



立法會參考資料摘要

A. 附屬法例的標題

《2019 年律師(專業彌償)(修訂)規則》(「《註冊外地律師修訂規則》」)
《2019 年律師(專業彌償)(修訂)(第 2 號)規則》(「《專業彌償限額修訂規則》」)
(見附錄 1)

B. 引言／背景

- (1) 香港律師會(「律師會」)於 1980 年引入為律師而成立的強制專業彌償保障，並於 1989 年成立現行的專業彌償計劃(「專業彌償計劃」)，由香港律師彌償基金(「基金」)提供彌償。律師會根據《律師(專業彌償)規則》(第 159M 章)(「《專業彌償規則》」)第 3(1)條，獲授權成立與維持基金。
- (2) 概括而言，當律師的執業業務招致任何民事法律責任的申索引致損失時，專業彌償計劃為其提供彌償保障。專業彌償計劃涵蓋所有香港律師行。
- (3) 律師會為此成立一間擔保有限公司，名為香港律師彌償基金有限公司(「公司」)。公司根據《專業彌償規則》管理基金。

C. 修訂附屬法例的理據

《註冊外地律師修訂規則》

- (4) 修訂的建議，是建基於香港律師行增加聘請外地律師的趨勢，以及有需要令註冊外地律師在專業彌償計劃下，作為一間律師行所聘請的合資格員工(而非在現行專業彌償計劃下供款公式及計算內所包含的不合資格職員)可能引致責任的風險，可在律師行的專業彌償計劃供款和免賠額中，適當地反映出來。

- (5) 總括在香港執業的註冊外地律師人數，在過往的 15 年期間，增幅達 132% (由 2003 年的 683 人增至 2018 年的 1,584 人)。受專業彌償計劃保障的香港律師行聘用的註冊外地律師人數亦由 2003 年的 450 人增至 2018 年的 1,151 人，增幅約 156%。
- (6) 由於愈來愈多律師把其執業業務發展至境外（例如因應更緊密經貿關係安排帶來的機遇，或由於外地律師行和香港律師行的合併），預計在香港律師行執業的註冊外地律師人數將持續上升。
- (7) 截至 2018 年 12 月 31 日，註冊外地律師的首三個司法管轄區來源地是(i) 美國；(ii) 英格蘭及威爾斯及 (iii) 中國內地。
- (8) 這些註冊外地律師的執業範圍甚廣，可包括中國的房地產交易，或在美國的大規模海外上市。註冊外地律師在香港的工作有機會令香港律師行於海外遭受索償。在海外司法管轄區的法律程序提出抗辯，多往往需要聘請當地律師，可能所費不菲。
- (9) 鑑於專業彌償計劃因註冊外地律師遭索償而承受的潛在風險上升，律師會的理事會決定採納公司董事局的建議，修訂供款及免賠額的計算方法，使香港律師行聘用的註冊外地律師，在計算時與助理律師或顧問在香港律師行執業時無異。
- (10) 修訂可能令計劃收取較多供款。然而根據《專業彌償規則》附表 1 第 2(7) 段，律師會理事會獲授權扣減下一個彌償期間的供款總款額。任何增收的供款將反映在基金的盈餘，以及理事會每年所檢討的基金財務狀況的精算預測。盈餘增加，將會是理事會考慮是否應該對所有香港律師行（無論有否聘用註冊外地律師）的供款款額作出扣減及扣減多寡的一個因素。自從《專業彌償規則》在 2010 年修訂，賦予律師會權力去扣減供款款額，理事會至今已批准扣減共超過港幣十一億元。

《專業彌償限額修訂規則》

- (11) 現時專業彌償的每宗申索限額是港幣一千萬元，限額額度自 1994 年適用至今。
- (12) 律師會理事會在仔細考慮各種因素例如過去二十年樓價的上升、專業彌償申索的數據、基金的財務狀況，以及海外其他司法管轄區的強制專業

彌償申索額度後，決定把專業彌償計劃的每宗申索限額提高至港幣二千萬元，由 2019/2020 彌償年度開始生效。

- (13) 計算律師行的專業彌償供款的公式(除以上提及的修訂外)將維持不變。彌償限額的提高，並不會引致供款的增加。提高額外保障的成本，將由基金承擔。
- (14) 現時一些小型律師行(擁有一至三名合夥人)可能沒有在市場購買加額專業彌償保險，因此提高彌償上限將可為公眾提供額外保障。
- (15) 《法律執業者條例》(第 159 章)第 7AD 條的第(2)及(3)段要求所有屬香港律師行的有限法律責任合夥，均須在專業彌償計劃的基本彌償以外，有一份就單一申索而言，獲得彌償款額不少於港幣一千萬元的保險單。隨著彌償限額提高，上述有限法律責任合夥所投保的額外專業彌償保單的起賠點，將會再提高，這或可節省有限責任合夥的保費。
- (16) 《外地律師註冊規則》(第 159S 章)第 6 條要求外地律師隨時須存在著一份保險單，而根據該保險單，該外地律師有權就其以外地律師身分行事或執業時所提供的服務獲得彌償，彌償的方式及程度須類似專業彌償計劃向律師提供的彌償。隨著專業彌償計劃的彌償限額提高，外地律師及外地律師行所規定須維持的保險單彌償額將間接提升，為公眾提供更大保障。

