

**《2010 年法律執業者(修訂)條例草案》(“《條例草案》”)
法案委員會**

- (a) 與香港律師會(“律師會”)討論退還財產期的近期發展；以及
- (b) 有關退還財產期以外事項的《條例草案》最新修正案擬稿

目的

本文件闡述以下事項的最新情況：

- (a) 當局近期與律師會討論 2011 年 12 月 19 日委員會審議階段修正案(“修正案”)擬稿(“12 月修正案擬稿”)¹第 7AI(6)條所述退還財產期期限(“退還財產期”)的進展；以及
- (b) 我們就退還財產期以外事項提出的最新修正案擬稿。

近期就退還財產期與律師會進行的討論

2. 在 2012 年 3 月 27 日法案委員會會議上，委員獲悉，我們與律師會就《條例草案》主要事項(退還財產期除外)的討論取得重大進展。委員進一步獲悉，當局建議把退還財產期由 6 年縮短至 4 年，而律師會則堅持退還財產期應縮短至 2 年。

¹ 12 月修正案擬稿載於我們先前在 2012 年 2 月發出的法案委員會文件(立法會 CB(2)1182/11-12(01) 號文件)附件 A，12 月修正案擬稿第 7AI(6)條訂明如下：

“(6) 凡某項法律責任關乎某項分發，根據本條強制執行該法律責任的法律程序，不得在自該項分發作出之日起計的 6 年之後提出。”

3. 2012 年 3 月 30 日，當局與律師會代表會面，討論一項建議，以換取把退還財產期縮短至 2 年(“**最新建議**”)。按照該建議，除根據《律師(專業彌償)規則》(第 159M 章)第 3 條成立的基金(“**彌償基金**”)向合夥提供彌償外，有限法律責任合夥還須就損失購買加額保險(“**加額保險**”)。

4. 在上文所述 2012 年 3 月 30 日的會議上，律師會與當局就加額保險達成以下初步協議(但須以詳細的修正案為準)：

- (a) 賠償應先從彌償基金中支付，然後從加額保險支付；
- (b) 加額保險應涵蓋有限法律責任合夥處理的所有事宜；
- (c) 加額保險應對各方(包括律師行和其合夥人)作出彌償；
- (d) 加額保險提供的彌償應至少為 1,000 萬港元；以及
- (e) 《條例草案》須指明加額保險應至少為 1,000 萬港元。

5. 不過，以上第 4(d)段所述加額彌償保險的範圍及其他相關細節，當局須與律師會進一步討論。

6. 當局會就最新建議及其修正案繼續與律師會商討。與此同時，我們歡迎法案委員會委員就最新建議提出意見。

有關退還財產期以外事項的最新修正案擬稿

7. 2012 年 3 月 26 日，我們與律師會代表會面，討論有關退還財產期以外事項的修正案擬稿。其後，我們根據與律師會在 2012 年 3 月 26 日的討論，進一步修訂修正案。已納入經修訂修正案擬稿的《條例草案》文本載於附件 1(“**最新修訂《條例草案》**”)。

8. 現特別指出最新修訂《條例草案》的下述主要修訂，請委員留意：

第 7AA(1)條及第 7AG(3)條

- (a) 律師會關注《條例草案》第 7AG(3)條所述“……在某[外地]司法管轄區根據當地法律以屬有限責任的合夥的模式……”，會被誤會是指某[外地]司法管轄區根據當地法律的有限責任合夥模式(而非有限法律責任合夥模式)。為釋除律師會的疑慮，我們已作澄清，並將之修訂為“……在某[外地]司法管轄區根據當地法律以屬~~有限責任的合夥模式~~ 有限法律責任合夥模式……”。
- (b) 第 7AA(1)條需相應修訂，以澄清經修訂的第 7AG(3)條所述“……在某[外地]司法管轄區根據當地法律以有限法律責任合夥模式……”，並不屬於《條例草案》第 7AA 條²所界定的有限法律責任合夥，而只屬於該外地司法管轄區的有限法律責任合夥。

