



JURISK!

December 2012 Vol 8 Issue 4
Risk Management Quarterly

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

YOUR RISK ANALYSIS: FINDING WHAT WORKS FOR YOU



CONTENTS

- P2 CHAIRPERSON'S MESSAGE
- P3 A DOT OF INK
- P4 2012 RISK MANAGEMENT PROGRAMME HIGHLIGHTS
- P7 WHERE THE RISKS LIE
- P8 DEALING WITH COMPLAINTS
- P9 MANAGING PRACTICE RISKS
- P12 BERURUSAN DENGAN ADUAN
- P13 MENGURUS RISIKO AMALAN
- P16 PII DID YOU KNOW? / TAHUKAH ANDA?

Chairperson's Message

HAPPY NEW YEAR AND BEST WISHES!!

We are nearing the end of the year and on behalf of the Professional Indemnity Insurance Committee of Bar Council and the staff of the PII and Risk Management Department, I would like to wish everyone a Happy New Year and the very best for the coming year!!!

It is always a challenge to practice law and a greater challenge to run a small practice with its myriad problems and challenges.

The objective of the Professional Indemnity Scheme is to provide a decent level of coverage to assist us in our practice. It is not a full ALL-RISK cover but a cover which is fairly comprehensive and requires that you run your practice in a managed structure with minimal risks.

We must be careful to ensure minimal distractions in our practice and we have to be vigilant at all times to the numerous challenges that we face day-to-day as lawyers. There is no fool-proof method or promise that if you do follow all our advice and checklists that you would not be sued but we assure you that we will lend you all our support to ensure that you do get the cover contracted under our policy.

If you are in a partnership, ensure that there are sufficient checks and balances, and if you are a fresh partner, please assess your risks and ensure that you know what you are getting into, in terms of financial commitments and obligations. If you do any conveyancing work, please ensure that you have a proper checklist in place and do get the right employees to assist you in your work!

In the first three publications (March, June and September) we covered litigation-based claims, dishonesty claims, as well as conveyancing-based claims which are the most prevalent types of claims in the Scheme. We wanted to showcase these numbers and statistics to highlight areas of concern and pitfalls to Members.

With this sort of exposure, we envisioned Members taking on a more proactive role in ensuring better risk management compliance in their firms. The best way to start is to obviously look out for the potential risk areas in your daily practice life, and armed with our best practice advices available in these issues of Jurisk!, every Member of your firm would be better prepared to safeguard themselves, and by extension, the firm.

The Committee and the Department are continuously experimenting with new ideas to generate better risk management tools and publications for Members. Aside from producing new tools, we will also continue publicising the current range of tools that we already have. Whilst every effort has been taken in the past to get the news out there on what we have to offer, we do still encounter episodes of Member apathy. This too, we will find further ways and means to change hearts and minds of Members to see the various benefits available to them for free, or at a very minimal cost.

The Committee and the Department are always eager for your feedback, both criticism and encouragement will always be welcomed. It is through your opinions, that we can better our services and products. Please feel free, even if you just want to rant and rave about the Scheme, or even if you need a sounding board to matters of which you are unhappy with, contact me directly at either my email or telephone number below, or you could even contact the Department's Officers directly.

We would like to take this opportunity again to wish all Members a

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Inside This Issue...

...we wrap up the years' theme of causes of claims of the Malaysian Bar PII Scheme. We've delved into the more problematic areas of practice and practice management in the first three issues of 2012 and the publication team is happy to note that these issues have been well received.

In this issue we deal matter-of-factly with situations that many have faced: circumstances and stand-offs with clients who have become unhappy with the firm and/or who have become dejected with the way their case is being handled. The handling of a client during this sensitive time will be the decider in them either making a claim against the firm or settling the matter amicably. If handled well and with a generous amount of tact, many of these disgruntled clients can be pacified. Read on to find out more.

We wrap up the year with our Risk Management Highlights – a condensed “report card” on the Department's activities for the year. With that, we leave you with good wishes and the best of luck for 2013.

Happy reading!

The Jurisk! Team

a dot of ink •

what do you think?

PII: What You Need To Know

Have you renewed your PII for 2013? The premium has been reduced due to decrease of claims' notifications as well as the reduction of the severity of claims. The premium for 2013 is RM1140 per lawyer as announced in **Circular 154/2012 Reduction in Professional Indemnity Insurance Base Premium for 2013**. We urge all Members to read the Circular to be better informed on the current terms and conditions of your Certificate of Insurance (COI).

Since June 2011, we have included a segment entitled "PII: Did You Know?" in Jurisk! This segment explains selected clauses from the PII Policy for the year and examples of coverage or non-coverage. This section is also available in Bahasa Malaysia under the title "PII Tahukah Anda?"

If there are any sections of the COI that you are unclear with, or if you have questions regarding the Scheme that you want answered, write in to us (to our email provided below) and we will do our best to cover it in future "PII: Did You Know" segments.

WHAT'S COMING IN 2013

We are currently taking registrations for **Getting Started!** and **Risk Management for Staff** workshops. The normal fee for these workshops are RM250 and RM100 respectively. Register early to avoid disappointment as very limited seats are available. We will inform you when we have confirmation dates for these events.

(NB: Dates for the workshops and expiry of early bird rates will be informed via Bar Council Circulars.)

New risk management publication and workshops will be introduced in 2013 to cater your needs. Look out for the updates in 2013 issues of Jurisk!

