

RISK management QUARTERLY



Contents:

- ◆ Editorial
Page 1
- ◆ 2005 Proposal Form
& Guide to Proposal
Form
Page 2 - 5
- ◆ Circular 36/2005 -
Letter of
Acknowledgement
Page 6 - 7
- ◆ Summary of PII Main
Terms for Year 2005
Page 8
- ◆ What Is Excluded
from the Insurance
Page 9 - 11
- ◆ FAQs
Pages 12 - 14
- ◆ Claims Notification
Flowchart
Page 15
- ◆ Next Edition
Page 16

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<http://www.jltecsolutions.com/barcouncil>

Editorial

The Bar Council has reappointed Jardine Lloyd Thompson (JLT) as our Brokers for the Professional Indemnity Insurance (PII) Scheme for 2006 and we are positive that this re-appointment would assist us to bring forth further positive changes to the Scheme which would benefit members of the Bar.

We are now looking at improving the ambit and jurisdiction of the Joint Claims Committee to look into complaints for members.

The onerous terms in the Master Policy and Certificate of Insurance, including the "loading" of premiums for member with claims or notifications would also be renegotiated for the coming year. There has also been a lot of dissatisfaction with the claim management process, including the appointment and response from the solicitors appointed by the Insurers to act for the Insured. We are seeking to revamp the claims management process to ensure that the Insurers provide prompt and efficient service to members.

Members must look into Risk Management seriously and implement good practice systems to ensure that their practice is run efficiently and therefore generating more profit and income.

Members must understand how the PII Scheme operates and move away from the attitude that the PII Scheme is an additional burden to the difficulties of running a practice.

The PII Committee would be conducting a survey of the Scheme and it is working to gauge members' views and problems faced for the Committee to improve the Scheme.

We would appreciate response from all members especially members facing claims on the support and assistance (including solicitors appointment and response) from the Insurers.

Your feedback and comments would be appreciated.

Ragunath Kesavan
Chairman
Professional Indemnity Insurance Committee

GUIDE TO PROPOSAL FORM – BAR COUNCIL MALAYSIA, PROFESSIONAL INDEMNITY SCHEME 2005/2006

PAGE	QUESTION	REMARKS
Page 1	Question 1 PRACTICE DETAILS	<p>(a) Indicate the name of the Practice as approved by the Bar Council via their letter of “no objection”</p> <p>(b) Indicate date the Name of Practice was approved unconditionally</p> <p>(c) Indicate latest correspondence address</p> <p>(d) Indicate ALL available latest telephone numbers, facsimile and the Practice's email address.</p>
Page 1	Question 2 (a) QUALIFIED AND ADMITTED PERSONNEL	<p>Please state names of</p> <ol style="list-style-type: none"> (1) Sole Proprietor/Partners (2) Consultant (s) (3) Legal Assistant (s) <p>Other staff/personnel e.g. pupils in chamber, interns, office manager, clerical, secretarial, dispatch, etc. are to be part of the head-count in Question 3.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Note: Please list the names of every practitioner who is currently in the firm.</p> </div>
Page 2	Question 2 (b) [Previous Practice Information]	<p>You <i>NEED to REPEAT</i> the names indicated in Question 2(a) if the person was from another practice and joined the current Practice after 1 July 1999 [the date changes year-to-year so please take note of the new date in 2006 Proposal Form].</p> <p>Also include details of the person's previous practice, date joined and left and also the designation/status (e.g. partner, legal assistant, etc) whilst he was at that previous practice.</p>
Page 2	Question 3 UNADMITTED STAFF	<p>Indicate the number of staff on pay-roll excluding the names from Question 2 (a).</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Note: All non legally-qualified staff.</p> </div>
Page 2	Question 4 GROSS LEGAL FEE INCOME	<p>For consistency, please refer to Accounts for the last Financial Year to be submitted together with the Sijil Annual application. Also provide the Estimate for the Current Year.</p>
Page 3	Question 5 NATURE OF WORK	<p>Please refer to Accounts for the last Financial Year to be submitted for Sijil Annual application.</p>

		<p>The formula to be used is as follows:</p> <p>(a) $\frac{\text{Company Work}}{\text{Total Gross Annual Legal Fees}} \times 100\%$</p> <p>(b) $\frac{\text{Insolvency Work}}{\text{Total Gross Annual Legal Fees}} \times 100\%$</p> <p>(c) $\frac{\text{Conveyancing Commercial}}{\text{Total Gross Annual Legal Fees}} \times 100\%$</p> <p>(d) $\frac{\text{Conveyancing Residential}}{\text{Total Gross Annual Legal Fees}} \times 100\%$</p> <p>(e) $\frac{\text{Taxation}}{\text{Total Gross Annual Legal Fees}} \times 100\%$</p> <p>(f) $\frac{\text{Civil Litigation}}{\text{Total Gross Annual Legal Fees}} \times 100\%$</p> <p>(g) $\frac{\text{Criminal Litigation}}{\text{Total Gross Annual Legal Fees}} \times 100\%$</p> <p>Please describe accordingly</p> <p>(h) $\frac{\text{All other work}}{\text{Total Gross Annual Legal Fees}} \times 100\%$</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Note: If you are a new firm, please complete based on an estimate of the type of work you expect to be doing.</p> </div>
<p>Page 3</p>	<p>Question 6 CLAIMS EXPERIENCE</p>	<p>(a) To the best of your knowledge, please confirm the claims history of <i>BOTH the Practice and ALL</i> the persons named in Question 2.</p> <p>(b) Same</p> <p>If YES is ticked for (a) and/or (b), please provide details for each claim or threatened claim. Please declare the claims experience even if claim was described in 2004 Proposal Form.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Note: When you are completing this Question please note that it requires you to declare:-</p> <ul style="list-style-type: none"> • Claims against your firm • Claim against any of the lawyers named in Question 2. • Claim against any of the lawyers at a previous practice. • The Execution Clause requires the firm to obtain WRITTEN CONFIRMATION from each lawyer named in this Form that he is aware and answerable to ensure the accuracy of the Question answered. </div>

