equivalent thereto (taking into account whether the firm is a sole proprietor or if the firm has a branch office) at the time of the misconduct:
  - (i) entries in the client cashbook and client ledger of each branch maintained pursuant to Rule 11(2) of the Solicitors' Account Rules were copied and exchanged;
  - (ii) bank statements of client accounts and office account of each branch office are sent (which may be via electronic medium) by its bank direct to the principal office as well as the branch office;
  - (iii) all transactions involving operating of client bank accounts must where practical have two (2) signatories. In the event that the firm utilizes electronic banking in respect of client bank accounts, adequate risk management procedures must be in place.
  - (iv) In all other respects the Firm complies with the Solicitors' Account Rules 1990 and the Accountant's Report Rules 1990 (as amended from time-to-time).

Misconduct means dishonest or fraudulent conduct in the discharge of your duties. Cover for an innocent Partner and/or employee is **ONLY** available if the criteria in Clause 12 are satisfied. **Please read Clause 12 carefully.**

Clause 12(e)(ii) was amended to allow for electronic banking in respect of branches receiving their bank statements. Whilst it is now acceptable for Firms to receive their bank statements electronically, each and every Firm and their branch should inform their banks to directly send a copy of their bank statements to the Firm's principal office including other branches. This allows cross checking.

Clause 12(e)(iii) was also amended to provide for the operation of client bank accounts' to have two signatories where practicable. This allows for Sole Practitioners and Partners of branch offices to be sole signatories, although there is a requirement for proper adherence to risk management procedures. It is still incumbent for Firms to have in place an adequate system of checks and balances and in the event of a claim the onus is on the Firm to prove that they took adequate risk management measures; and not in breach of the LPA 1976.



## Illustration 1

Ben & Jerry is a Kuala Lumpur ("KL") law practice, with one branch office in Selangor. Ben manages the KL office while Jerry manages the Selangor branch. All banking transactions, including office and client accounts are handled separately – in fact the principal KL office does not receive any copies of any banking transactions of its Selangor's branch and vice versa. A claim is made against the Firm and upon investigation it is revealed that Jerry was siphoning off clients' money. In order for Ben to secure 'innocent Partner' cover he must prove compliance with Clause 12. And based on the facts, *prima facie* Ben would be in breach of Clauses 12(d) and (e)(i) & (ii) which entitles the Insurer to decline the claim. Jerry however, would not be able to seek protection under this PII policy as his act is specifically excluded under Clause 33(e) COI.



## Best Practices

- ✓ Ensure all supporting documents such as invoices and vouchers are in place before signing cheques.
- ✓ Use serialised payment vouchers.
- ✓ Do not leave the Firm's cheque books with office staff.
- ✓ When you receive new cheque books from the Bank, make sure all cheque leaves are accounted for.
- ✓ Set aside a day just to sign cheques. Never sign cheques in a rush. This you can procrastinate!
- ✓ Apply a two-to-sign obligation for cheques with larger amounts eg amount above RM5,000.
- ✓ Do not pre-sign blank cheques.
- ✓ Check your Firm's bank statements especially the clients' account monthly [or even conduct spot checks!] so you can detect any discrepancies. With online banking you can check at shorter intervals.
- ✓ It is preferable that you do not allow just one staff to manage your Firm's accounts as it may create an easy environment for that one staff to embezzle.
- ✓ Inform the bank that your Firm only requires one signature to stop payment. This option is good when you suspect the payment was actually not authorised by the Firm.

## YOUR DUTY TO CO-OPERATE

**Clause 15, COI:** It is your duty to provide full disclosure of all relevant facts and circumstances, whether specifically requested or otherwise, which is known or becomes known to you any time before or after a claim.

It is furthermore your duty to render at your own expense all reasonable assistance and co-operation to us or our authorised representatives which includes but is not limited to:

- (a) providing all relevant information, documents and data in whatsoever form; and
- (b) attending meetings, mediation, court hearings and appearing as a witness to give evidence or testimony if required.

**Clause 16, COI:** If after three written requests for you to comply with Clause 15 (a) and/or (b), you fail to respond in a timely manner or in a manner satisfactory to us or our authorised representatives, your inaction shall be deemed as total or gross disregard or avoidance and shall entitle us to void the claim except when the failure was due to circumstances beyond your reasonable control.

**Clause 17, COI:** You further agree to waive any legal professional privilege to the extent of your duties described at Clause 15 and generally in relation to a claim.

Any insurance policy is a contract between two parties where the Insurer agrees to provide indemnity to the other based on specific terms and conditions. One of the conditions of this PII policy is the requirement for you to provide full documents and details for the Insurer to evaluate your notification and decide if your notification falls under coverage of the PII policy.

Under Clause 16 the Insurer can decline your claim if you refuse co-operation with the Insurer and/or their authorised representatives (Claims Administrator, Panel Solicitor, Loss Adjuster and other parties that may be deemed necessary).



## Best Practices

- ✓ It is an obligation under the COI for you to co-operate with the Insurer.
- ✓ When you notify the Insurer prepare all documents and files relating to your notification early so that it can be handed over to the Panel Solicitor, Loss Adjuster, Claims Administrator in a timely manner.

# INSURERS HAVE THE RIGHT TO TAKE CONDUCT OF THE CLAIM

**Clause 19, COI:** You agree that:

- (a) we have the right to take over the conduct of a **claim** against you, including its investigation, defence, avoidance, reduction or, subject to Clause 22, its settlement; and
- (b) we may do so in your name.

**Clause 20, COI:** Upon receipt of notice from you of any writ, we and/or our **authorised representatives** shall appoint a **legal practitioner** within 14 working days to take conduct of the claim without prejudice to our right to investigate and subsequently refuse coverage or to avoid the claim as provided under this insurance.

Provided that if we and/or our **authorised representatives** fail or neglect to appoint a **legal practitioner** within 14 working days and take conduct of the claim, you shall have the right, if you so choose, to appoint a **legal practitioner** from the approved panel to defend the claim and instruct the appointed **legal practitioner** as you deem fit. You shall not be liable for any act or omission that compromises our right to settle or defend the claim. We shall be liable to indemnify you as if we had conduct of the claim.

**Clause 21, COI:** Where the amount of the **claim** is less than the Base Excess in Item 9 of the Schedule, you may with our prior written consent, assume the conduct of and settle the **claim**.

When the Insurer receives your notification, they have the right to take full control of and act on your behalf. You may have the right, with Insurer's approval, to select a legal practitioner to defend you but this appointment must be made from the Panel of Solicitors approved by the Insurer. The approved Panel of Solicitors have been carefully selected based on their skill sets and vast experience in the conduct of legal practitioners' defence work.

However please note that whilst the Insurer agrees to appoint a Panel Solicitor to take conduct of a claim against you, they will reserve their right to refuse coverage should it later be determined that the claim is not covered by the policy. If the Insurer does not respond within 14 working days of the receipt of your notification, then the Insurer agrees that you may take conduct of the claim and instruct a legal practitioner to defend you from the approved Panel of Solicitors.

