

立法會 *Legislative Council*

立法會CB(2)247/04-05(01)號文件

檔 號：CB2/PL/AJLS

司法及法律事務委員會

立法會秘書處擬備的背景資料簡介

《 律師法團規則 》

目的

本文件旨在綜述司法及立法律事務委員會(“事務委員會”)之前在上屆立法會任期就律師成立公司以法團方式執業建議的實施進度所作的討論。

背景

2. 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。其中一項是准許律師成立公司以法團方式執業。根據法律規定，法團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。諮詢文件認為，只要有適當的保障措施的，律師應獲准以有限或無限責任的法團方式執業。

3. 於1997年制定成為法例的《1996年法律服務立法(雜項修訂)條例草案》第2條旨在就《法律執業者條例》(第159章)增訂條文，讓律師可以成立律師法團的方式執業。這些條文包括對《法律執業者條例》第73及73A條的修訂，訂明律師會理事會可就成立律師法團、向律師會申請註冊成為律師法團所需費用及律師法團的專業彌償保額等事宜訂立規則。該等新訂條文將於律政司司長在憲報公告所指定的日期生效。

4. 事務委員會曾先後於2000年12月19日、2002年5月27日及2003年11月24日舉行3次會議，以討論律師以成立法團方式執業建議的實施進度，包括有關制訂《律師法團規則》擬稿(“規則擬稿”)的事宜。於2003年11月24日的會議上，律師會向事務委員會簡介規則擬稿的具體條文、《律師法團(費用)規則》及對《律師(專業彌償)規則》的相應修訂建議。

事務委員會曾討論的主要事項

擬備規則擬稿

5. 律師會回答委員的查詢時告知事務委員會，該會在擬備規則擬稿期間，曾研究有關部分海外普通法司法管轄區的律師以成立法團方式執業方面的問題。律師會指出，在考慮有關問題期間，該會曾詳細討論律師法團如何遵守現行的執業規則(包括與律師專業彌償計劃有關的規則)、行為守則及其他的監管事宜。最終目標，是要確保能為法律服務使用者提供周全保障，同時又能給予律師更大自由度選擇經營業務的方式。

6. 律師會又告知事務委員會，該會會繼續研究在英格蘭及威爾斯成為新發展趨勢的法律執業有限法律責任合夥制(即律師合夥在某些情況下成為有限法律責任的法定實體)，會否較律師法團模式更適合香港的情況。

加額保險

7. 政府當局於2002年5月27日的事務委員會會議上告知委員，律師會曾於2001年6月發表規則擬稿供其會員及政府當局提供意見，當局已研究該等規則擬稿。政府當局認為，尚未解決的主要關注事項，關乎律師法團為保障消費者而投購保險的問題。

8. 政府當局注意到，規則擬稿並無條文規定律師法團必須先投購保險，才獲准成立律師法團。政府當局認為，為保障消費者，律師法團必須投購足夠的彌償保險，以支付當事人提出的民事索償。政府當局建議律師會考慮，目前律師行投購的最低保險額，對律師法團是否足夠。

9. 律師會告知事務委員會，該會會作出法例修訂，將律師法團納入《律師(專業彌償)規則》對“獲彌償保障者”的定義中。該會認為，現行律師專業彌償計劃的保險總額已能為公眾提供足夠保障。此外，除為當事人提出的每宗索償投購的1,000萬元強制保險額外，部分規模較大的律師行投購額外的彌償保險，亦相當普遍。

10. 事務委員會一名委員認為，規定投購加額保險，會有違律師行成立法團的立法原意。該委員指出，考慮成立律師法團的原因，是在現行制度下，律師即使本身與其合夥人所犯的疏忽無關，但必要時仍須自掏腰包為該項錯失作出賠償，這對律師行而言，實過於嚴苛。

11. 政府當局曾檢討其立場，並於2003年11月告知事務委員會，當局在現階段不會堅持要求律師法團投購加額保險。至於應否進一步評估加額保險的需要，則將視乎律師會對現有律師專業彌償計劃的檢討結果，以及《律師法團規則》的實際執行情況而定。

12. 律師會又解釋，該會將修訂《律師(專業彌償)規則》，訂明在律師法團執業的律師及其職員所處的情況，一如其現時以獨資或合夥

的經營方式在律師行執業的一樣，而任何針對律師法團的索償，均會循正常途徑，向律師彌償基金提出。

有關律師法團的成員及董事的規定

13. 《律師法團規則》擬稿第3(1)(d)(i)條規定，律師法團各成員及董事必須為一個個人，並為持有有效執業證書的律師；而其持有的執業證書，除規定持有人須遵守《專業進修規則》及其他根據《法律執業者條例》第73條訂定的法律進修規則外，並無施加其他任何條件。律師會指出，由於《執業證書(特別條件)規則》容許律師會就律師執業證書訂立條件，有人關注到，該規則生效後，律師會所施加的條件會否禁止律師成為律師法團的成員或董事。律師會表示，該會理事會會進一步考慮此事，如有需要，會對規則擬稿作出相關修訂。

14. 律師會又指出，規則擬稿第3(2)條規定，由單一名執業者成立的律師法團，必須有第二名成員。事務委員會一名成員建議律師會參照《公司條例》的相關法例規定檢討第3(2)條的草擬方式，以保持統一。

立法時間表

15. 律師會在2003年11月24日的會議上告知事務委員會，該會已諮詢其會員對規則擬稿的意見。若律師會理事會認為有必要進一步修訂規則擬稿，會再諮詢會員。然後，規則的定稿會提交終審法院首席法官批准，並刊登憲報。律師會預期可於2004年年初完成有關程序。

