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Solicitors, Agent for Trade Marks & Patents

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Date 日期: 17th September 2001**By Fax(2845 0387) & By Post**

Mr. Herbert Tsoi
The President
The Law Society of Hong Kong
3/F, Wing On House, Central
Hong Kong

Dear Mr. Tsoi,

Re: Professional Indemnity Insurance

I refer to the Forum on 12th September 2001 during which several members expressed their concern about the professional indemnity insurance scheme ("Scheme"), in particular the significant increase of insurance premium and the shortfall risk of over HK\$320 million exposed to the members due to the collapse of the reinsurance company, HHH, which was selected by our insurer!

As I mentioned during the Forum, conveyancing work has consistently required the highest claims value among the different practice groups within the legal industry in Hong Kong for the past 5 indemnity years according to Table 7 of the Professional Indemnity Insurance Report for 1999/2000 ("Report") while professional costs charged have fallen substantially during the same period. You also mentioned that your own firm would be paying at least 3% of business turnover as insurance premium.

I would like to reiterate the point that I raised during the Forum which also appeared to have strong support amongst the attendees that for The Law Society to require its members to pay such a high proportion of their business turnover as insurance premium appears to suggest that we are being charged an unreasonably high premium by the insurer chosen by The Law Society and, in order to overcome the problem, many members may have no choice but to aggressively undertake more legal work without properly assessing the professional risk.

In my opinion, a review of the current monopolistic professional insurance system is required in order to break this vicious cycle.

1. High Premium For Low-risk Work

Under the Scheme, our only insurer, Essar which monopolises the legal professional insurance market in Hong Kong, does not carry out any risk due diligence prior to writing the policies. This is certainly contrary to the standard professional practice concerning other insurance products, that usually require various relevant information from the insured-to-be, e.g. medical records, product specifications, and business records etc., depending on the insurance category.

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The purpose of an insurance company obtaining such information is to enable it to make an accurate assessment of the risks involved and to calculate the premium according to the risk factors whilst also taking into account the competition from other insurance companies in the open market environment.

Unfortunately, Essar only takes a very passive role to manage the Scheme even though its claims data clearly show that certain practice groups or operations compared to others in the industry carry an exceptionally higher business risk.

The following claims analysis is based on the data listed in Table 7 of the Report: -

Value Of Claims By Type Of Practice

	Indemnity Year					
	1997/98		1998/99		1999/00	
	Amount	%	Amount	%	Amount	%
Conveyancing	167,281,706	76.42%	320,629,680	90.78%	37,738,219	96.61%
Commercial	22,724,493	10.38%	13,100,206	3.71%	1,322,293	3.39%
Litigation	22,774,441	10.40%	18,911,944	5.36%	0	0%
Probate	4,901,538	2.24%	150,000	0.04%	0	0%
Landlord & Tenant	1,227,625	0.56%	0	0%	0	0%
Patents, Trademarks	0	0%	0	0%	0	0%
Tax Matters	0	0%	0	0%	0	0%
Others	0	0%	389,471	0.11%	0	0%

For the past 3 indemnity years, the claims ratio related to conveyancing work increased from 76.45% to 96.60% out of the total claims while its actual professional fees charged have fallen substantially, since abolition of the scaled fee system.

However, due to the "monopoly" Essar has, the market has been distorted as the low-risk practice groups and operations are forced to "subsidise" the insurance premium for the high-risk ones as shown in the above claims analysis. Essar, with its monopoly, has failed to minimise the insurance risk which a reasonable insurance company should do in an open market environment. I also make note of the obvious in that it is the members who are ultimately undertaking such insurance risk, not the insurer.

With the existing monopolistic insurance system and lack of risk-control by the insurer, it is inevitable that our professional insurance premium will continue to escalate.

2. Low Legal Fee For High-risk Work

The Scheme is a one-basket system. It does not accurately identify the different levels of risk carried by different practice groups and evaluate the business track records of individual firm's operations. Under this distorted insurance system, some members may not be aware that certain legal work carries higher professional risk, which should be compensated with higher professional fees!

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Unfortunately, Essar fails to alert the members about the claims development by adjusting the premium calculation to reflect the risks involved. To cope with the escalating insurance premium, various professional related expenses, e.g. CPD, practising certificate and membership fee etc. and other overheads, it is inevitable that some members would start to undertake more high-risk work with unrealistically low fees in order to "improve" their business volume without monitoring quality control of work done, as the risk is underwritten by the profession as a whole.

This leads to the lowering of professional standards which would inevitably be followed by an increase of negligence claims and higher insurance premium. The vicious cycle continues.

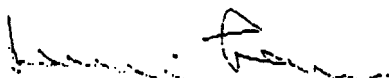
3. Conclusion

There are fundamental defects in this monopolised insurance scheme. It does not have a risk-control mechanism on the part of the insurer nor does it guide the members to be aware of the high-risk work and to carry out quality-control in their operations.

The purpose of our profession having a professional insurance system is to promote high quality legal services and not to penalise firms with good house-keeping records. I urge The Law Society to open up the professional insurance market. Let different levels of professional risk and firms' operational track records be properly assessed.

We need to break this vicious cycle!

Yours faithfully,



Dennis Lam

c.c. Ms. Margaret Ng- LegCo Member (Legal Profession Constituency)
The Council Members
Mr. Patrick Moss- Secretary General
All Members