The Base Excess is the amount which is not insured and is the amount which you will pay. In the event of a claim where the amount is within your Base Excess, you may assume conduct of the said claim and settle, but before you do so, you must obtain the consent of the Insurer in writing.



## DECIDING WHETHER TO PROCEED TO HEARING OR SETTLE

**Clause 22, COI:** Neither of us shall be required to contest any legal proceedings to trial unless a senior member of the Malaysian Bar (to be appointed in the absence of mutual agreement by the President for the time being of the Malaysian Bar) shall advise that such proceedings could be contested with a reasonable prospect of success. The option to invoke this clause by either party shall be made within 30 days of the written notification of our decision on whether to contest or settle any legal proceedings.

**Clause 23, COI:** This advice shall bind both of us. The fees payable for this advice shall not exceed RM10,000 and shall be shared equally between us.

**Clause 24, COI:** If both of us cannot agree on invoking Clause 22, and if we recommend that a claim should be settled but you elect to contest the proceedings, you may do so with our prior written consent with a **legal practitioner** of your choice PROVIDED THAT our liability for all losses arising out of that claim shall not exceed the amount for which that claim could have been settled plus legal costs up to the date we and/or our **authorised representatives** recommended the settlement in writing to you.

The Insurer has the right to take conduct and manage your notification. However, if you do not agree with the Insurer's strategy on how to manage your claim, specifically on whether to settle or to litigate, you can invoke Clause 22. This clause allows both you and the Insurer to agree on the appointment of an independent senior lawyer to advise on whether to litigate or settle the notification. The cost of this appointment will be shared equally between you and the Insurer and the senior lawyer's advice will bind both you and the Insurer.

In the event both you and the Insurer cannot agree on invoking Clause 22, then Clause 24 may come into play. In this instance it will be where the Insurer wants to settle the claim against you but you wish to contest it. With the Insurer's consent you can take over conduct of the claim against you BUT the Insurer's liability towards any damages and/or cost awarded against you will be capped at the sum that the Insurer had initially wanted to settle at.

## ONE CLAIM

**Clause 36(I), COI:** One claim means:

All claims by one or more claimants that arise from

- (i) one act or omission; or
- (ii) one series of related acts or omissions; or
- (iii) the same act or omission in a series of related matters or transactions; or
- (iv) similar acts or omissions in a series of related matters or transactions; or
- (v) misconduct of one person acting alone or in collusion with others; such claims shall be regarded as attributable to one underlying cause and shall be subject to the terms of Clause 11 and Clause 12.

When there are a series of claims against you, Clause 36 states the conditions where the multiple claims will be treated as One claim.



### Illustration 1

In 2011 the Legal Practice notified four separate suits by four different clients. Each suit may be considered as a separate and distinct claim under the policy with four separate Mandatory Limits and Base Excesses that will apply; UNLESS all four suits have a common link ie a same perpetrator(s) which caused the loss. For example, if an employee had embezzled money over a period of several years and the client(s) submit claim/claims against you, then all these acts of embezzlement by the same employee will be considered as One Claim and not four separate claims.



### Illustration 2

Using the same scenario above, if the loss was committed by the misconduct of two of more employees acting in collusion; this will also be considered as One Claim as the underlying cause is the misconduct of the same employees.

# PREMIUM

**Clause 38, COI:** If we have not made any payment towards your claim or notifiable circumstances under this insurance the premium applicable for the Firm shall be RM1,140.00 per legal practitioner. The premium of RM1,140.00 per practitioner will similarly apply to newly established practices.

**Clause 39, COI:** In the event that we make a payment towards your claim or notifiable circumstance under this insurance, an additional premium (also referred to as claims loading) will be applied upon renewal of your insurance. This additional premium will be calculated either as 5% of the claim amount paid by us or 5 times the 2013 premium **whichever is the lower**, subject to a maximum cap of up to 25% of the amount paid for that particular claim and will apply over a period of 5 years from the date of notification.

A Claims Loading is the amount the Insurer charges when there is payment made on your claim for damages and/or defence cost.

The maximum claims loading that the Insurer can charge is 25% of the total amount they have paid. This 25% will be spread over a 5 year period such that you are charged 5% per year of the total amount paid. **The payable claims' loading is added to your Firm's base premium.**



## Illustration 1

Firm A has 100 Legal Practitioners. The Firm's base premium is RM114, 000 ie RM1,140 per practitioner x 100 practitioners. The Firm made a notification in 2010 which is then settled by the Insurer in 2013 for RM2 million.

The calculation of Firm A's Claims' Loading for the year will be either:

1. 25% of RM2 million (25% of claim amount paid)  
= RM500,000.00 spread over 5 years equals to  
RM100,000 per year
- OR**
2. RM114,000.00 x 5 (Five times their base premium)  
= RM 570,000.00 per year

**Whichever is the lower.**

As RM100,000.00 is the lower of the two amounts, the Claims Loading of RM100,000.00 will be added to the Base Premium of RM114,000.00 for Firm A, for each renewal AFTER the payment has been made by Insurers. Since Claims Loading is charged for 5 years from date of notification, the Firm would have to incur this until the year 2015. Service tax is separate, and must be added.

## Appendix A Sample Letter of Acknowledgement

Please amend the waiver accordingly.

### ACKNOWLEDGMENT OF LEGAL REPRESENTATION

To: *[firm of solicitors concerned]*

Re: Loan/facility amount: RM.....

Financier:

Borrower(s):

Chargor(s):

Security:

I/we, the undersigned, expressly acknowledge the following:-

1. I/We am/are the abovenamed Borrower(s)/Chargor(s).
2. I/We am/are fully aware, and hereby acknowledge, that [name of firm of solicitors & address] ("the said Solicitors") are solicitors acting only for the abovenamed Financier in the above loan documentation, and that the said Solicitors are NOT representing me/us in the matter; notwithstanding that they witness or attest my/our execution of the relevant documents, or that I/we have agreed to bear their fees on behalf of the Financier, or that they may be acting (or have acted) for me/us in any other related or unrelated matter.
4. I/We have been advised, and am/are fully aware, that I/we am/are at liberty to engage separate and independent legal representation in the matter. However, I/we have chosen not to do so, while being fully aware that, should situations arise where the Financier's interest is in conflict with my/our interest, the said Solicitors' duty would be owed to the Financier and not to me/us.
5. The contents of this acknowledgment have been explained to me/us and I/we fully understand the same.

Dated .....

\_\_\_\_\_  
Name:

I/C:

## Disclaimer

This article has been approved by the Scheme Underwriter, P&O Insurance Co Berhad and Broker, Jardine Lloyd Thompson Sdn Bhd but it must be read in conjunction with the 2013 Certificate of Insurance in its entirety. Best Practice tips are provided as a guide. Examples given are for illustrative purposes only and all the policy terms conditions and limitations will need to be considered in the specifics of any case notified.



## Penjelasan Terma-terma Utama yang Terkandung dalam 2013 Certificate of Insurance

### WHO IS INSURED

**Clause 1, COI:** We agree to insure you being the **Firm**; and:

- a) each **principal**;
- b) each **employee**; and
- c) the estate and legal representative of each person referred to in (a) and (b) above.