就“有關整體監督合夥人的規定”新建議的第 7AC(3)(c)條及第 7ACA 條

- (c) 正如我們在 2012 年 2 月發給法案委員會的立法會 CB(2)1182/11-12(01)號文件第 8 段所述，當局已建議(但須以最終的有限法律責任合夥法例為準)把我們先前的修正案中有關指定合夥人的建議條文全部刪除，並以一套有關監督合夥人的新規定(“**監督合夥人的規定**”)取代。有關監督合夥人規定的修正案現載於附件 1 的最新修訂《條例草案》的下述條文：

² 《條例草案》第 7AA(1)條述明有限法律責任合夥具有第 7AB 條給予該詞的涵義，而第 7AB 條訂明如下：

“就本部而言，有限法律責任合夥為當其時符合以下說明的合夥——

- (a) 是一間香港律師行或外地律師行；及
(b) 由其合夥人之間的書面協議指定為本部適用的合夥。”

新建議的第 7AC(3)(c)條

- (i) 第 7AC(3)(c)條訂明，某合夥人如要獲得第 7AC(1)條所述的有限法律責任合夥保障，必須在有關的失責行為發生時遵從新建議的第 7ACA(2)條(見下文)的規定。

新建議的第 7ACA(1)條

- (ii) 第 7ACA(1)條訂明，在處理當事人某事宜的所有期間，有限法律責任合夥須有至少一位負責整體監督該事宜的合夥人(“**整體監督合夥人**”)。

新建議的第 7ACA(2)條

- (iii) 第 7ACA(2)(a)條訂明，在接受當事人延聘處理某事宜後，有限法律責任合夥須在 21 天內把最少一名整體監督合夥人的身分通知當事人。
- (iv) 第 7ACA(2)(b)條訂明，在依據第 7ACA(2)條通知當事人後，如整體監督合夥人的身分有所改變，有限法律責任合夥須在 7 天內通知當事人有關改變。

新建議的第 7ACA(3)條

- (v) 第 7ACA(3)條容許當事人要求第 7ACA(4)條所指明的人向其提供以下人士的姓名：1)負責某事宜的其他整體監督合夥人(如有的話)，以及 2)負責監督某事宜任何特定部分的其他合夥人。
- (vi) 第 7ACA(4)(a)條訂明，當事人可向有限法律責任合夥最後告知當事人的整體監督合夥人，根據第 7ACA(3)條提出要求。
- (vii) 第 7ACA(4)(b)條訂明，如有限法律責任合夥最後告知當事人的每名整體監督合夥人均已不再是有限法律

責任合夥的合夥人，則當事人可根據第 7ACA(3)條向有限法律責任合夥提出要求。

(viii)第 7ACA(5)條規定，任何人收到當事人根據第 7ACA(3)條提出的要求，須在 21 天內盡其所知向當事人提供有關資料。

第 7ACB(2)條

(d) 第 7ACB(2)條對先前 12 月修正案擬稿中第 7ACA(2)條擬稿作出修訂。為方便法案委員會委員參考，最新的修訂在下文以追蹤修訂模式顯示：

“在該合夥所處理事宜的失責行為引致法律責任時，如有下述的情況，第 7AC(1)條並不會使某合夥人免責 —

(a) 有關的失責行為由該合夥人造成；或

(b) 造成該失責行為的合夥的合夥人~~一~~僱員、代理人或代表在有關的失責行為發生時由該事宜的有關合夥人直接監督。”

(e) 在 2012 年 3 月 9 日舉行的法案委員會第 11 次會議上，律師會代表要求在上述條文中刪去“合夥人”一詞，並在監督二字前加入“直接”一詞。我們已充分考慮律師會的要求，並同意移除上述條文中“合夥人”一詞的提述，理由是一般而言律師理應具備合理的高度專業才能才可成為合夥人。因此，總的來說，我們認為當一名合夥人有失責行為時，監督這名合夥人的另一合夥人不會被剝奪有限法律責任合夥保障的做法，應屬合理。此外，我們亦同意加入“直接”一詞，以釐清有關監督合夥人的法律責任的條文涵蓋

