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Panel on Administration of Justice and Legal Services

Background brief for the meeting on 16 December 2008

Limited liability for professional practices

Purpose

This paper provides information on the past discussions of the Panel on Administration of Justice and Legal Services (the Panel) on the issue of limited liability for professional practices, with particular reference to limited liability partnership (LLP) for legal practice.

Background

2. In Hong Kong, many professional practices, such as the legal and accounting professions, operate under the business model of general partnership. Under a general partnership, a partner is not only liable for the liabilities caused by his or her own actions, but also jointly and severally for the liabilities incurred by other partners. In addition, a partner is not protected by limited liability and claimants can always go after the personal assets of each partner to meet his or her claim.

3. The issue of limited liability for professional practices was brought to the attention of the Panel by the Law Society of Hong Kong at the meeting on 14 June 2004, when the Law Society informed members that it was studying limited liability practices adopted in other jurisdictions, including the model of LLP for solicitors in England and Wales of the United Kingdom (UK).

Research report on “Limited Liability Partnership and Liability Capping Legislation for the Practice of Law in Selected Places”

4. At the request of the Panel, the Research and Library Services Division of the Legislative Council Secretariat (RLSD) prepared a research report on “Limited Liability and Liability Capping Legislation for the Practice of Law in Selected Places”, which was considered by the Panel at its meeting on 31 March 2005. The report examined the basic concepts of business structures to limit liability for legal practice in UK, the State of New York (NY) in the United States and New South Wales (NSW) of Australia, with particular reference to LLP. An executive summary of the report and a comparison of the various attributes of LLP and liability capping legislation in places under study are in **Appendices I and II** respectively.

5. LLP is a model for doing business which combines the limited liability feature of a limited company and the flexibility of the internal organization of a general partnership. LLPs in UK and NY render the privilege of limited liability to the innocent members/partners so as to insulate their personal assets from claims incurred by the faults of other members/partners. The LLP option is open to all types of business in UK, whilst limited to around 40 licensed professions in NY.

6. NSW does not adopt LLP but has in place liability capping legislation which limits liability capping to members of those occupational associations which have set up their own professional standards schemes approved by the Professional Standards Council. The capping of liability covers the members of the associations regardless of whether they have personal involvement in the wrongful act or not. Under the Solicitors Scheme, the maximum liability for each claim depends on the number of principals in the legal practice.

Views received by the Panel

7. On 31 March and 23 May 2005, the Panel discussed with the Administration the proposals for professional liability reform from the Hong Kong Institute of Certified Public Accountants (HKICPA) and the Law Society. The proposals included introduction of proportionate liability and LLP.

Views of HKICPA

8. HKICPA was of the view that the joint and several liability framework under general partnership was no longer appropriate in the present commercial and business environment, as it resulted in liability wholly disproportionate to the contribution of any particular defendant to the overall loss. Hong Kong was trailing behind other jurisdictions in implementing professional liability reform, which was urgently required to bring Hong Kong in line with what had already been adopted in other major financial centres, so as to enable Hong Kong to compete with them on a level playing field.

9. HKICPA had proposed a three-pronged approach, namely –

- (a) introduction of a system of proportionate liability under which the liability of a defendant was limited to that proportion of the damages suffered by a plaintiff which was directly referable to that defendant's degree of fault;
- (b) repeal of the relevant provision in section 165 of the Companies Ordinance to allow auditors to agree contractually with their clients on limits for the auditors' liability in respect of audit work; and
- (c) introduction of LLPs which would remove the risk for the innocent partners but leave the claimant with a remedy against LLP and the individual partner or partners responsible for the alleged breach of duty.

Views of the Law Society

10. The Law Society proposed that LLPs should be introduced for Hong Kong solicitors to bring about a more equitable system of limiting liability for legal practitioners. As Hong Kong had developed into a global financial and business centre, the increasingly litigious environment had increased the risk of firms being wiped out by catastrophic claims. A system of LLPs would remove the risk of innocent partners but leave the claimants with recourse to remedy against both LLP itself and the individual partners who were held personally liable for their own negligence. It would not only be good for the solicitors profession but also for Hong Kong, if Hong Kong was to maintain its position as a key centre for the provision of legal services in the region.

11. The Law Society had also pointed out that Hong Kong solicitors needed LLPs in addition to solicitor corporations as the profession found that the latter was not an attractive vehicle for structuring solicitors practices and was not the right solution for Hong Kong law firms. Nonetheless, the fact that legislation was enacted to enable solicitors to limit their liability by means of solicitor corporations suggested that the community had accepted the concept of limiting professional liability and that limiting liability was not inconsistent with protection of consumer interests.