Di bawah tajuk "Definitions" dalam COI, terma berikut adalah ditakrifkan sebagai:

1. *The Firm:* Orang dan/atau nama Firma yang disenaraikan dalam Jadual sebagai Perkara 4 dan termasuk amalan terdahulu yang tidak lebih khusus diinsuranskan di bawah mana-mana insurans lain sama ada dikuatkuasakan atau tidak.
2. *A Principal:* Seseorang yang pada bila-bila masa atau adalah merupakan seorang rakan kongsi atau orang yang merupakan pengamal tunggal.
3. *An employee:* Seseorang yang pada bila-bila masa, atau bekerja atau terlibat sama dalam Firma (seperti pembantu undang-undang, kerani artikel, pelatih dalam kamar, perunding, kakitangan pejabat atau perkeranian).

NOTA: Employee juga termasuk pekerja sambilan.



#### Amalan Terbaik

- ✓ Maklumkan kepada Broker sebarang perubahan berkenaan peguam dan kakitangan yang menyertai dan meninggalkan Firma.
- ✓ Lantik kakitangan khusus untuk memastikan pematuhan Firma anda terhadap peraturan-peraturan Majlis Peguam seperti Yuran Tahunan, Sijil Tahunan / Perakuan Amalan dan pembaharuan PII.

### WHAT IS INSURED

**Clause 2, COI:** We agree to indemnify you against civil liability for a claim that:

- a) arises from your **legal practice**; and
- b) is first made against you during the **Period of Insurance**.

*Legal Practice* ditakrifkan sebagai menyediakan perkhidmatan seperti yang diperuntukkan dalam urusan biasa menjalankan profesion sebagai seorang pengamal undang-undang dalam amalan swasta di mana-mana di Malaysia seperti yang ditadbir oleh Akta Profesion Undang-Undang 1976 [LPA 1976] sebagaimana yang dipinda.

Perlindungan di bawah polisi PII ini adalah untuk liabiliti sivil yang timbul daripada kerja yang dilakukan untuk dan bagi pihak amalan guaman anda. Ia adalah untuk kerja-kerja yang diandaikan atau diusahakan oleh pengamal undang-undang termasuk kerja pro bono seperti yang dibenarkan di bawah LPA 1976. Ia tidak meliputi kerja-kerja yang dilakukan oleh seorang pengamal yang tidak terikat dengan sebuah amalan guaman.

Polisi PII adalah atas dasar "Tuntutan Dibuat" atau "Claims Made" dan respons kepada tuntutan yang pertama kali diketahui dan dimaklumkan kepada Syarikat Insurans semasa dalam tempoh insurans. Adalah penting untuk anda membuat pemberitahuan kepada Syarikat Insurans apabila menyedari tentang sesuatu Tuntutan atau kemungkinan yang boleh membawa kepada Tuntutan.



#### Ilustrasi 1

Dalam Tahun 1, Skim PII telah diinsuranskan oleh Good Will dan pada tahun berikutnya (Tahun 2), Prosperity merupakan Syarikat Insurans skim ini. Surat Tuntutan yang dihantar oleh bekas klien dalam Tahun 1 berkembang menjadi saman terhadap anda dalam Tahun 2. Anda hanya membuat pemberitahuan kepada Syarikat Insurans apabila menerima saman dalam Tahun 2. Syarikat Insurans Tahun 2 tidak akan menerima pemberitahuan itu kerana anda telah pun mempunyai pengetahuan terhadap Tuntutan itu dalam Tahun 1 sewaktu Surat Tuntutan diterima. Di bawah polisi *Claims Made*, pemberitahuan untuk tuntutan itu akan dipindahkan ke Syarikat Insurans Tahun 1, yang akan mengkaji pemberitahuan anda di bawah terma polisi PII kerana pemberitahuan sepatutnya dibuat sewaktu menerima Surat Tuntutan.

## WHAT IS INSURED

**Clause 3, COI:** Our indemnity also extends to:

- a) **Claimant's** costs and **defence costs**;
- b) **Loss Mitigation:** This Clause is only for **clients' monies** and provides indemnity in respect of any costs incurred by the Firm including all expenses which minimise the exposure of the Firm to actions against it or such other reasonable outlay incurred in otherwise mitigating the consequences of any action, omission, **misconduct** or dishonesty on the part of a **principal** or of an **employee**, which action, omission, **misconduct** or dishonesty, in the absence of such mitigation, would have given rise to a **claim** or loss which may result in a **claim** under the policy.

Selain perlindungan terhadap penyelesaian, pampasan dan/atau ganti rugi, perlindungan di bawah polisi ini termasuk:

1. Kos pihak yang menuntut iaitu kos yang diawardkan kepada yang menuntut sekiranya mereka berjaya dalam tuntutan mereka terhadap anda.
2. Kos pembelaan termasuk kos yang munasabah, caj, yuran dan perbelanjaan yang ditanggung oleh anda atau bagi pihak anda dalam penyiasatan, pembelaan dan/atau penyelesaian mana-mana tuntutan sebenar atau yang berpotensi yang boleh membentuk subjek indemniti di bawah insurans ini.

**Provided that the mitigating actions taken are:**

- i) Notified to us within 60 days of the first action being taken;
- ii) Subsequent actions taken after the notification aforesaid are with our prior consent;
- iii) There is no admission of liability; and
- iv) All such actions are within the spirit of the Bar Council's Rules and Rulings that govern the Profession.



## WHEN YOU HAVE TO NOTIFY THE INSURER

**Clause 14, COI:** You must notify us in writing as soon as practicable:

- a) but no later than 60 days of any **claim** first made against you during the **Period of Insurance**;
- b) but no later than 60 days of any **notifiable circumstances** of which you first become aware during the **Period of Insurance**. We will treat any subsequently resulting **claim** as if it had been made against you during this **Period of Insurance**.

- c) Notice under this Policy shall be given in writing addressed to:

**Jardine Lloyd Thompson Sdn Bhd**

Suite 10.2 10th Floor  
Faber Imperial Court  
21A Jalan Sultan Ismail  
50250 Kuala Lumpur

Telephone No : +603 2723 3388

Facsimile No : +603 2723 3301

**Berikut adalah contoh yang termasuk dalam Fasal 14 (a), COI:**

1. Firma anda menerima sebarang kenyataan hak untuk mendapatkan pampasan dan/ atau ganti rugi dan/ atau Surat Tuntutan.
2. Firma anda menerima saman, writ, atau apa-apa jenis prosiding mahkamah.

**Berikut adalah contoh yang termasuk dalam Fasal 14 (b), COI:**

1. Anda menerima panggilan telefon daripada pelanggan yang sangat marah yang menghamun anda tentang cara Firma anda mengendalikan kesnya. Beliau menamatkan panggilan dengan mengatakan bahawa dia akan melantik peguam lain untuk mengkaji kerja-kerja yang dilakukan oleh Firma anda.
2. Ketika memeriksa Akaun Klien, anda mendapati terdapat perbezaan dan memang disahkan terdapat kehilangan wang klien. Penemuan ini mestilah dibuat pemberitahuan walaupun klien tidak mengetahui tentang kerugian itu.

