香港會計師公會
HONG KONG SOCIETY OF ACCOUNTANTS
(Incorporated by the Professional Accountants Ordinance, Cap. 50)
香港金鐘道八十九號力寶中心二座四樓
4th Floor, Tower Two, Lippo Centre, 89 Queensway, Hong Kong.
Tel: 2287 7228 Fax: 2865 6603 / 2865 6776 Website: http://www.hksa.org.hk E-mail: hksa@hksa.org.hk

Annex I

BY HAND

Our Ref: C/PRMC 11(C)

16 April 2002

Secretary for Financial Services,
Financial Services Bureau,
Government of the Hong Kong Special
Administrative Region,
18/F., Admiralty Centre, Tower 1,
18 Harcourt Road,
Hong Kong.

Dear Sir,

Review of Professional Liability

The Hong Kong Society of Accountants (HKSA) wrote to the Financial Secretary on 27 September 2001 expressing concerns about the liability of professionals particularly arising from application of the principle of joint and several liability, and requested an opportunity to present recommendations for a more equitable system of liability. The HKSA was advised by the Financial Secretary's Office, in its interim reply dated 22 October 2001 to the aforesaid letter, to submit the HKSA's specific proposal to you.

In this connection, please find attached the HKSA's submission entitled "Proposal for an Equitable System of Liability" (the "Submission"), which examines in more detail the way in which the principle of joint and several liability applies. It looks at the problems that arise in practice particularly for professionals, discusses the advantages and disadvantages of various mechanisms to alleviate the problems and sets out the HKSA's proposal in more detail, together with the justification for its introduction.

Representatives of the HKSA would be pleased to attend a meeting with you to discuss the Submission if considered necessary. Please contact Ms. Winnie Cheung, our Senior Director, Professional and Technical Development at telephone number 2287 7037 to arrange a mutually convenient time for such a meeting. If you have any questions in relation to the Submission, please contact Mr. Stephen Chan, our Deputy Director (Assurance), in the first instance.

We look forward to hearing from you.

Yours faithfully,

LEE KAI-FAT
REGISTRAR & SECRETARY-GENERAL
HONG KONG SOCIETY OF ACCOUNTANTS

KFL/SSLC/jc
Encl.

HONG KONG SOCIETY OF ACCOUNTANTS

Proposal for an Equitable System of Liability

On 27 September 2001, the President of the Hong Kong Society of Accountants ("HKSA") wrote to the Financial Secretary expressing concerns about the liability of professionals particularly arising from application of the principle of joint and several liability. The HKSA has been given an opportunity to present recommendations for a more equitable system of liability. This paper examines in more detail the way in which the principle of joint and several liability applies. It looks at the problems that arise in practice particularly for professionals, discusses the advantages and disadvantages of various mechanisms to alleviate the problems and finally sets out the HKSA's proposal in more detail, together with the justification for its introduction.

Joint and Several Liability

Liability may be several, joint, or joint and several. Several liability arises where the fault of a person for loss or damage is distinct from that of anyone else. Accordingly the person severally liable is responsible independently for loss or damage caused to another. Joint liability arises where two or more persons are responsible for a single tort, giving rise to loss or damage to another, and share liability to compensate that loss or damage. The obligation is indivisible and performance by one discharges the obligation of the other. Joint and several liability arises where two or more persons act independently so as to cause the same indivisible loss or damage to another. Where liability is joint, the plaintiff must usually proceed against all who share liability in the same action, whereas if liability is joint and several, the plaintiff may elect to proceed against defendants separately or decide which defendant to pursue.

The effect of the principle of joint and several liability is that where two or more parties are negligent in performing their role in a transaction which causes loss to a plaintiff, the plaintiff can recover his loss in full from any one defendant without reference to the actual share of fault of each defendant. The plaintiff can choose whether to sue one, some or all of the potential defendants. Any defendant who actually pays the plaintiff's loss is left to pursue the

other parties for their contribution reflecting their share of responsibility for the loss suffered. Whilst the defendant has this right, it is in practice only likely to be exercised where there are realistic prospects of making a successful recovery.

The principal justification for joint and several liability is generally that the innocent plaintiff should be compensated in full for loss suffered and that the risk of any one defendant's impecuniosity or unavailability should be borne by the defendants as a group rather than by the plaintiff. The HKSA recognises that this consideration is still important in certain cases, most particularly personal injury actions. In the commercial and business environment, however, the HKSA believes that a rule which frequently results in liability wholly disproportionate to the contribution of any particular defendant to the overall loss cannot be justified. The inevitable consequence of the rule is that a plaintiff will target defendants with 'deep pockets' rather than pursue those primarily to blame for the loss suffered.

