



**Bar Malaysia
Malaysian Bar**

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**Circular No 263/2019
Dated 26 Nov 2019**

To Members of the Malaysian Bar

2020 Professional Indemnity Insurance: Top-Up Insurance to Cover Amount Exceeding Your Mandatory Limit of Indemnity

We refer to [Circular No 173/2019](#) dated 30 Aug 2019 entitled “2020 Professional Indemnity Insurance Renewal | Premium, Terms and Conditions”.

We encourage Members of the Bar to consider opting for top-up insurance to cover any amount exceeding your mandatory limit of indemnity.

An informative write-up prepared by the Professional Indemnity Insurance (“PII”) Scheme Broker, Jardine Lloyd Thompson Sdn Bhd (“JLT”) regarding top-up insurance is reproduced below for your reference.

Members who are doing work involving amounts exceeding your mandatory limit of indemnity are advised to opt for the top-up insurance as soon as possible upon renewing your PII, or before taking on a file involving such amounts. Members should consider the issues relating to top-up coverage before deciding on which top-up insurance provider to sign up with.

Should you have any enquiries about the top-up insurance, please contact JLT directly, by telephone at 03-2723 3241 or 03-2723 3388, or by email at mbar@jltasia.com.

Thank you.

**Kuthubul Zaman Bukhari
Chairperson
Professional Indemnity Insurance Committee**

Which Top-up Insurance?

Many firms buy Top-up Insurance to give themselves greater protection, and often because it is required by a client, eg a bank or property developer.

The question we would like you to consider is — what are you buying and could you be wasting your premium? Obviously, a competitive premium is important especially during difficult economic times, but are you getting your money’s worth?

Many products are marketed broadly as “follow-form”, but unfortunately the small print is important. We have seen several examples where law firms and their claims, settlement and even coverage processes have been hammered because their Top-up coverage and notifications do not fully align. So, before buying Top-up Insurance, check the quotation carefully and ask yourself the following questions:

(1) Does the Limit of Indemnity (“Limit”) apply to Each and Every Claim (“EEC”) or in “Aggregate”?

EEC gives you “more” overall cover as it replenishes your limit for separate and unrelated claims (this is the same basis as provided under the Malaysian Bar PII Scheme for both the Mandatory and Top-up Limits).

However, if you purchase Top-up insurance on an aggregate basis, remember to evaluate the cost benefits. It’s best to compare the cost of both options.

(2) What is the Retroactive Date under my Top-up?

This is important as it determines the date from which cover applies to the work you have done. In other words, the Insurer might not cover any work done before the retroactive date leading to a claim during the policy period.

Under the Malaysian Bar PII Scheme, a retroactive cover is **unlimited**, which means it covers all past work giving rise to a claim.

We have seen more than one example where the Malaysian Bar PII Scheme responds, but the non-scheme Top-up policy declines as they are providing a reduced retroactive cover.

(3) Do any sub-limits apply to my Top-up?

Claims arising from misconduct are commonly excluded. However, a sub-limited cover is provided for innocent partners not involved in the misconduct. Therefore, if the Top-up Limit is RM1,000,000, the sub-limit for misconduct cover specified in a non-Scheme Top-up Insurance may usually be RM500,000 whereas under the Malaysian Bar PII Scheme the full Top-up Limit purchased shall apply but in aggregate for misconduct claims.

(4) What is the basis of my defence costs under my Top-up?

For the Malaysian Bar PII Scheme, the Limit purchased goes towards any judgment / settlement while the defence costs are covered in addition to such Limit. Whereas for most non-scheme Top-up policies, the maximum payment by the Insurer for the judgment / settlement and defence costs is capped at the Limit.

(5) Claims notification, handling and management?

If you buy Top-up via the Malaysian Bar PII Scheme, a notification of a claim to the insurance broker, Jardine Lloyd Thompson Sdn Bhd (“JLT”), will constitute a notification to both your Mandatory and Top-up Insurance. The claim administrator, Echelon Claims Consultants Sdn Bhd and a panel solicitor will seamlessly manage the claims. However, if you effect Top-up from a non-scheme Insurer, you must notify them separately and make sure the subsequent claims process is understood and agreed by the respective parties.

(6) Does the Top-up Insurance follow the same terms as the Mandatory? What is “follow-form”?

Although a non-scheme Top-up Insurer may advertise as being “follow-form”, this can mean different things under different wordings. We have seen examples where the Malaysian Bar PII Scheme pays the full Mandatory Limit towards a claim but the non-Scheme Top-up

Insurer declined to pay the balance for their own coverage differences or based on a different interpretation or application of their policy clauses.

In conclusion, and like many things in life, the cheapest does not always equate to the best value for money (or peace of mind). Therefore, please evaluate what exactly you are paying for. You can also contact JLT, as we will be pleased to assist you with an impartial evaluation of the pros and cons of different market options on a “no obligation” basis.