

**Consumer Council's Submission to
the Legislative Council
Panel on Administration of Justice and Legal Services**

Limited Liability Partnership (LLP) for Legal Practice

Introduction

1. The Council does not object to the adoption of limited liability partnership ("LLP") as a matter of principle, provided that there are sufficient safeguards for consumers.
2. Nonetheless, as the Council observes, consumer interests have not been adequately addressed under the proposed LLP system.
3. The Council also notices, from the attachment to the Law Society's letter dated 24 March 2009 to the Panel Chair, that a partner of LLP "is not personally liable for any obligations or liabilities of the partnership or any other person solely by reason of the fact that he is a partner of the firm". In other words, the proposed limited liability framework can be understood as covering not only liability arising from negligence, which the Council was given to understand as the only liability to which LLP applied, but also those from wrongful acts committed in the course of practice.

Council's concerns

Consumers' chance of recovery

4. One of the Council's major concerns is that the change from general partnership status to limited liability partnership status of a solicitors firm would mean a shift of the risk of sustaining losses, caused by negligence or wrongful acts of a partner of a solicitors firm committed during the course of his practice, from the partnership to the consumers.
5. Under such a change, a consumer aggrieved by the negligence or wrongful acts of a partner would be able to seek remedy against that partner only instead of any or all of the partners of the firm as he or she is currently entitled to. This would diminish his or her chance of recovery.
6. The Council recognizes that the Professional Indemnity Scheme ("the Scheme") does render certain protection to consumer in securing claim

recovery from the defaulting partner. However, it is noted that such protection is limited in terms of amount and scope: -

- i) The indemnity is capped at HK\$10 million per claim.
 - ii) The Scheme applies only to professional negligence claims against solicitors and any person employed in or in connection with their practice. Losses arising out of claims for personal injuries, physical damage to property and fraudulent act or fraudulent omission are expressly excluded.
7. The Council is given to understand that the statutory indemnity is proposed to remain to be capped at HK\$10 million per claim. In the current general partnership system, a consumer seeking to recover the outstanding award for a negligence claim in excess of the limit of indemnity may enforce it against any or all of the partners. On the other hand, although non-negligence claims are not covered by the Scheme, the consumer may seek recovery from any or all of the partners.
 8. However, the introduction of LLP would necessarily diminish the chance of recovery of the outstanding award for a negligence claim in excess of the limit of indemnity or an award of damages for non-negligence claims outside the Scheme, particularly, where the defaulting partner has no financial capacity to satisfy the claims or his whereabouts cannot be located.
 9. It is also noted that the statutory limit has been kept unchanged since 1994. The Council wonders whether the present limit is still adequate to meet the current demands (for instance, the value of properties have increased considerably since 1994 and there are now a significant number of transactions involving properties worth over \$10 million). We consider that should LLP be introduced, the Scheme should be reviewed to ensure that the interests of consumers for legal services are sufficiently safeguarded.
 10. The Council would suggest that consideration should be given to: -
 - (i) expanding the scope of the Scheme so as to cover losses arising from the claims currently excluded; and

- (ii) raising the statutory indemnity limit.

Unfairness in bearing risks

11. On the other hand, it seems to be often the case that a consumer seeking to retain the service of a solicitors firm places trust on the partnership rather than a particular partner. He is usually referred to the legal clerks or assistant solicitors of the firm for the services. He has no idea on which partner is going to handle or supervise his case; not to mention, the handling partner's professional competence and financial capacity in satisfying claims. He is not in a position to make any choice amongst the partners. To him, it is the firm with which they entered into the contract for legal services.
12. The partners of a firm are supposed to know each other well. They are in a position to decide whether or not to enter into partnership and place their trust in one another. In contrast, such knowledge of the partners' competence etc. is not generally available to the average consumers of legal service.
13. Therefore, it would be unfair to consumers to bear the risk of sustaining losses caused by negligence or wrongful acts of the defaulting partner, which is used to be borne by the partnership.

Consumers' choice

14. To minimize the risk of failing to recover from the handling partner for losses caused by his negligence or wrongful acts, when seeking to hire the legal services, a consumer under the LLP system may have to ascertain whether his handling partner is with "deep pocket". However, it is difficult to envisage that consumers will have any means to ascertain the actual financial viability of the handling partner.
15. Currently, in terms of chance of recovery from professional negligence, consumers would feel more secured to retain a partnership than a sole proprietorship. It is the Council's concern that the introduction of LLP may limit consumer's choice because in terms of liability there may not be difference between the two.

Destruction of the unlimited liability framework

16. As noted from the said letter of 24 March 2009 from the Law Society to the Panel Chair, another vehicle of limited liability, namely the Solicitor Corporation, is proposed. It is intended to provide an option for sole proprietorship to turn itself into a limited liability entity.
17. It raises the Council's concern over the destruction of the unlimited liability framework which has been for hundreds of years an optimal safeguard for consumer interests.

Impact on professional and ethical performances

18. Further, the Council is also concerned about whether the displacement of joint and several liability by liability limited to defaulting partner would result in a disincentive for ethical scrutiny and internal control over the quality of work among members or partners of the firm.
19. We are of the view that the joint and several liability of general partnership has the advantage of ensuring that partners would maintain a direct interest in the business of the partnership and the conduct of their fellow partners and employees. It is conducive to the assurance of observance of both ethical and professional responsibilities.

Conclusion

20. To conclude, there seems to be an absence of mechanism preventing consumer interests from being derogated as a result of the change from the general partnership system to the LLP system. Moreover, the Council is not able to envisage that the proposed LLP system will confer any additional benefit to consumers. In the premises, the Council feels unable to support the current LLP proposal.
21. The Council is looking forward to a proposal that would duly address the consumer interests and assure high professional and ethical standards of the legal practice.

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