



JURISK!

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FORGING PARTNERSHIPS

BUILDING FIRM
FOUNDATIONS



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Chairperson's Message

Take Charge of Your Partnership!

Law practice partnerships make up approximately 37% of law firms in Malaysia, with the remaining law firms being run by sole proprietors. Being a partner in a law firm may seem to be a glamorous title but it comes with huge responsibilities and liabilities! You may NOT benefit equally but you WILL be jointly and severally liable for any claim made against the firm regardless of your equity or if you are merely a salaried partner.

Issues with partnerships are on the rise in the Professional Indemnity Insurance ("PII") Scheme. These include dishonesty of partner, and in some cases include the embezzlement rising to millions of ringgit. You would receive limited cover for any claim involving the dishonesty of a partner, moreover the maximum limit of indemnity is capped at only RM350,000. Even if firms opted for a top-up policy, the top-up limit of indemnity may still be insufficient for the remaining innocent partners to cover for all losses. The remaining innocent partner(s) may face financial ruin!!

The Partnership Act 1961 ("the Partnership Act") does not make any distinction between equity, salaried, commissioned nor principal partners. Both the Partnership Act and Bar Council see all Partners equally, regardless of whatever form of handshake deal agreed between the parties. When commencing a partnership, have a Partnership Agreement. By having one, most of the disputes that the partnership faces can be settled by referring to a Partnership Agreement.

At the minimum, lawyers entering into partnerships must complete their own due diligence of the firm and ensure that their roles, responsibilities, rights and liabilities are properly laid out in a Partnership Agreement. There has been many instances, as evidenced from the case studies in this issue of *Jurisk!*, that many partners are only partners in name; they are kept in the dark from the firm's day-to-day management and financial wellbeing, and they are also in the dark about the going-ons of other Partners in the firm.

Remember that prevention is better than cure!! Insist on financial controls, requirements of two signatories for cheques, full access to the firm's financial accounts AND client information. If the partnership is opening a branch office, even greater care and control is necessary.

It is impossible for Bar Council to regulate all aspects of your practice. Please be diligent AND set down ground rules on how the partnership is to function. Take charge of your partnership! Know and understand everything that is going on within the firm. If you feel that matters are constantly kept hidden from you, it is time to move away from that environment and protect yourself.



Premium Collection and Claims By Year

Also in this issue is an update of our latest project: the *Risk Aware! A Review of Your Firm Initiative*. This project involves the one-on-one study of law firms with an objective to review and suggest improvements in the firm to avoid possibility of a claim. So far, three firms each from Melaka and Terengganu have participated, but we are looking for more firms to come forward to take part in this initiative. All information can be found on page 18.

I would like to take this opportunity to welcome several new PII Committee Members and thank everyone for their continuous hard work to maintain the PII Scheme for the benefit of all Members. It is ever an on-going team effort to raise the PII Scheme's profile. As always, if you have any reason at all to be in contact with the PII Committee, please do so. The Committee, with the assistance of the PII and Risk Management Department are always on standby to help with your every PII need.

Thank you.

Ragunath Kesavan

Chairperson

PII Committee

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Professional Indemnity Insurance Committee 2016/2017

Chairperson: Ragunath Kesavan

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2. Arthur Wang
3. Balbir Singh
4. Dhinesh Bhaskaran
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9. Kuthubul Zaman Bukhari
10. Lawrence Pereira
11. Muthuveeramani Nadesan
12. Rao Suryana bt Abdul Rahim
13. Richard Kok Chi Wei

Inside This Issue...

... the spotlight is on partnerships as there are worrying trends in the Professional Indemnity Insurance ("PII") Scheme. You can read about and take heed of the various problems faced by law firm partnerships and branches that are affecting the PII Scheme. Also included in this issue are tips and ideas to avoid fallouts in partnerships.

We have also included updates on your PII Scheme's Certificate of Insurance ("COI") that affect all practising lawyers. We urge all Members to read and understand the terms and conditions of their policy, which consist of the Master Policy, COI and Schedule.

An update on the PII Committee's latest risk management drive — *Risk Aware! A Review of Your Firm* — is featured in this issue of *Jurisk!* Read more about it to find out how it can help enrich you and your firm.

We hope you enjoy this issue of *Jurisk!* If you have any feedback, thoughts or ideas about the contents in this issue, or even about the PII Scheme in general, please contact us at the PII and Risk Management Department. You can find our contact details on the last page of the publication.

Happy reading.

The *Jurisk!* Team

...That Your 2016 Certificate Of Insurance Has Been Amended?

Following a recent review of the policy wordings and practises, the Certificate of Insurance ("COI") for the 2016 Professional Indemnity Insurance ("PII") Scheme has been amended (effective 1 January 2016), as follows:

A. Clauses 7, 8, 9, 10(a) and 10(b) - in respect of your Base Excess obligations

These Clauses have all been amended slightly. The main purpose of these amendments is to provide clearer explanation of the Firm's Base Excess obligations towards the Insurer. Each Firm's Base Excess is specified in Item 9 of the Firm's Schedule of Insurance. This Base Excess can however, be increased in circumstances catered for in Clause 10.

Wordings of these clauses have been made clearer to inform Firms that their Base Excess obligation is NOT just limited to what is stated in Item 9, Schedule of Insurance, but it will also include increases (if any) to the Base Excess if the Firm falls within the scope of Clause 10, as well as any uninsured sums ie that part of the defence costs which are uninsured by virtue of Clause 6(a).

B. New Clause 31 - Non-Imputation

Clause 31 preserves the rights of Partner(s) to be indemnified and covered within the policy if a fellow Partner had failed to comply with any of the terms and conditions of the COI. These include failure to notify a claim, and even failure to cooperate with the Insurer.

This clause shall not prejudice the rights of the non-offending Partner only if he/she can prove that he/she did not possess any prior knowledge of the failure(s) of the offending Partner; and furthermore had reasonably assumed that the terms and conditions of the COI had been complied with and that the other partner(s) will inform and cooperate with the Insurer as soon as he/she becomes aware of such failure.

C. Clause 33(n) - Exclusion for professional fees etc.

The exclusion earlier provided under Clause 32(n) states that the policy will not indemnify for "any claims for refund of your professional fees, charges, disbursements and other incidental costs". Following a review of the wording of Clause 32(n), this clause has now been revised and re-numbered as Clause 33(n), to help ensure the wording interpretation reflects the policy intention which is not to respond to pure commercial arguments over fees. A definition of "refund" has also been included under Clause 36(p) for better clarity.

The PII Committee strongly urges every Member to read and understand the terms and conditions of their COI, including and especially new and junior lawyers. If there is any part of the Master Policy, COI and Schedule that you do not understand, please do not hesitate to contact the PII and Risk Management Department.

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

The Bahasa Malaysia translation on page 19 relating to the Master Policy, Certificate of Insurance and illustrative examples is for guidance only. In the event of inconsistency between the English version and the Bahasa Malaysia version, the English version will prevail.



Bar Malaysia
Malaysian Bar

Circular No 103/2016
Dated 28 Apr 2016

To Members of the Malaysian Bar

Alert: Possible Scam Against Lawyers Involved in Conveyancing Practice

It has come to the Bar Council's attention that there may be a scam being perpetrated against lawyers who are involved in conveyancing practice. This information was conveyed to us by the Insurer for the Malaysian Bar Professional Indemnity Insurance ("PII") Scheme through the Claims Administrator, Echelon Claims Consultant Sdn Bhd ("Echelon").

Currently, five firms have been identified as victims of a possible scam relating to preparation of loan documentation in respect of properties. Based on the information available, the potential scam is most likely carried out by a syndicate, and involves sub-sales of residential properties.

The similarities found between the five affected firms include:

1. Similar *modus operandi*;
2. Same names are repeated either as Purchaser/Borrower or Vendor; and
3. Possibility of the same Agent (freelance real estate negotiator by the name of "Kumar" or "John", and/or same despatch).

As at 3 Feb 2016, the five affected firms have, collectively, 27 notifications amounting to approximately RM14 million or more. Each firm has its own mandatory limit, and may not have top-up insurance to cover the excess amount of the claims against them.

Modus Operandi

The general characteristics of the syndicate's *modus operandi* are as follows:

1. The insured practice is approached by a freelance real estate negotiator, with documents indicating that one or more banks has/have approved loans to the Purchaser/ Borrower;
2. The bank then appoints the insured practice to prepare the loan documentation;
3. The insured practice relies solely on the freelance real estate negotiator and/or freelance despatch to collect documents from, or submit documents to, the relevant party;
4. The insured practice advises the bank to release the loan sum;
5. Subsequently, the Borrower default in their loan repayments; and
6. The bank then discovers that:
 - (a) the sale and purchase transaction between the Purchaser/Borrower and the Vendor is fraudulent; and
 - (b) the letter of undertaking and confirmation from the Developer was forged.



What Can You Do?

We urge Members to adopt good risk management and due diligence practices when handling conveyancing matters. The following is a list of recommended best practices to minimise the risk of falling prey to such potential scams:

1. Exercise extreme caution when dealing with so-called Agents or third parties;
2. Be wary if you are approached by an Agent or a third party to complete a transaction or prepare documents for a transaction;
3. If a potential transaction is brought or introduced by an Agent or a third party, deal directly with the Developer/Vendor and bank. Do not allow the Agent or third party to collect and deliver correspondence;
4. Obtain a copy of the Agent or third party's credentials (eg MyKad or real estate agent licence);
5. Identify and verify the identity of the client, Agent or third party, and Developer/Vendor. Conduct additional independent checks on the Developer/Vendor and Purchaser/Borrower (eg MyKad, or utility bills to prove that the Vendor is residing there);
6. If in doubt, and where practical, conduct a site visit;
7. Only carry out instructions that are given by the client, which should be in writing;
8. Practise due diligence at all times;
9. Alert the authorities and the Insurer of the PII Scheme, if you suspect a possible scam; and
10. Use the conveyancing checklist, available here on the Praktis website) as a tool to minimise risk.

Generally, the use of a checklist for each file will help minimise the likelihood of a claim being made against a firm. Please refer to the checklists available here on the Praktis website. If you are already using a checklist, we urge you to find time to update and improve the checklist.

Members are reminded to be constantly vigilant, and to report suspected or confirmed scams to the Bar Council by email to the undersigned at secretary@malaysianbar.org.my, with a copy to the PII and Risk Management Department at pirm@malaysianbar.org.my.

Should you have any enquiries, please contact the officers of the PII and Risk Management Department by telephone at 03-2032 4511, or by email at pirm@malaysianbar.org.my.

Thank you.

Karen Cheah Yee Lynn
Secretary
Malaysian Bar

Keep Your Clients Close, and Your Partners Even Closer

by Shafiq Sobri,
Jardine Lloyd Thompson Sdn Bhd

A law partnership is normally formed with the best intentions in the partners' minds. They believe they have each found someone trustworthy and someone who shares the same professional goals and personal interests. Partnerships are also formed when new partners come together to practice their own brand of law, or even branch out to more challenging areas of law. Some partnerships are even formed to provide a gateway for shared and pooled resources and a much larger client base.

Whatever the intentions are, it is presumed that all partners intend to see their partnerships grow and prosper for the foreseeable future. Nonetheless, plans do not always work out for some partnerships and what was once a propitious legal practice, can find itself falling apart or even heading towards dissolution caused by misdeeds of partners.

A great synergy between partners can enhance the quality of legal services rendered to clients in ways that one lawyer working alone may not be able to accomplish. Partners with high levels of competency and professionalism can enhance the reputation of the firm. On the other hand, a partner's ethical and legal troubles such as dishonesty and misbehaviour can tarnish the firm's reputation as a whole and may lead to professional and financial disaster.

