LC Paper No. CB(2)950/05-06(01)

THE LAW SOCIETY OF HONG KONG QUALIFYING INSURERS SCHEME PROGRESS REPORT

- Since the last meeting of the LegCo Panel on the Administration of Justice & Legal Affairs the Law Society has continued to work towards implementation of a Qualifying Insurers Scheme by 1 October 2006.
- 2. The fourth draft of the proposed QIS Rules ("the Rules") has been completed so far as possible at present. There may be some fine tuning in the light of ongoing discussions with the insurance industry and other stakeholders. A copy has been sent to the Department of Justice for its views both as to policy and as to drafting. The Chief Justice as the rule-making authority under s. 73A has been asked for his approval in principle.
- 3. The Rules have been provided to a number of potential qualifying insurers to enable them to give expressions of interest. Discussions on the Rules with the industry has been conducted by the Society's brokers in conjunction with the Society's working party and issues clarified. As a result nine insurers have indicated that they are interested in participating in the scheme. More may follow in due course.
- 4. Of the nine interested insurers three agreed to participate with the Law Society in a costing exercise in which 35 firms completed proposal forms on the basis of which the three insurers gave indications of likely premiums to be paid when the scheme becomes operational. The data provided by the firms included details of the breakdown of areas of work and claims history as well as gross fee income. Those indications which have already been provided to the 35 firms will be published shortly by the Law Society in a format which will ensure that the 35 firms cannot be

identified yet will give some assistance to the profession in gauging the likely effect that the introduction of QIS will have on their own firms. However the indications have been given in a "soft" insurance market and on the basis that the firm has "an excellent" risk management and quality control system in place within the practice. Accordingly premiums or excess may well vary from that provided in respect of the sample firms.

- 5. The Law Society has responded to the earlier enquiry by the Department of Justice on matters relating to the protection of the public particularly in the light of any possible insolvency of a qualifying insurer. A copy of the two relevant letters is annexed.
- 6. The qualifying insurers will be required to sign a number of agreements with the Law Society. The foremost of these is the Qualifying Insurers agreement which sets out the basis on which the insurers comply with minimum terms and conditions required in order for them to be qualifying insurers under the Rules. A contract of Assigned Risk Pool insurance for those firms which are unable to obtain insurance on the open market from a qualifying insurer, an Assigned Risk Pool management agreement and a Claims Data sharing agreement are all in the course of preparation by solicitors instructed by the Law Society. Once the Assigned Risk Pool management agreement has been drafted steps will be taken to seek tenders for the appointment of an Assigned Risk Pool manager.
- 7. Following the publication of the premium indicators referred to in paragraph 4 above the Law Society intends to hold a general meeting for members at which they will be asked to confirm the decision to proceed with a QIS, and to give their views on outstanding issues relating to scheme.

8. These issues include:

a) the calculation of rates of premium applicable for those firms required to obtain cover through the Assigned Risk Pool. (The rate in England & Wales is 27.5% of gross fee

00%

income);

- the method of contribution by qualifying insurers to the Assigned Risk Pool;
- c) whether the Rules should restrict the maximum excess that a firm may retain; and whether the provision of counter indemnities by insured firms to their insurers should be prohibited;
- d) whether there should be any restriction to prevent international firms using their global policies to reduce their premium and thus diminish the overall premium pool;
- e) whether qualifying insurers must hold a credit rating at a prescribed level before becoming eligible;
- f) whether the requirement for firms ceasing practice to take out and maintain "run off" cover for six years following cessation will create difficulties for firms;
- g) whether qualifying insurers will agree to incorporation in the Rules of a cut through clause in policies to enable firms to claim indemnity from the re-insurer in the event of failure of the qualifying insurer;
- h) the geographical extent of cover to be provided.
- 9. Much remains to be done and although the working party has resolved the majority of the outstanding matters the list above contains issues which need to be resolved by the profession in general meeting. A general meeting will be convened for the profession to make its decision as soon as practicable.

20 January 2006

doc. 93703