

**Results of the survey on the impact of
the Solicitors (Professional Indemnity) (Amendment) Rules 2001
on Solicitors Firms in Hong Kong**

Total number of questionnaires collected: 180

- Question 1: Type of your firm:
- | | | |
|---|----|----------|
| Sole Proprietor: | 70 | (38.89%) |
| Partnership(2-5) | 90 | (50.00%) |
| Partnership(6-15): | 10 | (5.56%) |
| Partnership(over 15): | 7 | (3.89%) |
| Partnership(without stating no. of partners): | 3 | (1.66%) |
- Question 2: Type of practice of your firm with regard to conveyancing:
- | | | |
|-----------------------------|-----|----------|
| No conveyancing: | 14 | (7.78%) |
| Some conveyancing: | 129 | (71.67%) |
| Up to 50% conveyancing: | 33 | (18.33%) |
| Predominately conveyancing: | 3 | (1.67%) |
| No answer: | 1 | (0.55%) |
- Question 3: The present increase in contribution to Solicitors Indemnity Fund means the contribution of your firm will be:
- | | | |
|-------------|-----|----------|
| 5% or less: | 109 | (60.56%) |
| over 5%: | 70 | (39.44%) |
| No answer: | 1 | (0.01%) |
- Question 4: How the increase would affect the financial position of your firm:
- | | | |
|--------------------------------|----|---------------------|
| Not significantly: | 15 | (8.33%) |
| Will cause some difficulty: | 87 | (48.33%) |
| Will cause serious difficulty: | 67 | (37.22%) (remark 1) |
| Fatal: | 10 | (5.56%) (remark 2) |
| No answer: | 1 | (0.56%) |
- Question 5: Your firm would favour the following form of insurance /indemnity:
(can choose more than one option) (total no. of answers: 212)
- | | | |
|--|----|----------|
| No change except as reflected in the Amendment Rules | 6 | (2.83%) |
| Mutual fund but with adjustment | | |
| a) Reduction for those firms without claims | 46 | (21.70%) |
| b) Variation reflecting the type of practice | 11 | (5.19%) |
| c) Both | 50 | (23.58%) |
| Qualified insurer Programme | 69 | (32.55%) |
| Some other schemes | 30 | (14.15%) |

Remark (1):

Out of the 67 respondents who claim the increase will **cause serious difficulty** to their firms:

A) Type of firm:

Sole proprietor:	28 (41.8%)
Partnership (2-5):	36 (53.73%)
Partnership (6-15):	2 (3%)
Partnership (over 15):	0 (0%)
Partnership (without stating the no. of partners):	1 (1.47%)

B) Type of practice with regard to conveyancing:

No conveyancing:	2 (3%)
Some conveyancing:	50 (74.63%)
Up to 50% of conveyancing:	9 (13.43%)
Predominately conveyancing:	6 (8.94%)

Remark (2):

Out of the 10 respondents who claim the increase will be **fatal** to their firms:

A) Type of firm:

Sole proprietor:	4 (40%)
Partnership (2-5):	6 (60%)
Partnership (6-15):	0 (0%)
Partnership (over 15):	0 (0%)

B) Type of practice with regard to conveyancing:

No conveyancing:	1 (10%)
Some conveyancing:	2 (20%)
Up to 50% of conveyancing:	6 (60%)
Predominately conveyancing:	1 (10%)

Comments under Q5 and Q6 of the survey on Solicitors (Professional Indemnity) (Amendment) Rules conducted by Ms Margaret Ng

