

# **立法會**

## ***Legislative Council***

LC Paper No. LS121/06-07

### **Paper for the House Committee Meeting on 5 October 2007**

### **Legal Service Division Report on Subsidiary Legislation tabled in the Legislative Council on 11 July 2007**

This paper annexes one Legal Service Division's report on items of subsidiary legislation gazetted on 6 July 2007 (**Annex**). The subsidiary legislation was tabled in the Legislative Council at the meeting on 11 July 2007, but has not been considered by the House Committee. The report has already been submitted to Members during the summer recess. It is submitted again to facilitate consideration by the House Committee.

2. Under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), the scrutiny period of these items is deemed to extend to and expire on the day after the second meeting of the Legislative Council (i.e. 17 October 2007). The scrutiny period could be further extended to 7 November 2007 by resolution of the Legislative Council. (The typographical error with regard to the latter date, which was stated as 14 November 2007 in the report submitted earlier to Members during the summer recess, has been rectified.)

3. Members may wish to have particular attention on Building Management (Third Party Risks Insurance) Regulation (L.N. 146) (the Regulation). Section 28(1) of the Building Management Ordinance (Cap. 344) (BMO) (which has not yet come into operation) requires an owners' corporation to procure and keep in force in relation to the common parts of the building, and the property of the corporation, a policy of insurance in respect of third party risks. The object of the Regulation is to prescribe the requirements with which a policy must comply and to provide for related matters. The Regulation will come into operation on the day appointed for the commencement of section 28 of BMO.

4. The Bills Committee on Building Management (Amendment) Bill 2005 had discussed various issues relating to the Regulation (in draft) and raised various concerns. Members may refer to paragraphs 187 to 200 of the Report of the Bills Committee (issued vide LC Paper No. CB(2)1603/06-07 on 20 April 2007) for further information. Members are recommended to form a Subcommittee to study the Regulation in detail.

5. The Secretariat has circulated to Members the Gazette which contains the subsidiary legislation covered by this report in the usual manner. Members may also view the relevant Gazette at the following website : <http://www.gld.gov.hk/egazette/>.

6. Apart from the recommendation on the Regulation (L.N. 146), no difficulties relating to the legal and drafting aspects of the items of subsidiary legislation covered by the report have been identified.

Encl

Prepared by

Legal Service Division  
Legislative Council Secretariat  
3 October 2007

LS/S/49/06-07

**Legal Service Division's Report on  
Subsidiary Legislation gazetted on 6 July 2007**

<b><u>L.N. No</u></b>	<b><u>Item</u></b>
146	Building Management (Third Party Risks Insurance) Regulation
147	Shipping and Port Control (Ferry Terminals) (Amendment: Fee Reduction) Regulation 2007
148	Merchant Shipping (Local Vessels) (Fees) (Amendment: Fee Reduction) Regulation 2007
149	Merchant Shipping (Prevention of Air Pollution) Regulation
150	Road Traffic (Construction and Maintenance of Vehicles) (Amendment: Maximum Permitted Smoke or Visible Vapour Emissions) Regulation 2007
151	Road Traffic (Construction and Maintenance of Vehicles) (Amendment: Requirements for Speedometers and Speed Display Devices) Regulation 2007
152	Road Traffic (Construction and Maintenance of Vehicles) (Amendment: Safety Requirements for Passenger Seats in Student Service Vehicles) Regulation 2007
153	Road Traffic (Traffic Control) (Amendment: Addition of Traffic Signs) Regulation 2007
154	Solicitors (Professional Indemnity) (Amendment) Rules 2007

# **立法會**

## ***Legislative Council***

### **Legal Service Division Report on Subsidiary Legislation Gazetted on 6 July 2007**

**Date of tabling in LegCo** : 11 July 2007

**Amendment to be made by** : 17 October 2007 (or 7 November 2007 if extended by resolution)

#### **PART I BUILDING MANAGEMENT (THIRD PARTY RISKS INSURANCE)**

##### **Building Management Ordinance (Cap. 344)**

##### **Building Management (Third Party Risks Insurance) Regulation (L.N. 146)**

Section 28(1) of the Building Management Ordinance (Cap. 344) (BMO) (which has not yet come into operation) requires an owners' corporation to procure and keep in force in relation to the common parts of the building, and the property of the corporation, a policy of insurance in respect of third party risks ("policy"). The object of this Regulation is to prescribe the requirements with which a policy must comply and to provide for related matters.