As such, lawyers should be wary when choosing a partner so as to avoid any complications and troubles that may

affect the partnership. Firms that are disorganised, incohesive and have partners who do not maintain high levels of professionalism and integrity may come apart under the pressures of a lawsuit or claim against the partnership. Ultimately, firms that are well structured and have responsible and trustworthy partners will withstand these difficulties and may become stronger because of the experience.

While misconduct which includes dishonesty is generally excluded under the policy, partners who were not parties to or condoned such misconduct may be covered under the policy subject to certain terms and conditions under Clause 11 of the 2016 Certificate of Insurance ("COI") and the policy as a whole.

Nevertheless, for the Insurers to decide whether "innocent partners" will be covered under the policy, the Insured Practice ("IP") needs to demonstrate that the partner who committed the misconduct was practicing as a genuine principal and carrying on practice in common with other partners of the IP.

In this issue of *Jurisk!*, we explore a few case studies on claims that have had adverse effects on partnerships. Our risk management tips in the following article on page 15 provide some insight and recommendations on how IPs can avoid claims and issues such as dishonesty of partners from affecting their partnership.

Am I Really A Partner Here?

Joffrey and Theon were the partners of Messrs Baratheon & Associates, the Insured Practice ("IP"). When Theon joined the partnership, there was no partnership agreement executed between the two. Instead, they mutually agreed to a verbal arrangement on each partner's roles and responsibilities.

Theon was a non-equity partner and held no beneficial interest in the Firm. His income was derived from legal fees of clients' files that he personally attended to, at a percentage agreed with Joffrey. Although Theon was an authorised signatory to the Firm's office and clients' accounts, he had in fact no control over the accounts or the Firm's cheque books. The signatory arrangement was only to satisfy the bank's requirement.

All cheques were signed by Joffrey; Theon was only allowed to sign cheques when Joffrey was not around, or for miscellaneous expenses within the amount of RM5,000. Theon also did not have access to the Firm's accounting records and bank statements.

One day, Joffrey came into the office flustered, and he anxiously explained to Theon that a Judgement in Default ("JID") of appearance was entered against their Firm. Theon was caught off guard, he had no idea that the Firm was even served with a suit!

What had actually happened?

The file was handled by Joffrey who represented the Vendor in a conveyancing transaction. However, the cheque for the balance of purchase price issued from the Firm's clients' account was stopped by Joffrey due to insufficient funds. Joffrey admitted that he had used the money for personal purposes.

Despite various follow-ups and demands from the Vendor, Joffrey still failed to release the balance purchase price. Having no other recourse, the Vendor filed a suit against the Firm and named Joffrey and Theon as Defendants.

Theon had no knowledge about the file or the money that Joffrey misappropriated. Joffrey admitted that he decided to keep Theon in the dark about the suit since Theon should not be responsible for it and that Joffrey was trying to reach an amicable settlement with the Vendor to resolve the matter.

Joffrey also admitted that he accepted the service of the writ on behalf of Theon without the latter's knowledge. Furious with what transpired, Theon notified the Insurers about the suit and the JID entered against the Firm.

But We Are No Longer Together!

Emily and Victoria were the founding partners of Messrs Grayson & Co, the Insured Practice ("IP"). After some time in the partnership, there were some disagreements about the Firm's business plan, eventually driving a wedge between them. Emily then moved out of the main office and rented an office adjacent to the Firm.

Despite being only a named partnership, they still maintained and shared certain parts of managing the Firm, for example administrative fees and staff salaries, equally. The office and clients' accounts were still held jointly by both of them.

A few months later, Emily received news that Victoria was suspended from practice as a result of a complaint lodged against her. Fearing that her reputation will be tarnished by Victoria's suspension, Emily decided to dissolve the partnership through a Deed of Dissolution. Emily later established Messrs Thorne and Associate and remained as a sole proprietor of her new Firm.

Two years later Emily was served with a Writ and a Statement of Claim which named her as a co-defendant in her capacity as a former partner of the IP. The claimant, Daniel, alleged that the IP was involved in a fraud to

dispose a property which belonged to him without his consent or knowledge.

Daniel was a good friend of Victoria. Sometime in 2015, he entrusted Victoria with a title to his property as lien for RM300,000 that he borrowed from Victoria to start a business. However, Daniel was slightly behind with the repayment and Victoria needed her money back to help her husband's ailing company, BlueFields Ltd. Unable to wait any longer, Victoria obtained a bank loan and charged Daniel's property as security.

Unfortunately, BlueFields Ltd was not able to meet its debt obligation and went into liquidation. Daniel only discovered about the charge when the bank served an Originating Summons to exercise their right to sell the property. After realising that the charge was registered fraudulently, he filed a suit against the bank, BlueFields Ltd, Emily and Victoria.

Emily did not have any knowledge about the transaction and when the suit was served, the partnership was no longer in existence. She also discovered that Victoria had already been struck off as an advocate and solicitor. She then proceeded to notify the Insurer.



It's Not Our Problem, It's Yours!

Ron, Leslie and Ann were legal assistants at a firm where they practiced together for several years. During their time at the firm, they developed a good friendship and camaraderie; and they shared common professional and personal interests. After careful planning, they decided to set up their own law partnership and established Messrs Swanson, Knope & Perkins, the Insured Practice ("IP"). Since the Firm's clients were growing, they decided to establish another branch in Ron's hometown, Johor Bahru, which Ron was assigned to manage.

The partnership was put to a test when one of its former clients filed a suit against the Firm for negligence. It all started when the Firm was retained by Eagleton Construction Pte Ltd ("Eagleton") to file a suit against their client for non-payment of fees. On the day of trial, the court adjourned the hearing to a later date since Ron, the solicitor in charge of the matter, was unwell.

When the trial of the case resumed, Ron did not appear due to a conflicting hearing on the same date. As a consequence, the court struck off the suit against Eagleton's client. Ron had only updated Eagleton about the trial adjournment but had failed to inform them about the striking-off despite numerous requests for updates from Eagleton. Ron also kept this news from Leslie and Ann.

After some time, Eagleton decided to appoint a new solicitor to take over the matter from the IP. Only then did Eagleton discover that the suit had been struck off. Eagleton immediately instructed their new solicitor to revive the suit but it was too late for Eagleton as the matter was already time-barred.

It was a tough break for Eagleton since they had lost the opportunity to recover the outstanding fees in the amount of RM200,000 from their client. After a Notice of Demand to the Firm to pay the losses was unfruitful, Eagleton filed a suit against the Firm for negligence and named all partners as Defendants.

The suit was served to the IP's main office which was managed by Leslie and Ann. Leslie decided to defend the suit herself in order to save the partnership. Despite assuring Ron that the suit was being taken care of, Leslie felt that Ron should be fully responsible for his conduct and should bear the liability himself.

She decided to file two separate defences without Ron's knowledge nor consent. Leslie and Ann also met with Eagleton and negotiated a settlement to absolve their liability in the suit. Eagleton reached a settlement agreement with Leslie and Ann, and decided to withdraw the claim against the two. Ron was now the sole Defendant in the suit.

Ron only discovered about the settlement on the day of the trial when Leslie updated the court that they had reached a settlement agreement with Eagleton. Since Ron was the only Defendant left in the suit, the court adjourned the matter to allow Ron to appoint a new solicitor to defend him in the suit. He finally notified the Insurer about the suit one day before the trial.

The Insurer evaluated the situation to determine whether the partners should be afforded cover under the policy. Due to Ron's conduct and the settlement by Leslie and Ann with Eagleton, the Insurer decided to repudiate the claim.

But I Have Known Him For Years!

Michael decided to set up his own law partnership known as Messrs Bluth & Finke, the Insured Practice ("IP") with his long-time friend, Lindsay. Michael managed the main office in Petaling Jaya while Lindsay managed the Firm's branch in Bangsar.

With the growing lists of clients, Michael decided he needed another pair of hands to assist him at the Firm. He then remembered an old colleague from his previous firm, Tobias. Michael decided to offer Tobias a salaried partner position at his Petaling Jaya branch.

Since both of them had known each other for some time, they mutually agreed to do away with a partnership agreement. Since there was no partnership agreement between Michael and Tobias, they verbally discussed and agreed what each other's roles, responsibilities and remuneration would be.

One of the salient points of the arrangement was that each partner will be responsible for their own clients' files and clients' money. Due to this arrangement, only the partner in charge of a particular client will have knowledge and control over the file. All partners of the Firm were the authorised signatories to the clients' account where any one partner can sign a cheque for the clients' account.

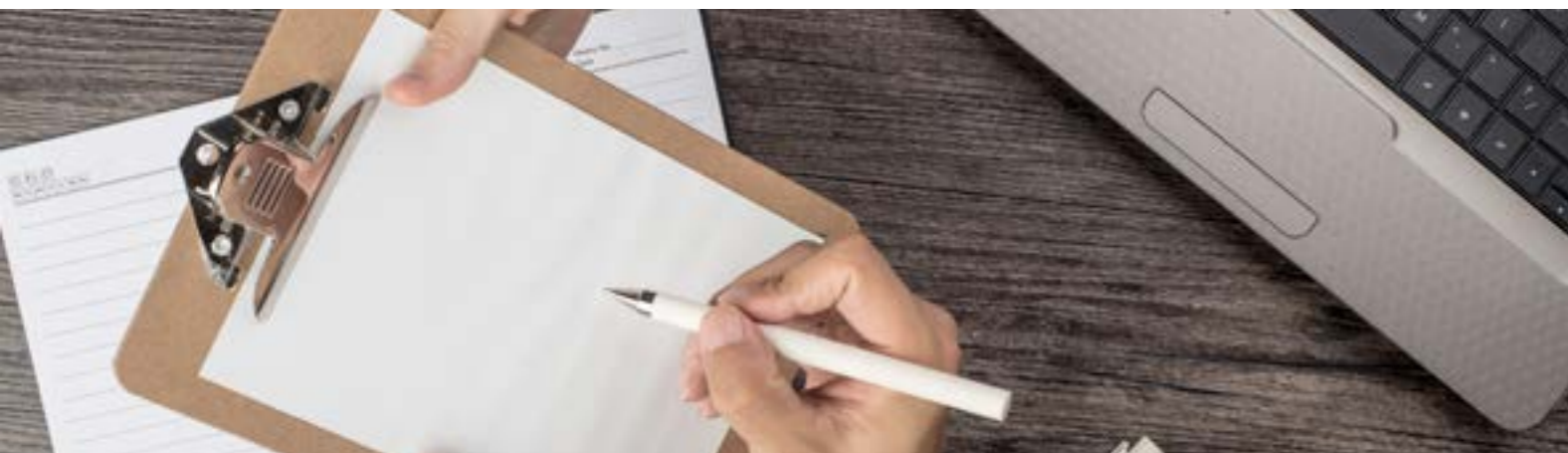
One day at the office, Tobias was alerted by the accounts clerk that a payment to one of the Firm's client could not be made since the money in the clients' account was insufficient. Bewildered, Tobias instructed the accounts clerk to investigate why.

After some reconciliation of bank statements and inquiries with the bank, it was revealed that the monies in the clients' and office accounts were withdrawn by Michael under his name on several occasions. Tobias and Lindsay tried contacting Michael for an explanation, but their phone calls were left unanswered and Michael failed to turn up at the office for several days.

Afraid for the worse, Tobias and Lindsay instructed the bank to revoke Michael as the office and clients' account authorised signatory. They also lodged a complaint against Michael with Bar Council and notified the Insurer on potential claims against the IP resulting from Michael's embezzlement.

