

**Extract from minutes of meeting of the
Panel on Administration of Justice and Legal Services on 27 May 2002**

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V. Incorporation of solicitors' practices
(LC Paper No. CB(2) 2056/01-02(02))

29. The Chairman said that according to the Administration's paper, the issue remained to be resolved was whether solicitor corporations should be required to take out top-up insurance. The Administration's view regarding the issue of insurance was that, in the interests of consumers, adequate insurance coverage should be taken out by solicitor corporations.

30. The Chairman invited representatives of the Law Society of Hong Kong to give their views on the matter.

31. Mr Patrick MOSS said that the Law Society considered the cover provided by the existing Hong Kong Solicitors Professional Indemnity Scheme (PIS) was sufficient protection for the public. Under the current arrangement, the Hong Kong Solicitors Indemnity Funds Limited (SIF) provided coverage of \$10 million in each and every claim to its membership. Of this amount, SIF retained the first \$1.5 million of every claim and reinsured the remaining \$8.5 million. In addition to the mandatory \$10 million insurance coverage, it was not uncommon for some larger solicitor firms to take out additional indemnity insurance. Mr MOSS pointed out that whilst there might also be a claim against the solicitor corporation in contract, it would be subsumed in any action in tort brought against the solicitor or members of his staff in the solicitor corporation who would be covered under the PIS in respect of such action. The Law Society therefore was of the view that it was difficult to conceive of any situation where the solicitor corporation might be liable but not the solicitor directors/members other than in actions in contract to which the usual commercial rules would apply. Moreover, even if additional coverage was required of solicitor corporations, the amount of compensation which a claimant would receive would not be more than that under the existing arrangement. Furthermore, amendments would be made to include solicitor corporation in the definition of "indemnified" under the Solicitors (Professional Indemnity) Rules.

32. Mr MOSS said that the reason why the English law required a solicitor's firm to take out top-up insurance to cover civil claims made by clients was because members of a solicitor's firm in England and Wales were not

necessarily solicitors of England and Wales, and could include foreign lawyers and members of other professions from the European community. Such a situation was different from that of Hong Kong. Mr MOSS further said that if solicitors in Hong Kong were required to take out additional insurance for the corporation, it would become unattractive for them to incorporate their practices, bearing in mind that the only benefit that one could really get from a solicitor corporation was that innocent directors might escape liability in tort.

33. Ms Miriam LAU asked the Administration to advise whether it was mandatory for a firm to take out top-up insurance before it could become a solicitor corporation, or whether it was a matter for the Law Society to decide. Representatives of the Administration responded that the Administration considered that the Law Society should consider whether the existing insurance coverage was sufficient from the public interest angle and recommended the Law Society to consider whether mandatory, instead of optional, top-up insurance was required. The concern identified in England in respect of the "gap" in compensation that might be obtainable in respect of a negligent solicitor in a solicitor corporation, as opposed to a negligent solicitor in a firm, appeared to apply equally in Hong Kong. In determining whether solicitor corporations ought to take out top-up insurance, the Administration had asked the Law Society for information on other common law jurisdictions where solicitor corporations existed, i.e. whether or not they required top-up insurance, and if so, according to what formula. The Law Society had replied that it was contacting other jurisdictions where solicitor corporations were permitted and would revert to the Administration as soon as possible.

34. Mr MOSS said that the risk of a "gap" mentioned by the Administration existed irrespective of whether a solicitor practised as a sole proprietor or a solicitor corporation because there was always a possibility for a solicitor to face a claim which was larger than the \$10 million mandatory insurance cover, or the mandatory insurance cover plus top-up insurance.

35. The Chairman said that requiring a solicitor to take out top-up insurance would defeat the legislative intent of incorporation of solicitor firms. The reason why incorporation of solicitor firms was contemplated was that the present system was considered to be too onerous on solicitor firms as solicitors had to pay from their own private means, if necessary, for the faults of their partners even though they had nothing to do with the case.

36. In order to help members to consider more carefully the proposal of top-up insurance, the Chairman requested the Administration to provide more information on the proposal, including the proposed amount of top-up coverage, how it was calculated, and the justification for the extent of the proposed top-up amount. The Chairman also requested the Law Society to provide information on the practice in other jurisdictions for the consideration of the Panel.

37. In response to the Chairman's enquiry about the legislative timetable for the Solicitor Corporations Rules, Mr MOSS said that the approval of the Chief Justice had to be obtained first. It was envisaged that the rules could be introduced into LegCo by the beginning of the next legislative session.

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