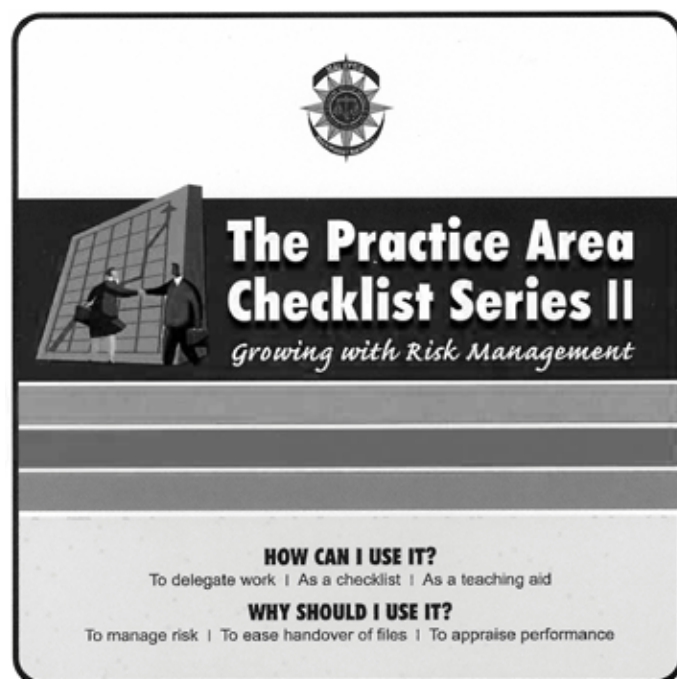
The PII and Risk Management Department is continuously looking to improve and produce new risk management tools for the legal practice. Your views and comments are very much appreciated. Send your thoughts by fax at 03-2031 6124 or email to pirm@malaysianbar.org.my.

TARGETING RISKS.

MINIMISE RISKS - USE RISK MANAGEMENT PRACTICE TOOLS

In our March 2012 issue, we focused on litigation and the top three sub-causes of litigation claims were highlighted – broken communication, bad time management and poor legal knowledge. Meanwhile, in June 2012, dishonesty claims (employee embezzlement) was the highlight of the issue whilst in September 2012 it was conveyancing practice that was featured and its various sub-causations were brought to fore and discussed. Our main aim of highlighting these causes of claims were to show Members that many of these claims could have been easily avoided if proper risk management procedures and steps were implemented.

An array of risk management practice tools are made available either for free or at a minimal fee. Our practice tools, such as Jurisk!, is delivered for free and can be downloaded online via our websites. Other printed practice tools available are the Best Practice Guide series – Setting Up Practice, Accounting, Time Management for Lawyers and Law Practice Management; File Transfer Checklist and Everyday Risk Management for Lawyers. Also available are printable soft copies of checklists on conveyancing and litigation via the Practice Area Checklist CD-ROM.



An aide memoire to help you in conveyancing and litigation. Purchase the Practice Area Checklist CD-ROM from Bar Council Secretariat for only RM8.

Members can also opt to attend workshops organised by Bar Council to stay abreast with current changes in practice and find out how to create a risk aware culture at the work place. Law firms could also send their staff (non-lawyers) to attend the Risk Management for Staff workshop that the Department organises yearly.

There is no best way to risk manage the work place but precautionary measures are the most viable option.

CREATING SOLUTIONS.

2012 RISK MANAGEMENT PROGRAMME HIGHLIGHTS

In 2012 the Department completed its major objectives set out in the earlier part of the year. In terms of events, five workshops were successfully conducted whilst on the publication front, Jurisk! was produced in every quarter.

Aside from the mainstay productions above, the Department continued the dissemination of the Bar Council Start Kit. Due to low take-up rates, some overhauls were made to the dissemination routes. At present all Ethics and Professional Standard Course students receive a complimentary Kit.

Internally, the Department has undergone some personnel changes over the year. Long-standing Head of Department Wong Li Chin vacated her post in February. Mysahra Shawkat is the current Head of Department and among her chief responsibilities, aside from steering the Department, is claims' management. Melissa Kraal continues her role in publications, primarily of Jurisk!, the Risk Management Calendar as well as other adhoc publication projects. Iznina Rafa bt Abd Rafa was brought into the fold in the last quarter to primarily assist the PII Committee. The Department is ably assisted by Syahizan Md Din.

EVENTS SUMMARY

- Five workshops were successfully organised from April to November 2012.
- 125 lawyers and 190 law firm staff attended nationwide.
- Workshops were organised in Kuala Lumpur and Malacca.

Getting Started!



Our flagship event, the *Getting Started!* workshop is now in its fifth year of production which saw a total of 95 lawyers participate over two sessions in 2012. The first workshop of the year was conducted at the Raja Aziz Addruse Auditorium, Bar Council on 19 April 2012.

A total of 42 participants completed the full day course, with quite a number travelling from outstation states of Johore, Negeri Sembilan, Perak and Pahang.

The second *Getting Started!* workshop was also conducted at Bar Council was held on 18 October 2012, this time attracting over 50 participants.

Compactly packed into a full day, participants were taken through a range of topics: law practice management, accounting, litigation and conveyancing best practices. These individual modules were conducted by professionals and practitioners who are highly qualified in their respective fields.

