

**Bills Committee on
Legal Practitioners (Amendment) Bill 2010 (“Bill”)**

**Professional Indemnity Insurance Requirements on a Limited
Liability Partnership (“LLP”) in Various Overseas Jurisdictions**

Purpose

This paper provides information on the professional insurance requirements on an LLP in various overseas jurisdictions, including, where available, information on the difference in the requirements as between an LLP and a general partnership (“**Requested Information**”).

The Requested Information

2. At the BC meeting on 9 March 2012, Members asked for the Requested Information to facilitate their further discussions on the appropriate clawback period for s7AI of the Bill. The Administration has now gathered the Requested Information on eleven jurisdictions and set it out in the table at **Annex** for Members’ consideration.

Brief Analysis and Conclusion

3. Among the eleven jurisdictions studied, apparently only two jurisdictions do not draw the distinction between general partnerships and LLPs for the purpose of professional indemnity insurance (i.e. Colorado and Saskatchewan). In seven other jurisdictions (Alberta, California, Malaysia, Manitoba, Nova Scotia, Ontario and Texas), there are specific requirements for LLPs. In Singapore and the United Kingdom, higher insurance requirements are imposed on LLPs than general partnerships. In Singapore, it is SG\$4 million for LLPs and SG\$1 million for general partnerships. In United Kingdom, it is at least £3 million per claim for LLPs and £2 million per claim for general partnerships.

4. In sum, in the jurisdictions included in the above survey, it appears that specific or additional professional indemnity insurance requirements are generally imposed on LLPs over general partnerships.

**Department of Justice
March 2012**

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**Professional Indemnity Insurance Requirements for
General Partnerships and Limited Liability Partnerships (“LLPs”)
in Overseas Jurisdictions**

(A) Jurisdictions with additional professional indemnity insurance requirements for LLPs as compared with general partnerships

Jurisdiction	Citation	Professional Indemnity Insurance Requirements
Singapore	Legal Profession (Professional Indemnity Insurance) Rules	<u>General Partnerships</u> SG\$ 1 million per claim¹ <u>LLPs</u> SG\$ 4 million per claim²
The United Kingdom	Solicitors Regulation Authority Indemnity Insurance Rules 2011	<u>General Partnerships</u> At least £2 million per claim³ <u>LLPs</u> At least £3 million per claim³

¹ The cover required for an advocate and solicitor practising in a law firm under Rule 3(1)(a) and Item 1(a) of the Schedule to the Rules.

² SG\$2 million per claim being the cover required for each advocate and solicitor practising in an LLP under Rule 3(1)(a) and Item 1(c) of the Schedule to the Rules; and SG\$2 million per claim being the additional cover required for an LLP as a whole under Rule 3(2A) and Item 3 of the Schedule to the Rules.

³ Para. 2.1 of Appendix 1 to the Rules provides:
“The sum insured for any one claim (exclusive of defence costs) must be, where the insured firm is a relevant recognised body or a relevant licensed body (in respect of its regulated activities), at least £3 million, and in all other cases, at least £2 million.” (Emphasis added)

“Relevant licensed body” and “relevant recognized body” are defined in Appendix 4 to the Rules as excluding “a partnership in which none of the partners is a limited company, an LLP or a legal person whose members have limited liability”.

“Partnership” is defined in Appendix 4 to the Rules as “an unincorporated body in which persons are or are held out as partners and does not include a body incorporated as an LLP save that in the [minimum terms and conditions of a policy of qualifying insurance] means an unincorporated insured firm in which persons are or are held out as partners and does not include an insured firm incorporated as an LLP”. (Emphasis added)

(B) Jurisdictions with specific professional indemnity insurance requirements for LLPs

Jurisdiction	Citation	Professional Indemnity Insurance Requirements
Alberta	Alberta Partnership Act ⁴	As provided in Rule 159.4 in Part 8.1 of the Rules of the Law Society of Alberta. ⁵
California	California Corporations Code	As provided in S. 16956(a)(2)(A)&(B) of the California Corporations Code. ⁶

⁴ S. 82(4)(b)(i) of the *Alberta Partnership Act* provides:
“An application [for registration as Alberta LLP] must be in a format acceptable to the Registrar and must ...
(b) be accompanied with a statement from a person who is authorized by the governing body of the applicable eligible profession to provide the statement, certifying that
(i) the partners are covered by liability insurance or other protection against professional liability within the meaning of section 12 in the form and amount that is required for that purpose by regulation, rule or bylaw under the Act that regulates the eligible profession,”

⁵ Rule 159.4 in Part 8.1 of the *Rules of the Law Society of Alberta* provides:
“A member of the Society who is a partner in an LLP, or who holds shares in a professional corporation that is a partner in an LLP, must have and maintain professional liability insurance providing coverage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate.”

⁶ S. 16956(a)(2)(A)&(B) of the *California Corporations Code* provides:
“(2) For claims based upon acts, errors, or omissions arising out of the practice of law, a registered limited liability partnership or foreign limited liability partnership providing legal services shall comply with one, or some combination, of the following:

(A) Each registered limited liability partnership or foreign limited liability partnership providing legal services shall maintain a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims; however, the total aggregate limit of liability under the policy or policies of insurance for partnerships with five or fewer licensed persons shall not be less than one million dollars (\$1,000,000), and for partnerships with more than five licensees rendering professional services on behalf of the partnership, an additional one hundred thousand dollars (\$100,000) of insurance shall be obtained for each additional licensee; however, the maximum amount of insurance is not required to exceed seven million five hundred thousand dollars (\$7,500,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this subparagraph.”

