

For discussion  
on 27 January 2003

**Panel on Administration of Justice and Legal Services**  
**Law Amendment and Reform (Miscellaneous Provisions) Bill**  
**Proposed amendment to new s.9AA Legal Practitioners Ordinance**

**Background of Solicitor Corporations**

In 1995, the then Attorney General's Chambers published a Consultation Paper on Legal Services which made a number of proposals regarding Hong Kong legal services. One was a proposal to allow solicitors to incorporate their practices as companies. An incorporated company is in law a separate legal entity, distinct from its members. Shareholders of a company with limited liability are only liable to the extent of the unpaid nominal capital of the shares which they own. The advantages for conducting business are that an incorporated company can raise capital, borrow money and enter into contracts in its own capacity as a legal person. The view expressed in the Consultation Paper was that, subject to proper safeguards, solicitors should be permitted to incorporate their practices with either limited or unlimited liability.

2. The Report on the Consultation Exercise and Proposals for the way forward, subsequently published by the Attorney General's Chambers, revealed that the majority of the submissions supported the recommendation on the incorporation of solicitors' practices. The Law Society agreed with the recommendation and proposed to prepare detailed regulations regarding the conditions under which solicitors may elect to practise through a company.

3. The Administration introduced amendments to the Legal Practitioners Ordinance ("the Ordinance") through the Legal Services (Miscellaneous Amendments) Bill which was enacted at the end of June 1997. The amendments provide that the Law Society may "in accordance with the [Law Society] Council's rules" approve or refuse to approve an application for the approval of a company as a solicitor corporation.

## **The Draft Solicitor Corporations Rules (“the draft Rules”)**

4. The Law Society undertook the drafting of the relevant rules. In June 2001, the Law Society released the draft Rules for comments by its members. The Administration studied the draft Rules and provided its comments to the Law Society from the public interest angle.

5. The draft Rules were examined by the LegCo Panel on Administration of Justice and Legal Services on 27 May 2002. The Administration understands that the Law Society is currently seeking the Chief Justice’s approval in respect of the draft Rules.

6. In considering the draft Rules, one of the queries that the Administration raised concerned Rule 3(2) and (3) (**at Annex A**) which stated that a person not being a solicitor can also be a member or director of a solicitor corporation. The reason, as provided in the rule, is that this would enable a sole practitioner to comply with the requirements of the Companies Ordinance (Cap.32) that a company formed under it must have two members and two directors. The rule provides that the second member or director would need to execute a declaration of trust in favour of the sole practitioner in respect of the one share that he holds, and the management and control should remain with the sole practitioner.

7. The Administration’s concern was that if such a situation were to arise, the public may not be aware that the second member (who may be a well known/respected member of society), though being held out as a director, is only a trustee of the share and that he is not involved in the operation and management of the company. The role of this non-legally qualified director would therefore need to be clarified.

8. The Law Society responded that the problem would be resolved if the new section 9AA of the Ordinance (**at Annex B**) were additionally to refer to an “officer”. The definition of “officer” contained in the new section 2(1) of the Ordinance (**at Annex C**) includes directors, managers, etc and this would bring those appointed as directors under Rule 3(2)(b) within the parameters of the new section 9AA whilst those appointed as members under Rule 3(2)(a) are already “caught” by the new section 9AA. The Administration agrees to this proposed amendment to the new section 9AA of the Ordinance and proposes to

include such amendment in the Law Amendment and Reform (Miscellaneous Provisions) Bill.

### **Implications of one-director companies introduced in the Companies (Amendment) Bill 2002**

9. As a result of a query by the AJLS Panel at its meeting on 13 December 2002, the Law Society was requested to assess the implications of one-director companies as introduced in the Bills Committee on Companies (Amendment) Bill 2002 on the Administration's proposal. A copy of the Law Society's reply dated 8 January 2003 is at **Annex D**.