At the time when the principle of joint and several liability first developed, any contributory negligence on the part of a plaintiff was a complete bar to recovery of damages from a defendant. Further, before 1963, a plaintiff had no cause of action in tort to recover economic loss based on negligent misrepresentation. The decision of the House of Lords in *Hedley Byrne v Heller* paved the way for a new breed of negligence claims against professionals. Since 1963, the basis for imposing liability in tort has broadened, damage awards have increased in magnitude and an increasing compensation culture has led to a surge in the number of claims.

An example of the application of joint and several liability in practice might arise in the case of a plaintiff who has claims against two defendants (A and B) who are 20% and 80% at fault respectively. The plaintiff can recover all of the damages suffered from either of the defendants jointly and severally liable to him. If B is insolvent or has disappeared, however, the risk of such an event has fallen entirely upon A and not upon the plaintiff. As a result, A will effectively provide the plaintiff with insurance against the fact of B being judgment proof. It may be, however, that it was the plaintiff who decided to engage B and had the chance to check on his financial standing where A had not. Alternatively, B may have had no connection with A and, as far as A is concerned, the fact of their concurrent wrongdoing was pure chance.

Changes brought about in some common law jurisdictions by legislation which provides for apportionment between the plaintiff and defendant (contributory negligence) and between co-defendants (claims for contribution) have removed one of the main arguments for joint and several liability. This argument was that the courts were not qualified to apportion fault and liability for that fault between parties. It is now more common for a plaintiff in a professional negligence claim to be found to have been contributorily negligent and to have his recovery reduced in proportion to his degree of fault. Having established this principle, there is no justification for a defendant to have to make good any shortfall caused by the inability of a co-defendant to pay his share.

Existing legislation in some common law countries not only recognises the principle of apportionment of damage according to the degree of fault as between a plaintiff and a single defendant or as between defendants but also entrusts the courts with the application of the principle in practice. This acknowledges that the courts can fairly make such an apportionment in accordance with the justice of the case. The courts have years of experience in making apportionments which are just and equitable in all the circumstances of any particular case. The courts would clearly be well able to do the same thing in the context of a claim by a plaintiff against multiple defendants if they were not prevented from doing so by reason of the principle of joint and several liability.

Availability and Cost of Insurance

The current economic climate both in Hong Kong and globally brings the need for a review of the principle of joint and several liability into sharp focus. Whilst the motivation for a plaintiff commencing proceedings against a professional is the availability of insurance, recent events are likely to have a significant impact both on the amount of cover available and how much it costs.

Accountants and other professionals are widely regarded as being well insured when in reality the claims experience has made comprehensive cover difficult to obtain, at least at reasonable prices. The cover of the largest accounting practices, for instance, has been restricted to excess layers or what might be referred to as catastrophe cover and then only at substantial premiums. The practices would be self-insured for the smaller claims.

Although the market for professional indemnity insurance had stabilised for a few years, last year alone two major insurance companies providing professional indemnity cover collapsed with insufficient assets available to meet claims that are likely to arise. The first was HIH Casualty & General Insurance Company, an Australian insurance group which went into provisional liquidation in March 2001. HIH wrote professional indemnity insurance for professionals in many jurisdictions including Hong Kong. Australian insolvency rules favour Australian policyholders when the time comes to distribute assets recovered. Subsequently in June 2001 the Independent Insurance Company, a UK insurer which also underwrote professional indemnity risks for insureds in Hong Kong and elsewhere, went into provisional liquidation. Both collapses have created uncertainty for Hong Kong professionals as to the extent to which they may be effectively covered by their policies.

The September 11 terrorist attacks on the US have already had a significant impact on the global insurance market and, in particular, the availability and cost of insurance. There have been reports of insurers going out of business or ceasing to write new business as a result of their exposure, whether direct or indirect, to the enormous insurance losses incurred as a result of the terrorist attacks. The inevitable consequence of the tragedy and its impact on global insurance markets is that insurance premiums will increase substantially across the board. This trend had been apparent before September 11 and has accelerated since.