Page 3	Question 7 CIRCUMSTANCES	<p>To include probable circumstances that the Practice/Lawyer may be aware of. This includes claim against the person, the previous Practice's personnel and the previous Practice.</p> <div data-bbox="624 439 1401 528" style="border: 1px solid black; padding: 5px;"> <p>Note: Please refer to Question 6 as a guide to complete this question. The same criteria applies to circumstances.</p> </div>
Page 4	Question 8 NO CLAIMS BONUS	<p>Please refer to Invoice for Year 2004 and tick box accordingly.</p>
Page 4	Question 9 TOP UP	<p>This question is <i>OPTIONAL</i>. You may or may not opt for Top-up insurance. You are also free to arrange for Top-up Insurance with another Insurer.</p>
Page 4	DECLARATION	<p>EXCEPT for sole proprietorship, any one Partner/Principal may sign the Proposal Form on the Practice's behalf. However, ALL parties named in the Proposal Form must ensure that they are aware of all information stated in the Proposal Form.</p> <div data-bbox="624 954 1393 1193" style="border: 1px solid black; padding: 5px;"> <p>Note: Upon signing the declaration, the Partner signing should obtain WRITTEN CONFIRMATION from each of the persons named in Question 2 for the answers to Question 6 and 7. Subsequent claims of ignorance or inaccuracy with regard to the answers in the completed Proposal Form will not be accepted as all lawyers/partners are deemed to have sighted and declared the requisite information.</p> </div>
Page 4	AUTHORITY	<p>The same person signing the Declaration can sign the authorisation on behalf of the Practice to allow the Insurer/ Adjuster to provide the Bar Council with statistical information arising from any claim under the insurance cover – Names of the Practice/Lawyer WILL NOT be identified. Disciplinary action CANNOT be based on the claims data provided.</p>

PLEASE ENSURE THAT THE FIRM'S STAMP ON THE FORM IS LEGIBLE.



“Chains of habit are too light to be felt until they are too heavy to be broken.”

Warren Buffett



“In not my, but our collective hands, is held the promise of change. “

Mark Sanford



PROPOSAL FORM BAR COUNCIL MALAYSIA - PROFESSIONAL INDEMNITY SCHEME

Basis of Cover

The basis of cover provided under the Master Policy is indemnity for claims made against the Practice and/or lawyers in respect of any civil liability incurred in the course of conduct of the functions of lawyers in Malaysia as governed by the Legal Profession Act 1976.

Note:
• For terms, conditions and exceptions please refer to the Certificate of Insurance when issued by Insurer.

BEFORE COMPLETING THE FORM PLEASE READ THESE IMPORTANT NOTICES

- 1. Your attention is drawn to Section 149(4) of the Insurance Act 1996 (Malaysia). You are to disclose in this proposal form, fully and faithfully, all the facts which you know or ought to know, otherwise the policy issued hereunder may be void.
- 2. Every question must be answered. You must fully and clearly give the information asked. If the space provided is not sufficient to record a complete answer, please record the answer on a separate sheet of paper, sign, date and attach it to the proposal form.
- 3. This proposal form must be completed and signed by the Proposer. If the form is completed by any other person, you must ensure that you are aware of all information stated herein.

Question 1 : Practice Details

(a) Practice names(s) / Name of the firm _____

(b) Date established _____

(c) Address for correspondence _____

(d) Tel _____ Fax _____ Email _____

Question 2 (a) : Qualified and Admitted Personnel

Please state whether Sole Proprietor (SP), Partner (P), Consultant (C) or Legal Assistant (LA)

Full Name	SP/P/C/LA	Sjil Annual No.

Question 2 (b) : For each of the personnel in 2 (a) that joined the Practice from a previous practice after 1st July 1999, please complete the following:

Please state whether Sole Proprietor (SP), Partner (P), Consultant (C) or Legal Assistant (LA)

Full Name	Previous Practice	Date Joined Firm	Date Left Firm	SP/P/C/LA

Question 3 : Unadmitted Staff*

Number of unadmitted staff

* Office Managers, Secretaries, Litigation & Conveyancing Clerks, Para-Legals, Pupils, Office Boys, Typists, Messengers, etc. A part-time employee = 1/2 a full-time employee.

Question 4 : Gross Legal Fee Income

	Last Financial Year	Estimate for the Current Year
Gross annual legal fee debited	RM	RM
Gross annual American fee debited	RM	RM
Total	RM	RM

Note: American fees relates to legal fees debited for work done in Malaysia or elsewhere for client(s) with an address in North America or Canada or owned/controlled by person(s) domiciled there.

