

LCQ14: Hong Kong Solicitors Indemnity Fund

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Following is a question by the Hon Leung Kwok Hung and a written reply by the Secretary for Justice, Mr Wong Yan Lung, SC, in the Legislative Council today (October 21):

Question:

Under the Solicitors (Professional Indemnity) Rules (Cap. 159, Sub. Leg. M), in respect of negligence claims made by the public against solicitors who have been declared bankrupt, the fund which is owned and managed by the Hong Kong Solicitors Indemnity Fund Limited ("indemnity fund") will only provide indemnity for the bankrupt solicitors against loss arising from such claims, and it will not indemnify the claimants directly. Hence, claimants can only make claims against the bankrupt solicitors. In the event that the bankrupt solicitors are not able to pay compensation to the claimants, whether claimants can make claims against the indemnity fund will depend on the applicability of section 2 of the Third Parties (Rights Against Insurers) Ordinance (Cap. 273). However, the court ruled in a case in 1994 that the professional indemnity provided by the indemnity fund was not "contract of insurance" and therefore, the claimant could not cite that Ordinance to seek indemnity from the indemnity fund. In this connection, will the Government inform this Council whether it knows:

(a) whether the main purpose of establishing the indemnity fund is to protect public interests; and

(b) the role of the indemnity fund in the above cases, and the measures put in place by the Government to safeguard the interests of those claimants?

Reply:

President,

(a) Compulsory professional indemnity insurance for solicitors was introduced by the Law Society in 1980. The current Professional Indemnity Scheme ("the Scheme") was set up in 1989 under which indemnity was provided by the Solicitors Indemnity Fund. Pursuant to Rules 3(1) of the Solicitors (Professional Indemnity) Rules (Cap. 159M) ("the Rules"), the Law Society is authorised to establish and maintain the Fund.

In general terms, the purpose of the Scheme is to provide indemnity against loss arising from claims in respect of the civil liability incurred by a solicitor in connection with his practice.

(b) The Fund is administered in accordance with the Rules by the Hong Kong Solicitors Indemnity Fund Limited, a company established by the Law Society for this purpose. It is not an insurer in itself.

As far as the Administration is aware, the matters set out in the background of this question are likely to be decided in an ongoing court case to be heard later this month. In the light of the impending court hearing, it is not appropriate for the Administration to comment further.

Ends/Wednesday, October 21, 2009