The Litigious Environment

The recent collapse of Enron Corporation has brought into sharp focus the role of auditors in the context of significant corporate collapses. Soon after Enron had filed for Chapter 11 protection in early December 2001, New York lawyers had advertised in the South China Morning Post on 13 December 2001 announcing the filing of a lawsuit against Enron and its auditors on behalf of all persons who purchased or otherwise acquired the common stock of Enron Corporation between 19 October 1998 and 30 November 2001. The purpose of the advertisement was to encourage investors interested in participating in the action and/or serving as a leading plaintiff to contact the law firm concerned.

One of the factors which it is suggested led to the true financial position of Enron being obscured for so long was the existence of various off-balance sheet partnerships that hid

Enron's huge liabilities. Whilst there has been constant press attention given to the role of Enron's auditors, this should be contrasted with the subdued attention paid to the other professional advisers responsible for advising on and establishing the partnerships.

Clearly investigations into the collapse of Enron Corporation are still at a relatively early stage and it is not possible to reach any conclusions as to what those investigations might reveal and how the advertised lawsuit and any other lawsuits, including those not yet commenced, might be resolved. The response to the collapse, however, is instructive in relation to the business climate in which all professionals operate. Those who suffer loss need to find a scapegoat on whom to attach blame and a source of funds from which to make a recovery. That is perhaps natural and justifiable to an extent but only if liability lies fairly with those responsible according to their respective degree of fault.

The same attitudes can be seen from the events surrounding the collapses of both HIH and Independent last year. Both collapses happened with great speed and little warning. Press reports in both cases indicated that attention was being paid to how the auditors had come to express clean opinions on the financial statements for the last complete period before each collapse. UK press reports have specifically reported that a firm of solicitors is investigating potential class action claims against the auditors of the Independent and seeking new members to join the action group.

Businesses in Hong Kong are currently suffering from recessionary pressures. The current economic climate may lead to further insolvencies and, perhaps, the collapse of one or more high profile companies. In that unhappy event, the role and activities of the auditors and other professional advisers will no doubt come under the spotlight in the same way as has been the case with Enron and numerous previous examples.

It is important to make it clear that the HKSA accepts that professionals should take responsibility for their breaches of duty. The concern is to avoid the unfairness of professionals having to pay more than their fair share of loss suffered when they only have partial responsibility for that loss. It is inappropriate to be held responsible for the mistakes of co-defendants who are either unavailable or unable to pay their share of any loss especially if the consequence is that the financial viability of the professional might be threatened.

Professionals will be accountable for their conduct and will be responsible for the financial consequences. They should not, however, bear the financial consequences of others' shortcomings.

Much is made of the in-built protection for plaintiffs to be able to recover their loss in full when two or more defendants have been negligent but one is unavailable or insolvent. There is no such protection, however, when a plaintiff suffers loss as a result of the actions of a single defendant. If that party is insolvent or unavailable, the plaintiff must bear the entirety of the loss himself. The HKSA believes therefore that there is nothing inherently wrong in transferring at least some of the risk of a defendant's insolvency or unavailability from a 'deep pocket' defendant to the plaintiff. What is important is to balance carefully the interests of a plaintiff who has suffered loss as a result of the shortcomings of others and the interests of negligent professionals who may have caused or contributed to that loss.

Proportionate Liability

Under a system of proportionate liability, the liability of a defendant is limited to that proportion of the damages suffered by a plaintiff which is directly referable to that person's degree of fault. Loss or damage suffered by a plaintiff may arise from failures on the part of a number of different defendants but the degree of fault on their part may vary. They may each be in breach of some duty which is a direct cause of the loss but one may be fraudulent or dishonest, another negligent and the third in technical breach of some statutory duty. Provided that the plaintiff can show that the loss was caused by each of the defendants, the degree of fault is irrelevant under the concept of joint and several liability. Using proportionate liability, however, Courts decide on the respective responsibility of various defendants justly and fairly having regard to all the relevant circumstances.

CANADA

The need to re-evaluate the application of joint and several liability has been recognised in a number of other jurisdictions. For instance legislation was introduced in Canada in June 2001 implementing a modified proportionate liability regime in respect of claims for economic loss arising from errors in financial statements. The new legislation limits a

defendant's liability to a portion of the loss by reference to his relative degree of fault. Two exceptions were introduced, the first relating to claims by certain types of plaintiffs considered to be more vulnerable than others and the second to cases where fraud or dishonesty on the part of the defendant is involved.

