

MISCONDUCT CLAIMS

Clause 33(e), COI: We will not indemnify you under this insurance for any liability directly or indirectly caused by or contributed to by or arising from or in respect of **misconduct** (except as provided in Clause 12).

Clause 12, COI: Notwithstanding the Exclusion in Clause 33(e), we will indemnify the **Firm** and its **employees** against any claim arising out of **misconduct** excluding indemnity to any person(s) or **employees** who were party to or condoned such **misconduct** relating to the **claim**.

PROVIDED THAT

- (a) The maximum amount we will indemnify you for **claims** in respect of **misconduct** is RM350,000 or the Firm's Mandatory Limit whichever is the lower. This is applicable towards any **one claim** and in the aggregate during the Period of Insurance. This Limit of Indemnity is over and above the Base Excess in Clause 9.
- (b) You shall at our request take or procure, to be taken at our expense, all reasonable steps to obtain reimbursement from any party to such **misconduct** or from his personal legal representatives.
- (c) You agree that any recovery so obtained together with any monies which but for such **misconduct** would have been due to any party to such **misconduct**, shall be paid to us up to but not exceeding the amounts paid by us in respect of such **claim** together with any expenditure reasonably incurred in obtaining such reimbursement.
- (d) You establish that at the time of the **misconduct** giving rise to the claim, 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.
- (e) The Firm complied with risk management procedures set out below or equivalent thereto (taking into account whether the firm is a sole proprietor or if the firm has a branch office) at the time of the misconduct:
 - (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 (which may be via electronic medium) by its bank direct to the principal office as well as the branch office;
 - (iii) all transactions involving operating of client bank accounts must where practical have two (2) signatories. In the event that the firm utilizes electronic banking in respect of client bank accounts, adequate risk management procedures must be in place.
 - (iv) In all other respects the Firm complies with the Solicitors' Account Rules 1990 and the Accountant's Report Rules 1990 (as amended from time-to-time).

Misconduct means dishonest or fraudulent conduct in the discharge of your duties. Cover for an innocent Partner and/or employee is ONLY available if the criteria in Clause 12 are satisfied. **Please read Clause 12 carefully.**

Clause 12(e)(ii) was amended to allow for electronic banking in respect of branches receiving their bank statements. Whilst it is now acceptable for Firms to receive their bank statements electronically, each and every Firm and their branch should inform their banks to directly send a copy of their bank statements to the Firm's principal office including other branches. This allows cross checking.

Clause 12(e)(iii) was also amended to provide for the operation of client bank accounts' to have two signatories where practicable. This allows for Sole Practitioners and Partners of branch offices to be sole signatories, although there is a requirement for proper adherence to risk management procedures. It is still incumbent for Firms to have in place an adequate system of checks and balances and in the event of a claim the onus is on the Firm to prove that they took adequate risk management measures; and not in breach of the LPA 1976.



Illustration 1

Ben & Jerry is a Kuala Lumpur ("KL") law practice, with one branch office in Selangor. Ben manages the KL office while 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 and vice versa. A claim is made against the Firm and upon investigation it is revealed that Jerry was siphoning off clients' money. In order for Ben to secure 'innocent Partner' cover he must prove compliance with Clause 12. And based on the facts, *prima facie* Ben would be in breach of Clauses 12(d) and (e)(i) & (ii) which entitles the Insurer to decline the claim. Jerry however, would not be able to seek protection under this PII policy as his act is specifically excluded under Clause 33(e) COI.



Best Practices

- ✓ Ensure all supporting documents such as invoices and vouchers are in place before signing cheques.
- ✓ Use serialised payment vouchers.
- ✓ Do not leave the Firm's cheque books with office staff.
- ✓ When you receive new cheque books from the Bank, make sure all cheque leaves are accounted for.
- ✓ Set aside a day just to sign cheques. Never sign cheques in a rush. This you can procrastinate!
- ✓ Apply a two-to-sign obligation for cheques with larger amounts eg amount above RM5,000.
- ✓ Do not pre-sign blank cheques.
- ✓ Check your Firm's bank statements especially the clients' account monthly [or even conduct spot checks!] so you can detect any discrepancies. With online banking you can check at shorter intervals.
- ✓ It is preferable that you do not allow just one staff to manage your Firm's accounts as it may create an easy environment for that one staff to embezzle.
- ✓ Inform the bank that your Firm only requires one signature to stop payment. This option is good when you suspect the payment was actually not authorised by the Firm.

YOUR DUTY TO CO-OPERATE

Clause 15, COI: It is your duty to provide full disclosure of all relevant facts and circumstances, whether specifically requested or otherwise, which is known or becomes known to you any time before or after a claim.

It is furthermore your duty to render at your own expense all reasonable assistance and co-operation to us or our authorised representatives which includes but is not limited to:

- (a) providing all relevant information, documents and data in whatsoever form; and
- (b) attending meetings, mediation, court hearings and appearing as a witness to give evidence or testimony if required.

Clause 16, COI: If after three written requests for you to comply with Clause 15 (a) and/or (b), you fail to respond in a timely manner or in a manner satisfactory to us or our authorised representatives, your inaction shall be deemed as total or gross disregard or avoidance and shall entitle us to void the claim except when the failure was due to circumstances beyond your reasonable control.

Clause 17, COI: You further agree to waive any legal professional privilege to the extent of your duties described at Clause 15 and generally in relation to a claim.

Any insurance policy is a contract between two parties where the Insurer agrees to provide indemnity to the other based on specific terms and conditions. One of the conditions of this PII policy is the requirement for you to provide full documents and details for the Insurer to evaluate your notification and decide if your notification falls under coverage of the PII policy.

Under Clause 16 the Insurer can decline your claim if you refuse co-operation with the Insurer and/or their authorised representatives (Claims Administrator, Panel Solicitor, Loss Adjuster and other parties that may be deemed necessary).



Best Practices

- ✓ It is an obligation under the COI for you to co-operate with the Insurer.
- ✓ When you notify the Insurer prepare all documents and files relating to your notification early so that it can be handed over to the Panel Solicitor, Loss Adjuster, Claims Administrator in a timely manner.