No	Comments
3	<p>Q6. The bulk of the claims was caused by and will continue to be caused by conveyances not perusing title deeds. If ONE were to peruse title, he could only handle about 22 cases per month whilst if he does not peruse title. He can handle over 22 cases per day by leaving the typing work to his clerks. If he doesn't peruse title, he can work on a case at \$2, 000.00 per case since they will only be getting the maximum gross costs of \$44,000.00 per month. The problem is the end result of the removal of the scale charge and such scenario had been encountered in England many years ago and is now repeated in Hong Kong with thanks to the last A.G. of the British Regime.</p>
4	<p>Q5. I prefer mutual fund but with adjustment as a first choice and Qualified Insurer Programme as 2nd choice.</p>
5	<p>Q6. Insurance should provide for no claim discount or bonus like motor insurance to encourage solicitors to observe proper standard and to act fairly amongst those solicitors who never commit any professional negligence.</p>
7	<p>Q6. Please consider "User pays" principle</p>
8	<p>Q5. As over 90% of the claims are conveyancing business, it is unfair to those firms who only have little or even no conveyancing business to pay the indiscriminate high premium. On the other hand, there should have sufficient mutual fund to meet the claims in order to maintain public confidence to lawyers. We suggest to adopt a similar scheme of the travel agents that a compulsory levy of a percentage of the consideration of the conveyancing transaction be paid into a Conveyancing Indemnity Fund which will be exclusively used to meet claims of conveyancing business. Such scheme has the following advantages:</p> <ol style="list-style-type: none"> 1. Firms who have little conveyancing business will pay less; 2. A compulsory levy will give practitioner a clear message that the costs paid for the conveyancing transaction must reflect the risk; 3. Client's interest will still be protected by the Conveyancing Indemnity Fund; 4. Client will be willing to pay the levy if they know the levy are paying into an indemnity fund but not into the pocket of the lawyers; 5. There is no worry of any firm to practise at the mercy of insurance company.
9	<p>See attached</p>
11	<p>Q5. Any scheme as long as it can <u>reduce</u> the premium but only if it can reduce the premium. Q6. The danger to any change is that we might end up paying more for our insurance cover (small firms). Insurance runs on "law of large numbers" (I know cos I'm an insurance lawyer) The smaller the turn over, the higher the rate! Pls therefore "look before we leap"</p>
12	<p>Q5. The existing mutual scheme be replaced by open market cover</p>
16	<p>Q5. Open market insurance coverage with limit to be reduced to HK \$ 5million for each claim</p>

22	Q6. Poor quality of work brings about the increase of claims. The Law Society should take a deep review on how to maintain quality of fellow members.
25	Q6. It would not be difficult for us to obtain cover in the London Market independently of any Scheme operated by the Hong Kong Law Society at a cost considerably lower than we are now having to pay in order to subsidise the claims records of some other firms.
28	Q5. Incorporation of firm
35	Q6. Insurance cover for conveyancing work should be made an independent item.
38	Q6. What will the effect of HIH's demise be on SIF? Will AON's role as adviser and broker to SIF be independently reviewed?
39	Q5. Own choice with the approval of Law Society
41	Q5. Open market insurance depending on the result of independent review
45	Q5. Open up the market to other insurance companies willing to provide such insurance.
48	Q5. Without changes, small size firms will be eliminated
55	Q6. Laissez faire approach favoured. No justification for conveyancing firms enjoying subsidy.
57	Q5. Open the market to other insurers
58	Q6. See attached. <i>(Already presented to AJS Panel and therefore not included)</i>
62	Q5. The mandatory scheme should be abolished. The scheme is a nuisance and is silly, - as it stands given the present economic climate.
64	Q5. Reduction of \$10 million per claim to say \$ 3-5 million per claim, provided that clients are well informed of the decreased protection. Q6. Small firms dealing with clients' stake and interest in conveyancing or other matters seldom exceed \$ 2-3 million, \$10 million claims insurance is obviously over insured.
65	Q6. We would undertake not to do <u>ANY</u> conveyancing works if our premium could be decreased significantly. I do not have any false hope this time as I used to have e.g. as to scale charge, as to the registered title, as to advertisement of solicitors etc. Probably, the only way to solve this problem is <u>TO HAVE A SECOND LAW SOCIETY</u> .