Due to the arrangement between the partners, Tobias was left alone to manage the Petaling Jaya branch. Since the amount embezzled by Michael was quite substantial, Tobias could no longer afford to pay for expenses to run the Petaling Jaya branch. Fearing that the branch may have to be closed, Tobias asked Lindsay if he could practice at the Bangsar branch instead. Lindsay refused to accept Tobias since he was only a salaried partner and the Bangsar branch could not afford to pay for another partner.

With no other options, Tobias relocated to a smaller office and tried his best to salvage the situation. Being the only partner managing the branch, Tobias started to question his own liability as a salaried partner and his insurance coverage should the IP receive real demands or suits resulting from Michael's embezzlement.



Maybe I Wasn't Ready...

Alexis began her legal career as a legal assistant at Messrs Morello & Associates where she befriended Piper, a senior legal assistant at the firm. When Piper left Messrs Morello & Associates to set up her own firm, Messrs Chapman & Co, Alexis lost contact with her. A few years later they met and rekindled their friendship.

At that time, Piper was deciding to expand her Firm and open another branch. She invited Alexis to join the Firm as a partner. Confident that she already had the requisite capability to service her own clients, Alexis accepted the offer and was tasked to manage the new branch. The Firm's name was changed to Messrs Chapman & Vause to reflect the newly-formed partnership.

Alexis and Piper managed their branches independently of each other with separate office and clients' accounts. They were also not the authorised signatories for each other's office and clients' accounts. Each branch did not share profits and liabilities and each branch even filed separate income taxes. They did not update each other on their respective clients' files.

When Alexis returned to the office after her maternity leave, she decided to take in fewer clients so that she could spend more time with her newborn. A little after returning to work, Alexis discovered that one of Piper's clients had lodged a complaint against Piper with the Disciplinary Board. Without hesitation, she contacted Piper to dissolve the partnership in order to protect herself from any adverse consequences that might befall her or the Firm.

Piper refused to do so and otherwise demanded that the partnership should stand until she found another partner to take over Alexis' position. When Piper was suspended as an advocate and solicitor, Alexis dissolved the partnership and established her own practice under the name and style of Messrs Vause and Co.

A year later, Alexis received a copy of Writ, Statement of Claim and Statement of Defence sent to her by Piper in which both of them were named as Defendants in their capacity as former partners of Messrs Chapman & Vause. The Claimant was Piper's former client who claimed that the Firm failed to return the excess money paid for stamp duty and the registration of a Memorandum of Transfer in the amount of RM300,000.

Alexis realised that the cause papers were served at Piper's branch when they were still partners. Upon inquiring about the suit, Piper admitted that she had appointed a solicitor to enter appearance and file a common defence for both of them. Piper confessed that she had already used the money and promised the Claimant to repay the misappropriated money through monthly installments.

Piper also admitted that she received the service of cause papers on behalf of Alexis. Alexis was shocked with the revelation since she had no knowledge about the file nor did she consent to Piper's appointment of a solicitor to enter appearance and file a defence on her behalf. Alexis immediately notified the Insurers about the Suit.

Gone With The Wind

Messrs Underwood & Partners, the Insured Practice ("IP") was established in 1996. The Firm's main office in Petaling Jaya was managed by Frank and the branches in Ipoh and Johor Bahru were managed by Claire and Douglas respectively.

Douglas was brought in as a partner in 2010 when the Firm decided to establish another branch in Johor Bahru. However, Douglas was only a named partner and did not share any profits or losses with the other partners.

He ran the branch on his own and operated the office solely without any supervision or reporting requirements to the main office. The branch also had its own accounts where the signatory to those accounts was only Douglas. The management of the branch was akin to a sole proprietorship despite the existence of a partnership between Douglas and the other partners.

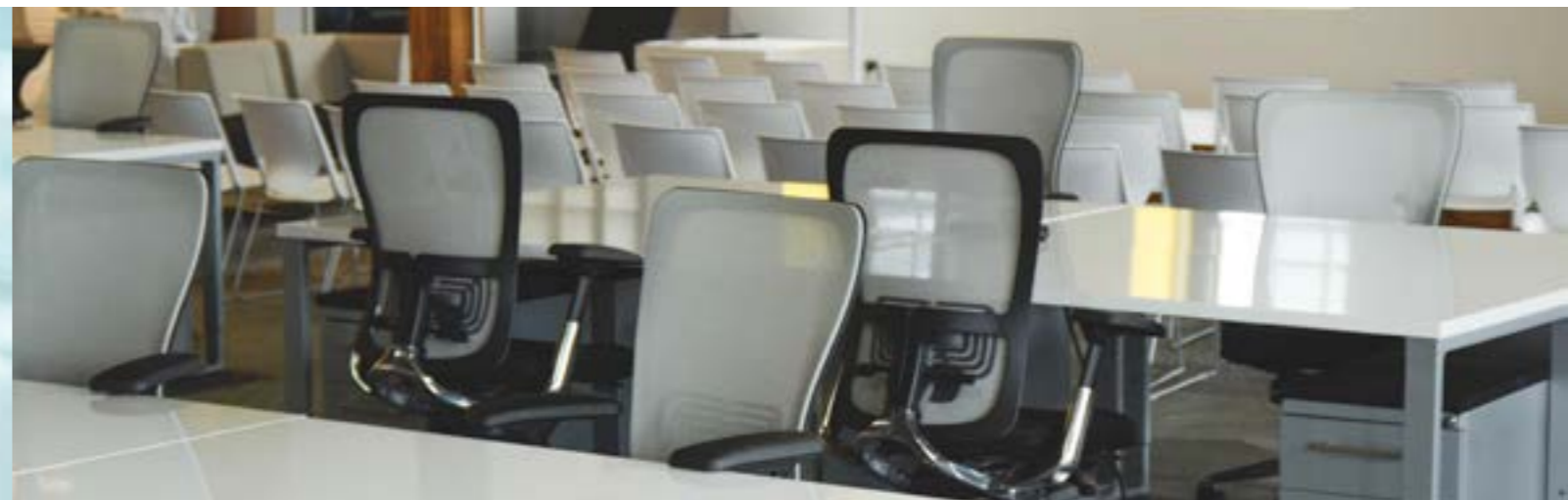
The Firm received a Letter of Demand ("LOD") in late 2015 requesting for a refund of RM500,000 which the Firm had undertaken to release to a tenant upon the delivery of vacant possession. The Firm represented a vendor in a conveyancing transaction involving the purchase of a commercial property. The existing tenant demanded a compensation for the delivery of a vacant possession since the tenancy agreement was still in force between

the purchaser and the tenant. The vendor agreed to compensate the tenant and instructed the Firm to release the cheque upon the delivery of vacant possession. Even after the vacant possession was delivered, the Firm failed to deliver the cheque to the tenant.

This conveyancing file was solely handled by Douglas in the Johor Bahru branch. When the other partners tried to contact Douglas, their calls were left unanswered. Suspecting that something might have gone wrong, they made a trip down to Johor Bahru to meet Douglas at the branch.

When they arrived, they found out that the branch had closed down. They also found a notice on the front door directing all current clients to contact the main office for all outstanding matters. Douglas did not inform neither Frank nor Claire, nor Bar Council about the branch's closure. The office closure heightened their suspicions that Douglas may have misappropriated the money and absconded.

Frank and Claire notified the Insurers and lodged a police report against Douglas. They forwarded all relevant documents to the Insurer to assist the investigation in determining whether the IP could be covered under the policy.



Under Observation

After several years of practice, Max, a legal assistant at Messrs Channing & Associate, the Insured Practice (“IP”) was offered to be a partner of the Firm by Caroline, the sole proprietor of the Firm at that time. Max had been handling the Firm’s conveyancing files since his very first day at the Firm so Caroline entrusted him to continue with managing conveyancing files on his own with the help of a conveyancing clerk, Sophie. Caroline maintained her position as a litigation lawyer and handled all litigation matters for the Firm’s clients.

Due to the nature of her litigation work, Caroline spent most of her time meeting clients and appearing in court. Max was then tasked to manage the daily operation of the Firm during Caroline’s absence from the office. Sophie reported directly to Max since she only handled conveyancing files. Nonetheless Max resigned as partner two years later when he decided to pursue his Master’s degree overseas. The partnership was dissolved and Caroline was once again a sole proprietor of the Firm.

One day, Caroline received a call from one of the Firm’s client, a vendor in a sale and purchase transaction requesting for an update on the transfer of the property. Since Sophie was on sick leave, she had to review and check the file on her own. Upon reviewing the file, Caroline discovered that a payment was made from the clients’ account for the registration at the land office. However, the transfer was not yet registered despite the payment made out from the account. The discovery raised suspicions to Caroline that some other files may be affected.

Upon her investigation, she discovered that a substantial sum of money has been misappropriated from the Firm’s conveyancing files. Further investigation proved that the embezzlement was committed by Sophie from the time that Max was made partner at the Firm. Sophie had since left the Firm and absconded when her wrongdoings were discovered.



Risk Manage Your Partnership

A Partnership is not something you jump in and jump out of on a regular basis. A solid, working partnership involves more than just a handshake. There is a lot of groundwork that needs to be done prior to establishing a Partnership. And once a Partnership is up and running, it takes a lot more work to keep it afloat.

Partnerships should not be formed merely for convenience. It should be borne from the idea that two or more people in the same track of mind, can go on to do greater and bigger things together, rather than hacking it on their own, separately.

We’ve covered some pointers below that you can use in managing your Partnership.



Partnership Agreement



Understanding Duties



Knowing The Firm



Firm Management



Financial Management

You can read more detailed tips and best practices in the following pages.



Partnership Agreement

It is not uncommon for most lawyers to establish partnerships based on a gentlemen's agreements. Although a partnership does not require any specific formality to be established as such, lawyers are encouraged to execute a partnership agreement which should at least cover the vital issues.

These include details on managing expectations of all partners, address the varying degrees of participation of partners, each partner's interests or equity in the firm and the processes of admission, withdrawal and dismissal of partners.

A partnership agreement might seem unnecessary when you have comforting words from another partner, however, poorly organised partnerships without clear roles and responsibilities can lead to dispute among owners.

The following are details that should be included in a Partnership Agreement:

- The name of the Partnership;
- Names and identification of all Partners;
- Breakdown of Partners' shareholding or equity in the Partnership;
- Roles and responsibilities of each Partner;
- The clear distinction and identification of a Managing Partner;
- Cross sharing of data (if there are branches involved);
- Events that will lead to dissolution of the Partnership; and
- In the event of a dissolution, what is to happen to the Firm.

In absence of a Partnership Agreement, the Insurer will decide cover for "innocent partners" under the relevant clause of the COI in cases of misconduct. The Insurer will need to ensure that the partner who committed the misconduct was practicing as a genuine principal and carrying on practice in common with other partners. The Insurer will look at the following:

- The Firm's Professional Indemnity Insurance ("PII") Mandatory Scheme's Proposal Form and a letter to the Bar Council when the partnership was formed, as details of all Partners are included in both forms.
- The Insurer will also look at secondary evidence, such as purported partners' names appearing on the Firm's letterhead and Firm signage.