範圍。在這方面，我們知悉《安大略省合夥法令》(Ontario Partnerships Act)亦同樣把監督限定為“直接監督”。³

第 7AI(1A) 條

(f) 以下是 12 月修正案擬稿第 7AI(1A)條的最新修訂：

“(1A) 但任何收取第(1)款所述的任何分發的人如能證明有以下所有情況，則不須按第(2)根據該款的規定負上法律責任 —

(a) 在緊接作出有關分發之前，有關的有限法律責任合夥已作出合理的評估，認為該合夥在緊接該項分發之後的財政狀況，不會如第(1)款所描述者；及

(b) 該項評估是該合夥在盡了合理的努力後、並基於為該項評估的目的而取得的資料及在有關評估之時可得的其他資料而得出的；及。

~~(c) 在該項分發作出時，該人沒有理由懷疑該項評估的準確性，如該人為某合夥人於該合夥中的股份的承讓人，則該人及該合夥人均沒有如此懷疑的理由。”~~

(g) 律師會反對第 7AI(1A)(c)條(見上文刪除部分)，理由是有關的合夥人會難以反證其有理由懷疑有關評估的準確性。我們重新考慮這問題後，同意基於律師會所提出的理由，刪除該款。

³ 《安大略省合夥法令》第 10(3)條訂明：

“在下述情況下，第(2)款不會免除有限法律責任合夥的合夥人的法律責任，……

(b) 由合夥人 直接監督的人所造成的疏忽或錯誤的作為或不作為；”(底線為本文所加)

第 7AI(1B)條

(h) 我們在上一份法案委員會文件（立法會 CB(2)1520/11-12(01)號文件）第 8 及 9 段，解釋了為何我們無法接納律師會的建議，即根據下列理由，就有限法律責任合夥作出的分發訂定安全港條文：

“(a) 根據在當時的情況下屬合理的會計常規及原則而擬備的財務報表；

(b) 公平估值；或

(c) 任何其他在當時情況下屬合理的方法。”

(註：律師會的建議原文為英文，此中譯本僅供參考之用。若有任何歧異，以英文文本為準。)

(i) 律師會其後不再堅持立場，並同意把上述安全港條文改為法院可予考慮的因素。我們歡迎律師會對此問題的最新立場，並已加入第 7AI(1B)條以反映這方面的最新發展。

9. 我們已把經修訂修正案擬稿送交律師會考慮，並正等待該會的意見。與此同時，我們歡迎法案委員會委員就最新修訂《條例草案》提出意見。

律政司

2012 年 4 月

#371253v3

A BILL
To
Amend the Legal Practitioners Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Legal Practitioners (Amendment) Ordinance 2010.

2. Commencement

This Ordinance comes into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

3. Section 2 amended (Interpretation)

Section 2(1) of the Legal Practitioners Ordinance (Cap. 159) is amended by adding –

““partnership” (合夥) includes a limited liability partnership as defined by section 7AA;”.

4. Part IIAAA added

The following is added immediately after section 7A –

“PART IIAAA

LIMITED LIABILITY PARTNERSHIPS

7AA. Definitions (Part IIAAA)

(1) In this Part –

“business” (業務), in relation to a limited liability partnership, means the business of the partnership in providing services as a Hong Kong firm or a foreign firm;

~~“business” (業務) —~~

~~(a) — in relation to a Hong Kong firm, means the business of practising as solicitors; and~~

~~(b) — in relation to a foreign firm, means the business of practising or advising on foreign law;~~

~~“client” (客戶), in relation to a law firm, means a person who retains or employs the firm;~~

~~“default” (失責行為) means any negligent or wrongful act or omission, or any misconduct;~~

“distribution” (分發), in relation to partnership property, means a transfer of money or other partnership property by a partnership to a partner, whether as a share of profits, return of contributions to capital, repayment of advances or otherwise;

“limited liability partnership” (有限法律責任合夥), except for the reference in section 7AG(3) to a limited liability partnership under the law of a foreign jurisdiction, (有限責任合夥) has the meaning given by section 7AB;

“partnership obligation” (合夥義務), in relation to a partnership, means any debt, obligation or liability of the partnership, other than debts, obligations or liabilities of the partners as between themselves, or as between themselves and the partnership;

“partnership property” (合夥財產) has the same meaning as in the Partnership Ordinance (Cap. 38).