A large portion of participants who submitted their feedback forms for these events were happy with the workshops, many saying that it had met their expectations. Many of them also go on to say that they will encourage their peers to attend future *Getting Started!* workshops.

Getting Started! Express



The *Getting Started!* Express Workshop was launched in 2011 and it was specifically marketed as an abbreviated version of the full day *Getting Started!* event. It was also developed to be held in association with State Bars outside of Kuala Lumpur and Selangor to give outstation Members an idea of what they can expect of the full day version.

The Department conducted one *Getting Started!* Express workshop this year. Held in Malacca with the assistance of the Malacca State Bar, the half day workshop was attended by 30 Members.

State Bars outside of Kuala Lumpur and Selangor who wish to organise risk management workshops at their respective State Bars in 2013 are encouraged to register their interest as soon as possible with the Department. This would enable our Officers time to plan ahead as well as for the State Bars to generate interest amongst their Members.

Risk Management for Staff Workshop



training for law firm staff.

The Risk Management for Staff workshop was conducted twice this year at Bar Council, the first on 21 June 2012 attended by 80 people and the second on 1 Nov 2012, attended by 110 people. Participants of these two events were made up of legal support staff, paralegals as well as accounting and administrative staff of legal practices.

The participants hailed from around Malaysia including Johore, Penang and Kedah. 91% found the Workshop Kit useful; 97.1% felt that the Workshop met their expectations and that they would encourage their peers to attend future Workshops.

As this is one of the more popular workshops, we encourage all law firm staff who are eager to participate in 2013 to register their interest with the Department as soon as possible.

PUBLICATIONS SUMMARY

- Jurisk! was published four times; its focus was on areas of practice with highest number of claims.
- 2013 Calendar contains best practice tips as well as key Bar Council reminders.
- Both Jurisk! and Calendar is mailed out to all Members, free of charge.

Jurisk!



Jurisk! was produced four times in 2012. The overall theme and message that the PII Committee and the Department wanted to highlight and convey this year was on claims. Each of the first three issues concentrated on the top causes of claims in the Malaysian Bar Mandatory Professional Indemnity Insurance Scheme. Each issue provided actual case studies of past claims, statistics and rounded off with fix-it solutions.

(a) **Jurisk! March 2012 (Litigation Claims)**

Members were given real-life scenarios of actual claims complete with tips to avoid falling into the same trap.

(b) **Jurisk! June 2012 (Employee Embezzlement Claims)**

The showcase piece of this issue brought to light the alarming increase of employee dishonesty within law practices.

(c) **Jurisk! September (Conveyancing Claims)**

Another thorny issue, this area of practice has drawn the highest number of claims in the Scheme.

(d) **Jurisk! December (Your Risk Analysis)**

Understand the needs of your law practice by first understanding its weaknesses. With this knowledge, finding solutions would be easier to do, and implement.

2013 Risk Management Calendar



The Department is happy to report that previous editions of the Calendar have been well received by Members. This time around, the key features of the 2013 edition of Bar Council's Risk Management Calendar includes all the tips, advice and best practices taken from the 2012 issues of Jurisk! that we feel are very important to have within easy reach on your workstation. Also included in the Calendar are pertinent key reminders on Bar Council deadlines such as paying your Bar Council Subscriptions, preparing for your PII and SA/PC renewals as well deadlines on submitting nominations and elections of Council Members

ADDITIONAL PROJECTS

- START Kit now disseminated to all Bar Council's Ethics and Professional Standards Course participants.
- Year-long "Have Your Say" Survey concluded; responses received were reported in the Jurisk! September 2012 issue.

SURVEY



The Department officially ended the "Have Your Say" Survey in June 2012. At that time, we received a total of 320 completed surveys from Members. Whilst it only reflects 2.3% of the Malaysian Bar, it is still the most number of responses we have received compared to surveys conducted in the past.

The results of the survey were tabulated and its corresponding report was published in Jurisk! September 2012.

Start



Bar Council's first-ever legal starter kit.

Launched in 2011, START is a legal starter kit that is part of the Bar Council's risk management initiative. START includes the Best Practice Guides on "Setting Up Practice", "Accounting for Lawyers", "Time Management for Lawyers" and "Law Practice Management"; Practice Area Checklist CD-ROM; Office Management DVD-ROM; and reference materials on daily practice.

The kit is aimed at supporting lawyers when they set up new firms and/or in their practice. With effect from 2012, START is distributed during the Bar Council Ethics and Professional Standards Course, and to new firms that have obtained their no-objection letters from Bar Council. Previously, START was only distributed to new lawyers who had recently entered the profession and to newly-established firms. Members can purchase the Kit for RM50 from the sales counter at the Bar Council Secretariat.

The following publications are included in the Start Kit:



Setting Up Practice



Accounting for Lawyers



Law Practice Management



Time Management for Lawyers



Practice Area Checklist CD



Office Management DVD



Getting the requisite buy-in from Members continues to be an uphill battle. We are nevertheless confident, based on the limited Members' feedback that the RM Programme is moving in the correct direction ie achieving our goals of becoming both relevant to the Bar and, one that provides practice tools for Members and Firms to face the increasing challenges of practice. Correspondingly, this would have a positive impact on the PII Scheme for Members.