\* Penerimaan apa-apa prosiding mahkamah dianggap sebagai tuntutan dan mesti dimaklumkan dalam masa 60 hari.

Syarikat Insurans juga menganggap sebarang pernyataan bertulis untuk mendapat pertolongan atau Notis Tuntutan sebagai satu Tuntutan, maka pemberitahuan perlu dibuat dalam tempoh masa yang sama.

Dalam hal yang berkemungkinan yang wajib dilapor (*notifiable circumstance*), adalah lebih baik untuk membuat pemberitahuan kepada Syarikat Insurans dengan kadar yang segera dan praktik supaya anda boleh mendapat manfaat daripada campur tangan awal oleh Syarikat Insurans, yang seterusnya boleh mengelakkan atau mencegah Tuntutan yang lebih besar terhadap anda.

DIINGATKAN BAHAWA PEMBERITAHUAN TIDAK AKAN MEMBAWA KEPADA SEBARANG *CLAIMS LOADING* KE ATAS FIRMA ANDA. *Claims Loading* hanya akan dikenakan apabila Syarikat Insurans telah membuat bayaran terhadap ganti rugi dan/ atau kos pembelaan.



## Amalan Terbaik

- JANGAN BERLENGAH – beritahu BROKER dengan SEGERA!
- Buat pemberitahuan (*notify*) walaupun anda tidak pasti sama ada ini adalah satu perkara yang perlu diberitahu. Pihak Broker akan dapat membantu anda selepas anda membuat pemberitahuan.
- Lantik kakitangan khusus, sebaik-baiknya seorang Rakan Kongsi, untuk membuat pemberitahuan dan menjadi orang hubungan bagi pertanyaan lanjut.

## HOW MUCH ARE YOU INSURED FOR

**Clause 6, COI:** The maximum amount we will indemnify you for any **one claim** is the amount specified in Item 7 of the Schedule, subject to the provisions of Clause 12. The maximum amount includes **claimant's** costs.

**Clause 7, COI:** We will also indemnify you for **defence costs**, which amount shall be in addition to the Limit of Indemnity specified in Item 7 of the Schedule. Any payment by us of **defence costs** shall not reduce such Limit of Indemnity. Provided however, that

- a) if any **one claim** exceeds the Limit of Indemnity, our liability for **defence costs** shall be restricted to such proportion thereof that the Limit of Indemnity bears to the **claim**.
- b) any cost recovered from the claimant will first be fully used to offset and indemnify us of any costs we may have incurred in your defence, with any balance remaining thereafter to inure to you for your benefit.

**Fasal 6** menyatakan jumlah maksimum perlindungan yang layak dapat dari Syarikat Insurans untuk mana-mana satu tuntutan. Bergantung kepada saiz Firma, had mandatori adalah berbeza-beza. Sila rujuk Perkara 7 dalam Jadual COI untuk mengetahui had mandatori anda.

**Fasal 7 (a)** menerangkan bahagian yang akan dikongsi oleh Syarikat Insurans terhadap kos pembelaan dalam keadaan apabila bayaran bagi sesuatu Tuntutan adalah melebihi had mandatori indemniti anda. Dalam kes sebegini prinsip insurans yang dikenali sebagai *the condition of average*, akan digunakan. Dalam hal ini, Syarikat Insurans akan membayar Tuntutan hanya sehingga had mandatori anda dan sebahagian daripada kos pembelaan. Base Excess anda masih akan diguna pakai.

**Fasal 7 (b)** dimuatkan untuk menjelaskan mengenai penerimaan apa-apa award atau mendapat semula kos apabila tamat Tuntutan, Syarikat Insurans berhak untuk mengimbangi mula-mula ganti rugi dan/atau kos yang mereka telah dahulukan dengan mana-mana baki yang terakru kepada anda.



## Ilustrasi bagi Fasal 7 (b)

Firma A telah didakwa oleh Encik X. Mahkamah membuang kes yang dikemukakan oleh Encik X terhadap anda dan kos diberi kepada anda. Jika Syarikat Insurans telah membayar kos pembelaan, maka Syarikat Insurans anda akan layak untuk mendapatkan kembali kos ini. Walau bagaimanapun, Syarikat Insurans hanya layak untuk menyimpan jumlah yang telah dibayar oleh mereka. Sekiranya terdapat lebihan, ia akan dibayar kepada anda. Ini dipanggil prinsip *Top Down*.



## YOUR BASE EXCESS

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

**Clause 9, COI:** Our liability under this insurance shall only apply to that part of the **defence costs** on account of any **one claim** which exceeds the Base Excess specified in Item 9 of the Schedule. Provided however, that the Base Excess shall only be applied once in the event **claim** and/or **defence costs** are incurred.

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

*Base Excess* merupakan obligasi kontrak yang terkandung dalam polisi PII. Amnya, ini adalah jumlah yang anda perlu bayar untuk pemberitahuan yang dibuat, sama ada untuk ganti rugi dan/atau kos pembelaan. Syarikat Insurans tidak akan menanggung *Base Excess* anda.

Kewajipan Syarikat Insurans menanggung ganti rugi dan/atau kos pembelaan hanya wujud setelah anda membayar *Base Excess*. Ia adalah serupa dengan insurans kereta anda, apabila tuntutan dibuat di bawah polisi kereta anda, Syarikat Insurans hanya akan bayar untuk membaiki bersih lebihan polisi anda.

*Base Excess* Firma anda adalah ditetapkan sebagai Perkara 9 dalam Jadual Polisi.



### Amalan Terbaik

- ✓ Ketahui jumlah *Base Excess* anda. Ia dinyatakan sebagai Perkara 9 dalam Jadual PII Firma anda.
- ✓ Untuk memastikan Tuntutan anda diurus dengan cekap, bayar *Base Excess* anda untuk bil/ bill interim/ ganti rugi seperti yang diminta oleh Syarikat Insurans.



### Ilustrasi 1

Jika *Base Excess* Firma anda adalah RM50,000, dan kos pembelaan interim yang dibilkan adalah RM40,000, anda dikehendaki untuk membayar kos pembelaan kerana ia adalah dalam *Base Excess* anda. Bayaran ini adalah syarat duluan kepada hak anda untuk memperbaharui insurans di bawah polisi PII ini.



### Ilustrasi 2

Sebuah Firma dengan lima peguam mempunyai Had Mandatori sebanyak RM450,000 dan *Base Excess* RM30,500. Dalam kes yang dimenangi terhadap Firma, ganti rugi yang dibayar adalah RM300,000. Firma perlu membuat bayaran sebanyak RM30,500 dahulu manakala bakinya RM269,500 akan ditanggung oleh Syarikat Insurans.