Knowing The Firm

- Before joining a partnership, it is advisable that lawyers understand the firm's liabilities, risks and its accounts to ensure that they will not be liable for any complications in the future.
- If lawyers realises that certain things about the firm are amiss, investigate further or get clarification with the current partners. If the irregularities about the firm's management or accounts are glaring, avoid joining the partnership.
- Partnership of convenience can be very risky. When forming a partnership, lawyers should be wary of having a rogue lawyer joining the firm. Not only do rogue lawyers bring the practice into disrepute; it may also cost financial losses.
- Before venturing into a partnership or opening a branch, lawyers are encouraged to assess the risks and future liabilities that may affect the partnership.



Firm Management

A genuine partnership would allow partners to have better control over the management of the firm and its branches since all partners are bound by common responsibilities as partners of the firm. A system of checks and balances between all partners could ensure no individual partner is given an ultimate authority and control over the accounts.

- Formulate a system of supervision so that all partners must report the progress of their files to other partners. This could ensure that partners do not engage in risky businesses which could bring the firm and the partners into financial loss and disrepute.
- Formulate internal procedures and controls to effectively manage a partnership. Partners need to monitor each other to ensure a strict compliance with the law and legal ethics.



Understanding Duties

- The law does not make any distinction between a salaried partner, a commissioned partner or an equity partner. Each and every partner of a firm faces unlimited liability jointly and severally for the acts of all other partners and employees. As such, it is imperative that all partners recognise that fiduciary duty is owed to each other in ensuring that the partnership is one of confidence, trust and honesty.
- In a partnership, all partners owe a fiduciary duty to each other which imposes upon the partners the duty to act for the common benefit of all partners and the duty to refrain from taking advantage of one another by misrepresentation, concealment or adverse pressure relating to the partnership and its business.
- All partners of a firm are jointly and severally liable for claims against the firm. However, when one partner was solely responsible for such claims, it is expected that conflicts will arise when other partners would want to absolve their liabilities towards the claim. A frank discussion among partners in resolving the conflict is essential to ensure that all partners' interests are protected.
- Every partner is liable jointly with the other partners for all debts and obligations of the firm incurred while the person is partner. Wrongful acts or omissions, misappropriation of money or property done in the ordinary course of practice will bind all partners. Hence it is imperative for lawyers to ask questions whether they genuinely need to form a partnership.



Financial Management

- If firms have branches, ensure that there is a mandatory reporting requirement to the main office especially on the office and clients' accounts.
- Request the bank to send the bank statement directly to the principal office and respective branch for reconciliation and perusal by partners. This internal supervision could ensure that discrepancies with the accounts could be investigated at the earliest opportunity.
- A branch would normally have its own office and clients' accounts; hence it is imperative that all partners are updated with the current financial status of each branch and the partnership as a whole.
- Establish an appropriate system of checks and balances and operational segregation of office and clients' monies between partners to avoid commingling of funds between one or more partners in the firm. For instance, dual authorised signatories for cheques.
- For a small firm, monthly account statements reconciliation may sound cumbersome and often overlooked by partners. Ensure that account statements reconciliation is done properly to ensure that the account balances and every single transaction are accurate.
- IP should ensure that the branches operate in common with the practices and processes at the main office. This includes a standard reporting requirement on the financial health of office and clients' accounts.
- If one branch is managed by only one partner, having at least two authorised signatories could reduce the risk of misappropriation of fund in their branches since the sole partner does not have full control of the clients' accounts. The check and balance system could ensure transparency in operating clients' accounts.
- Although it may sound impractical to have two signatories to operate clients' account where partners do not practice in the same branch, lawyers should be mindful that a having a good risk management system in place may protect the partners from being liable for other partners' misconduct.

RISK AWARE!

A REVIEW OF YOUR FIRM

Risk Management is essential for every Firm. The idea behind implementing good risk management practices is so each and every client is provided with the best legal care and service. Proper risk management also protects both the Firm and client from any negative fallout, and in particular, protects the Firm from being sued.

The Professional Indemnity Insurance ("PII") Committee has revived a programme that reviews Law Firm's risk management on a firm-to-firm basis. This initiative originally began in 2007 as the Practice Review Risk Management Audit, and is now making its comeback as *Risk Aware! A Review of Your Firm*.

Risk Aware! is carried out by visiting Officers of PII and Risk Management Department being present in the Firm and making observations of the Firm's operational processes, procedures and systems. The objective is to evaluate and provide recommendations of the Firm's daily operations. This in turn can reduce the Firm's exposure to claims. As an added benefit, a risk management session will also be conducted after the review by the visiting Officers.

Risk Aware! has started its tour in the states of Melaka and Terengganu with participation of three Firms from each state so far. These Firms were randomly selected from the list of participants who attended various risk management workshops organised by the PII and Risk Management Department between 2011 and 2015. This initial review focused on smaller firms located outside the Klang Valley. Participation was on a voluntary basis and at no cost to the Firms.

The review itself comprises of four stages; pre-interview, the interview, firm's report, and follow-up review (if necessary). Interviews will be conducted with appropriate individuals of the firm such as the Sole Proprietor or Managing Partner, Legal Assistant and/or Head of Departments. Once the relevant information is gathered,

a report with recommendations will be prepared based on observations made by the Officers conducting the review. If necessary, a follow-up visit will be carried out to assess the implementation of the recommendations suggested earlier.

All data collected from the Firm will be kept confidential and will only be used to provide recommendations, maintain statistics and research for the PII Committee. The Officers will not observe or collect information in relation to client's confidentiality.

The report will comprise of the following:

1. Methodology and Firm Structure – The Methodology used and a description of the structure of the firm.
2. Risk Management Systems and Procedures – The body of the report outlines the generic issues associated with various areas of practice management. This section also outlines observations and comments regarding the techniques and methods currently in operation in the firm to identify, review and control risks, as well our recommendations for improvement.
3. Executive Summary – Containing principle recommendations.

If you are interested in having your Firm participate in the *Risk Aware! A Review Of Your Firm*, do contact us at 03-2032 4511 or drop an email to pirm@malaysianbar.org.my.

Remember, prevention is better than cure!

SKIM MANDATORI PII BADAN PEGUAM MALAYSIA TAHUKAH ANDA?

...Sijil Insurans 2016...

Berikutan penilaian yang dibuat terhadap susunan kata dalam polisi baru-baru ini, Sijil Insurans ("COI") bagi Skim Profesional Indemniti Insurans ("PII") 2016 telah diperbaiki dan berkuatkuasa secara retrospektif (bermula 1 Januari 2016), seperti berikut:

A. Fasal 7, 8, 9, 10(a) dan 10(b) – berkaitan kewajipan terhadap Base Excess

Sedikit pindaan telah dibuat ke atas fasal-fasal ini bagi memberi gambaran yang lebih jelas tentang kewajipan Firma untuk menanggung *Base Excess* yang ditentukan Syarikat Insurans. *Base Excess* bagi setiap Firma ada dinyatakan di Perkara 9 dalam Jadual Insurans Firma. *Base Excess* ini berkemungkinan meningkat mengikut keadaan mahupun peristiwa seperti yang dinyatakan di dalam Fasal 10.

Pernyataan bagi fasal-fasal ini telah diperjelaskan untuk memaklumkan kepada Firma yang tanggungan *Base Excess* TIDAK hanya terhad sebagaimana dinyatakan di Perkara 9 dalam Jadual Insurans Firma, tetapi ia juga akan melibatkan (jika ada) kenaikan ke atas *Base Excess* sekiranya Firma jatuh di dalam skop Fasal 10, dan sebarang jumlah yang tidak diinsuranskan contohnya, sebahagian daripada kos pembelaan yang tidak diinsuranskan mengikut Fasal 6(a).

B. Fasal 31 Baru – Bukan Penyebab

Hak Rakan Kongsi untuk mendapat ganti rugi dan perlindungan polisi sekiranya Rakan Kongsi yang lain gagal mematuhi mana-mana terma dan syarat yang ditetapkan COI dikekalkan di dalam Fasal 31. Ini termasuklah kegagalan membuat notifikasi tuntutan, dan juga kegagalan untuk bekerjasama dengan Syarikat Insurans.

Fasal ini tidak akan mempertikaikan hak Rakan Kongsi yang tidak bersalah sekiranya dia dapat membuktikan yang dia tidak mengetahui tentang kegagalan Rakan Kongsi yang bersalah; dan dia juga beranggapan terma dan syarat yang ditetapkan COI telah dibuat dan sebaik sahaja Rakan Kongsi tersebut mengetahui tentang kegagalan itu, dia hendaklah segera memaklumkan kepada Syarikat Insurans dan memberi kerjasama yang sepatutnya.

C. Fasal 33(n) - Pengecualian bayaran profesional dsb

Pengecualian yang dibuat sebelum ini, di bawah Fasal 32(n) menyatakan tiada sebarang kerugian yang akan ditanggung bagi "apa jua tuntutan bayaran balik untuk yuran, caj dan perbelanjaan profesional serta kos-kos berkaitan". Selepas melakukan semakan semula ke atas beberapa susunan kata yang digunakan di dalam Fasal 32(n), Fasal ini kini telah di tukar dan dinomborkan semula kepada Fasal 33(n), bagi memastikan pernyataan yang digunakan jelas menggambarkan tujuan asal polisi dibuat dan bukan sebagai respon kepada pertikaian komersial mengenai bayaran. Definisi "refund" juga turut disertakan di dalam Fasal 36 (p) bagi memberikan penjelasan yang lebih baik.

Jawatankuasa PII menggesa setiap Ahli untuk membaca dan memahami syarat dan terma yang ditetapkan di dalam COI mereka, termasuk dan terutamanya peguam baru dan lebih muda. Sekiranya anda kurang jelas dengan mana-mana bahagian di dalam Master Policy, COI dan Jadual, sila hubungi pihak Jabatan PII dan Pengurusan Risiko untuk mendapatkan kepastian. Segala pertanyaan akan dilayan sebaiknya.

Nota: Di bawah Skim Mandatori PII, perlindungan adalah tertakluk kepada terma, pengecualian, had dan syarat-syarat 'Certificate of Insurance'.

Terjemahan berkaitan 'Master Policy', 'Certificate of Insurance' dan contoh ilustrasi adalah sebagai panduan sahaja, dan sekiranya terdapat perbezaan antara Bahasa Inggeris dan terjemahan Bahasa Malaysia, versi Bahasa Inggeris akan digunakan.



RISK AWARE!

A REVIEW OF YOUR FIRM

Pengurusan risiko merupakan perkara yang sangat penting bagi setiap Firma. Pelaksanaan pengurusan risiko yang baik akan menjamin mutu perkhidmatan guaman yang terbaik dapat diberikan kepada klien. Ia juga dapat membantu melindungi Firma mahupun klien daripada perkara negatif yang mungkin mendatangkan kesan buruk terhadap mereka, contohnya disaman.

Sehubung dengan itu, Jawatankuasa Insurans Indemniti Profesional ("PII") telah mengembalikan semula program penilaian pengurusan risiko ke atas Firma guaman yang dilakukan dari Firma ke Firma. Inisiatif ini asalnya bermula pada tahun 2007 dan dikenali sebagai Practice Review Risk Management Audit. Selepas melakukan penjenamaan semula, ia kini dikenali sebagai *Risk Aware! A Review of Your Firm*.

Risk Aware! dijalankan oleh Pegawai dari Jabatan PII dan Pengurusan Risiko yang hadir dengan membuat pemerhatian ke atas proses operasi, prosedur dan sistem yang digunakan dalam Firma yang terlibat. Objektif utamanya adalah untuk membuat penilaian dan memberi cadangan mengenai operasi harian Firma tersebut. Harapannya adalah untuk mengurangkan risiko Firma daripada sebarang tuntutan. Sebagai faedah tambahan, satu sesi pengurusan risiko juga akan diadakan selepas penilaian dibuat oleh pegawai-pegawai berkenaan.

