



Legislative Council Brief

A. Title of the subsidiary legislation

Solicitors (Professional Indemnity) (Amendment) Rules 2019 (“RFL Amendment Rules”)

Solicitors (Professional Indemnity) (Amendment) Rules (No. 2) 2019 (“PIS Indemnity Limit Amendment Rules”)

(Annex 1)

B. Introduction / Background

- (1) Compulsory professional indemnity insurance for solicitors was introduced by the Law Society of Hong Kong (“Law Society”) in 1980. The current Professional Indemnity Scheme (“PIS”) was set up in 1989 under which indemnity is provided by the Hong Kong Solicitors Indemnity Fund (“Fund”). Pursuant to rule 3(1) of the Solicitors (Professional Indemnity) Rules (Cap. 159M) (“PIS Rules”), the Law Society is authorized to establish and maintain the Fund.
- (2) In general terms, the purpose of the PIS is to provide indemnity against loss arising from claims in respect of any civil liability incurred by a solicitor in connection with his/her practice. The PIS covers all Hong Kong law firms.
- (3) The Fund is administered in accordance with Cap. 159M by the Hong Kong Solicitors Indemnity Fund Limited (“Company”), a company limited by guarantee established by the Law Society for this purpose.

C. Justification for introducing the amendments to the subsidiary legislation

RFL Amendment Rules

- (4) The proposal was made in view of the growing trend of Hong Kong law

firms employing Registered Foreign Lawyers (“RFLs”), and the need to account for RFLs as qualified members of staff of a firm (as opposed to unqualified staff under the existing PIS contribution formula and calculations) so that their risk exposure to the PIS may be properly reflected in the PIS contributions and deductibles payable by their firms.

- (5) Overall, the number of RFLs practising in Hong Kong has risen by nearly 132% over the past 15 years (from 683 in 2003 to 1,584 in 2018). The number of RFLs employed by Hong Kong law firms (and covered under the PIS) has grown by over 156% from 450 in 2003 to 1,151 in 2018.
- (6) In view of the growing trend of solicitors expanding their practices across borders (e.g. CEPA opportunities and mergers by foreign law firms and Hong Kong law firms), it is anticipated that the number of RFLs practising in Hong Kong law firms will continue to increase.
- (7) As of 31 December 2018, the top three home jurisdictions of RFLs are (i) USA (ii) England and Wales and (iii) Mainland China.
- (8) The areas of practice of these RFLs are diverse and may range from conveyancing transactions in the PRC to large scale overseas listing of companies in the US. Claims may be brought overseas against Hong Kong law firms for work done by RFLs in Hong Kong. Legal proceedings in overseas jurisdictions may be costly to defend as the appointment of correspondent lawyers is usually required.
- (9) In view of the growing potential exposure of the PIS to claims against RFLs, the Council of the Law Society has resolved to adopt the recommendations of the Board of the Company to amend the PIS contribution formula and deductible calculations so that RFLs employed by a Hong Kong law firm will be accounted for in the same manner as an assistant solicitor or consultant practising in a Hong Kong law firm.
- (10) The amendments may result in more contributions being collected by the PIS. However the Council of the Law Society is empowered to reduce the total amount of contributions for the next indemnity period under paragraph 2(7) of Schedule 1 to the PIS Rules. Any increased contributions collected will be reflected in the Fund surplus as well as the actuarial projections of the financial position of the Fund which are reviewed by the Council on an annual basis. An increased surplus will

be a factor which the Council will be able to take into account in resolving whether a contribution reduction should be authorised and, if so, at what level across all Hong Kong law firms, regardless of whether they employ RFLs. Since the PIS Rules were first amended to empower the Law Society to reduce PIS contributions in 2010, the Council has authorised a total reduction of over HK\$1.1 billion.

PIS Indemnity Limit Amendment Rules

- (11) The existing PIS indemnity limit of HK\$10 million per claim has been in place since 1994.
- (12) After careful consideration of factors such as the rise in property values over the last twenty years, PIS claims statistics, the financial position of the Fund and the compulsory professional indemnity limits in overseas jurisdictions, the Council of the Law Society has resolved to increase the PIS indemnity limit to HK\$20 million per claim, effective from the 2019/2020 indemnity year.
- (13) The formula for calculating PIS contributions payable by law firms (save as mentioned above) will remain unchanged. The increased limit of indemnity will not result in an increase of PIS contributions. The cost of providing the additional cover will be borne by the Fund.
- (14) Some small firms (i.e. firms with 1 – 3 partners) may not currently purchase top up professional indemnity insurance in the commercial market and this increase in the indemnity limit will therefore provide additional protection to the public.
- (15) Paragraphs (2) and (3) of Section 7AD of the Legal Practitioners Ordinance (Cap. 159) require all Limited Liability Partnerships that are Hong Kong firms (“LLPs”) to have in existence, in addition to the indemnity which the LLPs are entitled under the PIS, a policy of insurance which provides indemnity up to an amount not less than HK\$10 million in respect of any one claim. With the increase of the PIS indemnity limit, the effective engagement of the above additional professional indemnity policy taken out by the LLPs is triggered will be moved further up, and this may result in premium savings for the LLPs.
- (16) Rule 6 of the Foreign Lawyers Registration Rules (Cap. 159S) requires

that there shall be in existence at all times a policy of insurance under which a foreign lawyer is entitled to be indemnified, in respect of services rendered by him/her while acting or practising as a foreign lawyer, in a manner and to the extent similar to the indemnity provided to a solicitor under the PIS. The increase of PIS indemnity limit will indirectly increase the level of indemnity required of foreign lawyers and foreign law firms and provide better protection to the public.

D. Explanation of main provisions

RFL Amendment Rules

- (17) The annual contribution payable by a Hong Kong law firm to the Fund is calculated based on a contribution formula set out in paragraph 2(1)(a)(i) of Schedule 1 to the PIS Rules, as follows:

$$C = (N * \$20000) + (M * \$13000) + S$$

Where-

** =multiplied by;*

C =the amount (subject to any appropriate adjustment made under subparagraph (3)) of the basic contribution which may also be the contribution;
N =number of principals (as at 31 July immediately preceding such indemnity period);

M =number of assistant solicitors and consultants (as at 31 July immediately preceding such indemnity period); and

*S =the amount established from the **Gross Fee Income** of the firm*

- (18) After the amendments, *M* will be amended so that the number of RFLs in a law firm will become a rating factor in the calculation of that firm's PIS contribution, as follows:

M =number of assistant solicitors, ~~and~~ consultants (as at 31 July immediately preceding such indemnity period) and foreign lawyers (as at 31 July immediately preceding such indemnity period commencing on or after 1 July 2019);

- (19) When an Indemnified makes a claim for indemnity under the PIS, he or she is required to bear the first part of any loss, referred to as a "deductible", in accordance with paragraph 1(1) of Schedule 3 to the PIS

Rules. The amount of deductible to be borne by the Indemnified is calculated by reference to the formula set out in paragraph 2(2) of Schedule 3 to the PIS Rules, as follows:

- “(a) where the indemnified is a sole practitioner at the relevant date, the first \$30,000 in respect of any one claim;*
- (b) where the indemnified is a partnership, in respect of any claim against that partnership or its predecessors in business, the first \$20,000 of any one claim multiplied by the **number of principals** in the firm at the relevant date;*
- (c) in addition to sub-subparagraph (a) or (b), \$15,000 of any one claim multiplied by the **number of assistant solicitors and consultants** in the firm at the relevant date.”*

After the amendments, paragraph 2(2)(c) of Schedule 3 to the PIS Rules will be amended as follows:

- “(c) in addition to sub-subparagraph (a) or (b), \$15000 of any one claim multiplied by the **number of assistant solicitors, foreign lawyers and consultants** in the firm at the relevant date.”*

The maximum deductible to be borne by the Indemnified in respect of any one claim will remain unchanged at HK\$200,000.