相關文件

16. 隨文附上下列文件，供委員參閱——

- (a) 律師會為事務委員會2000年12月19日會議提供的文件(附錄I)；
- (b) 政府當局為事務委員會2002年5月27日會議提供的文件(附錄II)；及
- (c) 律師會為事務委員會2003年11月24日會議提供的文件，當中夾附了《律師法團規則》擬稿、《律師法團(費用)規則》，以及對《律師(專業彌償)規則》的相應修訂建議(附錄III)；
- (d) 事務委員會2000年12月19日會議紀要摘錄(附錄IV)；
- (e) 事務委員會2002年5月27日會議紀要摘錄(附錄V)；
- (f) 事務委員會2003年11月24日會議紀要摘錄(附錄VI)。

立法會秘書處

議會事務部2

2004年11月18日

INCORPORATION OF SOLICITORS' PRACTICES

In 1995 the Government published a Consultation Paper on Legal Services which contained arguments in favour of allowing solicitors to incorporate their practices. (Para. 10.11 et seq.) The Consultation Paper suggested that the shareholders of such a practice would only be liable to the extent of the unpaid nominal capital of the shares which they owned. Compared to a partnership in which each of the partners is liable to the full extent of his partnership and private assets for any liability of the practice incurred by the partners or employees, incorporation is, on the face of it, an attractive proposition.

In consequence of this the Law Society supported the proposal and in due course amendments were made to the Legal Practitioners Ordinance through the Legal Services (Miscellaneous Amendments) Bill which passed into law in the end of June 1997. Those amendments were slightly unusual in that they provided the authority to enable solicitors to incorporate but left it to the Law Society to provide the rules under which incorporation was to take place.

Immediately after the change of sovereignty there was a collapse of the property market, the effective abolition of scale fees and a general economic recession. There were other more pressing livelihood issues occupying the Law Society at the time and an absence of any demand from members for rules to be promulgated to enable them to incorporate. Accordingly there was not the highest priority given to the drawing up of rules for incorporation.

However the Law Society undertook research on the issues relating to incorporation particularly in overseas common law jurisdictions including England & Wales, Australia, Canada, South Africa, Northern Ireland, New Zealand and Singapore although many such jurisdictions had marked differences from practice in Hong Kong. For example legislation in certain states in Australia allows providers of professional services to limit their liability. There has been a misconception that incorporation would enable a solicitor to limit all liability towards his client both in contract and in tort.

Having taken the advice of leading London counsel on this point the Law Society has been advised that the existing legislation does not permit solicitors to avoid liability to their clients in tort. Given the present state of the legislation in Hong Kong the reality is that a solicitor may be able to limit his contractual liability to a client of the corporation in the absence of any contractual personal duty to or fiduciary relationship with the client of

the corporation but unless he genuinely has no knowledge or involvement in the negligence of his partner/co-director he will remain jointly and severally liable with his co-director solicitors to the client. Consideration might well be given to placing a statutory cap on the tortious liability of solicitor directors with indemnity cover at least to that limit. This is the position in New South Wales where a Professional Standards Scheme applies and Western Australia is about to follow suit.

Recently we have ascertained that legislation is under discussion in Western Australia to enable solicitors to incorporate. Similarly in New South Wales where incorporation under the Legal Profession Act has existed since 1991 there are moves to enable practices to incorporate under the Corporations Act thus removing the anomaly that currently exists whereby solicitor corporations are not subject to the provisions of company law in the State. We understand that federal law in Australia permits the incorporation of bodies such as law firms and it has only been state law which has prevented law firms from incorporating with limited liability.

Having decided in principle on the most appropriate format for incorporation of a Hong Kong solicitor's practice the Law Society Council resolved to put out to tender the work of drafting the rules. In December 1998 an invitation to tender was circulated to all law firms and in mid January 1999 Messrs. Deacons, Graham & James were appointed. The firm proceeded to carry out further research on incorporation of practices and received up to date information from a number of overseas jurisdictions. A detailed comparative report on the legislation in other jurisdictions was submitted to the Law Society in June 1999 and the Society's working party met to consider the specific instructions to be given to the solicitors for drafting the rules. Detailed instructions were given in December after publication in Singapore of the Legal Profession (Amendment) Bill and in March the first draft was made available to the working party. Following consideration of the first draft at meetings of the working party further instructions were given and a second draft was submitted to the Law Society in June 2000. That draft was also discussed at length and further comments made as a result of which a third draft was received on 24 November. That draft is now under consideration and subject to some minor amendments will shortly be submitted to the Chief Justice for his approval and thereafter to the Law Draftsman.

Consideration of the issues has involved detailed discussion on the way in which solicitor corporations will conform to existing practice rules including those relating to the Hong Kong Solicitors Professional Indemnity Scheme, compliance with rules of conduct and regulatory matters all of which are intended to ensure that the way in which the profession conducts its business is maintained for the benefit of the public

yet allows solicitors greater flexibility in the manner in which they run their practices. A significant number of issues have had to be discussed and decided upon in order to achieve these ends. These include specific provisions to meet the likely demand for incorporation from sole practitioners who constitute more than 50% of the total number of firms in Hong Kong.

In England & Wales the Limited Liability Partnerships Bill received the Royal Assent in July 2000 and regulations are in the course of preparation which will lead to the first such bodies being incorporated in early 2001. It is the belief of many that LLPs constitute a more effective means of conducting a legal practice at the same time providing adequate safeguards to the public. However until they are seen in operation in England & Wales we are unable to advise as to whether this is an appropriate format for use in Hong Kong.