Views of the Consumer Council

12. The Consumer Council provided its views on LLP to the Panel in June 2005. The Consumer Council did not object to the adoption of LLP provided that there would be sufficient safeguards for consumers, such as ensuring that there was sufficient insurance coverage at both firm and individual solicitors levels under the new LLP model which should not be less than the coverage under the current model of general partnership, and requiring an LLP to disclose its LLP status and insurance coverage level to the public to facilitate consumers in making informed choices when selecting legal representatives.

Discussions of the Panel

13. Members shared the concern that Hong Kong was lagging behind other jurisdictions in implementing professional liability reform, which had significant implications on Hong Kong's competitiveness as a leading international financial centre in the Asia-Pacific region, and urged the Administration to expedite the introduction of LLP which was a relatively simple system that did not necessitate a review of the more complex issues such as restricting liability for tort. The Administration should then assess the need for further reform measures at some later stage. The Panel requested the Administration to study proposals on LLP separately from those on other forms of limitation of liability such as proportionate liability, and consider introducing LLP for a number of professions including solicitors, accountants and medical practitioners.

14. The Administration reverted to the Panel on its position at the meeting on 27 March 2006. Members noted that it was a prime concern of the Administration that the proposals for the limitation of liability put forward by organizations representing various sectors, including the legal, accounting and medical professions, would have the effect of shifting liability from the professional service providers to the consumers. It was the Administration's view that the professional sectors had already been given recognition and a degree of protection under the law, which must be balanced against the need to safeguard the interests of consumers and service users. The Administration had therefore concluded that no further studies would be carried out into proposals on limitation of liability to pay compensation during the remainder of the Chief Executive's term of office (ending on 30 June 2007).

15. Members, the Law Society and HKIPCA expressed great disappointment at the Administration's decision. While sharing the view on the importance of protection of consumer interests, some members considered that the Administration had not paid heed to the lack of sufficient protection to the professionals concerned as service providers, and that a right balance should be struck between conflicting interests. As regards the safeguarding of consumers' interests, some members were of the view that a fair and transparent system which facilitated consumers in making informed choices would afford sufficient safeguard to consumers. It was also pointed out that practical experience in other jurisdictions had shown that most of the claims could still be met in full under LLPs.

16. On the question of whether the introduction of LLPs in Hong Kong would result in the professions being required to take out increased professional indemnity insurance, representatives of the Law Society advised the Panel that under its proposal, there would be no additional insurance requirements on LLPs. As under the present system, where a claim arose, recourse would first be made to the Solicitors Indemnity Fund subject to a maximum limit of \$10 million per claim. If the limit was exceeded and if there was no top-up insurance, the claimant could seek additional remedy from the assets of LLP and from the assets of the solicitor partners responsible for the wrong-doing.

Latest developments

17. At the meeting on 22 October 2007, the Panel agreed that it was opportune to request the Administration to reconsider its position on professional liability reform. In response to the Panel, the Secretary for Justice (SJ) advised, in his letter to the Panel Chairman dated 10 July 2008, that while there had been no decision on whether to carry out further study on the issue of limited liability as a whole or any particular aspect thereof, the Department of Justice (DoJ) was prepared to consider LLP among legal professionals.

18. At the meeting on 20 October 2008, members noted from SJ that DoJ had been in discussion with the Law Society on the related policy and legislative issues on the introduction of LLP to limit the liability of solicitors for the negligence of their

partners. The Administration will brief the Panel on its progress in taking forward the matter in the coming meeting on 16 December 2008.

Relevant papers

19. A list of the relevant papers which are available on the LegCo website (<http://www.legco.gov.hk>) is in **Appendix III**.

Council Business Division 2
Legislative Council Secretariat
10 December 2008

**Extract from research report on Limited Liability Partnership
and Liability Capping Legislation for the Practice of Law in Selected Places**

Executive Summary

Nature of limited liability partnership and liability capping legislation

1. A limited liability partnership (LLP) is a vehicle for doing business, combining the limited liability feature of a limited company and the flexibility of the internal organization of a general partnership. LLPs of both the United Kingdom (UK) and the State of New York (NY) in the United States render the privilege of limited liability to the innocent members/partners, so as to insulate their personal assets from claims incurred by the faults of other members/partners.
2. The Professional Standards Act 1994 of New South Wales (NSW) is the first liability capping legislation in Australia. It enables occupational associations to establish their own professional standards schemes, requiring members to insure and implement strategies for the protection of the parties concerned in exchange for their liability capped at a specified level. The cap is to provide *"some guarantee of payment for the vast majority of claimants"*.