- (20) In view of the number of RFLs becoming an additional rating factor, the “former solicitor” cover currently provided under rule 10(2) and paragraph 3 of Schedule 3 of the PIS Rules will also be extended to cover former RFLs and former employees.

PIS Indemnity Limit Amendment Rules

- (21) All references to the indemnity limit in the PIS Rules have been updated so that the increased limit of HK\$20 million per claim will apply to any claims made on or after 1 October 2019 against persons who are entitled to indemnity under the PIS.
- (22) There is no need to amend paragraph 3(1)(c) of Schedule 3 to the PIS

Rules (cover for former solicitors who ceased to be solicitors in practice on or before 30 September 1986) as all past claims covered by this provision have already been closed. There is no need to increase the indemnity limit of such historical cover.

E. Date of tabling the subsidiary legislation in LegCo and its Commencement Date

- (23) It is hoped that LegCo will table the two sets of amendment rules on 3 April 2019. The Commencement Dates of the two sets of amendment rules are as follows:

RFL Amendment Rules – 1 July 2019

PIS Indemnity Limit Amendment Rules – 1 October 2019

The PIS indemnity period runs from 1 October to 30 September. The above commencement dates will enable the new calculations of PIS contributions and deductibles as well as the new PIS indemnity limit to kick in from the indemnity year 2019/2020.

F. Public Consultation

- (24) A paper entitled "*Solicitors (Professional Indemnity) (Amendment) Rules 2017, Paper for the Panel on Administration of Justice and Legal Services ("AJLS Panel") of the Legislative Council*" dated 31 March 2017 consulting the AJLS Panel on the RFL Amendment Rules was noted at its meeting held on 24 April 2017 (**Annex 2**).

Members of the Law Society have also been informed of the proposed reforms made by the two sets of amendments rules in the following publications (**Annex 3**):

- December 2016 issue of "President's Message" of Hong Kong Lawyer;
- President's letter dated 29 September 2017;
- Circular 17-818(PA) issued on 3 October 2017;
- November 2017 issue of "From the Council Table" of Hong Kong Lawyer;
- President's Letter dated 13 July 2018.

G. Enquiries

For enquiries on this brief, please contact Ms. Gigi Liu, Assistant Director, Professional Indemnity Scheme of the Law Society at 3rd Floor, Wing On House, 71 Des Voeux Road Central, Hong Kong (Telephone No. 2846 0557).

Law Society of Hong Kong

29 March 2019

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Solicitors (Professional Indemnity) (Amendment) Rules 2019

(Made by the Council of The Law Society of Hong Kong under section 73A of the Legal Practitioners Ordinance (Cap. 159) subject to the prior approval of the Chief Justice)

1. Commencement

These Rules come into operation on 1 July 2019.

2. Solicitors (Professional Indemnity) Rules amended

The Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg. M) are amended as set out in rules 3 to 6.

3. Rule 2 amended (interpretation)

(1) Rule 2—

Repeal the definition of *indemnified*

Substitute

“*indemnified* (獲彌償保障者) means the firm named in the receipt referred to in rule 9, or any principal in the firm, any person employed or working in connection with the Practice (including any assistant solicitor, any foreign lawyer, any solicitor who is a consultant in the firm, and any trainee solicitor), any solicitor who has ceased by reason of death, retirement or otherwise to practise as principal in the firm, any person who was employed or who worked in connection with the Practice (including any assistant solicitor, any foreign lawyer, any consultant and any trainee solicitor) and their estate and legal representatives, and also includes any service, administrative or nominee company or trust in so far as

its activities are carried out in connection with the Practice;”.

(2) Rule 2, definition of *Indemnity*—

Repeal

“the indemnified or a former solicitor”

Substitute

“an indemnified, a former solicitor, or any person who was employed or who worked in connection with the Practice (whether as an assistant solicitor, a foreign lawyer, consultant, trainee solicitor or otherwise), or their estate and legal representatives”.

4. Rule 10 amended (entitlement to Indemnity)

(1) Rule 10(2)—

Repeal

“A former solicitor,”

Substitute

“A former solicitor, or any person who was employed or who worked in connection with the Practice (whether as an assistant solicitor, foreign lawyer, consultant, trainee solicitor or otherwise), or their estate and legal representatives.”.

(2) Rule 10(2), Chinese text—

Repeal

everything after “首次向” and before “發出一樣”

Substitute

“上述的人提出任何申索而引起者，而獲提供彌償的情形，須猶如第 9 條所提述的收據已向上述的人”。

(3) Rule 10(3)—

Repeal

everything after “Schedule 3”

Substitute

“apply to any of the following persons referred to in subrule (2) as if they were an indemnified—

- (a) a former solicitor, or any person who was employed or who worked in connection with the Practice (whether as an assistant solicitor, foreign lawyer, consultant, trainee solicitor or otherwise); and
- (b) their estate and legal representatives.”.

5. Schedule 1 amended (contributions to fund)

- (1) Schedule 1, paragraph 1—

Repeal

“assistant solicitors”

Substitute

“assistant solicitors, foreign lawyers”.

- (2) Schedule 1, paragraph 2(1)(a)(i)—

Repeal

“and consultants (as at 31 July immediately preceding such indemnity period); and”

Substitute

“, consultants (as at 31 July immediately preceding such indemnity period) and foreign lawyers (as at 31 July immediately preceding such indemnity period commencing on or after 1 July 2019); and”.

- (3) Schedule 1, paragraph 2(1)(b)(i)—

Repeal

“solicitors and consultants”

Substitute

“solicitors, consultants, and from 1 July 2019 onwards, foreign lawyers,”.

- (4) Schedule 1, English text, paragraph 2(1)(b)(iii)—

Repeal

“names”

Substitute

“name”.

- (5) Schedule 1, after paragraph 2(1)(b)(iii)—

Add

“(iia) From 1 July 2019 onwards, the return referred to in sub-paragraph (b)(iii) must also include particulars of the name and the position held in the Practice of every foreign lawyer and any change in such particulars since the date of the previous return.”.

- (6) Schedule 1, paragraph 3(d)—

Repeal

“solicitors”

Substitute

“solicitors, foreign lawyers”.

6. Schedule 3 amended (exclusions and conditions)

- (1) Schedule 3, paragraph 2(2)(c)—

Repeal

“solicitors”

Substitute

“solicitors, foreign lawyers”.

- (2) Schedule 3, paragraph 3, heading—

Repeal

“former solicitors Indemnity”

Substitute

“Indemnity to former solicitors and former employees”.