Question 5 : Nature of Work : Please state estimated percentage of work based on the total gross annual legal fees debited the last financial year to nearest whole number

(a) Company/Corporate/Commercial or Financial Work (eg. acquisitions, takeover, share issues, general company and commercial work excluding conveyancing work, etc)	(a) _____ %
(b) Insolvency, Administration or Liquidations	(b) _____ %
(c) Conveyancing of commercial real estate	(c) _____ %
(d) Conveyancing of residential real estate	(d) _____ %
(e) Taxation, Estate planning, Executorship and Trusteeship	(e) _____ %
(f) Civil litigation	(f) _____ %
(g) Criminal litigation	(g) _____ %
(h) All other work (.....Description)	(h) _____ %
Total 100%	

Question 6 : Claims Experience

	YES	NO
(a) Have any claim(s) been made against the Practice or any lawyers named in Question 2 including at a previous Practice since 1st July 1999? Please tick.	<input type="checkbox"/>	<input type="checkbox"/>
(b) Since 1st July 1999 has any letter of demand, notice of intended claim or any intimation or threat of a claim been received by the Practice.	<input type="checkbox"/>	<input type="checkbox"/>

If "NO" kindly proceed to Question 7. If "YES" please provide the following details for each claim or threatened claim (even if you have provided them previously), attaching a separate page if necessary. (If there has been a claim which you have not notified, please write "Not notified" in the Date of Notification column.)

Date of Notification to adjuster or date of letter of demand or threat	Claimant / Potential Claimant	Finalised? (Yes/No)

Question 7 : Circumstances which may reasonably be expected to give a rise to a claim

	YES	NO
Is any lawyer named in Question 2, AFTER ENQUIRY aware of any occurrence or circumstances which may reasonably be expected to give rise to a claim against them, any predecessor or any principal, consultant, or professional assistant including arising at that person's previous firm in or of the Practice or its predecessor/s? Please tick as appropriate.	<input type="checkbox"/>	<input type="checkbox"/>

If "YES" please provide full details of each occurrence or circumstances (attach a separate page if necessary).

Question 8 : What No Claims Bonus did the firm receive for 2004?

(a) 50%

(b) 45%

(c) Other

Question 9 : Top-up quotations

The mandatory limit of indemnity starts with RM250,000 for a one lawyer practice and increases by RM50,000 for every additional lawyer up to a maximum of RM2,000,000. You may wish to obtain a quote for a premium to increase this limit.

Top-up quotations will be provided for limits of RM2, 5 and 10 million. Please advise if you need alternatives in the space below.

(i) RM	(ii) RM	(iii) RM

DECLARATION: I/We warrant that all the above statements are true and complete and that written confirmation has been obtained by me from each of the lawyers named in Question 2, relating to the answers to Question 6 and 7 and it is agreed that this proposal shall be the basis of the contract between the Practice and the Insurers.

Signature of Partner / Sole Proprietor: _____

Name of signatory: _____

Date of signing: _____ Firm's Stamp: _____

Completion and signature of this proposal does not bind the Proposer or the Insurers to complete a contract of insurance.

AUTHORITY TO THE BAR COUNCIL

Authorisation: I/We hereby authorise the Insurer and/or the adjuster to release to the Bar Council of the Malaysian Bar, from time to time and on written request by the Bar Council, such information arising from any claim under insurance cover issued to me/us to enable the Bar Council to maintain claim statistics and/or data for the more efficacious management of the Master Scheme including information concerning the date of the claim, the nature of the claim, the amount reserved, the settlement date and amount and the defence costs incurred. Provided always that any information disclosed shall not identify and/or name the legal firm and/or lawyer concerned and provided further that it is expressly understood and agreed to by the Bar Council that such information as is disclosed shall not render the firm and/or the lawyer concerned to disciplinary action based on the claims data.

Name: _____

Signature: _____ Firm's Stamp: _____

Conveyancing practices and transactions in Malaysia involve multi-party transactions with vague demarcation of roles. As such, claims arising from conflicts of interest in Conveyancing (both Commercial and Residential transactions) are the most recurrent and expensive category of claims in the PII Scheme.

In a concerted effort to reduce such claims, the Insurers

have agreed that if the firm/lawyer obtained a written waiver from the client before acting for them, the Excess applicable in the event a claim arises from Conveyancing, shall be the Base Excess [Item 10 of the Schedule of Insurance 2005].

Circular 36/2005 was issued by the Bar Council to Members on 11 May 2005. A copy of the Circular is reproduced for your information.

Circular No: 36/2005

11 May 2005

To all members of the Malaysian Bar

**LETTER OF ACKNOWLEDGMENT IN CONVEYANCING MATTERS
Professional Indemnity Mandatory Insurance Scheme 2005
Clause 6.3(a)(i) of the Certificate of Insurance 2005**



In view of the possibility of a conflict of interest arising whenever a solicitor acts for a purchaser and the purchaser's financier in a conveyancing transaction, the Bar Council and the insurers have agreed that if the insured obtains a Letter of Acknowledgement from the Purchaser/Borrower, the Base Excess would apply in the event of a claim:

Clause 6.3 (a) (i) in summary states as follows:-

- (1) That where a claim arises against a firm/lawyer because the firm/lawyer has acted for more than one party in a conveyancing of land/building transaction and/or in contravention of the applicable Bar Council rules on Conflict of Interest, then the Base Excess [Item 10 of the Schedule of Insurance 2005] will **NOT** apply to that claim.
- (2) In such cases, the excess applicable to the claim will be minimum RM 100,000.00 or **DOUBLE** the Base Excess [Item 10 of the Schedule of Insurance 2005] subject to a maximum of RM 300,000.00.