10. As it is uncertain when the amendment to the Companies Ordinance is likely to take effect, it is presently still necessary to comply with the requirement for a second director under current company law

11. Having considered this issue, the Law Society took the view that it may allay some of the concerns within the Panel if it proposes to add to the draft Rules a provision similar to Rule 7A of the Solicitors Accounts Rules which deals with a situation not entirely dissimilar, namely the appointment of a non-solicitor to sign cheques on clients' accounts under certain circumstances. Rule 7A reads as follows:

7A(1) No money shall be drawn from a client account under rule 7 unless one of the following persons has specifically authorized in writing its withdrawal, namely,

- (a) ...
- (b) ...
- (c) a person approved by the Council, which approval shall only be given in exceptional circumstances, upon an application in writing made to it by the solicitor or firm and subject to such conditions as the Council may think fit, if any.

the Law Society suggested that an amendment could be made to Rule 3 of the draft Rules so as to add a proviso to sub-Rule (2) as follows:

“...provided that :-

- (1) the company shall at all times be managed and controlled by the sole practitioner;
- (2) no person shall be appointed and act as the second member or the second director referred to above unless such second member or second director have been approved by the Council, which approval shall only be given upon an application in writing made to it by the sole practitioner or the company and subject to such conditions as the Council may think fit, if any.”

12. The Administration is of the view that the proposed additional provision in the draft Rules would provide additional safeguards to ensure that a non-solicitor director would not take control of the accounts and management of the solicitor corporation.

Legal Policy Division  
Department of Justice  
January 2003

## **Rule 3(2) and (3)**

### **Annex A**

(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.

**"9AA. Misconduct of member or employee of  
solicitor corporation or foreign  
lawyer corporation**

Conduct of a person who is a member of, or is employed by, a solicitor corporation or a foreign lawyer corporation may be the subject of a complaint, and may be investigated, inquired into and dealt with under this Part in the same way as the conduct of a solicitor or employee of a solicitor or foreign lawyer may be investigated, inquired into and dealt with, but only in so far as the conduct relates to the practice carried on by the corporation."

Annex C

New section 2(1)

“officer” of a corporation means a director, manager, executive or secretary of the corporation



THE  
**LAW SOCIETY**  
OF HONG KONG  
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LP 5004/4/11C III

8 January 2003

Ms Kitty Fung, *u 8/1/03*  
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Department of Justice,  
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HONG KONG.

Dear Ms Fung,

**Law Amendment & Reform (Miscellaneous Provisions) Bill**  
**Proposed amendment to new s. 9AA Legal Practitioners Ordinance**

Thank you for your letter dated 16 December.

I note that it is proposed to amend section 9AA of the Legal Practitioners Ordinance so as to include an officer of a solicitor corporation as being a person whose alleged misconduct may be investigated and dealt with by the Law Society.

There appears to be a conflict within the LegCo Panel as to whether sole proprietorships should be permitted to incorporate by taking advantage of the proposed amendment to s. 153A of the Companies Ordinance or whether the existing law requiring two directors is insufficient because one of the two might be a non-solicitor and a "front" for an other. Given that we do not know at present when the amendment to the Companies Ordinance is likely to take effect it would seem that we have to resolve the concerns over the appointment of a second, non-solicitor director.

Having considered this issue we take the view that it may allay some of the concerns within the Panel if we were to add to the draft Solicitor Corporation Rules a provision similar to that in the Solicitors Accounts Rules which deals with a situation not entirely dissimilar, namely the appointment of a non-solicitor to sign cheques on Clients' Accounts under certain circumstances. That Rule reads as follows:

7A ....(1) No money shall be drawn from a client account under Rule 7 unless one of the following persons has specifically authorized in writing its withdrawal, namely,

- (a)
- (b)
- (c) a person approved by the Council, which approval shall only be given in exceptional circumstances, upon an application in writing made to it by the solicitor or firm and subject to such conditions as the Council may think fit, if any.

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**The Law Society of Hong Kong**

- 2 -

An amendment could be made to Rule 3 of the Solicitor Corporation Rules so as to add a proviso to sub-Rule (2) as follows:

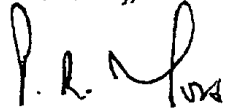
...provided that:-

- (1) the company shall at all times be managed and controlled by the sole practitioner;
- (2) no person shall be appointed and act as the second member or the second director referred to above unless such second member or second director have been approved by the Council, which approval shall only be given upon an application in writing made to it by the sole practitioner or the company and subject to such conditions as the Council may think fit, if any.

The requirement in the Solicitors Accounts Rules that consent should only be given in "exceptional circumstances" would not appear to be warranted in the context of these rules.

Perhaps you would be kind enough to let us know whether this meets your concerns and those of the LegCo Panel in which event the Solicitor Corporation Rules will be amended and re-submitted to the Chief Justice.

Yours sincerely,



Patrick Moss  
Secretary General

cc Ms Rebecca Pun,  
Administrative Assistant to the Chief Justice  
Court of Final Appeal