

立法會
Legislative Council

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LC Paper No. CB(2)156/11-12
(These minutes have been seen
by the Administration)

Bills Committee on Legal Practitioners (Amendment) Bill 2010

Minutes of meeting
held on Thursday, 2 June 2011, at 10:45 am
in Conference Room B of the Legislative Council Building

Members present : Dr Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon Miriam LAU Kin-ye, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Ronny TONG Ka-wah, SC
Hon Paul TSE Wai-chun

Member absent : Hon LAU Kong-wah, JP

Public Officers attending : Ms Adeline WAN
Senior Assistant Solicitor General
Department of Justice

Ms Betty CHEUNG
Senior Assistant Law Draftsman
Department of Justice

Mr Christopher NG
Senior Government Counsel
Department of Justice

Ms Ida CHAN
Senior Government Counsel
Department of Justice

Mr Bernard YUE
Government Counsel
Department of Justice

Ms Karmen KWOK
Government Counsel
Department of Justice

Clerk in attendance : Miss Mary SO
Chief Council Secretary (3) 3

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Ms Maisie LAM
Senior Council Secretary (2) 5

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I. Meeting with the Administration

[LC Paper Nos. CB(2)1852/10-11(01), CB(2)1900/10-11(01), CB(2)1914/10-11(01), CB(2)1938/10-11(01) and (02)]

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

Proposed section 7AA - Definitions (Part II AAA)

2. Senior Assistant Solicitor General ("SASG") explained that the proposed amendment to the definition of "business" in the proposed section 7AA(1) was to address the previous comments raised by the American Chamber of Commerce in Hong Kong in this regard as detailed in its submission (LC Paper No. CB(2)2260/09-10(02)). The wording "in providing services" was used to reflect the partial shield limited liability partnership "LLP" model adopted in the Bill. As for the newly added definition for "distribution", SASG explained that the addition was to make clear what "distribution" meant in the context of clawback under the proposed section 7AI. The proposed definition was modelled on the definitions of "distribution" found in the LLP legislation of various Canadian jurisdictions.

Proposed section 7AC – Effect on liabilities of partners in limited liability partnership

Proposed section 7AC(3)(a)

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3. Noting that "default" was defined in the proposed section 7AA(1) as any negligent or wrongful act or omission, or any misconduct, Ms Audrey EU enquired whether failure of attempts to remedy another partner's default would be considered as an omission and fell within the definition of "default". Ms EU was concerned that if such failure would constitute a default, the imposition of a time reference point (i.e. at the time of the occurrence of the default) in the proposed section 7AC(3)(a) was not in the best interest of consumers, as the protection under the proposed section 7AC(1) might still be available to a partner in an LLP if the partner knew of the default after, but not at the time of, its occurrence and did not take reasonable steps to remedy the default.

4. Ms Miriam LAU and Mr Paul TSE considered it appropriate to impose a specific point of time in respect of a partner's knowledge of the default. They pointed out that in legal practice, a default would ultimately be made known to all innocent partners of an LLP. The removal of the proposed time reference point from the proposed section 7AC(3)(a) would result in a situation that no partners would be afforded the protection under the proposed section 7AC(1), thus defeating the purpose of the introduction of LLP.

5. Noting that the Administration would move a Committee Stage amendment ("CSA") to remove the constructive knowledge element from the proposed section 7AC(3)(a), Mr Albert HO asked whether the supervising or managing partner would be entitled to the protection under the proposed section 7AC(1) if he or she was not named in the notice referred to in the proposed section 7AGA(2) as a designated partner for that matter.

6. SASG said that it was the policy intent of the Bill to allow an innocent partner of an LLP to rely on the proposed section 7AC(1) for protection if he or she did not have actual knowledge of the default at the time it was committed. However, the proposed section 7AC(1) was not intended to change the common law position with respect to the general principles of negligence and the general law of tort. In the light of this, what would constitute a default and whether the supervising or managing partner had to shoulder personal liability because of the supervising or managing partner's negligence or default were matters to be decided by the court.

Proposed new sections 7AC(2A), 7AC(2B) and 7AGA(1)

7. Noting that the Administration would propose a CSA to add a new subsection (2A) to the proposed section 7AC, Assistant Legal Advisor to

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the Bills Committee ("ALA7") pointed out that "(2A)" should be added after "subsections" in the proposed section 7AC(1). Senior Assistant Law Draftsman ("SALD") agreed to revise the draft CSA to amend the provision accordingly.

