

LC Paper No. CB(2)1689/01-02(01)**RE: SOLICITORS FIDELITY FUND****Background**

As early as 1995, the former Administration suggested that the Law Society should establish a "fidelity fund" to compensate those who suffer pecuniary losses from the dishonesty of their solicitors. It was considered that such a fund is needed in the public interest<sup>1</sup>. Despite lengthy discussion over the years, no such fund has been established in Hong Kong. Today, as it was 7 years ago, clients who suffer pecuniary losses could have no claims against any fund operated by the Law Society. The Solicitors Indemnity Fund only covers losses caused by negligent acts of solicitors, not fraudulent acts. In a letter to the Solicitor General, the Law Society warned that if the profession is required to finance the establishment and maintenance of a fidelity fund, this would cause serious hardship to a number of firms. Recent reports of dishonest acts of a few unscrupulous solicitors however have revived public interest in the establishment of such a fund. To protect client interests and to redeem professionalism, there is an urgent need to reconsider the former Administration's proposal. To shed light on the issue, the following would look at the experience of other common law jurisdictions, namely, the UK, the US, Canada and Australia.

**The U.K.**

In England and Wales, compensation funds have been set up under the Solicitors Act 1974 to compensate clients whose money has been misappropriated by their solicitors. The compensation fund can replace money which a solicitor has stolen or which the solicitor has failed to pay over to client. While there is no cap on the amount of compensation, the fund will normally compensate client only if he/she has no other way of getting his/her money back<sup>2</sup>. For instance, if the solicitors firm has closed down. The income of the compensation fund is consisted of various types of levies and assessments. Solicitors generally pay a levy of over £1000 each per annum to cover defalcation.

**The US**

Only a few US states have set up compensation funds. There is no national

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<sup>1</sup> See paragraph 7.22-7.23 of Consultation Paper on Legal Services, Attorney General's Chambers, Hong Kong, 1995.

<sup>2</sup> [http://www.lawsociety.co.uk/dcs/fourth\\_tier.asp](http://www.lawsociety.co.uk/dcs/fourth_tier.asp)

compulsion on any states to have a fund at all<sup>3</sup>. In the State of Connecticut, the Client Security Fund is a fund established by the rules of the Connecticut Superior Court to provide reimbursement to clients who have lost money or property as a result of the dishonest conduct of an attorney practicing law in the State of Connecticut. The income of the Fund consists of various types of fees. The Fund is financed by a fee collected from each attorney admitted to practice law in the State of Connecticut, as well as each judge, judge trial referee, state referee, family support magistrate, family support referee and workers' compensation commissioner<sup>4</sup>.

### Canada

All Canadian Law Societies maintain statutory compensation funds, exacting levies varying from nominal levels to several hundred dollars. The Law Societies match the level of levies with claims. Investment interest is also a significant source of income of Canadian compensation fund. In Ontario, the Law Society of Upper Canada established the Lawyers Fund for Client Compensation in 1953 to mitigate the hardship of clients who have suffered a financial loss as a result of their solicitors' dishonesty<sup>5</sup>. All Ontario lawyers contribute to the Fund through the annual dues they pay to the Law Society<sup>6</sup>. The fund is entirely financed by the profession with no contributions from clients or the government.

### Australia

All Australian states and territories have established fidelity funds to compensate clients whose money is misappropriated by their solicitors. The Australians, however, are unique in the way they fund their fidelity funds. For example, the Law Society of Victoria, one of the first Law Societies to establish a fidelity fund, used to finance its compensation fund by interest derived from client money. Until the reform brought by the Legal Practitioners Act in 1996, interest from client money was the major source of income of Victoria's fidelity fund. The Legal Practitioners Act 1996 replaced the old fund with a new Legal Practitioners Fidelity Fund<sup>7</sup>. The new fund is financed by annual levy collected from solicitors and interests from investment. The Law Society can charge each solicitor up to A\$1500 per annum. However there is no pressure to charge the solicitors anything more than just a nominal sum since interests from client money can still be used if there is any

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<sup>3</sup> For a more detailed analysis, see Adrian Evans, *The Development and Control of the Solicitors Guarantee Fund (Vic.) and its Ethical and its Ethical Implication Implications for the Legal Profession*, Chapter 3.

<sup>4</sup> <http://www.jud.state.ct.us/faq/attorney.html>.

<sup>5</sup> Section 51 of Society Act

<sup>6</sup> [http://www.lusc.on.ca/public/compfund\\_faq\\_en.jsp](http://www.lusc.on.ca/public/compfund_faq_en.jsp)

<sup>7</sup> Section 388 of Legal Practitioners Act 1996

insufficiency<sup>1</sup>. Even though interests from client money is no longer being treated as the major source of income of the Fund under the new regime, it continues to be the legal profession's backstop.

#### **Other Jurisdictions**

The professional bodies in New Zealand, South Africa, Malaysia and Singapore have all established similar fidelity fund to compensate clients who suffer pecuniary losses because of dishonest acts of their solicitors. Our legal profession appears to lag behind international standard.

DEMOCRATIC PARTY  
20th April 2002