

# MALAYSIAN BAR MANDATORY PII SCHEME..... DID YOU KNOW?

## ...innocent partners within the firm will be protected and covered in a claim involving misconduct?

Dishonest and fraudulent conduct by any member of a Firm is detrimental to any law practice; even more so when it involves the misappropriation of client's money. **Misconduct** is defined in Clause 35(i) of the Certificate of Insurance 2014 ("COI") to mean *a dishonest or fraudulent conduct in the discharge of his duties*.

Clause 11 COI protects the **innocent partners** of the Insured Practice ("IP") against any claim arising out of misconduct subject to the following provisions:

*(a) The maximum amount indemnified for misconduct-claims is RM350,000 or the Firm's Mandatory limit, whichever is the lower;*

*(b) The IP, at the request of the Insurer, will take all reasonable steps to obtain reimbursement from any party to such misconduct or the party's legal representatives;*

*(c) The IP agrees that all monies recovered is to be paid to the Insurer up to, but not exceeding the amounts paid out by the Insurer in respect of that claim;*

*(d) At the time of the misconduct, 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. (Clause 35(n) COI defines "principal" as a person who, at any time is or was a partner of the Firm; or a person who is the sole practitioner of the Firm).*

Furthermore, under Clause 11(e) COI, Insurers will **ONLY** indemnify a firm or its employees for claims involving misconduct **provided the following risk management procedures are satisfied:**

- (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 by its bank direct to the principal office as well as branch office;*
- (iii) All transactions involving client bank accounts must have two (2) signatories except to stop operation of an account or the cancellation of any transaction where one (1) signatory will suffice; and In all other respects the Firm complies with the Solicitors' Account Rules 1990 and the Accountants' Report Rules (as amended from time-to-time).*

## Illustration

Ben & Jerry is a Kuala Lumpur law firm, with one branch office in Selangor. Ben manages the KL branch while his only partner, 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. A claim is made against the Firm and upon investigation it is revealed that Jerry was siphoning of client's money. In order for Ben to secure coverage under Clause 11 COI he would have to demonstrate among others, compliance with Clause 11(e) COI in particular. And based on the facts *prima facie*, Ben would be in breach of Clause 11 (e)(i) & (ii) which entitles Insurers to decline the claim.

Jerry however, would not be able to seek protection under the COI as he is the party who committed the act which is against public policy and is specifically excluded under Clause 32(e) COI: “*any liability directly or indirectly caused by or contributed to by or arising from or in respect of misconduct (except as provided in Clause 11)*”.

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