8. The Chairman considered it not necessary for the Administration to move a CSA to add a new subsection (2B) to the proposed section 7AC as it was sufficiently clear that the provision would not exonerate any members of an LLP from their common law liability. Mr Paul TSE agreed with the Chairman's view. Mr Albert HO and Ms Audrey EU expressed no strong view in this regard.

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ALA7

9. SASG explained that the purpose of adding the new subsection (2B) to the proposed section 7AC was to eliminate any doubt on the liability of a defaulting partner in an LLP. The Chairman requested the Administration and ALA7 to review whether there was a need to move a CSA to add the new subsection (2B) to the proposed section 7AC solely for the purpose of clarity.

Proposed section 7AD – Advance notice to Society in respect of limited liability partnership

10. SASG said that the proposed section 7AD(1) required that the Law Society of Hong Kong ("LS") be notified at least seven days before the establishment of an LLP. However, a foreign firm which was constituted as an LLP when it commenced business in Hong Kong was not required to give a separate notice under the proposed section 7AD(1) because it would have already provided the relevant particulars to LS for prior approval of its registration under section 39B of the Legal Practitioners Ordinance (Cap. 159) ("the principal Ordinance").

11. Ms Audrey EU suggested that for clarity, the Administration should consider adding a cross-reference to section 39B of the principal Ordinance in the proposed section 7AD(3).

12. On the consequences of failing to comply with the notification requirements imposed under the proposed sections 7AD(1) and (2), SASG advised that non-compliance would result in disciplinary consequence and, as specified in clause 6 of the Bill which sought to amend the Schedule to the Summary Disposal of Complaints (Solicitors) Rules (Cap. 159AD), an LLP which failed to comply with the proposed section 7AD(1) or 7AD(2) might be subject to a fixed penalty of \$10,000 and a fixed investigation cost of \$15,000. SASG clarified that an LLP would not lose LLP protection if the firm failed to comply with the requirements imposed

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under the proposed section 7AD(1).

13. In response to Ms Miriam LAU's enquiry as to whether LS would acknowledge receipt of the written notice submitted by a firm for the purpose of the proposed section 7AD(1) or 7AD(2), SASG advised that there was no such requirement under the Bill, adding that the establishment of an acknowledgement mechanism would fall within the autonomy of LS.

Proposed section 7AE – Name of limited liability partnership

Proposed section 7AF – Notification of name by limited liability partnership

14. Taking into consideration that members of the public might not be familiar with the abbreviation "LLP", Ms Miriam LAU expressed concern about the option provided under the proposed section 7AE that an LLP could choose to include the abbreviation "LLP" or "L.L.P.", instead of the words "Limited Liability Partnership", as part of its English name. SASG said that it was common practice in overseas jurisdictions that solicitor firms could use the abbreviation to indicate their LLP status. After the coming into effect of the Bill, it was intended that publicity programmes would be launched to educate the public on the business nature of LLPs.

15. Ms Audrey EU noted that an LLP which failed to comply with the naming and notification requirements imposed under the proposed section 7AE(a), 7AE(b), 7AF(1) or 7AF(2) would be subject to disciplinary sanction (which might be in the form of a fixed penalty of \$10,000 and a fixed investigation cost of \$15,000). Ms EU considered that the proposed sanction in the form of disciplinary sanction (which might be in the form of fixed penalty and fixed investigation cost), instead of a loss of the LLP protection, would undermine the interest of consumers.

16. Mr Paul TSE held a different view, pointing out that the interest of consumers had been safeguarded under the proposed section 7AC(4)(b) which provided that the protection under the proposed section 7AC(1) would only be available to a partner if the client knew or ought reasonably to have known that the partnership was an LLP at that time, among others.

17. SASG said that having taken into account the view of LS that a firm should not lose its LLP status due to its failure in complying with certain formalities, the Administration considered that the proposed disciplinary sanction (which might be in the form of fixed penalty and fixed investigation cost) was adequate.

Proposed section 7AG – Notice by limited liability partnership to existing clients

18. SASG advised that to safeguard the interest of existing clients, a law firm had to notify all its existing clients within 30 days after it became an LLP. In the light of this, it was necessary to define who would be regarded as existing clients for the purpose of the proposed section 7AG. To bring out this policy intention more explicitly in the Bill, the Administration would move a CSA to amend the definition of "existing client (現有客戶)" in the proposed section 7AG(6) to read as "a person who retains or employs the firm at the time it becomes a limited liability partnership". With the proposed amendment to the definition of "existing client" in the proposed section 7AG(6), the definition of "client (客戶)" in the proposed section 7AA(1) was no longer required. The Administration would move a CSA to remove the definition of "client" in the provision.

