

立法會
Legislative Council

Ref : CB2/BC/2/09

LC Paper No. CB(2)199/10-11
(These minutes have been seen
by the Administration)

Bills Committee on Legal Practitioners (Amendment) Bill 2010

Minutes of 2nd meeting
held on Friday, 17 September 2010, at 2:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Dr Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon LAU Kong-wah, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Ronny TONG Ka-wah, SC
Hon Paul TSE Wai-chun
- Member absent** : Hon Miriam LAU Kin-ye, GBS, JP
- Public Officers attending** : Item I
Department of Justice

Ms Adeline WAN
Senior Assistant Solicitor General

Ms Betty CHEUNG
Senior Assistant Law Draftsman

Mr Christopher NG
Senior Government Counsel

Mr Bernard YUE
Government Counsel
- Attendance by invitation** : Item I
The Law Society of Hong Kong

Mr Huen WONG
President

Mr Joseph LI
Chairman of Working Party on LLPs

Mr Michael Lintern-Smith
Past President of The Law Society of Hong Kong
and member of the Working Party on LLPs

Mr David Hirsch
Member of the Working Party on LLPs

Ms Heidi CHU
Deputy Secretary General

Consumer Council

Ms Connie LAU
Chief Executive

Mr Eddie NG
Senior Legal Counsel

The American Chamber of Commerce in Hong Kong

Mr Eric SZWEDA
Chair, Law Committee

Clerk in attendance : Miss Mary SO
Chief Council Secretary (2) 5

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Ms Amy YU
Senior Council Secretary (2) 3

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I. Meeting with deputations and the Administration

[LC Paper Nos. CB(2)2233/09-10(01) to (03), CB(2)2260/09-10(01) and (02)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Views of deputations

2. The Bills Committee received views from the following three deputations on the Legal Practitioners (Amendment) Bill 2010 ("the Bill") -

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- (a) the Law Society of Hong Kong ("Law Society") [LC Paper No. CB(2) 2233/09-10(03)];
- (b) the Consumer Council [LC Paper No. CB(2) 2260/09-10(01)]; and
- (c) the American Chamber of Commerce in Hong Kong [LC Paper No. CB(2) 2260/09-10(02)].

Discussion

Proposed section 7AA - Definitions

3. Senior Assistant Law Draftsman ("SALD") explained that the definition of "partnership obligation" under the proposed section 7AA, which referred to "debt", "obligation" and "liability", was consistent with the expressions used in the Partnership Ordinance (Cap. 38), and was similar, in approach, to overseas legislative precedents on limited liability partnerships ("LLP"). SALD further explained that the Chinese rendition "義務" was adopted for "obligation" under the Bill for consistency with the Partnership Ordinance. The authentic Chinese text of the Partnership Ordinance had been adopted for over a decade and was familiar to the courts. The use of "obligation" as meaning what was legally binding was supported by the dictionary, national laws that applied to Hong Kong and the People's Republic of China legislation on partnership. Ms Audrey EU remained of the view that including the word "obligation" and its Chinese rendition of "義務" in the drafting of the definition of "partnership obligation" in the proposed section 7AA had the connotation of covering things that a partner in a LLP were morally obliged to do. SALD explained that the word "obligation" and its Chinese rendition of "義務" in the definition of "partnership obligation" in the proposed section 7AA had the same meaning as the same word and its Chinese rendition had in the Partnership Ordinance, i.e. only covering things that a partner were legally bound to do. To allay Ms EU's concern, SALD undertook to try to consider whether the intent that "obligation" and its Chinese rendition of "義務" had the same meaning as in the Partnership Ordinance might be brought out even more explicitly. At the request of the Chairman, the Law Society undertook to consider the appropriateness or otherwise of the drafting of the definition of "partnership obligation" in the proposed section 7AA.

