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31 March 2006

Mr Henry TANG Ying-yen, GBS, JP
Financial Secretary
Financial Secretary's Private Office
12th floor, West Wing
Central Government Offices
Hong Kong

Dear Mr TANG,

Panel on Administration of Justice and Legal Services

Limited liability for professional practices

On behalf of the Panel on Administration of Justice and Legal Services, I write to convey to you the views of the Panel expressed at its meeting on 27 March 2006 concerning the captioned subject.

In March and May 2005, the Panel discussed with the Administration (represented by the Department of Justice and the Financial Services and the Treasury Bureau) proposals for professional liability reform from the Hong Kong Institute of Certified Public Accountants and the Law Society of Hong Kong. The proposals included introduction of proportionate liability and limited liability partnership (LLP). The Administration undertook to prepare a paper on the issue for consideration by the Policy Committee and revert to the Panel. The Panel requested the Administration to consider studying the proposal on LLP separately from proportionate liability as the latter had previously been referred to the Standing Committee on Company Law Reform for consideration, and to consider introducing LLP for a number of professions, including solicitors, accountants and medical practitioners.

The Administration reverted to the Panel on its position at the meeting on 27 March 2006. Members note that the Administration has not addressed specific points made in the detailed study and proposals jointly presented by the two professions, but has rejected the proposals on the grounds that they would have the effect of "shifting liability from the professional service providers to the consumers",

and that the professional sectors "have been given recognition and a degree of protection under the law" which "must be balanced against the need to safeguard the interests of consumers and service users." The Administration has therefore concluded that "no further studies will be carried out into the proposals for limitation of liability during the remainder of the Chief Executive's term of office."

Members and the two professional bodies have expressed great disappointment at the Administration's decision. They are dissatisfied that the Administration has failed to explain why the proposal on LLP cannot be studied separately from other forms of limiting liability such as proportionate liability, as the Law Society has already drafted a bill on LLP for the consideration of the Administration, and the Consumer Council has indicated that it does not object to the adoption of LLP provided that there will be sufficient safeguards for consumers.

Members are of the view that under the existing liability framework, it is unfair that partners in professional practices have to bear the risk of having unlimited liability for the consequences of another partner's negligence. LLP, which is a more equitable system of limiting liability for the professions concerned, and which is not inconsistent with protection of consumer interests, should be introduced. In this context, it should be noted that in providing for solicitors to practise in the form of solicitors corporation in 1997, the Administration has already agreed to the limitation of liability in principle.

Members have also pointed out that Hong Kong's liability framework has not evolved in step with its economic and financial developments. As Hong Kong has developed into a global financial and business centre, the increasingly litigious environment has increased the risk of firms being wiped out by catastrophic claims against them. In insisting on maintaining the existing balance between protecting the interests of the professions and safeguarding those of the consumers, the Administration has failed to consider the question of whether the balance is still sound in the face of drastic changes to the reality in the context of which the professions have to practice. There is a need for an appropriate liability framework for professional practices.

Members have noted that Hong Kong is trailing behind other sophisticated jurisdictions, such as Australia, Canada & Bermuda, the United Kingdom, some European Union countries and Singapore, in implementing professional liability reform. Members request the Administration to reconsider its decision on professional liability reform, which is urgently required to bring Hong Kong in line with what has already been adopted in other major financial centres, so as to enhance Hong Kong's competitiveness as a global financial centre.

As professional liability reform has significant implications on Hong Kong's competitiveness as a leading international financial centre in the Asia-Pacific region, the Panel agrees that the views expressed by the Panel should be referred to you for consideration. The Panel looks forward to your early response.

With best regards,

Yours sincerely,

(Mrs Percy MA)
Clerk to Panel

c.c. Hon Margaret NG
Chairman of the Panel on Administration of Justice and Legal Services

Hon Bernard CHAN
Chairman of the Panel on Financial Affairs

Mr WONG Yan-lung, QC, JP
Secretary for Justice

Mr Frederick MA Si-hang, JP
Secretary for Financial Services and the Treasury