## YOUR BASE EXCESS

**Clause 11, COI:** The Base Excess specified in Item 9 of the Schedule shall be increased to the amounts specified below in the event of any **claim** arising out of the following circumstances or events:

- (a) Conflict of Interest – RM100,000 or 2 times the Base Excess whichever is the higher subject to a maximum of RM300,000 where you have acted for more than one party to a transaction in respect of conveyancing of land and/or buildings otherwise than in accordance with Bar Council's Rules and Rulings as amended from time to time on conflict of interest, applicable at the time of transaction.  
However the Base Excess [Item 9] shall apply in the event you had obtained written waivers from the clients.
- (b) Conveyancing – RM50,000 minimum in respect of conveyancing of land and/or buildings.  
However the Base Excess shall apply in the event you had in place an implemented risk management programme at the time of the act, error or omission giving rise to the claim was committed.
- (c) Dishonesty of Partner – RM20,000 multiplied by the number of **principals** subject to a minimum of RM30,000 and maximum of RM250,000 per **Firm** in respect of **misconduct of principals**.

Base Excess yang dinyatakan sebagai Perkara 9 dalam Jadual Polisi Firma anda diguna pakai dalam semua kes kecuali dalam tiga situasi yang berbeza:

### Konflik Kepentingan (Conflict of Interest)

Satu contoh ialah apabila Firma bertindak bagi Pembeli dan kemudian juga mendapat perlantikan untuk bertindak bagi bank yang menyediakan pinjaman untuk Pembeli membiayai pembelian hartanah itu; tetapi Firma tidak mendedahkan perkara ini kepada Pembeli. Sekiranya Perjanjian Jual dan Beli tidak terlaksana kerana sebarang sebab dan Pembeli yang terkilan membuat Tuntutan terhadap Firma, *Base Excess* akan dinaikkan kepada minimum iaitu RM100,000, melainkan Firma telah mendapat Surat Pengecualian daripada Pembeli.

**NOTA:** Contoh Surat Pengecualian bertulis yang disebut dalam Fasal 11 [a] dilampirkan di akhir artikel ini sebagai Lampiran 1.

### Pemindahhakan (Conveyancing)

*Base Excess* minimum bagi Tuntutan *conveyancing* adalah RM50,000. Walau bagaimanapun *Base Excess* asal anda boleh dipohon sekiranya anda melaksanakan program pengurusan risiko pada masa berlakunya kesilapan atau perkara yang menimbulkan Tuntutan itu. Sebagai cadangan, Firma sekurang-kurangnya mesti membuktikan bahawa ia mempunyai prosedur standard *conveyancing* sendiri yang boleh termasuk:

- Satu sistem *check and balance*, penyeliaan kakitangan perkeranian, penggunaan senarai semak Firma untuk *conveyancing*;
- Amalan menjalankan sekurang-kurangnya 2 carian tanah sebelum penyediaan SPA dan sebelum melepaskan wang bayaran terakhir;
- Memasukkan kaveat persendirian untuk pelanggan sebelum menasihati pelanggan anda untuk membuat sebarang bayaran;
- Pengesahan identiti: bergantung sama ada pihak adalah individu/syarikat, buat carian melalui Kad Pengenalan, Pasport, Suruhanjaya Syarikat Malaysia.
- Menjalankan carian mufliis;
- Pengesahan tahap kedua iaitu memeriksa lesen memandu, bil taksiran, bil elektrik, bil pembentungan dan lain-lain.

**NOTA:** *Gunakan Practice Area Checklist CD-ROM for Conveyancing yang boleh didapati dari Majlis Peguam.*

### Ketidakjujuran Rakan Kongsi (Dishonesty of Partner)

*Base Excess* seperti yang dinyatakan dalam Klausa 11 [c] akan dikenakan apabila terdapat Tuntutan yang timbul daripada ketidakjujuran rakan kongsi untuk melindungi 'rakan kongsi yang tidak bersalah'. Pelaksanaan prosedur pengurusan risiko oleh rakan-rakan kongsi seperti mengawal ketat kewangan sebagai contoh, sama ada pejabat adalah tunggal atau mempunyai cawangan, sekiranya dijalankan pemeriksaan berkala, pemantauan kakitangan, akaun dan operasi, tanda-tanda awal atau amaran tentang ketidakjujuran rakan kongsi atau kakitangan dapat diperhatikan.



### Amalan Terbaik

- ✓ Gunakan *Practice Area Checklist CD-ROM* (CD-ROM ini boleh dibeli dari Majlis Peguam, atau pesanan boleh dibuat melalui laman web [www.praktis.com.my](http://www.praktis.com.my)) untuk *conveyancing* pada setiap fail, senarai semak dicetak dan dilampirkan pada setiap fail kes.
- ✓ Sekiranya anda mewakili lebih daripada satu pihak dalam sesuatu kes/transaksi, sediakan Surat Pengecualian dan pastikan semua pihak bersetuju dan menandatangani (dihadapan saksi) sebelum SPA ditandatangani oleh kedua-dua pihak. Contoh Surat Pengecualian dilampirkan di akhir artikel ini.
- ✓ Menjalankan carian untuk konflik – wujud dan sengarakan daftar pelanggan sama ada dalam komputer atau manual; dan data ini mesti dikemaskini setiap kali Firma berurusan dengan klien baru. Data mestilah disediakan untuk dikongsi oleh semua pengamal undang-undang dalam Firma. Jika ragu-ragu, rujuk kepada tuan punya tunggal atau rakan kongsi.
- ✓ Mengadakan mesyuarat dengan tetap dengan semua rakan kongsi untuk membincangkan hal kewangan dan pengurusan Firma.



# MISCONDUCT CLAIMS

**Clause 33(e), COI:** We will not indemnify you under this insurance for any liability directly or indirectly caused by or contributed to by or arising from or in respect of **misconduct** (except as provided in Clause 12).

**Clause 12, COI:** Notwithstanding the Exclusion in Clause 33(e), we will indemnify the **Firm** and its **employees** against any claim arising out of **misconduct** excluding indemnity to any person(s) or **employees** who were party to or condoned such **misconduct** relating to the **claim**.

## PROVIDED THAT

- (a) The maximum amount we will indemnify you for **claims** in respect of **misconduct** is RM350,000 or the Firm's Mandatory Limit whichever is the lower. This is applicable towards any **one claim** and in the aggregate during the Period of Insurance. This Limit of Indemnity is over and above the Base Excess in Clause 9.
- (b) You shall at our request take or procure, to be taken at our expense, all reasonable steps to obtain reimbursement from any party to such **misconduct** or from his personal legal representatives.
- (c) You agree that any recovery so obtained together with any monies which but for such **misconduct** would have been due to any party to such **misconduct**, shall be paid to us up to but not exceeding the amounts paid by us in respect of such **claim** together with any expenditure reasonably incurred in obtaining such reimbursement.
- (d) You establish that at the time of the **misconduct** giving rise to the claim, the **principal** who committed such **misconduct** was practising as a genuine **principal** of and carrying on practice in common with other **principals** of the Firm.
- (e) The Firm complied with risk management procedures set out below or equivalent thereto (taking into account whether the firm is a sole proprietor or if the firm has a branch office) at the time of the misconduct:
  - (i) entries in the client cashbook and client ledger of each branch maintained pursuant to Rule 11(2) of the Solicitors' Account Rules were copied and exchanged;
  - (ii) bank statements of client accounts and office account of each branch office are sent (which may be via electronic medium) by its bank direct to the principal office as well as the branch office;
  - (iii) all transactions involving operating of client bank accounts must where practical have two (2) signatories. In the event that the firm utilizes electronic banking in respect of client bank accounts, adequate risk management procedures must be in place.
  - (iv) In all other respects the Firm complies with the Solicitors' Account Rules 1990 and the Accountant's Report Rules 1990 (as amended from time-to-time).

