

RISK management QUARTERLY



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

Introduction

The Bar Council appointed Jardine Lloyd Thompson Sdn Bhd (JLT Malaysia) as the broker for the Professional Indemnity Insurance Scheme for 2005.

Editorial

We are pleased to announce that working together with JLT Malaysia, we have initiated the Risk Management Publication on a quarterly basis for the benefit of our Members.

The Bar Council is conscious of the shortcomings of our mandatory Scheme and we intend in the coming year to take control and manage the Scheme effectively for the benefit of our Members and the profession as a whole.

An important aspect of managing the Scheme is to put in place a comprehensive and effective Risk Management programme.

The Bar Council and JLT Malaysia are committed to ensure that the Risk Management programme is successful and we hope that the number of claims would be reduced, thereby ensuring reduced premiums for all!

We have a full time Risk Manager, Ms Corrinne Wong on board at the Bar Council and we believe that with cooperation from JLT Malaysia and the insurers, we can achieve our goal of reducing incidents of claims and creating awareness within our Members for a professional and reduced risk working environment for all!!

Ragunath Kesavan
Secretary
Bar Council Malaysia



“There are risks and costs to action. But they are far less than the long range risks of comfortable inaction. “

John F. Kennedy

Who is JLT

Jardine Lloyd Thompson Sdn Bhd (JLT Malaysia) is a recognised market leader in specialised risk solutions; offering a broad range of insurance and reinsurance intermediary services, risk management advisory and consultancy services to corporations, governments and institutions. In Asia, JLT employs over 500 insurance and risk solutions specialists in China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Philippines, Singapore, Taiwan, Thailand and Vietnam.

Jardine Lloyd Thompson Group Plc (JLT) is the world's fifth largest insurance broker and the largest European-based broker quoted on the London Stock Exchange.

The Risk Manager

The Bar Council working with JLT Malaysia have placed strong emphasis on the importance of effective risk management and will provide assistance to the Bar Council's newly appointed Risk Manager, Corrinne Wong. JLT Malaysia will co-ordinate the development of a Risk Management Programme together with her.

Corrinne joined the Bar Council on 17 January 2005. She has spent last 10 years in various banking departments of both local and foreign banks in Malaysia. She has an LL.B (Hons) from University of London. Corrinne's responsibilities include the setting up of a comprehensive and efficient Risk Management programme for the Professional Indemnity Insurance (PII) scheme for the Malaysian Bar. She will also be involved in monitoring the operation of the PII scheme and propose suitable measures for its overall improvement – i.e. improvement in claims experience leading to lower premiums, excesses and better coverage.

Risk Management Objectives

The main objective of Risk Management is to promote the message that all legal practitioners must establish systematic practice management strategies which will reduce their exposure to complaints from clients and professional negligence claims.

The objectives of the Risk Management programme are:-

1. Risk Management techniques to allow the introduction of a fairer premium allocation system that does not overly penalise members who have claims.
2. To inform and educate the profession about the Bar Council's Professional Indemnity Scheme and its benefits.
3. To imbue the profession with an understanding of the concepts of risk management and the necessity of adopting a risk management culture in legal practice.
4. Provide information on practical systems, checklists and file management to minimise risk with emphasis on quality assurance.

What is Professional Indemnity Insurance?

All lawyers practicing in Malaysia are required to purchase Professional Indemnity Insurance (PII) in order to obtain their Sijil Annual from the Bar Council to obtain or renew Practising Certificates under the provisions of the *Legal Profession Act 1976* (Act 166). The mandatory insurance policy gives protection to:-

♦ LAWYERS

In respect of civil liability incurred in the course of conduct of the legal profession by a practice.

♦ CONSUMER/CLIENT

To ensure that innocent members of the public are compensated if they suffer loss through negligence of a lawyer or dishonesty of a partner.



"Management is efficiency in climbing the ladder of success; leadership determines whether the ladder is leaning against the right wall. "

[Stephen R. Covey](#)

What is a Mandatory Professional Indemnity Insurance Scheme?