Eligibility

3. The LLP option is open to all types of business in the UK, whilst, in NY, the LLP structure is limited to around 40 licensed professionals. The liability capping option in NSW is limited to members of the occupational associations which have set up their own professional standards schemes, including the Solicitors Professional Standards Scheme (Solicitors Scheme).
4. In both the UK and NY, a solicitors' LLP must be owned and run by lawyers. The Law Society of England and Wales further requires that a legal practice, before rendering services through an LLP, must obtain its recognition as a recognized body and have at least one member who is *"qualified to supervise"*.

Liability

5. In both the UK and NY, an LLP is liable for the wrongful acts and omission of its members/partners to the same extent as the members/partners so acting in the ordinary course of the business of the LLP.
6. The statutes in both the UK and NY provides that members/partners of an LLP are liable for their own faults, but not for each other's acts or omissions solely by virtue of being a member/partner of that LLP.
7. The liability capping legislation of NSW gives a blanket cover to the professionals under their respective professional standards schemes, no matter whether they have personal involvement in the wrongful act or not. Under the Solicitors Scheme, the maximum liability for each claim depends on the number of principals in the legal practice.

8. The NY Partnership Law expressly provides a full shield for the innocent partners of an LLP, so that they are not liable directly or indirectly (by way of contribution and indemnification) for any liability, whether arising in tort or contract. The UK LLP Act has no provision on whether innocent members of an LLP may be liable indirectly by contribution to make good losses of working capital after the LLP has satisfied a claim out of the LLP's capital.
9. Upon the winding up of an LLP, the members/partners of an LLP in both the UK and NY are not obliged to contribute anything when the liquidator seeks contribution to enforce third party claims.
10. The Partnership Law of NY provides that a partner of an LLP is personally and fully liable for any wrongful act committed by any person under his or her "*direct supervision and control*". Both the UK LLP Act and the NSW liability capping legislation have no provision on this issue.

Safeguards

11. In both the UK and NY, there is no compulsory insurance requirement in their respective LLP statutes. In contrast, the NSW Professional Standards Act 1994 requires professionals to hold insurance against occupational liability under each professional standards scheme and the insurance policy must comply with standards determined by the occupational association concerned.
12. The Law Society of England and Wales requires that a solicitors' LLP must have compulsory top-up insurance apart from the minimum qualifying insurance, considering that clients or third parties may have limited assets against which to claim. The Solicitors Scheme of NSW requires that a solicitor must have the benefit of insurance for an amount not less than his or her limited liability. The NY State Bar Association does not have any compulsory insurance requirement.
13. In the UK, a large number of provisions of the company and insolvency law apply to LLPs, so as to preserve the LLP assets which can be claimed by third parties and to disclose sufficient information for third parties to assess the risk they assume in dealing with LLPs. The safeguards imposed by the NY statutes emphasize the disclosure element, and have no measure to preserve the LLP assets. NSW promotes greater self-regulation through the complaints system and risk management, in order to improve the standard of professional services and protect the interests of the public.
14. The UK is the only place studied which may require an LLP member to pay back the withdrawals made during the two years prior to the commencement of winding up, if it is proved that the member knew or believed that the LLP was, or would be unable to pay its debts.
15. While both the UK and NY statutes require an LLP to submit regular reports of non-financial information, only the UK requires an annual report on financial information to be filed and applies the accounting and auditing requirements for companies to LLPs, including solicitors' LLPs.

16. Both the UK and NY statutes require that the name of an LLP must reveal its limited liability status. The NY law requires that an LLP has to publish a notice of its registration in two newspapers. The Professional Standards Act 1994 of NSW requires a person whose occupational liability is capped to notify that fact on all documents given to a client or prospective client.
17. In the UK, the Law Society of England and Wales requires that where a law firm converts from a partnership to an LLP, it has to notify its clients, either before the change or soon afterwards. In NY, there is no duty for a law firm to inform its clients about the change in liability status, although it is customary to do so.

