

For Information

LegCo Panel on Administration of Justice and Legal Services
Limiting Liability of Professional Practices

Purpose

This paper gives the administration's response to the paper prepared by the Law Society's Working Party on Limited Liability Partnership.

Background

2. At its meeting on 31 March 2005 the panel discussed the submission by the Hong Kong Institute of Certified Public Accountants for Liability Reform. The Institute recommended three proposals –

- (a) The introduction of proportionate liability;
- (b) The repeal of that part of section 165 of the Companies Ordinance which prohibits auditors from contractually limiting liability; and
- (c) The introduction of Limited Liability Partnerships.

The paper prepared by the Law Society's Working Group was annexed and referred to in the Institute's submission.

The Administration's Response

3. The submissions reflect the genuine concerns of the legal and accounting professions. Government is aware of the concerns raised. The importance and complexity of the issues is reflected by the amount of research and analysis put in from many quarters.

4. Although the possibility of limiting liability was raised last year by the legal profession, other proposals for limiting liability have been raised by other sectors. They all share a common concern of potentially huge liabilities.

5. Following a submission to FSB in 2002 the issue of “proportionate liability” was referred to the Standing Committee on Company Law Reform. This has since been deliberated at length. In particular, SCCLR looked at developments and studies in other jurisdictions concerning proportionate liability.

6. In August 2004 the Law Society produced a paper on Limited Liability Partnerships, and met with the Department of Justice to explain their proposals.

7. A related issue is the capping of compensation that may be awarded. The following suggestions have been put forward –

- (1) the insurance industry has suggested to FSTB that personal injury awards and employee compensation awards should be capped;
- (2) the medical profession has suggested to HWFB that medical negligence awards should be capped; and
- (3) the taxi driver trade has suggested to ETWB that claims under third party insurance should be capped.

8. The issues raised in the submissions go beyond the professional practice of the legal profession or that of accountants. They have government-wide ramifications cutting across the policy responsibilities of a number of bureaux.

9. “Partnership” as a business model is not limited to the legal sector. The partnership (or unlimited company) has been the basic model for small and medium size businesses across the board for many many years. It would not be rational or fair to introduce, or even to consider introducing, Limited Liability Partnerships for only the legal profession or the accountancy profession, or both. No other jurisdiction has done this.

10. Introduction of “proportionate liability” would have an even greater potential impact. Under this proposition the well known and understood concept of joint and several liability of tort-feasors would be replaced by proportionate liability. This would be a fundamental change of our general law of tort.

11. The public interest must not be lost sight of and must be taken account of before any change is made. The various proposals concern not just the individual professionals and their firms. They affect the people and businesses who are their clients. What is proposed would shift the burden of risk from the professionals to their clients. These are not matters to be rushed. They require careful and rational consideration.

12. The government is not against change. It recognises that professions require the best business model which is consistent with the greater public interest. In 1997 the government introduced legislation to enable solicitors to limit their liability by means of solicitor corporations.

(Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997, 94 of 97)

13. The government cannot make any commitment to introduce any of the major forms of limiting liability without undertaking an assessment of the impact on the professions and businesses and on the public; an assessment of the legal and legislative implications; and research and analysis of overseas practice and experience.

14. This is a major task. It may be necessary to prioritise. A government wide approach is required. A paper is under preparation for consideration by the Policy Committee to determine the way forward.