D. 解釋主要條文

《註冊外地律師修訂規則》

- (17) 香港律師行每年向基金作出的供款，是根據《專業彌償規則》附表 1 第 2(1)(a)(i)段的計算公式計算，如下：

$$C = (N * \$20,000) + (M * \$13,000) + S$$

在公式內——

* = 乘以；

C = 基本供款的款額 (須受根據第(3)節作出的適當調整所規限)，該款額亦可以是供款；

N = 主管的數目 (以緊接有關彌償期間前的 7 月 31 日計)；

M = 助理律師及顧問的數目 (以緊接有關彌償期間前的 7 月 31 日計)；

S = 由律師行的總費用收入所確定的款額

- (18) 修訂條文後， M 會作出修改，讓律師行的註冊外地律師數目，成為計算該律師行專業彌償供款的計算因素，如下：

$M =$ 助理律師及顧問的數目(以緊接有關彌償期間前的7月31日計)及外地律師的數目(以緊接於2019年7月1日或之後開始的有關彌償期間前的7月31日計)；

- (19) 當獲彌償保障者在專業彌償計劃下提出申索，根據《專業彌償規則》附表3第1(1)段，其須自行承擔每個損失的部分金額，稱為「免賠額」。獲彌償保障者本人須承擔的免賠額，是根據《專業彌償規則》附表3第2(2)段的計算公式計算；如下：

- (a) 如獲彌償保障者在有關日期是獨營執業者，則就任何一項申索而言，免賠額為首\$30,000；
- (b) 如獲彌償保障者是什麼合夥，則就任何針對該合夥或其業務前任人的申索而言，免賠額為任何一項申索的首\$20,000 乘以在有關日期在律師行的主管的數目；
- (c) 除(a)或(b)分節的規定外，免賠額為任何一項申索的\$15,000 乘以在有關日期在律師行的助理律師及顧問的數目。

修訂條文後，《專業彌償規則》附表3第2(2)(c)段將修訂為：

- (c) 除(a)或(b)分節的規定外，免賠額為任何一項申索的\$15000 乘以在有關日期在律師行的助理律師助理律師、外地律師及顧問的數目。

獲彌償保障者須承擔的每項申索最高免賠額現時為港幣二十萬元，將維持不變。

- (20) 因應註冊外地律師將成為計算公式的附加元素，現時《專業彌償規則》第10(2)條及附表3第10(2)段所指的「前律師」保障亦將延伸至包括前註冊外地律師及前僱員。

《專業彌償限額修訂規則》

- (21) 《專業彌償規則》所有關於彌償限額的條文已獲修改，令每宗申索限額增至港幣二千萬元。新的限額將適用於對任何有權在計劃下獲得彌償的人士於2019年10月1日或之後所作出的申索。

- (22) 《專業彌償規則》附表 3 第 3(1)(c)段（於 1986 年 9 月 30 日或之前已終止從事執業業務的前律師的保障）則毋須修改，因所有此條文包含的申索已經完結，所以並無需要為這些已過去的保障提高彌償限額。

E. 附屬法例提交立法會的日期與生效日期

- (23) 兩項修訂規則預計於 2019 年 4 月 3 日提交立法會。下列為兩項修訂規則的生效日期：

《註冊外地律師修訂規則》– 2019 年 7 月 1 日

《專業彌償限額修訂規則》– 2019 年 10 月 1 日

專業彌償計劃的彌償時段為任何一年的 10 月 1 日至翌年的 9 月 30 日。以上生效日期將使彌償供款與免賠額的新計算公式，以及新彌償限額，在 2019/2020 彌償年度開始生效。

F. 公眾諮詢

- (24) 一份題為《〈2017 年律師(專業彌償)(修訂)規則〉》的文件已於 2017 年 3 月 31 日發出，以就《註冊外地律師修訂規則》諮詢立法會司法及法律事務委員會，並在 2017 年 4 月 24 日的委員會會議上獲委員察悉(見附錄 2)。

律師會會員已循以下刊物(見附錄 3)獲告知兩項修訂規則擬作出的改革：

- 2016 年 12 月號《香港律師》中的〈會長的話〉；
- 2017 年 9 月 29 日的《會長的信》；
- 2017 年 10 月 3 日發出的 17-818(PA)號通告；
- 2017 年 11 月號《香港律師》中的〈理事會議題〉；
- 2018 年 7 月 13 日的《會長的信》。

