

立法會參考資料摘要

A. 附屬法例名稱

《2020年律師(專業彌償)(修訂)規則》(「《修訂規則》」)(見附錄1)

B. 引言/背景

- (a) 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,由香港律師彌償基金(「基金」)提供彌償。律師會按照《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。
- (b) 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。
- (c) 律師會為此成立一間有限公司,名為香港律師彌償基金有限公司(「彌償公司」)。 彌償公司根據《專業彌償規則》管理基金。

專業彌償計劃如何處理彌償申索

- (d) 當獲彌償保障者就申索、預期作出的申索,或可能引致申索的情況通知專業彌償計劃,並根據專業彌償計劃作出彌償申索,專業彌償計劃的管理公司(現為恒利保險服務有限公司,簡稱「ESSAR」)便會從律師行委員會(「專業彌償計劃委員會」):
 - (1) 委任一間委員會律師行,代表獲彌償保障者處理申索(「辯護委員會律師」);
 - (2) 委任另一間委員會律師行,就申索的彌償事宜向彌償公司提供意見。

辯護委員會律師是以聯合方式委任,即辯護委員會律師既代表獲彌償保障者,亦代表彌償公司。

(e) 《專業彌償規則》第17條規定:

17. 律師行委員會

- (1) 理事會須委任一個律師行委員會,而彌償公司可從該委員會內委任委員會律師。
- (2) 彌償公司如認為有此需要,可委任一間不在理事會根據第(1)款委任的律師行委員會內的律師行作為委員會律師。

理事會以公開招標方式委任專業彌償計劃委員會的律師行(「委員會律師行」)。委任期通常是五年(2003年前的委任期較短)。此外,彌償公司如認為有需要,亦可委任在專業彌償計劃委員會以外的律師行(「非委員會律師行」)作為辯護委員會律師。

(f) 《專業彌償規則》附表 3 第 8(1)(a)條規定,若獲彌償保障者未經彌償公司事先同意(該項同意不得不合理地不給予),不得招致任何訟費或開支。根據《專業彌償規則》附表 3 第 1(2)(e)條,在與任何針對獲彌償保障者的申索有關而由獲彌償保障者招致的訟費或開支,若未經彌償公司同意,都免除於彌償之外。

C. 提出附屬法例修訂的理據

- (a) 專業彌償計劃申索委員會(「委員會」)多年來收到獲彌償保障者要求委任非委員 會律師行作為辯護委員會律師的個案不多。委員會在考慮這些申請時,發覺《專 業彌償規則》並無清楚規定獲彌償保障者必須委託委員會律師行作為其辯護委員 會律師。委任非委員會律師行引致處理申索過程中出現問題和困難,如下:
 - (i) 非委員會律師行的服務質素參差。理事會會根據委員會律師行的經驗及處 理專業疏忽申索的知識等準則進行委任,但非委員會律師行並無經過同樣 的審核過程。
 - (ii) 委員會律師行有按照 ESSAR 發出的《委員會律師指引》展示之標準格式 撰寫辯護報告的經驗。相反,非委員會律師行會以各種風格和格式提供意 見,或令 ESSAR 及委員會的審閱過程更花時間及更困難。
 - (iii) 所有委員會律師行在獲理事會委任加入專業彌償計劃委員會前,須簽署承諾書,向律師會保證不會代表任何人向任何獲彌償保障者作出其或可就專業彌償計劃尋求彌償的申索。非委員會律師行通常是臨時委任,所以毋須

向律師會作出這種保證,這可能會導致利益衝突。

- (iv) 彌償公司只會支付委員會律師行獲根據其委任時雙方同意按訟費率計算 的訟費(現時與評定訟費率一樣)。若一間非委員會律師行拒絕跟隨這訟 費率,獲彌償保障者的權益可能因為須自行支付差額而受損。
- (v) 委任非委員會律師行,與律師會以公開招標方式委任專業彌償計劃委員會的目的——控制整體開支、確保服務質素, 背道而馳。
- (b) 某些申索個案或需要依靠專業彌償計劃委員會以外的律師行的專業知識。若遇到 這些情況,彌償公司將有權根據《專業彌償規則》的建議修訂,決定是否行使酌 情權,以個別個案形式考慮委任非委員會律師行。
- (c) 基於以上考慮,現建議修訂《專業彌償規則》,以清楚說明獲彌償保障者需由委員會律師行作為代表辯護委員會律師,但彌償公司有需要時亦可行使酌情權,委任非委員會律師行。