25 % of total claims Litigation

SUB CAUSES

- Failure to appear at hearing
- Failure to serve notice of appeal on time
- Breach of stakeholder's duty

9 % of total claims Company Work

SUB CAUSES

- Breach of stakeholder's duty
- Incorrect advice
- Failure to follow client's instructions

WHERE THE
RISKS
LIE



51 % of total claims Conveyancing

SUB CAUSES

- Acted in breach of conveyancing practice
- Third party fraud
- Breach of stakeholder's duty

8 % of total claims Dishonesty

SUB CAUSES

- Embezzlement by staff
- Embezzlement by Partner
- Embezzlement by third party

**I WANT
TO KNOW
MORE**

READ JURISK! ISSUES OF MARCH, JUNE AND SEPTEMBER 2012

Knowing the statistics and the sub-causations of claims is a starting point for your law firm. By reading the past year's issues you will be better informed on each specific cause of claims.

There remains to be however, avenues you can take and programmes that you can build to avoid an issue, circumstance or complaint from ever materialising into a PI claim. Seen as the best case scenario for any law firm, it does not happen automatically. See Page 8 on Dealing with Complaints and Page 9 on Managing Practice Risks.

DEALING WITH COMPLAINTS

This article looks at how best a law firm should handle potential claimants. Regardless of whether the law firm is at fault, you should never stop viewing the client as your client and begin viewing him or her as a claimant. There are many ways and means a law practice can take to prevent mishaps turning into professional indemnity claims. In other words, there are preventive measures you can take to stop a complainant from becoming a claimant.

How to deal with complaints...

Your first step should be to nominate a senior partner in the firm to be the main point of contact with the client and who will also hold the general portfolio of complaints coordinator. One of the early responsibilities this person should be tasked with is to complete the claim's notification process to the Broker, Jardine Lloyd Thompson Sdn Bhd (JLT). Irrespective of whether the potential situation will develop any further down the road, the circumstance alone warrants a notification to the Broker.

Most often, complaints are received first by your staff, in particular receptionists and phone operators. They should be given adequate training on what to do and what not to do when a complaint comes in. Most importantly, they should be instructed to channel all such complaints to the complaints coordinator.

What do you do with a complaint...

A register-system should be implemented and the register is to be treated not only as a complaints database, but it should also hold key information on standard operating procedures. The complaints register should have the name of the complainants, the lawyer that was overseeing the case, brief outline of the case, how the allegation arose, how it occurred and most importantly, how it is being handled.

The register will not only help the Firm keep track of all complaints received, it will also act as a management tool in deciphering weaknesses and key risk areas of the Firm's practice. The more a pattern develops, the clearer risks can be seen. Once identified, the Firm can take steps to revise its risk management procedures as necessary so that the jarring risk can be eliminated, if not at least minimised.

How to manage the complainant...

Your clients have filed a complaint with your Firm, or have informally alleged wrong doing. At this stage, your client has become unhappy with your Firm's services and may no longer view in your favour. This is where many Firms have failed - by continuing the neglect of an already unhappy client.

All complaints need to be dealt with promptly and thoroughly. Make time and take the effort to engage in dialogue with the client. Whilst verbal communication is the more personal and engaging option, always follow on with a letter detailing the nature of the complaint followed by an explanation to the client that the Firm will be doing everything it can to resolve the matter. Also include in the letter a promise to continuously update the client on your findings. Keep to this promise.

Do not make assumptions that the complaint will not turn into a claim.



MANAGING PRACTICE RISKS

In today's business climate, no law practice can afford to neglect the active management of practice risk. Clients are more educated in their demands, less tolerant of poor service delivery and delays, and they are well aware that lawyers can be sued, and sued successfully.

While we may adopt a phlegmatic view that as long as lawyers and their staff continue to be plagued by time pressures and human foibles, the threat of negligence claims is a given "constant" in legal practice – in fact, that is why the Mandatory PII Scheme is available!

A single, well publicised claim can have devastating effects in terms of bad reputation. The actions of a single rogue department or individual in your Firm can affect the survival of your whole Firm.

Risk management encompasses more than accounting for the costs associated with potential claims. Risk management is a keystone of good law practice management and embodies a formalised set of enterprise-wide standards, policies and procedures designed to minimise exposure to risk.

Effective risk management can be achieved by adopting these basic principles that apply across all business streams, they are not merely confined to law practices:

1. Identify areas of exposure;
2. Analyse the causes of specific risk situations as identified;
3. Devise solutions that address specific risk situations as identified;
4. Implement systems and procedures to manage your general risk exposure;
5. Monitor compliance by lawyers and staff; and
6. Deal properly and expeditiously with change management issues as they arise.

Types of Risk

The first step in effective risk management is to identify areas of risk exposure. Your analysis will form the basis for formulating policies that actively manage all identified threats to the practice.

The types of risks that law firms will face can be broadly categorised into the following:

- A) Operational Risks** – these include processes to ensure deadlines are kept, work output is monitored and the quality standards in client care and service delivery are met. Further expanding this category will take you to the perimeters of the operations, but are the vital elements, such as interruption to your IT network and the corruption of data in times of natural disaster.
- B) Quality Risks** – this area addresses the ignorance of the law and professional rules and rulings relating to the terms of engagement, client confidentiality, conflict of interest and others such. The aim of managing this type of risk is to ensure that your lawyers and staff are fully equipped to perform assigned tasks and to meet practice standards. Actions that need to be taken to properly and adequately address this risk involve staff training programmes, lawyer supervision and delegation as well as client engagement policies.