"A little knowledge that acts is worth infinitely more than much knowledge that is idle."

Kahlil Gibran

The insurers have agreed that if the firm/solicitor had obtained a written waiver from the Purchaser/Borrower before conducting the transaction, then the Base Excess [Item 10 of the Schedule of Insurance 2005] **SHALL** apply if a claim arises as a result of that transaction.

We have enclosed the following sample documents for your assistance.

[a] Attachment A: sample Schedule of Insurance 2005

The highlighted area is Item 10 referred to above and it states each firm's Base Excess.

This amount varies from firm to firm, so please refer to your firm's schedule to know your own applicable Base Excess and further, please refer to Clause 6.3 of the Certificate of Insurance 2005 to determine the exceptions to this Base Excess.

[b] Attachment B: sample Letter of Acknowledgment

This is the sample of the letter of Acknowledgement that is to be executed by the Purchaser/Borrower in situations where the solicitor acts for the Purchaser/Borrower in the Sale and Purchase and the Financial Institution in the financing. Please amend the waiver accordingly to suit any other transaction where a conflict situation may arise.



Failure to have this waiver executed will result in the increased excesses as outlined in Clause 6.3 (a) (i).

We would like to urge members involved in conveyancing to take note and ensure that such written acknowledgement is obtained to avoid increased excess in the event a claim is made against you.

“What you risk reveals what you value.”

Jeanette Winterson

Thank you.

Ragunath Kesavan
Chairman
Professional Indemnity Insurance Committee

**Attachment A:
 sample Schedule of Insurance 2005**

MALAYSIAN BAR			
SCHEDULE ATTACHING TO AND FORMING PART OF THE MALAYSIAN BAR PROFESSIONAL INDEMNITY INSURANCE CERTIFICATE AS PART OF MASTER POLICY NO. 92-882-04-000553			
1. CERTIFICATE	:	2805MABCO080	
2. INSURER	:	Oriental Capital Assurance Berhad (30688 K) Bangunan Oriental Capital No. 26, Jalan Ampang 50450 Kuala Lumpur (and its successors or assigns)	
3. NAMED INSURED	:	(As per Attachment 1 to this Schedule)	
4. THE PRACTICE	:	ABC & CO.	
5. ADDRESS	:	XXX	
6. PERIOD OF INSURANCE	:	12 months from 01 January 2005 at 12.01 a.m. Malaysia Time	
7. MANDATORY LIMIT OF INDEMNITY	:	RM XXX	each and every claim (subject to sub-limit in respect of defamation and dishonesty of partners)
8. SUB-LIMIT IN RESPECT OF DEFAMATION	:	RM 250,000.00	in the aggregate
9. SUB-LIMIT IN RESPECT OF DISHONESTY OF PARTNERS	:	RM 250,000.00	in the aggregate
10. BASE EXCESS	:	RM ZZZ	each and every claim (subject to Clause 5.3 of the Certificate of Insurance)
11. PREMIUM INCLUSIVE OF 5% SERVICE TAX	:	RM 3XX	
12. STAMP DUTY	:	Paid on the Master Policy	

SIGNED: _____
 SIGNED
 For: Oriental Capital Assurance Berhad
 Mohd Wahid Hassan
 Authorized Signatory

This insurance is subject to the terms of the Master Policy No. 92-882-04-000553, which is available for inspection at the Office of the Malaysian Bar Council. The same procedure should also be observed in this Certificate.

**Attachment B:
 sample Letter of Acknowledgment**

ATTACHMENT B	
ACKNOWLEDGMENT OF LEGAL REPRESENTATION	
To:	<i>(flow of solicitors concerned)</i>
Re:	Loan/facility amount: RM..... Financier: Borrower(s): Charge(s): Security:
I/we, the undersigned, expressly acknowledge the following:-	
1.	I/We am/are the above-mentioned Borrower(s)/Charge(s).
2.	I/We am/are fully aware, and hereby acknowledge, that <i>(name of flow of solicitors of address)</i> ("the said Solicitors") are solicitors acting only for the above-mentioned Financier in the above loan documentation, and that the said Solicitors are NOT representing me/us in the matter; notwithstanding that they witness or attest my/our execution of the relevant documents, or that I/we have agreed to bear their fees on behalf of the Financier, or that they may be acting (or have acted) for me/us in any other related or unrelated matter.
3.	I/We have been advised, and am/are fully aware, that I/we am/are at liberty to engage separate and independent legal representation in the matter. However, I/we have chosen not to do so, while being fully aware that, should situations arise where the Financier's interest is in conflict with my/our interest, the said Solicitors' duty would be owed to the Financier and not to me/us.
4.	The contents of this acknowledgment have been explained to me/us and I/we fully understand the same.
Dated	
Name:	_____
(/C)	

