

This paper aims at providing information on the operation of the professional indemnity scheme and the top-up insurance.

1. The latest consensus is that an LLP be required to provide top-up insurance to cover loss arising from a claim in respect of a default that is in excess of HK\$10 million up to an amount that is not less than HK\$10 million per claim.

Primary layer of HK\$10 million per claim

2. To qualify to practise as a solicitor in Hong Kong, a person must comply with the indemnity rules made by the Council of the Law Society of Hong Kong (section 7(d) of the Legal Practitioners Ordinance (Cap. 159) ("the LPO")). The power of the Council to make such rules derives from section 73A of the LPO.
3. The Professional Indemnity (Solicitors) Rules ("Rules") provide that the Law Society is authorised to establish and maintain a fund to provide the indemnity mentioned in section 73A of the LPO. This fund is known as the Hong Kong Solicitors Indemnity Fund ("the Fund"). The Fund is held and administered by the Hong Kong Solicitors Indemnity Fund Ltd. ("the Company") which is a company limited by guarantee. The directors of the Company are appointed by the Council. The terms and conditions of indemnity, the method of calculation of deductibles, exclusions and the formulae for calculating the contributions to the Fund applicable to all solicitors are set out in the Rules.
4. Essar Insurance Services Limited ("Essar") is the appointed Claims Manager ("Managers"). Essar manages the claims, maintains records and statistics as required by the Company and reinsurers.
5. The present level of indemnity for each claim is HK\$10 million. The limit includes the deductible. If a firm's deductible is for example HK\$75,000, the Company will contribute indemnity up to HK\$9,925,000 and the firm is responsible to pay the HK\$75,000 deductible.
6. A firm's deductible is calculated by reference to the number of solicitors in the firm at "the relevant date". Relevant date is defined in Rule 2 as the date when the Indemnified notified or the date at which the Indemnified first became aware of circumstances which might give rise to a claim, whichever is the earlier.
 - (i) Sole practitioner
HK\$30,000 plus HK\$15,000 x number of other solicitors (i.e. assistant solicitors or consultants or registered foreign lawyers) (Schedule 3, paragraph 2(2)(a) and (c)); and

(ii) Partnerships

HK\$20,000 x the number of principals plus HK\$15,000 x the number of other solicitors (i.e. assistant solicitors or consultants or registered foreign lawyers) (Schedule 3, paragraph 2(2)(b) and (c)).

7. Paragraph 2(4) of Schedule 1 to the Rules provides that the contribution payable for an indemnity period (from 1 October to 30 September) shall be due and payable to the Company on or before 30 September.
8. Under rule 10 of the Rules, a firm is only entitled to indemnity upon the issue of a receipt and under rule 9, a receipt will only be issued if the contribution is paid.
9. If contribution is not paid in accordance with the requirement, under rule 6(2) of the Rules, any current practicing certificate which has been issued to a solicitor who is required to have and maintain indemnity and who fails to have indemnity shall be suspended and such person shall not be qualified to act as a solicitor while he fails to have indemnity.
10. If a client makes a claim against a firm or notifies his/her intention of doing so, or if a firm discovers an act or omission which could reasonably justify such a claim, the firm is required to notify the Managers in writing as soon as practicable (see Schedule 3, paragraph 8(2)(a) and (b) and 8(3) of the Rules). Circumstances which may give rise to a claim should be notified as soon as your firm is aware of those circumstances (Schedule 3, paragraph 8(3)).

Top-up insurance in excess of the primary layer up to an amount not less than HK\$10 million per claim

11. An LLP is required to maintain top-up insurance in excess of the primary layer up to an amount not less than HK\$10 million per claim.
12. Within 14 days of commencement of practice as an LLP, a principal of the firm is required to provide to the Law Society evidence of the firm's compliance with the top-up insurance requirement. A principal of the firm is also required to notify the Law Society within 14 days of any changes of the particulars provided to the Law Society.
13. Further, if an LLP ceases to have in existence the top-up insurance as required, it must notify the Law Society within 14 days of such occurrence.
14. Administratively, for the purpose of monitoring the compliance with the top-up insurance requirement, the Law Society will maintain a database to track the expiry dates of the top-up insurance policies as notified by the LLPs and send out renewal reminders to firms.