

Professional Indemnity

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Know Thy Client

It is part of a lawyer's professional obligations to carry out customer due diligence checks. This is not a mere rote exercise; it is an essential step that allows you to identify your client. In addition to lowering the risk of being caught in anti-money laundering or terrorism financing activities, this will help you avert negligence claims.

Proper due diligence and know-your-client checks will enable you to identify the issues that need to be addressed and resolved. You will be better equipped to offer suitable advice to your clients.

We will in this issue of the Law Letter bring to your attention some claims scenarios pertaining to client identification, and offer some tips on what you can do to ensure your client due diligence checks are in order.

Joint Venture Agreement

Pursuant to the instructions of Party A, a lawyer drafted a joint venture agreement. Party A said that the other party, Party B, had his own lawyers to represent him in the agreement. Party A and Party B then attended at the lawyer's office to execute the agreement. The lawyer explained the terms of the agreement to both Party A and Party B, and added that he only represented Party A. Both Party A and Party B signed the agreement in the lawyer's presence.

Subsequently, Party A breached the agreement. Party B alleged that the

lawyer had acted for him as well and failed to protect his interests.

Sale Committee

A law practice acted for the consenting subsidiary proprietors ("the vendors") in the collective sale of a property. The option provided that the Strata Titles Board ("the STB") order was to be obtained by a certain date. At all times, the law practice took instructions from the Sale Committee.

The law practice filed the vendors' application to the STB for an order for the collective sale of the property. However, several Objectors filed applications which caused a delay in the hearing dates being fixed, which then made the original option terms unworkable. The law practice advised the Sale Committee to write to the STB to obtain a hearing date as soon as possible, and one of the Sale Committee members gave instructions to the law practice to write accordingly. The STB convened a full Board hearing.

However, it later transpired that some other members of the Sale Committee were unhappy with the letter—the representative had not discussed the law practice's advice with the remaining members before giving instructions.

Fraudulent mortgage

Calvin appeared at Lawyer's ("Jayna") office with instructions for Jayna to complete the mortgage of a property in favour of a bank. The bank had granted a loan to Trite. The property was registered in the name of a foreigner, Danny, who resided overseas. Calvin said that Danny held the property on trust for Calvin.

Calvin informed Jayna that another lawyer had prepared the mortgage documents for Danny and Trite. Calvin also handed over a Power of Attorney executed by Danny, purportedly prepared by the other lawyer. Calvin instructed Jayna to complete the mortgage. The latter asked Calvin to get Danny to sign the documents before a Notary Public in Danny's country. A few days later, Calvin and Trite came back to Jayna with the signed mortgage documents. Jayna witnessed Trite's signature and signed the Certificate of Correctness.

It later transpired that Calvin was a fraudster.

Some Good Risk Management Measures

You may wish to consider adopting the following measures, which can help you avert claims such as those described hereinbefore.

Internal checks

Use a standard Know Your Client ("KYC") checklist before starting on your retainer, so that you are satisfied that your client is a good risk. The Law Society of Singapore has provided a sample practical KYC checklist which you may adopt to suit your law practice.

Background checks

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For example, in a divorce matter

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Remember that taking the effort to check your clients is not a hurdle to your business development; rather, it is good for business because it minimises the risk of errors, thereby also minimising the cost, time and effort you may need to spend on dealing with such errors. It also gives you peace of mind that the clients you accept are good risks.

where your client is an individual, we may perceive a lower risk, and checking their original identification document may be all that is necessary. In contrast, if you are tasked to draft a trust deed involving new overseas clients and your instructions include holding large amounts of funds, you may wish to take further steps to ascertain the background of the parties involved.

In addition to general searches on online search engines, you may wish to conduct Accounting and Corporate Regulatory Authority (ACRA) searches to find out the shareholders and office-holders. From there, you may also wish to conduct cause book and/or Questnet searches to view the entities' litigation histories. Finally, there are various online databases which you can use to check if an entity has taken part in any illegal or suspicious activities.

Client's authority

With regard to entity clients, you may wish to meet the individual instructing you to ensure that he or she has the authority to give instructions, and check the appropriate identification documents. Further, in cases where one party is conferred authority by another, whether by a company resolution,

an Order of Court or a Power of Attorney, it is essential to check that your instructions fall within the ambit of the authority conferred.

Business contacts

There are instances where a client is known to you through a business contact. In such instances, you may wish to conduct a background check on the business contact. The relationship between the business contact and the client may be pertinent, such as in the following example:

An agent calls you and says he wants your firm to prepare the documents for a loan agreement between a lender and a borrower. You have never met any of the parties. You meet all of them the next day and your instructions are to draft the contract in two days, as the parties have already agreed on the terms of the loan agreement.

In such a scenario, there are a number of red flags which indicate that it may be worthwhile to carry out thorough searches into the relationship between the parties – namely the facts that the agent and the parties are new to you, that your instructions are to make haste, and that they will give you the pre-agreed terms to record. As you may anticipate, the risk is that you might become the victim of a group of creative

crooks who have colluded to stage a loan default, and then commence a claim against you in negligence for damages.

Obtaining the right information

Sometimes, a standard questionnaire may come in handy to extract relevant information from your clients. This would be especially useful in residential property conveyancing matters where you would need to ascertain your client's existing property ownership and intentions regarding the prospective purchase, in order to advise your client on their stamp duty payment obligations.

When a party is represented

If you are informed that one of the parties to a transaction you are handling is represented by another solicitor, do not attend to that party at all. You should not entertain that party even if he calls at your office on his own accord. You should liaise with that party only through his own solicitor.

Remember that taking the effort to check your clients is not a hurdle to your business development; rather, it is good for business because it minimises the risk of errors, thereby also minimising the cost, time and effort you may need to spend on dealing with such errors. It also gives you peace of mind that the clients you accept are good risks. ■

Day of Conveyancing Highlights 2017

Pitfalls in Conveyancing

Our Mr Nandakumar was honoured to be invited to speak again on the *Pitfalls in Conveyancing* at the Day of Conveyancing Highlights 2017 on 3 November 2017. By focusing on stamp duty mistakes, our segment became a coincidental sequel to our previous (July/September 2017) Law Letter which highlighted several recent notifications on the same subject. As our practitioners are well aware, stamp duty mistakes form a significant proportion of the number and quantum of notifications we receive. It bears repeating that some of these mistakes could have been avoided with better risk management. Therefore, we also provided some risk management tips and suggestions.

A novel feature of our segment was the interactive live polls with the audience. We presented two multiple-choice questions on the scenarios discussed and asked the audience to provide their answers (with their mobile devices) which were collated and displayed live, very much like general election results. Thankfully, most of the participants selected the correct answers.