15th December 2000

The Law Society of Hong Kong

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一

““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

2002年5月

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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為**

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為可成為申訴的標的，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為可予以調查、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為。”。

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.

SOLICITOR CORPORATIONS RULES
SOLICITOR CORPORATIONS (FEES) RULES
AMENDMENT TO THE SOLICITORS
(PROFESSIONAL INDEMNITY) RULES

1. The Legal Practitioners Ordinance (Cap 159) ("the ordinance") was amended by the Legal Services Legislation (Miscellaneous Amendments) Ordinance in 1997 to enable solicitors to incorporate their practices as solicitor corporations. The amendments which are contained in Part II AA of the ordinance are to take effect upon notice being given in the Government Gazette by the Secretary for Justice.
2. Section 7 D (1) of the amended ordinance provides that:
"a solicitor corporation is authorized to do anything that only a solicitor can lawfully do and is required to do anything that a solicitor is required to do by law."
3. Under amendments to section 2 of the ordinance a solicitor corporation becomes a "legal practice entity" which definition includes solicitors, foreign lawyers and law firms.
4. The amendments to the ordinance require the Council of the Law Society ("the Council") to make rules in respect of solicitor corporations.
5. The Council intends to make rules ("the Rules") in accordance with the draft at Annex A hereto in respect of solicitor corporations, in accordance with the draft at Annex B in respect of the fees payable to the Law Society for applications for registration as a solicitor corporation and in accordance with the amendments proposed in Annex C in relation to the professional indemnity cover of such corporations.

6. The Solicitor Corporation Rules

Rule 1

This contains definitions to be used in the context of the Rules.

Rule 2

The Rule provides for applications to be made for approval of the registration by the Law Society of a solicitor corporation. It requires the Council of the Law Society ("the Council") to be satisfied that the company or proposed company satisfies the qualifications for approval as a solicitor corporation as set out in Rule 3 and is not contrary to the public interest. Approval only takes effect once the solicitor corporation is formed and registered under the Companies Ordinance.

There is provision for the approval to be withdrawn in certain specified circumstances.

A fee is payable in accordance with the proposed Solicitor Corporations (Fees) Rules.

Rule 3

The rule sets out the grounds upon which a solicitor corporation may be approved. Amongst other requirements all members must be directors or employees of the company as must all directors. All members and directors must be individuals holding a current Practising Certificate and must have been in practice for the preceding 12 months.

Subject to certain exceptions referred to below every member must beneficially own his or her own shareholding in the company.

In order to assist sole practitioners who may wish to incorporate their practices provision is made in Rule 3 (2) to enable the requisite second member and director to be an individual other than a practising solicitor. This relaxation is qualified. It is only permitted in specified

circumstances as set out in Rule 3 (2) which include the requirement that the company is at all times managed and controlled by the sole practitioner, that only one share in the company may be vested in the second member who shall execute a declaration of trust in favour of the sole practitioner and that the written approval of the Council to the appointment is obtained.

Provision is made for the replacement of the second member in specified circumstances.

Rule 4

This rule deals with the way in which the solicitor corporation conducts its business and restricts it to the practice of law.

Rule 5

At all times the shares in a solicitor corporation must be held by solicitors who beneficially own them. They may not be held on behalf of other persons. Nor shall they be charged or be subject to any third party interests. The rule contains provision for the transfer of shares on death, striking off or bankruptcy and the non-exercise of voting rights in respect of such shares.

Rule 6

The rule sets out the requirements for the name of a solicitor corporation. This essentially follows the existing rules in respect of partnerships but permits the use of the pre-existing firm name as that of the solicitor corporation under certain prescribed conditions. The use of a name similar to that of an existing solicitor corporation or one which might mislead the public because of its similarity to that of an existing solicitor corporation is prohibited. The Council has power within 12 months of approval to require a solicitor corporation in such circumstances to change its name.

Rule 7

The certificate of approval given by the Council to a solicitor corporation is valid until revoked. It is not renewable annually.

Rule 8

The Council is required to state the grounds on which it has refused an application made under the Rules within 28 days and an appeal lies to the Chief Judge of the High Court in open court.

7. Consequential amendments are required to the Solicitors (Professional Indemnity) Rules. ("the indemnity rules")

The effect of the proposed changes will be to ensure that the solicitors and their staff working within a solicitor corporation will remain in the same position with regard to professional indemnity cover as though they were practising through the existing forms of sole proprietorship or partnership.

Since a solicitor corporation will be a body corporate it will enjoy limited liability thus limiting the members' exposure to the amount of their stake in the company. Business will normally be conducted with the solicitor corporation as the principal and not with the members who will be agents of the corporation and, unlike partners, not agents of each other. The corporation will be liable for the acts of its members in the ordinary course of business and any claims will be against the assets of the solicitor corporation. Generally speaking the personal assets of the solicitors within the corporation will not be subject to claims against the corporation.

However under the general law of agency a director as agent of the company may in certain circumstances be jointly and severally liable with the company for tortious acts committed by the company. For example if a director undertakes work negligently for the company he may be liable even though the tort is itself committed by the company. Similarly if a director personally directs or procures the commission of a tort he will be liable. A director is liable in tort for negligently causing

loss to any person with whom he has entered into a contract if the circumstances impose a personal duty on the director towards that person to act with proper skill or care e.g. in the relationship of solicitor and client. In the context of a solicitor corporation a solicitor director will have direct contact with the corporation's clients. Legal services to clients can only be provided by the exercise of personal skill and care of the solicitor director or the corporation's employees. Accordingly a solicitor director who acts negligently towards his clients may be personally liable in tort to the client notwithstanding that the client has entered into a contract with the solicitor corporation.