No.	Item	<p align="center">Summary of PII Scheme Main Terms for 2005 [Please refer to the 2005 Certificate of Insurance for full details]</p>
1	Base Premium	The Base premium is RM1,500 per lawyer. This is then subject to Hazard, Responsibility and Claims loading, if applicable.
2	Base Excess	The Base Excess of a firm is based on the number of lawyers in the firm. Notwithstanding Clause 10 of Schedule of the Certificate of Insurance , Base Excess differs for the following: <ul style="list-style-type: none"> (a) Claims arising from Conflict of Interest (b) Claims arising from conveyancing of land/building (c) Misconduct of partners- RM20,000 multiply the number of lawyers in the Firm or RM30,000 per practice, whichever is higher but not exceeding RM250,000 per claim.
3	No Claim Bonus (NCB)	For 2005, Insurers have increased the NCB as follows: <ul style="list-style-type: none"> a. 55% for firms with NO claims or circumstances notified since 1.7.99; OR b. 50% for firms with CLOSED claims or circumstances, which did not incur any payment since 1.7.99.
4	Responsibility Ratio	<u>UNQUALIFIED STAFF to LAWYER RATIO</u> <ul style="list-style-type: none"> a. Firm has 6 or more staff to one lawyer - 10% loading b. Firm has more than 10 staff to one lawyer - 15% loading
5	Hazard Loading	<u>TYPE OF WORK:</u> Based on the total percentage of fees derived from residential and commercial conveyancing and civil litigation work. Scale is as follows: <ul style="list-style-type: none"> a. 20-30% - 10% loading b. 31-50% - 15% loading c. 51-75% - 20% loading d. over 75%- 30% loading
6	Claims Loading	<ul style="list-style-type: none"> a. Applied to all notifications [claims and circumstances] from 1.7.99 to date. A claims loading will be applied to firms who have a reserve set by insurers against their notifications. In some cases special excesses may apply. b. Firms whose notifications carry a nominal reserve will not enjoy NCB but there will not be a claims loading. c. Previous Practice Claims Loading: Lawyer A who was a partner or sole proprietor at Firm X, leaves Firm X to join Firm Y. If Firm X had a notification, the premium for Lawyer A at Firm Y will carry a claims loading. The premium for Firm Y will be determined by its own claims record.
7	Defamation	Defamation claims are subject to an aggregate limit of RM250,000 per annum. The Base Excess of the firm as stated in the Schedule of the Certificate of Insurance will apply.
8	Dishonesty of Partner	Dishonesty of Partner [not employees] claims is subject to an aggregate limit of RM250,000 per annum. [Excess as stated in Para 2(c) above]
9	Conflict of Interest	The Base Excess will apply to claims arising out of a lawyer acting in conflict of interest provided the firm has obtained a written waiver from its client. See Page 6 for further explanation & sample Otherwise, the minimum excess stated in Clause 6.3[a] of the Certificate of Insurance will apply.
10	Notification of Claim	Firms are required to follow Clause 5.3 of the Certificate of Insurance and notify claims to the Broker as soon as practicable but no later than 30 days from the date the firm first becomes aware of the claim. See Page 15 for the Flowchart

What Is Excluded From the Insurance

Your professional indemnity insurance generally provides coverage against **civil liability** incurred in the course of conduct of the Profession. However, the following circumstances are excluded.

- 1 any liability which is insured under any other policy effected by or on behalf of you/the firm
- 2 (a) Prior Notifiable Circumstances or occurrence **notified** under any other insurance; or

(b) Prior Notifiable Circumstances or occurrence **known** to the Insured which might reasonably be expected to produce a claim.
- 3 The Base Excess (specified in Item 10 of the Schedule) being your/ the firm's contribution shall apply to *any one claim*.

The Base Excess is borne by you and is payable to a claimant upon a successful claim by the claimant or on the incurring of Defence Costs except for investigation costs incurred by adjusters and the Insurer's costs in determining if any claim is indemnifiable under this insurance.

PROVIDED however that the Base Excess shall be increased to the amount specified below:

- (a) if the claim arises out of or is contributed to by any of the following circumstances, factors, acts or omissions:
 - Acting for more than one party to a transaction in respect of conveyancing of land and/or buildings otherwise than in accordance with the Bar Council Rulings on conflict of interest applicable at the time of the transaction.
 - The amount of the excess applicable to such claim shall be minimum RM100,000 or DOUBLE the amount specified in Item 10 of the Schedule, whichever is higher, subject to a maximum of RM300,000.
 - However the Base Excess shall apply if you have obtained a written Letter of Acknowledgement from the client.
- (b) Claim in respect of conveyancing of land/buildings
 - the minimum excess shall be RM50,000.
 - However the Base Excess shall apply in the event the Insured had in place a risk management programme at the time the act was committed.

Clause 6.1

- ◆ Coverage Existing in Other Policies

Clause 6.2(a)

- ◆ Prior Claims

Clause 6.2 (b)

- ◆ Prior Circumstances

Clause 6.3

- ◆ Base Excess Payable Per Claim
- ◆ Does Not Apply To Investigation Costs
- ◆ Does Not Apply To Insurer's cost to determine if claim is indemnifiable

Clause 6.3(a)

- ◆ Base Excess to increase if:

Clause 6.3(a)(i)

- ◆ Acting for More than One Party- Conflict of Interest Conveyancing)
- ◆ No Letter of Acknowledgement from Client

Clause 6.3(a)(ii)

