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15 October 2001

Mrs Percy Ma
Clerk to Subcommittee
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mrs Ma,

Subcommittee on Solicitors (Professional Indemnity)
(Amendment) Rules 2001

I refer to the sub-committee meeting of the House Committee held on 10 October 2001 and your letter to us dated 10 October 2001. The Administration is requested to comment in writing, from the public policy angle, on the following issues raised in the meeting: -

(a) A reduction of the existing insurance coverage of \$10 million per claim to \$5 million or some other level

Under sections 73 and 73A of the Legal Practitioners Ordinance (Cap. 159), it is for the Law Society, with the prior approval of the Chief Justice, to make the Solicitors (Professional Indemnity) (Amendment) Rules. As a general rule, the Administration will not interfere with such rule-making. Only if the manner of such rule-making was clearly against the public interest would the Administration consider ways of protecting the public interest.

It is clearly in the public interest that there should be a requirement for professional indemnity insurance as provided under the Ordinance. The coverage of the insurance must also be adequate so that the public is assured that law firms have taken out at least a minimum amount of insurance.

At present, the indemnity coverage is up to \$10 million per claim. It is noted that one of the comments raised by some members of the profession is that there is a need to reduce the coverage to \$5 million for each claim in order to reduce the amount of insurance premium payable. We consider that to determine whether or not the amount of insurance coverage is adequate for the protection of consumers is a complex matter involving actuarial calculation and assessment based on data available to the Law Society and the insurance company. The Administration would not support a reduction in the minimum insurance coverage arranged by the Law Society unless there were compelling grounds for doing so. At this stage, no such grounds have been established.

(b) The impact on the provision of legal services in Hong Kong, in view of the impact of the increase in contributions on certain small local firms.

We are aware of the difficulty faced by the legal services industry during the economic downturn and we note from the survey conducted by the Hon Ms Margaret Ng that the increase in insurance premiums may have a fatal impact on some law firms. We consider that each law firm must make its own business decisions and decide how best to manage its operation. We take the view that a more effective and positive measure in solving the present financial difficulty is to create new sources of income for the profession. Since the beginning of last year, the Administration has been actively assisting the legal profession to explore new business opportunities arising from the Mainland's imminent accession to the WTO. We have been working closely with the professional bodies to explore ways to create new sources of income for the profession.

Meanwhile, it is in the public interest that clients are assured that any successful claims they may have against solicitors will be met. Adequate indemnity insurance must therefore continue to be a mandatory requirement.

Yours sincerely,

(Ms Kitty Fung)
Senior Government Counsel
Legal Policy Division