- (3) Schedule 3, after paragraph 3(2)(b)—

Add

“(c) If any person (other than a former solicitor described in sub-subparagraph (a)) who was employed or who worked in connection with the Practice ceases to be employed or to work in connection with the Practice on or after 1 July 2019, he or she must be provided with Indemnity under rule 10(2) for that part of his or her loss that exceeds \$15,000 and up to but not exceeding \$10,000,000 in respect of any one claim.”.

Approved this day of 2019.

Chief Justice

Made this day of 2019.

Explanatory Note

These Rules amend the Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg. M) to incorporate foreign lawyers who are employed or who work in connection with a Hong Kong law firm as an additional rating factor in calculating the firm's contributions and deductibles applicable under the Professional Indemnity Scheme.

2. The Rules also extend cover for persons who were employed or who worked in connection with a Hong Kong law firm, such as foreign lawyers and non-professional staff, where they have retired and the firms for which they formerly worked for have ceased to exist.

Solicitors (Professional Indemnity) (Amendment) (No. 2) Rules 2019

(Made by the Council of The Law Society of Hong Kong under section 73A of the Legal Practitioners Ordinance (Cap. 159) subject to the prior approval of the Chief Justice)

1. Commencement

These Rules come into operation on 1 October 2019.

2. Solicitors (Professional Indemnity) Rules amended

The Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg. M) are amended as set out in rules 3 and 4.

3. Schedule 1 amended (contributions to fund)

Schedule 1, paragraph 2(6)(c)(i)—

Repeal sub-sub-sub-subparagraph (A)

Substitute

“(A) for all claims first made before 1 October 2019 against persons who are entitled to be provided with Indemnity—any amount in excess of \$10,000,000 in respect of any one claim;

(AB) for all claims first made on or after 1 October 2019 against persons who are entitled to be provided with Indemnity—any amount in excess of \$20,000,000 in respect of any one claim;”.

4. Schedule 3 amended (exclusions and conditions)

(1) Schedule 3, paragraph 2(1)—

Repeal

“such deductibles and \$10,000,000 in respect of any one claim.”

Substitute

“such deductibles and—

(a) for all claims first made before 1 October 2019 against persons who are entitled to be provided with Indemnity—\$10,000,000 in respect of any one claim;

(b) for all claims first made on or after 1 October 2019 against persons who are entitled to be provided with Indemnity—\$20,000,000 in respect of any one claim.”.

(2) Schedule 3, paragraph 3(2)(a)—

Repeal

“and \$10,000,000 in respect of any one claim.”

Substitute

“and—

(i) for all claims first made before 1 October 2019 against the former solicitor—\$10,000,000 in respect of any one claim;

(ii) for all claims first made on or after 1 October 2019 against the former solicitor—\$20,000,000 in respect of any one claim.”.

(3) Schedule 3, paragraph 3(2)(c)—

Repeal

“and up to but not exceeding \$10,000,000 in respect of any one claim.”

Substitute

“and—

- (i) for all claims first made before 1 October 2019 against him or her—up to but not exceeding \$10,000,000 in respect of any one claim;
- (ii) for all claims first made on or after 1 October 2019 against him or her—up to but not exceeding \$20,000,000 in respect of any one claim.”.

Approved this day of 2019.

Chief Justice

Made this day of 2019.

Explanatory Note

These Rules amend the Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg. M) to increase the limit of indemnity of the Professional Indemnity Scheme (*PIS*) from the existing \$10,000,000 per claim to \$20,000,000 per claim. The calculation of PIS contributions payable by each firm remains unchanged.

Ref : CB4/PL/AJLS

LC Paper No. CB(4)75/17-18
(These minutes have been seen
by the Administration)

Panel on Administration of Justice and Legal Services

**Minutes of meeting
held on Monday, 24 April 2017, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex**

Members present : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)
Hon Dennis KWOK Wing-hang (Deputy Chairman)
Hon James TO Kun-sun
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, JP
Hon CHAN Chi-chuen
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Elizabeth QUAT, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung

Member attending : Dr Hon Yiu Chung-yim


Members absent : Hon CHUNG Kwok-pan
Hon YUNG Hoi-yan

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

Action

I. Information paper(s) issued since the last meeting

Members noted that the following information paper had been issued since the last meeting.

LC Paper No. CB(4)870/16-17(01) -- Letter of The Law Society of Hong Kong dated 12 April 2017 with a paper entitled "Solicitors (Professional Indemnity) (Amendment) Rules 2017" 

II. Items for discussion at the next meeting

LC Paper No. CB(4)817/16-17(01) -- List of outstanding items for discussion

LC Paper No. CB(4)817/16-17(02) -- List of follow-up actions

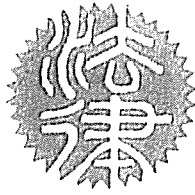
2. Members agreed to discuss the following items at the next regular meeting scheduled for 22 May 2017 at 4:30 pm:

- (a) Proposed Arrangement with the Mainland on Reciprocal Recognition and Enforcement of Judgments on Matrimonial and Related Matters;
- (b) Handling of prosecution works before the Magistrates' Courts; and
- (c) Launch of Hong Kong e-Legislation

3. Mr Dennis KWOK suggested to invite the Hong Kong Bar Association ("Bar Association") and the Law Society of Hong Kong to join the discussion of the item "Launch of Hong Kong e-Legislation". Members agreed.

III. Review of the Supplementary Legal Aid Scheme

LC Paper No. CB(4)817/16-17(03) -- Home Affairs Bureau ("HAB")'s paper on "Review of the Supplementary Legal Aid Scheme"



Solicitors (Professional Indemnity) (Amendment) Rules 2017

Paper for the Panel on Administration of Justice and Legal

Services of the Legislative Council

A. Title of the subsidiary legislation

Solicitors (Professional Indemnity) (Amendment) Rules 2017 (“Amendment Rules”)

B. Introduction / Background

- (a) Compulsory professional indemnity cover for solicitors was introduced by the Law Society of Hong Kong (“Law Society”) in 1980. The current Professional Indemnity Scheme (“PIS”) was set up in 1989 under which indemnity was provided by the Hong Kong Solicitors Indemnity Fund (“Fund”). Pursuant to rule 3(1) of the Solicitors (Professional Indemnity) Rules (Cap. 159M) (“PIS Rules”), the Law Society is authorized to establish and maintain the Fund.
- (b) In general terms, the purpose of the PIS is to provide indemnity against loss arising from claims in respect of any civil liability incurred by a solicitor in connection with his/her practice.
- (c) The Fund is administered in accordance with Cap. 159M by the Hong Kong Solicitors Indemnity Fund Limited (“Company”), a company established by the Law Society for this purpose.
- (d) PIS cover is renewed on the 1st of October every year. The annual contribution payable by a law firm to the Fund is calculated on the basis of a contribution formula set out in paragraph 2(1)(a)(i) of Schedule 1 to the PIS Rules, as follows:

$$“C = (N*\$20000) + (M*\$13000) + S”$$

Where-

* =multiplied by;

C =the amount (subject to any appropriate adjustment made under subparagraph (3)) of the basic contribution which may also be the contribution;

N =number of principals (as at 31 July immediately preceding such indemnity period);

M =number of assistant solicitors and consultants (as at 31 July immediately preceding such indemnity period); and