- ◆ Conveyancing Claim
- ◆ Unless risk management programme in place

<p>(c) Claim arising from Misconduct of a partner</p> <ul style="list-style-type: none"> - The applicable excess shall be RM20,000 per Insured multiplied by the number of Insureds named in Item 3 of the Schedule; or - RM30,000 per Practice, whichever is higher but not exceeding RM250,000 on any one claim. 	<p>Clause 6.3(a)(iii)</p> <ul style="list-style-type: none"> ◆ Misconduct of Partner
<p>4 any legal proceedings in a court other than of Malaysia.</p> <ul style="list-style-type: none"> - This exclusion shall not apply to proceedings in Malaysia for the enforcement of any award or judgment secured in any foreign jurisdiction except the United States of America, its possessions and dependencies or Canada. 	<p>Clause 6.4</p> <ul style="list-style-type: none"> ◆ Proceedings in USA/Canada
<p>5 any liability directly or indirectly caused by or contributed to by or arising from or in respect of Misconduct. There is a maximum cover of RM250,000 for <i>Misconduct of Partner</i> claims but these are subject to rules in Clauses 7.2 and 7.3</p>	<p>Clause 6.5</p> <ul style="list-style-type: none"> ◆ Misconduct
<p>6 any claim in respect of any personal financial guarantee or undertaking given by you/the firm otherwise than in good faith in the course of the conduct of the Practice or as required by law or order of the courts.</p>	<p>Clause 6.6</p> <ul style="list-style-type: none"> ◆ Personal Financial Guarantee
<p>7 death, bodily injury or loss of or damage to any physical property occupied or used by any of the Insured for the purposes of the Practice (not being property in the care, custody and control of the Insured in connection with the Practice for which the Insured is responsible).</p>	<p>Clause 6.7</p> <ul style="list-style-type: none"> ◆ Property Damage and Personal Injury
<p>8 wrongful dismissal or any other alleged breach of any contract of employment by you/the firm.</p>	<p>Clause 6.8</p> <ul style="list-style-type: none"> ◆ Employment Liability
<p>9 wrongful termination or any other alleged breach of any contract for supply to or use by you/the firm of services, materials, equipment, other goods and/or immovable property.</p>	<p>Clause 6.9</p> <ul style="list-style-type: none"> ◆ Contractual Obligations
<p>10 any trading debt incurred by you/the firm.</p>	<p>Clause 6.10</p> <ul style="list-style-type: none"> ◆ Trading Debts
<p>11 The giving of any express or implied warranty or guarantee relating to the financial return on any investment.</p>	<p>Clause 6.11</p> <ul style="list-style-type: none"> ◆ Providing Warranty/Guarantee
<p>12 any liability directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.</p>	<p>Clause 6.12</p> <ul style="list-style-type: none"> ◆ Radioactive Contamination
<p>13 any liability directly occasioned by pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.</p>	<p>Clause 6.13</p> <ul style="list-style-type: none"> ◆ Sonic Bangs

- 14 any liability directly or indirectly caused by or contributed to by or arising from war, invasion, acts of foreign enemy, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power or terrorist activity or from any action taken to avoid or detect terrorist activity.
- 15 any claims brought about by or attributable to or consequent upon the holding by you/the firm of any appointment as a director, officer or company secretary of a company or organisation.
- This exclusion shall not apply to claims arising out of the Insured acting in a professional capacity as an advocate or solicitor for any company or organisation for whom the Insured is a director, officer or company secretary and for which they received a fee.
- 16 any liability directly or indirectly, wholly or in part caused by or contributed to by or arising from or in respect of dispute over professional fees, charges, disbursements and other incidental costs.
- 17 any liability directly or indirectly, wholly or in part caused or contributed to or arising from or in respect of any disciplinary proceedings brought against or by you/the firm.
- 18 any claim or counterclaim set off by an Insured against another Insured under this Scheme unless the claim is in respect of the Insured acting as solicitor or advocate for the claiming Insured.

For full details, please refer to Clause 6 of the 2005 Certificate of Insurance.

Clause 6.14

- ♦ War, Terrorism

Clause 6.15

- ♦ Directors' and Officers' Liability

Clause 6.16

- ♦ Dispute Over Fees/ Disbursements

Clause 6.17

- ♦ Disciplinary Proceedings

Clause 6.18

- ♦ Insured vs. Insured



“The law of harvest is to reap more than you sow. Sow an act, and you reap a habit. Sow a habit and you reap a character. Sow a character and you reap a destiny. “

James Allen

Frequently Asked Questions

2005 Insurance Renewal/PII Scheme –

A. COVERAGE

1. Is there any difference between the cover provided by:
 - a. the Mandatory Insurance, and
 - b. Top-up Insurance

Answer

The cover provided by the Mandatory Insurance is stated in Clause 4.1 of the Certificate of Insurance. If you have purchased Top-up Insurance through Jardine Lloyd Thompson Sdn Bhd (JLT), the cover is identical to the Mandatory Policy.

If you have purchased Top-up Insurance through another broker, please refer to the terms and conditions of the Top-up Policy issued by the Insurer as it may differ from the Mandatory Policy.

2. How do the 2 policies (Mandatory & Top-up) work? Am I right to say that a claim is first met by the Mandatory Policy and any remaining amount is then met by the Top-up Policy?

Answer

Once a claim is notified and liability is established under the Mandatory Policy, the Mandatory Policy will respond first, up to the Mandatory Limit. If the Mandatory Limit is insufficient to meet the claim, the additional amount will be met by the Top-up Policy, up to the Top-up Limit.