Appendix II

Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places

	The United Kingdom	The State of New York	The State of New South Wales
Eligibility			
Is the limited liability partnership (LLP) structure/liability capping legislation available to all types of business?	<ul style="list-style-type: none"> • Yes, but individual profession can determine if their members can operate through LLPs or not. 	<ul style="list-style-type: none"> • No, it is limited to around 40 licensed professionals, including lawyers, accountants and licensed physicians. 	No, liability capping is limited to members of the occupational associations which have set up their own professional standards schemes and got approved by the Professional Standards Council (PSC).
Statutory requirements for establishing an LLP or a professional liability scheme	<ul style="list-style-type: none"> • There must be two or more persons. • The business has to be a lawful business. • An LLP must become incorporated by registration with the Registrar of Companies. One of the proposed members must sign a statement of compliance that the persons named in the form are associated for carrying on a lawful business with a view to profit. 	<ul style="list-style-type: none"> • There must be two or more persons. • The licensed professionals have to form a general partnership before applying for registration. • The partnership has to file with the Division of Corporations of the Department of State a registration which sets forth the name of the LLP and other particulars. A certified copy of the registration has to be filed with the licensing authority within 30 days. 	<ul style="list-style-type: none"> • Only an occupational association may set up a professional standards scheme. Before approval, PSC must publish a notice in a daily newspaper explaining the nature of the scheme, and inviting comments. • The Attorney General, the court or either House of Parliament may disapprove the scheme.

Appendix II (cont'd)

Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places

	The United Kingdom	The State of New York	The State of New South Wales
Eligibility (cont'd)			
Legal professional body's requirements for allowing a law firm to operate through an LLP	<ul style="list-style-type: none"> The law firm must obtain recognition from the Law Society of England and Wales as a recognized body, which must comply with the requirements of professional conduct and the Solicitors' Incorporated Practice Rules 2004 and ensure its members to do so. The Law Society of England and Wales may, by discretion, refuse an application if: <ol style="list-style-type: none"> it is not satisfied that a member of the law firm is a suitable person to be engaged in the direction or ownership of an LLP; or it considers that it is proper in the public interest not to recognize the body. 	The ownership of the LLP is restricted to those individuals and entities authorized to practise law in the State of New York (NY).	Not applicable.
Statutory requirements for being a member/partner of an LLP or for participating in the Professional Standards Scheme	A member can be an individual, an LLP, or a company.	<ul style="list-style-type: none"> A partner can be an individual, a general partnership or LLP, or a company. Each partner must be a licensed professional or a licensed professional firm. 	<ul style="list-style-type: none"> A professional must be a member of an occupational association. A professional standards scheme may provide that it applies to all persons or to a specified class of persons within an occupational association, except for those apply to be exempted. Each member must have the benefit of an insurance policy against occupational liability and/or business assets of value not less than the maximum amount of liability specified in a professional standards scheme.

Appendix II (cont'd)

Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places

	The United Kingdom	The State of New York	The State of New South Wales
Eligibility (cont'd)			
Legal professional body's requirements for being a member/partner of an LLP or for a member to be covered by the Solicitors Professional Standards Scheme (Solicitors Scheme)	<ul style="list-style-type: none"> The only persons who may be members of a law firm operating as an LLP are: <ol style="list-style-type: none"> individual solicitors with a practising certificate or an European/foreign lawyer permitted under the Law Society of England and Wales' rules; a company/an LLP which is a recognized body and has at least one director/member who is a solicitor or a registered European lawyer (REL); and A European corporate practice. An LLP must have at least one member who is "qualified to supervise". 	Partners must be individuals or entities authorized to practise law in NY.	<ul style="list-style-type: none"> The Solicitors Scheme is applicable to all members of the Law Society of New South Wales who are: <ol style="list-style-type: none"> holding a current practising certificate; and having the benefit of an insurance policy under which the amount payable is not less than the required maximum amount of liability specified in the Solicitors Scheme. Member may apply for exemption from the Solicitors Scheme.
Does the court have any authority to disqualify a member/partner of an LLP, or revoke a professional standards scheme?	<ul style="list-style-type: none"> Yes, members of LLPs are subject to the same disqualification rules and penalties that apply to company directors. Undischarged bankrupts are automatically disqualified. There are a number of grounds where the court is authorized to issue a disqualification order for a specified period of time. If a person acts in contravention of a disqualification order, he or she is not only guilty of a criminal offence, but also personally liable for all the relevant debts of the LLP. 	No, the court does not have any power to disqualify a partner of an LLP, but it may order the dissolution of an LLP.	<ul style="list-style-type: none"> Yes, a person who is or is reasonably likely to be affected by a professional standards scheme may apply to the Supreme Court for an order that the scheme is void. PSC may review the operation of a professional standards scheme. The concerned professional standards scheme may be amended or revoked as a result of the review.