The amendment to Rule 6 of the Third Schedule to the indemnity rules is to make it clear that there is a limit to the liability of the indemnity fund if a claim is made against both the solicitor corporation and a negligent staff member/director/employee. That limit is the same limit applied to claims made against solicitors not practising within a solicitor corporation, namely HK\$10 million.

20 November 2003

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Annex A**SOLICITOR CORPORATIONS RULES****(Cap.159, Section [73])****1. Interpretation**

In these Rules, unless the context otherwise requires—

"firm" means a firm as from time to time constituted, whether of a sole practitioner or as a partnership, carrying on the business of practising as a solicitor or as solicitors and whether conducted from one address or more than one address;

"Practice" means the business of practising as a solicitor (including the acceptance of obligations connected with and incidental to such practice as trustee, executor, attorney acting under a power of attorney, notary, tax agent, agent for patents, agent for trade marks, company secretary or company director) undertaken by the solicitor corporation, provided always that wherever any fees or other income accrue therefrom they inure to the benefit of that business;

"solicitor corporation" means a solicitor corporation approved by the Society under section 7C(1) of the Ordinance.

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 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 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) 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 shall 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;
- (iii) 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
- (iv) 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.

4. Conduct of solicitor corporation

(1) The business of a solicitor corporation shall be limited to carrying on the Practice.

(2) A solicitor corporation shall at all times be managed and controlled by a solicitor or solicitors.

(3) A solicitor corporation shall at all times comply with these rules, including, in particular, rule 3(1), subject to any waiver of any of the requirements of rule 3(1) by the Council under rule 3(5).

(4) For the purpose of attending and voting at meetings, a member of a solicitor corporation shall not appoint as a proxy any person other than a solicitor who is a

member, officer or employee of the solicitor corporation.

(5) A solicitor corporation shall provide the Society with a copy of all the documents it is required to submit to the Companies Registry under the Companies Ordinance (Cap.32) at or before the time limit provided for in the Companies Ordinance (Cap.32).

(6) A member, director or an employee of a solicitor corporation who is a solicitor, whether he holds a current practising certificate or not, shall not without the prior written consent of the Council—

- (a) hold in any capacity whatsoever including that of trustee, or own beneficially any interest in any share in any other solicitor corporation;
- (b) be or act as a director, consultant or employee of any other solicitor corporation;
- (c) be or act as a partner, consultant or employee of a firm; or
- (d) practise as a solicitor on his own account.

(7) These rules shall not operate to affect the applicability to a solicitor of any laws, enactments, rules, regulations, practice directions and codes of conduct relating to the practice of a solicitor by virtue only of the fact that the solicitor is practising as a solicitor in his capacity as a director, consultant or employee of a solicitor corporation.

5. Shares in solicitor corporation

(1) Subject to rules 3(2) and (3), a member of a solicitor corporation shall not hold any share in the solicitor corporation for another person. At all times the shares in a solicitor corporation must be held by members who are solicitors and who beneficially own the shares.

(2) A member of a solicitor corporation shall not create any charge or other third party interest over any share in the solicitor corporation.

- (3) (a) Where a member of a solicitor corporation dies, the solicitor corporation shall ensure that any share or shares registered in his name at the time of his death is or are within 24 months of his death registered in the name of a solicitor who satisfies the requirements set out in rule 3(1)(d) or is or are repurchased by the solicitor corporation itself.
- (b) A solicitor who satisfies the requirements set out in rule 3(1)(d) and who is the personal representative of a deceased member of a solicitor corporation may elect to be entered in the register of members of the solicitor corporation but no member shall hold any share or shares as personal representative for longer than 24 months from the date of the

death of the deceased member.

- (c) Where a beneficial owner of a share or shares in a solicitor corporation who is not the registered holder of such share or shares dies, a member may continue to hold such share or shares for the personal representative of the deceased for a period of not longer than 24 months from the date of the death, provided that voting rights shall only be exercised in respect of any share or shares held in reliance on this sub-paragraph where the only personal representative in respect of the deceased's beneficial interest in the share or shares is a solicitor and who satisfies the requirements set out in rule 3(1)(d).
- (4) (a) In respect of a member of a solicitor corporation, where the name of such member is removed from or struck off the roll of solicitors or where such member becomes bankrupt, any share or shares registered in the name of such member may, notwithstanding rule 3(1)(d), remain so registered for a period of not longer than 6 months from the date of the relevant event, provided that no voting rights shall be exercised in respect of any such share or shares while it remains so registered.
- (b) In respect of a beneficial owner of a share or shares in a solicitor corporation who is not the registered holder of such shares or shares, where the name of such beneficial owner is removed from or struck off the roll of solicitors or where such beneficial owner becomes bankrupt, the member who holds such share for the beneficial owner may continue to hold such share for the beneficial owner or, as the case may be, his trustee in bankruptcy for a period of not longer than 6 months from the date of the relevant event, provided that no voting rights shall be exercised in respect of any such share or shares held in reliance on this sub-paragraph.
- (c) In respect of a member of a solicitor corporation, where such member is suspended from practice by an order of a Solicitors Disciplinary Tribunal, any share or shares registered in the name of such member may, notwithstanding rule 3(1)(d)(i), remain so registered for a period of not longer than 6 months from the date of the relevant event, provided that no voting rights shall be exercised in respect of any such share or shares while it remains so registered.
- (5) A member of a solicitor corporation shall not exercise any voting rights in respect of any share held in breach of any part of this rule and any vote tendered in breach of this paragraph or any other part of these rules shall not be accepted by the solicitor corporation.
- (6) A solicitor corporation shall so far as possible ensure that its members comply with this rule.

