

供 2002 年 5 月 27 日討論用

立法會司法及法律事務委員會
律師法團規則

背景

前律政署在 1995 年發表的《法律服務諮詢文件》，就香港法律服務提出多項建議。其中一項是建議准許律師成立公司以法人方式執業。根據法律規定，法人公司是一個法定實體，獨立於公司成員之外。有限責任公司的股東，其所須負擔的債務責任，只限於其本身所持股份的未付股本值。以法人公司經營業務的好處，是公司本身可用法人的身分集資、借貸和簽約。諮詢文件認為，只要有適當的保障措施，律師應獲准以有限或無限責任的法人方式執業。

2. 律政署其後發表的《諮詢工作報告書及關於未來路向的提議》，顯示大部分的意見書都贊成准許律師成立公司以法人方式執業的建議。香港律師會贊成該項建議，並提議擬備詳細規例，規定在什麼情況下，律師可選擇透過公司執業。

3. 政府透過《法律服務立法(雜項修訂)條例草案》修訂《法律執業者條例》，條例草案於 1997 年 6 月底通過成為法例。根據修訂條文的規定，律師會可“按照(律師會)理事會規則”，批准或拒絕批准公司作為律師法團的申請。

律師法團規則擬稿(“規則擬稿”)

4. 律師會負責草擬有關規則，並於 2001 年 6 月發表規則擬稿，供會員評論。

5. 政府詳細研究規則擬稿，並從公眾利益角度向律師會提出意見。律師會解答了政府就多項事宜提出的疑問。尚待商討的主要事項，涉及為保障消費者而設的律師法團保險。

6. 政府從公眾利益角度，就規則擬稿提出的主要意見，現載列如下—

(1) 拒絕批准的理由

7. 規則擬稿第 2(5)及(7)條(見附件 A)規定，律師會理事會必須認為批准某公司或建議成立的公司作為律師法團，並不抵觸律師專業或公眾利益，才會給予批准。政府認為律師會似乎暗示律師專業的利益會與公眾的利益有別。政府要求律師會就規則擬稿提述律師專業利益一點提供理據。

8. 律師會答覆，如果律師專業的利益與公眾利益有所衝突，律師會承諾代表市民履行監管律師專業的責任，而行事時必會以公眾利益為首要考慮因素。律師會同意修訂有關草擬條文，表明這個意向。

(2) 獲批准的資格

9. 規則擬稿第 3(2)及第(3)條(見附件 B)規定，一名並非律師的人也可成為律師法團的成員或董事。這規定可令一名單獨的法律執業者也可符合《公司條例》(第 32 章)的要求，即一間公司須有兩名成員及兩名董事才能成立。該規則訂明第二名成員或董事須就他所持有的一份股分簽立一份信託聲明書，以該名單獨的法律執業者作為受惠人，公司的管理及控制權亦由該名單獨的法律執業者擁有。

10. 政府向律師會就此作出評論，指出倘若出現這種情況，則公眾人士未必知道該第二名成員(可能是社會知名／具聲望的人士)雖然擔任董事職位，但卻只是股分的受託人，並不參與公司的運作和管理。我們要求律師會澄清該名不具法律資格的董事所擔任的角色，以及須採取什麼措施，為公眾提供足夠保障。

11. 律師會建議，這問題可透過修訂《法律執業者條例》新訂的第 9AA 條(見附件 C)來解決，即在根據該條例可因不當行為而被調查、查訊或處理的人士或個體名單中，加入“人員”一詞。至於“人員”的定義，則可加入該條例第 2(1)條，以包括 董事、經理等。這做法等同將根據

規則擬稿第 3(2)(b)條獲委為董事的人納入新的《法律執業者條例》第 9AA 條的規管範圍內。

(3) 上訴權

12. 規則擬稿第 8 條(見附件 D)訂明可就不服律師會的決定提出上訴的權利。政府建議，為對可能提出上訴的人公平起見，第 8 條該明確規定，律師會理事會如拒絕批准申請，必須在一段指定時限內通知申請人拒絕批准的原因。

13. 律師會同意修訂第 8 條，以便該會根據新的規則作出拒絕申請的決定後 28 日內，以書面述明拒絕批准的原因。

(4) 加額保險

14. 規則擬稿第 3 條訂明獲准成立律師法團的資格，但是卻無條文規定要求律師法團須先行投保，方可獲准成立。政府認為消費者受到保障，至為重要，因此律師法團須投購彌償保險，以支付委託人的民事索償。我們建議律師會參考《1988 年英國律師法團執業規則》(“英國規則”)，規定須就律師事務所投購的彌償保險最低保額的超出額，投購加額保險。我們已請律師會考慮在香港採用類似的做法。