Appendix II (cont'd)

Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places

	The United Kingdom	The State of New York	The State of New South Wales
Scope of liability limitation			
Is an LLP a separate legal entity?	Yes.	It is not expressly stated in the legislation. The NY State Bar Association is of the view that an LLP has a separate legal personality from its partners.	Not applicable.
Liability of an LLP/a law firm under the Solicitors Scheme in general	<ul style="list-style-type: none"> An LLP is liable to the same extent as a member who has incurred liabilities as a result of his or her wrongful act or omission in the course of the business of the LLP or with its authority. An LLP is not bound where a member acts beyond his or her authority and the third party knows that he or she has no authority to act, or the third party does not know or believe him or her to be a member of the LLP. 	<ul style="list-style-type: none"> An LLP is liable to the same extent as a partner who has caused loss or injury of a third party, or incurred penalty by his or her wrongful act or omission in the ordinary course of the business of the LLP, or with the authority of his or her co-partners. An LLP is not bound if a partner so acting has no authority to act for the partnership in the particular matter, and the person with whom he or she is dealing has knowledge of the fact that he or she has no such authority. 	<ul style="list-style-type: none"> A law firm which runs as a general partnership has its liability capped because its partners' liability is capped under the Solicitors Scheme.
Are members/partners of an LLP, or those under a professional standards scheme liable for their own wrongful acts or omissions?	Yes.	Yes.	Yes, but their liabilities are capped at the level specified in the professional standards scheme.

Appendix II (cont'd)

Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places

	The United Kingdom	The State of New York	The State of New South Wales
Scope of liability limitation(cont'd)			
Are the members/partners of an LLP, or the participants of the Solicitors Scheme liable for the acts or omissions of each other solely by virtue of being a member/partner of the firm?	<ul style="list-style-type: none"> • No. • The Limited Liability Partnerships Act 2000 (LLPs Act) does not expressly confer limited liability upon members of LLPs. As an LLP is a separate legal person from its members, liability is confined to the LLP itself and the liability of individual members is separated from that of the LLP. • As members are agents of the LLP and not of each other, individual members will not be liable for each other's acts simply by virtue of being a member of the LLP. 	<ul style="list-style-type: none"> • No, a partner of an LLP is not liable directly or indirectly (by way of indemnification or contribution) for liabilities arising in tort, contract or otherwise, solely by reason of being a partner of that LLP. • Under the NY statute, if a majority of partners in an LLP agree, all or specified partners may be liable in their capacity as partners for all or specified debts, obligations or liabilities of the LLP. 	<ul style="list-style-type: none"> • Yes. • Statutory requirements are: <ul style="list-style-type: none"> (a) The partners of a general partnership are liable for the acts and omissions of each other even if the professional standards scheme is applicable to them, albeit the level of their liability is capped. (b) The professional standards schemes cap civil liability arising in tort, contract or otherwise, directly or vicariously from anything done or omitted by a member of the occupational association in the performance of his or her occupation. (c) The capping of liability does not apply to liability for damages arising from death or personal injury to a person, a breach of trust, fraud or dishonesty, and liability which may be the subject of proceedings under Part 13 or 14 of the Real Property Act 1900. • Solicitors Scheme requirements are: <ul style="list-style-type: none"> (a) The level of the capped liability is determined by the number of principals in the firm.

Appendix II (cont'd)

Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places

	The United Kingdom	The State of New York	The State of New South Wales
Scope of liability limitation (cont'd)			
Do members/partners of an LLP bear liability indirectly by way of contribution or indemnification?	<ul style="list-style-type: none"> The LLP legislation has no provision on this point. It is determined by the members' agreement. 	No, the legislation expressly provides that LLP partners are protected from indirect liability <i>"by way of indemnification, contribution or otherwise"</i> for claims.	Not applicable.
Are members/partners required to contribute to the assets of an LLP to satisfy third party claims in the winding up of the LLP?	<ul style="list-style-type: none"> Members only have to contribute to the extent that they have agreed in the event of an LLP being wound up and they are not obliged to agree to contribute anything. If it is proved that a member of an LLP has withdrawn properties of the LLP during the two years prior to the commencement of the winding up of the LLP, knowing or had reasonable grounds for believing that the LLP was, or would be unable to pay its debts, the member may have to pay back those withdrawals as the court thinks proper. 	No, the Partnership Law exempts partners of LLPs from contributing the amount necessary to satisfy the liabilities in the event of the winding up of an LLP.	Not applicable.
Is a member/partner of an LLP liable for the acts or omissions of persons under his or her direct supervision?	<ul style="list-style-type: none"> There is no statutory provision that directly imposes such liability to the members of an LLP. The Law Society of England and Wales' guideline states that it is dangerous to assume that the LLP status will protect solicitors from the consequences of <i>"negligent supervision of staff"</i>. The Law Society of England and Wales explains that a member of an LLP would not automatically be responsible in law for that happening. It depends on the circumstances and whether a duty of care and actual negligence could be demonstrated. 	Yes, each partner is personally and fully liable for <i>"any negligent or wrongful act or misconduct"</i> committed by any person <i>"under his or her direct supervision and control"</i> while rendering professional services on behalf of the LLP.	Not applicable.

