XXXX Inc Attorneys

Compliance Monitoring Plan

It is desirable to have dedicated practice and risk managers to free up the rest of the professional staff to bring in the fees. The practice needs to have its own comprehensive, well-co-ordinated risk and practice management plans and policies in place as part of its MOS. The practice's compliance monitoring plan incorporates, inter alia, policies and procedures for delegation and supervision, such as:

- A procedure for checking all incoming documents and correspondence, including e-mails. This may be time-consuming, but gives a good insight into what is happening in the firm and surprisingly often, an early warning of problems.
- The use of file audits/reviews need to be conducted regularly, particularly in the case of new or junior staff. It is a good idea, for risk management purposes, to review the files of even the most senior practitioners.
- Regular meetings or brain-storming sessions to discuss interesting or problematic matters and/or new legal developments. These can be very helpful in getting staff to discuss the problematic file.
- Effective mentoring systems, an open-door policy and the encouragement of mutual respect and openness between employers and the employed, which also tend to draw out problems while they are still manageable.
- Effective workload and time management;
- Integration of legal processes into IT workflow management programs;
- Non-judgmental and solution-focussed approach in providing feedback;
- Identification and tracking the completion of all corrective actions.

During the monitoring phase, although not strictly mandated, the compliance function should aim to assist the management in focusing on how business processes operate in order to identify areas where the quality of the processes can be improved.

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Different degrees and styles of supervision are required for different co-workers and different types of matters/duties. Secretary's lack of knowledge or experience in the field of the business's area of practice results in claims out of the failure to supervise paralegals. They far more often stem from a lack of formal legal training and lack of adequate supervision.

Claims are caused by ill-supervised secretaries, particularly ones who are left to draft documents that are not subsequently properly checked. Some delegation coupled with effective supervision which should empower while providing broad guidelines, appropriate training, review and constructive feedback, is required. The building blocks are inspiration, respect, openness, two-way communication and leading by example.

Supervision of candidate attorneys - generally speaking, a candidate attorney (CA) enters your offices knowing little or nothing about practice. S/he will probably know something about law, legal principles and research. Supervision of other professionals - it is no less essential that all other professional staff, ranging from associates through to senior managers should be supervised.

Your practice should have its own standardised procedures and minimum operating standards (MOS) that will allow for a seamless transition where a matter is handled by another person. If there is such standardisation, then the margin for errors and misunderstandings is substantially decreased.

Drafting of documents is an area in which there are often errors that lead to claims being made against practitioners. Problems often do not result from the attorney's lack of legal knowledge and expertise, but rather from errors that have crept in and not been picked up in time.

Every practice needs to ensure that the full responsibility for any given file does not fall onto the shoulders of only one person.   You might, for example, have a centralised diary system for your practice. You may perhaps have a system whereby both the secretary and the attorney keep a diary of the matters that need to come out of diary. Whatever your system, it needs to work effectively for you and your staff. It is an essential to have a system of file reviews or audits to pick up any possible problem at an early stage.

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Responsible Party

Very often practitioners rely heavily on efficient support staff. A good personal assistant is an asset that very few busy practitioners can do without. Because of this, practitioners sometimes lose sight of the fact that, although an assistant may be excellent at her/his job, s/he does not have the years of legal and ethical training that give the attorney an understanding of the broader issues surrounding a matter and any actions taken in that matter.

It can be a serious mistake to allow your assistant to become used to making unlimited, independent decisions and acting on them. Empowerment is important, but independence needs to be balanced with careful training, set boundaries and support. It is both a danger to your practice and unfair and demoralizing to support staff, when too much responsibility is assigned to them.

It is important that personal assistants and other support staff are warned about the dangers of giving out advice, information or documents in any matter or context. They should be encouraged to ask for help from professional staff.

The director should determine the level of risk the practice is able to tolerate in pursuit of its objectives. The limits should be assessed during times of increased uncertainty or adverse changes in the sector. The director is responsible for the monitoring of the implementation and design of internal controls of the legal practice. The internal control systems must be ingrained into the DNA of the practice.

The director is responsible for ensuring that stakeholders are made aware of risk-related information, and that the methodologies in place are able to anticipate risks. The director should promote a strong risk culture in the organization.

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Risk Drivers and Indicators

A messenger's lack of understanding about the consequences of failing to serve and file documents timeously and the security of trust funds handled by the practice, may result in serious legal, reputational and financial implications for the practice .