D. 解釋主要修訂條文

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主要的修訂如下:

(a) 修訂第 2 條「有關連訟費」的定義,以說明「有關連訟費」是在有彌償公司的事 先書面同意下招致的訟費:

"有關連訟費"(related costs)指以下所招致的一切訟費及開支—

- (a) 在任何針對獲彌償保障者或前律師所提出的申索中為作出抗辯或和解而在 獲認可保險人或彌償公司的事先書面同意下所招致的;或
- (b) 獨僧公司在行使附表3第8(1)(d)段的權力時所招致的;
- (b) 在第 17 條加上第三段,指明任何尋求在專業彌償計劃下獲得彌償的人,需由委員會律師行作為辯護委員會律師,若該人希望以一間非委員會律師行作為辯護委員會律師,須事先向彌償公司取得書面同意,否則不會就招致的訟費提供彌償,條文如下:

17. 律師行委員會

(1) 理事會須委任一個律師行委員會,而彌償公司可從該委員會內委任委員會律師。

- (2) 彌償公司如認為有此需要,可委任一間不在理事會根據第(1)款委任的律師行委員會內的律師行作為委員會律師。
- (3) 除非彌償公司已書面明文同意相反安排,否則 ——
 - (a) 獲彌償保障者、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,只可由彌償公司委任的委 員會律師在與任何根據第 10 條尋求彌償的申索相關的情況下作 其代表;及
 - (b) 獲彌償保障者、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,不得委託任何其他律師行 在與任何上述申索相關的情況下作其代表,或就因委託任何上述 其他律師行而招致的訟費獲提供彌償。
- (c) 採納立法會法律顧問的建議(見立法會 CB(4)942/18-19 號文件)(**附錄 2**), 附表 3 第 3(2)(c)段的英文版,以「that person」(該人)取代「him or her」或「he or she」, 使英文版與中文版的用字相符。

E. 立法程序時間表

《修訂規則》 將於 2020 年 1 月 24 日刊憲,並於 2020 年 2 月 12 日提交立法會。經立法會進行先訂立後審議的程序後,《修訂規則》的預計生效日期為 2020 年 5 月 1 日。

F. 向相關人士諮詢

每名律師會會員都獲發《香港律師》(選擇不收取的會員除外)。《香港律師》中的以下文章已通知會員建議修訂(附錄 3):

- (a) 2017年11月號中的<理事會議題>;及
- (b) 2019 年 12 月號中的<律師會秘書處資訊>。

律師會並沒有收到會員對於有關建議修訂的任何反對意見。

我們於 2019 年 11 月 5 日向立法會司法及法律事務委員會發出了咨詢文件。 截至撰寫本摘要時,並未有收到委員對於有關建議修訂的任何反對意見。

G. <u>查詢</u>

如對此修訂工作有任何查詢,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:28460557)。

2020年1月24日

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《2020 年律師(專業費債)(修訂)規則

《2020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2020年5月1日起實施。

2. 修訂《律師(專業彌償)規則》

《律師(專業關償)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, 英文文本, Indemnity 的定義 ——

廢除

"is"

代以

"are"

(2) 第 2 條, **有關連訟費**的定義, (a)段 ——

廢除

"彌償公司的同意"

代以

"彌償公司的事先書面同意"

4. 修訂第10條(獲彌償的權利)

第 10(1)條,在"豁除則在"之後 ——

加入

"第 17(3)條及"。

第5條

5. 修訂第 17 條(律師行委員會)

在第 17(2)條之後 ----

加入

- "(3) 除非關償公司已書面明文同意相反安排,否則 ——
 - (a) 獲彌償保障者、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,只可由强償公司委 任的委員會律師在與任何根據第 10 條尋求强償 的申索相關的情況下作其代表;及
 - (b) 獲彌償保障者、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,不得委託任何其他律師行在與任何上述申索相關的情況下作其代表,或就因委託任何上述其他律師行而招致的訟費獲提供彌償。"。
- 6. 修訂附表 3(免除及條件)
 - (1) 附表 3,第 3(2)(c)段 ——

廢除

"他"

代以

"該人"。

(2) 附表 3, 英文文本, 第 3(2)(c)段 ----

廢除

"his or her"

代以

"that person"s" .