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Law
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Proposed section 7AC(3) - Effects on liabilities of partners in limited liability partnership

4. Members noted the grave concern expressed by the Law Society that under the proposed section 7AC(3), a partner would not be protected from the liability arising from a claim made by a client if the partner knew or ought reasonably to have known of the default of other members of the firm at the

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time of its occurrence. Mr Paul TSE shared the Law Society's view that the constructive knowledge element in the proposed section 7AC(3) should be deleted, as such element might be exploited by clients to cast their net unnecessarily wide leading to excessive litigation. Mr TSE further said that the removal of the constructive knowledge element in the proposed section 7AC(3) would not change a partner's liability at common law with respect to the general principles of negligence. Mr Albert HO was also of the view that the provision of a constructive knowledge element in the proposed section 7AC(3) would provide lesser safeguard to the consumers as senior members of a law firm might refrain from providing guidance to their junior members for fear of being held personally liable to the defaults of the junior members for their negligence or wrongful acts to clients.

5. Senior Assistant Solicitor General ("SASG") responded that the constructive knowledge element was found in similar LLP provisions in some overseas jurisdictions. Paragraph 12 of LC Paper No. CB(2)2233/09-10(02) referred to Ontario and Texas which had a similar provision to remove LLP protection for a partner who ought reasonably to have known of the default but failed to exercise reasonable diligence to prevent it. Moreover, the Administration had considered the commentary referred to in paragraph 18 of LC Paper No. CB(2)2233/09-10(02) that providing for only the actual knowledge element in the relevant provision might have harmful effects on both firms and their clients because partners would find that they could best reduce their liability risk by avoiding to monitor other members of the firm. For example, specialists might refuse to learn about cases in which they were not directly involved.

6. Referring to the Law Society's proposed amendments to the proposed section 7AC(3) as set out in paragraph 23 of its submission, Mr Ronny TONG expressed concern that an LLP might deliberately not to assign any partner to supervise an employee in order to protect partners from personal liability. Mr Joseph LI of the Law Society explained that there was no cause for such concern, as the systemic failure of an LLP to establish a proper system of supervision might be the basis of a claim that all partners of the LLP could be held liable for negligence. Mr Ronny TONG however pointed out that the proposed amendments might force a client to change his cause of action, (i.e., instead of founding his claim on the employee's negligence or wrongful act, the client needs to found his claim on the LLP's failure to establish a proper system of supervision) which might not be in the best interests of consumers. Mr Joseph LI responded that the Law Society would take note of Mr TONG's views.

7. The Chairman said that the drafting of the proposed section 7AC(3) must be clear in order to provide sufficient protection to the consumers. On the other hand, the proposed section 7AC(3) must be workable in practice in order to encourage the formation of LLPs in Hong Kong. The Chairman shared the

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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.

Law
Society

8. At the request of the Chairman, the Law Society agreed to provide a paper on why the existing practices adopted by solicitor firms in Hong Kong in accepting instructions from clients would obviate the need of including a constructive knowledge element in the proposed section 7AC(3) in protecting consumer interests. The Chairman also requested the Administration to provide a paper on the problems, if any, encountered by those overseas jurisdictions which did not have a constructive knowledge provision in their legislation on LLPs for legal practice. The Chairman also invited the Law Society to respond to the Administration's paper when it was available by a paper illustrating the problems encountered by those jurisdictions that had adopted the constructive knowledge provisions.

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Proposed section 7AI - Provisions regulating distribution of partnership property

9. In response to the submissions made by the Law Society and the American Chamber of Commerce in Hong Kong, SASG explained that the main purpose of the proposed section 7AI was to prevent dissipation of partnership assets by partners. This provision was not required for a general partnership where all partners would be held personally liable for the firm's liability.

10. Mr Paul TSE expressed support for the views of the Law Society and the American Chamber of Commerce in Hong Kong that the proposed section 7AI on distribution of partnership property was unfair and unnecessary and should be deleted.

Law
Society

11. At the request of the Chairman, the Law Society agreed to provide a paper on why the proposed section 7AI would be impracticable in practice for solicitors firms in Hong Kong.

Others

12. Mr Paul TSE supported the Law Society's view that the partial shield LLP model proposed in the Bill ought to be changed to a full shield one, as the proposed partial shield model would serve no useful purpose other than requiring LLPs to artificially complicate their structure by forming service companies at additional cost to achieve the same liability protection as that offered under a full shield model.

