



Points to Consider when Formulating a Disaster Recovery Plan

The Law Society hopes that the following information will assist members to formulate an appropriate Disaster Recovery Plan should a devastating event occur. The severe respiratory disease associated with a novel infectious agent, imposition of quarantine orders and possible transmission or transmutation of the COVID-19 virus are examples of events that could seriously impact upon your business. Members are encouraged to review their practices and systems that could benefit from a Disaster Recovery Plan. The following information is intended to be “food for thought”, and should not be considered prescriptive.

A. Disaster Recovery Plan

1. Primary Objectives

The following points, which are not exhaustive, have been prepared to enable members to formulate appropriate risk mitigation strategies to minimize the effect of unforeseen events that can seriously disrupt their practices. Disaster can occur at any time and members should take the opportunity to formulate plans to match the needs of their own practices in order to minimize the impact of events over which they have no control. It is not the scale of the event but the impact on the business that should be reviewed.

2. Test run

Once a Disaster Recovery Plan has been formulated it would be prudent to conduct a test run so that any flaws can be analyzed and the plan be modified. If the plan remains theoretical and a disaster occurs it will of course be too late to deal with the shortcomings, thus extending the time your business will be out of action. It would be prudent to try and review the plan every 6 months taking into account useful feedback from your staff and to accommodate changes which may have taken place within the business e.g. new software applications, changes in key members of staff etc.

3. Events which may disrupt the practice can include the following:

- Office fire
- Physical destruction of the office
- Severe water damage from typhoons or water sprinklers

- Outbreak of diseases listed in the schedules of the *Prevention and Control of Disease Ordinance (Cap. 599)* or as announced by the HKSAR Government from time to time
- Computer virus
- Act of terrorism
- Acts of God

4. Disaster Recovery Measures

The objective of your plan is to enable your business to resume essential business operations as soon as possible after a potentially disruptive event. To formulate your plan, a review of the immediate, intermediate and extended recovery needs of the practice should be conducted.

The firm's records are vital and there are several measures which should be adopted to enable the firm to resume business as soon as practicable. Your firm's Disaster Recovery Plan should be stored off-site, in more than one safe location where it can be easily retrieved. Key management personnel should be given a copy of this document.

5. The IT capabilities of the practice

Consider e.g.

- Can your IT recovery programme securely store the firm's essential records and survive a catastrophic event?
- How much data loss can your practice tolerate?
- How can your IT system facilitate and support the recovery process?

References could be made to Principles 1.07 and 1.08 of the Hong Kong Solicitors' Guide to Professional Conduct, which set out guidance for using Information Communication Technology and Practising outside Hong Kong.

B. Risk management programme:

1. The following recovery strategies should be considered:

- Installation of operation software to enhance the running of the practice e.g. integrated programs for filing, accounts etc
- Consideration on the use of secure cloud storage of data
- Adoption of a centralised filing system to reduce risk, and improve the retrieval/access to important documents such as the office diary, documents, records upcoming completion dates and court hearings etc
- Updating the database of the firm's current files together with details of the assigned fee earners monthly or as necessary

- Scanning and storing all correspondence, incoming and outgoing electronically.
2. Back up
 - Consider the benefits of implementing an appropriate system for backing up the firm's work on a daily basis, including all operating files and accounts data.
 - Store the back up tapes and office operation software at a separate and secure location.
 3. Accounts and Banking information
 - Monitor the transactions of the client accounts and office accounts by way of online banking system.
 - Store the following at a separate and secure location:
 - Office accounts
 - Clients' accounts
 - Spare set of bank books and cheques
 - List of Bank Accounts
 - Contacts of the bank officers.
 - The firm's contingency plans should comply with the Solicitors' Accounts Rules.

4. HR Information

Store the following at a separate and secure location:

- Contact details for all employees
- Health insurance details for all employees
- Immigration information for overseas employees.

5. Computer Viruses

Consider maintaining a secure back up of your firm's data for:

- the last month of each year
- the latest month of the current year
- the last 7 days of the current year.

C. Establishing an Emergency Office

1. Action Plan

Assign discrete tasks to the key personnel in the practice. Giving people clearly defined tasks, and making everyone aware of each other's responsibilities, will minimise the stress that is experienced and promote recovery. The Action Plan and a list of contact details should be prepared, disseminated and discussed with key personnel to enable recovery to commence as soon as practicable.

Contact details for key personnel should be disseminated to all employees. Firms could consider preparing emergency contact cards with this information.

2. Emergency Office

In cases where the practice can no longer operate from the current office premises (e.g. when the office is affected by a quarantine order, or the floor where the law firm is located has been infected), contingency plans should be made to source alternative office space. This will enable time sensitive transactions to be conducted. In considering alternative office space, due regard must be given to confidentiality and privacy of clients' matters as required under Law Society Practice Direction D5.

Reference could also be made to Rule 4A of the Solicitors' Practice Rules (Cap. 159H) concerning presence of solicitor to supervise the office.

3. Legal Stationery

A supply should be set aside for use in an emergency. It would be useful to prepare a soft copy of the firm's letterhead so that plain paper can be used if necessary. Reference is made to Law Society Practice Direction D2 as to signature of post by way of physical signature or electronic signature (See Electronic Transaction Ordinance Cap 553).

4. Informing Clients

The contingency plan should include plans to inform clients of the event affecting the practice and provide contact details as soon as possible by email or fax, where possible, especially in relation to those matters which are time sensitive e.g. conveyancing completions and court hearings.

Particular personnel could be assigned responsibility for informing particular clients.

5. Provisions in Agreements

In order to protect the firm in the case of a disaster, a standard contingency clause, for example in conveyancing transactions to "suspend time from running", could be drafted and included in your documents.

Members may wish to consider the following points when drafting such a clause, which are provided as examples only:

- Imposition of an Isolation Order under the *Prevention and Control of Disease Regulation (Cap. 599A)* making it impossible to
 - gain access to the firm's offices
 - gain access to the property
- Suspend time from running until expiration of the Isolation Order
- Agreement on when the suspension of time expires

- Agreement on the time for performance of completion
- Automatic suspension of time upon the happening of a specified event such as a fire or flooding arising from a typhoon.

Members are encouraged to inform their clients of their contingency plans/fall back arrangements ahead in cases which they deem necessary, preferably in writing. Members should also consider to discuss with other parties to the transactions ahead about their contingency plans/fall back arrangements in cases which they deem necessary and seek mutual consent thereto, preferably in writing.

D. Disclaimer

This paper is for guidance only and was prepared to assist members in organising their thoughts in relation to a Disaster Recovery Plan. The purpose of such a plan is to minimise the impact of an unforeseen event on members' practices. It is, however, the responsibility of each individual member to consider the needs of their practice, and its ability to cope with an unexpected and potentially devastating event.