- C) Human Resources (HR) or Intellectual Risks** – this addresses the succession planning, staff departures and partner defections. The aim of managing HR risk is to ensure that knowledge residing in the heads of key personnel and the goodwill of your client is retained by the practice when key personnel leave. Addressing staff's performance shortfall requires dedicated efforts to promote an environment that fosters knowledge sharing, mentoring and collaboration within your practice.
- D) Strategic or Business Risk** – this addresses the effect of a reduction in engagements from a key client. While market forces may well be outside your control, its impact can be addressed to a large extent by understanding the level of exposure that the practice has in any given industry or practice area; and if necessary, allocating resources to penetrate new areas.
- E) Regulatory Risks** – the environment in which law practices operate is becoming increasingly regulated. Apart from the professional rules of conduct by Bar Council, non-compliance with national and international directives on money laundering, data protection and records management will have a direct adverse impact on your practice.

Identification of Risks

To make sound assessment of the specific risk situations in your practice, you should be prepared to:

1. Initiate Dialogue with Lawyers and Staff

Engage positively with your support staff in this process and you will receive constructive feedback on how things are being done and how they can be improved. In your discussions with your Partners and lawyers, include also discussions on business risks and marketing strategies.

2. Study Your Claims' and Complaints' History

This will give you an indication of areas of weaknesses in risk management. The importance of maintaining a central register for claims and complaints was discussed on page 8.

3. Study Management Reports of the Practice

Management reports will show you how long any file has been opened, movement in your client account ledgers, amount of work in progress unbilled, which clients have not paid your bills etc. Use these to identify credit/cash flow risks.

4. Undertake Random File Audits

File auditing involves looking out for evidence of failure to meet the practice's quality standards, for example inordinate delays, failure to keep client informed on developments, lack of supervision or monitoring, failure to comply with procedures in relation to key dates, giving of undertakings, safe custody of original documents etc.

These examples are not exhaustive and any practice that is serious about the quality of their service will have devised their own checklist according to the standards they have set themselves.

When you have completed this process of identifying areas of risk in your practice, you are likely to be faced with a daunting list of risk issues that need to be addressed.

The next stage is to decide on a course of action aimed at addressing the areas of risk you have identified.

Management of Risks

An identification of the risks to which the practice is exposed is only one half of the complete picture. Your analysis must be followed up by action which is likely to involve imposing more rules, re-engineering current work processes and generally exacting greater control over the day-to-day decisions made by support staff and lawyers.

The following recommendations can act as a starting bloc for your practice to further build upon:

Appoint a Risk Manager

This person will take on active responsibility for implementation of appropriate processes.

Decide on Risk Management Standards

Set up clear objectives and a timetable for achieving them, including instituting a regular reporting mechanism to chart its progress.

Record Procedures and Policies in Writing

This can be an addendum to your office manual. These manuals will serve as reference points and training guides for the induction and training of new staff of the firm.

Enforce Risk Management Procedures

This can be done through “remedial action” for persistent breach of flagrant non-observance. Penalties however, may not always be effective, so a softer approach involving closer supervision or additional training could be used instead.

Encourage a Culture of Open Communications

Still the best way to instill a sense of ownership of programmes and personal responsibility in your staff and lawyers. Changing the way people work will not be achieved overnight. But you will face less resistance if you explained the reasons for the change and the objectives you wish to achieve.

This article was initially produced in the June 2006 issue of Risk Management Quarterly. The Bahasa Malaysia translation can be found on page 13.

The lists contained in this article are not exhaustive and because there are various ways a practice can model its risk management programme on, there is no one set rule, one set direction. Firms have to study their current processes, find the weak links and rectify.



BERURUSAN DENGAN ADUAN

Artikel ini meninjau diantara cara terbaik bagaimana sebuah firma guaman boleh mengendalikan pihak klien yang berpotensi membuat tuntutan. Tidak kira sama ada firma guaman bersalah atau tidak, anda tidak boleh mengenyepikan kemungkinan klien anda menjadi kemungkinan tuntutan yang berpotensi. Terdapat banyak cara yang boleh dilakukan oleh firma anda untuk mengelak situasi yang tidak diingini bertukar menjadi tuntutan indemniti profesional. Dengan kata lain, terdapat langkah-langkah pencegahan yang boleh diambil untuk mengelak klien daripada menjadi penuntut.

Bagaimana untuk berurusan dengan aduan ...

Langkah pertama adalah menamakan seorang rakan kongsi kanan dalam firma sebagai orang hubungan utama dengan pelanggan dan juga memegang portfolio umum sebagai penyelaras aduan. Antara tanggungjawab awal yang ditugaskan adalah untuk melengkapkan proses pemberitahuan tuntutan kepada Broker, Jardine Lloyd Thompson Sdn Bhd (JLT). Walaupun situasi tersebut mempunyai potensi yang tidak mungkin berkembang dikemudian hari, sebarang kebarangkalian masih perlu diberitahu kepada Broker.

Selalunya, aduan diterima oleh kakitangan anda, iaitu penyambut tetamu dan telefonis. Mereka perlu diberi latihan yang mencukupi mengenai perkara yang perlu dilakukan dan tidak boleh dilakukan sekiranya menerima aduan. Penting sekali, mereka harus diarahkan untuk menyalurkan semua aduan itu kepada penyelaras aduan.

Apa yang perlu dilakukan dengan aduan ...

