

Claims Handling Process under the Professional Indemnity Scheme

Introduction

1. The Hong Kong Solicitors Professional Indemnity Scheme (“**PIS**”) is a statutory scheme whereby its terms and conditions are set out in the Solicitors (Professional Indemnity) Rules (Cap.159M) (the “**Rules**”). Generally speaking, the PIS provides indemnity to solicitors, registered foreign lawyers and employees of Hong Kong law firms in respect of civil liability incurred in connection with the Hong Kong law firms’ practice.
2. The Fund (as defined in the Rules) under the PIS is managed and administered by the Hong Kong Solicitors Indemnity Fund Limited (the “**Company**”). The PIS is a mutual scheme – annual contributions collected from Hong Kong law firms are paid into the Fund which is used to pay claims under the PIS and its operational expenses. Therefore, the way in which claims under the PIS are handled is important as it clearly affects the financial condition of the Fund and the sustainability of the PIS in the long run.
3. This article highlights key aspects of the claims handling process under the PIS.

Claims Committee

4. The Company delegated its claims handling powers to the Claims Committee which has authority to defend, prosecute and settle (within the limit of indemnity under the Rules) all claims and to determine how claims are handled.
5. The Claims Committee currently consists of 12 experienced solicitors from firms of varying sizes and practice areas – Mr. Brian Gilchrist (Chairman); Mr. Colin Cohen (Vice-Chairman); Ms. Roberta Chan; Mr. Johnny Fee; Ms. Olivia Kung; Mr. George Lamplough; Mr. Gary Seib; Ms. Rachael Shek; Mr. Jamie Stranger; Mr. Ronald Tong; Ms. Careen Wong and Mr. Felix Yau.

Essar Insurance Services Limited

6. Since 1989, Essar Insurance Services Limited (“**Essar/ Managers**”) (a wholly owned subsidiary of the Aon Group of Companies) has been the Managers of the PIS. In addition to the PIS scheme administration work, Essar assists the Company and the Claims Committee with the handling and management of all notifications and claims under the PIS.
7. Essar has recruited experienced litigators to ensure that the notifications and claims under the PIS are dealt with properly and effectively:-
 - (a) The team is headed by the Account Director, Ms. Ming Chung, who was admitted as a solicitor in Hong Kong in 2003 and joined Essar for over 13 years. Before joining Essar, she worked in private practice for one of the PIS panel firms

specialising in commercial litigation and worked on a wide range of PIS-related matters.

- (b) The other Legal Officers are Ms. Lorraine Lee and Ms. Ying Ying Ho, who were both admitted as solicitors in Hong Kong in 2007. They have also previously worked in PIS panel firms.

