

立法會
Legislative Council

Ref : CB2/BC/2/09

LC Paper No. CB(2)1179/11-12
(These minutes have been seen
by the Administration)

Bills Committee on Legal Practitioners (Amendment) Bill 2010

Minutes of meeting
held on Wednesday, 15 June 2011, at 8:30 am
in Conference Room B of the Legislative Council Building

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

Action

I. Meeting with the Administration

[LC Paper Nos. CB(2)1852/10-11(01), CB(2)1914/10-11(01),
CB(2)1938/10-11(02), CB(2)2056/10-11(01) and
CB(2)2070/10-11(01)]

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

Liability of designated partner

2. The Bills Committee noted the letter dated 14 June 2011 from the Law Society of Hong Kong ("LS") setting out its position on the latest Committee Stage amendments ("CSAs") proposed by the Administration to the Legal Practitioners (Amendment) Bill 2010 ("the Bill") (LC Paper No. CB(2)2070/10-11(01)). It was noted that LS would make a detailed submission in due course to explain why it was not in a position to support the Bill as amended by the latest draft CSAs.

3. Senior Assistant Solicitor General ("SASG") advised that subsequent to the last meeting, the Administration had further explained to LS its position on the liability of designated partner, including the arrangement provided under the proposed section 7AC(2) that the protection from liability available to a partner who was not a designated partner for the matter would be subject to any written agreement between the partners to the contrary. However, LS maintained its strong view that in the absence of any proof of negligence on the part of a designated partner, the partner should not lose the entitlement to limited liability protection solely by reason of being named in the written notice to the client as the designated

Action

partner for the matter. In LS' view, such was contrary to the common law principle with respect to the proof of negligence against an individual. SASG said that the Administration had already explained to LS that if a limited liability partnership ("LLP") were not liable for any negligence, the designated partner would not be held so liable.

4. Mr LAU Kong-wah suggested that the Bills Committee should meet with LS before deciding on the way forward. Members agreed. Pointing out that the Bill was introduced after LS had long been urging the introduction of the LLP business model for solicitors' practices, Ms Audrey EU considered that much of the meaning of passing the Bill might be lost if it did not have support from LS.

5. In her capacity as representative of the legal constituency in the Legislative Council, the Chairman commented that the position taken by LS so far was more on promoting the competitiveness of the large law firms by ensuring that the regulatory regime for LLP would be on par with that of most overseas jurisdictions. It was against this background that LS would come to the view that it would not support the Bill as amended by the latest draft CSAs. However, the small solicitors' firms might only request for a legal infrastructure that an innocent partner would not have to become jointly and severally liable for others' default solely by reason of being a partner in the same firm so as to attract more talents. In her view, the focus of discussion of the Bills Committee should be on whether sufficient safeguards for consumers were provided in tandem with the introduction of an alternative business model for solicitors' practices.

6. Mr Paul TSE remarked that from the perspective of small law firms, the existing statutory professional indemnity limit of \$10 million per claim which would apply equally to LLPs would be sufficient for indemnity protection of individual consumers, but he considered that the option of increasing the professional indemnity limit for LLPs could be explored. Holding the view that whether LS was in support of the Bill was important, he considered that efforts should be made to explore whether measures other than excluding the designated partner from limited liability protection could be put in place to safeguard consumer interest on the one hand and allay LS's concern on the other hand.

Defence for distributions made after financial assessment

7. Referring to the concern raised by some members at the last meeting that the threshold for the defence for distributions made after financial assessment was too low and their suggestion to raise the reasonable diligence defence in the proposed new section 7AI(1A)(b) to a due diligence defence in order to better safeguard consumer interest, SASG advised that

Action

the test of diligence was an objective test. While the literal meaning of due diligence appeared to impose a higher threshold for the defence, what constituted due diligence and reasonable diligence would have to depend on the facts of each case. SASG further said that it was up to members to decide on the diligence requirement for the defence provisions.

8. Mr Paul TSE held the view that introducing a due diligence defence under the proposed new section 7AI(1A)(b) might not be conducive to enhancing the legal industry's competitiveness and Hong Kong's status as a legal services centre. He considered it acceptable to use reasonable diligence for the defence of distributions made after financial assessment. Ms Audrey EU said that she had no strong view on whether due diligence or reasonable diligence should be used as the defence for distributions made after financial assessment.

9. As regards the suggestion of members that LS should be required to issue a Practice Direction on the assessment referred to in the proposed new section 7AI(1A) in respect of whether the financial position of the LLP could meet the liquidity-asset test after the distribution, SASG advised that the informal response of LS was that the present discussion should be focused on the principal issue of LS' objection to imposing liability on designated partners at this stage, and that before the principal issue was resolved, LS would not consider the issue of issuing the Practice Direction.

10. Mr LAU Kong-wah was concerned that if guidelines for compliance of the diligence requirement in the primary legislation would be issued by LS in future, the requirements listed therein might not necessarily be able to fully reflect the diligence requirement. He considered that the Legislative Council should have sight of the draft guidelines. SASG advised that the guidelines to be issued by LS would have to follow the provisions in the principal legislation. If the due diligence requirement were eventually used in the principal legislation, LS would have to provide guidelines to its members on the steps to be taken to comply with the due diligence requirement. In court proceedings where a partner of an LLP wished to plead a defence under the proposed new section 7AI(1A), he/she had to prove to the court how he/she had complied with the due diligence requirement under the principal legislation. If the relevant LS' guidelines fell short of reflecting the requirements in the principal legislation, the court might rule that a partner of an LLP had not complied with the due diligence requirement even if the partner had followed LS' guidelines.

Action

II. Way forward

11. Members agreed to consider LS's submission on the latest CSAs proposed by the Administration to the Bill, when the submission was made as indicated in its letter dated 14 June 2011, before deciding on the way forward. A meeting would be convened in July 2011 to consider the submission and the Administration's response when available. LS would be invited to indicate whether it would like to make oral representations before the Bills Committee.

(Post-meeting note: The meeting was subsequently scheduled for 27 July 2011 at 4:30 pm.)

12. There being no other business, the meeting ended at 9:10 am.

Council Business Division 2
Legislative Council Secretariat
23 February 2012

**Proceedings of the meeting of the
Bills Committee on Legal Practitioners (Amendment) Bill 2010
on Wednesday, 15 June 2011, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000406	Chairman	Opening remarks The letter dated 14 June 2011 from the Law Society of Hong Kong ("LS") setting out its position on the latest Committee Stage amendments proposed by the Administration to the Legal Practitioners (Amendment) Bill 2010 (LC Paper No. CB(2)2070/10-11(01))	
000407 - 000926	Admin Chairman	The outcome of discussion between the Administration and LS on the issues of the liability of designated partner and the defence for distributions made after financial assessment	
000927 - 001109	Chairman Admin	The view of the Administration on whether "due diligence" or "reasonable diligence" should be used in the defence for distributions made after financial assessment under the proposed new section 7AI(1A)(b) in the draft CSAs	
001110 - 001621	Mr LAU Kong-wah Admin Chairman Mr Paul TSE Ms Audrey EU	Discussion on the diligence requirement for the defence provisions under the proposed new section 7AI(1A) in the draft CSAs	
001622 - 002743	Ms Audrey EU Chairman Admin Mr LAU Kong-wah Mr Paul TSE	Discussion on LS's position on the issue of liability of designated partners and the way forward	
003640 - 003800	Chairman	Concluding remarks	