Example:

- ◆ Firm X has a Mandatory Limit of RM500,000 and a Base Excess of RM60,000
- ◆ Top-up insurance of RM1,000,000 purchased through JLT
- ◆ Claim for RM650,000 was notified and liability established

Based on the example above, the claim will be settled as follows:

Firm X pays	RM 60,000 - The Base Excess
Insurers of Mandatory Policy pay	500,000 - The Mandatory Limit
Top-up Insurers pay	90,000 - The Amount exceeding Mandatory Limit
Total Claim against Firm X	650,000

3. Is there a panel of Top-up Insurers? What is the benefit of buying Top-up insurance through JLT?

Answer

There is no panel of Top-up Insurers. Legal firms are free to purchase Top-up Insurance from any insurer. However, the advantage of having Top-up Insurance arranged through JLT are:

- (i) The Top-up Insurers provide cover on the same basis as the Mandatory Policy. You need only notify JLT in the event of claims.
- (ii) If you purchased Top-up Insurance from another insurer, you have to notify them separately of any claims.

4. One of my clients is a foreigner who has businesses in and around the Asian region. Recently, he requested for my assistance to act on his behalf (as legal advisor) to conclude a business transaction in Indonesia. Does my PII provide cover for this work?

Answer

- ◆ NO. The Mandatory Insurance only covers claims made in respect of any civil liability incurred in the course of conduct of the

Profession. Please see Clause 4.1 of the Certificate of Insurance.

- ♦ The **Profession is defined in** Clause 3.9 of the Certificate of Insurance as “*the functions of lawyers in Malaysia as governed by the LPA 1976 and such other functions and services customarily and legitimately performed by lawyers in Malaysia.*”
- ♦ However, any proceedings in Malaysia for the enforcement of any award or judgment secured in any foreign jurisdiction other than the USA, its possession and dependencies or Canada, is covered. Please see Clause 6.4 of the Certificate of Insurance.

5. What type of claims are excluded from the PII Scheme?

Answer

Please refer to page 9 of this newsletter. You can also refer to Clause 6 of the Certificate of Insurance.

6. Our Mandatory Policy states that we have a RM10 million limit for each claim. Is it for Dishonesty of Partners and Misconduct too?

Answer

- ♦ There is an aggregate Limit of RM250,000 on claims arising from Dishonesty of Partners and Misconduct. Please see Clause 7.3 of the Certificate of Insurance and the Schedule.
- ♦ Thus a RM10 million cover has no bearing on such claims.

B. OTHERS

7. I heard a fellow Member talking about the JCC. What is it?

Answer

- ♦ The JCC is an acronym for the Joint Claims Committee.
- ♦ The Committee was set up by the Bar Council and JLT during the renewal of the PII Scheme 2005 to hear appeals and complaints lodged by legal firms regarding their **Mandatory PII**.
- ♦ To-date, the JCC has had three (3) sittings.
- ♦ The JCC comprises:
 - (i) Senior Members of the Bar
 - (ii) JLT; and
 - (iii) The Loss Adjusters.
- ♦ During hearings, JLT and the loss adjusters are present to help clarify issues raised. The Committee will then make their recommendation to the Insurers if they find merit in the appeal.
- ♦ Members who appeal to the JCC are encouraged to be present, in person, to voice their appeal to the JCC.
- ♦ Firms can make written complaints/appeals to the Bar Council, addressed to the Chairman, PII Scheme Committee.

8. Who is the current PII Scheme Committee Chairman? Who else are on the Committee?

Answer

The current PII Scheme Committee Chairman 2005/2006 is Mr. Rangunath Kesavan. After each AGM, members who fulfil specific requirements are invited by the Office Bearers to join the PII Scheme Committee.

9. When I paid my insurance premium, I received a Schedule of Insurance and then in April 2005, I received my Certificate of Insurance (COI). I noticed that the COI makes reference to the Master Policy. What is it? Why was it not sent to my Practice?

Answer

- ◆ The Master Policy, incorporating the Certificate of Insurance, is the agreement between the Bar Council and Insurers which spells out the framework on which the PII Scheme is arranged. It also spells out the cover granted upon retirement or death of any Insured Lawyer, as well as certain covers granted to the Bar Council itself.
- ◆ The Master Policy is retained at the Bar Council's office and is available for viewing during office hours.
- ◆ The Certificate of Insurance and Schedule of Insurance issued to you shows the Mandatory Limit, Excess and other specific details relating to your firm and deemed to form a part of the Master Policy.

Disclaimer Notice:

In compiling the information contained in this newsletter, the Malaysian Bar Council and JLT have used their best endeavours to ensure that the information is correct and current at the time of publication but accept no responsibility for any error, omission or deficiency.

Material in the newsletter is intended to provide general information and should not be considered a substitute to the PII Master Policy and the Certificate of Insurance 2005 (and its Schedule). We strongly advise that you refer to the Policy for the full terms and conditions.