2. Section 3 of the Regulation prescribes that a policy is required to insure the assured owners' corporation in respect of any liability that may be incurred by the corporation in respect of the death of, or the bodily injury to, any person ("prescribed liabilities"). Section 3 also prescribes the areas which the policy is not required to cover.

3. Section 4 of the Regulation prescribes the minimum amount of insurance at \$10m that a policy is required to provide in respect of the prescribed liabilities.

4. Section 5 of the Regulation requires an insurance company to issue to the assured owners' corporation a notice of insurance when it issues a policy. The corporation is required to display the notice in a prominent place in the building. Section 5 also provides that an insurance company or assured owners' corporation which fails to comply with the prescribed requirements, the insurance company or, subject to certain defences, every member of the management committee of the corporation is guilty of an offence and is liable on conviction to a fine at level 2 (\$5,000).

5. Section 6(1) of the Regulation stipulates that a policy provision that restricts the insurance by reference to a matter set out in section 6(2) is of no effect. Section 6(2) sets out a list of matters including the number of claims that may be made during the period the policy is in effect, the age of the building to which the policy relates, etc. However, this stipulation does not apply under the circumstances set out in section 6(3), for example a policy restricts the insurance of the assured owners' corporation by reference to the use of the building and requires the owners' corporation to exercise reasonable diligence to ensure compliance with the deed of mutual covenant concerned in relation to the use of that building and the death or bodily injury that gives rise to the liability is directly caused by the owners' corporation's contravention of that requirement. Section 6(7) stipulates that if a policy provision restricts the insurance in the event of the assured owners' corporation's failure to comply with a condition after the loss has taken place, the provision is of no effect.

6. Section 7 of the Regulation stipulates that an agreement that purports to negative or restrict any prescribed liability of an owners' corporation towards a third party is of no effect. If a person has willingly accepted the risk of negligence, the acceptance does not negative any prescribed liability of an owners' corporation.

7. Section 8 of the Regulation stipulates that if a third party has obtained judgement against an owners' corporation in respect of a prescribed liability covered by a policy, the insurance company is required to pay to the third party any sum payable under the judgment up to the amount covered by the policy.

8. Section 9 of the Regulation sets out the exceptions to the requirement to pay any sum under section 8.

9. Section 10 of the Regulation stipulates that if an owners' corporation becomes insolvent, the insolvency, or the third party's direct right of action against the insurance company under the Third Parties (Rights against Insurers) Ordinance (Cap. 273), does not affect the corporation's prescribed liability. And the third party's right against the insurance company under section 8 is not affected by that direct right of action against the insurance company.

10. Section 11 of the Regulation provides that if a person makes a claim against an owners' corporation in respect of any prescribed liability, the corporation is required to give certain information as to the third party risks insurance by which it is covered. If a corporation fails to give such information or wilfully makes any false statement, subject to certain defences, every member of the management committee of the corporation is guilty of an offence and is liable on conviction to a fine at level 2 (\$5,000).

11. Members may refer to LegCo brief Ref.: HAD/HQ/CR/20/3/1/(C) dated 5 July 2007 from Home Affairs Department for background information.

12. The Bills Committee on Building Management (Amendment) Bill 2005 discussed various issues relating to the Draft Building Management (Third Party Risks Insurance) Regulation (the draft Regulation). The main concerns are as follows.

13. On the statutory minimum amount of insurance coverage, some members considered that the proposed amount of \$10m was too low to offer adequate protection for owners. Other members, however, were concerned that increasing the minimum amount would lead to a higher level of premium. The Administration informed the Bills Committee that the proposal for a \$10m coverage was made by the Hong Kong Federation of Insurers. The Regulation prescribes the minimum amount of insurance at \$10m that a policy is required to provide in respect of the prescribed liabilities.