The Legal Profession Act 1976, as amended, came into force on 1st April 1992. A new Section 78A was added to the Principal Act which empowered the Bar Council to make rules on professional indemnity insurance. The Bar Council made the Legal Profession (Professional Liability) (Insurance) Rules 1992 whereby the Bar Council would take out an insurance policy to provide indemnity against professional liability for all advocates and solicitors with effect from 1st July 1992. Under the Rules, every advocate and solicitor is obliged to be insured under the Policy.

The 2005 PII Scheme consists of:-

- a. A Master Policy arranged by the Bar Council, on behalf of Members of the Malaysian Bar, with the Insurer, Oriental Capital Assurance Berhad whereby the Insurer agrees to insure all Members in private practice in West Malaysia.
- b. Individual Certificates of Insurance 2005 and its Schedules, issued to Members/practices in accordance with arrangements under the Master Policy following payment of the premiums by Members/practices.

- c. Under the Scheme, insurance will be provided to all lawyers who are allowed to practice by the Bar Council, no matter how adverse their claims history. The insurance for such lawyers is, however, subject to a Claims Loading.
- d. The Scheme provides cover from minimum mandatory Limit of Indemnity of RM250,000.00 for a 1-lawyer practice, increasing by RM50,000.00 for every additional lawyer up to a maximum of RM2,000,000.00.
- e. The premium charged for each firm is determined by:-
 - ◆ The number of practitioners multiplied by the **Base Premium**;
 - ◆ The type of work the firm does i.e. **Hazard Loading**.

Statistics collected from the Malaysian Bar Claims records since 1992 indicate that these 3 areas of practice contributed the largest number of claims:

- (i) Civil litigation;
- (ii) Residential conveyancing, and
- (iii) Commercial conveyancing.

- ◆ The ratio of unqualified staff vs. number of lawyers i.e. **Responsibility Ratio**.



“Restlessness and discontent are the first necessities of progress.

[Thomas E. Edison](#)

If there is a large staff to lawyer ratio then there is a risk that the non-qualified staff may not be adequately supervised which could increase the risk of a claim arising.

- ◆ Their claims history/claims reserves i.e. **Claims Loading**.

Thus, two similar firms will not pay the same premium if one has a “NIL claims record while the other has a poor claims experience.

- ◆ The number of practitioners in a firm determines the mandatory Limit of Indemnity and the Excess applicable to the firm.

f. The Master Policy and Certificate of Insurance 2005 (together with the Schedule) provide details of the terms, conditions and exclusions of the insurance as well as the Excesses applicable under the Scheme.

g. The Master Policy is retained by the Bar Council on behalf of its Members. It may be inspected during normal business hours at the principal office of the Malaysian Bar Council situated at Lebuhr Pasar Besar, 50050 KUALA LUMPUR.

h. Each firm will be sent a Certificate of Insurance 2005 together with a Schedule and Appendices, if any.

i. The Schedule shows the mandatory Limit of Indemnity, Base Excess, Sub-limits for defamation and dishonesty of Partner, the Premium and the names of each practitioner covered under the Scheme.

j. In a mandatory Scheme, lawyers are not stand-alone risks. The Profession is viewed in its entirety and one member’s action affects other members. The rating structure of the Insurers is based on the performance of the Scheme as a whole. Ultimately, a PII Scheme is driven by the claims experience of the Scheme. Good housekeeping and attention to proper procedures by the insured practitioners/firms will minimise claims so that premiums can be kept at a realistic level.

k. In recognition of good practices, firms who have a 5-year claims-free record are rewarded with a No-Claim Bonus (NCB) of the premium.

l. Risk Management is important to each Member to manage their individual exposures, and even more so in a mandatory scheme as it helps to reduce the overall exposure of all Members. Hence, Risk Management will feature significantly in the Scheme for 2005 and the years ahead.



“The pessimist sees difficulty in every opportunity. The optimist sees the opportunity in every difficulty.”