G. 查詢

如對這份簡介有任何查詢，敬請致函香港律師會(中環德輔道中七十一號永安集團大廈三字樓)，專業彌償計劃副總監廖以芹小姐(電話號碼 2846 0557)。

香港律師會

2019 年 3 月 29 日

《2019 年律師(專業彌償)(修訂)規則》

(由香港律師會理事會根據《法律執業者條例》(第 159 章)第 73A 條在終審法院首席法官事先批准下訂立)

1. 生效日期

本規則自 2019 年 7 月 1 日起實施。

2. 修訂《律師(專業彌償)規則》

《律師(專業彌償)規則》(第 159 章, 附屬法例 M)現予修訂, 修訂方式列於第 3 至 6 條。

3. 修訂第 2 條(釋義)

(1) 第 2 條 ——

廢除獲彌償保障者的定義

代以

“獲彌償保障者 (indemnified)指第 9 條提述的收據所指名的律師行、或該律師行任何主管、任何受僱於或從事於與執業業務有關工作的人(包括任何助理律師、任何外地律師、作為該律師行顧問的任何律師, 以及任何實習律師)、任何因去世、退休或其他理由而終止執業為該律師行主管的律師、任何曾受僱於或從事於與執業業務有關工作的人(包括任何助理律師、任何外地律師、任何顧問及任何實習律師), 以及上述任何人的遺產及法律代表, 亦包括任何服務、行政或代名人公司或任何信託但僅限於其活動是與執業業務有關而進行者;”。

(2) 第 2 條, 彌償的定義 ——

廢除

“或前律師”

代以

“、前律師或任何曾受僱於或從事於與執業業務有關工作的人(不論是助理律師、外地律師、顧問、實習律師或其他人), 或上述任何人的遺產及法律代表”。

4. 修訂第 10 條(獲彌償的權利)

(1) 第 10(2)條, 在“任何前律師”之後 ——

加入

“或任何曾受僱於或從事於與執業業務有關工作的人(不論是助理律師、外地律師、顧問、實習律師或其他人), 或上述任何人的遺產及法律代表, ”。

(2) 第 10(2)條, 中文文本 ——

廢除

在“首次向”之後而在“發出一樣”之前的所有字句

代以

“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) 第 10(3)條 ——

廢除

在“段, ”之後的所有字句

代以

“均適用於第(2)款所提述的下列的人, 猶如他們是獲彌償保障者一樣 ——

(a) 任何前律師或任何曾受僱於或從事於與執業業務有關工作的人(不論是助理律師、外地律師、顧問、實習律師或其他人); 及

(b) 上述任何人的遺產及法律代表。”。

5. 修訂附表 1(向基金作出的供款)

(1) 附表 1，第 1 段 ——

廢除

“助理律師”

代以

“助理律師、外地律師”。

(2) 附表 1，第 2(1)(a)(i)段，在“顧問的數目(以緊接有關彌償期間前的 7 月 31 日計)”之後 ——

加入

“及外地律師的數目(以緊接於 2019 年 7 月 1 日或之後開始的有關彌償期間前的 7 月 31 日計)”。

(3) 附表 1，第 2(1)(b)(i)段 ——

廢除

“律師及顧問”

代以

“律師、顧問及(由 2019 年 7 月 1 日起)外地律師”。

(4) 附表 1，英文文本，第 2(1)(b)(iii)段 ——

廢除

“names”

代以

“name”。

(5) 附表 1，在第 2(1)(b)(iii)段之後 ——

加入

“(iia) 由 2019 年 7 月 1 日起，(b)(iii)分節所提述的申報表，亦須包括每名外地律師的姓名及其在執業業務中所擔任職位的詳情，以及該等詳情自上一份申報表的日期起發生的任何改變。”。

(6) 附表 1，第 3(d)段 ——

廢除

“助理律師”

代以

“助理律師、外地律師”。

6. 修訂附表 3(免除及條件)

(1) 附表 3，第 2(2)(c)段 ——

廢除

“助理律師”

代以

“助理律師、外地律師”。

(2) 附表 3，第 3 段，標題 ——

廢除

“前律師”

代以

“前律師及前僱員”。

(3) 附表 3，在第 3(2)(b)段之後 ——

加入

“(c) 凡任何曾受僱於或從事於與執業業務有關工作的人((a)分節所描述的前律師除外)於 2019 年 7 月 1 日或之後終止受僱於或從事於與執業業務有關工作，則就任何一項申索而言，他須就其超過\$15,000 但不超過\$10,000,000 的損失部分而根據第 10(2)條獲得彌償。”。