Salah laku (*misconduct*) bermaksud kelakuan yang tidak jujur atau penipuan dalam menunaikan tugas. Perlindungan untuk rakan kongsi dan/ atau kakitangan yang tidak bersalah HANYA disediakan jika kriteria dalam Fasal 12 dipenuhi. **Sila baca Fasal 12 dengan teliti.**

Fasal 12 (e) (ii) telah dipinda untuk membolehkan cawangan menerima penyata bank mereka secara elektronik. Walaupun kini Firma dibolehkan menerima penyata bank secara elektronik, Firma yang menerima penyata bank mereka secara elektronik, Firma perlu memaklumkan kepada bank untuk menghantar terus satu salinan penyata bank mereka kepada pejabat utama Firma itu termasuk cawangan-cawangan lain. Ini membolehkan semakan silang dilaksanakan.

Fasal 12 (e) (iii) juga telah dipinda untuk mengadakan peruntukan bagi pengendalian akaun bank klien untuk mempunyai dua penandatanganan jika dapat dilaksanakan (*where practicable*). Ini membolehkan pengamal tunggal dan rakan kongsi di pejabat cawangan lain untuk menjadi penandatanganan tunggal, walau bagaimanapun terdapat keperluan untuk mematuhi prosedur pengurusan risiko yang sesuai. Firma masih wajib untuk mempunyai satu sistem semak dan imbang yang mencukupi dan sekiranya terdapat Tuntutan, Firma bertanggungjawab untuk membuktikan bahawa mereka telah mengambil langkah-langkah pengurusan risiko yang mencukupi, dan tidak melanggar LPA 1976.

**NOTA: Sila baca Fasal 12 dengan teliti.**



## Ilustrasi 1

Ben & Jerry adalah sebuah firma undang-undang di Kuala Lumpur ("KL"), dan mempunyai satu pejabat cawangan di Selangor. Ben mengurus pejabat di KL manakala Jerry menguruskan pejabat cawangan di Selangor. Semua urusan niaga perbankan, termasuk akaun pejabat dan pelanggan dikendalikan secara berasingan - malah pejabat di KL tidak menerima sebarang salinan bagi transaksi perbankan pejabat cawangan di Selangor dan sebaliknya. Satu Tuntutan dibuat terhadap Firma dan hasil siasatan mendapati bahawa Jerry telah menyalahgunakan wang klien. Dalam usaha Ben untuk mendapat perlindungan sebagai 'rakan kongsi yang tidak bersalah', dia mesti membuktikan terdapat pematuhan seperti yang diperlukan dalam Fasal 12. Dan berdasarkan fakta *prima facie*, Ben telah melanggar Fasal 12 (d) dan (e) (i) & (ii) yang membolehkan Syarikat Insurans menolak tuntutan itu. Jerry pula, tidak akan mendapatkan perlindungan di bawah polisi PII ini kerana dikecualikan khusus di bawah Fasal 33 (e) COI.



## Amalan Terbaik

- ✓ Pastikan semua dokumen sokongan seperti invois dan baucar disertakan sebelum menandatangani cek.
- ✓ Gunakan baucar bayaran bersiri.
- ✓ Jangan tinggalkan buku cek Firma dengan kakitangan pejabat.
- ✓ Apabila menerima buku cek baru daripada Bank, pastikan semua helaian cek diambilkira.
- ✓ Khususkan satu hari hanya untuk menandatangani cek. Jangan menandatangani cek dalam keadaan tergesa-gesa. Ini boleh dilengahkan!
- ✓ Kuatkuasakan keperluan dua penandatangan sebagai satu obligasi untuk cek dengan jumlah yang lebih besar, contohnya melebihi RM5,000.
- ✓ Jangan menandatangani cek kosong.
- ✓ Semak penyata bank Firma tiap-tiap bulan terutamanya akaun bank klien [atau membuat pemeriksaan mengejut!] supaya anda dapat mengesan sebarang percanggahan. Dengan perbankan dalam talian, anda boleh menyemak dalam jangka masa yang pendek.
- ✓ Lebih baik untuk tidak mempunyai hanya seorang kakitangan yang menguruskan akaun Firma anda kerana ini boleh mengundang berlakunya pengelapan wang oleh kakitangan yang satu itu.
- ✓ Maklumkan kepada bank bahawa Firma anda hanya memerlukan 1 tandatangan untuk menghentikan pembayaran. Pilihan ini adalah baik apabila anda mengesyaki pembayaran itu sebenarnya tidak dibenarkan oleh Firma.

## YOUR DUTY TO CO-OPERATE

**Clause 15, COI:** It is your duty to provide full disclosure of all relevant facts and circumstances, whether specifically requested or otherwise, which is known or becomes known to you any time before or after a claim.

It is furthermore your duty to render at your own expense all reasonable assistance and co-operation to us or our authorised representatives which includes but is not limited to:

- (a) providing all relevant information, documents and data in whatsoever form; and
- (b) attending meetings, mediation, court hearings and appearing as a witness to give evidence or testimony if required.

**Clause 16, COI:** If after three written requests for you to comply with Clause 15 (a) and/or (b), you fail to respond in a timely manner or in a manner satisfactory to us or our authorised representatives, your inaction shall be deemed as total or gross disregard or avoidance and shall entitle us to void the claim except when the failure was due to circumstances beyond your reasonable control.

**Clause 17, COI:** You further agree to waive any legal professional privilege to the extent of your duties described at Clause 15 and generally in relation to a claim.

Mana-mana polisi insurans adalah kontrak antara dua pihak dimana Syarikat Insurans bersetuju untuk memberi indemniti berdasarkan terma-terma dan syarat-syarat tertentu. Salah satu syarat polisi PII ini adalah keperluan anda untuk menyediakan dokumen dan maklumat lengkap kepada Syarikat Insurans bagi menilai pemberitahuan anda dan memutuskan jika pemberitahuan anda termasuk dalam perlindungan dibawah PII.

Dibawah Fasal 16, Syarikat Insurans boleh menolak Tuntutan anda jika anda enggan bekerjasama dengan mereka dan/atau wakil-wakil mereka (Pentadbir Tuntutan, Peguamcara Panel, Pelaras Kerugian dan pihak-pihak lain yang difikirkan perlu).



## Amalan Terbaik

- ✓ Adalah satu kewajipan bagi anda di bawah COI untuk bekerjasama dengan Syarikat Insurans.
- ✓ Apabila anda membuat pemberitahuan kepada Syarikat Insurans, sediakan dari awal semua dokumen dan fail yang berkaitan dengan pemberitahuan anda supaya boleh diserahkan kepada Peguamcara Panel, Pelaras Kerugian dan Pentadbir Tuntutan dalam masa yang ditetapkan.