USA

A number of the States in the USA have also modified the principle of joint and several liability in favour of some form of proportionate liability. Whilst some have abolished the principle of joint and several liability entirely, most of them have chosen to modify it. A form of proportionate liability was adopted at Federal level with the passage of the Private Securities Litigation Reform Act of 1995. This legislation radically altered the rules governing actions brought by investors for fraud in connection with the purchase and sale of securities, one of the principal kinds of legal claim brought against accounting firms. The effect of the legislation is that accountants who did not knowingly engage in fraud will only be liable for damages proportionate to their degree of responsibility. Where a plaintiff cannot collect the share of an insolvent defendant, each of the remaining defendants is also liable for their proportion of the uncollected share provided that it is not more than 50% of his or her proportionate share. Proportionate liability does not apply, however, to claims by small investors. Further the legislation does not apply to claims by the companies themselves.

IRELAND

In Ireland, proportionate liability applies where a plaintiff is contributorily negligent whereas joint and several liability applies where no negligence is attributable to the plaintiff. Ireland's version of proportionate liability provides that the portion of the total loss attributable to an insolvent or unavailable defendant is shared rateably among the solvent defendants and the plaintiff.

BERMUDA

Bermuda has amended its Companies Act to adopt proportionate liability for auditors and corporate officers in situations where they are found to be liable for damages arising out of

the performance of any function contemplated by the legislation. Joint and several liability, however, continues to apply where there has been fraud or dishonesty.

UK

A wide ranging review of company law in the UK has recently been undertaken by a Steering Group appointed by the Department of Trade and Industry which presented its final report to the Secretary of State on 26 July 2001. The recommendations in the final report recognise the difficulties faced by accountants particularly in relation to an auditor's liability. Although proposals for proportionate liability have been rejected in the UK, the report recommends that section 310 of the Companies Act 1985 should be repealed.

Section 310 prevents the auditor of a company from limiting his liability to his client by any agreement to exempt or indemnify him from liability for any breach of duty in relation to the company. Under section 310, any such agreement is void. This provision is similar to that in section 165 of the Hong Kong Companies Ordinance. The recommendations made by the Steering Group went on to suggest that any agreement between the auditor and company to limit liability would need to satisfy the test of reasonableness set out in the Unfair Contract Terms Act 1977 and would also need to be disclosed to and approved by the shareholders in general meeting. The Department of Trade and Industry has yet to set out its plans for company law reform in response to the Steering Group's final report.

Other Protection

In Germany, there is a statutory cap on the amount of damages recoverable from auditors in the event of a negligent audit. The monetary amount of the cap is necessarily arbitrary and represents a significant move away from the principle that a plaintiff should be compensated in full for any loss or compensated by reference to the loss actually suffered as a direct result of the negligence or breach of duty. As such, this enactment is inherently unfair to a plaintiff and, perhaps, also to other defendants who might continue to be exposed to full liability. Further, if the cap is set too low, it might diminish the deterrent effect of full liability and reduce any incentive to settle litigation through negotiation.

It has been suggested that mandatory directors' and officers' liability insurance might alleviate concerns on the part of accountants that it is unfair for them to be jointly and severally liable for the full amount of any loss suffered when such loss was directly caused by negligence or fraud on the part of the corporation's directors and officers.

In Hong Kong, section 165 of the Companies Ordinance renders void any provision by a company in a contract exempting or indemnifying any officer of the company from liability in respect of negligence, default, breach of duty or breach of trust. This provision is understood to make void any insurance purchased by the company on behalf of its officers since this effectively provides them with an indemnity against their liabilities. Traditionally this difficulty has been resolved by issuing an insurance policy in two parts, the first being a company reimbursement policy and the second being cover for the directors and officers themselves. It is essential that the officers actually pay for their policy otherwise section 165 may render the policy void. This uncertainty will fall away, however, if the proposed amendments to section 165 of the Companies Ordinance in the recently gazetted Companies (Amendment) Bill 2002 are passed into law.

Whilst the requirement for wider insurance cover is superficially attractive, exclusions in the policy might deny cover for the loss when there has been dishonesty or fraud on the part of the directors or officers of the company thereby invalidating the requirement for mandatory cover and placing the onus back on to the accountants or other professional advisers. Concerns have also been expressed that mandatory insurance cover might impose too heavy a cost burden on the company.

Auditors and other officers in Bermuda may be entitled under the bye-laws of the company to an indemnity out of company funds even where they have been negligent in the performance of their duties. Any provision which provides indemnity for wilful negligence, wilful default, fraud or dishonesty, however, will be void under the Bermudan Companies Act. Whilst superficially attractive, the effect is likely to be that plaintiffs will actively look out ways and means to allege wilful negligence, wilful default, fraud or dishonesty in order to get an action off the ground. In those circumstances, the protection may only be of limited assistance especially where the loss suffered is particularly high.

