

Malaysian Bar Mandatory PII Scheme.... Did You Know?

(1) ...your Firm must notify the broker of a claim, in writing, as soon as practicable?

The Professional Indemnity Insurance policy is a claims-made policy. The first time you and your firm become aware of a claim, your firm has an obligation to notify the broker. Failure to do so is a breach of the requirements of the terms set out in the policy; and insurers have a right to exclude liability. **Insurers have provided firms with a 60-day period to notify.**

Clause 13 of the 2014 Certificate of Insurance (“COI”) states you have to notify the broker in writing as soon as practicable:

- *Clause 13(a), COI – “but no later than 60 days of any claim first made against you during the period of insurance”*
- *Clause 13(b), COI – “but no later than 60 days of any notifiable circumstances of which you first become aware of during the period of Insurance...”*

Clauses 13(a) and 13(b), COI highlights two instances where a notification is essential.

1. The first instance that obligates notification is when an actual demand or claim is made. Clause 35(b), COI defines a claim to mean:
 - * **A demand for, or an assertion of a right to compensation or damages; or**
 - * **An intimation of an intention to seek compensation or damages**

The above definitions can take the form of a writ, or letter of demand, or other such similar legal avenues whereby the receiver is made aware of a claim against him.

2. The second of which is a circumstance; Clause 35(k), COI defines it as **any fact, circumstance or event which may reasonably be anticipated to give rise to a claim against you at any future time.**

Illustration I

Lawyer X was conducting a weekly check on his clients’ cash book and ledger and found some irregularities with the entries. Upon further investigation, Lawyer X realises some money missing from the firm’s client account. Before conducting any further due diligence, Lawyer X writes in to Jardine Lloyd Thompson Sdn Bhd (“JLT”) to notify them of a possibility of a claim.

Illustration II

Lawyer Z concludes a case for his Client A by writing a closing letter and returning all original documents. Lawyer Z perceives that Client A is satisfied with the work conducted by Lawyer Z and his law firm. Six months after the file has been closed, Lawyer Z receives a letter of demand from Client A, who makes accusatory remarks about Lawyer Z and the manner in which his case was handled. Lawyer Z immediately writes in to JLT with details of the client, his case and the letter of demand.

(2) ...there are no claims loading imposed on your firm for notifications?

There are no consequences in notifying a claim or a circumstance. As claims' loading is no longer imposed on notifications, firms are encouraged to notify all circumstances that might lead to a claim.

It is only when Insurers are required to pay out any monies in excess of the base excess of the Firm is when claims loading is imposed.

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