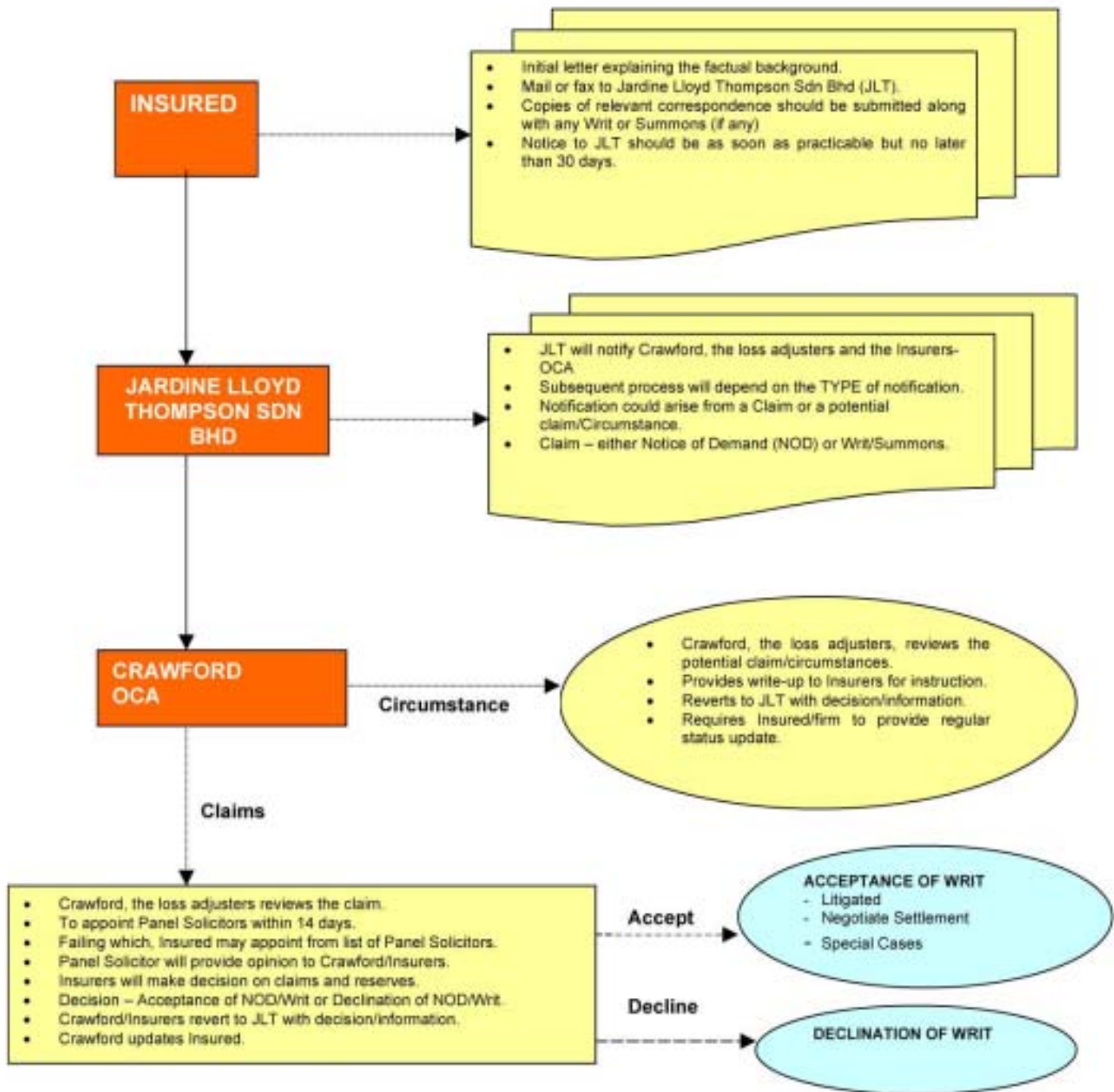
For more details and information, you should contact JLT – Bar Council PII Department.



Life is a series of steps. Things are done gradually. Once in a while there is a giant step, but most of the time we are taking small, seemingly insignificant steps on the stairway of life.

Ralph Ransom

FLOWCHART ON CLAIMS NOTIFICATION FOR 2005



Disclaimer:

This chart provides a general outline of the claims notification process only. Timelines and outcomes will vary with individual circumstances



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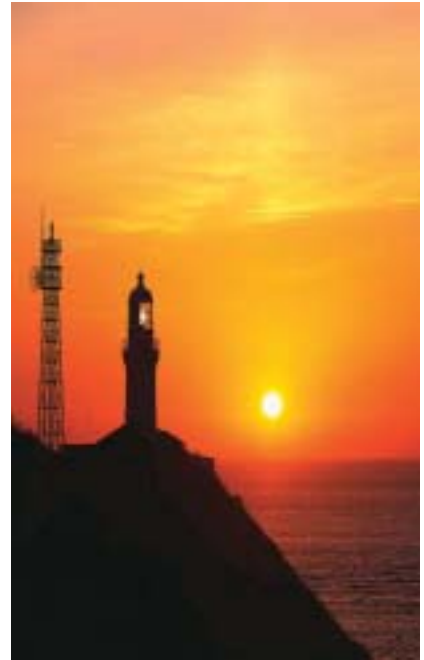
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Next edition

- **Risk Management Programme Overview**
An update of the Risk Management programme for 2005/2006
- **PII Scheme Survey Results**
We will uncover the general perception of Members about the PII Scheme
- **What is a Claims-Made Policy?**
Understanding your insurance and you
- **Be A "Memory-Friendly" Firm**
A Risk Management article by a leading risk consultant
- **More FAQs answered**



"Change is the law of life. And those who look only to the past or present are certain to miss the future."

John F. Kennedy

Footnote:

We are looking at ways to improve this newsletter and work towards ensuring that any areas of interest which concerns Risk Management will be highlighted in this newsletter. As always, we are pleased to hear from you on matters relating to this newsletter and PII Scheme 2005.

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