14. Members noted that an insurance company could under section 6 of the draft Regulation restrict the insurance of the assured corporation by reference to matters such as the age of the building, the condition or maintenance of the building, and the type of use of the building, etc. Any such restrictions would be of no effect if the assured corporation had exercised reasonable diligence in managing the building and kept the building in good condition. Members raised queries over the interpretation of the phrase "having exercised reasonable diligence". They were concerned that an insurance company might reject the claims by third parties on the ground that the assured corporation had failed to exercise reasonable diligence in that respect. In response to members' concern, section 6(4) of the Regulation sets out the circumstances in which an assured corporation is regarded to have not exercised reasonable diligence.

15. Some members were of the view that unauthorised building works (UBWs) should be covered under the mandatory insurance policies on the grounds that it could better protect third parties and the increase in premium might encourage owners concerned in considering demolition of their UBWs. Other members, however, considered it unfair to impose a mandatory requirement on the owners' corporations to procure insurance for UBWs in order to protect the owners who built the UBWs which were used by the owners concerned only. The Administration was strongly of the view that the owners' corporations should not be required to procure a third party risks insurance policy which covered liabilities relating to UBWs on the grounds that it would imply that the Government condoned the existence of UBWs and indirectly encouraged the continual existence of UBWs. Moreover, the higher insurance premium would mean cross-subsidy of the poor risks by good risks, which was unfair to those properly maintained buildings and those owners who had no UBWs attached to their units. The Administration also pointed out that section 3(2)(c)(ii) of the Regulation does not require the policy to cover any liability arising out of a breach of any duty imposed by law in relation to any building works carried out in contravention of the Buildings Ordinance (Cap. 123).

16. Some members considered that it was unlikely that claims against an owners' corporation in relation to death or bodily injury in the common parts of a building would be associated with asbestos. The Administration agreed to include an asbestos exclusion provision in the Regulation. Section 3(2)(d)(vii) of the Regulation does not require the policy to cover any liability in respect of the death, or the bodily injury, caused by or arising from the use, detection, removal, or elimination of, or exposure to, asbestos. Section 3(2)(d) of the Regulation also introduces new exclusions (which were not included in the draft Regulation) relating to liability of death or bodily injury arising from the radioactive properties of any nuclear installation, any weapon employing atomic fission or any chemical weapon, etc.

17. Members may refer to paragraphs 187 to 200 of the Report of the Bills Committee on Building Management (Amendment) Bill 2005 (issued vide LC Paper No. CB(2)1603/06-07 on 20 April 2007) for further details.

18. This Regulation will come into operation on the day appointed for the commencement of section 12 of the Building Management (Amendment) Ordinance 2000 (69 of 2000) (i.e. section 28 of the BMO).

19. Members are recommended to form a Subcommittee to study the Regulation in detail.

## **PART II SHIPPING AND PORT CONTROL**

### **Shipping and Port Control Ordinance (Cap. 313)**

#### **Shipping and Port Control (Ferry Terminals) (Amendment: Fee Reduction) Regulation 2007 (L.N. 147)**

### **Merchant Shipping (Local Vessels) Ordinance (Cap. 548)**

#### **Merchant Shipping (Local Vessels) (Fees) (Amendment: Fee Reduction) Regulation 2007 (L.N. 148)**

20. Under the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313H), a passenger embarkation fee shall be paid by the owner of a non-local ferry vessel in respect of each passenger embarking on the ferry vessel at a terminal. The current passenger embarkation fees payable for a passenger paying an amount exceeding \$12 for a single journey or travelling free of charge on a complimentary ticket are \$15. L.N. 147 reduces the above passenger embarkation fees to \$11.

21. Under the Merchant Shipping (Local Vessels) (Ferry Terminals) Regulation (Cap. 548B), a passenger embarkation fee shall be paid by the owner of a local ferry vessel in respect of each passenger embarking on the ferry vessel at a terminal. The current passenger embarkation fees payable for a passenger paying

\$12 or more for a single journey or travelling free of charge on a complimentary ticket are \$15. L.N. 148 reduces the above passenger embarkation fees to \$11.

22. Information about both of the above fee reductions was provided in an information paper (LC Paper No. CB(1)1457/06-07(01)) issued by the Environment, Transport and Works Bureau / Marine Department to the Transport Panel for its meeting held on 27 April 2007. Members may refer to the LegCo Brief (ref: THB (T)CR 8/581/87) issued by the Transport and Housing Bureau on 4 July 2007 for background about these amendment regulations.