## INSURERS HAVE THE RIGHT TO TAKE CONDUCT OF THE CLAIM

**Clause 19, COI:** You agree that:

- (a) we have the right to take over the conduct of a **claim** against you, including its investigation, defence, avoidance, reduction or, subject to Clause 22, its settlement; and
- (b) we may do so in your name.

**Clause 20, COI:** Upon receipt of notice from you of any writ, we and/or our **authorised representatives** shall appoint a **legal practitioner** within 14 working days to take conduct of the claim without prejudice to our right to investigate and subsequently refuse coverage or to avoid the claim as provided under this insurance.

Provided that if we and/or our **authorised representatives** fail or neglect to appoint a **legal practitioner** within 14 working days and take conduct of the claim, you shall have the right, if you so choose, to appoint a **legal practitioner** from the approved panel to defend the claim and instruct the appointed **legal practitioner** as you deem fit. You shall not be liable for any act or omission that compromises our right to settle or defend the claim. We shall be liable to indemnify you as if we had conduct of the claim.

**Clause 21, COI:** Where the amount of the **claim** is less than the Base Excess in Item 9 of the Schedule, you may with our prior written consent, assume the conduct of and settle the **claim**.

Apabila Syarikat Insurans menerima pemberitahuan anda, mereka mempunyai hak untuk mengambil-alih secara keseluruhan dan bertindak bagi pihak anda. Anda mungkin mempunyai hak, dengan kelulusan Syarikat Insurans, untuk memilih seorang Peguamcara untuk membela anda tetapi perlantikan ini mesti dibuat daripada Panel Peguamcara yang diluluskan oleh Syarikat Insurans. Ahli Panel Peguamcara yang diluluskan telah dipilih dengan teliti berdasarkan kemahiran mereka dan pengalaman yang luas dalam menjalankan kerja-kerja pembelaan terhadap pengamal undang-undang.

Walaupun bagaimanapun, sila ambil perhatian bahawa walaupun Syarikat Insurans bersetuju untuk melantik seorang Peguamcara dari Panel Peguamcara untuk mengendalikan Tuntutan terhadap anda, mereka berhak untuk menolak perlindungan terhadap anda nanti sekiranya ditentukan bahawa Tuntutan itu tidak dilindungi oleh polisi. Jika Syarikat Insurans tidak bertindak balas dalam tempoh 14 hari bekerja dari tarikh penerimaan pemberitahuan anda, maka Syarikat Insurans bersetuju bahawa anda boleh mengendalikan Tuntutan dan mengarahkan seorang peguamcara dari panel yang diluluskan untuk membela anda.

*Base Excess* adalah jumlah yang tidak diinsuranskan dan jumlah yang anda akan bayar. Sekiranya jumlah Tuntutan itu adalah dalam *Base Excess* anda, anda boleh mengambil alih Tuntutan tersebut dan menyelesaikan, tetapi sebelum anda berbuat demikian, anda mesti mendapatkan persetujuan secara bertulis daripada Syarikat Insurans.



## DECIDING WHETHER TO PROCEED TO HEARING OR SETTLE

**Clause 22, COI:** Neither of us shall be required to contest any legal proceedings to trial unless a senior member of the Malaysian Bar (to be appointed in the absence of mutual agreement by the President for the time being of the Malaysian Bar) shall advise that such proceedings could be contested with a reasonable prospect of success. The option to invoke this clause by either party shall be made within 30 days of the written notification of our decision on whether to contest or settle any legal proceedings.

**Clause 23, COI:** This advice shall bind both of us. The fees payable for this advice shall not exceed RM10,000 and shall be shared equally between us.

**Clause 24, COI:** If both of us cannot agree on invoking Clause 22, and if we recommend that a claim should be settled but you elect to contest the proceedings, you may do so with our prior written consent with a **legal practitioner** of your choice PROVIDED THAT our liability for all losses arising out of that claim shall not exceed the amount for which that claim could have been settled plus legal costs up to the date we and/or our **authorised representatives** recommended the settlement in writing to you.

Syarikat Insurans mempunyai hak untuk mengambilalih dan mengurus pemberitahuan anda. Walau bagaimanapun, jika anda tidak bersetuju dengan strategi Syarikat Insurans tentang pengurusan Tuntutan anda, khususnya mengenai sama ada untuk menyelesaikan atau meneruskan Tuntutan tersebut, anda boleh merujuk kepada Fasal 22. Fasal ini membolehkan anda dan syarikat insurans untuk bersetuju mengenai pelantikan seorang peguam kanan untuk menasihati mengenai sama ada untuk meneruskan atau menyelesaikan pemberitahuan itu. Kos perlantikan ini akan dikongsi sama rata antara anda dan Syarikat Insurans dan nasihat peguam kanan ini akan mengikat kedua-dua anda dan Syarikat Insurans.

Sekiranya anda dan Syarikat Insurans tidak boleh bersetuju dengan Fasal 22, maka Fasal 24 boleh juga dirujuk. Dalam hal ini, Syarikat Insurans mahu membuat penyelesaian terhadap Tuntutan anda tetapi anda beranggapan sebaliknya. Dengan persetujuan Syarikat Insurans, anda boleh mengambil alih pengendalian Tuntutan terhadap anda TETAPI liabiliti Syarikat Insurans terhadap sebarang ganti rugi dan/ atau kos yang diawardkan terhadap anda akan dihadkan pada jumlah yang telah pada mulanya ditetapkan oleh Syarikat Insurans.

## ONE CLAIM

**Clause 36(I), COI:** One claim means:

All claims by one or more claimants that arise from

- (i) one act or omission; or
- (ii) one series of related acts or omissions; or
- (iii) the same act or omission in a series of related matters or transactions; or
- (iv) similar acts or omissions in a series of related matters or transactions; or
- (v) misconduct of one person acting alone or in collusion with others; such claims shall be regarded as attributable to one underlying cause and shall be subject to the terms of Clause 11 and Clause 12.

Apabila terdapat satu Tuntutan bersiri atau saling berkait terhadap anda, Fasal 36 menyatakan keadaan di mana pelbagai Tuntutan yang berkait ini akan dianggap sebagai Satu Tuntutan.



### Ilustrasi 1

Pada tahun 2011, sebuah Amalan Guaman membuat pemberitahuan untuk empat saman berasingan oleh empat klien yang berbeza. Setiap saman boleh dianggap sebagai tuntutan yang berasingan dan berbeza di bawah polisi ini dengan empat Had Mandatori dan Base Excess yang berasingan akan dikenakan; KECUALI jika semua empat saman mempunyai hubungkait yang sama iaitu pelaku yang sama yang menyebabkan kerugian. Sebagai contoh, jika kakitangan telah menggelapkan wang dalam tempoh beberapa tahun dan klien mengemukakan tuntutan (atau tuntutan-tuntutan) terhadap anda, maka semua tindakan penyelewengan oleh kakitangan yang sama akan dianggap sebagai Satu Tuntutan dan bukan empat tuntutan yang berasingan.