(2) If a law firm is constituted as a limited liability partnership when it commences business in Hong Kong, a reference in this Part to the date on which it becomes a limited liability partnership is a reference to the date on which it commences business in Hong Kong.

7AB. Limited liability partnership

For the purposes of this Part, a limited liability partnership is a partnership that is for the time being –

- (a) a Hong Kong firm or a foreign firm; and
- (b) designated by written agreement between the partners as a partnership to which this Part applies.

~~7AC. Effect on liabilities of partners in limited liability partnership~~

~~(1) Subject to subsections (3), (4) and (5), a partner in a limited liability partnership is not, solely by reason of being a partner, jointly or severally liable for any partnership obligation (whether founded on tort, contract or otherwise) that arises from a default of any other partner in the partnership, or of an employee, agent or representative of the partnership, in the course of the business of the partnership as a limited liability partnership.~~

~~(2) The protection of a partner from liability under subsection (1) applies irrespective of whether the liability is in the form of indemnification, contribution or otherwise.~~

~~(3) Subsection (1) does not protect a partner from liability if the partner –~~

- ~~(a) knew or ought reasonably to have known of the default at the time of its occurrence; and~~

~~(b) — failed to exercise reasonable diligence to prevent its occurrence.~~

~~(4) — Subsection (1) protects a partner from the liability arising from a claim made against the partnership by a client only if —~~

~~(a) — the partnership was a limited liability partnership at the time the cause of action for the claim accrued; and~~

~~(b) — the client knew or ought reasonably to have known that the partnership was a limited liability partnership at that time.~~

~~(5) — Subsection (1) does not protect any interest of a partner in the partnership property from claims against the partnership.~~

~~(6) — If a partner is protected from liability under subsection (1) —~~

~~(a) — the partner is not a proper party to any proceedings brought by or against the partnership for the purpose of recovering damages or claiming other relief in respect of the liability; and~~

~~(b) — the proceedings may, if they could apart from this section be brought by or against the partnership, continue to be brought by or against the partnership.~~

7AC. Protection from liability of partners in limited liability partnership

(1) A partner in a limited liability partnership is not, solely by reason of being a partner, jointly or severally liable for any partnership obligation (whether founded on tort, contract or otherwise) that arises in the course of the business of the partnership as a limited liability partnership from a default of —

(a) another partner; or

(b) an employee, agent or representative of the partnership.

(2) Subsection (1) applies irrespective of whether the liability is in the form of indemnification, contribution or otherwise.

(3) Subsection (1) applies only if at the time of the default—

(a) the partnership was a limited liability partnership;

(b) the client knew or ought reasonably to have known that the partnership was a limited liability partnership;
and

(c) the partnership had complied with section 7ACA(2) for the matter in respect of which the default occurred.

7ACA. Requirements relating to overall supervising partners

(1) For each matter handled by a limited liability partnership for a client there must, throughout the time it is handled, be at least one partner who is responsible for the overall supervision of the matter (*overall supervising partner*).

(2) For each matter handled by a limited liability partnership for a client, the partnership must —

(a) not later than 21 days after the partnership accepts instructions on the matter, inform the client of the identity of at least one overall supervising partner for the matter; and

(b) where there is any change of the overall supervising partner or partners notified under this subsection, inform the client within 7 days from the change .

(3) When a limited liability partnership is handling a matter for a client, or after the partnership has done so, the client may request a

person specified in subsection (4) to provide the client with a list of the names of –

- (a) all other partners (if any) who are or were (as appropriate) overall supervising partners for the matter; and
- (b) all other partners (if any) who are or were (as appropriate) responsible for the supervision of any particular parts of the matter.