6. Name and memorandum and articles of association of solicitor corporation

(1) Subject to subrules (2) and (4), the name of a solicitor corporation shall consist solely of the name or names of one or more solicitors who are members of the solicitor corporation.

(2) Subrule (1) shall not preclude—

- (a) the use of the name or names of one or more former members of that corporation;
- (b) the use of the name or part of the name of any predecessor firm or predecessor solicitor corporation in practice at the time of the formation of the corporation;
- (c) the use of the word "solicitor", "notary", "agent for trade marks" or "agent for patents" whether in the singular or the plural; or
- (d) the use of a name approved in writing by the Council.

(3) For the purposes of subrule (2), a firm shall be deemed a predecessor firm of a solicitor corporation if not less than one-third of the principals of such firm immediately prior to the formation of the solicitor corporation are members of the solicitor corporation at the time of its formation, and a solicitor corporation shall be deemed a predecessor solicitor corporation if not less than one-third of the members of such solicitor corporation immediately prior to the formation of the solicitor corporation in question are members of the solicitor corporation in question at the time of its formation.

(4) The name of a solicitor corporation must have the word "limited" as its last word.

(5) The name of a solicitor corporation shall not—

- (a) be the same as or, in the opinion of the Council, so similar to a name appearing on the roll of solicitor corporations kept by the Secretary General of the Society under section 7I of the Ordinance as to be likely to cause confusion to the public;
- (b) be the same as or, in the opinion of the Council, so similar to the name of a solicitor corporation which has been approved by the Society under rule 2(4) prior to the application in respect of the first-mentioned solicitor corporation under rule 2(1) or subrule (8) as to be likely to cause confusion to the public;
- (c) be the same as or, in the opinion of the Council, so similar to the name of a firm which has been established prior to the application in respect of the solicitor corporation under rule 2(1) or subrule (8) as to be likely to cause confusion to the public; or

- (d) in the opinion of the Council, be offensive or otherwise contrary to the interests of the solicitors' profession.

(6) The memorandum of association of a solicitor corporation shall provide that its object is to carry on the business of practising as a solicitor and its object shall be limited to such.

(7) The articles of association of a solicitor corporation shall not contravene any of the provisions of these rules.

(8) A solicitor corporation which wishes to change its name or amend its memorandum or articles of association shall apply to the Society for approval in a form approved by the Society, accompanied by such documents and fee as the Society may require or prescribe.

(9) Any new name which a solicitor corporation proposes to adopt must be in compliance with subrules (1), (2), (4) and (5).

(10) Any amendment to the memorandum or articles of association of a solicitor corporation must not contravene any of the provisions of the Companies Ordinance (Cap.32) or these rules.

(11) The Society may refuse to approve an application made under subrule (8) but only as provided by these rules.

(12) Where a solicitor corporation has been approved under rule 2(4) with a name which—

- (a) is the same as or, in the opinion of the Council, too like a name appearing on the roll of solicitor corporations kept by the Secretary General of the Society under section 71 of the Ordinance;
- (b) is the same as or, in the opinion of the Council, too like a name which should have appeared on that roll of solicitor corporations at that time;
or
- (c) is the same as, or in the opinion of the Council, too like the name of a solicitor corporation which has been approved by the Society under rule 2(4) prior to the approval of the solicitor corporation concerned,

the Council may within 12 months of the approval of the solicitor corporation concerned, in writing, direct the solicitor corporation to change its name within such period as the Council may specify.

(13) The Society may withdraw the approval given under rule 2(4) in respect of a solicitor corporation if such solicitor corporation fails to comply with a direction under subrule (12).

7. Certificate of approval

A certificate of approval issued by the Society pursuant to section 7C(1) of the Ordinance shall be valid as from the date shown on the certificate as the date of issue until such certificate is revoked.

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

(1) The grounds for refusal of an application made to the Council under these Rules shall be provided in writing to the applicant within 28 days of such refusal;

(2) An appeal against a decision of the Society under these rules shall lie to the Chief Judge within one month of the applicant being informed of this decision. The decision of the court on any such appeal shall be final.

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

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

SCHEDULE**FORM 1**

**FORM OF APPLICATION FOR APPROVAL OF A
SOLICITOR CORPORATION**

1. Name of Corporation/Proposed Corporation

hereby applies to the Law Society for approval as a solicitor corporation pursuant to Section 7C(1) of the Legal Practitioners Ordinance.

2. The applicant is a company limited by shares.**3. The address of the applicant is : -**

4. The registered office of the applicant is : - (if different from 3 above)

5. The solicitors who are/will be members of the applicant are : -

<u>Surname</u>	<u>Forenames</u>	<u>Current Practising Address</u>
-----	-----	-----
-----	-----	-----
-----	-----	-----
-----	-----	-----
-----	-----	-----

6. The solicitors who are/will be directors of the applicant are : -

<u>Surname</u>	<u>Forenames</u>	<u>Current Practising Address</u>
-----	-----	-----
-----	-----	-----
-----	-----	-----
-----	-----	-----

7. Interests in shares held by nominees are as follows : -

- a) ----- (full name of member) holds
----- (number) shares as nominee for

(full name of beneficial owner) who is a solicitor of

----- (full practising address)

- b) ----- (full name of member)
holds ----- (number) shares as nominee for

(full name of beneficial owner) who is a solicitor of

----- (full practising address)

Declaration of Compliance

It is declared that : -

- i) the applicant complies with Rule 3-6 and its members comply with Rules 3-5; and
- ii) the memorandum and articles of association of the applicant are such as to enable it
 - a) to continue to comply with Rules 3-6; and

- b) so far as possible to ensure continued compliance
by its members with Rules 4-6.