### Ilustrasi 2

Berdasarkan senario yang sama seperti di atas, jika kerugian itu telah dilakukan oleh salah laku dua atau lebih kakitangan yang bertindak dalam pakatan sulit; ini juga akan dianggap sebagai Satu Tuntutan kerana punca asas berasal dari salah laku kakitangan yang sama.

# PREMIUM

**Clause 38, COI:** If we have not made any payment towards your claim or notifiable circumstances under this insurance the premium applicable for the Firm shall be RM1,140.00 per legal practitioner. The premium of RM1,140.00 per practitioner will similarly apply to newly established practices.

**Clause 39, COI:** In the event that we make a payment towards your claim or notifiable circumstance under this insurance, an additional premium (also referred to as claims loading) will be applied upon renewal of your insurance. This additional premium will be calculated either as 5% of the claim amount paid by us or 5 times the 2013 premium *whichever is the lower*, subject to a maximum cap of up to 25% of the amount paid for that particular claim and will apply over a period of 5 years from the date of notification.

*Claims Loading* adalah amaun yang dikenakan oleh Syarikat Insurans apabila pembayaran dibuat ke atas Tuntutan anda untuk ganti rugi dan/ atau kos pembelaan.

Bayaran *Claims Loading* maksima yang boleh dikenakan oleh Syarikat Insurans adalah 25% dari jumlah keseluruhan yang telah dibayar oleh mereka. Kadar 25% ini akan dipuratakan jumlahnya untuk dilangsaikan dalam tempoh 5 tahun. Jadi, bayaran 5% setahun daripada jumlah yang dibayar akan dikenakan. *Claims Loading* yang kena dibayar ditambah kepada premium asas Firma anda.



## Ilustrasi 1

Firma A mempunyai 100 Pengamal Undang-undang. Premium asas Firma adalah RM114,000 iaitu RM1,140 setiap pengamal x 100 pengamal. Firma membuat pemberitahuan pada tahun 2010 yang kemudiannya diselesaikan oleh Syarikat Insurans pada tahun 2013 untuk RM2 juta.

Pengiraan *Claims Loading* untuk Firma A bagi bagi tahun ini akan sama ada:

1. Kadar 25% daripada RM2 juta (25% daripada jumlah tuntutan yang dibayar) = RM500,000.00 puratakan selama 5 tahun bersamaan RM100,000 setahun

### ATAU

2. RM114,000.00 x 5 (Lima kali premium asas mereka) = RM570,000.00 setahun

### Yang mana lebih rendah.

Memandangkan RM100,000.00 adalah lebih rendah daripada dua amaun diatas, *Claims Loading* sebanyak RM100,000.00 akan ditambah kepada premium asas Firma A iaitu RM114,000.00, bagi setiap pembaharuan SELEPAS pembayaran dibuat oleh Syarikat Insurans. Firma perlu menanggung *Claims Loading* ini sehingga tahun 2015 kerana *Claims Loading* dikenakan terhadap sesuatu Firma selama 5 tahun dari tarikh pemberitahuan. Cukai perkhidmatan tidak termasuk dalam pengiraan ini dan adalah berasingan yang mesti ditambah.

## Appendix A Sample Letter of Acknowledgement

Please amend the waiver accordingly.

### ACKNOWLEDGMENT OF LEGAL REPRESENTATION

To: *[firm of solicitors concerned]*

Re: Loan/facility amount: RM.....

Financier:

Borrower(s):

Chargor(s):

Security:

I/we, the undersigned, expressly acknowledge the following:-

1. I/We am/are the abovenamed Borrower(s)/Chargor(s).
2. I/We am/are fully aware, and hereby acknowledge, that [name of firm of solicitors & address] ("the said Solicitors") are solicitors acting only for the abovenamed Financier in the above loan documentation, and that the said Solicitors are NOT representing me/us in the matter; notwithstanding that they witness or attest my/our execution of the relevant documents, or that I/we have agreed to bear their fees on behalf of the Financier, or that they may be acting (or have acted) for me/us in any other related or unrelated matter.
4. I/We have been advised, and am/are fully aware, that I/we am/are at liberty to engage separate and independent legal representation in the matter. However, I/we have chosen not to do so, while being fully aware that, should situations arise where the Financier's interest is in conflict with my/our interest, the said Solicitors' duty would be owed to the Financier and not to me/us.
5. The contents of this acknowledgment have been explained to me/us and I/we fully understand the same.

Dated .....

Name:

I/C:

## Penafian

Artikel ini telah diluluskan oleh Penaja Jamin Skim, P & O Insurance Co Berhad dan Broker, Jardine Lloyd Thompson Sdn Bhd tetapi mesti dibaca bersama-sama secara keseluruhan dengan COI 2013. Tip Amalan Terbaik yang disediakan adalah sebagai panduan. Contoh yang diberikan adalah untuk tujuan ilustrasi sahaja dan semua terma, syarat dan had dalam polisi perlu dipertimbangkan secara khusus bagi mana-mana kes yang diberitahu.



**PI INSURANCE & RISK MANAGEMENT DEPARTMENT**  
**Bar Council Malaysia**  
Suite 4.03A, 4th Floor, Wisma Maran  
28 Medan Pasar, 50050 Kuala Lumpur, Malaysia

Tel: 03-2032 4511 Fax: 03-2031 6124  
Email: [pirm@malaysianbar.org.my](mailto:pirm@malaysianbar.org.my)

**BAR COUNCIL MALAYSIA**  
No 15, Leboh Pasar Besar  
50050 Kuala Lumpur, Malaysia  
Tel: 03-2050 2050  
Fax: 03-2034 2825 / 2026 1313 / 2072 5818  
Email: [council@malaysianbar.org.my](mailto:council@malaysianbar.org.my)

**Mysahra Shawkat** Executive Officer  
✉ [mysahra@malaysianbar.org.my](mailto:mysahra@malaysianbar.org.my)

**Melissa Kraal** Officer  
✉ [melissa@malaysianbar.org.my](mailto:melissa@malaysianbar.org.my)

**Iznina Rafa** Officer  
✉ [iznina@malaysianbar.org.my](mailto:iznina@malaysianbar.org.my)

**Disclaimer** In compiling this newsletter, Bar Council Malaysia and all authorised parties have used their best endeavors to ensure that the information is correct and current at the time of publication. We do not accept responsibility for any error, omission or deficiency as all references are not meant to be exhaustive. Material in this newsletter is not intended to be legal advice. The information, which includes techniques aimed at preventing claims does not create the standard of care for lawyers. Lawyers should conduct their own legal research. PII information is to provide general information and should not be considered a substitute for the applicable PII Master Policy and Certificate of Insurance together with its Schedule. We strongly advise that you refer to the applicable Master Policy and Certificate for the full terms and conditions. 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.

# Targeting Risks. Creating Solutions.

## HELPDESK

Contact the Professional Indemnity Insurance & Risk Management  
Department with your practice queries.