

Letterhead of THE LAW SOCIETY OF HONG KONG

From the President

15th September 2001

Dear Member,

PIS Members' Forum

The Members' Forum on the Professional Indemnity Scheme was held on 12 September at the Central Conference Center. It lasted for 3 hours and evoked a considerable depth of feeling from those present. A number of comments were made and suggestions put forward all of which will be carefully considered both by the Council and the directors of HK Solicitors Indemnity Fund Limited which is the company charged with administering the Scheme and the Fund.

The original purpose of the forum was to discuss the present position of the Fund following the collapse of HIH Insurance Group earlier in the year. Representatives from the Scheme's manager/broker, Aon, made a presentation based upon a projection of the assets and liabilities of the Fund including, in particular, those claims reserved from earlier years for which the Fund is now liable following HIH's collapse.

Inevitably at this time there are a number of variables such as the amount of investment income that may accrue to the Fund, the timing of payments to be made for cases concluded, the amount of those eventual settlements which may be more or less than the amounts reserved and any dividend received from the liquidator of HIH. However actuarial projections based upon historical data from past activities of the Fund and the scheme indicate that it will remain able to meet all claims at least until the year 2004. Obviously the position is being monitored on an almost daily basis and a decision will have to be reached eventually as to how the shortfall between the assets of the Fund and the claims required to be paid, can be met. Currently that shortfall is slightly less than \$375 million.

As practising members, we are all concerned at the sharp rise in contributions to be made to the Scheme. I do not like it anymore than anyone else but the harsh fact remains that unless the level of contributions is increased the Fund cannot pay the premiums for the insurance cover to be provided as well as meeting on-going claims commitments. The PIS was created for the protection of both the profession and the public and unless and until we can find a better substitute for it, if any, it is the duty of the entire profession to ensure that the PIS is able to continue to function.

I would remind members that the increases were presaged in my letter to members almost exactly a year ago and we held a Members' Forum at which the explanation for those increases was spelt out clearly by the Scheme managers. At the forum a resume of which was circulated to all members the consensus was an acceptance, albeit perhaps reluctantly, that a 5 year contract to give the stability of continued indemnity cover on terms known from the outset as well as meeting the demands of the insurers was the only realistic way forward. Following the discussion at the forum the Council proceeded with implementation of the contract for 5 years. In July of this year we published a circular setting out the proposed changes to the PIS Rules.

Members will no doubt have gathered from the news that an astronomical amount of payments will have to be met by the insurance companies worldwide after the horrifying events in New York and Washington this week. It is also anticipated that insurance companies will have to replenish their reserves by increasing the amount of premiums that they can collect. No one could have foreseen the recent tragic events but with hindsight, we should consider ourselves lucky at having secured professional indemnity cover with 4 years to run with a locked in premium.

At this week's forum members suggested ways of deferring the increase or paying by instalments. These will be looked at the Council meeting next week but my personal view at this moment is that deferral is not the solution. It would inevitably be the cause of an even bigger increase next year whereas under the current proposal the increase this year will establish the plateau above which there will be no need to increase contribution levels for the next 3 years.

Suggestions that the existing scheme should be terminated and replaced by a Qualified Insurers Programme have been put forward. The Law Society considered a similar proposal last year but came to the conclusion that there was then insufficient time before the date for renewal of cover in which to fully explore the points both for and against such a programme. However the proposal together with particulars of those professional indemnity schemes adopted in other jurisdictions will be looked at again in more detail.

From my own personal view, I believe that if the Qualified Insurers Programme were adopted hastily when insurance markets are hardening, many of our members would, if not initially but probably on renewal, be left to the "tender mercies" of the insurance companies which are in business to make a profit for their shareholders.

Our claims history as a profession, sadly, is against us in recent years. Members can do so much to improve that antecedent history by making sure that they do not act in such a way as to give rise to claims against themselves.

Yours sincerely,

Herbert Tsoi
President

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