

For discussion
on 25 May 2009

Panel on Administration of Justice and Legal Services

Limited liability partnerships for legal practice

This paper provides information on the recent developments of the legislative proposal to introduce limited liability partnerships (LLP) for legal practices.

Limited liability partnerships

2. In brief, LLP is a model for doing business which confers the privileges of limited liability on innocent partners so as to insulate their personal assets from claims incurred by the negligence of other partners. This is to be contrasted with the position under the existing law where partners are personally, jointly and severally liable for such claims.

Background

3. In late 2008, the issue of LLP having been previously raised by the Law Society of Hong Kong, the Administration decided to introduce legislation to enable solicitor firms in Hong Kong to carry on business in the form of LLP.

4. At the meeting of the Panel on Administration of Justice and Legal Services on 16 December 2008, the Department of Justice (DoJ) undertook to introduce a bill to amend the Legal Practitioners Ordinance (Cap. 159) to implement the legislative proposal, details of which were then under deliberation in consultation with the Law Society.

5. At the end of that Panel meeting, the Administration was requested to provide more information on the following aspects of the legislative proposal –

- (a) whether solicitor partners should be held personally liable for ordinary debts of the business;

- (b) partners' liabilities for acts and omissions of assistant solicitors and of consultants under LLP;
- (c) insurance requirements on LLP;
- (d) the position of international law firms which had already been operating in the form of LLP in other countries; and
- (e) specific proposals in the Administration's draft bill and how far they incorporated proposals in the draft legislative amendments prepared by the Law Society in 2005.

Recent developments

6. The representatives of DoJ and the Law Society followed up on the issues set out in paragraph 5 above and met in March 2009 with a view to exploring further their respective positions on the issues. After that meeting, the Law Society issued a letter to the AJLS Panel giving its views on the issues. DoJ responded to the Law Society's views by a letter issued to the Panel dated 3 April 2009. It will be seen from these letters that, apart from the issue of whether solicitor partners should be held personally liable for ordinary debts of the business, DoJ and the Law Society have agreed on all important matters of principle.

The outstanding issue

7. On the outstanding issue of whether solicitor partners should be held personally liable for ordinary debts of the business such as rent and salaries of employees, the Administration is sympathetic to the view of the Consumer Council, expressed in its letter to the Panel dated 24 June 2005, that LLP partners should be held so liable, having regard to the purpose of LLP as set out in paragraph 2 above. Ordinary business debts are not unforeseeable debts over which LLP partners have no control as in the case of claims incurred by negligence of other partners.

8. The Law Society points out in its letter that law firms can use service companies to carry out administrative functions such as the employment of staff. It is a matter of choice and we see no reason why an LLP cannot continue to do the same. Whether or not a third party dealing with the firm would be willing to deal with the service company instead is a matter for the third party. Solicitors who wish to enjoy a full shield from general liabilities of

the firm may opt to practise in the form of a solicitor corporation, which will be possible on the entry into force of Part II of the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 and the making of the relevant rules by the Law Society pursuant to section 73 of the Legal Practitioners Ordinance.

9. With regard to the outstanding issue, it would be most helpful to have views from the Panel.

The legislative timetable

10. Drafting instructions have been issued to the Law Draftsman in April 2009. It is expected that the proposed bill can be introduced into the Legislative Council in the first half of the 2009 – 2010 session.

Department of Justice
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