

立法會
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Paper for the House Committee meeting on 11 June 2010

**Report of the Subcommittee on Solicitors (Professional Indemnity)
(Amendment) Rules 2010**

Purpose

This paper reports on the deliberations of the Subcommittee on Solicitors (Professional Indemnity) (Amendment) Rules 2010.

The Subcommittee

2. At the meeting of the House Committee on 28 May 2010, members agreed that a Subcommittee should be formed to study the Solicitors (Professional Indemnity) (Amendment) Rules 2010 (L.N. 65 of 2010) ("Amendment Rules").

3. Under the chairmanship of Dr Hon Margaret NG, the Subcommittee held a meeting with The Law Society of Hong Kong. The membership list of the Subcommittee is in the **Appendix**.

The Amendment Rules

4. The Council of The Law Society of Hong Kong ("the Council") is empowered to make rules concerning professional indemnity insurance for solicitors in Hong Kong under section 73A of the Legal Practitioners Ordinance (Cap. 159) with the prior approval of the Chief Justice.

5. The Amendment Rules were gazetted on 20 May 2010 and tabled in the Legislative Council on 26 May 2010. The purpose of the Amendment Rules is to amend Schedule 1 to the Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg. M) ("the principal Rules") to enable the Hong Kong Solicitors Indemnity Fund Limited ("the Company"), authorized by a resolution passed by the Council, to reduce the contributions to the indemnity fund payable by all solicitors firms (instead of the newly constituted firms) during an indemnity period.

6. The Amendment Rules also make some technical amendments to Schedule 1 to the principal Rules to rectify a minor error in the Chinese text of the principal Rules to achieve consistency with their English text.

Deliberations of the Subcommittee

Reduction in contributions to the Fund

7. The Professional Indemnity Scheme ("the Scheme") is a mandatory scheme which provides indemnity against negligence claims made by the public against members of the Law Society. In accordance with the requirements of the Legal Practitioners Ordinance, a Solicitors Indemnity Fund ("the Fund") is established and maintained by the Council for administering the indemnity scheme. Under the Scheme, indemnity cover is provided to all members of the Law Society up to a limit of \$10 million for each and every claim. The Fund has primary liability but has always reinsured its obligations with a number of reinsurers.

8. According to the Law Society, the HIH Group, the reinsurer of the Fund, collapsed in March 2001. This had necessitated two calls to solicitors in April and July 2003 for extra contributions to the Fund to make up for the \$132 million deficit caused by the collapse of the HIH Group. Since the liquidation of the HIH Group, dividends of \$50 million have been paid. Further interim dividends may be paid in the future.

9. The Law Society has pointed out that the level of contributions have been raised since 2001 and since the payment of interim dividends, members of the Law Society have asked for a refund. Under paragraph 2(7)(a) of Schedule 1 to the principal Rules, the Company may, with the authority of a resolution of the Council at any time during an indemnity period, reduce the total amount of the contributions payable by new firms during the next indemnity period by such amount as is authorized by the Council. The Law Society has obtained legal advice that there is no power to make a refund under the principal Rules. Besides, the administrative costs would outweigh the dividends as many solicitors have changed firms and some firms have ceased practice since 2003. However, there is a power under paragraph 2(7) of Schedule 1 to the principal Rules which empowers the Law Society to reduce the contributions payable by new firms. It is viable for the Fund to receive less contributions by extending the application of paragraph 2(7) to all firms. Having obtained independent legal opinions and the advice of the Department of Justice, the Law Society proposes to reduce the contributions to the Fund payable by all solicitors firms during an indemnity period (i.e. 1 October to 30 September).

10. The Subcommittee has noted that the amendment is effected, in paragraph 2(7)(a) of Schedule 1 to the principal Rules, by replacing with the reference to paragraph 2(2) which relates to firms commencing practice during any indemnity period (i.e. newly constituted firms).

11. The Subcommittee has also noted that under paragraph 2(2) and 2(3) of Schedule 1 to the principal Rules, the minimum contributions to the Fund is \$20,000. The proposed amendments to paragraph 2(2) and 2(3) seek to remove the limit in order to allow small sized solicitors firms to benefit from the reduction in the event that the basic contributions so reduced falls below \$20,000.