Risk Aware! telah memulakan kembaranya ke negeri Melaka dan Terengganu dengan penglibatan tiga buah Firma di setiap negeri. Firma-Firma yang terlibat telah dipilih secara rawak berdasarkan senarai peserta yang hadir ke bengkel pengurusan risiko yang dianjurkan oleh Jabatan PII dan Pengurusan Risiko sekitar tahun 2011 hingga 2015. Penilaian ini memfokuskan kepada Firma-Firma kecil yang terletak di luar kawasan Lembah Klang. Penglibatan Firma dalam penilaian ini dilakukan secara sukarela dan tiada sebarang kos yang dikenakan.

Penilaian ini meliputi empat peringkat iaitu; pra-temubual, temubual, laporan Firma, dan penilaian susulan (jika perlu).

Temubual dijalankan dengan individu-individu yang berkenaan di dalam Firma terbabit contohnya, Pemilik Tunggal atau Rakan Kongsi Pengurusan serta Pembantu Undang-Undang dan/atau Ketua Jabatan. Setelah mendapatkan semua maklumat yang diperlukan, satu laporan beserta cadangan akan disediakan berdasarkan pemerhatian awal yang telah dibuat oleh Pegawai yang terlibat. Jika perlu, penilaian susulan akan dijalankan untuk melihat sama ada cadangan yang telah diberikan sebelum itu diaplikasikan dalam urusan harian ataupun tidak.

Semua maklumat yang diperolehi daripada Firma yang terlibat akan dirahsiakan dan hanya akan digunakan untuk memberi cadangan, mengeluarkan statistik dan penyelidikan oleh Jawatankuasa PII. Pegawai yang menjalankan penilaian juga tidak akan menyentuh apa-apa perkara berkaitan dengan klien Firma tersebut.

Butiran yang terdapat di dalam laporan adalah:

1. Metodologi dan Struktur Firma- Metodologi atau kaedah yang digunakan dan huraian tentang struktur Firma itu.
2. Sistem Pengurusan Risiko dan Prosedur - Laporan ini menggariskan tentang isu umum berkaitan dengan beberapa bahagian dalam pengurusan amalan. Bahagian ini juga menghuraikan tentang pemerhatian dan komen terhadap teknik dan kaedah operasi Firma yang digunakan bagi mengenal pasti, menilai, dan mengawal risiko, serta cadangan untuk penambahbaikan.
3. Ringkasan Eksekutif - Menghimpunkan kesemua cadangan yang diberi.

Sekiranya Firma anda berminat untuk menerima kunjungan kami dan bersedia untuk dinilai, sila hubungi kami ditalian 03-2032 4511 atau emel kepada pirm@malaysianbar.org.my.

Risk Aware! A Review Of Your Firm, ingat mencegah itu lebih baik daripada mengubati!

Musuh Dalam Selimut

oleh Shafiq Sobri,
Jardine Lloyd Thompson Sdn Bhd

terjemahan oleh Azwa Zulsamli,
Jabatan PII dan Pengurusan Risiko,
Bar Council

Amnya, perkongsian guaman ditubuhkan oleh rakan kongsi dengan tanggapan yang baik. Mereka percaya bahawa mereka telah berjumpa dengan seseorang yang boleh dipercayai serta boleh berkongsi matlamat profesion dan kepentingan peribadi yang sama. Perkongsian ditubuhkan sebagai cara untuk berkongsi serta mengumpul sumber pangkalan klien dengan lebih banyak.

Walau apapun tujuan penubuhan tersebut, yang penting adalah hasrat untuk melihat perkongsian yang di usahakan berkembang dan terus maju pada masa akan datang. Namun begitu, bukan semua yang dirancang dalam perkongsian akan membuahkan hasil. Jika suatu ketika dulu, Firma tersebut pernah berada di kemuncak, dalam sekelip mata ianya boleh musnah disebabkan salah laku yang berpunca dari salah seorang atau beberapa rakan kongsi itu sendiri.

Kerjasama yang baik di antara rakan kongsi sangat membantu dalam meningkatkan kualiti perkhidmatan undang-undang yang diberikan kepada klien, di mana ia mungkin tidak akan berjaya jika dilakukan secara bersendirian. Rakan kongsi yang mempunyai tahap kecekapan dan profesionalisme yang tinggi dapat membantu untuk meningkatkan reputasi syarikat. Sebaliknya, rakan kongsi yang mempunyai masalah etika dan undang-undang seperti ketidakjujuran mahupun salah laku boleh menjejaskan reputasi Firma secara keseluruhan, sekaligus menjurus kepada masalah profesionalisme dan kewangan Firma.

Oleh yang demikian, setiap peguam perlu lebih berhati-hati dalam memilih rakan kongsi bagi mengelak sebarang kesulitan dan juga masalah yang boleh menjejaskan perkongsian itu. Sesebuah Firma boleh musnah sekiranya dikenakan tindakan undang-undang atau terdapat tuntutan terhadap Firma tersebut, akibat daripada ketidakaturan

Firma, tiada kerjasama antara satu sama lain, serta mempunyai rakan kongsi yang tidak mengekalkan tahap profesionalisme dan integriti yang tinggi. Namun, bagi Firma yang mempunyai sistem yang teratur dan rakan kongsi yang bertanggungjawab serta boleh dipercayai, masalah seperti ini mampu diatasi dan mampu mengukuhkan Firma tersebut berdasarkan pengalaman dahulu.

Sejak beberapa tahun kebelakangan ini, jumlah notifikasi yang diterima daripada Firma perkongsian oleh Syarikat Insurans amat membimbangkan - punca utama yang dikenalpasti adalah disebabkan oleh ketidakjujuran rakan kongsi. Walaupun salah laku yang melibatkan ketidakjujuran secara umumnya tidak termasuk dalam polisi, namun bagi rakan kongsi yang tidak terbabit atau tidak bersubhat dengan salah laku tersebut boleh dilindungi oleh polisi tertakluk kepada terma dan syarat di bawah Fasal 11 dari 2016 Sijil Insurans ("COI") dan polisi tersebut secara keseluruhan.

Amnya, bagi Syarikat Insurans untuk menentukan sama ada "rakan kongsi yang tidak bersalah" akan dilindungi di bawah polisi ini ataupun tidak, pihak Amalan Yang Diinsuranskan ("IP") hendaklah membuktikan bahawa rakan kongsi yang melakukan salah laku telah menjalankan amalan dengan peranan yang tulen, sama seperti rakan kongsi IP yang lain.

Dalam keluaran *Jurisk!* kali ini, kita akan melihat beberapa kajian kes mengenai tuntutan yang mendatangkan kesan buruk terhadap perkongsian. Panduan tentang pengurusan risiko yang terdapat di muka surat 29 turut membincangkan sedikit sebanyak pandangan dan juga cadangan yang boleh diambil oleh IP bagi mengelakkan tuntutan ketidakjujuran rakan kongsi dan isu-isu untuk dipertimbangkan yang boleh menjejaskan sesebuah perkongsian.

Biar Betul?

Joffrey dan Theon merupakan rakan kongsi di Firma Tetuan Baratheon & Associates, Amalan Yang Diinsuranskan ("IP"). Semasa Theon mula-mula menyertai perkongsian tersebut, tiada perjanjian perkongsian yang dimeterai di antara mereka. Sebaliknya, mereka memilih untuk bersetuju dengan perjanjian yang dibuat secara lisan mengenai peranan dan tanggungjawab masing-masing.

Theon merupakan rakan kongsi bukan ekuiti dan tidak memegang sebarang kepentingan benefisial di dalam Firma tersebut. Dia memperoleh pendapatan daripada yuran guaman yang dibayar oleh klien yang berurusan dengannya, berdasarkan jumlah peratusan yang dipersetujui oleh Joffrey. Walaupun Theon merupakan penandatangani bagi kedua-dua akaun pejabat dan klien, namun dia tidak mempunyai kawalan terhadap akaun mahupun buku cek Firma berkenaan. Penandatangani kedua hanyalah dibuat bagi memenuhi kehendak bank semata-mata.

Kesemua cek ditandatangani oleh Joffrey; dan tandatangan Theon hanya diperlukan sekiranya Joffrey tiada ataupun untuk perbelanjaan pelbagai tidak melebihi RM5,000.00. Selain itu, Theon juga tidak mempunyai akses kepada rekod perakaunan Firma dan juga penyata bank.

Suatu hari, Joffrey datang ke pejabat dalam keadaan bingung dan dengan cemas menjelaskan kepada Theon bahawa Penghakiman Ingkar ("JID") telah dikenakan terhadap Firma mereka. Theon sangat terkejut dan dia tidak mengetahui yang Firma berkenaan sedang berhadapan dengan kes saman!

Apa yang telah terjadi sebenarnya?

Fail tersebut telah dikendalikan oleh Joffrey yang mewakili Vendor dalam transaksi pemindahhakan. Namun, disebabkan dana yang tidak mencukupi dalam akaun klien Firma, Joffrey telah menghentikan cek tersebut. Joffrey turut mengaku yang dia telah membelanjakan wang tersebut untuk tujuan peribadi.

Walaupun didesak dan pelbagai tindakan susulan daripada Vendor, Joffrey masih lagi gagal menjelaskan baki yang dituntut. Disebabkan tiada jalan lain, Vendor akhirnya telah memfailkan saman terhadap Firma berkenaan serta menamakan Joffrey dan Theon sebagai Defendan. Theon langsung tidak mengetahui apa-apa tentang fail itu mahupun jumlah wang yang telah disalahgunakan oleh Joffrey. Joffrey juga mengaku yang dia tidak mahu melibatkan Theon dalam perkara terbabit kerana Theon tidak patut dipersalahkan sama sekali dan Joffrey telah cuba menyelesaikan masalah itu dengan vendor secara baik.

Joffrey turut mengaku yang dia telah menerima penyampaian writ itu bagi pihak Theon tanpa pengetahuannya. Marah dengan apa yang terjadi, Theon telah membuat notifikasi kepada Syarikat Insurans mengenai saman tersebut dan JID yang dikenakan terhadap Firma berkenaan.

Tetapi Kami Tidak Lagi Bersama!

Emily dan Victoria merupakan pengasas bersama bagi Tetuan Grayson & Co, Amalan Yang Diinsuranskan ("IP"). Selepas beberapa ketika dalam perkongsian itu, mereka mula tidak mencapai persefahaman mengenai pelan perniagaan Firma tersebut dan mengakibatkan jurang antara mereka semakin jauh. Emily kemudian mengambil keputusan untuk berpindah keluar dari pejabat utama dan menyewa sebuah pejabat berhampiran Firma itu.

Meskipun perkongsian atas dasar nama sahaja, mereka masih mengekalkan dan berkongsi bahagian-bahagian tertentu dalam menguruskan Firma tersebut, contohnya bayaran pentadbiran dan gaji pekerja dibahagikan secara sama rata. Mereka juga masih lagi memegang kedua-dua akaun pejabat dan akaun klien bersama-sama.

Beberapa bulan kemudian, Emily telah menerima berita bahawa Victoria telah digantung daripada beramal berikutan aduan yang dibuat terhadapnya. Bimbang jika reputasinya akan terjejas dengan berita penggantungan Victoria, Emily mengambil keputusan untuk membubarkan perkongsian mereka melalui Pembubaran Surat Ikatan. Tidak lama selepas itu, Emily menubuhkan Tetuan Thorne and Associate dan kekal sebagai pemilik tunggal Firma terbabit.