S =the amount established from the following table-

Gross fee income of the firm \$ Million	Amount \$
over 0 but not exceeding 5	2.64% x gross fee income
over 5 but not exceeding 6	142000
over 6 but not exceeding 7	161000
over 7 but not exceeding 8	181000
over 8 but not exceeding 9	197000
over 9 but not exceeding 10	212000
over 10 but not exceeding 11	228000
over 11 but not exceeding 12	241000
over 12 but not exceeding 13	253000
over 13 but not exceeding 14	265000
over 14 but not exceeding 15	274000
over 15 but not exceeding 16	281000
over 16 but not exceeding 17	286000
over 17 but not exceeding 18	290000
over 18 but not exceeding 19	295000
over 19 but not exceeding 20	299000
over 20 but not exceeding 21	302000
over 21 but not exceeding 22	306000
over 22 but not exceeding 23	309000
over 23 but not exceeding 24	313000
over 24 but not exceeding 25	316000
over 25 but not exceeding 50	1.27% x gross fee income (subject to a maximum amount of \$543000)
over 50 but not exceeding 75	1.09% x gross fee income (subject to a maximum amount of \$673000)
over 75 but not exceeding 100	0.90% x gross fee income (subject to a maximum amount of \$732000)
over 100	0.73% x gross fee income"

As shown in the contribution formula above, the rating factors currently adopted in calculating a firm's contribution are: **(i) number of principals (ii) number of assistant solicitors and consultants and (iii) the firm's gross fee income for the immediately preceding accounting year.**

- (e) When an Indemnified makes a claim for indemnity under the PIS, he/she is required to bear a self-retained loss referred to as a "deductible" pursuant to paragraph 1(1) of Schedule 3 to the PIS Rules. The amount of deductible to be borne by the Indemnified is calculated with reference to the formula set out in paragraph 2(2) of Schedule 3 to the PIS Rules, as follows:

- "(a) where the indemnified is a sole practitioner at the relevant date, the first \$30000 in respect of any one claim;*
(b) where the indemnified is a partnership, in respect of any claim against that partnership or its predecessors in business, the first \$20000 of any one claim multiplied by the number of principals in the firm at the relevant date;
(c) in addition to sub-subparagraph (a) or (b), \$15000 of any one claim multiplied by the number of assistant solicitors and consultants in the firm at the relevant date."

The rating factors currently adopted in calculating an Indemnified's deductible are: (i) number of principals and (ii) number of assistant solicitors and consultants.

- (f) The Board of Directors of the Company ("Board") and the Council of the Law Society ("Council") have taken note of the rising number of Foreign Lawyer ("FLs") practising in Hong Kong. The Law Society does not currently require FLs, who apply for registration to be employed in a Hong Kong law firm, to supply evidence of professional indemnity insurance pursuant to s.6 of the Foreign Lawyers Registration Rules (Cap. 159S); on the basis that they are already covered as employees of Hong Kong law firms under the PIS. **Currently, the number of FLs employed in a Hong Kong law firm is not, however, incorporated in the calculation of PIS contribution and deductible as shown in paragraphs B(d) & (e) above.** The associated risk exposure of these FLs to the PIS is therefore not reflected in the PIS contribution and

deductible payable by Hong Kong law firms with FLs.

C. Justification for introducing the amendments to the subsidiary legislation

(a) The objective of the Amendments Rules is to introduce the “number of FLs” employed or working in connection with the Practice of a Hong Kong law firm as an additional rating factor for the calculation of that law firm’s PIS contribution and deductible.

(b) Growing trend of FLs practising in Hong Kong law firms

(1) The number of FLs practising in Hong Kong has risen by more than 50 percent over the past 10 years (from 906 in 2006 to 1,358 in 2016). The number of FLs and percentage of FLs employed in Hong Kong law firms as at 31 December 2006, 2011 and 2016 are as follows:

As at 31 Dec of	No. of FLs	% employed in HK law firms
2006	906	58%
2011	1,371	66%
2016	1,358	73%

(2) In view of the growing trend of solicitors expanding their practices across borders (e.g. CEPA opportunities and mergers by foreign law firms and local firms), it is anticipated that the number of FLs practising in Hong Kong law firms will continue to increase.

(3) As of 31 December 2016, the top three home jurisdictions of FLs are (i) the United States, (ii) England & Wales and (iii) Mainland China.

(4) The areas of practice of these FLs are diverse and may range from conveyancing transactions in the PRC to large scale overseas listing in the US. Claims may be brought overseas against Hong Kong law firms arising out of work done by FLs in Hong Kong. Legal proceedings in overseas jurisdictions may be costly to defend as the appointment of correspondent lawyers is usually required.

(5) The type of claims or notifications received by the PIS that involved FLs were similar to those made against solicitors. Examples of the claims or notifications made include:

- Breach of confidential information;
- Negligent review of due diligence reports prepared by a PRC law firm;
- Failure to advise on an agreement between an overseas listed company and Hong Kong listed company;
- Negligent advice on the offerings of senior secured notes in the US and inter-creditor agreements;
- Negligent advice on potential tax warranty claims on the purchase of certain shares;
- Failure to give proper advice on the structure of a transaction and the need for any regulatory approvals in relation to a commercial building project in the PRC.

The amounts claimed by some of the claimants exceed the PIS policy limit of HK\$10 million.

- (6) Despite the growing risk exposure of FLs to the PIS, the current contribution formula and calculation of deductible in the PIS Rules do not account for the number of FLs employed in a Hong Kong law firm. FLs are treated no different from unqualified staff but as demonstrated in paragraph C(b)(5) above, FLs are qualified persons who should more appropriately be accounted for as professional staff of the firm. It is also unfair for Hong Kong law firms which do not employ FLs to pay the same amount of PIS contributions as those that employ FLs. To remedy this inequity, the Board and Council have resolved to amend the PIS Rules to incorporate the “number of FLs” into the contribution formula and calculation of deductible.

- (c) The Amendment Rules will also extend PIS cover to a former solicitor, or any person who was employed or who worked in connection with the Practice (whether as an assistant solicitor, foreign lawyer, consultant, trainee solicitor or otherwise), and their estate and legal representatives as compared to the existing PIS Rules which cover only former solicitors.

D. Explanation of main provisions

The proposed amendments to the PIS Rules are set out at Annex. Salient changes are as follows:

- (a) Rule 10(2) of the PIS Rules will be amended to cover all former Indemnifieds as explained in paragraph C(c) above, thus providing more comprehensive cover to the members of the Law Society and the public;

- (b) The amendments will bring FLs in line with the treatment of assistant solicitors or consultants of a firm under the PIS. Amendments to paragraph 2(1)(a)(i) of Schedule 1 and paragraph 2(2) of Schedule 3 to the PIS Rules will incorporate FLs into the calculation of PIS contributions and deductibles in the same manner as assistant solicitors or consultants are currently incorporated.
- (c) The reporting obligations on the principals of a Hong Kong law firm will also be updated to include the particulars of FLs of the firm.

E. Date of tabling the subsidiary legislation in LegCo and its Commencement Date

The Society is aiming to gazette the Amendment Rules in 2017.

The Commencement Date is to be appointed by the President of the Law Society by notice published in the Gazette.