(4) The following persons are specified for the purposes of subsection (3) –

- (a) any overall supervising partner for the matter, as last informed to the client by the partnership; or
- (b) if each person last informed to the client by the partnership to be an overall supervising partner for the matter is no longer a partner in the partnership, the partnership.

(5) A person specified in subsection (4) must, not later than 21 days from receiving a request under subsection (3), provide the client with the list referred to in subsection (3) to the best of the knowledge of the person.

7ACB. Limitations on section 7AC protection

(1) Section 7AC(1) does not protect a partner from liability if the partner –

- (a) knew of the default at the time of its occurrence; and
- (b) failed to exercise reasonable care to prevent its occurrence.

(2) Section 7AC(1) does not protect a partner from liability arising from a default in respect of a matter handled by the partnership if the default is –

- (a) the partner's default; or
- (b) a default of an employee, agent or representative of the partnership who was under the direct supervision of the partner in respect of the matter at the time of the default.

(3) Section 7AC(1) does not protect any interest of a partner in the partnership property from claims against the partnership.

7ACC. Indemnification under partnership agreement not affected

Nothing in this Part affects any right of a partner in a limited liability partnership to be indemnified by another partner, or any obligation of a partner to indemnify another partner, under a written agreement made between the partners.

7ACD. Effect of section 7AC(1) on proceedings

If a partner is protected from liability by section 7AC(1) –

- (a) the partner is not a proper party to any proceedings brought by or against the partnership for the purpose of recovering damages or claiming other relief in respect of the liability; and
- (b) the proceedings may, if they could apart from this section be brought by or against the partnership, continue to be so brought.

7AD. Advance notice to Society in respect of limited liability partnership

(1) A law firm must ensure that, at least 7 days before the date on which it becomes a limited liability partnership, a written notice of the following particulars is given to the Society –

- (a) the date on which the firm becomes a limited liability partnership;
- (b) the name of the partnership;
- (c) the name of each partner in the partnership;
- (d) each address at which the partnership carries on its business;
- (e) any other particulars prescribed by rules made under section 73.

(2) A law firm must ensure that, at least 7 days before the date on which it ceases to be a limited liability partnership, a written notice of that date is given to the Society.

~~(3) Subsection (1) does not apply to a foreign firm that is constituted as a limited liability partnership when it commences business in Hong Kong.~~

7AE. Name of limited liability partnership

A limited liability partnership must –

- (a) if it has a Chinese name, include the words “有限法律責任合夥” “有限責任合夥” as part of that Chinese name; and
- (b) if it has an English name, include the following as part of that English name –
 - (i) the words “Limited Liability Partnership”;
 - or
 - (ii) the abbreviation “LLP” or “L.L.P.”.

7AF. Notification of name by limited liability partnership

(1) A limited liability partnership must display its name, in a clearly visible and legible manner, at or outside every office or place in which it carries on its business.

(2) A limited liability partnership must state its name, in a clearly visible and legible manner, in its correspondence, notices, publications, invoices and bills of costs, and on its websites.

7AG. Notice by limited liability partnership to existing clients

(1) Except as provided in subsection (2), a law firm must, within 30 days after it becomes a limited liability partnership, by written notice inform each of its existing clients of that fact.

(2) A specified foreign firm must, within 30 days after it becomes a limited liability partnership, by written notice inform each of its existing clients in Hong Kong of that fact.

(3) For the purposes of subsection (2), a foreign firm is a specified foreign firm if, before becoming a limited liability partnership, it has been carrying on, in a foreign jurisdiction, the practice of law as a limited liability partnership~~partnership with limited liabilities~~ under the law of that jurisdiction.

(4) A written notice issued under this section must be in a form specified by the Council.