19. ALA7 drew members' attention to section 2 of the principal Ordinance which provided that, except in relation to non-contentious business, "client (當事人)" included "any person who as principal or on behalf of another person retains or employs, or is about to retain or employ, a solicitor, and any person who is or may be liable to pay a solicitor's costs". While agreeing that there was a need to define "existing client" for the purpose of the proposed section 7AG, ALA7 expressed concern over the possible ambiguity of the revised drafting of the proposed section 7AG(6) as to whether those clients who had retained or employed the law firm before it became an LLP and remained as its clients at the time the firm became an LLP could be regarded as existing clients.

20. SASG explained that for a client who had retained or employed the law firm for a particular matter, if the file for that matter had already been closed before the firm became an LLP, that matter was dealt with during the time when the firm was a general partnership. In that case, the client would not be considered an "existing client" within the meaning of the proposed section 7AG(6). For a client to be considered an "existing client", he or she had to have an on-going matter being dealt with by the firm at the time when the firm was converted from a general partnership to an LLP.

21. The Chairman, Mr Paul TSE and Ms Audrey EU held the view that, given that the term "client" had already been defined in the principal Ordinance, the original drafting of the proposed section 7AG(6), i.e. "a person who is a client of the firm at the time the firm becomes a limited liability partnership", sufficed to reflect the policy intention of the Administration mentioned in paragraph 18 above. Ms EU further said that

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the Chinese rendition "當事人" as provided in the principal Ordinance should be adopted for "client" under the Bill for consistency.

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22. SALD undertook to revise the drafting of the proposed section 7AG(6) to make the meaning of "existing client" clearer and, given that the new Part IIAAA would no longer have a separate definition of "client" but would apply the definition of "client" in the principal Ordinance, to replace the Chinese rendition of the term "client" (客戶) with "當事人" throughout the Bill to achieve consistency with the principal Ordinance.

23. Ms Audrey EU enquired whether an innocent partner of an LLP would be afforded the protection under the proposed section 7AC(1) if a past client pleaded a claim for negligence committed by the firm when it was operating under general partnership.

24. The Chairman asked whether the partners would be protected from liability arising from a claim against the partnership by an existing client who had not been notified by the firm of its change from general partnership to LLP status.

25. SASG replied in the negative to both questions, pointing out that it was provided under the proposed sections 7AC(4)(a) and (b) that a partner might be protected from the liability arising from a claim made by a client only if the partnership was an LLP 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 an LLP at that time. SASG further said that a failure to inform all the existing clients of its change from general partnership to LLP status would render the law firm liable to disciplinary actions set out in sections 9A(1A) and 9AB of the principal Ordinance, which could be in the form of a fixed penalty of \$10,000 and a fixed investigation cost of \$15,000 as specified in clause 6 of the Bill.

II. Any other business

26. The Chairman reminded members that the next meeting of the Bills Committee had been scheduled for 10 June 2011 at 8:30 am.

27. There being no other business, the meeting ended at 12:45 pm.

**Proceedings of the meeting of the
Bills Committee on Legal Practitioners (Amendment) Bill 2010
on Thursday, 2 June 2011, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000503	Chairman	Opening remarks Letter dated 24 May 2011 from Hon LAU Kong-wah concerning the new defence for distributions made under the proposed section 7AI(1) (LC Paper No. CB(2)1900/10-11(01)) and the Administration's response (LC Paper No. CB(2)1938/10-11(01))	
000504 - 000601	Chairman Admin	The Administration's confirmation in response to the Chairman that it had issued a set of its proposed draft Committee Stage amendments ("CSAs") to the Legal Practitioners (Amendment) Bill 2010 ("the Bill") (LC Paper No. CB(2)1914/10-11(01)) to The Law Society of Hong Kong ("LS") for comments and LS had yet to provide its response on the day of the meeting	
000602 - 000913	Chairman Admin	Clause-by-clause examination of the Bill and examination of the CSAs proposed by the Administration to the Bill (The Bill and LC Paper Nos. CB(2)1852/10-11(01) and CB(2)1938/10-11(02)) <u>Clause 1 – Short title</u> <u>Clause 2 – Commencement</u> <u>Clause 3 – Section 2 amended (Interpretation)</u> Members raised no questions on clauses 1 to 3	
000914 - 001731	Chairman Admin	<u>Clause 4 – Part IIAAA added</u> <u>Part IIAAA – Limited Liability Partnerships</u> <i>7AA – Definitions (Part IIAAA)</i> <i>7AB – Limited liability partnership</i> Members raised no questions on the proposed section 7AA and the proposed CSA to the section; and the proposed section 7AB	
001732 - 003019	Chairman Admin Ms Miriam LAU	<i>7AC – Effect on liabilities of partners in limited liability partnership</i> Enquiries about whether other jurisdictions adopting limited liability partnership ("LLP") had the same practice that interest of an innocent partner in the partnership property would not be protected from the liability arising from a claim made by a client Members agreed that the proposed CSA to add new subsections (2A) and (2B) to the proposed section 7AC should be examined together with the proposed CSA to add a new section 7AGA	

