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**By fax: 2509 9055**

3 April 2009

Clerk to Panel on Administration  
of Justice and Legal Services  
Legislative Council Secretariat  
3/F., Citibank Tower  
3 Garden Road, Hong Kong  
(Attn: Miss Flora Tai)

Dear Miss Tai,

**Limited Liability Partnerships for Solicitors' Practices**

I refer to the meeting of the Panel on Administration of Justice and Legal Services on 16 December 2008, at which the Administration was requested to provide information on a number of issues relating to the above legislative proposal. We have been provided with a copy of the Law Society's letter to the Panel dated 24 March 2009.

**Solicitor partners' liability for ordinary debts of the business**

We note the position of the Law Society in its letter dated 24 March 2009. In this regard, we also note the position of the Consumer Council in its letter to the Panel dated 24 June 2005, a copy of which is enclosed. The Consumer Council expresses the hope that "individual solicitors of LLPs will continue to be held directly answerable for liabilities incurred in connection with their legal business".

Having regard to the purpose of LLPs which, in our view, is to confer limited liability on innocent partners so as to insulate their personal assets from claims incurred by the negligence of other partners over whom they have no control, we are sympathetic to the view of the Consumer Council that LLP partners

should continue to be held liable for ordinary debts of their business such as rent and salaries of employees, which are not unforeseeable debts.

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 of course a matter of choice and we see no reason why an LLP firm 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 really a matter for the third party. Solicitors who wish to enjoy full shield from general liabilities of the firm may opt to practise in the form of a solicitor corporation, which will be subject to the financial disclosure provisions in the Companies Ordinance.

#### Partners' liability for acts and omissions of assistant solicitors, consultants and foreign lawyers under LLPs

We note the Law Society's position that the introduction of LLPs is not intended to change the common law position with respect to the proof of negligence against an individual rendering professional services for the firm. Whether a person is negligent will be determined in accordance with the existing law of tort, irrespective of his position in the LLP. Where a partner is found by the court to be negligent, whether by committing the act himself or through the lack of action or supervision of others or otherwise, he should be held personally liable.

We have no difficulty with the above proposal in principle. We will work out with the law draftsman as to how this proposal can be reflected in the proposed legislation.

#### Insurance requirements on LLPs

Subject to the Law Society's provision of satisfactory statistics and evidence showing that the limit of HK\$10 million per claim is generally adequate to meet claims against solicitors, we have no objection to the Law Society's proposal in its letter of 24 March 2009.

#### International law firms

We note the Law Society's proposal that international/foreign law firms should be allowed to practise as LLPs in Hong Kong and that the same standard of liability should apply to all LLPs conducting legal practice in Hong Kong. We agree with this proposal.

Legislative proposals on LLPs

It is clear from the above analysis that, apart from the issue of whether solicitor partners should be held personally liable for ordinary debts of the business, the Law Society and the Department of Justice have agreed on all important matters of principle.

With regard to the outstanding issue, it would be most helpful to have views from the Panel. We will also seek the Consumer Council's comments on the Law Society's proposal and will report to the Panel when such comments are available.

Yours sincerely,



( Ms. Adeline Wan )  
Senior Assistant Solicitor General  
(General Legal Policy)

c.c. Law Society of Hong Kong  
(Attn: Mr Joseph Li, Chairman,  
Working Party on Limited Liability Partnerships)

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消費者委員會 CONSUMER COUNCIL

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PLEASE YOUR REF.

PLEASE OUR REF. **CC 1/37**

24 June 2005

The Hon Margaret Ng  
Chairperson  
Panel on Administration of Justice and  
Legal Services  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central, Hong Kong

Re: Limited Liability Partnership

This Council thanks the Panel on Administration of Justice and Legal Services for the opportunity to attend its meeting on 31 March 2005 to discuss the issue of limited liability partnership. Although no Government consultation paper has been published on the issue, this Council would think that it is appropriate to express its preliminary views to the Panel for its kind consideration.

The business model of limited liability partnership is applicable to various trades and businesses. We wish to comment on proposed limited liability partnership model for solicitors, as legal services are more directly related to individual consumers.

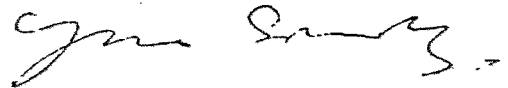
We understand that limited liability partnership ("LLP") is becoming a world trend in professional business model and we do not object to its adoption provided that there will be sufficient safeguards for consumers. We also understand the background to the current proposal that a solicitor will not be liable for the negligence of his/her partner but will only be liable for his/her own negligence.

P.2/However...

However, we do not support a LLP model which gives separate legal entity to the LLP. We hope individual solicitors of LLPs will continue to be held directly answerable for liabilities incurred in connection with their legal business. We do not oppose to the adoption of a partnership model if it does not give its partners a shield behind which they can avoid personal contractual or tortious liabilities in connection with their business.

The new LLP model should have sufficient insurance coverage at both firm level and individual solicitors level and the coverage should not be less than the coverage under the current model of general partnership. This ensures that consumers will be offered no less protection in this respect.

We consider it appropriate to require an LLP to have sufficient disclosure of its insurance coverage level to the public so that consumers will have such important information at hand when they selecting legal representatives. Moreover, disclosure of LLP status of solicitors' firms is also important for consumer choice. This helps consumers to decide if they would like to instruct a LLP or a general partnership firm of solicitors.



Mrs. CHAN WONG Shui  
Chief Executive