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LC Paper No. CB(2)935/05-06(01)

LAW SOCIETY

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VL/mc/PI-9
LP 5004/4/9C VIII

13 January 2006

Department of Justice
Legal Policy Division
Queensway Government Offices
66 Queensway
Hong Kong

By Fax and By Post
(Fax: 2869 0720)

Attention: Ms. Kitty Fung, Senior Government Counsel

Dear Sirs

Professional Indemnity Scheme

I refer to your letter dated 30 September 2005 to the Panel on Administration of Justice and Legal Services.

The Law Society is encouraged to note that the Administration has undertaken to work constructively with the Law Society to try to resolve matters in a way that satisfies the public interest.

You have asked the Law Society to elaborate why a Qualifying Insurers Scheme ("QIS") should be acceptable in the public interest. In particular, you have asked the Law Society to comment on -

- (1) what system will be in place for ensuring that only reliable insurers are approved as qualifying insurers;
- (2) whether reinsurance will offer any protection to solicitors and their clients against the insolvency of a qualifying insurer;

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- (3) whether qualifying insurers will introduce practice standards for solicitors which will help to prevent negligence occurring;
- (4) whether solicitors with bad claims records will be forced either to improve their practices or to cease to practise through inability to obtain insurance cover.

Using the same numbering as your letter, I would comment as follows.

- (1) One of the major selection criteria that is being considered by the Law Society and likely to be adopted with respect to a qualifying insurer is that an insurer must be authorized by the Office of the Commissioner of Insurance to conduct business in Hong Kong. In this regard, we note that authorized insurers are subject to the Insurance Company Ordinance which sets in place a system of prudential supervision of authorized insurers in Hong Kong, including prescribed minimum requirements on paid up capital, solvency margin, fitness and propriety of directors and controllers, and adequacy of reinsurance.
- (2) Our understanding is that reinsurance per se will not offer protection to solicitors and their clients against the insolvency of a qualifying insurer, because reinsurance is a contract between a reinsurer and an insurer, as such, the benefits of this contract would not flow through to a third party, whether it be the insured solicitors or their clients. There may be a possibility of providing for 'cut-through' provisions in the qualifying insurers' agreement whereby the insured solicitors may claim directly from reinsurers in the event the qualifying insurers become insolvent. There are however complicated legal and practical issues involved and it cannot be stated with certainty whether these provisions are enforceable in Hong Kong but the Law Society will endeavour to negotiate with qualifying insurers to provide for them.
- (3) I expect qualifying insurers will introduce risk management guidelines to help reduce future claims. This is to the advantage of both qualifying insurers and the insured solicitors. The Law Society is naturally not aware precisely what guidelines or standards might be introduced by qualifying insurers. However, I understand that this is the position in England and Wales where qualifying insurers impose practice standards on solicitors. As for the Law Society, you are aware that since November 2004 we have implemented a mandatory programme of risk management for solicitors in practice in Hong Kong.

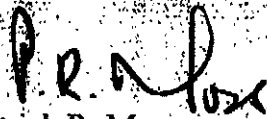
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- (4) Once a QIS is in place, qualifying insurers will be at liberty to underwrite each insured as they wish. It follows that some insured with very bad claims records might be perceived as a bad risk from qualifying insurers' perspective and they may face difficulties in obtaining qualifying insurance. Those firms which do not have qualifying insurance in place can apply to enter the Assigned Risk Pool before the start of the relevant Indemnity Period. By making an application to enter the Assigned Risk Pool, the applicant agrees and is required to, inter alia, submit to investigation and monitoring by the Law Society and/or its agents to determine the reasons why qualifying insurance was not obtained, to ascertain what special measures should be taken by that firm, and to ensure that these measures are fully implemented. Other than firms which have ceased to practise, firms cannot remain in the Assigned Risk Pool for more than 24 months in any 5 year period, after which they must either obtain qualifying insurance in the open market or cease practice.

I look forward to receiving the Government's re-considered position concerning QIS in due course.

Yours faithfully,



Patrick R. Moss
Secretary General

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