23. These regulations shall come into operation on 19 November 2007.

### **PART III MERCHANT SHIPPING (PREVENTION OF AIR POLLUTION)**

#### **Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413)**

#### **Merchant Shipping (Prevention of Air Pollution) Regulation (L.N. 149)**

24. This Regulation gives effect to Annex VI to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention ("Annex VI"). Annex VI concerns the prevention of air pollution to the marine environment by the emission of harmful substances from ships. After Annex VI came into force, the International Maritime Organization approved amendments to it which include amendments introduced under the Harmonized System of Survey and Certification.

25. Under Part 2 of the Regulation, ships of 400 gross tonnage or above to which the Regulation applies shall have on board International Air Pollution Prevention Certificates or Hong Kong Air Pollution Prevention Certificates before being engaged in voyages. The requirement does not apply to certain classes of ships specified in this Part.

26. Part 3 sets out general preventive controls on regulated Hong Kong ships by imposing survey and certification requirements.

27. Part 4 restricts the emission of certain harmful substances from specified ships by imposing control on -

- (a) emission of ozone depleting substances;
- (b) emission of nitrogen oxide;
- (c) emission of volatile organic compounds;



- (d) emission of sulphur oxide;
- (e) shipboard incineration; and
- (f) the quality of fuel oil used on board.

28. Section 40(4) of the Regulation provides that in any proceedings for an offence under the Regulation, it is a defence for the person charged to show that he had taken all reasonable steps to prevent the commission of the offence.

29. The proposed Regulation was referred to the Economic Services Panel for consultation at its meeting held on 27 February 2006. Whilst members expressed support for this Regulation, they raised concerns about the fees for carrying out the relevant survey and certification work for controlling air pollution from ships. There were concerns about the costs incurred in relation to surveys by vessels, in particular small local vessels. The Administration was urged to consider lower the fees for providing survey services to ships. Such fees will be provided in a separate amendment to the relevant subsidiary legislation, namely, the Merchant Shipping (Prevention and Control of Pollution) (Fees) Regulation (Cap. 413L).

30. Members may refer to the LegCo Brief (ref: MA 90/6/1) issued by the Transport and Housing Bureau on 4 July 2007 for background about the Regulation.

31. The Regulation shall come into operation on a date to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

## **PART IV ROAD TRAFFIC ORDINANCE**

### **Road Traffic Ordinance (Cap. 374)**

#### **Road Traffic (Construction and Maintenance of Vehicles) (Amendment: Maximum Permitted Smoke or Visible Vapour Emissions) Regulation 2007 (L.N. 150)**

32. This amendment Regulation adjusts downwards the maximum permitted level of smoke or visible vapour emitted from motor vehicles. The change does not apply to motor vehicles having a permitted gross vehicle weight exceeding 5.5 tonnes and manufactured before 1 January 1990.

33. Maximum permitted smoke or visible vapour emissions from motor vehicles are provided as follows -

Maximum permitted smoke or visible vapour level (Hartridge Smoke Units)	Maximum permitted smoke or visible vapour level in absolute units of light absorption ( $\text{m}^{-1}$ )
(a) Motor vehicles having a permitted gross vehicle weight exceeding 5.5 tonnes and manufactured before 1 January 1990 ..... 60	(a) Motor vehicles having a permitted gross vehicle weight exceeding 5.5 tonnes and manufactured before 1 January 1990 .....2.13
(b) All other motor vehicles ..... 50	(b) All other motor vehicles .....1.61

34. L.N. 150 shall come into operation on 1 May 2008.

**Road Traffic Ordinance (Cap. 374)**

**Road Traffic (Construction and Maintenance of Vehicles) (Amendment: Requirements for Speedometers and Speed Display Devices) Regulation 2007 (L.N. 151)**

35. This Regulation amends the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374A) to -

- (a) divide the general description of "speed indicators" in Cap. 374A into two separate categories of "speedometer" and "speed display device" for the purpose of clarity;
- (b) prohibit the fitting of a speedometer in a new motor vehicle which displays the speed of the motor vehicle slower than its actual speed;
- (c) require every public light bus to be fitted with a speed display device;
- (d) require every speedometer and speed display device to be approved by the Commissioner for Transport ("Commissioner");
- (e) require every speedometer and speed display device approved by the Commissioner to bear an approval mark;
- (f) prohibit any modification of an approved speedometer or speed display device unless written permission has been obtained from the Commissioner;
- (g) require the speedometer of a new motor vehicle registered on or after 1 May 2008 to conform with the new installation and performance

requirements set out in Part 2 of Schedule 16 to Cap. 374A as amended by this amendment Regulation;