於 2019 年 月 日批准。

終審法院首席法官

於 2019 年 月 日訂立。

註釋

本規則修訂《律師(專業彌償)規則》(第 159 章，附屬法例 M)，以便計算某香港律師行在專業彌償計劃下所適用的供款及免賠額時，把受僱於或從事於與該律師行有關工作的外地律師涵蓋在內，使其構成一個附加的計算成份。

2. 本規則亦將保障範圍延伸至曾受僱於或從事於與某香港律師行有關工作的人，例如已退休及其先前所工作的律師行已不存在的外地律師及非專業人員。

《2019 年律師(專業彌償)(修訂)(第 2 號)規則》

(由香港律師會理事會根據《法律執業者條例》(第 159 章)第 73A 條在
終審法院首席法官事先批准下訂立)

1. 生效日期
本規則自 2019 年 10 月 1 日起實施。
2. 修訂《律師(專業彌償)規則》
《律師(專業彌償)規則》(第 159 章，附屬法例 M)現予修訂，
修訂方式列於第 3 及 4 條。
3. 修訂附表 1(向基金作出的供款)
附表 1，第 2(6)(c)(i)段 ——
廢除(A)次小分節
代以
“(A) 就所有在 2019 年 10 月 1 日前首次向有權獲提供彌償的人提出的申索而言——就任何一宗申索而支付的
超過\$10,000,000 的任何款額；
(AB) 就所有在 2019 年 10 月 1 日或之後首次向有權獲提供
彌償的人提出的申索而言——就任何一宗申索而
支付的超過\$20,000,000 的任何款額；”。
4. 修訂附表 3(免除及條件)
(1) 附表 3，第 2(1)段 ——
廢除
“但以不超過該筆免賠額與\$10,000,000 之間的差額為上限
的損失部分。”
代以

“但 ——

- (a) 就所有在 2019 年 10 月 1 日前首次向有權獲提供
彌償的人提出的申索而言——以不超過該筆
免賠額與\$10,000,000 之間的差額為上限的損失
部分；
 - (b) 就所有在 2019 年 10 月 1 日或之後首次向有權
獲提供彌償的人提出的申索而言——以不超過
該筆免賠額與\$20,000,000 之間的差額為上限的
損失部分。”。
- (2) 附表 3，第 3(2)(a)段 ——
廢除
“與\$10,000,000 之間的差額為上限的損失部分而獲得彌
償。”
代以
“——
- (i) (就所有在 2019 年 10 月 1 日前首次向該前律師
提出的申索而言)與\$10,000,000 之間的差額為上
限的損失部分而獲得彌償；
 - (ii) (就所有在 2019 年 10 月 1 日或之後首次向該前
律師提出的申索而言)與\$20,000,000 之間的差額
為上限的損失部分而獲得彌償。”。
- (3) 附表 3，第 3(2)(c)段 ——
廢除
“不超過\$10,000,000 的損失部分而根據第 10(2)條獲得彌
償。”
代以
“——

- (i) (就所有在 2019 年 10 月 1 日前首次向他提出的申索而言)不超過\$10,000,000 的損失部分而根據第 10(2)條獲得彌償；
- (ii) (就所有在 2019 年 10 月 1 日或之後首次向他提出的申索而言)不超過\$20,000,000 的損失部分而根據第 10(2)條獲得彌償。”。

於 2019 年 月 日批准。

終審法院首席法官

於 2019 年 月 日訂立。

註釋

本規則修訂《律師(專業彌償)規則》(第 159 章，附屬法例 M)，將專業彌償計劃的彌償限額從目前的每宗申索 \$10,000,000，提高至每宗申索 \$20,000,000。每間律師行所應付的專業彌償計劃供款計算維持不變。

立法會
Legislative Council

附錄二

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	Amount
\$ Million	\$
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

3233990

PRESIDENT'S MESSAGE

會長的話

附錄三

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@hklawsoc.org.hk.

Thomas So
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@hklawsoc.org.hk。

蘇紹聰
蘇紹聰 會長

President's 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

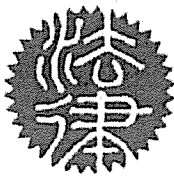
我們在九月十分繁忙，在過去兩星期先後接待來自南京市司法局及來自南京、無錫、蘇州及深圳的律師協會的訪問團，亦有來自中國法學會和中國政法大學校友會的法律學者。各訪問團的成員都對律師會的架構和工作深感興趣，例如我們的風險管理教育計劃、律師會在服務和規管會員的角色，以及香港的法律界和民事司法程序的最近發展。我們期望在未來與這些組織作更深入的合作和交流。

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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THE
LAW SOCIETY
OF HONG KONG
香港律師會

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.

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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。它亦位處「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，與香港有類似之處，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。]