Dua tahun kemudian, Emily telah menerima Writ dan Penyata Tuntutan yang menamakan dirinya sebagai defendan dalam kapasitinya sebagai bekas rakan kongsi IP. Daniel, Pihak Yang Menuntut mendakwa bahawa IP telah terlibat dalam satu kes penipuan untuk menjual hartanah milik Daniel tanpa kebenaran ataupun pengetahuannya.

Daniel dan Victoria pernah bekawan baik. Sekitar tahun 2015, Daniel telah meminjam wang sebanyak RM300,000 untuk memulakan perniagaan daripada Victoria dan atas dasar kepercayaan, Daniel telah memberikan geran tanah miliknya kepada Victoria sebagai cagaran. Namun, Daniel agak sedikit lewat dalam membuat pembayaran balik kepada Victoria yang amat memerlukan wang pada ketika itu bagi membantu syarikat suaminya, BlueFields Ltd yang sedang ditimpa masalah. Oleh kerana keadaan genting ketika itu, Victoria mengambil keputusan untuk mendapatkan pinjaman bank dan menggadaikan hartanah Daniel sebagai jaminan.

Malangnya, BlueFields Ltd tidak mampu berdepan dengan bebanan hutang yang banyak dan terpaksa dibubarkan. Daniel hanya mengetahui tentang gadaian tersebut apabila pihak bank menyerahkan Saman Pemula kepada Daniel dan menuntut hak mereka untuk menjual hartanah tersebut. Selepas menyedari bahawa penggadaian itu telah dilakukan secara penipuan, Daniel akhirnya memfailkan saman terhadap pihak bank, BlueFields Ltd dan Victoria.

Emily langsung tidak mengetahui mengenai transaksi tersebut dan pada ketika saman itu dikemukakan, perkongsian antara mereka sudah tidak wujud. Emily juga turut mendapati yang nama Victoria sudah digugurkan dari daftar peguam. Tanpa lengah, Emily segera memaklumkan kepada Syarikat Insurans tentang apa yang telah terjadi.



Itu Masalah Awak, Bukan Masalah Kita!

Ron, Leslie dan Ann telah beramal bersama-sama di sebuah Firma guaman sebagai pembantu undang-undang selama beberapa tahun. Sepanjang berada di Firma tersebut, mereka telah menjadi sahabat baik dan sangat akrab. Mereka juga turut berkongsi kepentingan profesionalisme dan peribadi yang sama. Selepas membuat perancangan yang teliti, mereka mengambil keputusan untuk menubuhkan Firma guaman perkongsian sendiri iaitu Tetuan Swanson, Knope & Perkins, Amalan Yang Diinsuranskan ("IP"). Memandangkan jumlah klien di Firma itu semakin meningkat, mereka bersetuju untuk menubuhkan sebuah lagi cawangan di tempat kelahiran Ron di Johor Bahru dan Ron dipertanggungjawabkan untuk menguruskan cawangan tersebut.

Perkongsian itu akhirnya diuji apabila salah seorang daripada bekas klien mereka telah memfailkan saman terhadap Firma berkenaan atas sebab kecuaiannya. Semuanya bermula apabila Eagleton Construction Pte Ltd ("Eagleton") telah melantik Firma tersebut untuk memfailkan tuntutan saman terhadap klien mereka kerana tidak menjelaskan yuran guaman. Apabila tiba tarikh perbicaraan dijalankan, Ron, peguamcara yang dilantik tidak dapat hadir kerana kurang sihat dan mahkamah telah menangguhkan tarikh perbicaraan tersebut ke satu tarikh yang lain.

Pada hari perbicaraan sambung kes, Ron tidak muncul kerana bercanggah dengan tarikh perbicaraan kes yang lain. Oleh sebab itu, mahkamah telah mengambil keputusan untuk membatalkan saman terhadap klien Eagleton. Walaupun Eagleton kerap bertanyakan tentang status terkini, namun Ron hanya memaklumkan mengenai penangguhan kes perbicaraan tersebut kepada Eagleton tetapi tidak memaklumkan tentang pembatalan yang telah dibuat oleh pihak mahkamah. Ron turut merahsiakan perkara ini daripada Leslie dan Ann.

Selepas beberapa ketika, Eagleton memutuskan untuk melantik peguamcara yang baru dan mengambil alih kes tersebut daripada IP. Hanya pada waktu itulah, Eagleton mengetahui yang kes saman tersebut telah dibatalkan. Eagleton segera mengarahkan peguamcara yang baru dilantik mereka untuk memfailkan saman itu semula tetapi sudah terlambat kerana kes itu sudah terlalu lama.

Eagleton kehilangan peluang untuk menuntut kembali hutang yang berjumlah RM200,000 daripada klien mereka amat sukar diterima. Selepas Notis Tuntutan yang diberikan kepada Firma itu tidak mendatang hasil, Eagleton telah memfailkan saman terhadap IP atas sebab kecuaiannya dan menamakan semua rakan kongsi sebagai Defendan.

Saman berkenaan telah dihantar kepada ibu pejabat IP yang diuruskan oleh Leslie dan Ann. Leslie memilih untuk membuat pembelaan sendiri terhadap saman tersebut bagi mempertahankan perkongsian mereka. Walaupun Leslie telah memberi jaminan kepada Ron bahawa kes itu akan diuruskan olehnya, namun Leslie merasakan yang Ron sepatutnya bertanggungjawab atas kelakuannya dan menanggung liabiliti itu sendiri.

Dia membuat keputusan untuk memfailkan dua pembelaan berasingan tanpa pengetahuan dan persetujuan Ron. Leslie dan Ann juga telah berjumpa dengan Eagleton untuk berbincang mengenai penyelesaian agar liabiliti mereka digugurkan daripada saman tersebut. Mereka dapat mencapai satu persefahaman dimana Eagleton bersetuju untuk mengugurkan nama Leslie dan Ann. Manakala Ron pula kekal sebagai Defendan tunggal dalam saman tersebut.

Ron hanya mengetahui tentang penyelesaian yang dibuat antara Leslie dan Eagleton pada hari perbicaraan tersebut apabila Leslie memaklumkan kepada mahkamah mengenai perkara itu. Oleh kerana Ron kini merupakan Defendan tunggal, mahkamah telah menangguhkan kes perbicaraan bagi memberikan masa kepada Ron untuk melantik peguamcara yang baru. Akhirnya, Ron memaklumkan kepada Syarikat Insurans tentang saman berkenaan sehari sebelum perbicaraan dijadualkan.

Syarikat Insurans telah membuat beberapa penilaian daripada situasi tersebut untuk menentukan sama ada rakan kongsi yang lain perlu diberi perlindungan di bawah polisi ataupun tidak. Berdasarkan kelakuan Ron serta penyelesaian diantara Leslie, Ann dan Eagleton, Syarikat Insurans memutuskan untuk menolak tuntutan itu.

Saya Mengenalinya Bertahun-tahun Lamanya!

Michael telah membuat keputusan untuk menubuhkan perkongsian guamannya sendiri iaitu Tetuan Bluth & Finke, Amalan Yang Diinsuranskan ("IP") bersama rakan lamanya, Lindsay. Michael menguruskan ibu pejabat Firma tersebut yang terletak di Petaling Jaya, sementara Lindsay menguruskan cawangan mereka di Bangsar. Disebabkan jumlah klien mereka yang semakin meningkat, Michael bercadang untuk menambah tenaga kerja bagi membantu dalam urusan cawangannya. Dia teringat akan Tobias, rakan lamanya di Firma sebelum ini. Michael kemudian telah menawarkan kepada Tobias untuk menjadi rakan kongsi bergaji di Firmanya di Petaling Jaya.

Memandangkan mereka berdua sudah agak lama saling mengenali antara satu sama lain, mereka tidak membuat sebarang perjanjian perkongsian. Walaupun tiada perjanjian perkongsian yang dibuat antara mereka, Michael dan Tobias telah berbincang dan bersetuju tentang peranan, tanggungjawab, dan bayaran masing-masing secara lisan.

Salah satu perkara penting yang dibincangkan adalah setiap rakan kongsi hendaklah bertanggungjawab ke atas fail dan wang klien masing-masing. Disebabkan perkiraan yang sebegitu, hanya rakan kongsi yang mengendalikan klien tertentu itu sahaja tahu mengenai apa yang terjadi dengan fail yang berkenaan. Kesemua rakan kongsi di dalam Firma tersebut merupakan penandatanganan bagi akaun klien dimana salah seorang daripada mereka boleh menurunkan tandatangan diatas cek bagi akaun tersebut.

Suatu hari, Tobias telah dimaklumkan oleh kerani akaunnya bahawa pembayaran bagi salah satu klien Firma itu tidak dapat dibuat berikutan jumlah wang yang tidak mencukupi. Keliru dengan masalah itu, Tobias mengarahkan kerani akaun terbabit untuk menyiasat mengapa terdapat kekurangan wang dalam akaun tersebut.

Selepas membuat pelarasan penyata bank dan juga beberapa pertanyaan kepada pihak bank, jelas terbukti bahawa Michael telah beberapa kali membuat pengeluaran dari akaun klien. Tobias dan Lindsay telah cuba menghubungi Michael untuk mendapatkan penjelasan, namun panggilan mereka tidak dijawab dan Michael juga tidak hadir ke pejabat untuk beberapa hari.

Bimbang keadaan akan menjadi lebih teruk, Tobias dan Lindsay telah mengarahkan pihak bank untuk membatalkan nama Michael sebagai penandatanganan akaun pejabat dan klien. Mereka juga telah membuat aduan terhadap Michael kepada Majlis Peguam. Selain itu, mereka turut membuat notifikasi kepada Syarikat Insurans untuk kemungkinan sesuatu tuntutan dibuat terhadap IP berikutan masalah penyelewengan yang dilakukan Michael.

Memandangkan tiada perjanjian yang dibuat di antara rakan kongsi, Tobias terpaksa bersendirian menguruskan cawangan di Petaling Jaya. Oleh kerana jumlah penyelewengan yang dilakukan Michael agak besar, Tobias tidak lagi mampu untuk menampung kos perbelanjaan untuk menguruskan cawangan berkenaan. Bimbang kemungkinan penutupan cawangan itu, Tobias bertanya kepada Lindsay sama ada dia boleh menjalankan amalan di cawangan Bangsar atau tidak. Lindsay enggan menerima cadangan Tobias memandangkan Tobias hanya rakan kongsi bergaji dan cawangan Bangsar juga tidak mampu untuk menanggung gaji seorang lagi rakan kongsi.

Oleh kerana tiada pilihan lain, Tobias akhirnya terpaksa berpindah ke pejabat yang lebih kecil dan cuba sehabis baik untuk menyelamatkan keadaan. Sebagai satu-satunya rakan kongsi yang menguruskan cawangan tersebut, Tobias mula mempersoalkan liabilitinya sebagai rakan kongsi bergaji dan juga perlindungan insurans untuk dirinya sendiri sekiranya IP menerima tuntutan atau saman berkenaan kes penyelewengan Michael itu nanti.



Mungkin Saya Masih Belum Bersedia...

Alexis memulakan kerjaya undang-undangnya sebagai pembantu undang-undang di Tetuan Morello & Associates. Di situ, dia mula mengenali Piper, pembantu kanan undang-undang di Firma tersebut. Mereka terputus hubungan setelah Piper meninggalkan Firma itu untuk menubuhkan Firma guamannya sendiri iaitu Tetuan Chapman & Co. Selang beberapa tahun kemudian, mereka berjumpa kembali dan menyambung semula persahabatan yang telah lama terputus.

