



**Bar Malaysia
Malaysian Bar**

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To Members of the Malaysian Bar

Professional Indemnity Insurance Scheme — Base Excess and Recovered Costs

This circular aims to answer queries Members of the Bar may have regarding base excess and how costs recovered by the Insurer in Professional Indemnity Insurance (“PII”) claims are utilised.

(1) What does “base excess” mean?

When a claim is made, you must pay for part of the liability: that is the “base excess” (“BE”). It includes legal costs of defence, any judgment sum or the quantum of settlement. The most you pay is the BE. The Insurer will pay all sums above the BE, but up to your firm’s mandatory Limit of Indemnity.

Please look at your firm’s Schedule of Insurance.

(2) How is the BE determined?

The BE is determined based on the number of lawyers in the law firm. For example, a one-lawyer firm pays RM10,000, and a three-lawyer firm pays RM25,000. For a firm that has over 48 lawyers, the BE reaches a maximum of RM250,000.

(3) Why is the BE required?

It is a global insurance practice covering all professions. Experience has shown that when a firm takes ownership of the risk of being sued, practitioners become more careful. A firm that is carefully operated reduces the risk of claims against it. When the firm accepts a part of the losses, the premium tends to be lower.

(4) Can I reduce the amount of the BE?

Yes. You can reduce the amount of the BE by paying a small, additional premium. During the renewal of the PII cover, you can cut your firm’s BE by half, but this is subject to any requirement for an increased BE (see Question 5 below).

For the year 2018, the additional premium is calculated based on the rate of 14% of the amount you wish to reduce. In 2016, the additional premium rate was 25%, and for 2017, it is 17.5%.

For example, if you are a single-lawyer firm, your BE is RM10,000. Should you wish to reduce your BE by half (ie 50%) to RM5,000, the additional premium that you have to pay is RM700, which is calculated by multiplying the reduced BE by 14%, ie:

(a) $RM10,000 \times 50\% = RM5,000$

(b) $RM5,000 \times 14\% = RM700$

In the event of a claim, all you have to pay is the BE amount of RM5,000, and no more (subject to any increase in the BE requirements — see Question 5 below).

The tables below illustrate a sample calculation based on firm size:

Item	Size of law firm (number of lawyers)	
	1 lawyer (RM)	3 lawyers (RM)
Mandatory Limit of Indemnity	250,000	350,000
Standard BE	10,000	25,000
Gross premium (subject to 6% GST)	1,190	3,570
Optional: reduced BE, ie half of the standard BE (subject to any increased BE — see Question 5 below)	5,000	12,500
Additional premium: 14% multiplied by the amount of reduced BE (subject to 6% GST)	700	1,750

Calculation of the premium payable	Size of law firm (number of lawyers)	
	1 lawyer (RM)	3 lawyers (RM)
Gross premium based on size of law firm (number of lawyers)	1,190	3,570
Additional premium for reduced BE	700	1,750
Total gross premium	1,890	5,320
6% GST	113.40	319.20
Total amount payable	2,003.40	5,639.20

(5) In what circumstances will the BE be increased?

Regardless of the answer to Question 4 above, a higher BE is payable on claims that exhibit any one of the three “high risk” characteristics, as described below:

(a) Conflict of interest in a conveyancing transaction

Where the law firm has acted for multiple parties in a conveyancing transaction and a claim is made against the law firm, the BE increases to RM100,000 (or double the amount of the firm’s BE, whichever is higher), up to a ceiling of RM300,000, unless you obtain a written waiver from the parties in the conveyancing transaction;

(b) Conveyancing transactions

The BE increases to RM50,000 unless one of the three exceptions below applies:

- (i) At the material time, you had in place a satisfactory risk management system for conveyancing transactions. For this purpose, it is enough to have used the Bar Council's conveyancing checklist, or any similar method; or
- (ii) You are not liable for the claim; or
- (iii) The claimant withdraws the claim against you.

(c) Dishonesty of Partner

If your partner commits misconduct (eg your partner is dishonest or engages in fraudulent conduct in the discharge of his/her duties), the BE payable is formulated in this manner:

RM20,000 multiplied by the number of partners, up to a maximum of RM250,000.

(6) What happens to costs awarded and recovered in my favour?

When costs awarded are successfully recovered, the Insurer deducts these costs against all legal fees paid for defending the claim (ie above the BE or any increased BE). Any balance is paid to your law firm. This reduces any claims loading.

Sometimes the Insurer may decide not to recover its legal costs. Your law firm is then free to pursue its recovery, and the Insurer will lose its right to those costs.

The information provided above is available in the Certificate of Insurance, Explanatory Note and FAQs at www.praktis.com.my. The Insurer also informs Members of the Bar about the BE during the annual policy renewal, through the PII Scheme Broker, Jardine Lloyd Thompson Sdn Bhd.

Should you have any enquiries, please contact Jardine Lloyd Thompson Sdn Bhd by telephone at 03-2723 3241 or by email at mbar@jltasia.com; or the Bar Council PII and Risk Management Department by telephone at 03-2032 4511, or by email at pirm@malaysianbar.org.my.

Thank you.

G K Ganesan Kasinathan
Chairperson
Professional Indemnity Insurance Committee