This application is dated _____ and is signed on
behalf of the applicant by all its members and directors.

Signatures

Annex B

Solicitor Corporations (Fees) Rules

1. Citation

These rules may be cited as the Solicitor Corporations (Fees) Rules.

2. Fees

The fees set out in Schedule 1 are prescribed for payment under the Solicitor Corporations Rules made under the Ordinance.

3. Payment of fees

The fees set forth in Schedule 1 shall be paid to the persons named in the fourth column of such Schedule opposite such fees.

SCHEDULE 1**FEES PAYABLE UNDER THE SOLICITOR CORPORATIONS RULES**

Item	Section Description	Payee	Fee \$
1.	2(3) Application for approval of a solicitor corporation	The Law Society of Hong Kong	HK\$5,000

doc. 63409
26/11/2002

Annex C

SOLICITORS (PROFESSIONAL INDEMNITY) RULES**Proposed amendments****Rule 2**

Amend the definition of "Indemnified" so as to read, "indemnified" means the firm or solicitor corporation named in the receipt referred to in Rule 9, or any principal in the firm, any person employed in or in connection with the Practice (including any director or member of a solicitor corporation, any assistant solicitor, any assistant solicitor who is a consultant with the firm ... in connection with the Practice"

Amend the definition of "Practice" to include:

(j) a solicitor corporation,

Amend the definition of "principal" to read, " "Principal" means a partner or sole practitioner of a firm or a director of a solicitor corporation and shall also include any solicitor holding out as such a partner, sole practitioner or a director of a solicitor corporation.

Rule 6 Schedule 3

Amend Rule 6 (1) so as to read,

"The aggregate liability of the Fund for all claims arising from the same act or omission or in any claim where a solicitor corporation is named or could be named in proceedings, arising from the same act or omission or from causally connected acts or omissions and/or from a series of acts or omissions which relate to one originating cause (whether or not made or intimated or arising out of circumstances notified during the same indemnity period) against any indemnified or former solicitor or any combination of persons entitled to indemnity under these rules shall in no event exceed in total the indemnity limit determined in accordance with paragraph 2 or 3 whichever is smaller.

For the avoidance of doubt, the Fund shall not be liable for more than one claim arising from the same act or omission or from causally

**connected acts or omission and/or from a series of acts or omissions
which relate to one originating cause.**

Doc. 72552

司法及法律事務委員會於2000年12月19日的會議摘錄

X X X X X X X X X

V. 律師法團

(立法會CB(2)522/00-01(08)號文件——香港律師會提供的資料文件)

24. 應主席之請，周永健先生介紹香港律師會就成立律師法團一事的最新情況所擬備的資料文件。

25. 周永健先生告知委員，整件事的背景可追溯至1995年，當年政府發表《法律服務諮詢文件》，提出了支持律師成立法團的論據。諮詢文件建議律師法團的股東只須對屬其擁有的未繳名義資本股份負責。政府在1997年6月制定《法律服務立法(雜項修訂)條例草案》，修訂《法律執業者條例》，以實施有關建議。經修訂的法例亦規定律師會理事會應制定有關成立律師法團的規則等事項。周先生簡介了目前的發展情況，表示律師會研究過若干海外普通法司法管轄區律師法團的有關事項後，現已委聘律師草擬規則。律師會一個工作小組現正研究規則擬本的第三稿。律師會對該擬本作輕微修訂後，即可提交首席大法官審批，然後轉交法律草擬專員。

26. 主席指出，該等規則頒布後，將訂立有效的規管架構，以確保律師法團會遵照現行的操守規則，以最能保障公眾利益的方式提供專業法律服務。她詢問律師會在草擬規則時曾否徵詢政府當局的意見。

27. 周永健先生認同主席提出的論點。他在回答時表示，批准律師成立法團的法例自1997年通過後，律師會曾就若干海外司法管轄區(包括英格蘭與威爾斯、澳洲、加拿大、南非、北愛爾蘭、新西蘭及新加坡)的律師法團的執業情況進行研究。此等司法管轄區中，有不少的執業情況與香港的情況有顯著差別，其成立律師法團的原因亦有所不同。他表示，研究此等問題時，曾就律師法團應如何遵守現行執業規則(包括有關香港律師專業彌償保險計劃的規則及其他規管事宜)作出詳細討論。其最終目的，是要確保可為法律服務用者提供周全保障，同時容許律師在執行業務上有更大彈性。他補充，就目前情況而言，律師會理事會將向首席大法官提交規則擬本，在等待首席大法官核准規則擬本期間，律師會將詳細諮詢政府當局有關草擬法律的事宜。

28. 署理法律政策專員保證，政府當局將繼續肩負保障公眾利益的責任，監察此事的進度，並在此事上與律師會緊密合作。他指出，該等規則提交立法會時，將須經過立法會的正面議決程序通過。

29. 主席表示，根據一般慣例，當局將條例草案或擬議的附屬法例刊憲並提交立法會前，會把該擬議法例的內容提交立法會有關委員會審議，讓議員可及早評估該等立法建議，並就有關事項提出意見。她要求律師會向事務委員會提交該等規例擬本，供委員在稍後時間討論；以及提交一份文件，詳細解釋成立律師法團對香港執業律師有何實際影響。劉慧卿議員贊同主席的意見，並表示律師會應詳細解釋律師法團如何能對使用法律服務者的利益提供更周全的保障。

香港律師會

30. 主席提及律師會文件的最後一段，當中闡述在英格蘭及威爾斯的律師有限法律責任合夥的情況。她對在本港實行有限法律責任合夥制度會否較成立律師法團為佳諮詢律師會的意見。