15. 律師會最初回覆，現有的香港律師專業彌償計劃已給公眾人士提供足夠保障。該會認為，儘管律師法團亦可能遭人透過合約訴訟提出申索，但這類申索可納入針對律師法團的律師或職員而提出的侵權訴訟之內，而有關的律師或職員涉及這類訴訟，則會獲專業彌償計劃的保障。該會認為難以想像出除了適用一般商業規則的合約訴訟外，會有任何情況是只有律師法團須負上法律責任，而律師董事／成員是無須負上法律責任的。律師會認為，為審慎起見，應為法團董事及人員購買保險，但不認為必須強制執行。

16. 政府認為從公眾利益角度來看，上述做法並不足夠。為了確定律師法團應否購買加額保險，我們請律師會就其他容許成立律師法團的普通法司法管轄區的做法提供資料，即這些司法管轄區有否需要律

師法團購買加額保險；如要的話，則根據什麼公式計算。

17. 律師會回覆，現正聯絡其他容許成立律師法團的司法管轄區，並會盡快再與政府討論此事宜。

18. 為了研究是否需要律師法團就律師事務所投購彌償保險的規定最低保額的超出額投購加額保險一事，我們向英格蘭及威爾斯律師會查詢英國規則規定須購買加額保險的理據。

19. 英格蘭及威爾斯律師會回覆如下－

“認許團體”必須就彌償規則所規定的最低保額的超出額投購加額保險，這項規定只適用於有限責任的認許團體，即有限公司或有限責任合夥。

這個規定最初是應上訴庭民事分庭庭長於 1988 年所提出的關注而加入的，有關規則當時才首次訂立。當時律師只能以非法團的無限責任合夥方式執業。獲判可得超出最低彌償保額(當時為 100 萬英鎊，而目前也是)的訴訟人，可以針對各合夥人的個人資產作出追討，以取回判定賠償額與律師事務所保險所支付的賠償額之間的差額。上訴庭民事分庭庭長對於在追討賠償方面可能出現的“差距”表示關注，因此加額保險的規定便開始引入。

20 在保險事宜方面，政府認為律師法團必須購買足夠保險，以保障消費者的利益。在英格蘭方面所關注的，是市民就律師法團的律師疏忽而提出訴訟可以獲得的賠償額，與就律師事務所的律師疏忽而提出訴訟可以獲得的賠償額，兩者有“差距”，這個關注事項看來同樣適用於香港。政府建議律師會研究目前規定律師事務所須投購的最低保額，對於律師法團來說是否足夠，以及是否有需要投購加額保險。

律政司

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2. Application for approval under section 7C(1) of the Ordinance

(1) Any person who wishes to have a company or a proposed company approved as a solicitor corporation under section 7C(1) of the Ordinance shall apply to the Society.

(2) An application made under subrule (1) shall be in Form 1 in the Schedule.

(3) When an application is made under subrule (1), there shall at the same time be paid to the Society such fee as is prescribed by the [Solicitor Corporations (Fees)] Rules.

(4) On receiving an application made under subrule (1), the Society may, in accordance with these rules, approve or refuse to approve the company or proposed company as a solicitor corporation.

(5) Before approving a company or proposed company as a solicitor corporation, the Council shall be satisfied that the company or proposed company satisfies or will satisfy the qualifications for approval as a solicitor corporation and that such approval is not, in the opinion of the Council, contrary to the interests of the solicitors' profession or the public.

(6) If the Society gives approval for a proposed company to be a solicitor corporation, the approval does not take effect until the company is formed and registered under the Companies Ordinance (Cap.32).

(7) Any approval given by the Society pursuant to subrule (4) may be withdrawn by the Society at any time if the continuance of such approval is, in the opinion of the Council, contrary to the interests of the solicitors' profession or the public or if the relevant solicitor corporation ceases for any reason to be qualified for approval under rule 3 or otherwise.

(8) Any approval given by the Society with respect to a solicitor corporation pursuant to subrule (4) shall expire where

- (a) a winding-up order under the Companies Ordinance (Cap 32) is made by the High Court with respect to such solicitor corporation;
- (b) a resolution for voluntary winding-up is passed with respect to such solicitor corporation; or
- (c) a person is appointed receiver or manager of the property of such solicitor corporation.