Appendix II (cont'd)

Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places

	The United Kingdom	The State of New York	The State of New South Wales
Safeguards			
Is there any statutory requirement for compulsory insurance?	No, there is no compulsory insurance requirement in the LLPs Act.	No, there is no statutory insurance requirement for LLPs.	<ul style="list-style-type: none"> • Yes, each professional standards scheme requires professionals to hold insurance against occupational liability and the insurance policy must comply with the standards determined by the occupational association.
Does the legal professional body impose any requirement for compulsory insurance cover?	<ul style="list-style-type: none"> • Yes, before one applies to the Law Society of England and Wales for recognition as an LLP, one must arrange to have a minimum qualifying insurance for the LLP, which is the same amount required for sole practitioners and general partnerships. • In addition, an LLP must have top-up insurance, which is compulsory for LLPs only. 	No, there is no compulsory insurance requirement on LLPs or its partners.	<ul style="list-style-type: none"> • Yes, under the Solicitors Scheme, a solicitor must have the benefit of insurance for an amount not less than his or her limited liability. • The insurance policy must cover all civil liability arising in connection with the solicitors' practice.
Is it a statutory requirement that the name of the law firm must disclose its limited liability partnership status?	Yes, the name of an LLP must end with the expression " <i>limited liability partnership</i> ", or the abbreviation " <i>llp</i> " or " <i>LLP</i> ".	Yes, the name of each registered LLP must contain the words " <i>Registered Limited Liability Partnership</i> " or " <i>Limited Liability Partnership</i> " or the abbreviations " <i>R.L.L.P.</i> ", " <i>RLLP</i> ", " <i>L.L.P.</i> " or " <i>LLP</i> ".	Not applicable.

Appendix II (cont'd)

Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places

	The United Kingdom	The State of New York	The State of New South Wales
Safeguards (cont'd)			
Statutory disclosure requirements regarding the limited liability status/liability capped status	<ul style="list-style-type: none"> An LLP is required to paint or affix its name on the outside of every office or place in which its business is carried on, in a conspicuous position and in letters reasonably legible. An LLP must put its full corporate name on its business correspondence. An LLP must also put its registered number, place of registration, address of its registered office and the fact that it is an LLP (if its name is not spelled out in full) on its business letters and order forms. If an LLP uses a trading name, it must put its full corporate name, principal place of business and a list of the LLP's members (or, where there are more than 20 members, a statement that the list is open to inspection) on its business letters and other documents. 	<p>Within 120 days after the effective date of the registration of an LLP, a copy of the items in the application of registration or a copy of a notice containing those items has to be published in two newspapers once in each week for six successive weeks. The newspapers must be published in the county in NY in which the principal office of the registered LLP is located.</p>	<ul style="list-style-type: none"> The Professional Standards Act 1994 requires a person whose occupational liability is limited to notify that fact on all documents given to a client or prospective client by carrying the statement "<i>Liability limited by a scheme approved under Professional Standards Legislation.</i>" The size of the disclosure statement is also specified in the regulations. PSC has further issued a policy statement guiding participants of the professional standards schemes on the kinds of documents where the disclosure statement should appear.

Appendix II (cont'd)

Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places

	The United Kingdom	The State of New York	The State of New South Wales
Safeguards (cont'd)			
Legal professional body's disclosure requirements regarding the limited liability status/liability capped status	<ul style="list-style-type: none"> Under section 2 of the Solicitors' Publicity Code 2001, the LLP's notepaper must include: <ol style="list-style-type: none"> the words "<i>regulated by the Law Society</i>"; and either a list of the members or a statement that the list is open to inspection. "<i>The Guidance to the Professional Conduct of Solicitors (1999)</i>" requires that where a partnership converts to an LLP, the law firm has to notify its clients, either before the change or soon afterwards. 	The NY State Bar Association does not impose any duty on a law firm to inform its clients individually that it has converted from a general partnership into an LLP, although it is customary to do so.	Same as the statutory disclosure requirements.
Non-financial reporting	<ul style="list-style-type: none"> An LLP has to deliver to the Registrar of Companies successive annual returns four weeks before the anniversary of the incorporation of the LLP. The annual return has to contain, inter alia, the followings: <ol style="list-style-type: none"> the address of the registered office of the LLP; and the names and usual residential addresses of the members of the LLP, and the names of those members who are designated members. If an LLP fails to deliver an annual return in time, the LLP and its designated members are guilty of an offence and liable on summary conviction to a fine. The registered office and practising addresses of the LLP, the names and professional qualifications of all members of the LLP, and all subsequent changes have to be notified to the Law Society of England and Wales. 	<ul style="list-style-type: none"> Each LLP has to, within 60 days prior to the fifth anniversary of the effective date of its registration and every five years thereafter, furnish a statement to the Department of State setting forth, inter alia, the followings: <ol style="list-style-type: none"> the name of the LLP; the address of the principal office of the LLP; and a statement that it is eligible to register as an LLP. If the statement is not timely filed, the Department of State may proclaim that the registration to be revoked 60 days after mailing to the LLP a notice of the failure to file the statement. The NY State Bar Association does not require law firms operating through LLPs to file any annual report or update the changes in names of partners or other particulars with the Association. 	The NSW Law Society and other occupational associations subject to a professional standards scheme have to provide an annual report to PSC as to the implementation and monitoring of its risk management strategies, the effect of these strategies and any changes made or proposed to be made.