67	<p>Q5. Each firm to place/ acquire indemnity insurance at such level prescribed in law.</p> <p>Q6. Law Society is in a very difficult position. After the WTC 911 attack the insurance they have placed in fact is not a bad deal. But the existing scheme is problematic esp. to firms (of which we are one) with no claim record whatsoever.</p>
73	<p>Q5. The insurance should be divided into different practice with different premium. So that we could adjust our practice to fit the premium appropriate to the firm let say, conveyancing bears the highest premium. We would drop it and if we come across a conveyancing case, we could buy an insurance on case to case basis.</p>
74	<p>Q5. (No claim bonus) different rates for firms with different emphasis on work, e.g. conveyancing work or open subject to individual negotiation.</p>
78	<p>Q6. The fees charged by legal firms for conveyancing are even less than the cost of insurance. We have recently received a fax offering us insurance cover for individual conveyancing transactions at a premium ranging from 0.25% to 0.5% of the purchase price. Very often than not, we charge far less than that.# # Effectively, the indemnity scheme or the profession as a whole is subsidising the general public in conveyancing transaction.</p>
79	<p>Q6. I think a variation reflecting types of practice may be difficult to fairly apply due to subjective information which might be supplied in describing the type of practice and percentage of different types. It would not be uniformly measured. Based on my experience so far on the PIS (Professional Indemnity Scheme) claims committee 90% of claims seem to arise from and conveyancing transaction, but I cannot... this with the Law Society Annual Report pie-chart which shows quite a high percentage of claims arising out of civil litigation.</p>
81	See attached
85	<p>Q6. Given the facts that a lot other professional bodies not having compulsory insurance requirement, it is hightime the present scheme should be replaced by some voluntary arrangements.</p>
87	<p>Q5. Free choice of separate insurer just like car third party insurance.</p> <p>Q6. The present scheme should be abolished immediately.</p>
91	<p>Q5. Allow more insurers to provide insurance.</p>
93	<p>Q5. Any scheme which may reduce the payment of premium.</p>
95	<p>Q5. Open market cover with indemnity limit reduced from \$10m to \$3m or \$4m for each and every claim.</p>
97	See attached <i>(Not included for reasons of privacy.)</i>

98	Q6. The increase of 130% in premium is totally outrageous, unreasonable, unfair and a severe blow to the profession as a whole.
100	Q5. There must be no claim bonus for firms without claims
102	Q6. Conveyancing has proved itself to be a high risk practice area. It can no longer be subsidised by low risk practice.
107	Q6. It is self evident that allowing qualified insurers to compete will result in smaller premiums.
109	Q6. A comprehensive review be conducted.
112	Q6. 1. The surge in huge insurance claims results from the abolition of scale charges. Please consider amending the Rules to restore the scale charge. 2. Please consider lowering the insurance cover from \$10m per claim to \$5m so as to lower premium.
117	Q5. In respect of conveyancing, please explore - whether a scheme of title insurance at client's cost will alleviate the solicitors' premium for conveyancing business. - Whether cover for conveyancing can be separately assessed so that solicitors not practising conveyancing need not bear the premium for it.
119	Q6. Help! Otherwise we shall all perish soon!
121	Q5. Further information would be needed before determining the appropriate change for HK.
122	Q5. Each firm can choose their own qualified Insurance company, so that morerate can be offered. Please urge the Law Society to reply the letter by Li, Wong & Lam dated 25/9/01 which a cc. copy that had been sent to you. Thank you. Please also urge the Law Society to explain the selection of Essar to be our monopolized insurance broker???
123	Q6. I note that claims relating to conveyancing work amount to 95 % of total claims and it is unfair that firms like us who do very little conveyancing works are penalised.
127	Q5. A scheme that is similar to the tourist industry such as adding a percentage to each bill and accumulate a fund to meet insurance claims.
129	Q6. The usual "Q.C. Clause" should be a condition <u>strictly</u> observed by the insurers to avoid damage to the reputation of the <u>firm</u> .
132	See attached.