(5) The form specified under subsection (4) must include a brief statement stating how liabilities of partners in a law firm are affected under sections 7AC, 7ACA and 7ACB by the law firm becoming a limited liability partnership~~of a law firm are affected by the law firm becoming a limited liability partnership under section 7AC.~~

(6) In this section, “existing client” (現有當事人)(現有客戶), in relation to a law firm, means a person who is a client of the firm at the time the firm becomes a limited liability partnership.

(7) For the purposes of subsection (2), an existing client of a specified foreign firm is its existing client in Hong Kong if –

- (a) the client is a body corporate, and it has its registered office or a place of business in Hong Kong; or
- (b) the client is not a body corporate, and the last correspondence address provided by the client to the firm is in Hong Kong.

(8) This section does not apply to a law firm that is constituted as a limited liability partnership when it commences business in Hong Kong.

~~7AH. Other requirements relating to practice of law firm in rules made under section 73~~

~~Sections 7AD, 7AE, 7AF and 7AG are in addition to, and do not affect, any other provisions relating to the practice of a law firm as prescribed by rules made under section 73.~~

7AH. Other requirements relating to practice of law firm not affected

Sections 7ACA, 7AD, 7AE, 7AF and 7AG are in addition to, and do not affect, any other provisions relating to the practice of a law firm as prescribed by rules made under section 73 or contained in The Hong Kong Solicitors’ Guide to Professional Conduct.

7AI. Provisions regulating distribution of partnership property

~~(1) If a limited liability partnership makes a distribution of any of its partnership property to a partner, or to an assignee of a partner's share in the partnership, as a consequence of which —~~

~~(a) the partnership would be unable to pay its partnership obligations as they become due; or~~

~~(b) the value of the remaining partnership property would be less than the partnership obligations,~~

~~then the partner or assignee is liable as provided in subsection (2).~~

(1) If a limited liability partnership makes a distribution of any of its partnership property to one or more persons (each being a partner or an assignee of a partner's share in the partnership), and immediately after the distribution —

(a) the partnership is or will be unable to pay its partnership obligations as they become due; or

(b) the value of the remaining partnership property is less than the partnership obligations,

then each of the persons is liable to the partnership to the extent specified in subsection (2).

(1A) However, a person who receives a distribution as described in subsection (1) is not liable under that subsection if the person proves that —

(a) immediately before making the distribution, the limited liability partnership made a reasonable assessment that the financial position of the partnership would not be as described in subsection (1) immediately after the distribution; and

(b) the partnership arrived at the assessment after exercising reasonable diligence and based on information obtained for the purpose of the assessment or otherwise available at the time of the assessment.

(1B) In determining whether the partnership made a reasonable assessment as referred to in subsection (1A)(a), a court may have regard to all the circumstances of the case including, without limitation, whether the assessment was based—

- (a) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances;
- (b) on a fair valuation; or
- (c) on any other method that is reasonable in the circumstances.

(2) A person who is liable under subsection (1)~~The partner or assignee who receives the distribution~~ is liable to the partnership for –

- (a) the value of the property received by the person as partner or assignee as a result of the distribution;
- or
- (b) the amount necessary to discharge the partnership obligations at the time of the distribution,

whichever is the lesser.

(3) Proceedings to enforce any of the liabilities arising under this section as a result of the distribution may be brought by –

- (a) the partnership;
- (b) any partner in the partnership; or

- (c) any person to whom the partnership owes any partnership obligation at the time of the distribution.

(4) In this section, a reference to partnership obligation is a reference to partnership obligation (whether actual or contingent).

(5) This section does not affect a payment made as reasonable compensation for current services provided by a partner to the partnership, to the extent that the payment would be reasonable if paid to a person who is an employee of, but not a partner in, the partnership as compensation for similar services.

(6) No proceedings to enforce a liability under this section may be commenced later than [] years after the date of the distribution to which the liability relates.

7AJ. List of limited liability partnerships

(1) The Council must keep a list of law firms that are or have been limited liability partnerships.

(2) The list must, in relation to each such law firm, contain –

- (a) its name;
- (b) each address at which it carries on its business or, if it has ceased its business, each address at which it last carried on its business; and
- (c) the date on which it first became a limited liability partnership and, if applicable, the dates from which or periods during which it has ceased to be a limited liability partnership.