[Winston Churchill](#)



The Risk Management Plans

- a. The PII Scheme Committee is working closely with JLT Malaysia for the implementation of a proper Risk Management programme in line with the Insurer's recommendation, which will greatly influence their review of the Scheme for 2006.
- b. The Programme is being developed with the aim of eventually establishing systematic practice management strategies which will reduce exposure to complaints from clients and professional negligence claims against firms.
- c. The Bar Council's Risk Management Quarterly Newsletter and JLT Malaysia's website for the Scheme will both serve as conduits to keep Members updated on the Scheme's Risk Management programme.
- d. The internet is an efficient and effective tool for the Risk Management Programme. As such, the use of web-based technology will be promoted and implemented. Members are therefore encouraged to develop their infrastructure to enable access to the internet and take advantage of the resources that will be made available.
- e. To kick-start the Risk Management programme, this flagship newsletter features articles explaining the PII Policy to familiarise Members with the terms and conditions of the Professional Indemnity Insurance Policy.
- f. Members can expect subsequent newsletters to be as informative and educational - dealing with pertinent aspects of risk management culture in legal practice. Topics and articles would include both preventive and remedial measures adopted by legal professions around the world.
- g. The Risk Management Quarterly intends to be an avenue for Members to source and share ideas and concerns in respect of best practice for the legal profession.
- h. The Programme will, in due course, be expanded to include Road Shows, Seminars and Professional Development Courses for Members.

"True peace is not merely the absence of tension: it is the presence of justice."

Martin Luther King Jr.

Frequently Asked Questions

2005 Insurance Renewal/PII Scheme –

A. PREMIUMS/COVERAGE

1. How do Insurers calculate my premiums?

Answer

The premium charged for each firm is determined by:

- a. The number of practitioners multiplied by the base premium;
- b. The nature of work the firm does i.e. **Hazard Loading**.
- c. The ratio of number of staff to number of lawyers i.e. **Responsibility Ratio**.
- d. The claim history/claim reserves i.e. **Claims Loading**.

Please note that the Mandatory Limit of Indemnity and the Excess for each firm is determined by the number of practitioners in the firm.

2. What is Hazard Loading?

Answer

Certain areas of legal work, such as residential and commercial conveyancing and civil litigation have historically seen a greater frequency and/or severity of claims. As such, Hazard Loading is applied based on the proportion of such work undertaken by a firm. This has been in place since 1992 when the Scheme was inception.

3. What is Responsibility Loading?

Answer

Responsibility Loading is determined by the ratio of unqualified staff-to-lawyers. This is based on the rationale that a high staff-to-lawyer ratio presents a risk that non-qualified staff may not be adequately supervised, increasing the risk of a claim arising.

4. What is Claims Loading?

Answer

The claims experience of each firm is taken into account to determine the Claims Loading, which is applied for 5 years from date of notification.

5. What is my “Excess”?

Answer

The excess is the amount a Firm has to pay in the event defence costs or a claim becomes payable. Please refer to Item 10 of the Schedule attaching to the PII Certificate 2005.

6. What is my Mandatory Limit of Indemnity?

Answer

The Mandatory Limit of Indemnity is determined by the Bar Council as per the Legal Profession (Professional Liability) (Insurance) Rules 1992. The current minimum Limit is RM250,000 for a lawyer, increasing by RM50,000 for each additional lawyer up to a maximum of RM2,000,000.

Please refer to Item 7 of the Schedule attaching to the PII Certificate 2005 which shows the Limit of cover for each claim notified.

7. What cover do I have if I am sued for Defamation or Dishonesty by Partner?

Answer

There is cover up to a Limit of RM250,000 in the aggregate for Defamation and up to a Limit of RM250,000 in the aggregate for Dishonesty of Partners.

Please refer to Items 8 and 9 of the Schedule attaching to the PII Certificate 2005.

8. If I employ lawyers, staff or take on a principal will it affect my premium?

Answer

Generally speaking, if the restructure is a restructure of your firm during 2005, you may expect an increase in premium in 2005/2006.

