

**Presentation to the Legco Panel on  
Administration of Justice and Legal Services  
14.6.2004**

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Madam Chairman, Honorable Panel members, fellow solicitors, and members of the Press, good afternoon,

This is a rare opportunity for the members of the Law Society to make submissions to this Panel on the PIS which matters a lot to the profession. I would say, indeed, a matter of life and death for the profession, and I am grateful to this Panel for arranging this special meeting to discuss the issues.

I have presented this Panel a paper on my recommendations and I do not intend to read out the 17 pages paper here. Some of the points that I made had already been cogently and precisely put forward by Mr. Larry Ko's presentation. In the next 10 minutes or so, I hope to be able to

1. highlight the problems of the existing PIS scheme which should be avoided in any future scheme;
2. to look at briefly the professional insurance schemes in England and Wales, New South Wales, as well as Quebec and Ontario of Canada;
3. to make out a prima facie case for the suitability of a Captive model for Hong Kong.

Mr. Larry Ko had already made the point that the profession should not be the ultimate underwriter for the insolvency of re-insurer. I totally agree and have nothing better to add.

But the current PIS debacle has surfaced some deep-seated structural problems which are too significant to ignore. There are:

1. draconian decision-making and management structure of the Scheme
2. probable conflict of interests situation;
3. lack of transparency and accountability
4. lack of supervision and regulation

Modern corporate governance practices must be introduced.

Any future PIS scheme must be regulated by the relevant regulatory authority and run by independent financial and insurance professionals.

While the majority of the profession agrees with the government's policy that solicitors' professional insurance scheme must remain mandatory, distinction should be made between what is 'mandatory'/'compulsory' from 'uniformity', or 'one size fits all'.

It is a fundamental misconception to suggest that the public interest and the profession's interest are mutually exclusive, or a 'zero-sum' game. In my respectful submission, and this is a message which I hope the public and the Administration would get without distortion: that it is in the public's best interest to maintain an affordable, equitable and effective professional insurance scheme that would promote the delivery of a strong, independent and efficient legal services industry.

Experiences in other jurisdictions has seen a general trend from open-market commercial professional insurance towards a non-commercial risk-retention model involving a regulated on-shore captive insurer. A striking example is NSW which had suffered a more direct blow of the HIH collapse. The Captive regimes in Quebec and

Ontario are examples of successful Captives with a track record of over 10 years.

The setting up of a Captive would entail substantive initial capitalization and I have set out at my recommendations how such initial capitalization can be met: by contribution from the Law Society and the government.

I have also recommended the introduction of levy surcharge on transaction basis modeled on the Ontario example, very similar to what Mr. Albert Ho had suggested in the last meeting on 26<sup>th</sup> April 2004. I urge the government not to dismiss this idea prematurely as the levy contribution can be designated to a broader protection for clients to cover non-civil liability, such as fraud or dishonesty of solicitors principals.

The Rule of Law is of fundamental importance to Hong Kong and it should be maintained at all costs. The present underwriting arrangements of the PIS threatens the very survival of the solicitors profession and in turn threatens the basic fabric of the maintenance of Rule of Law of Hong Kong, of which both the general public and the HKSAR governments are stakeholders. The Rule of Law of Hong Kong should be defended at all costs and if that entails the government setting aside an amount for special relief of the HIH shortfall, the government should not decline doing so. The price for the government's failure to do so may mean Hong Kong's failure to be a 'high-value-added service centre' or 'Asia's world city', and the price will be borne by the Hong Kong general public.

Honorable Councilors, is this the price that Hong Kong should pay?

Thank You.