Appendix II (cont'd)

Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places

	The United Kingdom	The State of New York	The State of New South Wales
Safeguards (cont'd)			
Statutory requirements on financial reporting	<ul style="list-style-type: none"> • LLPs are subject to accounting and auditing requirements similar to those for companies. • It is a statutory requirement that an LLP has a duty to keep proper accounting records for three years. The annual accounts and the auditor's report must be sent to every member of the LLP and filed with the Registrar of Companies. • LLPs qualified as small and medium-sized LLPs may prepare and deliver abbreviated accounts to the Registrar of Companies. The auditing requirement may also be exempted if the turnover and balance sheet total are less than the specified amounts. 	<ul style="list-style-type: none"> • The NY Partnership Law does not impose any financial disclosure requirement on LLPs. 	Neither the Professional Standards Act 1994 nor the Solicitors Scheme imposes any financial disclosure requirement upon the professionals who participate in the Solicitors Scheme or other professional standards schemes.
Preservation of the legal practices' assets in the course of winding up	On the application of the liquidator, a member of an LLP may have to pay back withdrawals made during the two years prior to the commencement of the winding up if it is proved that at the time of the withdrawal, the member knew or had reasonable grounds for believing that the LLP was, or would be unable to pay its debts.	There is no statutory provision to claw back the capital withdrawn by partners of an LLP while the business is or is about to become insolvent.	Not applicable.

Appendix II (cont'd)

Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places

	The United Kingdom	The State of New York	The State of New South Wales
Safeguards (cont'd)			
Is there any statutory requirement for LLPs or participants of professional standards schemes to establish a particular complaints and disciplinary system?	No.	<ul style="list-style-type: none"> The NY Partnership Law provides that businesses operating through LLPs, other than those authorized to practise law, must be under the supervision of the Regents of the University of the State of New York. These LLPs are subject to disciplinary proceedings and penalties in the same manner and to the same extent as are provided with respect to individuals and their licences relating to the applicable profession. The Appellate Division of the New York State Supreme Court regulates and disciplines lawyers in NY, whether they practise through LLPs or not. 	Yes, the Professional Standards Act 1994 provides a Model Code of complaints and disciplinary matters in Schedule 1 as default rules. Occupational associations may set up their own complaints and disciplinary systems as well. The NSW Law Society has its own complaints and disciplinary system under Part 10 of the Legal Professions Act.
Does LLP legislation or liability capping legislation require any risk management strategies to be adopted by LLPs or participants of professional standards schemes?	No.	No.	<ul style="list-style-type: none"> Yes. Statutory requirement is: An occupational association must have a detailed list of the risk management strategies and the means by which those strategies are to be implemented. Solicitors Scheme requirement is: The NSW Law Society operates a Risk Management Education Program, which is designed to assist practitioners in devising appropriate risk management and practice management systems.

Appendix II (cont'd)

Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places

	The United Kingdom	The State of New York	The State of New South Wales
Impact			
Impact of the use of LLPs/ Solicitors Scheme by the legal practices on clients and third parties concerned	<p>The Law Society of England and Wales' views:</p> <ul style="list-style-type: none"> • Since the liability of LLPs is backed by compulsory insurance and the Solicitors' Compensation Fund as for general partnerships, it makes no difference to clients and third parties in respect of making claims against a law firm, whether it operates through an LLP or not. • However, the ability of the claimant to get fully paid may be affected because, if a claim exceeds the firm's insurance cover and the LLP's assets are exhausted, the claimant cannot claim against the personal assets of individual lawyers of that LLP. 	<p>The NY State Bar Association's views:</p> <ul style="list-style-type: none"> • The limited liability status of a law firm does not affect its liability or the availability of its assets to pay a debt. It has no such information on the impact of law firms practising as LLPs on their clients. 	<p>PSC's views:</p> <ul style="list-style-type: none"> • It is not aware of any large claim across professions that is above the limitation amount since the introduction of professional standards schemes. • A recent survey shows that most claimants are fully compensated for damages and only corporate clients might experience limits on their claims against professions, but they have the capacity to self-insure and manage risk.
Impact of the use of LLPs/ Solicitors Scheme by the legal practices on solicitors and law firms	<p>The Law Society of England and Wales' views:</p> <ul style="list-style-type: none"> • The insurance premium for an LLP is not lower than that for a general partnership because the risk to the LLP itself (and hence to the insurer) is no less. Instead, it believes that the premium is likely to be higher because an insurer would be more difficult to enforce payment of the final premium when the LLP fails. • The statutory requirement to file financial information will accelerate the breaking down of the culture of secrecy about law firms' financial affairs. 	<p>The NY State Bar Association's views:</p> <ul style="list-style-type: none"> • It has no such information on the impact of law firms practising as LLPs on the firms and the solicitors themselves. The limited liability status of a law firm does not change its need for insurance to protect its own assets. In the case of a partner of an LLP, he or she still needs to protect himself or herself for those claims to which the limited liability status is not applicable. 	<p>PSC's views:</p> <ul style="list-style-type: none"> • As the legal profession has a well-developed system of regulation before the commencement of the Solicitors Scheme, it is difficult to identify the direct impact of the Solicitors Scheme on legal practitioners and the legal profession of NSW as a whole. • Some law firms have to take out more insurance to fit within the Solicitors Scheme. • PSC has not collected data on whether the insurance costs are reduced as a result of the Solicitors Scheme.

Limited liability for professional practices

Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
Panel on Administration of Justice and Legal Services	9 November 2004	Minutes of meeting [LC Paper No. CB(2)245/04-05]
	31 March 2005	<p>Research Report on "Limited Liability Partnership and Liability Capping Legislation for the Practice of Law in Selected Places" prepared by the Research and Library Services Division of the Legislative Council Secretariat [RP04/04-05]</p> <p>Submission from the Hong Kong Institute of Certified Public Accountants [LC Paper No. CB(2)1099/04-05(01)] (English version only)</p> <p>Minutes of meeting [LC Paper No. CB(2)1590/04-05]</p>
Legislative Council	4 May 2005	Official Record of Proceedings of the Council on an oral question raised by Hon TAM Heung-man on "Reform in Professional Liability"
Panel on Administration of Justice and Legal Services	23 May 2005	Administration's paper on "Limiting liability of professional practices" [LC Paper No. CB(2)1613/04-05(03)]
		Background brief on "Limited liability for professional practices" prepared by the Legislative Council Secretariat [LC Paper No. CB(2)1613/04-05(01)]
		Report of the Working Party on Limited Liability Partnership of the Law Society of Hong Kong [LC Paper No. CB(2)1613/04-05(02)] (English version only)
		Minutes of meeting [LC Paper No. CB(2)2232/04-05]

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
	--	<p>Letter dated 24 June 2005 from the Consumer Council on "Limited Liability Partnership" [LC Paper No CB(2)2210/04-05(01)] <i>(English version only)</i></p>
	27 March 2006	<p>Administration's paper on "Limitation of liability" [LC Paper No. CB(2)1371/05-06(01)]</p> <p>Background brief on "Limited liability for professional practices" prepared by the Legislative Council Secretariat [LC Paper No. CB(2)1490/05-06(03)]</p> <p>Submission from the Hong Kong Institute of Certified Public Accountants on "Limited liability for professional practices" [LC Paper No. CB(2)1490/05-06(04)] <i>(English version only)</i></p> <p>Letter dated 24 March 2006 from the Law Society of Hong Kong on "Limited liability partnerships" [LC Paper No. CB(2)1559/05-06(02)] <i>(English version only)</i></p> <p>Minutes of meeting [LC Paper No. CB(2)2048/05-06]</p>
Legislative Council	5 July 2006	<p>Official Record of Proceedings of the Council on a written question raised by Hon TAM Heung-man on "Reform on Professional Liability System"</p>
Panel on Administration of Justice and Legal Services	--	<p>Administration's letter dated 22 February 2008 to the Panel on "Limited Liability for Professional Practices" [LC Paper No. CB(2)1176/07-08(01)] <i>(English version only)</i></p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
	--	Administration's letter dated 10 July 2008 to the Panel Chairman on "Limited Liability for Professional Practices" [LC Paper No. CB(2)2642/07-08(01)] <i>(English version only)</i>

Council Business Division 2
Legislative Council Secretariat
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