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II. Date of next meeting

13. Members agreed to hold the next meeting on 5 October 2010 at 10:45 am.

14. There being no other business, the meeting ended at 4:36 pm.

Council Business Division 2
Legislative Council Secretariat
2 November 2010

**Proceedings of the meeting of the
Bills Committee on Legal Practitioners (Amendment) Bill 2010
on Friday, 17 September 2010, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000406	Chairman	Opening remarks	
000407 - 002619	The Law Society of Hong Kong ("Law Society")	Presentation of views [LC Paper No. CB(2)2233/09-10(03)]	
002620 - 003128	Consumer Council	Presentation of views [LC Paper No. CB(2)2260/09-10(01)]	
003129 - 003711	The American Chamber of Commerce in Hong Kong	Presentation of views [LC Paper No. CB(2)2260/09-10(02)]	
003712 - 005101	Chairman Admin	The Administration's response to the views expressed by deputations	
005102 - 010033	Chairman Mr Paul TSE	The Chairman declared interest that she was a practising barrister. Mr Paul TSE declared interest that he ran a solicitors firm. Mr Paul TSE's expression of support for the views expressed by the Law Society in its submission.	
010034 - 010852	Chairman Mr Ronny TONG The Law Society	Mr Ronny TONG declared interest that he was a practising barrister. Referring to the Law Society's proposed amendments to the proposed section 7AC(3) as set out in paragraph 23 of its submission, Mr Ronny TONG expressed concern that a limited liability partnership ("LLP") might deliberately not assign any partner to supervise an employee in order to protect partners from personal liability.	
010853 - 013602	Chairman Mr Albert HO Admin The Law Society Consumer Council	Mr Albert HO declared interest that he was a partner of a solicitors firm. Mr Albert HO's view that the provision of a constructive knowledge element in the proposed section 7AC(3) would provide lesser safeguard to the consumers as senior members of a law firm might refrain from providing guidance to their junior members for fear of being held personally liable to the defaults of the junior members for their negligence or wrongful acts to clients. The Law Society's reiteration of its views on the flaws of the Bill and its concern that Hong Kong was lagging behind other jurisdictions in	

Time marker	Speaker	Subject	Action required
		implementing professional liability reform.	
013603 - 014459	Chairman Admin The Law Society	<p>The Law Society was requested to provide responses in writing to the following -</p> <p>(a) explanation on why the existing practices adopted by solicitor firms in Hong Kong in accepting instructions from clients will obviate the need of including a constructive knowledge element in the proposed section 7AC(3) in protecting consumer interests; and</p> <p>(b) illustrations on why the proposed section 7AI would be impracticable in practice for solicitor firms in Hong Kong.</p> <p>The Administration was requested to provide a paper on the problems, if any, encountered by those overseas jurisdictions which did not have a constructive knowledge provision in their legislation on LLPs for legal practice. The Chairman also invited the Law Society to respond to the Administration's paper when it was available by a paper illustrating the problems encountered by those jurisdictions that had adopted the constructive knowledge provisions.</p>	<p>Law Society (paras. 8 and 11 of minutes refers)</p> <p>Admin and Law Society (para. 8 of minutes refers)</p>
014500 - 015533	Chairman Admin	Briefing by the Administration on its paper addressing the issues raised by members on the drafting of the definition of "partnership obligation" under the proposed section 7AA (LC Paper No. CB(2)2233/09-10((01))	
015534 - 020419	Chairman Ms Audrey EU The Law Society	The Law Society undertook to consider the appropriateness or otherwise of the drafting of the definition of "partnership obligation" in the proposed section 7AA.	Law Society (para. 3 of minutes refers)
020420 - 020750	Chairman Ms Audrey EU Admin Mr Paul TSE	<p>Discussions on the drafting of the definition of "partnership obligation" in the proposed section 7AA.</p> <p>Ms Audrey EU's view that including the word "obligation" and its Chinese rendition of "義務" in the drafting of the definition of "partnership obligation" had the connotation of covering things that a partner in an LLP were morally obliged to do.</p> <p>The Administration undertook to consider whether the intent that "obligation" and its Chinese rendition of "義務" had the same meaning as in the Partnership Ordinance might be brought out even more explicitly.</p>	Admin (para. 3 of minutes refers)

Time marker	Speaker	Subject	Action required
		Mr Paul TSE's view that it was not necessary to provide for a definition for "partnership obligation" which could be replaced with the phrase "partnership liability".	
020751 - 020905	Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
2 November 2010