12. Noting that the proposed reduction in contributions is applicable to all solicitors firms, including those set up after 2003 and which have not made extra contributions to the Fund arising from the collapse of the HIH Group, Hon Miriam LAU has cautioned that some solicitors firms may claim undue disadvantage although she welcomes the proposed reduction.

13. The Law Society has stressed that the Council has given due consideration to all relevant factors and put forward the current arrangement. The Law Society has pointed out that based on projections made by actuaries, the reserves generated by the contributions collected over the past years and the income generated by investments of the Fund are sufficient to meet projected claim payments. It is therefore considering further reducing the contributions to the Fund.

14. Hon James TO has expressed concern that the reduction in contributions to the Fund will give rise to shortfall in the Fund to meet future claims made by the public, if the actuaries have made wrongful projections. To safeguard public interest in seeking professional indemnity, Hon James TO requests the Law Society to make available the actuaries' projection reports. In response, the Law Society has said that while it will consider Mr TO's request, the Fund provides indemnity cover up to a limit of \$10 million for each and every claim under the Scheme.

15. The Chairman and Hon Miriam LAU do not consider it necessary for the Law Society to provide the detailed projections made by actuaries given that the Law Society assumes the overall responsibility for administering the mandatory scheme. In the circumstances, the Chairman has suggested and the Law Society has agreed that, in future, it will provide the Panel on Administration of Justice and Legal Services with an information note on its plan to revise the contributions to the Fund together with the proposed ranges of revision so that Panel members would have the opportunity to discuss the proposal before its gazettal.

Methodology of calculating the reduction in contributions

16. The Subcommittee has noted that the formula for calculating the reduction is contained in paragraph 2(7)(c) of Schedule 1 to the principal Rules, and that no change is proposed by the Amendment Rules to the formula. In the case of new firms, as well as the proposed extension of reduction in contributions to all firms, the formula prescribed by paragraph 2(7)(c) of Schedule 1 to the principal Rules is summarized as follows –

$$TR \times \frac{C}{TC}$$

where TR = the total amount of reduction resolved by the Council for the coming indemnity year

C = the contribution paid by a firm in the current indemnity year

TC = the total amount of contributions paid by all solicitors firms in the current indemnity year.

17. Hon Audrey EU has asked about the basis for calculating the amount of reduction. The Law Society has explained that it is the first time for it to make such an arrangement. The percentage of reduction in contributions payable by solicitors firms in the 2010-2011 indemnity year will be resolved by the Council in accordance with paragraph 2(7)(c) of Schedule 1 to the principal Rules in late August 2010. As the total contributions payable by all law firms for the 2010-2011 indemnity year is projected to be HK\$308 million, the outstanding dividends from the HIH Group constitutes about 16% reduction in contributions enjoyed by all law firms.

18. Members note that all solicitors firms have been requested to provide information on the size of the firms and number of solicitors employed before 15 August 2010 for the purpose of calculating the premium for the 2010-2011 indemnity period. The Law Society will take into account the information so provided, the claims records and past contributions, and determine the contributions payable by individual firms. Individual solicitors firms will be notified of the reduced premium vide the debit notes for the 2010-2011 indemnity period to be issued by the end of August 2010, and they are expected to settle their respective contributions before 30 September 2010. The next indemnity period will commence on 1 October 2010.

Other amendments

19. The Subcommittee has also noted that the Amendment Rules make some technical amendments to Schedule 1 to the principal Rules to rectify a minor error in the Chinese text of the principal Rules to achieve consistency with their English text.

Follow-up action required of the Law Society

20. The Law Society has agreed to provide the Panel on Administration of Justice and Legal Services with an information note on its future plan to revise the contributions to the Fund as early as practicable (paragraph 15 above refers).

Recommendation

21. The Subcommittee raises no objection to the Amendment Rules, and does not propose any amendment to the Rules.

Advice sought

22. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
10 June 2010

**Subcommittee on
Solicitors (Professional Indemnity) (Amendment) Rules 2010**

Membership List

Chairman	Dr Hon Margaret NG
Members	Hon James TO Kun-sun
	Hon LAU Kong-wah, JP
	Hon Miriam LAU Kin-ye, GBS, JP
	Hon Audrey EU Yuet-mee, SC, JP
	Hon Paul TSE Wai-chun
	(Total : 6 Members)
Clerk	Miss Betty MA
Legal adviser	Mr Stephen LAM
Date	7 June 2010