

LC Paper No. CB(2)1854/05-06(01)

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SUSAN LIANG & Co.

Solicitors



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Received 20/4

BY HAND

Ms. Margaret Ng
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Hong Kong

Please ask : Ms. Susan Liang
for
Our Ref. : SL/office
Your Ref. :
Date : 20 April 2006

Dear Margaret,

Re: **Proposed Change of the PIS to a QIS**

I shall be grateful if you will present my views on the following to the LEGCO.

1. **Conflict of Interest**

It is important for the solicitors on the Committee advocating QIS to declare their interest, i.e. are they from large firms and do they act for the insurer currently or will do so in the future when the Scheme is in place.

2. **Disadvantages of the QIS Scheme**

I believe that at the time the vote in favour of QIS was taken at the last EGM of the Law Society the way the scheme was to work was not clearly spelt out to members. It is now available in draft and I enclose herewith a copy to you. I set out below the following disadvantages of the QIS Scheme.

- (a) Should the firm not be able to negotiate successfully with a Qualifying Insurer for insurance, the firm has to apply to join the assigned Risk Pool. That firm will then have to pay the premium notified to it within 30 days of such notification and the premium will be substantial and if that firm is unable to pay the premium notified it has to forthwith cease to carry on practice.

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- (b) The premium to be charged by the Qualifying Insurer is to be individually negotiated and does not follow a disclosed formula and is governed by Section 7.7 of the enclosed Rules which leaves the firm entirely at the mercy of the Qualifying Insurers. On the other hand, the premium for the assigned Risk Pool is set out in Schedule 2 Part 1 which can go as high as 25% of the firm's gross fee income.
- (c) The firm may not be accepted by the Qualifying Insurers without being told of the reasons why and there are limited qualifying insurers joining the Scheme so that a firm may have to go out of business if for any reason not known to him no qualifying insurers is prepared to accept him or he cannot afford to pay the premium proposed by them which then brings him into the assigned Risk Pool which will ensure that he will be put out of business since the premium is calculated at 25% of the gross fees declared by the firm.

3. Public Interest

QIS if adopted may have the effect of wiping out small firms and lead to a lack of choice in the market place. The Law Society ask 50 firms to take part in a non-binding quotation survey (see enclosed questionnaire) and the quotation given in response to the survey (see attached) is not binding on insurers so members would not know when the scheme is in place whether they can afford to pay. On the other hand, the present scheme is based on a fixed formula being a percentage of the gross fee income. QIS is not.

4. Present Scheme

More thought should be given to keeping the Present Scheme with modifications such that solicitors do not become insurers without any limitation when one of the insurers in the scheme go bust. The reason for the previous disaster was because HIH was underwriting a larger percentage than intended at the outset and this was not informed to the Law Society by the managers of the scheme. So far the Present Scheme works well save for the above disaster which can with hind sight now be improved upon and indeed was recommended by Willis, the experts appointed by Law Society to advise (their report which is quite thick can be obtained from the Law Society).

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5. Panel of Solicitors

It should be left to the Insurers who they wish to appoint and the Insured should be allowed to nominate a few names for underwriters' consideration. I am bringing this up because the fees earned by the Panel Solicitors appointed by the Law Society exceed the claims itself to the detriment of the members of the Law Society.

Further, the insured firms should be given the right to tax the bills of the solicitors chosen by the Insurers. Presently when a claim is reported the underwriter can only appoint a solicitor from the Panel of Solicitors chosen by the Law Society and their legal costs is paid by the Scheme but the deductible which is quite substantial is paid by the Insured and the bill is never taxed because there is no mechanism in place for the Insured to do so and if the fees are not taxed the premium may go up on renewal of the Scheme.

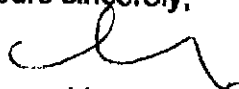
6. Conclusion

In conclusion the Present Scheme should stay and improvements can be made to the Present Scheme. The Government should not just accept the views of the large firms who employ large number of solicitors to vote for QIS to the detriment of the small or smaller firms as otherwise the Public interest is compromised and a cartel of large firms may be the Public's only choice for legal services.

I can assure you that there are a great member of solicitors who now object to QIS (after the draft rules were made available recently) although at the next EGM to be held on 27th April 2006 I do not know whether they would be in a position to out vote those who will support it since proxy votes are allowed and the majority of solicitors are employed by big firms (see Explanatory Note provided by the Law Society dated 11th April 2006).

I thank you for your contribution to the profession by representing our different views to LEGCO during your tenure as our representative and I hope you remain vigilant for the sake of the legal profession. If the small firms are wiped out by QIS, the Junior Bar will similarly be affected.

Yours sincerely,



Susan Liang
Susan Liang & Co.

SL/dh

Encl.

c.c. Mr. Wong Yan Lung, SC, JP
Secy for Justice

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URGENT BY HAND26th April 2006

Mrs. Susan Liang
 Messrs. Susan Liang & Co.
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HONG KONG

Dear Susan

Thank you for your letter which we have spoken with each other about. I will of course circulate your letter to members of the AJLS Panel. Since the very issues you raise in the letter were already touched upon in the meeting of the Panel on 27 March 2006, I am sure your views on them as a solicitor of long years of experience will be of great assistance to members.

You may recall that during my election campaign in 2004, I pledged to diligently follow up on the reform of professional indemnity scheme for solicitors. At the time, I explained that the MPS (which modifies the present scheme) was likely to be the more expeditious option, although QIS was the more fundamental reform. Like you, I was particularly concerned about conflict of interest issues inherent in the present common fund system. In the event, members of the Law Society voted in favour of QIS, and I have since been doing all I can to facilitate progress. It is imperative that the full details be made available to practitioners so that they can make an informed choice, and to the wider public so as to ensure its reasonable protection.

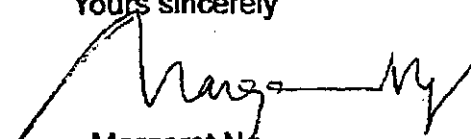
While the choice rests ultimately with members of the Law Society, it will be very disappointing to everyone, myself included, if several years of hard work and anxious waiting end in neither an acceptable new scheme being introduced nor an improvement to the current scheme. I hope very much that should the proposed QIS be rejected at the EGM, members such as yourself will put in train speedy reform of the current PIS. As the LegCo member for the Legal Functional Constituency, I will of course continue to take an anxious interest in the matter.

It is unfair to solicitors to be saddled with an unviable and unsustainable indemnity scheme, but the issue goes beyond the interest of solicitors. A

healthy and up to date legal profession is central to Hong Kong's interest as a whole. Your views and comments will be greatly appreciated.

With best regards

Yours sincerely



Margaret Ng

- c.c. Clerk, AJLS Panel
- c.c. Secretary for Justice
- c.c. President, The Law Society of Hong Kong
- c.c. Mr. Benny Yeung (PIS Action Group)