153	<p>Q5. Open for enlightened suggestions</p> <p>Q6. All medium/ small solicitors' firms need assistance <u>now</u> in dealing with this matter which has... very hard given the present climate. The Law Society seem to sit ... say they sympathise... do nothing ...their...The Law Society takes over ... and only think they seem to take interest ... is to take an ... attitude towards us whoever complaints are</p>
154	<p>Q5. Lower premium for firm with no claim for 25 years</p>
155	<p>Q6. The government shall be responsible to pay for at least 70% of the insurance; because it abolished scale fees.</p>
157	<p>Q5. Current premiums are too expensive.</p>
159	<p>Q6. The claims are predominantly conveyancing files and it would cause injustice to firms (like me) not practicing conveyancing. We are literally subsidising them.</p>
160	<p>Q5. NCB system like motor car insurance. Those who makes no claim should receive better treatment.</p>
161	<p>Q6. In practice, we also buy substantial top up insurance so the HKLS (Hong Kong Law Society) minimum cover is not significant in the overall scheme of things.</p>
162	<p>Q5. No compulsory insurance is imposed (cf the profession of doctors).</p> <p>Q6. Let culprit firm(s) bear their own consequence of malpractice and not pooling resources of innocent law abiding firm(s).</p>
163	<p>Q6. It was said that the coverage raise from 5m to 10m was because of rise of property prices. I wonder if the coverage is lowered to 5m the premium could go down a bit?</p>
169	<p>Q5. We would favour a mutual fund with variation reflecting the type of practice, but with an overriding right to self insure subject to fulfilling minimum insurance requirements specified under the Scheme. There should be a levy on conveyancing transaction proportionate to the amount involved, and the amount of a firm's turnover related to conveyancing transactions given the proportion of claims that relate to conveyancing. Consideration should also be given to permitting law firms to operate under limited liability provided that minimum insurance requirements have been met.</p>
175	<p>Q6. The Law Society should provide members with more information about the scheme.</p>

176	Q6. Insurance requires to be removed from the Law Society's control. There is an obvious conflict of interest inherent in a mutual fund which it is plainly unable to deal with in a satisfactory manner.
178	Q5. (choose no change) because we are stuck with it since the Law Society signed an agreement for 5 years. Q6. I would like to make changes to the structure of the scheme and also to the manner in which....

ANNEX A

We are concerned about

- (1) the Board of SIF's unilateral decision to commit members to a fixed 5 year Contract without prior full explanation or members' endorsement.
- (2) the Law Society's failure (which was explained to only those members present at the Forum on 12 September 2001) that the hugely increased premia are for payment towards SIF's liability arising from the HIH liquidation.
- (3) The attached 3 letters (Erving Brettell of 27 August 2001 and Li, Wong and Lam of 17 and 27 September 2001) are a summary of the difficulties the Board of SIF/Law Society has caused members to face. *

(* Already presented to AJLS Panel
and therefore not included.

Margaret Ng)

Dear Sirs,

Re: Solicitors Professional Indemnity Insurance

I wish to make several additional points for thinking :-

1. The current indemnity covers \$10 million per claim. It favours firms having sizable deals and not majority of the firms which are small sizes and have a mixture of petty practices. The coverage can be desirably reverted to the pre-property boom period of \$5 million per claim. Of course, firms having sizeable deals can buy top-up by their own choice.
2. The current premium is assessed with reference to the gross fee of a firm. It does not reflect the reality that different deals are underlined with different levels of risks. Risks are not proportionate to the fee charged. Therefore, amount of premiums should be paid for different types of work. For instance risk of commercial and conveyancing deals are different from a criminal trial with Counsel instructed and a simple tenancy.
3. The premium is not transaction-based. Although it serves the purpose of indemnifying a client's loss, it is not reflected on the bill of cost. It is desirable to have a separate disbursement item of insurance levy on the bill based on the nature of the work and the amount of fee charged. A client may also be free to choose whether to get insured or not or to what indemnity amount he likes to be get insured.