9. Do I get a refund if my employee leaves at any time during the insurance year?

Answer

There are NO refunds during a Policy Year as the insurance is on a claims-made basis.

10. Do I have to pay premium for employees who start after the assessment date?

Answer

YES.

11. Do I have to pay any extra premium if one of my employees changes status to a partner during the insurance year?

Answer

NO.

12. I employ a consultant – is he covered under my Policy?

Answer

A consultant is considered a practitioner of a firm within the Policy and will be covered under the firm's insurance. An independent contractor will not be covered.

An employee is defined in the Policy as:

- ♦ The Named Insured;
- ♦ Any past, present or future legal assistant in or consultant to the Practice;
- ♦ Any past, present or future individual (not included above) employed in the Practice under a contract of service or articles of clerkship or pupillage;

13. What if I cease to be a partner and become a consultant of the firm?

Answer

Inform JLT Malaysia and they will obtain an endorsement to acknowledge the change of status. Consultants are regarded as employees for the purpose of the insurance. The firm will then continue to pay a contribution for you each year.

B. CLAIMS

14. What do I do if my firm receives a Notice of Demand/Writ?

Answer

Please notify JLT Malaysia of the claim/circumstances. Their full address can be found in Clause 5.3.1 of the Certificate of Insurance 2005.

15. Will notifying a claim/circumstances affect my claims history?

Answer

YES.

It is essential that you notify JLT Malaysia if you or any of your principals or employees are aware, or reasonably should have been aware of:-

- ♦ a matter fact or circumstance that might give rise to a claim against you; or

- ♦ a claim made against you or your principals or employees.

The reason it is so important to notify promptly is that:-

- ♦ Under your Policy (Clause 5.2.1 of the Certificate of Insurance 2005), you are required to notify JLT Malaysia in writing as soon as practicable, but no later than 30 days of any claim made against you. In the event that late notification prejudices the conduct or settlement of the claim, your Policy requires you to indemnify the Insurer to the extent that the breach (i.e. late notification) has prejudiced them.
- ♦ If you do not notify promptly (and you purchase Top Up Insurance), the Top Up insurer may be entitled to decline the claim for non-disclosure.

When you do submit a written notification, you should discuss with the Insurers whether they intend to appoint a panel solicitor, and if they do (Clause 5.3.2 of the Certificate of Insurance 2005, within 14 days), you should enquire as what is likely to be involved.

16. If I become a principal/buy a firm, how can I ensure that I do not inherit its claims history?

Answer

We suggest that when you decide to purchase an existing firm, you may want to enquire into the professional standing and performance of that firm. In particular, to determine whether you might inherit that firm's claims history, you may want to request that the firm provide you with their "claims history" and of any prior claims of their practitioner/partners. Alternatively, you may conduct an audit of their files.

17. How can I sell my practice if it has claims?

Answer

We suggest that when selling a practice, you may want to ensure that you provide full disclosure of the assets and liabilities of the firm, including providing a claims history to the prospective purchaser. Your claims history may not necessarily have a negative impact on a prospective purchaser. Other factors that the prospective purchaser may take into account are the size and age of claims, and also the amount of premium your firm has paid over the same period.

18. If I have a favourable outcome will I get my claims loading back?

Answer

The Insurers do not refund claims loadings if there is ultimately a favourable outcome as they would have incurred substantial defence costs for the panel solicitors. Similarly, the Insurers do not retrospectively impose a higher claims loading/or attempt to recoup a higher claims loading if there is ultimately an unfavourable outcome. There may, however, be a reduction in the premium you pay next year if your claims history has improved, provided the underwriting criteria remain unchanged.

19. If I have a CLAIM, how is the Excess applied?

Answer

The Excess is applied to each and every claim relating to:-

- a. Defence costs, and/or
- b. Damages

You are required to contribute the amount of the Excess on the incurring of Defence Costs or on payment to a claimant.

The Excess is indicated in Item 10 of the Schedule attaching to the PII Certificate 2005.