F. Consultation with the relevant parties

The proposal to incorporate the number of FLs into the PIS contribution formula and calculation of deductible was explained and published in the “President’s Message” of the December 2016 edition of *Hong Kong Lawyer*, a copy of which had been distributed to every member of the Law Society (except for members who have chosen to opt out from the distribution list).

G. Enquiries

Any enquiries concerning this amendment exercise can be directed to Ms. Gigi Liu, Assistant Director, Professional Indemnity Scheme of the Law Society at 3rd Floor, Wing On House, 71 Des Voeux Road Central, Hong Kong (Telephone No. 2846 0557).

31 March 2017

PRESIDENT'S MESSAGE

會長的話

Annex 3

Professional Indemnity Scheme: An Update

The Professional Indemnity Scheme ("PIS") has been the professional indemnity provider of law firms in Hong Kong for nearly 30 years. It is governed by the Solicitors (Professional Indemnity) Rules (Cap. 159M) ("PIS Rules") and is held, managed and administered by the Hong Kong Solicitors Indemnity Fund Limited ("Company").

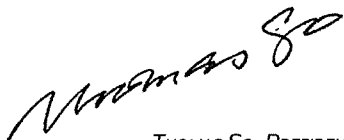
The PIS Rules were drafted nearly three decades ago and are in need of revision. The Solicitors (Professional Indemnity) (Amendment) Rules 2016 and Solicitors' (Practice) (Amendment) Rules 2016 (together "Amendment Rules") were gazetted on 25 November 2016. The Amendment Rules aim to improve the clarity of the PIS Rules, enhance the operation of the PIS and provide better protection to the public. Salient features of the changes include:

- (a) amending the definition of "Practice" (r. 2 of the PIS Rules) to clarify that the business of practising as a solicitor includes *"the neutral in any form of alternative dispute resolution procedure; China-Appointed Attesting Officer; or civil celebrant..."*;
- (b) amending the Senior Counsel Clause (para. 8(1)(c) of Schedule 3 to the PIS Rules) to give the Indemnified and the Company a choice to refer a difference or dispute arising between them regarding the defence or settlement of a claim, to either a *Junior or a Senior Counsel* for final determination (the "Counsel Clause"). This may result in cost savings as the current PIS Rules only make reference to a Senior Counsel;
- (c) clarifying the existing power of the Company or the Law Society to disburse or reimburse out of the fund all expenses and liabilities incurred in the handling of claims and other expenses and liabilities incurred in respect of the fund and the PIS Rules, subject to the Company or the Law Society having acted in good faith (para. 3(d) of Schedule 2 to the PIS Rules);
- (d) removing an exclusion (para. 1(2)(c)(x) of Schedule 3 to the PIS Rules) so that Indemnity will be provided even where no Receipt had been issued to the relevant practice because of some default by its principals. This means that subject to the terms and conditions of the PIS Rules, the relevant law firm will still be indemnified even when its principals have failed to pay the PIS contributions. The deletion of this exclusion to the PIS Rules is aimed at safeguarding the public. The Company's remedy for the law firm's failure to pay its contribution is to rely on its power to charge interest on overdue contributions (pursuant to para. 5 of Schedule 1 to the PIS Rules) and to pursue each principal of the firm for reimbursement of any payment made by the Company to satisfy the claim against the firm, together with interest (under para. 9 of Schedule 3 of the PIS Rules). Members should take note however, that a solicitor's practising certificate shall be suspended if he/she fails to maintain PIS cover pursuant to r. 6 of the PIS Rules;
- (e) clarifying the Company's discretion to take over the conduct of a claim, which is important in cases where a claim may be made against a sole practitioner who has passed away and no personal representative has been appointed to administer the estate. Unless the Company takes over the conduct of the claim the claimant may go uncompensated.

In addition to these two sets of Amendment Rules, the Board of the Company and the Law Society have also taken note of the rising number of registered foreign lawyers ("RFLs") practising in Hong Kong. The Law Society does not currently require RFLs, who apply for registration to be employed in a Hong Kong law firm to supply evidence of professional indemnity insurance pursuant to s. 6 of the Foreign Lawyers Registration Rules; on the basis that they are covered by the PIS. The number of RFLs practising in Hong Kong has risen by more than 67 percent over the last 10 years. (from 777 in 2005 to 1,299 in 2015). As at 31 December 2015, 74 percent of RFLs are employed in Hong Kong law firms. There is thus an increase in potential exposure to claims arising out of errors or omissions by RFLs in Hong Kong firms. The top three home jurisdictions of RFLs are the United States, England & Wales and mainland China.

Despite the rising number of RFLs practising in Hong Kong law firms, the number of RFLs is not incorporated in the contribution formula and therefore is not reflected in the contributions payable. RFLs are treated no differently to unqualified staff. To remedy this inequity in the PIS contribution calculation, the Council and the Board have resolved to incorporate the number of RFLs into the formula for calculation of PIS contributions and deductibles.

The Board is also considering other proposals to improve the coverage of the PIS, preferably at no additional cost to members. If you have any comments or suggestions, you are most welcome to let me know at president@hkllaw.org.


THOMAS SO, PRESIDENT

專業彌償計劃更新

專業彌償計劃已為香港律師行提供專業彌償接近30年。該計劃由《律師(專業彌償)規則》(第159M章)(「專業彌償規則」)規管,並由香港律師彌償基金有限公司(「彌償公司」)持有、管理及執行。

「專業彌償規則」自起草至今已近30年,需要作出修訂。《2016年律師(專業彌償)(修訂)規則》及《2016年律師(執業)(修訂)規則》(統稱「修訂規則」)已於2016年11月25日憲報刊登。「修訂規則」旨在令專業彌償規則更清晰;改善基金的日常營運;及為公眾人士提供更佳保障。修訂的要點包括:

- (a) 修訂「執業業務」(「專業彌償規則」第2條)的定義,澄清律師的執業業務包含「在任何形式的另類爭端排解程序中的中立方、中國委託公證人或婚姻監禮人...」;
- (b) 修訂資深大律師條款(「專業彌償規則」附表3第8(1)(c)條),讓獲彌償方及彌償公司可選擇把雙方訟費或申索引起的分歧或爭議交由一名大律師或資深大律師作出決定(「大律師條款」)。現行的專業彌償規則規定只可交由資深大律師作出決定。此項修訂可為各方節省開支;
- (c) 澄清現時當彌償公司或律師會在真誠行事時,可從基金支付或代墊付處理申索時招致的所有開支、費用及法律責任,及有關基金及「專業彌償規則」招致的其他開支和法律責任(「專業彌償規則」附表2第3(d)條);
- (d) 取消一條除外條款(「專業彌償規則」附表3第1(2)(c)(x)條),令即使執業業務的主管因某些違責而並未能獲發有關收據時,彌償基金依然會為其提供彌償保障。這意味著即使其主管沒有根據「專業彌償規則」的條款支付專業彌償供款,有關律師行仍會獲得彌償保障。取消這條除外條款旨在保障公眾。彌償公司有權力就過期供款收取利息(根據「專業彌償規則」附表1

