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5 July 2003

Clerk to Bills Committee
(Attn.: Miss Salumi Chan)
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Miss Chan,

**Land Titles Bill : Indemnity
Subrogation Rights**

At the ninth Bills Committee meeting on 30 June 2003, Members requested the Administration to provide an initial response as soon as possible to the Law Society submission of 27 June 2003, in particular on paragraph 4 concerning subrogation rights. This letter provides that response. I am copying it to the Law Society as well so that they may, if they so wish, submit further comment to the Bills Committee before its next meeting.

The Law Society is objecting to the effect of Clause 82(5), which bars professional indemnity insurers from subrogating to the rights of any person against Government arising under Clause 82(1), while Clause 86(1)(b) allows Government to subrogate to the rights of persons who have been paid an indemnity.

What is now Clause 82(5) was introduced into the draft Bill in 1996. Then, there had been recent cases in Australia where professional indemnity insurers, after having paid out on claims arising from malfeasance by solicitors, had made claims against the public indemnity schemes. This resulted in the contributors to the public fund having had to pay for the cost of a solicitor's malfeasance even though the solicitor had taken out professional indemnity insurance to cover such acts.

Where a solicitor has been negligent or acted wrongly it is appropriate that either directly or through his professional indemnity insurer he should recompense the indemnity fund under the Bill for any payments it has made to the extent that he was liable for the loss. (Clause 86(1)(b) is explicit that recovery by the indemnity fund from other parties must be "in proportion to their respective contributions to the loss".) Indeed, in its letter of 3rd April 1996, the Law Society accepted that "...there may be some logic in the argument of preventing subrogation rights where... a claim arose solely because of the fraud or negligence of a solicitor...".

The Administration considers that the principles reflected in Clauses 82(5) and 86(1)(b) are appropriate. We, therefore, have difficulty in understanding the Law Society's objection to Clause 82(5) in paragraph 4.

As regards paragraph 6, a professional indemnity scheme is different in nature from that of the indemnity fund under the Bill. A professional indemnity insurer will only pay for losses caused by its members. The likelihood of the insurer paying for a loss that was in fact due to the Land Registry should be very small. Nonetheless, following the principles of Clauses 82(5) and 86(1)(b), we agree that if a professional indemnity insurer has (erroneously) paid out for that part of a loss that was actually due to the Land Registry, the insurer should be entitled to recover that payment from the Land Registry. We are now considering whether and how the Bill should be amended to make this intention clear. We will consult the Law Society on this.

The Administration will provide a more detailed response to the Bills Committee on the issues raised in the Law Society paper of 27 June 2003 in due course.

Yours sincerely,

(Denis Li)
for Secretary for Housing, Planning and Lands

c.c. The Law Society of Hong Kong
(Attn : Ms Christine W S Chu) [Fax : 2845 0387]

LR (Attn : Mr Kim Salkeld) [Fax : 2810 4561]

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