Liability reform: who pays?

Since 2002, no fewer than seven submissions regarding liability reform have been put forward by the Hong Kong Institute of CPAs to the government. The LegCo panel meeting on 27 March 2006 ended without any progress.

"We are very disappointed that the administration will not be looking at liability reform during the remaining term of the HKSAR's chief executive to 30 June 2007 due to other urgent initiatives," says Winnie Cheung, chief executive of the Institute. Liability reform is in Hong Kong's public interest, she asserts, and adds, "Hong Kong cannot afford to be out of step with other major capital markets." Cheung believes that the increasing risks that the market is asking the profession to shoulder without commensurate protection will hurt Hong Kong's position as a major world capital market.

Raphael Ding, a partner at Moores Rowland Mazars, says the auditing profession in Hong Kong is experiencing a very good time, expanding by double digits in terms of revenue and staff levels every year. He observes that in the present climate, it's hard to convince the government to give liability reform to the auditing profession. "I know that in other countries, for example, Australia, they have proportionate liability, but in Hong Kong we still have a long way to go," he says. Richard George, partner, Practice Protection at Deloitte, says, "For the time being in Hong Kong, we're not moving forward on liability reform." Hong Kong has unlimited liability, which potentially attracts claims because of the supposed deep pockets of accountants, hence the need for change. "There is a perception in government perhaps that as a profession arguing for reform, we want to avoid our responsibilities. This is not the case. We recognise as a profession that we should properly have our fair share of liability."

"What we're advocating is not unique," Cheung says. "Other jurisdictions have introduced or are contemplating liability reforms such as limited liability patnerships or proportionate liability, etc. *(see table)*. Under the current joint and several liability regime, professionals are not only held liable for errors they make, they are also asked to cover damages caused by the errors of others."

Cheung says Hong Kong's success is built on its strong professional services. "Our legal framework must address the increasing risks our professionals are taking in their work and changes are urgent to ensure they have the needed protection," she says.

"The CPA profession has been doing a lot for Hong Kong, but it appears to be a one-way street," Cheung says. "The government is not giving anything back."

According to the latest Institute progress report prepared for the government, the next five years will see a significant increase in Mainland companies raising funds through Hong Kong listings with consequent benefits to Hong Kong generally. The report states: "This creates an increase in the volume and scale of assurance work while the liability framework remains unchanged. Further, insurance cover is becoming increasingly scarce." It declares reform is urgent and must be addressed before professionals find the inherent risks outweigh the rewards: "If the accounting profession suffers, Hong Kong's hard-earned status will suffer."

THE LIABILITY BANDWAGON	Australia	Canada & Bermuda	UK	Other EU Countries*	USA	Hong Kong	Singapore
Proportionate liability	✔	✔	✔ Proposed	✔	✔		
Ability to limit liability contractually	✔			✔	✔		
Limited liability partnerships		✔	✔	✔	✔		✔
Corporate practices	✔		✔	✔		✔	✔
Statutory liability cap	✔			✔			

*Notes: 1. The 8th Directive of the European Union provides that all member states should introduce liability reform provisions in their member states.
2. EU Countries include Germany and Italy, and very recently Belgium, Denmark and Spain.