Attachment

I have been in practice for more than 15 years. Only until recently, past and present council members of Law Society seldom sought the members' view on the operation of the Professional Indemnity Fund. The present scheme and/or any future collective insurance scheme (in particular the hundred million dollars of cash premium lying in the bank accounts) must be supervised by an independent committee comprising of at least two lay members, preferably representatives from the ICAC or the Judiciary.

The Law Society ought to disclose the identities of those solicitors who have made a claim against the scheme. Up till this moment, I am not aware of any information or statistics about, say, the number of paid claims of any particular firm of solicitor of which a council member is a partner/associate. In a nutshell, I do not have any information about whether any of the council members or employees or agents of the Law Society was/were in a position of conflict of interest when the Law Society decided to continue the present scheme when they well knew that the litigators would heavily subsidized the conveyancers and at least a small portion of the conveyancers would mostly likely agree to provide conveyancing services at cut-throat prices without regard to other fellow practitioners' liabilities to contribute to the scheme. Therefore the present or any future scheme ought to severely penalize the individual practitioner (as distinct from the firm of solicitors of which the claimant is the partner/associate) who (i) has more than, say, one claim in every 3 years; or (ii) has a claim of more than, say, HK1,00 million. It is time to "tidy our own house".

Margaret Ng
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[Original cover letter
and questionnaires]

To: All solicitors firms in Hong Kong
Attn: Senior Partner/Sole Proprietor

5th October 2001

**Re: Solicitors (Professional Indemnity) (Amendment) Rules 2001
("Amendment Rules")**

The LegCo Panel on Administration of Justice and Legal Services has in a recent meeting agreed to recommend to the House Committee of LegCo to set up of a sub-committee to scrutinise the Amendment Rules. To facilitate the work of the sub-committee which will have to operate under a very tight schedule when formed, I am sending the enclosed survey to you:

- (i) to collect information on how the proposed increase in contribution would affect law firms of different sizes and businesses; and
- (ii) to explore whether the existing scheme should be adjusted or replaced by alternative schemes and if so in what ways.

The information you provide and your suggestions will be essential to the proper scrutiny of the Amendment Rules. I therefore urge you to spare some time to complete the survey and return it to me by fax (2801 7134) if possible by **9 October 2001**.

While the survey results will be made available to the sub-committee and to LegCo Panels and Committees. If you wish the identity of your firm to be kept confidential, and known to me only, please indicate in your response and I will strictly respect it.

I thank you in advance for your kind co-operation and comments.

Margaret Ng

**SURVEY ON THE IMPACT OF THE
SOLICITORS (PROFESSIONAL INDEMNITY) (AMENDMENT) RULES 2001
ON SOLICITORS FIRMS IN HONG KONG***

1. Type of your firm:

- Sole Proprietor
- Partnership
 - 2-5 partners
 - 6-15 partners
 - over 15 partners

2. Please state the type of practice of your firm with regard to conveyancing:

- no conveyancing
- some conveyancing
- up to 50% conveyancing
- predominately conveyancing

3. The present increase in contribution to the Solicitors Indemnity Fund means the contribution of your firm will be:

- 5% or less of gross income
- over 5% of gross income

4. How the increase will affect the financial position of your firm:

- not significantly
- will cause some difficulty
- will cause serious difficulty
- fatal

5. Your firm would favour the following form of insurance/indemnity:

- no change to current arrangements other than those implemented in the Amendment Rules
- mutual fund but with adjustment:
 - reduction for those firms without claims
 - variation reflecting the type of practice
- Qualified Insurer Programme
- Some other scheme
(Please specify) _____

6. Any other comments: _____

(signed)

Name of Firm & Fax Number

***Please fill in and fax to Margaret Ng: 2801 7134**