Time marker	Speaker	Subject	Action required
003020 - 003328	Chairman Admin Ms Audrey EU	<i>7AD – Advance notice to Society in respect of limited liability partnership</i> Ms EU's proposal to add a cross-reference to section 39B of the Legal Practitioners Ordinance (Cap. 159) in the proposed section 7AD(3) for clarity	
003329 - 003549	Ms Audrey EU Chairman Admin	Consequences of failing to comply with the notification requirements imposed under the proposed sections 7AD(1) and (2)	
003550 - 003814	Chairman Admin Ms Miriam LAU	Mechanism to be put in place by LS to acknowledge receipt of the written notices submitted by the law firms for the purpose of the proposed section 7AD(1) or 7AD(2)	
003815 - 005014	Ms Audrey EU Chairman Mr Paul TSE Ms Miriam LAU Admin Mr Albert HO	<i>7AC – Effect on liabilities of partners in limited liability partnership</i> The imposition of a time reference point in the proposed section 7AC(3)(a) in respect of a partner's actual knowledge of a default	
005015 - 005155	Mr Albert HO Chairman Admin	Liability of supervising partner who was not named in the notice referred to in the proposed section 7AGA(2) as a designated partner for the matter	
005156 - 005730	Chairman Admin Ms Audrey EU Mr Paul TSE	<i>7AE – Name of limited liability partnership</i> <i>7AF – Notification of name by limited liability partnership</i> Consequences of failing to comply with the naming and notification requirements imposed under the proposed sections 7AE(a), 7AE(b), 7AF(1) and 7AF(2)	
005731 - 005910	Chairman Ms Miriam LAU Admin	The option provided under the proposed section 7AE that an LLP could choose to include the abbreviation "LLP" or "L.L.P.", instead of the words "Limited Liability Partnership", as part of its English name	
005911 - 010334	Mr Albert HO Admin Chairman	<i>7AC – Effect on liabilities of partners in limited liability partnership</i> Liability of managing partners in an LLP	
010335 - 010555	Chairman Admin Mr Paul TSE	<i>7AF – Notification of name by limited liability partnership</i> The Administration advised that it had received no adverse comments from LS on the notification requirements imposed under the provision	
010556 - 012826	Chairman Admin ALA7 Mr Paul TSE Ms Audrey EU	<i>7AG – Notice by limited liability partnership to existing clients</i> The Administration was requested to revise the drafting of the proposed section 7AG(6) in the proposed CSA to make the meaning of "existing client" clearer and replace the Chinese rendition of the term "client" (客戶) with "當事人" throughout the Bill to achieve consistency	Admin (para. 22 of the minutes refers)

Time marker	Speaker	Subject	Action required
012827 - 013218	Ms Audrey EU Admin Chairman	Consequences of failing to comply with the notification requirements imposed under the proposed sections 7AG(1) and (2)	
013219 - 013259	Mr Paul TSE	The use of the Chinese rendition "客戶" for the term "client" in the proposed section 7AC	
013300 - 013400	Chairman Admin	<i>7AH – Other requirements relating to practice of law firm in rules made under section 73</i> Members raised no questions on the proposed section 7AH and the proposed CSA to it	
013401 - 014622	Chairman Admin Mr Paul TSE Mr Albert HO Ms Audrey EU	<i>7AC(2A), 7AC(2B) and 7AGA(1)</i> The Administration and ALA7 were requested to review whether there was a need to add a new subsection (2B) by CSA to the proposed section 7AC	Admin/ALA7 (para. 9 of the minutes refers)
014623 - 014934	Chairman ALA7 Admin	The Administration was requested to move a CSA to add "(2A)" after "subsections" in the proposed section 7AC(1)	Admin (para. 7 of the minutes refers)
014935 - 015919	Chairman Admin	<i>7AGA – Designated partner for each matter</i> Members agreed to continue to examine the proposed new section 7AGA in the proposed CSA at the next meeting	
015920 - 020037	Chairman	Date of next meeting	