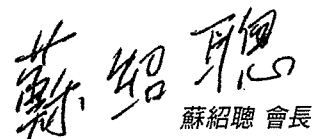
的第5段),並向律師行的每一位主管追討彌償公司就償付對律師行的申索作出的任何付款及利息(根據「專業彌償規則」附表3的第9段)。然而,會員應注意,若會員未能根據「專業彌償規則」第6條維持彌償保障,其律師執業證書將被暫停;

- (e) 澄清彌償公司接手處理任何申索的酌情權。此修訂在某些情況下十分重要,例如當申索者向已去世的獨營執業者提出申索,而該名執業者未有委任代表處理其遺產時,在該情況下,除非彌償公司接手處理申索程序,否則申索人可能不能獲得賠償。

除了對這兩條條例的修訂外,彌償公司董事局及律師會亦注意到,在香港執業的註冊外地律師人數正在不斷上升。申請註冊受僱於香港律師行的註冊外地律師,因他們已被專業彌償計劃所保障,律師會現時不需要他們提供專業彌償保險證據(《外地律師註冊規則》第6條)。在香港執業的註冊外地律師人數,在過去10年增加超過67%(由2005年的777人增至2015年的1,299人)。截至2015年12月31日,74%的註冊外地律師受僱於香港律師行。因此,因香港律師行的註冊外地律師的錯誤或遺漏,而招致申索的潛在風險亦增加。註冊外地律師的三個主要所屬司法管轄區為美國、英格蘭和威爾斯及中國內地。

儘管在香港執業的註冊外地律師人數不斷上升,但此數目並未納入供款的計算公式,因此應繳供款並未能反映相關風險。現時供款的計算方式將註冊外地律師當作不合資格職員一樣處理。為補救這個不公平情況,理事會及彌償公司董事局決定將註冊外地律師人數納入專業彌償供款及免賠額的計算公式。

彌償公司董事局亦正考慮其他建議,在盡量不增加會員成本的情況下,改善專業彌償的保障。如有任何意見或建議,歡迎與我聯絡:president@hkllaw.org。


蘇紹聰 會長



Presidents Letter

Sub Menu of President's Letter

President's Letter*From the President*

29 September 2017

Dear Fellow Members,

Increase of the Professional Indemnity Scheme ("PIS") Indemnity Limit

In announcing the one-third reduction in PIS contributions for the 2017/18 indemnity year in my letter of 9 June, I also mentioned that the Council would be considering other suggestions to improve the PIS in the long run.

The existing PIS indemnity limit of HK\$10 million per claim (inclusive of defence costs) has been in place for more than two decades since 1994. After careful consideration of factors such as the rise in property values over the last twenty years, PIS claims statistics, the financial position of the Solicitors Indemnity Fund and the compulsory professional indemnity limits required in other jurisdictions, the Council has resolved to increase the PIS indemnity limit to HK\$20 million per claim, effective from a date to be appointed. We hope that the proposed increase in the PIS indemnity limit would enhance the benefits provided to both members and the public, bring Hong Kong law firms in line with overseas standards and increase the overall competitiveness of our profession. The increased limit of indemnity will not result in an increase of PIS contributions. There will be no change in the calculation of the PIS contribution formula.

An increase of the PIS indemnity limit will require legislative amendments to the PIS Rules and the approval of the Chief Justice and the Legislative Council. I shall keep you closely informed of the progress.

Consultation on Gender Recognition

The Government has issued a Consultation Paper on Gender Recognition. It seeks the views of the community on a number of issues concerning legal recognition of gender, including whether a gender recognition scheme should be established in Hong Kong and, if so, the contents of the scheme. This subject is complex and controversial. It involves matrimonial, constitutional and human rights issues. The specialist committees of the Law Society are now reviewing the Consultation Paper and welcome input from members. If you have any comments on the matter, please send your views to the Secretariat. Please refer to this [Circular](#).

Law Week 2017 - Free Legal Advice Programme

The fulfillment of solicitors' public services role in the society takes different forms. Many of our members have contributed to free legal advice services by participating in the Law Society's Free Legal Helpline, the Duty Lawyer Service's Free Legal Advice Scheme, similar services offered by other NGOs as well as giving free talks and seminars on law related subjects to the public.

To promote access to legal services, the Law Week 2017 Organising Committee organised a Free Legal Advice Programme on 22 and 23 September at the covered piazza of Times Square. Nearly 100 solicitors and trainee solicitors joined us to offer free legal advice on over 230 enquiries from members of the public during the two days. I would like to take this opportunity to thank all those who have contributed their precious time and effort to make this event a big success.

Visits by Mainland Delegations

September has been an eventful month for us. Over the past two weeks, we had visits from Nanjing Justice Bureau, Lawyers Associations of Nanjing, Wuxi, Xuzhou, Shenzhen, as well as legal academics, namely, China Law Society and China University of Political Science and Law Alumni Association. The delegates showed great interest in the structure and work of the Law Society, such as our Risk Management Education Programme, our role to serve and regulate members, as well as the latest development of the Hong Kong legal industry and our civil procedures. We look forward to promoting a closer cooperation and exchange with these organisations.

I wish you all a relaxing week ahead and happy Mid-Autumn Festival!

Yours sincerely,

Thomas So
President

[This President's Letter is in bilingual text.]

From the President

各位同業：

專業彌償計劃增加彌償上限

我在6月9日的《會長的信》中向大家宣布2017/18年度的彌償供款額將減少三分之一，並指出理事會會考慮如何長遠改善專業彌償計劃。

現時專業彌償計劃的港幣一千萬元（包括訟費）彌償上限，自1994年生效至今，已經超過二十年。理事會在考慮過去二十年的物業價值升幅、專業彌償計劃索償數據、專業彌償基金的財政狀況，及其他司法管轄區的指定專業彌償上限等因素後，決定把每宗彌償索償的上限增加至港幣二千萬元，生效日期將另行指定。我們希望建議的彌償上限上調，可以令會員及公眾人士得益更多、令香港律師行與海外標準看齊，並提升業界的整體競爭力。建議的彌償上限上調，不會導致彌償供款增加，亦不會影響專業彌償計劃供款方程式的計算方法。

要落實增加彌償上限的建議，須修訂《專業彌償規則》，並須經終審法院首席法官同意和立法會通過，方可生效。我將會把有關進展情況向大家匯報。

性別承認諮詢文件

政府最近就性別承認發表諮詢文件，就以下事宜諮詢公眾：如何在法律上承認性別，包括應否在香港建立一套性別承認制度，若應建立，其內容為何。此議題甚具爭議，亦涉及家事、憲制及人權等事宜，十分複雜。律師會的專業委員會現正審閱此諮詢文件，並歡迎會員就此發表意見。若你就此議題有任何意見，歡迎向秘書處發表。請參閱通告。

2017年法律周——免費法律諮詢計劃

律師可以不同形式服務社會。很多會員透過參與律師會的免費法律熱線服務、當值律師服務的免費法律諮詢計劃，和其他非政府組織提供的類似服務，以及向公眾人士就與法律有關的議題的免費講座中發言。

為使更多公眾人士獲得法律諮詢服務，2017年法律周籌備委員會於9月22至23日在時代廣場的有蓋露天廣場舉辦免費法律諮詢計劃，有近一百名律師和實習律師參與，就超過二百三十項公眾人士的查詢提供免費法律諮詢。感謝所有參加人士的付出，令此活動得以順利舉行。