- (h) allow the speedometer of a motor vehicle registered before 1 May 2008 to conform with the existing installation and performance requirements set out in Part 1, or the new installation and performance requirements set out in Part 2, of Schedule 16 to the amendment Regulation; and
- (i) require every speed display device to conform with the new installation and performance requirements set out in Part 3 of Schedule 16 to the amendment Regulation.

36. L.N. 151 shall come into operation on 1 May 2008.

**Road Traffic Ordinance (Cap. 374)**

**Road Traffic (Construction and Maintenance of Vehicles) (Amendment: Safety Requirements for Passenger Seats in Student Service Vehicles) Regulation 2007 (L.N. 152)**

37. Regulation 73 of Cap. 374A sets out certain safety requirements for passenger seats in a bus, light bus, and public light bus registered on or after 1 August 2004.

38. This regulation amends regulation 73 of Cap. 374A to require a student service vehicle registered on or after 1 May 2009 -

- (a) to have every seat to be forward-facing;
- (b) not to have sharp edges in all seats and in the accessories attached to the seats which may increase the risk or severity of injury to seated passengers in a traffic accident;
- (c) to have all seats and their anchorages to conform to the installation and performance requirements of any specification or standard specified in any section of Part 5 of Schedule 15;
- (d) to have all restraining barriers and their anchorages to be constructed to the strength requirements provided in new regulation 73(1AA)(c) in respect of the seats and their anchorages;
- (e) to have every controlled surface made of impact energy absorption material;

- (f) not to have folding table or folding accessories installed on any controlled surface;
- (g) to have all seats and restraining barriers made of fire resistant material;
- (h) to have a back rest for every seat and if a back rest exceeds 800 millimetres in height, to have the seat concerned equipped with a head restraint;
- (i) to have every seat to be so fitted that it has another seat back or a restraining barrier in front of it; and
- (j) to have every seat to be so fitted that there is a clear space of not more than 740 millimetres in front of the back rest of any seat.

Definitions of "controlled surface", "fire resistant material", "impact energy absorption material" and "restraining barrier" are provided in section 3(5) of this amendment Regulation.

39. This regulation also amends Schedule 15 to Cap. 374A by adding Parts 3, 4 and 5 to that Schedule which respectively set out the specifications and standards of -

- (a) the impact energy absorption requirements for public light buses and student service vehicles registered on or after 1 May 2009;
- (b) the fire resistance requirements for public light buses and student service vehicles registered on or after 1 May 2009; and
- (c) the seats and their anchorages for student service vehicles registered on or after 1 May 2009.

40. This regulation makes alterations to the Chinese text of regulation 73(1A)(e)(i) of Cap. 374A so as to achieve consistency between the Chinese equivalent for "shall not have sharp edges which may increase the risk or severity of injury to seated passengers in traffic accidents" in the Chinese text of regulation 73(1A)(e)(i) and that in the Chinese text of regulation 73(1AA)(b).

41. The amendments set out in paragraphs 38 and 39 above shall come into operation on 1 May 2009 and the other parts of L.N. 152 shall come into operation on 1 December 2007.

**Road Traffic Ordinance (Cap. 374)**

**Road Traffic (Traffic Control) (Amendment: Addition of Traffic Signs) Regulation 2007 (L.N. 153)**

42. This Regulation specifies new traffic signs in Schedule 1 to the Road Traffic (Traffic Control) Regulations (Cap. 374G) to enable the Commissioner for Transport to designate a particular section of road as a prohibition zone for vehicles carrying dangerous goods.

43. L.N. 153 shall come into operation on 1 December 2007.

44. Details of the above four legislative proposals (L.N. 150 - L.N. 153) were provided in information papers issued by the Environment, Transport and Works Bureau to the Transport Panel in April and May 2007 (LC Paper No. CB(1)1418/06-07(01) and CB(1)1663/06-07(01)).

45. The Transport Panel was consulted on the proposals relating to L.N. 151 and L.N. 152 at its meeting held on 23 March 2007. Members were generally in support of the proposal for installation of safer seats on school private light buses.