(B) Each registered limited liability partnership or foreign limited liability partnership providing legal services shall maintain in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising

Jurisdiction	Citation	Professional Indemnity Insurance Requirements
Malaysia	Malaysia Limited Liability Partnerships Act	As provided in s. 8(b)(ii) of the Malaysia Limited Liability Partnerships Act. ⁷
Manitoba	Manitoba Partnership Act ⁸	As provided in Rule 3-48 of the Law Society Rules of Manitoba. ⁹
Nova Scotia	Nova Scotia Partnership Act	As provided in S. 51(1)(c) of the Nova Scotia Partnership Act ¹⁰

out of all claims; however, the maximum amount of security for partnerships with five or fewer licensed persons shall not be less than one million dollars (\$1,000,000), and for partnerships with more than five licensees rendering professional services on behalf of the partnership, an additional one hundred thousand dollars (\$100,000) of security shall be obtained for each additional licensee; however, the maximum amount of security is not required to exceed seven million five hundred thousand dollars (\$7,500,000).

- ⁷ S. 8(b)(ii) of the *Malaysia Limited Liability Partnerships Act* provides:
 “A limited liability partnership may be formed for the purpose of carrying on a professional practice which partners shall –
 (b) have in force professional indemnity insurance cover for an amount of not less than the amount -
 ...
 (ii) in the case where the professional practice is governed by a governing body as specified under the third column of the First Schedule, approved by the Registrar after consultation with the governing body.”
- ⁸ S. 69(1)(c) of the *Manitoba Partnership Act* provides:
 “A partnership or two or more persons who have agreed to carry on business in a limited liability partnership may register as a Manitoba limited liability partnership under *The Business Names Registration Act* if
 ...
 (c) the governing body of the profession or a regulation under this Act requires members who are partners in limited liability partnerships to maintain a minimum amount of liability insurance.”
- ⁹ Rule 3-48 of the *Law Society Rules of Manitoba* provides:
 “A member of the society who is a partner in a Manitoba LLP, or who owns voting shares in a law corporation that is a partner in the LLP, must:
 (a) have and maintain professional liability insurance that provides coverage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate; and
 (b) be a practising lawyer as defined in Part 1 of the Act.”
- ¹⁰ S. 51(1)(c) of the *Nova Scotia Partnership Act* provides:
 “A partnership or two or more persons who have agreed to carry on business in a limited liability partnership may register as a Nova Scotia LLP under the Partnerships and Business Names Registration Act if

Jurisdiction	Citation	Professional Indemnity Insurance Requirements
Ontario	Ontario Partnerships Act	As provided in s. 44.2(b) of the Ontario Partnerships Act. ¹¹
Texas	Texas Revised Civil Statutes	As provided in Article 6132b-3.08(d)(1)(A)&(B) of the Texas Revised Civil Statutes. ¹²

...

- (c) the governing body of the profession or a regulation under this Act requires members who are partners in limited liability partnerships to maintain a minimum amount of liability insurance.”

¹¹ S. 44.2(b) of the *Ontario Partnerships Act* provides:

“A limited liability partnership may carry on business in Ontario only for the purpose of practising a profession governed by an Act and only if,

...

- (b) the governing body of the profession requires the partnership to maintain a minimum amount of liability insurance;”

¹² Article 6132b-3.08(d)(1)(A)&(B) of the *Texas Revised Civil Statutes* provides:

“(d) Insurance or Financial Responsibility.

(1) A registered limited liability partnership must:

- (A) carry at least \$100,000 of liability insurance of a kind that is designed to cover the kinds of errors, omissions, negligence, incompetence, or malfeasance for which liability is limited by Subsection (a)(2); or
- (B) provide \$100,000 of funds specifically designated and segregated for the satisfaction of judgments against the partnership based on the kinds of errors, omissions, negligence, incompetence, or malfeasance for which liability is limited by Subsection (a)(2) by:
 - (i) deposit in trust or in bank escrow of cash, bank certificates of deposit, or United States Treasury obligations; or
 - (ii) a bank letter of credit or insurance company bond.”

(C) Jurisdictions with no apparent distinction between general partnerships and LLPs for the purpose of professional indemnity insurance

Jurisdiction	Citation	Professional Indemnity Insurance Requirements
Colorado	Colorado Rules of Civil Procedure	As provided in Rule 265(a)(3)(C) of the Colorado Rules of Civil Procedure. ¹³
Saskatchewan	Rules of the Law Society of Saskatchewan	As provided in Rule 605 of the Rules of the Law Society of Saskatchewan (Form A-5 to the Rules shows an indication of the minimum coverage for each practising member). ¹⁴

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¹³ Rule 265(a)(3)(C) of the *Colorado Rules of Civil Procedure* provides, “(C) **Limits of Coverage.** The professional liability insurance shall be in an amount for each claim of at least the lesser of \$100,000 multiplied by the number of attorneys who render legal services through the professional company or \$500,000. If the policy or policies for the professional liability insurance provide for an aggregate top limit of liability per year for all claims, the top limit shall not be less than the lesser \$300,000 multiplied by the number of attorneys who render legal services through the professional company or \$2,000,000.”

¹⁴ Paragraph 605(1) of the *Rules of the Law Society of Saskatchewan* provides: “....., each member shall in each year pay to SLIA a liability insurance assessment in the amount fixed by the Benchers.”

Paragraph 2 of Form A-5 (Application for Exemption from Professional Liability - Claims Fund Assessment) to the *Rules of the Law Society of Saskatchewan* provides:

“I have a current professional liability coverage in the above jurisdiction of at least \$1,000,000.00 per occurrence which coverage will provide protection for any services I may perform within Saskatchewan. (**Attach certificate of insurance**)”