Examples of risk divers are:
* inadvertent errors made in the handling of matters;
* bad practice habits and non-adherence to your MOS;
* dishonesty and matters that have not come out on the diarised dates
  or have been filed away without a new date.

KRI's allow the compliance function to monitor major risks relating to the efficiency or performance of business processes. They allow the compliance function to monitor risks related to business operations and, as such, are useful for highlighting inefficiencies or poor performance in business process. An analysis of these indicators can help the compliance function develop better processes throughout the business and improve the process of risk monitoring.

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Risk identification and analysis

Risks often stand between you and reaching beneficial objectives. Without taking risks, you will never have the chance to innovate, change or develop your business. The purpose of risk management is to minimise unnecessary risks in pursuit of opportunities. There are two types of risks, i.e. pure risks and speculative risks. The former are the risks that you need to avoid, if possible, since there is no potential benefit to be gained from them or opportunity that can be exploited. A speculative risk has the possibility of either producing gain or a loss.

A risk must be identified, analysed and evaluated to be properly managed. It is necessary to take risks to make progress, and necessary to avoid risks to avoid disaster. The person(s) responsible for the practice must determine the level of risk that the business is able to tolerate. These limits should be reassessed during times of increased uncertainty or adverse changes in the sector. It is crucial to determine the level of risk tolerance and ensuring that appropriate risk responses are considered and implemented. The frameworks and methodologies in place should be able to anticipate risks. Risk culture determines the organisation's attitude towards risk. Poor risk culture can result in financial crisis. The different kind of risk the organisation has to contend with in pursuit of their objectives are regulatory risk and compliance risk. Regulatory risk focuses on consequences of failing to comply with certain requirements and compliance risk focuses on the failure of the systems and processes that were meant to ensure compliance.

The tools that are typically used in compliance risk identification and risk analysis are:
- Escalation triggers which serve to notify relevant stakeholders of potential problems, such as processes and systems that are increasingly prone to risk. Provided that specific triggers have been defined and agreed upon by the relevant stakeholders, when a problem reaches a certain level, those stakeholders will be alerted to the problem;
- Audit/review reports. The audit function is closely related to that of compliance function, and similar procedures and methods may be used by both entities to fulfil their objectives. One of the benefits of audit/review reports is that they may identify risks that fall within the scope of the compliance function;
- Self-assessment.

Example of risk analysis	Identification (Type)
Malfunctioning computer application,	System
Amendments to applicable legislation	External factors
Poor decision making	Process

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The risk rating assigned to each process provides the organisation with a reasonable idea of its probability and seriousness, which should allow the risk to be prioritised appropriately and scheduled for review as needed. The main considerations when determining the frequency with which core compliance reviews of business processes should be conducted, are the risk ratings attached to those processes and the extent to which the processes are likely to have changed.

Key risks to business objectives are strategic, operations, financial and compliance. The examples of the different types of risk to be monitored include:
- Malfunctioning computer application (systems) - operational;
- Amendments to the applicable legislation (external factors) - compliance;
- Accounting and reporting - financial;
- Planning and resource allocation - strategic

Risks are rated according to the severity of their impact on the long-term standing of a business. The impact may be reputational, legal , strategic or financial. The sheer number of regulatory requirements and the difficulty to interpret the regulations are contributing factors to the high risk of non-compliance.

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Support staff members also need to be made aware of the dangers of failing to immediately bring correspondence and other important documents and pleadings to the attention of the professional staff. Where important documents like notices of bar have been filed away without their having been brought to the attention of the attorney concerned, disastrous consequences usually follow!

Elements of control-framework that should be reviewed and engaged with on a highly frequent basis, e.g. weekly, if not daily, are action plans, detect controls and flow of information.
- Client complaint procedures to alert you at an early stage where there is any client dissatisfaction (detect controls);
- Checking activity on matters in the practice's financial records and diary system, regular accounting for the whereabouts of all client files (action plans);
- Proper induction, training and development of staff, and effective knowledge management (flow of information).

Detect controls are typically developed to identify problems that have occurred within a short period of time in order to minimise any loss that may result from them. For this reason they are used frequently, and may take the form of daily reviews or weekly checks on problem areas.

Back-stop controls are used during the monitoring of risk and are infrequent reviews, such as quarterly compliance report, that are intended to limit or minimise the loss incurred from the risk-related problems.

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