

practice ALERT!

Employees Provident Fund (EPF) Fraudulent Withdrawals

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Facts:

A syndicate, possibly involving EPF members/third parties submit false documents on behalf of an EPF Member to facilitate the approval of withdrawals from the member's funds in Account II (Housing).

The third party offers a desperate EPF member fast cash in exchange for commission from the EPF withdrawal or the EPF member themselves attempt to defraud EPF.

Modus Operandi: How Legal Firms Get Involved

The syndicate prepares Sale and Purchase Agreements (SPA) and housing loan offer letters in the name of existing legal firms to facilitate EPF withdrawals.

- ! Syndicate usually adopts the name of an active legal firm, usually a sole proprietorship or a small/medium partnership but the contact details are changed to that belonging to the syndicate.
- ! When EPF contacts either developers, banks or legal firm to verify the withdrawal, it is then that EPF usually learns that:
 - (a) there was no property sale transaction nor housing loan agreement with this 'Purchaser';
 - (b) the 'Purchaser' is not a client of that legal firm.

What Can You Do?

It is quite difficult for you to know if the syndicate has 'adopted' your firm's name.

- ✓ Ensure that all partners, lawyers and staff are aware of this. Be alert to the most recent scams reported and share with your lawyers and staff.
- ✓ Talk to staff about this issue, have them report any such incidences to a partner immediately.
- ✓ Do not ignore calls from EPF, better if a partner can attend to such calls.
- ✓ Full cooperation with EPF is crucial.
- ✓ You can call and check with EPF on whether your firm's name is on their KIV list.
- ✓ Make a report through EPF anti-fraud hotline 03-26162121 Monday to Friday.
- ✓ Keep and update your register of clients.

Should Bar Council receive information that a firm's name/identity is being used, we will inform you immediately. In those circumstances, immediately lodge a police report.

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Case Study

1. **Application to EPF made with a false SPA, carrying a real legal firm's name but false contact details. Upon investigation by EPF, the bank confirmed that the applicant did not apply for a housing loan. EPF could not contact the firm as the details were false so they contacted Bar Council to get the correct contact details. It transpired that legal firm DID NOT prepare the SPA and that the applicant is not a client of the firm. EPF lodged a police report against the applicant.**
2. **A similar false application was made to EPF by a member. This time the SPA stated a legal firm's name carrying a Kajang address and a lawyer's name. When EPF did their investigation it transpired that the firm exists but they are ONLY in Batu Pahat, they do not have any branches and they definitely do not have a lawyer with that name.**

Lawyers are generally NOT AWARE that their firm name is being used until they receive that call from the EPF!

DID YOU KNOW?

- ? Under Section 59 Employees Provident Fund Act 1991, punishment for fraudulent withdrawal (including attempt) is a maximum jail sentence of three years or a RM10,000.00 fine, or both.
- ? More than 902 police reports were lodged from 2008 to 2010 and in 2009, 96 court summons were filed. 35 EPF members have been found guilty to date.

References:

http://www.kwsp.gov.my/index.php?ch=p2news&pg=en_p2news_press&ac=2942
Bar Council Circular No. 271/2009