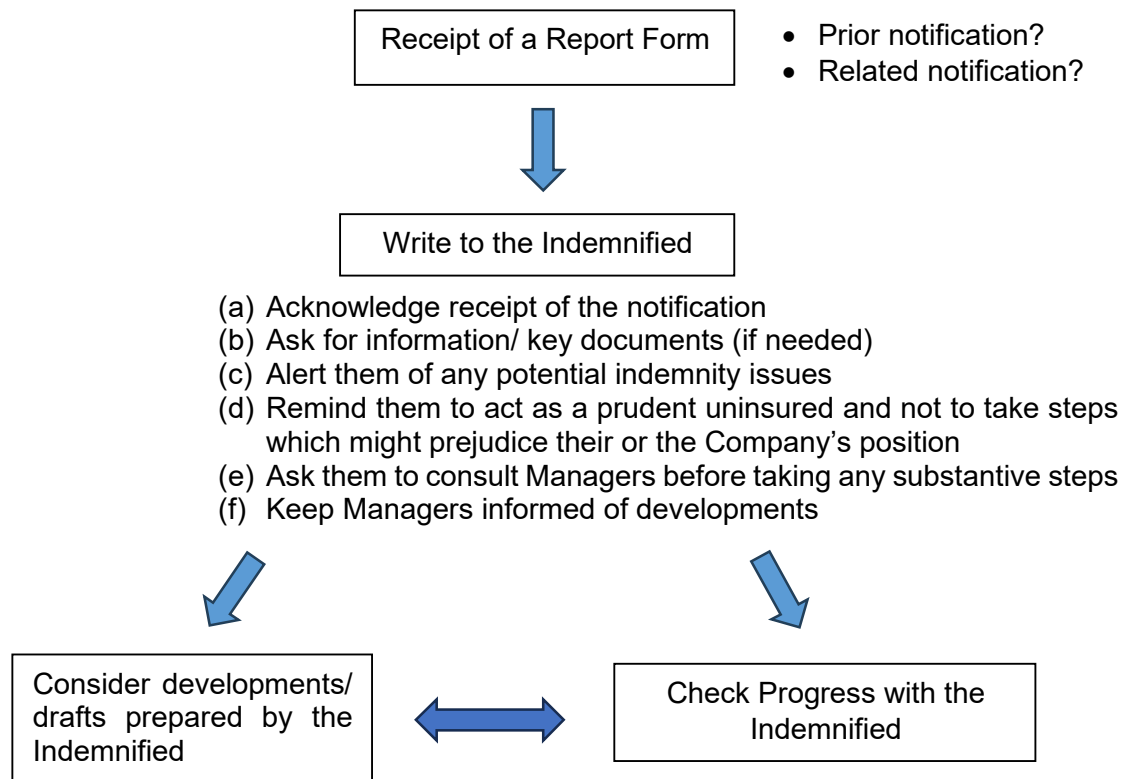
8. Dealing with PIS notifications and claims on a day-to-day basis has enabled Essar to build extensive expertise. With the in-depth knowledge of the Rules, the PIS's operation and the legal issues involved in professional negligence claims against solicitors accumulated through its years of experience, Essar walks alongside different stakeholders (i.e. members of the profession, the Company, the Claims Committee and the PIS panel firms) through each step of the claims handling journey.

Claims Handling Process

9. From claims handling perspective, notifications made under the PIS can be divided into 2 groups – (a) notification of circumstances which might give rise to a claim; and (b) notification of a claim.