Satu sistem daftar rekod perlu dilaksanakan dan rekod itu hendaklah dianggap bukan sahaja sebagai pangkalan data aduan, tetapi juga harus memegang maklumat penting mengenai prosedur operasi standard.

Data aduan perlu merekod nama pengadu, peguam yang menyelia kes tersebut, ringkasan kes itu, bagaimana dakwaan itu timbul, bagaimana dakwaan itu berlaku dan paling penting, bagaimana dakwaan itu sedang dikendalikan.

Daftar rekod bukan sahaja akan membantu Firma menjejaki semua aduan yang diterima, tetapi juga akan bertindak sebagai alat pengurusan dalam mentafsir kelemahan dan bidang risiko utama amalan dalam Firma itu. Risiko yang lebih jelas dapat dikesan dengan melihat tren yang ditunjukkan oleh daftar rekod ini. Setelah dikenal pasti, Firma boleh mengambil langkah-langkah untuk menyemak semula prosedur pengurusan risikonya supaya dapat diperbaiki atau sekurang-kurangnya mengurangkan risiko.

Bagaimana untuk berurusan dengan pengadu ...

Klien-klien anda telah memfailkan aduan kepada Firma anda, atau secara tidak rasminya mendakwa salah laku. Klien anda kini tidak berpuas hati dengan perkhidmatan Firma anda dan tidak lagi memihak kepada anda. Di peringkat ini banyak Firma gagal kerana terus-menerus mengabaikan klien yang tidak berpuas hati.

Semua aduan perlu ditangani dengan segera dan teliti. Luangkan masa dan berusaha untuk berdialog dengan klien. Walaupun komunikasi lisan adalah pilihan yang lebih peribadi, ikuti dengan surat yang memperincikan aduan yang telah dibuat dengan penjelasan kepada klien bahawa Firma akan melakukan yang terbaik mungkin untuk menyelesaikan perkara itu. Sertakan juga dalam surat tersebut janji untuk terus melaporkan yang terkini mengenai penemuan anda. Tepati janji ini.

Jangan membuat andaian bahawa aduan itu tidak akan bertukar menjadi tuntutan.

MENGURUS RISIKO AMALAN

Dalam suasana hari ini, amalan guaman perlu aktif dan tidak boleh mengabaikan pengurusan risiko. Klien lebih berpengetahuan dalam tuntutan mereka, kurang toleransi terhadap kelewatan penyampaian perkhidmatan dan mereka juga sedar bahawa peguam boleh didakwa, dan didakwa dengan jayanya.

Adakalanya kita berpandangan sinis bahawa selagi peguam dan kakitangan mereka terus dibelenggu oleh tekanan masa dan faktor kelemahan manusia, ancaman tuntutan berkaitan kecuai akan berterusan dalam amalan guaman - hakikatnya, itulah sebabnya mengapa Skim Mandatori PII disediakan!

Hanya satu tuntutan tunggal yang digembarkan mampu memberi kesan seperti reputasi buruk. Tindakan kasar sesebuah jabatan atau individu dalam Firma boleh menjejaskan kewujudan keseluruhan Firma.

Pengurusan risiko merangkumi lebih daripada perakaunan kos yang berkaitan dengan tuntutan yang berpotensi. Pengurusan risiko adalah kunci amalan pengurusan undang-undang yang baik dan merangkumi set formal seluruh perusahaan piawaian, dasar dan prosedur yang direka untuk mengurangkan pendedahan kepada risiko.

Pengurusan risiko yang berkesan boleh dicapai dengan mengamalkan prinsip-prinsip asas yang digunakan merentasi pelbagai bidang perniagaan, tidak terhad kepada amalan perundangan:

1. Kenal pasti pendedahan;
2. Analisa punca situasi risiko khusus yang telah dikenal pasti;
3. Merangka penyelesaian terhadap sesuatu situasi risiko khusus yang telah dikenal pasti;
4. Laksanakan sistem dan prosedur untuk mengurus pendedahan risiko anda;

5. Pantau pematuan oleh peguam dan kakitangan; dan
6. Mengurus isu-isu perubahan pengurusan dengan betul sekiranya timbul.

Jenis-jenis Risiko

Langkah pertama dalam pengurusan risiko yang berkesan adalah untuk mengenalpasti pendedahan risiko pada setiap bahagian. Analisis anda akan membentuk asas untuk merumus dasar yang aktif bagi mengurus semua ancaman yang dikenalpasti untuk amalan.

Jenis risiko yang dihadapi oleh firma-firma perundangan boleh dibahagikan kepada yang berikut:

- A) Risiko Operasi** - ini termasuk proses untuk memastikan tarikh akhir dipatuhi, hasil kerja dipantau dan standard kualiti dalam penjagaan klien dan memenuhi penyampaian perkhidmatan. Kategori ini boleh diperluaskan lagi kepada perimeter operasi, seperti elemen-elemen penting seperti gangguan kepada rangkaian IT dan kemusnahan/ganggaun data sekiranya berlaku bencana alam.
- B) Risiko Kualiti** – risiko ini merujuk kepada kejahilan mengenai peraturan undang-undang profesional, dan peraturan-peraturan yang berkaitan terma perjanjian, rahsia klien, konflik kepentingan dan lain-lain lagi. Tujuan mengurus risiko sebegini adalah untuk memastikan bahawa peguam dan kakitangan dilengkapi secukupnya untuk melaksanakan tugas-tugas yang diberikan dan memenuhi piawaian amalan. Tindakan yang perlu diambil dengan betul dan secukupnya untuk menangani risiko ini melibatkan program latihan kakitangan, pengawasan peguam dan delegasi serta dasar perjanjian pelanggan yang memuaskan.