Secara kebetulan, Piper bercadang untuk mengembangkan Firmanya dengan membuka satu lagi cawangan dan menawarkan kepada Alexis untuk menjadi rakan kongsi Firma berkenaan. Yakin dengan kemampuan yang dia ada bagi mengendalikan kliennya sendiri, Alexis telah menerima tawaran tersebut dan ditugaskan untuk menguruskan cawangan yang baru. Nama Firma itu juga turut ditukar kepada Tetuan Chapman & Vause bagi menggambarkan perkongsian yang baru ditubuhkan.

Alexis dan Piper menguruskan cawangan mereka masing-masing secara sendiri serta mempunyai akaun pejabat dan akaun klien yang berasingan. Mereka hanya menjadi penandatanganan bagi akaun pejabat dan klien untuk cawangan mereka sendiri sahaja. Setiap cawangan tidak berkongsi keuntungan dan liabiliti, bahkan turut memfailkan cukai pendapatan yang berasingan. Mereka juga tidak berkongsi atau mengetahui fail klien di antara satu sama lain.

Sekembalinya Alexis ke pejabat selepas tamat tempoh cuti bersalin, dia telah membuat keputusan untuk mengurangkan jumlah klien yang diuruskan olehnya agar dapat meluangkan lebih banyak masa bersama bayinya yang baru lahir. Tidak lama selepas itu, Alexis mendapat tahu yang salah seorang daripada klien Piper telah membuat aduan terhadap Piper di Lembaga Tatatertib. Tanpa berlengah, Alexis telah menghubungi Piper untuk membubarkan perkongsian

mereka bagi melindungi dirinya dari segala kesan buruk yang mungkin akan dihadapi olehnya ataupun Firma mereka.

Walau bagaimanapun, Piper enggan berbuat demikian malah mendesak supaya perkongsian itu tetap diteruskan sehingga pengganti Alexis ditemui. Semasa Piper digantung dari menjadi peguambela dan peguamcara, Alexis telah membubarkan perkongsian mereka dan menubuhkan amalannya sendiri iaitu Tetuan Vause and Co.

Setahun kemudian, Alexis telah menerima salinan Writ, Penyata Tuntutan dan Penyata Pembelaan yang dihantar oleh Piper, dimana mereka berdua telah dinamakan sebagai Defendan, bersesuaian dengan kapasiti mereka sebagai bekas rakan kongsi di Tetuan Chapman & Vause. Pihak yang menuntut, bekas klien Piper mendakwa bahawa lebih wang sebanyak RM300,000 yang telah dibayar untuk duti setem dan pendaftaran bagi Memorandum Pindahan, gagal dipulangkan semula oleh Firma tersebut.

Alexis menyedari bahawa kertas kausa yang disampaikan ke cawangan Piper itu adalah ketika mereka masih lagi menjadi rakan kongsi. Sewaktu bertanyakan mengenai saman tersebut, Piper mengaku bahawa dia telah melantik seorang peguamcara untuk memasukkan pembelaan dan memfail pembelaan yang sama bagi mereka berdua. Piper juga mengaku yang dia telah menyalahgunakan wang tersebut dan berjanji kepada pihak yang menuntut untuk melangsaikan hutang berkenaan secara ansuran setiap bulan.

Piper turut mengaku yang dia telah menerima penghantaran kertas kausa itu bagi pihak Alexis. Alexis sangat terkejut dengan pengakuan itu kerana dia langsung tidak mengetahui tentang fail berkenaan mahupun bersetuju dengan tindakan Piper melantik peguamcara untuk membela dirinya. Alexis kemudian terus membuat notifikasi kepada Syarikat Insurans mengenai saman tersebut.

Ghaib Dalam Sekelip Mata

Tetuan Underwood & Partners, Amalan Yang Diinsuranskan ("IP") telah ditubuhkan pada tahun 1996. Ibu pejabat Firma itu yang terletak di Petaling Jaya diuruskan oleh Frank, manakala cawangan mereka di Ipoh diuruskan oleh Claire, sementara Douglas pula di Johor Bahru.

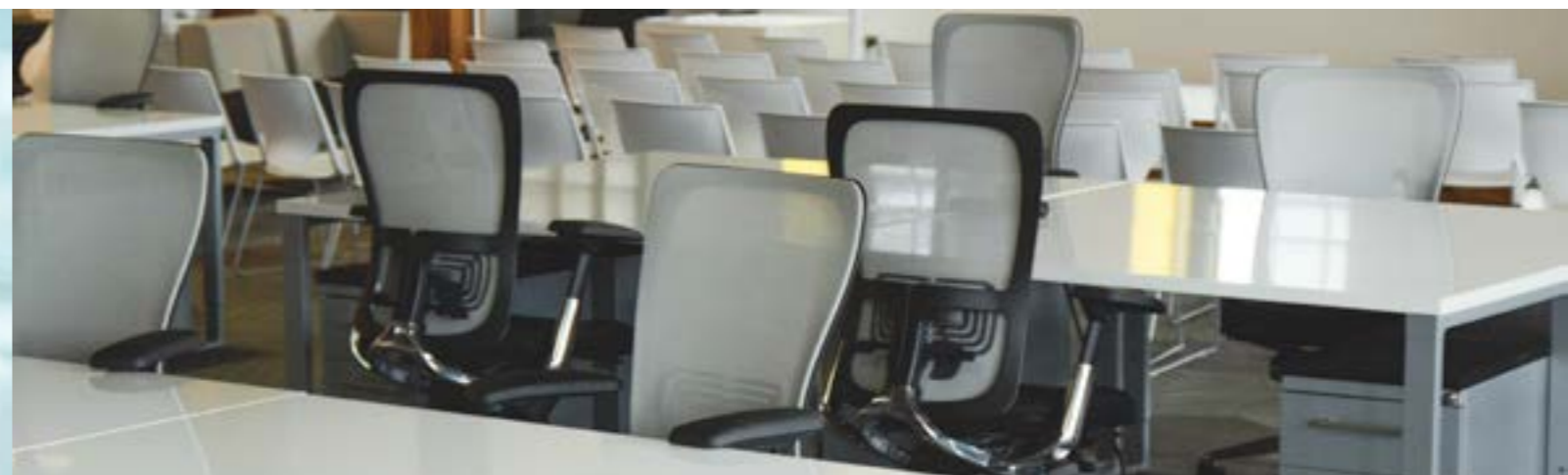
Douglas telah dibawa masuk sebagai rakan kongsi pada tahun 2010 apabila Firma itu membuat keputusan untuk menambah satu lagi cawangan di Johor Bahru. Namun begitu, Douglas hanyalah rakan kongsi pada nama sahaja dan dia tidak berkongsi apa-apa keuntungan mahupun kerugian Firma tersebut dengan rakan kongsi yang lain. Dia menguruskan cawangan itu bersendirian tanpa pengawasan sesiapa dan tidak melaporkan apa yang berlaku di cawangan tersebut ke ibu pejabat. Cawangan itu juga mempunyai akaunnya sendiri dan Douglas merupakan penandatanganan tunggal akaun berkenaan. Pengurusan cawangan tersebut lebih ke arah milikan tunggal walaupun sebenarnya ia adalah perkongsian antara Douglas dengan rakan kongsinya yang lain.

Firma itu telah menerima Surat Permintaan ("LOD") pada akhir tahun 2015 menuntut bayaran balik sebanyak RM500,000 daripada Firma berkenaan yang dijanji akan diserahkan kepada penyewa berikutan penyerahan milikan kosong. Firma itu telah mewakili vendor dalam transaksi pemindahhakan yang melibatkan pembelian harta komersil. Penyewa sekarang menuntut pampasan untuk penyerahan milikan kosong memandangkan perjanjian penyewaan itu

masih sah di antara vendor dan penyewa. Vendor bersetuju untuk membayar pampasan kepada penyewa berkenaan dan mengarahkan Firma untuk mengeluarkan cek atas penyerahan milikan kosong tersebut. Walaupun selepas pemilikan kosong diserahkan, Firma tersebut masih gagal untuk memberikan cek tersebut kepada penyewa terbabit.

Fail pemindahhakan ini diuruskan sendiri oleh Douglas di cawangan Johor Bahru. Apabila rakan kongsi yang lain cuba untuk menghubungi Douglas, panggilan mereka tidak berjawab. Mengesyaki sesuatu yang terjadi, mereka segera ke Johor Bahru bagi mencari Douglas di cawangannya. Setibanya mereka di sana, mereka mendapati bahawa cawangan tersebut telahpun ditutup. Mereka juga mendapati terdapat notis di pintu hadapan cawangan itu yang meminta semua klien untuk menghubungi ibu pejabat bagi semua perkara yang tertangguh. Douglas tidak memaklumkan kepada Frank, Claire mahupun Majlis Peguam mengenai penutupan cawangannya itu. Penutupan cawangan itu telah menguatkan syak wasangka mereka yang Douglas telah menyalahgunakan wang tersebut dan melarikan diri.

Frank dan Claire segera membuat notifikasi kepada Syarikat Insurans dan membuat laporan polis terhadap Douglas. Mereka berdua menyerahkan semua dokumen yang berkaitan kepada Syarikat Insurans bagi membantu siasatan dalam menentukan sama ada IP boleh dilindungi di bawah polisi ataupun tidak.



Dibawah Pemerhatian

Selepas beberapa tahun bermal, Max, seorang pembantu undang-undang di Tetuan Channing & Associate, Amalan Yang Diinsuranskan ("IP") telah ditawarkan untuk menjadi rakan kongsi Firma berkenaan oleh Caroline, pemilik tunggal Firma pada masa itu. Oleh kerana Max telah mengendalikan fail-fail berkaitan pemindahhakan sejak hari pertamanya di Firma itu, Caroline telah memberi kepercayaan kepadanya untuk terus menguruskan fail-fail tersebut sendiri dengan bantuan seorang kerani, Sophie. Caroline mengekalkan kedudukannya sebagai peguam litigasi dan mengendalikan semua fail-fail berkaitan litigasi di Firma tersebut.

Disebabkan keadaan kerja litigasi, Caroline menghabiskan sebahagian besar masanya dengan berjumpa klien dan menghadiri diri ke mahkamah. Max kemudian ditugaskan untuk menguruskan operasi harian Firma tersebut semasa ketiadaan Caroline di pejabat. Sophie melapor terus kepada Max kerana dia hanya mengendalikan fail-fail berkaitan pemindahhakan. Dua tahun kemudian, Max telah meletakkan jawatan sebagai rakan kongsi kerana ingin melanjutkan pengajiannya ke peringkat Sarjana di luar negara. Perkongsian tersebut dibubarkan dan Caroline sekali lagi menjadi pemilik tunggal Firma berkenaan.

Satu hari, Caroline telah menerima panggilan daripada salah seorang klien Firma tersebut yang merupakan vendor dalam transaksi jual beli dan bertanyakan tentang perkembangan pemindahhakan yang dibuatnya. Memandangkan Sophie mengambil cuti sakit pada ketika itu, Caroline terpaksa meneliti dan menyemak semula fail berkenaan sendiri.

Setelah menyemak fail terbabit, Caroline mendapati bahawa pembayaran telah dibuat daripada akaun klien untuk pendaftaran di pejabat tanah. Walau bagaimanapun, pemindahan itu masih belum didaftarkan meskipun bayaran telah dibuat. Hal itu terus menimbulkan keraguan kepada Caroline yang mengesyaki berlakunya penyelewengan.