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Annex 1

(3) 附表 3、第 3(2)(c)(i)段 ——

廢除

"他"

代以

"該人"。

(4) 附表 3,第 3(2)(c)(ii)段 ——

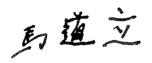
廢除

"他"

代以

"該人"。

於 2020 年 1 月 2 日批准。



終審法院首席法官

於 2020 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)(《主體規則》),訂定任何根據《主體規則》第 10 條尋求彌償的人,須由香港律師彌償基金有限公司(彌償公司)委任的律師行代表其行事。該人如委任任何其他律師行,則必須獲彌償公司的事先書面同意,否則不會就招致的訟費而獲提供上述彌償。

Extract of Paper for the House Committee meeting on 31 May 2019
- 6 - LC Paper No. CB(4)942/18-19

<u>Drafting issues</u>

Annex 2

With regard to Rule 3(2) of L.N. 51 which amends the definition of "indemnity" under Rule 2 of Cap. 159M to "the indemnity to which an indemnified, a former solicitor, or any person who was employed or who worked in connection with the Practice (whether as an assistant solicitor, a foreign lawyer, consultant, trainee solicitor or otherwise), or their estate and legal representatives is entitled under rule 10", the legal adviser of the Subcommittee considers that the singular verb "is" should be replaced with a plural verb "are" because the expression "their estate and legal representatives" is a plural noun. ESSAR agrees that the plural verb "are" should have been used. As the Law Society is continuing to make various other amendments to Cap. 159M, it will seek views of the Department of Justice ("DOJ) about this textual point and amend "is" to "are" in the next legislative exercise if DOJ agrees.

The legal adviser of the Subcommittee has pointed out that the term "他" in the Chinese text of paragraph 3(2)(c) of Schedule 3 to Cap. 159M is not entirely consistent with "he or she" in the English text. The legal adviser of the Subcommittee has suggested that the term "that person" (該人) may perhaps be used in lieu of the pronouns to ensure consistency between the two versions. The Law Society has taken note of the suggestion.

23. The Chairman has suggested that the term "該筆" in the Chinese version of paragraph 2(1)(a) and (b) of Schedule 3 to Cap. 159M should be replaced with "每一筆" in relation to "any one claim" in the English version. The Law Society has taken note of the suggestion.

) Discussed & resolved the existing wording is correct, no need to amend.

Recommendation

24. The Subcommittee does not object to the two Amendment Rules.

Advice sought

25. The House Committee is invited to note the deliberations of the Subcommittee.

Council Business Division 4
<u>Legislative Council Secretariat</u>
29 May 2019



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 idemnity 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况下,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 現行做法一根據《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。



Update on the Professional Indemnity Scheme

Professional indemnity cover is a compulsory and an essential element to the practice of every solicitors' firm in Hong Kong. Such indemnity is provided by the Professional Indemnity Scheme ("PIS"), which operates in accordance with the Solicitors (Professional Indemnity) Rules (Cap. 159M) ("PIS Rules").

As part of the Council's on-going review of the PIS, a number of changes are in the pipeline and some have come into operation. This article provides an overall update.

The reforms that were implemented earlier this year related to the following:

- i) incorporating foreign lawyers employed in Hong Kong law firms into the formula for calculating PIS contributions and deductibles (effective from 1 July 2019);
- ii) increasing the indemnity limit of the PIS from HK\$10 million per claim to HK\$20 million per claim for claims first notified and first made against an Indemnified (as defined in the PIS Rules) on or after 1 October 2019.

The next change on the list, probably a relatively smaller change, will be to expressly set out in the PIS Rules the current practice regarding the appointment of defence solicitors to handle claims made under the PIS. When a claim for indemnity is made by an Indemnified under the PIS, Managers of the PIS (currently ESSAR Insurance Services Limited) will usually appoint a firm of solicitors to represent the Indemnified to handle the claim made against that Indemnified. Such firm of solicitors is selected from a Panel ("PIS Panel") appointed by the Council (usually for a term of five years) through open tender. The proposed change will set out clearly that, in relation to a claim for which indemnity is sought under the PIS, an Indemnified must be represented by defence solicitors

專業彌償保險計劃 的最新動態

香港每間律師行執業均須強制投購專業彌償保障。專業彌償由專業彌償保險計劃(下稱「計劃」)提供,計劃根據《律師(專業彌償)規則》(第159M章)(下稱《規則》)運作。

理事會一直檢視計劃,計劃進行多項更改,有些 已開始實施。本文總結了各項更改。

今年較早時實施的改革涉及以下方面:

-)把受僱於香港律師行的外地律師納入計算計 劃供款和免賠額的方程式(自 2019 年 7 月 1 日起生效);
- ii) 將2019年10月1日或之後對獲彌償保障者(定義見《規則》)的首次索賠限額從每項索賠1000萬港元提高至每項2000萬港元。

 from the PIS Panel unless the Indemnified has obtained the prior written consent of the Hong Kong Solicitors Indemnity Fund Limited ("Company", which was established to hold, manage and administer Hong Kong Solicitors Indemnity Fund from which indemnity is provided under the PIS), otherwise no indemnity will be provided in respect of the relevant costs incurred by the Indemnified. The amendments to the PIS Rules effecting this change are currently being finalised pending their gazettal in early 2020. The target commencement date is currently 1 May 2020.