In common law jurisdictions there has been a general trend towards defining auditors' liability for damages more precisely. This has primarily been achieved by a better definition of the class of persons to whom a duty of care is owed and therefore those entitled to sue. The recent authorities have brought into focus the purpose for which the advice (including, in the case of auditors, the audit report) was given. It appears from the decisions that the relevant policy considerations are:

- Tortious liability should not be owed 'in an indeterminate amount for an indeterminate time to an indeterminate class';

- Liability of professional people to others should address the transaction which the plaintiff had in contemplation; the purpose of the advice given or statement made; whether the defendant knew that the advice would be communicated to the plaintiff as an individual or a member of an identified class and would be relied on by him for the transaction concerned; and whether there was a sufficient relationship of proximity for a duty of care to arise;

- Where functions performed are prescribed by statute, the purpose for which those functions are prescribed must be examined to determine to whom a duty of care should be owed and to what extent.

The law has also used the issue of causation to restrict professionals' liability for damages. Cases have distinguished between failures which give rise to the opportunity for loss to be suffered and failures which can be shown to be the direct cause of the loss claimed.

The need for a plaintiff to establish a causal connection between the breach of duty and loss will not prevent professionals from being exposed to an amount of liability which is disproportionate to the extent of their involvement. The most striking example of what is meant can be seen from the case of *ADT v BDO Binder Hamlyn* in which the judge at first instance awarded damages to ADT for an amount well in excess of BDO's available insurance cover. BDO's liability arose in that case from a comment made to representatives of ADT at a short meeting by the audit partner of a company which ADT was considering acquiring. The partner knew of the planned acquisition but had not previously been involved

in it and had not been provided with any agenda or other detailed briefing in advance of the meeting. The audit partner told the representatives of ADT that he stood by the audit opinion on the most recent audited financial statements and was not aware of any change in the company's financial position since the year end.

Specific Issues for Auditors

Justice requires that compensation should be commensurate with responsibility. Exposing professionals to damages which are disproportionate to their degree of fault increases the cost of professional services due to the need to fund the costs of defence and high insurance premiums. Such costs are inevitably passed on to the client and by the client to its customers.

The amount of damages claimed in some cases is so huge that neither the professionals nor their insurers could cover them. The effect of joint and several liability is to force even innocent defendants in such cases to settle in order to avoid the possibility of draconian liability.

Where a plaintiff company is insolvent, as is often the case with claims against auditors, the insolvency is frequently the consequence of acts or omissions on the part of the directors or management. In the absence of fraud on the company itself, the conduct of the directors and management is treated as the conduct of the company itself. Where the liability of the directors or management to the company cannot be satisfied, it is neither just nor commercial sense to impose the consequences on the auditors who do not share in the profits of the business if it is successful and are not at liberty to restrict their liability. The shareholders appoint the directors and should bear the consequences of that choice rather than receive full protection against the consequences of their choice.

There is a clear and important distinction between the situation of an individual plaintiff who suffers physical injury as a result of the negligence of a number of defendants and the position of a corporate body that has suffered loss. Shareholders and other investors are not innocent victims but conscious risk takers. They should bear some risk in respect of the choices they have made rather than being entitled to obtain full recovery by virtue of the principle of joint and several liability.

Specific Issues for Hong Kong

There is no doubt that professionals play a vital role in the operation of the capital markets and in helping to promote confidence in good corporate governance generally. The audit process is particularly important. It is important that high risk companies that are most in need of top quality service should be able to obtain that service. It is not in the interests of anyone involved in the capital markets for the professionals to engage in defensive practice because they are forever looking over their shoulders and worrying how best to limit their potential liability.

Professional costs need to remain competitive and be reasonable in relation to the overall cost of doing business. Further, the professions need talented people at a time when the financial complexity of business is increasing. Bright graduates must be encouraged to apply to join the professions and there must be a clear career structure and good prospects for those who do join.

The risks for professionals are increasing as Hong Kong becomes a more sophisticated financial centre. The growing amount of cross border business and listings of companies with limited track records on the GEM means that the risk exposure is multiplying. The role of professionals in these areas will be crucial.