31. 周永健先生回應時表示，在某些情況下把律師合夥形式確立為為一個有限責任的法律實體，是一個新發展的概念。在英格蘭及威爾斯，《有限法律責任合夥條例草案》在2000年7月獲得御准實施，有關規則亦在草擬中，首批此類合夥法團可在2001年初成立。律師會認為，有限法律責任合夥具有若干優點，可作為律師執業的另一方式，律師會會密留意英國的進展。他表示，律師會將在適當時間與政府當局商討此事。

32. 穆士賢先生表示，他個人認為，有限法律責任合夥的其中一個優點，是可為律師提供較簡單的行政管理制度，而律師法團則須遵守多項規定，包括就會議提交報告、披露帳目資料等。因此，前者所節省的行政費用，或可惠及客戶。

33. 周永健先生及穆士賢先生進一步回應主席的問題時表示，就律師法團而言，處理法團客戶個案的律師，仍須對該客戶負上無限法律責任。根據本港的現行法例，律師若對律師法團的客戶並無任何合約上的個人責任或與其並無任何受信關係，可能可限制其對該客戶在合約上的法律責任。然而，除非他確實並未參與其合夥人／共同董事的疏忽，並對之毫不知情，否則他仍與其共同董事律師對該客戶共同及分別負上法律責任。最終，每一個案均須按其實際情況予以裁定。此外，現行法例並不容許律師逃避對其客戶的侵權法律責任。

經辦人／部門

34. 應委員的要求，周永健先生表示律師會將於稍後就其他司法管轄區的有限法律責任合夥的最新發展向事務委員會匯報，並就有限法律責任合夥制度可否及可如何在本港實行提供意見。

香港律師會

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司法及法律事務委員會於2002年5月27日的會議摘錄

X X X X X X X X X

V. 律師法團

(立法會CB(2)2056/01-02(02)號文件)

29. 主席表示，據政府當局的文件顯示，應否規定律師法團投購加額保險的問題，仍有待解決。對於保險事宜，政府當局認為，律師法團必須投購足夠保險，以保障消費者的利益。

30. 主席請香港律師會的代表發表對此事的意見。

31. 穆士賢先生表示，律師會認為，現有的香港律師專業彌償計劃(“彌償計劃”)已為公眾人士提供足夠保障。根據現行安排，香港律師彌償基金有限公司(“彌償公司”)會就每宗申索為律師會會員提供1,000萬元的承保額，在該筆款項中，彌償公司為每宗申索保留最先的150萬元作為自留保額，再為餘下850萬元再投保。除法定的1,000萬元承保額外，部分大型律師行亦常會投購額外的彌償保險。穆士賢先生指出，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內，而涉及這類訴訟的律師或職員，均受到彌償計劃的保障。因此，律師會認為難以想像除了適用一般商業規則的合約訴訟外，會出現只有律師法團須負上法律責任，而律師董事／成員則無須負上法律責任的情況。此外，即使規定律師法團須額外投保，申索人可獲取的賠償，也不會較現行安排者為多。再者，當局擬修訂《律師(專業彌償)規則》，將律師法團納入“獲彌償保障者”的定義中。

32. 穆士賢先生表示，英國法律規定律師行投購加額保險以支付委託人民事索償的原因是，在英格蘭及威爾斯，律師行的成員未必是當地律師，他們當中亦有外國律師及來自歐洲共同體的其他專業人士。這與香港的情況有別。穆士賢先生再表示，如規定香港律師為法團投購額外保險，以法人方式執業對他們便再難有吸引力，原因是，律師從律師法團的唯一得益，只是不知情的董事可免除侵權法律責任。

33. 劉健儀議員要求政府當局說明律師行是否必須投購加額保險才可成為律師法團，或此事交由律師會自

行決定。政府當局的代表回應稱，政府當局認為律師會應從公眾利益的角度，考慮現行保險保障是否足夠，並建議律師會考慮須否強制律師行加額投保，而非任其選擇。英格蘭方面所關注的，是當事人就律師法團的律師疏忽提出訴訟而可獲得的賠償額，與就律師事務所的律師疏忽提出訴訟而可獲得的賠償額，兩者有“差距”，看來香港亦同樣有此情況。為了確定律師法團應否投購加額保險，政府當局已要求律師會提供資料，說明其他有設立律師法團的普通法司法管轄區有何做法，即這些司法管轄區有否規定律師法團投購加額保險；若有，則按何公式計算。律師會已表示正聯絡其他容許律師法團成立的司法管轄區，並會盡快向政府當局匯報。

34. 穆士賢先生表示，無論律師是獨資經營或以律師法團形式執業，均有可能面對申索額高於1,000萬元法定承保額或法定承保額連加額保險的案件，因此，政府當局提及的“差距”風險總會存在。

35. 主席表示，規定律師投購加額保險，有違設立律師法團的立法用意。根據現行制度，律師犯了過失須作賠償，如有需要，其合夥人即使與案無關，亦須自掏腰包支付有關賠償。由於此制度對律師行過於苛刻，才會有律師法團此構思出現。

政府當局
律師會

36. 為協助委員更仔細考慮加額保險的建議，主席要求政府當局提供更多資料，說明擬議加額保險的承保額及保額的計算方法，以及將保額增至擬議加幅的理據。主席亦要求律師會提供有關其他司法管轄區做法的資料，供事務委員會考慮。

37. 對於主席所提有關《律師法團規則》立法時間表的問題，穆士賢先生回應稱，該會須先徵求終審法院首席法官同意，預期於下個立法會會期初便可將規則提交立法會。

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司法及法律事務委員會於2003年11月24日的會議摘錄

X X X X X X X X X

V. 律師法團

(立法會CB(2)390/03-04(04)至(06)、394/03-04(01)號文件)

