

For discussion
on 23 January 2006

LegCo Panel on Administration of Justice and Legal Services

Professional Indemnity Scheme of the Law Society of Hong Kong

The object of this paper is to set out the Administration's comments in respect of the Law Society's response on 13 January 2006 to the issues raised by the Administration.

(1) The system that will be in place for ensuring that only reliable insurers are approved as qualifying insurers

2. The Law Society has replied that one of the major selection criteria for a qualifying insurer that is being considered and likely to be adopted is that an insurer must be authorized by the Office of the Commissioner of Insurance to conduct business in Hong Kong and is subject to the Insurance Company Ordinance.

3. We are of the view that greater transparency in the selection criteria would help to alleviate some of the concern of the public and the solicitors in respect of the risk of insolvency of the qualifying insurers. In this respect, the Administration would like to know –

- (i) Can the Law Society confirm that all qualifying insurers are Hong Kong insurance companies authorized by the Commissioner of Insurance to conduct business in Hong Kong and that overseas insurers will not qualify?
- (ii) What are the other major selection criteria that will be considered by the Law Society in respect of a qualifying insurer?
- (iii) Who will be selecting the qualifying insurers? Is it the Law Society Council and/or some other bodies?

(2) Whether reinsurance will offer any protection to solicitors and their clients against the insolvency of a qualifying insurer

4. The problems relating to reinsurance are noted. If the legal and practical issues can be worked out for reinsurance, the Administration considers that reinsurance will help to address some of the concern regarding the risk of insolvency of the qualifying insurers. We therefore suggest that the Law Society should consider including reinsurance as one of the major selection criteria for qualifying insurers.

(3) Whether qualifying insurers will introduce practice standards for solicitors which will help to prevent negligence occurring

5. The Law Society expects qualifying insurers will introduce risk management guidelines to help reduce future claims. This is to the advantage of both qualifying insurers and the insured solicitors. The Law Society is however not aware precisely of what guidelines or standards might be introduced by qualifying insurers.

6. The Administration considers that it would be useful for the Law Society to ascertain, before selecting the qualifying insurers, the guidelines or standards that will be introduced by them.

(4) Whether solicitors with bad claims records will be forced either to improve their practices or to cease to practise through inability to obtain insurance cover

7. We note the Law Society's response in relation to this issue and we have no further comment on this.

8. We await from the Law Society copies of the finalized minimum terms and conditions to be complied with in the qualifying insurance agreement, the draft qualifying insurance agreement and the draft assigned risk pool agreement.

Administration's Position

9. As expressed in the Administration's letter to the Panel on 30 September 2005, we consider that consumers should not be subject to a large degree of risk of non-recovery in the event of an insurer's insolvency. It seems from the Law Society's response that there is a need for the Law Society to consider some preventive measures or safeguards to ensure that the risk of insolvency of qualifying insurers is minimized and that the solicitors and the public are best protected of such risk.

10. Until further responses to the matters raised in this paper are received from the Law Society, the Administration maintains its position in relation to the proposed Qualifying Insurance Scheme as stated in our last paper for this Panel.

Department of Justice

January 2006

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