

LEAVE NO STONE UNTURNED

Messrs Turner and Associates ("IP") was the panel lawyer for Bank ABC and handled commercial loan transactions for the bank. In 2013, Cosmo Property Pty Ltd ("Cosmo") approached the bank to get a commercial loan of RM1,700,000. The loan will be secured by an office building owned by Cosmo. Timmy, a partner of the IP prepared the loan agreement and vetted through the relevant documents from Cosmo. Once the documents were in order, Timmy instructed the bank to release the money to Cosmo.

After the loan was released to Cosmo, Timmy received a phone call from one of Cosmo's directors saying that the company had never applied for any loan from Bank ABC. The directors of Cosmo did not even execute the loan documents nor passed a board of directors' resolution to accept the loan from Bank ABC!

Astounded with the revelation, the IP contacted the solicitor who represented Cosmo in the transaction. It was later discovered that the solicitor represented Cosmo was defrauded by two imposters purporting to be the directors of Cosmo. The imposters presented fake identity cards bearing the same names as the directors of Cosmo. The board of director's resolution provided by the imposters was also forged.

The directors filed an injunction to prevent Bank ABC and the IP from charging the company's property for the loan granted to the imposters. As a result, Bank ABC suffered losses and sued the IP for negligence.



In reviewing the IP's risk management processes to determine if their original Base Excess should be reinstated, the Insurer found the following:



The checklists used by the IP were comprehensive and according to the basic conveyancing checklist suggested by Bar Council.



As per the requirement in the checklist, the IP requested a confirmation from Cosmo's company secretary to verify its corporate information.



The checklist used by the IP for this particular file did not have any requirement to secure a confirmation from the company secretary on the genuineness of the board of director's resolution. Nonetheless, the IP could have taken one step further by securing such confirmation to ensure the authenticity of the board of director's resolution provided to them.