The perception of the role of auditors is also key. There is still a widening expectation gap as to how investigative auditors should be in performing their functions. Courts have held that auditors are required to be watchdogs not bloodhounds – the reality is that there is a limit to what can be expected from auditors in unearthing financial fraud and error especially where deliberate efforts have been made to conceal such matters from the professional advisers and shareholders. Increasingly, however, auditors are expected to be all-seeing in uncovering and reporting irregularities and duties have been imposed on them to report suspicions of wrongdoing in certain circumstances overriding their professional duty of client confidentiality.

The HKSA's Proposal

The above analysis shows clearly why the principle of joint and several liability is no longer apposite in the current business and economic climate. The HKSA believes that it is important to introduce a revised system of liability that is fair and balances injustice to a plaintiff who has lost money and injustice to a defendant whose breach of duty has contributed only partially to that loss. The proposal set out below represents the HKSA's views as to the best way of redressing the balance, specifically tailored to the particular circumstances of Hong Kong, following a careful analysis of the way that the problem has been addressed in other jurisdictions.

The proposal does not entail the wholesale displacement or exclusion of the principle of joint and several liability. The principle can co-exist with that of proportionate liability. This can be achieved, for instance, by limiting the operation of proportionate liability to specific cases or classes of cases or by conferring on the Court a discretion. The proposal involves the following main elements:

(i) ESSENTIAL IDEA – Proportionate liability should be introduced with exceptions. These exceptions would recognise that there are cases in which the principle of joint and several liability should continue to operate with normal consequences. For instance, joint and several liability should still apply where the defendant seeking to restrict liability has been found by the Court to have caused the damage or loss as a result of his fraud, dishonesty or wilful default.

(ii) THE SCHEDULE OF EXCEPTIONS – The use of the schedule would help facilitate the inclusion of exceptions designed to restrict the application of proportionate liability for policy reasons. The schedule could be shortened or extended and certain types of actions can be excluded altogether. As has been made clear above, the focus of the proposal is on claims by plaintiffs seeking pure economic loss from defendant professionals. The HKSA does not suggest that proportionate liability should apply in other areas such as personal injury actions.

(iii) A SEPARATE AWARD – No award would be made in favour of the plaintiff against any defendant unless the case falls outside the exceptions and any other conditions are satisfied. The Court would apportion as between the defendants the damages assessed against them in such proportion as may be just and equitable having regard to the degree in which each wrongdoer was at fault before making any separate award against the defendant in favour of the plaintiff. Under such a separate award calculated by reference to proportionate liability, the wrongdoer would be liable to pay the plaintiff only that sum which corresponds to his apportioned liability.

The HKSA recognises that there may be public concern about the ability of plaintiffs to recover full compensation for loss suffered if proportionate liability is introduced. The proposal may need further revision or refinement in order to address any public concern which arises. This could be addressed, for instance, by ensuring that the reasons for change are fully explained and publicised at the time or by including specific provisions in the legislation to safeguard the interests of plaintiffs.

The Public Interest

Hong Kong's sustainability as a world-class financial market in the 21st century is an established policy and a paramount objective which the HKSAR has committed itself to pursue. If Hong Kong is to preserve its status as a major world financial centre and keep pace with developments in the global market place in areas such as corporate governance and international regulation, it must be able to attract and retain professionals of the highest calibre. This is particularly important now that China has joined the World Trade Organisation.

Joint and several liability appears to have a negative impact on the accounting and other professions which could have adverse implications for the financial reporting system and capital markets. It also encourages plaintiffs to target 'deep pocket' defendants such as professionals who are known or perceived to be insured or solvent. In the business environment there is less justification for the law to protect plaintiffs who suffer financial loss in the same way as plaintiffs who suffer personal injury. The business environment is rapidly evolving and it is important that the legal principles applied by the Courts should reflect

current conditions. Changes to the system of liability proposed by the HKSA are unlikely to reduce the deterrence factor associated with legal liability either significantly or at all.

September 11 has taught us all to expect the unexpected. Whilst the HKSA acknowledges that there have been relatively few high profile claims for enormous sums against professionals in Hong Kong in the last 10 years or so, that has not been the case elsewhere in the world. With the increase in global trade comes the increased influence of trends from our trading partners such as an increased litigation culture. It is important that steps should be taken now to address issues such as the unjust effect of the principle of joint and several liability on claims against professionals before problems strike in Hong Kong with damaging effects on confidence in our capital markets, Hong Kong as a whole and the financial viability of the professionals on whose skills they are so dependent.

16 April 2002