(3) As soon as practicable after becoming aware of any matter that would require the list to be updated, the Council must update the list accordingly.

(4) For the purpose of enabling any member of the public to

ascertain whether a law firm is, or has been, a limited liability partnership and to ascertain the particulars of the partnership, the Council must make the list available for public inspection, free of charge, at the office of the Council during office hours.

7AK. No dissolution of partnership, etc.

(1) The fact that a partnership becomes, or ceases to be, a limited liability partnership –

- (a) does not cause the partnership –
 - (i) to be dissolved; or
 - (ii) to cease continuing in existence as a partnership; and
- (b) does not affect any of the rights and liabilities (whether actual or contingent) of the partnership, or of any person as a partner, that have been acquired, accrued or incurred before the partnership becomes, or ceases to be, a limited liability partnership.

(2) Subsection (1)(a) operates subject to any written agreement between the partners to the contrary.

7AL. This Part to prevail over inconsistent agreement

(1) In relation to a limited liability partnership, this Part prevails over any inconsistent provisions in any agreement between any persons, whether as partners in the partnership or otherwise.

(2) To avoid doubt, this section does not affect the operation of sections 7ACC and of section 7AK(2).

**7AM. Law not inconsistent with this Part
applies**

(1) All relevant laws, except so far as they are inconsistent with this Part, ~~continue to apply~~ in relation to a partnership that is a limited liability partnership.

(2) In this section, “relevant laws” (有關法律) means the Partnership Ordinance (Cap. 38) and every other law that applies in relation to a partnership (whether an enactment, or a rule of equity or of common law).”.

5. Section 73 amended (Power of the Council to make rules)

Section 73(1) is amended by adding –

- “(df) in relation to the practice of limited liability partnerships –
- (i) prescribing particulars for the purposes of section 7AD(1)(e); and
 - (ii) regulating any matters of procedure or matters incidental, ancillary or supplemental to the provisions of Part IIAAA;”.

Consequential Amendment

Summary Disposal of Complaints (Solicitors) Rules

6. Schedule amended (Scheduled items)

The Schedule to the Summary Disposal of Complaints (Solicitors) Rules (Cap. 159 sub. leg. AD) is amended, under the heading “**Legal Practitioners Ordinance (Cap. 159)**”, by adding –

“2.	Section 7AD(1)	10,000	15,000
3.	Section 7AD(2)	10,000	15,000
4.	Section 7AE(a)	10,000	15,000
5.	Section 7AE(b)	10,000	15,000

6.	Section 7AF(1)	10,000	15,000
7.	Section 7AF(2)	10,000	15,000
8.	Section 7AG(1)	10,000	15,000
9.	Section 7AG(2)	10,000	15,000”.

Explanatory Memorandum

The purpose of this Bill is to amend the Legal Practitioners Ordinance (Cap. 159) (“the principal Ordinance”) to introduce limited liability partnerships for law firms in Hong Kong.

Preliminary provisions

2. Clauses 1 and 2 provide for the short title and commencement.
3. Clause 3 adds to section 2(1) of the principal Ordinance a new definition of “partnership” to make it clear that a reference to this term throughout the principal Ordinance and its subsidiary legislation generally includes a limited liability partnership.