C) Sumber Manusia atau Risiko Intelekt - ini merujuk kepada rancangan penggantian, pemergian kakitangan dan pembelotan rakan kongsi. Tujuan menguruskan risiko sebegini adalah untuk memastikan pengetahuan yang dimiliki oleh kakitangan utama dan muhibah dengan klien anda dikekalkan oleh amalan guaman apabila kakitangan tersebut meninggalkan Firma. Menangani prestasi lemah kakitangan memerlukan usaha khusus untuk menggalakkan suatu persekitaran yang menggalakkan perkongsian pengetahuan, bimbingan dan kerjasama dalam amalan anda.

D) Risiko Strategik atau Perniagaan - ini merupakan kesan pengurangan dalam penglibatan dari klien utama. Walaupun kuasa pasaran berada di luar kawalan anda, sebahagian besar kesannya mungkin boleh difahami dengan memahami tahap pendedahan amalan guaman dalam industri tertentu atau bidang amalan; dan jika perlu, memperuntukkan sumber untuk menembusi bidang-bidang baru.

E) Risiko Pengawalseliaan – operasi amalan guaman kini dikawalselia dengan lebih ketat. Selain daripada peraturan profesional tatacara oleh Majlis Peguam, ketakpatuhan arahan peringkat kebangsaan dan antarabangsa mengenai pengubahan wang haram, perlindungan data dan pengurusan rekod akan mempunyai kesan buruk secara langsung kepada amalan guaman anda.

Pengenalpastian Risiko

Untuk menaksir secara bijak risiko khusus dalam amalan anda, anda perlu bersedia untuk:

1. Berdialog bersama Peguam dan Kakitangan

Dapatkan penglibatan positif daripada kakitangan sokongan anda dalam proses ini dan anda akan menerima maklum balas yang membina tentang bagaimana perkara-perkara yang dilakukan dan bagaimana untuk memperbaiki.

Dalam perbincangan dengan rakan-rakan kongsi dan peguam, jangan bataskan soalan kepada risiko yang berkaitan dengan penyampaian perkhidmatan undang-undang, tetapi masukkan juga perbincangan mengenai risiko perniagaan dan strategi pemasaran.

2. Kaji Sejarah Tuntutan dan Aduan Anda

Ini akan memberi petunjuk kelemahan yang terdapat dalam pengurusan risiko. Kepentingan mengekalkan suatu daftar pusat bagi tuntutan dan aduan telah dibincang di muka surat 12.

3. Kaji Laporan Mengenai Pengurusan Amalan

Laporan pengurusan akan menunjukkan jangkamasa sebarang fail telah dibuka, pergerakan dalam lejar akaun klien anda, jumlah kerja yang belum dibil, bil-bil yang belum dibayar oleh klien dan lain-lain. Gunakan laporan ini untuk mengenal pasti risiko kredit/aliran tunai.

4. Menjalankan Audit Fail Secara Rawak

Pengauditan fail melibatkan pencarian sebarang bukti kegagalan untuk memenuhi standard kualiti amalan undang-undang, contohnya kelewatan yang melampau, kegagalan untuk memaklumi klien perkembangan terkini, kurang pengawasan atau pemantauan, kegagalan untuk mematuhi prosedur berhubung tarikh penting, memberi akurjanji, menjaga dokumen asal dengan selamat dan lain-lain.

Contoh-contoh ini tidak menyeluruh dan amalan guaman yang serius tentang kualiti perkhidmatan mereka akan mencipta senarai semak mereka sendiri mengikut piawaian yang ditetapkan.

Apabila anda telah selesai melalui proses mengenal pasti risiko-risiko dalam amalan anda, anda mungkin berdepan dengan senarai isu-isu risiko yang menakutkan yang perlu ditangani.

Peringkat seterusnya adalah untuk membuat keputusan mengenai tindakan seterusnya yang bertujuan menangani bidang risiko yang telah dikenal pasti.

Pengurusan Risiko

Mengenalpasti pendedahan risiko yang dihadapi oleh amalan adalah hanya separuh daripada gambaran yang lengkap. Analisis anda perlui diikuti dengan tindakan yang berkemungkinan yang melibatkan mengenakan peraturan yang lebih, mereka semula proses kerja semasa dan secara amnya penekanan yang lebih terhadap kawalan untuk keputusan yang dibuat sehari-hari oleh kakitangan sokongan dan peguam.

Sebagai permulaan berikut adalah cadangan yang boleh digunakan:

Melantik Pengurus Risiko

Orang ini akan mengambil tanggungjawab aktif bagi pelaksanaan proses yang sesuai.

Tentukan Standard Pengurusan Risiko

Sediakan objektif yang jelas dan jangkamasa untuk mencapainya, termasuk memulakan mekanisme pelaporan biasa untuk mencartakan kemajuan.

Prosedur Rekod dan Dasar Penulisan

Ini boleh menjadi adendum kepada manual pejabat anda. Manual ini akan digunakan sebagai pusat rujukan dan panduan latihan untuk induksi dan latihan kakitangan baru.