46. For background information about L.N. 150 - L.N. 153, members may refer to the LegCo Brief issued by the Environment, Transport and Works Bureau in June 2007 (ref: ETWB(T) 1/12/44, ETWB(T) 1/12/107, ETWB(T) 3/9/40).

**PART V SOLICITORS PROFESSIONAL INDEMNITY**

**Legal Practitioners Ordinance (Cap. 159)**

**Solicitors (Professional Indemnity) (Amendment) Rules 2007 (L.N. 154)**

47. Under section 73A of the Legal Practitioners Ordinance (Cap. 159), the Council of the Law Society of Hong Kong may make rules concerning indemnity against loss arising from claims in respect of any description of civil liability incurred and every such rule shall be subject to the prior approval of the Chief Justice.

48. L.N. 154 provides that a law firm shall produce to the Hong Kong Solicitors Indemnity Fund Limited a report of gross fee income instead of a certificate of gross fee income. The relevant report of gross fee income will be in a form specified by the Hong Kong Solicitors Indemnity Fund Limited with the approval of the Council of the Law Society.

49. These amendment Rules have not been referred to the LegCo Panel on Administration of Justice and Legal Services. They came into effect on the date of publication in the Gazette, i.e. 6 July 2007.

50. In response to the Legal Service Division's request, the Law Society has provided some background information about the amendment Rules (Annex). Members may note that the Law Society has provided only the English version of the background information. According to the Law Society, the change was initiated by and agreed with the Hong Kong Institute of Certified Public Accountants.

Encl

Prepared by

Lam Ping-man, Stephen (L.N. 146)  
Kitty Cheng (L.N. 147 to L.N. 154)  
Assistant Legal Advisers  
Legislative Council Secretariat  
1 August 2007



THE  
**LAW SOCIETY**  
OF HONG KONG  
香港律師會



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2 August 2007

Ms. Kitty Cheng  
Assistant Legal Adviser  
Legislative Council Secretariat, Legal Service Division  
Legislative Council Building  
8 Jackson Road  
Central, Hong Kong

By Fax and By Post  
(Fax: 2877 5029)

Dear Ms. Cheng,

**Solicitors (Professional Indemnity) (Amendment) Rules 2007**

I refer to your letter of 1 August 2007 to Mr. Patrick Moss, Secretary General.

I am directed by Mr. Patrick Moss to advise you it is not the practice of the Law Society to provide the Chinese version of his reply dated 1 August 2007 as requested in your letter.

Yours sincerely,

Vivien Lee  
Assistant Director  
Professional Indemnity Scheme

cc: Mr. Patrick Moss, Secretary General

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中華人民共和國香港特別行政區  
Hong Kong Special Administrative Region of the People's Republic of China



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LEGAL SERVICE DIVISION

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本函檔號 OUR REF : LS/B/41/06-07  
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**URGENT**

Mr Patrick Moss  
Secretary General  
Secretariat  
The Law Society of Hong Kong  
3/F, Wing On House  
71 Des Voeux Road Central  
Central  
Hong Kong

By Fax (2845 0387) and By Post

1 August 2007

Dear Mr Moss,

**L.N. 154 of 2007 -  
Solicitors (Professional Indemnity) (Amendment) Rules 2007**

Thank you very much for your reply to my letter of 30 July 2007.

The reason for introducing the abovementioned subsidiary legislation as set out in your letter is noted. To assist members to appreciate the effects of the relevant amendment rules, we will attach your letter to our Legal Service Division report on it to the House Committee. I wonder if you would let us have the Chinese version of your reply (as I have requested in my previous letter). Please kindly advise as soon as possible, preferably before 5 p.m. on 2 August 2007.

Yours sincerely,

Kitty Cheng  
Assistant Legal Adviser

c.c. Legal Adviser





THE  
**LAW SOCIETY**  
OF HONG KONG  
香港律師會



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1 August 2007

Ms. Kitty Cheng  
Assistant Legal Adviser  
Legislative Council Secretariat, Legal Service Division  
Legislative Council Building  
8 Jackson Road  
Central, Hong Kong

By Fax and By Post  
(Fax: 2877 5029)

Dear Ms. Cheng,

**Solicitors (Professional Indemnity) (Amendment) Rules 2007 ("the Amendment Rules")**

I refer to your letter of 30 July 2007.

