

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

Does your firm's PII Policy provide cover against dishonesty?

Public policy dictates that only an innocent partner/s can seek indemnity of any form. Clause 11, Certificate of Insurance 2014 ("COI") protects and indemnifies the innocent partner/s for any claim arising from the dishonest or fraudulent acts of a partner/s, legal assistant/s or employee/s of the firm.

This cover is however subject to the firm showing:

- (a) they have specific risk management procedures (See Clause 11(e), COI). Examples of these risk management procedures include ensuring:
 - (i) compliance with the relevant Bar Council Rules and Rulings including the Solicitors' Accounts Rules 1990;
 - (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 the branch office; and,
 - (iii) that all transactions involving client bank accounts must have two signatories except to stop operation of an account or the cancellation of any transaction where only one signatory will suffice, etc.
- (b) the partnership is genuine ie the partner who committed the misconduct was practising as a genuine principal of and carrying on practice in common with other partners in the firm.

If the above criteria is met, cover provided under the COI is:

- (a) limited to RM350,000 or the firm's mandatory limit of indemnity, whichever is lower; and
- (b) applicable in the aggregate, towards any 'one claim' (See Clause 35(1), COI).

Illustration I:

Employee embezzled RM100,000 over a period of three years by collecting cash payments from clients and issuing forged receipts. Firm was later unable to continue work on some files and a client initiated a claim against the Firm. Subject to the firm meeting policy terms and conditions, particularly Clause 11, COI, Insurers will indemnify the law firm for the claim.

Illustration II:

Firm M is a three-lawyer partnership. The operation of Firm M's Client Accounts requires only one signatory. One of the partners embezzled approximately RM3 million in addition to buying numerous luxury cars and houses. When the firm was unable to continue work on files, a number of clients instituted claims against Firm M. The innocent partners will have to show that they can satisfy the requirements set out above in order to be covered under the PII Policy.

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