Another proposed change that has been approved in principle by the Council relates to the narrowing of the scope of 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 Indemnified". Currently, no indemnity will be provided in respect of losses arising out of any claim brought about by the dishonest or fraudulent acts or omissions of an employee of an indemnified firm unless the Company is satisfied that the employee's dishonesty and fraud did not occur as a result of the recklessness, dishonesty or fraud on the part of any person who was a principal of the firm at the relevant time. The proposal is to change the PIS Rules so that indemnity will still be provided for those indemnified who did not commit, approve or sanction the dishonest or fraudulent act or omission. The legislative amendment exercise is in progress.

Other proposed changes which have been approved in principle by the Council and are being worked on include the following:

- i) clarification on where a solicitor is a partner, an employee or a consultant of more than one Hong Kong law firm, his or her practising certificate will be suspended if any one of such Hong Kong law firms does not have a valid receipt as required under rule 6(1) of the PIS Rules;
- ii) consequential updates to the PIS Rules in preparation for the introduction of solicitor corporations as a new mode of operation for legal practices;
- iii) clarification on how the PIS operates where the receipt of more than one Indemnified responds to a claim made under the PIS.

In addition to the above, the Board of the Company and the Council will conduct a wider policy review regarding suggestions to extend the coverage of the PIS to cover the costs incurred in responding to or defending (i) an investigation or inquiry by law enforcement agencies (except for any disciplinary proceedings by or under the authority of the Law Society of Hong Kong) and (ii) criminal charges (but only if the relevant Indemnified is acquitted of such charges).

The PIS serves to provide our members and the public with protection and the resources to meet unexpected eventualities in the long run. If you have any comments or suggestions, you are welcome to email us at adpis@hklawsoc.org.hk.

香港律師彌償基金持有、管理和營辦,根據計劃提供彌償)的書面同意,否則獲彌償保障者招致的相關費用將不獲彌償。實施更改《規則》的修訂目前正在定稿階段,預計將於2020年初刊憲。目標生效日期為2020年5月1日。

理事會原則上批准的另一項擬議更改涉及縮小「重大欺詐/不誠實」免除的範圍(《規則》附表 3 第 1(2)(c)(iii) 條) ,以使免除不適用於「無辜的獲彌償保障者」。目前,由於律師行或獲彌償保障者的任何僱員的不誠實、欺詐性作為或或其性作為可信納,該僱員的不誠實或欺詐性作為或不作為而引起的申索,不獲提供彌償,但如令彌償公司信納,該僱員的不誠實或欺詐性作為或不作為前體任主管的人在處理或管理有關執業業務時罔顧後果或不誠實或有欺詐性作為或不作為而發生,則屬例外。提議或其常行為或不作為的獲彌償保障者提供彌償。法律修訂工作正在進行中。

理事會原則上批准並正在研究的其他擬議更改 包括:

- i) 澄清若一名律師是多於一間香港律師行的合 夥人、僱員或顧問,而其中任何一間香港律 師行沒有根據《規則》第6(1)條要求出示有 效收據,則其執業證書將被暫停;
- ii) 為準備引入律師法團作為 新的法律執業運作 模式,相應更新《規則》;
- iii) 澄清在收到多個獲彌償保障者回應根據計劃 提出的索賠時,計劃的運作方式。

除上述內容外,公司董事會和理事會將就擴大計劃的覆蓋範圍的建議進行更廣泛的政策檢討,以涵蓋回應或辯護 (i) 執法機構的調查或查詢產生的費用(由香港律師會或由香港律師會授權進行的任何紀律處分程序除外),以及 (ii) 刑事指控(但僅在獲彌償保障者被裁定無罪的情況下)。

計劃旨在為會員和公眾提供保護和資源,以應對 長遠的突發事件。如您有任何意見或建議,歡迎 電郵我們 (adpis@hklawsoc.org.hk)。