香港律師會的意見書

37. 穆士賢先生介紹香港律師會提供的文件，當中夾附了《律師法團規則》及《律師法團(費用)規則》文本，以及有關《律師(專業彌償)規則》的修訂(立法會CB(2)394/03-04(01)號文件)。該文件主要闡釋政府於1997年透過《法律服務立法(雜項修訂)條例》修訂《法律執業者條例》(第159章)，准許律師成立律師法團，以法人方式執業。有關修訂要求律師會理事會就成立律師法團、向律師會申請註冊成為律師法團所需費用，以及律師法團的專業彌償保額等訂立規則。該等修訂載於法例第159章第IIAA部，將於律政司司長在憲報刊登公告所指定的日期生效。

38. 穆士賢先生向委員逐項解釋《律師法團規則》(“《規則》”)的條文(載於律師會文件附件A)。

39. 穆士賢先生表示，關於律師以法人方式執業對此類律師法團的成員因侵權訴訟而引起的法律責任限度的影響，社會上一直有所誤解。他澄清，根據一般的代理法，作為公司代理人的董事如為公司工作時有所疏忽，雖則侵權行為本身是公司所觸犯，但該董事亦可能須負上法律責任。就律師法團而言，一名律師董事如與該律師法團的客戶有直接接觸，而為該客戶工作時行事疏忽，儘管該客戶曾與法團簽訂合約，該律師董事本人可能仍須向該客戶承擔侵權的法律責任。至於專業彌償保額方面，根據《律師(專業彌償)規則》的修訂建議，在律師法團工作的律師及其職員所處的情況，實際上如他們現時獨資或合夥經營方式執業的情況一樣，而任何針對該法團的申索，均會循正常途徑向律師專業彌償基金提出。

40. 穆士賢先生請委員參閱《規則》第3(1)(d)(i)條，該條訂明，根據規則第(2)款，律師法團每名成員及每名董事均須為一個個人，並為持有有效執業證書的律師；而執業證書除規定持有人須符合《專業進修規則》及根

據第159章第73條所訂的其他法律進修規則外，並無其他任何條件。他表示，《執業證書(特別條件)規則》令律師會可就律師執業證書訂立條件，有人關注到，此規則生效後，律師會所施加的條件會否禁止律師加入律師法團或成為法團董事。他告知委員，律師會理事會將於2003年11月25日的會議上研究此事。倘理事會就此事作出決議，則視乎情況需要，律師會會就第3(1)(d)(i)條作出修訂。

41. 關於《律師(專業彌償)規則》的擬議相應修訂(載於律師會文件附件C)，穆士賢先生告知委員，終院首席法官已核准《規則》第6條附表3的修訂，但尚未核准《規則》第2條的修訂。

政府當局的意見

42. 法律政策科高級政府律師向委員簡介政府當局於2003年11月17日致事務委員會的函件(立法會CB(2)390/03-04(06)號文件)。她告知委員，政府當局認為，對於律師法團，唯一尚待解決的問題，是律師法團是否需要投購加額保險。就此方面，政府當局經考慮律師會提出的各種情況後，已同意在現階段不堅持要求法團投購加額保險。政府當局亦認為，有關投購加額保險的問題應否作進一步評估，將視乎律師會對其現有律師專業彌償計劃的檢討結果，以及《規則》的實際運作而定。

委員提出的事項

43. 《規則》第3(2)條列明，由單獨的法律執業者所成立的律師法團必須有第二名成員，才符合《公司條例》的規定。對於這條件，余若薇議員詢問，鑒於《公司條例》最近曾作修訂，該款現在是否仍有需要。穆士賢先生回應時表示，他並未察悉該等修訂業已生效。依他個人意見，即使修訂通過，第3(2)條的保障或仍有需要。余若薇議員指出，有關《公司條例》的提述可能並無需要。穆士賢先生同意跟進此問題。

44. 余若薇議員詢問，有關律師法團的擬議規則，在其他地區可有先例，而當《規則》生效後，成立律師法團會否成為法律執業的常規。

45. 穆士賢先生表示，在部分司法管轄區(包括新加坡)也有類似法例。他補充，依其意見，雖然成立律師法團適合一些執業者的需要，對經營律師業務卻並非特別有效，他懷疑是否會有許多執業者成立律師法團，以法

人方式執業。他又表示，有些人誤以為成立律師法團後，執業者可局限其法律責任，而涉及專業彌償的問題也可得到解決，因而贊成成立律師法團。然而，實際情況並非如此。

46. 主席詢問，律師會有否就《規則》諮詢其成員。穆士賢先生答稱，律師會約於一年前曾徵詢其成員的意見，其後亦曾對《規則》作出輕微修訂。他表示，若律師會理事會認為須作進一步修訂，會再徵詢成員的意見。

47. 穆士賢先生回應主席時表示，當律師會理事會把尚待解決問題解決，而《規則》的中文本亦已備妥，便會將《規則》的定稿提交終院首席法官審批，然後刊登憲報。他表示，上述工作預期可於2003年年底至2004年年初完成。

未來路向

48. 主席表示，《規則》提交立法會省覽後，立法會很可能會成立小組委員會予以詳細研究。為方便日後對《規則》的商議工作，主席要求律師會提供文件，解釋下列各點——

- (a) 《規則》通過後，以合夥方式及以律師法團方式經營法律業務，兩者有何分別；及
- (b) 根據律師會現有的專業彌償計劃，法律執業者以合夥方式及以律師法團方式經營，在法律責任上有何分別。

律師會

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