Caroline mengambil keputusan untuk meneliti fail-fail lain secara rawak. Setelah disiasat, dia akhirnya mendapati bahawa sejumlah besar wang telah disalahgunakan dari fail-fail pemindahhakan Firma. Siasatan lanjut turut membuktikan bahawa penyelewengan itu telah dilakukan oleh Sophie sejak Max masih lagi rakan kongsi di Firma tersebut. Sophie kini telah pun meninggalkan Firma dan melarikan diri selepas kegiatan salah lakunya diketahui.

Menghadapi Risiko Dalam Perkongsian

Menguruskan perkongsian bukanlah semudah yang disangkakan. Perkongsian yang kukuh dan stabil adalah lebih dari sekadar berjabat tangan. Terdapat banyak perkara asas yang perlu diberi perhatian sebelum menubuhkan perkongsian. Bukan itu saja, usaha yang lebih juga diperlukan bagi mengekalkan dan memastikan perkongsian itu dapat bertahan lama.

Perkongsian tidak sepatutnya ditubuhkan atas dasar keselesaan semata-mata. Ia lebih kepada perkongsian dua mahupun lebih rakan kongsi yang mempunyai pemikiran yang sama, yang menginginkan sesuatu luar dari kemampuan mereka dan mengecapi kejayaan bersama-sama, bukannya berusaha secara berasingan.

Berikut adalah beberapa panduan yang boleh digunakan dalam menguruskan Perkongsian anda.



Perjanjian
Perkongsian



Memahami
Tugas



Memahami
Firma



Pengurusan
Firma



Pengurusan
Kewangan

Anda boleh membaca tips dan amalan terbaik dengan lebih terperinci dalam halaman berikut.



Perjanjian Perkongsian

Telah menjadi kebiasaan kepada kebanyakan peguam untuk menubuhkan perkongsian berdasarkan perjanjian atas budi bicara sahaja. Walaupun penubuhan perkongsian tidak memerlukan formaliti tertentu, namun para peguam digalakkan untuk membuat satu perjanjian perkongsian antara mereka yang sekurang-kurangnya meliputi beberapa perkara penting.

Perkara-perkara tersebut adalah termasuk menguruskan manfaat yang akan diterima oleh Rakan Kongsi, menyatakan tahap penglibatan setiap Rakan Kongsi, menentukan kadar faedah atau ekuiti setiap Rakan Kongsi serta proses perlantikan, penarikan diri dan pemecatan Rakan Kongsi.

Perjanjian perkongsian mungkin tidak diperlukan apabila anda berasa yakin dengan perjanjian lisan yang dibuat oleh Rakan Kongsi. Namun tanpa peranan dan tanggungjawab yang jelas, ia boleh mengakibatkan perbalahan antara Rakan Kongsi suatu hari nanti di masa hadapan.

Berikut merupakan maklumat penting yang perlu dimasukkan ke dalam Perjanjian Perkongsian:

- Nama perkongsian;
- Nama dan nombor pengenalan kesemua Rakan Kongsi;
- Jumlah pembahagian pegangan saham atau ekuiti setiap Rakan Kongsi;
- Peranan dan tanggungjawab setiap Rakan Kongsi;
- Peranan yang jelas dalam membezakan Rakan Kongsi pengurusan dengan yang lain;
- Perkongsian maklumat data (jika melibatkan cawangan lain);
- Apa yang akan terjadi kepada Firma sekiranya berlaku penarikan diri, pemecatan atau pembubaran.

Sekiranya terdapat tuntutan, Syarikat Insurans akan menentukan perlindungan bagi "Rakan Kongsi teraniya" di bawah fasal COI bagi kesalahan salah laku. Syarikat Insurans perlu memastikan bahawa Rakan Kongsi yang melakukan salah laku tersebut telah memainkan peranan dengan beramal secara tulen, sama seperti Rakan Kongsi yang lain. Syarikat Insurans akan mengambil kira beberapa perkara berikut:

- Borang Cadangan Skim Mandatori bagi Insurans Indemniti Profesional ("PII") Firma tersebut dan surat kepada Majlis Peguam semasa perkongsian ditubuhkan, dan maklumat mengenai kesemua Rakan Kongsi yang telah disertakan di dalam kedua-dua borang berkenaan.
- Nama Rakan Kongsi yang jelas tertera di kepala surat dan papan tanda Firma tersebut.



Memahami Firma

- Seseorang peguam dinasihatkan untuk memahami terlebih dahulu liabiliti, risiko dan akaun Firma sebelum menyertai perkongsian itu. Ini bertujuan untuk memastikan dia tidak akan dipertanggungjawabkan untuk sebarang masalah yang mungkin terjadi. Jika terdapat perkara yang meragukan di Firma itu, lakukanlah siasatan lanjut dan dapatkan kepastian daripada Rakan Kongsi yang sedia ada.
- Jika perkara yang mencurigakan mengenai Firma tersebut sangat menonjol, elakkan dari menjadi Rakan Kongsi.
- Perkongsian atas dasar keselesaan adalah sangat berisiko. Sewaktu menubuhkan perkongsian, setiap peguam hendaklah lebih berhati-hati dalam memilih Rakan Kongsi. Rakan Kongsi yang tiba-tiba berubah boleh memburukkan nama Firma, serta menyebabkan kerugian pada Firma itu sendiri.
- Sebelum menceburkan diri dalam perkongsian mahupun membuka cawangan baru, setiap peguam digalakkan untuk mengambil kira risiko dan liabiliti yang bakal ditanggung perkongsian itu nanti.



Pengurusan Firma

Perkongsian yang tulen akan membolehkan rakan kongsi mengawal pengurusan Firma dan cawangannya dengan lebih baik. Ini berikutan kesemua rakan kongsi akan lebih bertanggungjawab dengan peranan masing-masing sebagai rakan kongsi di sesebuah Firma itu. Sistem semak dan pembahagian tugas yang sama rata antara rakan kongsi dapat memastikan tidak ada seorang rakan kongsi tertentu sahaja yang boleh mengawal sesuatu perkara, contohnya akaun.

- Cadangkan satu sistem seliaan yang memerlukan kesemua rakan kongsi memaklumkan maklumat terbaru tentang fail yang dikendalikan kepada rakan kongsi yang lain. Ini dapat memastikan rakan kongsi tersebut tidak terlibat dalam urusan yang berisiko dan menyebabkan kerugian serta mencemarkan nama baik Firma.
- Cadangkan prosedur dan kawalan dalaman yang membantu dalam pengurusan perkongsian yang lebih berkesan. Rakan kongsi hendaklah mengawasi antara satu sama lain bagi memastikan mereka patuh kepada undang-undang dan etika yang telah ditetapkan.



Memahami Tugas

- Dari konteks undang-undang, tidak terdapat perbezaan di antara Rakan Kongsi bergaji, Rakan Kongsi berkomsen mahupun Rakan Kongsi berekuiti. Setiap seorang daripada mereka perlu berhadapan dengan liabiliti Firma itu secara bersama. Bagi salah laku yang dilakukan oleh Rakan Kongsi mahupun pekerja, tindakan akan dikenakan secara bersama dan berasingan. Oleh yang demikian, adalah sangat penting bagi kesemua Rakan Kongsi untuk memahami tugas masing-masing bagi mewujudkan sifat amanah, jujur dan yakin antara satu sama lain.
- Dalam perkongsian, kesemua Rakan Kongsi bertanggungjawab ke atas kewajipan fidusiari masing-masing dan perlu bijak dalam mengambil tindakan bagi kepentingan bersama. Selain itu, mereka juga tidak boleh mengeksploitasi keadaan dengan cara memalsukan kenyataan, menyembunyikan perkara sebenar ataupun memberi tanggapan yang buruk tentang perkongsian itu.
- Kesemua Rakan Kongsi Firma tersebut bertanggungjawab terhadap tuntutan yang dikemukakan sama ada secara

bersama mahupun berasingan. Walau bagaimanapun, sekiranya terdapat hanya seorang Rakan Kongsi yang bertanggungjawab atas sesuatu tuntutan itu, kemungkinan untuk berlakunya konflik dikemudian hari adalah besar. Masing-masing akan cuba untuk melepaskan diri daripada tuntutan tersebut. Oleh itu, adalah lebih baik sekiranya mereka berbincang dan mencari penyelesaian bagi mengatasi konflik tersebut agar kepentingan mereka dilindungi.

- Setiap Rakan Kongsi perlu menanggung segala hutang bersama-sama sekiranya tuntutan itu dikenakan semasa Rakan Kongsi terbabit masih lagi berkhidmat untuk Firma tersebut. Perbuatan salah laku atau kelalaian, penyalahgunaan wang atau harta yang dilakukan semasa urus niaga dijalankan seperti biasa akan menyebabkan semua Rakan Kongsi terlibat. Justeru itu, amat penting bagi seseorang peguam itu untuk meneliti semua perkara sebelum membuat keputusan untuk menubuhkan perkongsian.



Pengurusan Kewangan

- Bagi Firma yang mempunyai cawangan, pastikan laporan kewangan cawangan berkenaan sentiasa dikemaskini ke ibu pejabat, terutama sekali hal berkaitan akaun pejabat dan juga akaun klien. Rakan Kongsi boleh memohon supaya penyata bank dihantar terus ke ibu pejabat dan juga cawangan berkenaan untuk membuat pelarasan serta semak dan imbang akaun terbabit. Semakan ini boleh mengenalpasti sekiranya terdapat percanggahan di antara kedua-dua akaun dan siasatan awal boleh dijalankan.
- Wujudkan satu sistem yang sesuai untuk semak dan imbang serta asingkan penggunaan wang pejabat dan klien di antara Rakan Kongsi. Ini dapat mengelakkan wang tersebut dari bercampur aduk dan sukar dikesan. Sebagai contoh, keperluan dua tanda tangan bagi proses pengeluaran cek.
- Untuk sebuah Firma yang kecil pula, pelarasan penyata akaun yang dibuat setiap bulan mungkin agak rumit dan selalu diambil mudah oleh Rakan Kongsi. Oleh yang demikian, Rakan Kongsi perlu mengambil sedikit masa untuk memastikan pelarasan akaun berkenaan dilakukan dengan teliti dan imbalan bagi setiap transaksi adalah tepat.
- Firma juga harus memastikan yang cawangan beroperasi sama seperti amalan yang dijalankan di ibu pejabat. Ini merangkumi laporan standard yang diperlukan berdasarkan prestasi kewangan Firma berkenaan, termasuklah akaun pejabat dan akaun klien.
- Arahkan pihak bank untuk menghantar satu salinan penyata ke ibu pejabat bagi tujuan pelarasan. Pada kebiasaannya, setiap cawangan mempunyai akaun pejabat dan akaun klien mereka sendiri. Oleh itu, adalah penting untuk setiap Rakan Kongsi memaklumkan kepada Rakan Kongsi yang lain tentang status kewangan cawangan masing-masing dan perkongsian secara keseluruhan.
- Jika terdapat cawangan yang diuruskan oleh hanya seorang Rakan Kongsi, penanda tangan kedua dapat membantu mengurangkan risiko penyalahgunaan wang di cawangan tersebut kerana akaun klien tidak dikawal sepenuhnya oleh hanya seorang Rakan Kongsi. Sistem semak dan imbang ini juga dapat memastikan ketelusan dalam mengendalikan akaun klien berkenaan.
- Mungkin agak tidak praktikal untuk mengekalkan dua tanda tangan Rakan Kongsi yang menjalankan amalan di dua cawangan berasingan, namun ia merupakan satu langkah yang bijak. Mereka harus ingat bahawa pengurusan yang baik dapat melindungi Rakan Kongsi dari menanggung salah laku Rakan Kongsi yang lain.

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