New Part IIAAA of the principal Ordinance

4. Clause 4 adds to the principal Ordinance a new Part IIAAA on limited liability partnerships, which consists of the proposed sections 7AA to 7AM.
5. The proposed section 7AA provides for the interpretation of expressions used in the new Part IIAAA.
6. The proposed section 7AB sets out the meaning of a “limited liability partnership” in the Bill, namely, a Hong Kong firm or a foreign firm (both terms are defined in section 2(1) of the principal Ordinance) that is designated by written agreement between the partners as a partnership to which the new Part IIAAA applies.
7. Under the Partnership Ordinance (Cap. 38), every partner in a firm is liable jointly and severally for certain wrongful acts or omissions for which the firm becomes liable. The proposed section 7AC varies this rule for law firms that are limited liability partnerships. According to the proposed section 7AC(1), a person will not, solely by reason of being a partner, become jointly or severally liable for any partnership obligation if the firm is a limited liability partnership and the partnership obligation arises from the default of another partner, or of an employee, agent or representative of the firm.
8. The object of the proposed section 7AC(1) is to protect an innocent partner against personal liability for the default of other members of the firm. This provision is not intended to change the common law position with respect to the general principles of negligence (see the proposed section 7AM). For example, a partner in a limited liability partnership may still be held responsible under the common law for vicarious liability arising from a default of an employee, agent or representative who is under the supervision of the partner. Also, a failure to establish a proper system of staff supervision can be the basis for a claim that all partners of a limited liability partnership are jointly and severally liable for negligence.
9. The proposed section 7AC(3) further provides that the protection under section 7AC(1) is not available to a partner in a limited liability partnership if he

or she knew or ought reasonably to have known of a default at the time of its occurrence, and failed to exercise reasonable diligence to prevent its occurrence. Moreover, a partner may be protected from the liability arising from a claim made by a client only if the partnership was a limited liability partnership at the time the cause of action for the claim accrued, and the client knew or ought reasonably to have known that the partnership was a limited liability partnership at that time (see the proposed section 7AC(4)).

10. Under the proposed section 7AD, a law firm must ensure that a written notice of its relevant particulars is given to The Law Society of Hong Kong (“the Law Society”) at least 7 days before it becomes, or ceases to be, a limited liability partnership. However, a foreign firm constituted as a limited liability partnership when it commences business in Hong Kong is not required to give a separate notice under the proposed section 7AD(1) because it will have already provided the relevant particulars to the Law Society for prior approval of its registration under Part IIIA of the principal Ordinance.

11. The proposed section 7AE requires that the name of a limited liability partnership must contain the words “有限責任合夥” if it is in Chinese, and the words “Limited Liability Partnership” (or the abbreviation) if it is in English. That name must be displayed at every place of business of the partnership and stated in its correspondence and other publications as required by the proposed section 7AF.

12. The proposed section 7AG requires an existing law firm to notify all its existing clients within 30 days after it becomes a limited liability partnership. However, an existing foreign firm only needs to notify its existing clients in Hong Kong if it has already been practising law as a partnership with limited liabilities under the law of another jurisdiction.

13. The proposed section 7AH makes it clear that any other requirements relating to the practice of law firms as prescribed by rules made by the Council

of the Law Society under section 73 of the principal Ordinance will not be affected by the proposed sections 7AD, 7AE, 7AF and 7AG.

14. The proposed section 7AI regulates the distribution of a limited liability partnership's property in circumstances where, as a result of the distribution, the partnership would be unable to pay its obligations as they become due, or the value of the remaining partnership property would be less than its obligations.

15. Under the proposed section 7AJ, the Council of the Law Society is required to keep a list of limited liability partnerships and to make the relevant information available for public inspection.

16. The proposed section 7AK provides that a partnership's existence as a partnership (subject to any contrary agreement between the partners), and the pre-existing rights and liabilities of the partnership and of its partners, will not be affected by the fact that it becomes, or ceases to be, a limited liability partnership.

17. While the proposed section 7AL further states that the new Part IIAAA prevails over inconsistent provisions in any agreement, the proposed section 7AM makes it clear that all relevant laws applicable to a partnership, except so far as they are inconsistent with that Part, remain applicable to a limited liability partnership.

Further provisions

18. Clause 5 amends section 73 of the principal Ordinance to empower the Council of the Law Society to make rules respecting the practice of limited liability partnerships for giving full effect to the new Part IIAAA.

19. Clause 6 makes a consequential amendment to the Summary Disposal of Complaints (Solicitors) Rules (Cap. 159 sub. leg. AD) so that a complaint against a breach of any requirement in the proposed sections 7AD to 7AG may be submitted to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel for disposal under the summary procedure provided by those Rules.