3. Qualification for approval as a solicitor corporation

(1) Subject to the discretion of the Council pursuant to rule 2(5), a company is qualified to be approved as a solicitor corporation if—

- (a) it is a company limited by shares and formed and registered under the Companies Ordinance (Cap 32);
- (b) all the members of the company are directors or employees of the company;
- (c) all the directors of the company are members or employees of the company;
- (d) subject to subrule (2), every member and every director of the company is an individual:
 - (i) who is a solicitor holding a current practising certificate which is not subject to any condition other than the condition that he shall comply with the Continuing Professional Development Rules and any other continuing legal education rules made under section 73 of the Ordinance; and
 - (ii) who is employed in the practice of a solicitor or a solicitor corporation in Hong Kong or who is practising as a solicitor on his own account or in partnership in Hong Kong or who is a member or director of a solicitor corporation or has been in any such employment or practice or has been a member or director of a solicitor corporation not more than 12 months prior to his becoming a member or director of the company;
- (e) subject to subrules (2) and (3), every member of the company beneficially owns the share or shares he holds in the company;
- (f) the name of the company is in compliance with rules 6(1), (2), (4) and (5) and the company does not conduct its Practice under any other name; and
- (g) the memorandum and articles of association of the company are in compliance with the requirements of the Companies Ordinance (Cap.32) and these rules.

(2) To enable a sole practitioner to establish a solicitor corporation under section 7C(1) of the Ordinance and to comply with the requirements of the Companies Ordinance (Cap.32) that a company formed thereunder must have two members and two directors, a company may have—

- (a) as the second member any other individual person, whether a solicitor or not, who is eligible under the Companies Ordinance (Cap.32) and who is not a member director or employee of another solicitor corporation, or a corporation approved for the purpose by the Council; and
- (b) as the second director any other individual person, whether a solicitor or not, who is eligible under the Companies Ordinance (Cap. 32) and who is not a member director or employee of another solicitor corporation

provided that—

- (i) the company shall at all times be managed and controlled by the sole practitioner;
- (ii) not more than one share of the company may be registered in the name of such second member who shall hold such share in trust for the sole practitioner; and
- (iii) such second member shall have executed a declaration of trust in favour of the sole practitioner in respect of the one share in the company which he or it holds in trust for the sole practitioner and the person who lodges an application under rule 2 shall furnish a copy of such declaration of trust to the Society.

(3) If the second member mentioned in subrule (2) ceases to hold the one share in the company in trust for the sole practitioner mentioned in subrule (2), such sole practitioner and the company shall procure that:

- (a) another individual person, whether a solicitor or not, who is eligible under the Companies Ordinance (Cap.32) and who is not a member director or employee of another solicitor corporation, or a corporation approved for the purpose by the Council, shall become a member of the company holding one share in the company within 6 months from the date on which such second member ceases to hold the one share in the company; and
- (b) an individual person or a corporation as aforesaid who or which shall become a holder of that one share in the company pursuant to subrule (3)(a)

shall execute a declaration of trust in favour of such sole practitioner in respect of such share which he or it holds in trust for the sole practitioner and such sole practitioner shall furnish a copy of such declaration of trust to the Society within 6 months from the date on which such second member ceases to hold such share; and

- (c) the provisions in subrules (2)(i) and (ii) shall continue to apply to the company.

(4) If the second director of the company mentioned in subrule (2) ceases to act as such, the company shall procure that another individual person, whether a solicitor or not, who is eligible under the Companies Ordinance (Cap.32) shall become a second director of the company within 2 months from the date on which such second director ceases to act as a director of the company.

(5) The Council may waive any of the requirements of subrule (1) where it considers it appropriate in the particular case.

**“9AA. 律師法團或外國律師法團的
成員或僱員的失當行爲**

身為律師法團或外國律師法團的成員或受僱於律師法團或外國律師法團的人的行爲可成爲申訴的標的，並可根據本部予以調查、研訊和處理，其方式與律師或律師或外國律師的僱員的行爲可予以調查、研訊和處理的方式相同，但只限於與該法團進行的執業業務有關的行爲。”。

8. Right of appeal against decisions of Society under these rules

(1) An appeal against a decision of the Society under these rules shall lie to the Court and the provisions of Order 55 of the Rules of the High Court (Cap. 4 sub. leg.) shall apply to each such appeal save that the time for serving notice of motion of appeal shall be 21 days from the date of the decision and not 28 days as provided in Order 55 and the decision of the Court on any such appeal shall be final.

(2) In any appeal under subrule (1) the Society shall be the respondent.

(3) The hearing of every appeal under this rule shall be in open court unless, and to the extent to which, the Court otherwise directs.