內地訪問團

我們在九月十分繁忙，在過去兩星期先後接待來自南京市司法局及來自南京、無錫、蘇州及深圳的律師協會的訪問團，亦有來自中國法學會和中國政法大學校友會的法律學者。各訪問團的成員都對律師會的架構和工作深感興趣，例如我們的風險管理教育計劃、律師會在服務和規管會員的角色，以及香港的法律界和民事司法程序的最近發展。我們期望在未來與這些組織作更深入的合作和交流。

希望大家可在下星期享受輕鬆的假期，並預祝大家中秋節快樂！

蘇紹聰
會長
2017年9月29日

[本《會長的信》以雙語發放。]

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*Index Reference:
Professional Indemnity Scheme*

CIRCULAR 17-818 (PA)

3 October 2017

**PROFESSIONAL INDEMNITY SCHEME ("PIS")
Increase of the PIS indemnity limit**

1. The Council has adopted the recommendation of the Board of Directors of Hong Kong Solicitors Indemnity Fund Limited to increase the indemnity limit of the PIS from HK\$10 million any one claim inclusive of defence costs, to HK\$20 million any one claim inclusive of defence costs.
2. The increased limit of indemnity will require amendments to the Solicitors (Professional Indemnity) Rules (Cap. 159M) ("PIS Rules") and is subject to the approval of the Chief Justice and negative vetting by the Legislative Council. If approved, the increased limit of indemnity will take effect on a future date to be appointed by the President.
3. The current PIS indemnity limit has been in place since September 1994, more than two decades ago. Upon reviewing factors such as inflation and the substantial increase in the value of the property market, the Council is of the opinion that the increased limit of indemnity will provide more adequate protection to the general public and members.
4. The increased limit of indemnity will not result in an increase of PIS contributions. There will be no change in the calculation of the PIS contribution formula.
5. A Hong Kong law firm operating in the form of a Limited Liability Partnership will still be required to have in existence, in addition to the PIS, a policy of insurance under which the partnership is entitled to be indemnified up to an amount not less than HK\$10 million in respect of any one claim.
6. Members will be informed of the estimated effective date of the increased limit when the related amendments to the PIS Rules are gazetted.

Printed on : 3/18/2019 下午 05:19:33

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FROM THE COUNCIL TABLE

理事會議題

An Update on the Professional Indemnity Scheme

The Professional Indemnity Scheme ("PIS") provides compulsory professional indemnity to Hong Kong law firms against losses arising from civil liability incurred in connection with their practices. The terms and conditions of the PIS are set out in the Solicitors (Professional Indemnity) Rules (Cap. 159M) ("PIS Rules") where indemnity is currently provided by the Hong Kong Solicitors Indemnity Fund established by the Law Society.

The Council has been conducting an on-going review of the scope and operation of the PIS and the PIS Rules, and has approved the following proposals in principle:

- A. Increasing the limit of indemnity under the PIS from the existing HK\$10 million per claim to HK\$20 million per claim with no change to the PIS contribution calculation formula.
- B. Improving the coverage of the PIS by:
 - (i) narrowing the "principal fraud / dishonesty" exclusion (ie, para. 1(2)(c)(iii) of Schedule 3 to the PIS Rules) so that the exclusion will not apply to an "innocent partner"; and
 - (ii) providing indemnity for costs incurred in responding to or defending:
 - (a) an investigation or inquiry (except for any disciplinary proceedings by or under the authority of the Law Society) by law enforcement agencies; and
 - (b) criminal charges (but only if the Indemnified is acquitted of such charges).
- C. Amending the PIS Rules to:
 - (i) expressly set out the general current practice regarding appointment of defence solicitors in respect of claims made under the PIS – an Indemnified must appoint defence solicitors from the panel of firms of solicitors appointed by the Council under r. 17 of the PIS Rules, unless the Hong Kong Solicitors Indemnity Fund Limited agrees otherwise in writing;
 - (ii) clarify that where two Hong Kong law firms are in association, the practising certificates of solicitors working concurrently for both associated firms will be suspended if any one of such associated firms does not have a valid receipt under the PIS (as per r. 6(2) of the PIS Rules).

In addition to the above, changes are being made to the PIS Rules whereby foreign lawyers employed in Hong Kong firms will be treated no differently from assistant solicitors or consultants in the PIS contribution and deductibles calculation formula. When Solicitors Corporations are introduced as a new mode of operation, the PIS Rules will also be updated to cater for this new mode of business operation.

We endeavour to keep the PIS under continuous review to assist our members in overcoming challenges they may face when running their practices. Any comments on the above or any other suggestions on the PIS can be directed to adpis@hklawsoc.org.hk.

專業彌償計劃的更新

專業彌償計劃為香港律師行提供與律師執業業務有關所招致的民事法律責任上的申索的強制性專業彌償保障。專業彌償計劃的條款及細則載於《律師(專業彌償)規則》(第159M章)，目前由律師會成立的香港律師彌償基金提供上述彌償。

理事會一直對專業彌償計劃和《律師(專業彌償)規則》的範圍和運作進行檢討，並原則上批准了以下建議：

- A. 在專業彌償供款的計算公式不變的情況下，把專業彌償限額從現在的每項申索\$10,000,000港元增加到每項申索\$20,000,000港元。
- B. 通過以下方式提高專業彌償的覆蓋範圍：
 - (i) 縮窄「主管欺詐 / 不誠實」的免除範圍(《律師(專業彌償)規則》附表3第1(2)(c)(iii)段，使有關免除不適用於「無辜的合夥人」；及
 - (ii) 為以下回應或抗辯所支付的費用提供彌償：
 - (a) 執法機構的調查或查詢(由律師會進行或授權的任何紀律處分除外)；及
 - (b) 刑事指控(但只限獲彌償保障者被判定無罪的索償)。
- C. 修訂《律師(專業彌償)規則》：
 - (i) 明確訂明就專業彌償申索委任辯護律師的一般現行做法—根據《律師(專業彌償)規則》第17條，除非香港律師彌償基金有限公司另外書面同意，獲彌償保障者必須從理事會委任的律師行委員會內委任辯護律師；
 - (ii) 澄清在兩間香港律師行聯營的情況下，如其中任何一間聯營律師行並無具備專業彌償基金的有效收據，同時為兩間聯營律師行工作的律師之執業證書將被吊銷。(《律師(專業彌償)規則》第6(2)條)。

此外，對《律師(專業彌償)規則》的修訂還包括受香港律師行聘用的外地律師的專業彌償供款及免賠額計算公式，將與助理律師及顧問看齊。日後引入律師法團業務模式後，《律師(專業彌償)規則》也將更新，以配合這種新的業務模式。

我們致力不斷檢討專業彌償，以協助會員面對執業中可能面臨的挑戰。如對專業彌償計劃或上述對其更新的建議有任何其他意見，歡迎電郵至 adpis@hklawsoc.org.hk。

Presidents Letter

Sub Menu of President's Letter

President's Letter*From the President*

13 July 2018

Dear Fellow Members,

Contribution Reduction - Indemnity Year 2018/19

The Council has completed its annual review of the financial position of the Hong Kong Solicitors Indemnity Fund ("Fund") and resolved to reduce the 2018/19 PIS contributions by one-third.