I set out below the background information to the Amendment Rules:

1. Prior to the Amendment Rules, rule 8(1)(a) of the Solicitors (Professional Indemnity) Rules ("the Rules") provided the principals of a law firm must produce an accountant's certificate containing particulars of the gross fee income of the firm to Hong Kong Solicitors Indemnity Fund Ltd. ("the Company"). The amount is required by the Scheme Manager, ESSAR Insurance Services Ltd. ("ESSAR") to calculate the contribution payable for professional indemnity insurance.
2. A standard form of accountant's certificate was issued by ESSAR for the purpose of rule 8(1)(a) of the Rules. A copy of the accountant's certificate is enclosed as **Annexure A**.
3. The Hong Kong Institute of Certified Public Accountants ("HKICPA") objected to the format of the accountant's certificate.

President	Vice-Presidents	Council Members	Secretary General
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As part of their International Convergence Programme of Auditing and Assurance Standards with International Standards, the HKICPA has issued a range of standards on different reporting engagements typically undertaken by professional accountants in the public sector in Hong Kong in recent years. These standards set out key principles, required procedures and the appropriate form a report should take. According to the HKICPA, the format of the accountant's certificate is not in line with the standards imposed by them.

In a meeting on 15 September 2006, the HKICPA explained to the Law Society ("the Society") how the accountant's certificate deviated from their accounting standards.

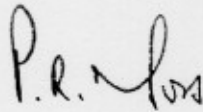
The words "certify" and "certificate" in the accountant's certificate denote absolute certainty. The HKICPA explained the accountant was not in a position to provide absolute certainty on the gross fee income of a law firm as a statement of fact. In order for an accountant to certify the gross fee income, the accountant would have to check every single entry in the ledger of the law firm to ensure all items of revenue which should be included in the accounts had been accurately and completely recorded. The HKICPA advised this exercise was not generally conducted during an audit. During an audit, the auditors will look at the cash books and bills delivered and extract samples of transactions to check if there are any errors. If a client i.e. the law firm has good internal controls over its ledger, the auditors may investigate fewer samples. If the internal controls are less proficient, the auditors may look at more samples. If there are no material errors in the samples, the auditors will opine the financial statements of the law firm show a true and fair view of the state of affairs of the firm. Therefore all that the auditors can give is a "reasonable assurance", which is far short of what they say a certificate requires.

The HKICPA advised in accordance with their accounting standards, all that the accountant could provide to the Society was a description of the mandatory tasks which the accountant had followed to provide the highest standard of assurance that the amount of gross fee income was correct and a statement on any limitations in existence.

4. As a result of the HKICPA's objections, many law firms and their accountants refused to sign the certificate. Without the information on the gross fee income, law firms are unable to renew their professional indemnity insurance. Under rule 6 of the Rules, unless a law firm is exempted, the solicitors in the firm cannot practise without insurance.

5. The purpose of the Amendment Rules is to replace "accountant's certificate" with "a report in such form as the Company may specify with the approval of the Council" in the Rules.
6. The HKICPA met with the Society again on 14 June 2007 and it was agreed the gross fee income report, attached as **Annexure 2**, would replace the certificate in Annexure 1.
7. The Society is satisfied that in the circumstances the gross fee income report will enable a fair calculation to be made of the firm's contribution to the annual professional indemnity premium.

Yours sincerely,



P.R. Moss  
Secretary General

Encls.

107975

# ANNEXURE I

CONFIDENTIAL

To: ESSAR Insurance Services Ltd.

21st Floor, Aon China Building  
29 Queen's Road Central  
Hong Kong  
Interchange: DX-009337 Central 1

## HONG KONG SOLICITORS INDEMNITY FUND LIMITED

### SOLICITORS (PROFESSIONAL INDEMNITY) RULES

#### ACCOUNTANT'S CERTIFICATE

NAME OF SOLICITOR FIRM: \_\_\_\_\_

I, the undersigned, hereby certify that the gross fee income of the practice of the above-captioned firm for the accounting year ended \_\_\_\_\_ was HK\$ \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

SIGNATURE \_\_\_\_\_  
NAME OF C.P.A. \_\_\_\_\_  
(Please print) \_\_\_\_\_

ADDRESS \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TELEPHONE NO. \_\_\_\_\_

NOTES:(1) This certificate shall be completed and signed by a Certified Public Accountant.