Notification of Circumstances

10. The process can be summarised as follows:-

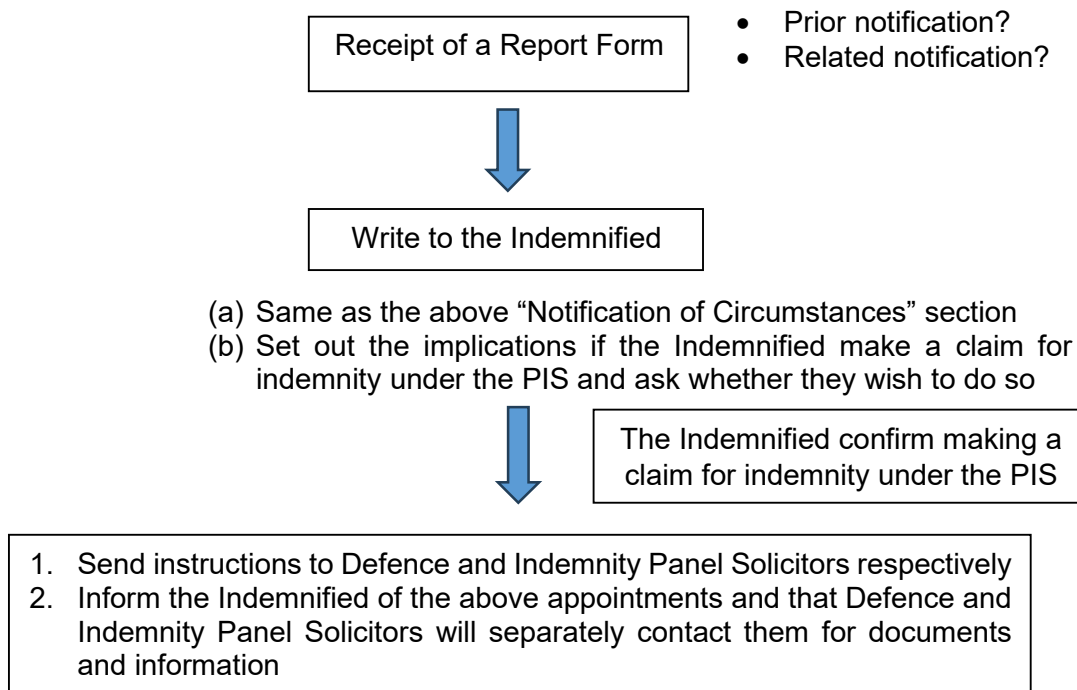


11. In relation to the above, the following points are worth highlighting:-

- (a) Although a notification of circumstances is made, the Indemnified have not (yet) made a claim for indemnity under the PIS. Therefore, indemnity position under the PIS in respect of such notification is generally reserved as usual.
- (b) Managers may point out potential indemnity issues (e.g. late notification, potential multiple claims and potential exclusions). The intention is to ensure that the Indemnified are fully aware of such potential issues and take them into account if and when the Indemnified need to make a decision on whether to seek indemnity under the PIS.
- (c) Whilst Managers cannot give any legal advice, Managers (with their vast claims handling experience and knowledge) will provide comments/ observations and raise apparent issues regarding drafts prepared by the Indemnified and/or their intended next step(s) for the Indemnified's consideration. Managers' input may relate to different aspects – any intended next step(s) may have potential implications on indemnity position under the PIS; Managers may have come across similar issues and legal analyses in other PIS claims; and Managers may have seen or experienced different approaches adopted in dealing with claimants and their effectiveness.

Notification of a Claim

12. The process can be summarised as follows:-



13. The following points should be noted regarding the above:-
- (a) Defence Panel Solicitors are instructed jointly by the Company (through Managers) and the Indemnified, and they act in the common interest of both. They will take instructions from and advise, both parties regarding the defence of the claim (unless the Company exercises its power to take over the conduct of the defence). It is a collaborative process.
 - (b) Indemnity Panel Solicitors are instructed solely by the Company to conduct indemnity investigation (i.e. to advise on whether a claim is covered under the PIS or not). They are appointed for each claim made under the PIS, and their appointment is not indicative of a claim having coverage issues.
14. After Defence Panel Solicitors are appointed, Managers continue to play a major role:-
- (a) Managers will critically consider advice given by Defence Panel Solicitors and ensure that all relevant issues are sufficiently covered and thoroughly analysed.
 - (b) Managers will provide constructive strategic inputs and pro-actively drive defence directions.
 - (c) Managers will ensure that there are effective and transparent tripartite communications and the Indemnified are on board with Defence Panel Solicitors' advice and suggested way forward.
 - (d) Managers will alert the Indemnified and Defence Panel Solicitors when instructions from the Claims Committee are required.
 - (e) Managers will vigilantly monitor the progress of the claim and defence costs incurred.
15. If and when instructions need to be sought from the Claims Committee, Managers will prepare detailed reports containing all relevant information regarding the claim and advice given, to assist the Claims Committee in making informed decisions.
16. Advice from Indemnity Panel Solicitors will be considered by the Claims Committee. Where indemnity under the PIS for a claim is confirmed, Managers will inform the Indemnified accordingly and ask for payment of the Deductible and Further Deductible (if applicable).

Conclusion

This article is intended to give a general overview of the claims handling process under the PIS so that members can have a better understanding of what they may anticipate after making a notification under the PIS. Please note, however, specific process for each case may vary depending on the facts, circumstances and issues arising therein.

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