The Council is aware of the views of some members that a larger reduction of the PIS contributions ought to be made. These views were voiced and considered by the Council and it was a difficult decision - whilst a larger contribution reduction can provide a larger immediate benefit to the profession, such benefit must be balanced against:

- the objective of the Fund to provide indemnity to the profession and to the public. The Council and the Board must ensure the long term solvency of the Fund;
- the inherent nature of the Fund to require reserve levels higher than commercial insurers as it does not have the option to be liquidated when it becomes insolvent;
- the fact that unlike a commercial insurer, the Fund has no option to non-renew indemnity or raise contributions despite rising claims and/or investment losses under adverse economic conditions;
- investment risks in a volatile climate, where the value of Fund investments could fluctuate and shrink unpredictably;
- the ongoing reforms of the PIS to provide more comprehensive cover - e.g. increase of indemnity limit and widening of coverage. The Fund must be maintained in a healthy financial state to embark on these long term improvements.

The debit notes incorporating the one-third reduction will be issued by ESSAR to your firm between late August and early September 2018.

With respect to the increase of the indemnity limit, members have been informed previously that the Council has resolved to increase the limit to HK\$20 million per claim, effective from a date to be appointed. We are in the process of preparing the necessary legislative amendments.

We hope that the proposed increase in the PIS indemnity limit would enhance the benefits provided to both members and the public, bring Hong Kong law firms in line with overseas standards and increase the overall competitiveness of our profession. The increased limit of indemnity will not result in an increase of PIS contributions. There will be no change in the calculation of the PIS contribution formula.

Kazakhstan - a bridge between Europe, Russia and Asia

The Law Society was honoured to have been invited to witness the official launch of the Astana International Financial Centre ("AIFC") on 5 July. AIFC is a planned financial free zone located in Astana, Kazakhstan.

Kazakhstan is the world's largest landlocked country with a population of about 18 million and vast mineral, oil and gas resources, generating about 60% of Central Asia's GDP. It is also centrally located at the heart of the Belt and Road route and is certainly a place with vast potentials for further development.

The Law Society has taken the opportunity of the recent visit to Astana to reach out to our counterparts and various organisations there. The Law Society representatives, namely, Mr Amirali Nasir, Vice President, and Mr Michael Lintern-Smith, Past President, met with representatives from the Ministry of Justice, the Supreme Court, the AIFC Authority, the law faculty of a local university and the local bar associations. They also introduced Hong Kong's "One Country, Two Systems" regime and shared information promoting Hong Kong as an international financial centre with a robust legal system and quality legal services.

AIFC is an interesting area that can offer opportunities for Hong Kong's legal profession. AIFC operates within a special legal regime based on the principles of English laws, similar to the Hong Kong legal regime which is familiar to Hong Kong practitioners. The AIFC Court is independent in its activity and separable from the judicial system of Kazakhstan. It has exclusive jurisdiction over disputes arising out of the activities and operations of AIFC and over disputes transferred to the AIFC Court by consent among the parties concerned. The International Arbitration Centre ("IAC") in AIFC provides an alternative to court litigation for resolving civil and commercial disputes. Arbitration awards of the IAC are enforceable in Kazakhstan as Orders of the AIFC Court as well as enforceable internationally under the New York Convention.

Our counterparts in Kazakhstan are keen to create a closer working relationship to explore future cooperation with the Hong Kong legal profession. The Law Society will actively explore further on how members can take advantage of the opportunities arising from the development there.

Yours sincerely,

Melissa K. Pang
President

[This President's Letter is in bilingual text.]

From the President

各位同業：

2018/19 彌償年度的供款下調

理事會已完成每年對香港律師彌償基金（下稱「基金」）財務狀況的檢討，並決定將律師行於2018/19彌償年度須繳付的彌償計劃供款下調三分之一。

理事會了解到，有意見指出供款應進一步下調。理事會考慮過這些意見，而最後的決定並不容易，因為若供款進一步下調，確可令業界即時受惠，但我們亦應同時平衡以下各項因素：

- 基金的目的，是為業界及公眾提供彌償保障，所以理事會及基金的董事局有責任確保基金的償債能力；
- 基金的本質，是不能在無償債能力時清盤，所以必須擁有較商業承保人更多的儲備；
- 有別於商業承保人，即使索償增加及／或經濟環境惡劣導致投資虧損，基金都沒有不為彌償續期或增加供款的選擇權；
- 投資市場不穩定，令風險增加，使基金的投資環境起伏不定，回報難以預測；
- 專業彌償計劃不斷改革，以提供更全面的保障，例如增加彌償上限、擴大保障範圍。基金必須處於穩健的財務狀況，方可展開這些改革。

恒利保險服務有限公司將於2018年8月底至9月初向各律師行發出已把供款額下調三分之一的供款通知單。

至於增加彌償上限的決定，我們較早前已通知會員，理事會已決定把每宗申索額的上限增加至港幣二千萬元，生效日期將另行指定。我們正準備相關的法例修訂工作。

我們希望建議的彌償上限上調，可以令會員及公眾得益更多、令香港律師行與海外標準看齊，並提升業界的整體競爭力。建議的彌償上限上調，不會導致彌償供款增加，亦不會影響專業彌償計劃供款方程式的計算方法。

哈薩克斯坦——歐洲、俄羅斯與亞洲的橋樑

律師會非常榮幸獲邀於7月5日見證阿斯塔納國際金融中心（Astana International Financial Centre，簡稱「AIFC」）的成立典禮。AIFC位於哈薩克斯坦的阿斯塔納，是一個經規劃的金融自由區。

哈薩克斯坦作為世界上最大的內陸國家，人口約一千八百萬，擁有很多礦物、原油和煤氣資源，生產中亞百分之六十的國內生產總值。它亦處於「一帶一路」路線中心，發展潛力無限。

律師會藉到訪阿斯塔納的機會，接觸當地的同業及不同機構。律師會的代表——副會長黎雅明先生及前會長史密夫先生，與當地司法部、最高法院、AIFC管理局、當地一所大學的法學院和當地律師協會的代表會面，並向當地代表介紹香港的一國兩制，及推廣香港作為一個有穩健的法律制度為基礎，並可提供優質法律服務的國際金融中心的相關資料。

AIFC可為香港的法律專業提供機會，值得關注。AIFC以建基於英國法律的特殊法律系統運作，與香港有類近之處，亦為香港的法律執業者熟悉的法律制度。AIFC法院自行運作，獨立於哈薩克斯坦的司法系統。它對AIFC業務和運作所衍生的糾紛，以及在各方同意下轉介至AIFC的糾紛，擁有專屬司法管轄權。AIFC的國際仲裁中心亦提供法庭訴訟以外的解決民事和商務糾紛辦法。AIFC的國際仲裁中心作出的仲裁裁決，在哈薩克斯坦如AIFC法院的命令般具有法律約束力，亦可根據《紐約公約》在國際層面具約束力。

我們在哈薩克斯坦的同業非常渴望與香港的法律專業建立更緊密的工作關係，以開拓將來的合作機會。律師會將積極探討會員能如何進一步善用當地的發展機會。

會長
彭韻儀
2018年7月13日

[本《會長的信》以雙語發放。]