(2) "Gross fee income" means:

- (a) all professional fees, remuneration, commission and charges of any kind whatsoever which are rendered or received in connection with the practice of a solicitor, and
- (b) all income derived by any service, administrative or trustee company or trust in so far as its activities are carried out solely in connection with the practice of a solicitor but excluding
  - (i) any company which accepts monies for investment other than as a trustee; and
  - (ii) any income derived by any company within paragraph (b) for services rendered to the practice or to any other company within paragraph (b) where and to the extent that such income is included in the gross fee income of the practice or of such other company as aforesaid.



# ANNEXURE 2

## Gross Fee Income Report

To: The principals

[Name of Law Firm]

In accordance with our engagement letter dated [date], we have performed the procedures agreed with you which are set out below with respect to the gross fee income of [Name of Law Firm] ("the Practice") for the year ended [date].

Our engagement was conducted in accordance with Hong Kong Standard on Related Services 4400 "Engagements to Perform Agreed-upon Procedures Regarding Financial Information" issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA"). The procedures do not constitute an assurance engagement performed in accordance with Hong Kong Standards on Auditing, Hong Kong Standards on Review Engagements or Hong Kong Standards on Assurance Engagements issued by the HKICPA (collectively referred to as "Hong Kong assurance standards"), and, as such, no assurance is expressed.

The procedures were performed solely to assist you in satisfying the requirement of Rule 8 of the Solicitors (Professional Indemnity) Rules and are summarised as follows:

- 1 We obtained a schedule of gross fee income of the Practice for the year ended [date] which amounted to HK\$[X] prepared by the principals and for which the principals are solely responsible.
- 2 We obtained the Practice's [\*audited financial statements]/[\*underlying books and records from which the gross fee income set out above is extracted] for the year ended [date] and such other documents as appropriate (including profits tax return where applicable).

- 3 We compared the amount of gross fee income of HK\$[X] as stated above to the corresponding amount stated in the [\*audited financial statements][\*underlying books and records from which the gross fee income set out above is extracted] for the year ended [date] and found the amounts to agree <sup>1</sup>.

Had we performed additional procedures or had we performed an assurance engagement in respect of the amount of gross fee income for the year ended [date] in accordance with Hong Kong assurance standards, other matters might have come to our attention that would have been reported to you.

Our report is solely for the purpose set forth in the third paragraph of this report and is for your information only, and is not to be used for any other purpose or to be distributed to any other parties, except that we agree that a copy of this report may be provided to the Manager of the Professional Indemnity Scheme. We expressly disclaim any liability or duty to any other party for the content in this report. This report relates only to the items specified above and does not extend to the financial statements of the Practice, taken as a whole.

[Name of firm]

[\* Certified Public Accountants (Practising)/Certified Public Accountants]

Hong Kong

[Date]

\* Delete as appropriate

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<sup>1</sup> In the event that practitioners encounter any exceptions, details of the exceptions should be listed in the report.



中華人民共和國香港特別行政區  
Hong Kong Special Administrative Region of the People's Republic of China



立法會秘書處 法律事務部  
LEGISLATIVE COUNCIL SECRETARIAT  
LEGAL SERVICE DIVISION

來函檔號 YOUR REF : LS/B/41/06-07

本函檔號 OUR REF :

電話 TELEPHONE : 2877 5029

圖文傳真 FACSIMILE :

Mr Patrick Moss  
Secretary General  
Secretariat  
The Law Society of Hong Kong  
3/F, Wing On House  
71 Des Voeux Road Central  
Central  
Hong Kong

By Fax (2845 0387) and By Post

30 July 2007

Dear Mr Moss,

**L.N. 154 of 2007 -  
Solicitors (Professional Indemnity) (Amendment) Rules 2007**

I refer to the above subsidiary legislation and wonder if you could provide some background information to assist members to appreciate its effects.

I look forward to your reply in bilingual form on or before 8 August 2007.

Yours sincerely,

Kitty Cheng  
Assistant Legal Adviser

c.c. Legal Adviser  
ASG2