Menguatkuasa Prosedur Pengurusan Risiko

Ini boleh dilakukan melalui "tindakan pemulihan" untuk pelanggaran terang-terangan yang berterusan. Menggenakan penalti mungkin tidak sentiasa efektif, sebagai ganti gunakan pendekatan lembut melibatkan penyeliaan yang lebih dekat atau latihan tambahan.

Menggalakkan Budaya Komunikasi Terbuka

Masih merupakan cara terbaik untuk memupuk semangat pemilihan program dan tanggungjawab peribadi dalam kakitangan anda dan peguam. Menukar cara kerja seseorang tidak akan dicapai dalam sekelip mata. Tetapi anda akan menghadapi kurang rintangan jika anda menjelaskan sebab-sebab untuk perubahan dan objektif yang ingin dicapai.

Senarai yang terkandung dalam artikel ini adalah tidak menyeluruh dan terdapat pelbagai cara yang boleh digunakan sebagai model program pengurusan risiko, harus diingat tidak ada set peraturan mahupun set arahan yang tetap. Firma perlu mengkaji proses semasa mereka, mencari hubungan yang lemah dan membetulkan.



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**MALAYSIAN BAR
MANDATORY PII SCHEME
DID YOU
KNOW?**

...claims between Insured Parties will be excluded from the Insurance Scheme?

Clause 33(r) of the Certificate of Insurance 2012 states that the Insurers will not indemnify insured parties under the Malaysian Bar Mandatory PII Scheme for any claim or counterclaim set off by an insured against another insured; provided however that this exclusion shall not apply to:

- i. any claim where you act as a legal practitioner for the claimant;
- ii. any claim where you act as a legal practitioner for a client in pursuing an action against another insured (second insured) and the second insured sues you.

Illustration I

Deer & Co represented the buyer in a sale and purchase transaction, whilst Lira & Co represented the vendor. The draft version of the sale and purchase agreement was sent back and forth multiple times due to the persistent demands for change by Lira & Co. Frustrated with the multiple delays and pedantry of Lira & Co, Deer & Co sent the Partner of Lira & Co a letter containing severe personal insults against the Partner calling the Partner "a dinosaur who has not moved on with time and is out of touch with the current world". The Partner of Lira & Co was severely upset with the said letter and replied Deer & Co harshly. Thereafter Lira & Co sued Deer & Co for defamation. In light of the contents of the letter sent by Deer & Co and especially since the insults were personal against the Partner, Insurers felt that this was not in the conduct of their legal practice and had nothing to do with the conveyancing file they were handling. Insurers felt that it would be excluded by Clause 33[r].

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

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

**SKIM MANDATORI PII
BADAN PEGUAM MALAYSIA
TAHUKAH
ANDA?**

...tuntutan diantara dua Firma yang diinsuranskan dikecualikan dari Skim PII?

Klausula 33(r) *Certificate of Insurance 2012* menyatakan bahawa Penanggung Insurans tidak akan menanggung rugi pihak yang diinsuranskan di bawah Skim Mandatori PII Bar Malaysia bagi sebarang tuntutan atau tuntutan balas oleh pihak yang diinsuranskan terhadap pihak lain yang diinsuranskan dibawah insurans yang sama; dengan syarat bahawa pengecualian ini tidak terpakai bagi:

- i. *any claim where you act as a legal practitioner for the claimant;*
- ii. *any claim where you act as a legal practitioner for a client in pursuing an action against another insured (second insured) and the second insured sues you.*

Ilustrasi I

Deer & Co mewakili pembeli dalam transaksi jual dan beli, manakala Lira & Co mewakili penjual. Draf perjanjian jual beli dihantar berulang-alik beberapa kali diantara kedua-dua pihak atas permintaan Lira & Co yang berterusan meminta perubahan dilakukan. Disebabkan kecewa dengan kelewatan dan perangai mementingkan perkara yang remeh yang ditunjukkan oleh Lira & Co, Deer & Co menghantar surat kepada Rakan Kongsi di Lira & Co. Surat itu mengandungi kata-kata hina yang bersifat peribadi yang ditujukan kepada Rakan Kongsi di Lira & Co dengan kenyataan seperti "dinosaur yang tidak mengikut peredaran masa dan tidak mengikuti perkembangan dunia semasa". Rakan Kongsi di Lira & Co tidak berpuas hati dengan kandungan surat tersebut dan membalas dengan intai surat yang kasar. Kemudian Lira & Co menyaman Deer & Co kerana fitnah. Berdasarkan kandungan surat yang dihantar oleh Deer & Co dan memandangkan kata-kata hina yang bersifat peribadi terhadap Rakan Kongsi itu, Penanggung Insurans berpendapat bahawa ini tidak mempunyai sebarang kaitan dengan fail pemindahhakan yang sedang diuruskan. Penanggung Insurans berpendapat untuk mengecualikan tuntutan berdasarkan fakta yang diterima.

Nota: Di bawah Skim Mandatori PII, perlindungan adalah tertakluk kepada terma, pengecualian, had dan syarat-syarat COI.

Terjemahan berkaitan 'Master Policy', 'Certificate of Insurance' dan contoh ilustrasi adalah sebagai panduan sahaja, dan sekiranya terdapat perbezaan antara Bahasa Inggeris dan terjemahan Bahasa Malaysia, versi Bahasa Inggeris akan digunakan.