C. NO-CLAIMS BONUS (NCB)

20. Why have I not got a No Claim Bonus (NCB) if I have been practicing for five years?

Answer

1. An NCB is given to all practitioners from their first year of practice provided they do not have any claims history in the past 5 years.
2. If you are a principal in a firm that has a claims history in the past 5 years and you leave it to start your own firm, you may not be entitled to an NCB.

D. RETIREMENT/DEATH

21. If I retire, how will my run-off work?

Answer

If a practice is closed (rather than being sold), run-off cover is provided under the annual Master Policy issued to the Bar Council. If you have sold your practice or you move with your files to another firm, that firm's insurance will provide cover for you.

22. I am planning to retire in 2005. What should I do with my application package, and what insurance coverage will be in place?

Answer

The Master Policy provides for retirement coverage. (Please see item 21 above.)

23. Do I get a refund if I retire at some stage during the insurance year?

Answer

NO.

24. I may be taking a leave of absence from my practice. Do I need to have insurance coverage? Should I be completing the application?

Answer

If the practice remains open during the period of your leave of absence, you need to be insured as per the rules made by the Bar Council. As such, you must complete the application for cover.

E. GENERAL

25. Are JLT Malaysia the Insurers?

Answer

No, JLT Malaysia is the insurance broker for the 2005 PII Scheme. The insurer for the Scheme is Oriental Capital Assurance Berhad.

26. When was JLT Malaysia appointed as the insurance broker for the Malaysian Bar Professional Indemnity Insurance Scheme 2005?

Answer

JLT Malaysia was appointed on 29 June 2004. Please refer to Bar Council Circular No. 29/2004, dated 21 July 2004.

27. How can I contact JLT Malaysia?

Answer

JLT Malaysia offices are located at
Suite 10.2 10th Floor
Faber Imperial Court
21A Jalan Sultan Ismail
50250 Kuala Lumpur

You can also contact them at:
Telephone No: +603 2723 3388
Facsimile No: +603 2723 3301

28. What services provided by lawyers does the Scheme cover?

Answer

The insurance provided by the Scheme covers the civil liability of advocates and solicitors admitted and enrolled under the Legal Profession Act 1976 (as amended to-date) in private practice in Malaysia. The cover will therefore apply to functions and services which are customarily and legitimately performed by lawyers in Malaysia.

Disclaimer Notice: In compiling the information contained in this newsletter the Malaysian Bar Council and JLT Malaysia 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 this 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 suggest that you refer to the Policy for the full terms and conditions.

For more detailed information, you should contact JLT Malaysia - Bar Council PII Department.



“One who asks a question is a fool for five minutes; one who does not ask a question remains a fool forever.”

[Chinese Proverb](#)



“New opinions often appear first as jokes and fancies, then as blasphemies and treason, then as questions open to discussion, and finally as established truths.”

[George Bernard Shaw](#)



Malaysian Bar Council

No.13, 15 & 17
Leboh Pasar Besar
50050 Kuala Lumpur
Malaysia

Peri Surat 12478
50780 Kuala Lumpur
Malaysia

Tel: 03-2031 3003
(Hunting Line)
Fax: 03-2034 2825,
2026 1313, 2072 5818

Email:
council@malaysianbar.org.my

We're on the Web!
See us at:

www.jltecsolutions.com/barcouncil

Next edition

- **Guide to Proposal form**
We'll walk you through each section of the Proposal form.
- **Summary of PII Scheme Main Terms for 2005**
Summary for your easy reference.
- **Claims Notification Flowchart**
We'll walk you through the claims notification process.
- **Information for lawyers who think a claim might be made against them**
Includes how to Notify Insurers and What steps Must be taken.
- **Members feedback**
- **More FAQs answered**



"Knowledge is of no value unless you put it into practice. "

Anton Chekhov

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.

Contact:

Risk Manager: Corrinne Wong
Tel: 03 - 2031 3003 Ext 190
Direct Line: 03 - 2072 1614
Email: corrinne@malaysianbar.org.my