

LEGAL PRACTITIONERS (AMENDMENT) BILL 2010

COMMITTEE STAGE

Amendments to be moved by the Secretary for Justice

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|--|
| 3 | <p>In the Chinese text, in the proposed definition of “合夥”, by deleting “有限責任合夥” and substituting “有限法律責任合夥”.</p> |
| New | <p>By adding –</p> <p>“3A. Section 6 amended (Practising certificates – solicitors)</p> <p>Section 6(3) is amended by repealing “section 73A” and substituting “section 73A (other than subsection (3)(fa))”.</p> <p>3B. Section 7 amended (Qualifications for practising as solicitor)</p> <p>Section 7(d) is amended by repealing “section 73A” and substituting “section 73A (other than subsection (3)(fa))”.</p> |
| 4 | <p>In the proposed Part IIAAA, in the Chinese text, in the heading, by deleting “有限責任合夥” and substituting “有限法律責任合夥”.</p> |
| 4 | <p>In the proposed Part IIAAA, in section 7AA –</p> <ul style="list-style-type: none">(a) in subsection (1), by deleting the definition of “business”;(b) in subsection (1), in the definition of “limited liability partnership”, by deleting “(有限責任合夥)” and substituting “(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.”;(c) in subsection (1), by deleting the definition of “client”;(d) in subsection (1), by adding –
““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;”;

- (e) in subsection (2), in the Chinese text, by deleting “有限責任合夥” (wherever appearing) and substituting “有限法律責任合夥”.

4 In the proposed Part IIAAA, in the Chinese text, in section 7AB –

- (a) in the heading, by deleting “有限責任合夥” and substituting “有限法律責任合夥”;
- (b) by deleting “有限責任合夥” and substituting “有限法律責任合夥”.

4 In the proposed Part IIAAA, by deleting section 7AC and substituting –

**“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 from the provision of professional services by the partnership as a limited liability partnership, as a result of 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;
- (c) the partnership had complied with section 7ACA;

and

- (d) the partnership had complied with section 7ACB(2) for the matter in respect of which the default occurred.

7ACA. Top-up insurance requirement for limited liability partnership

- (1) In this section –

“Indemnity” (彌償) has the same meaning as it has in the Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg. M);

“prescribed amount” () means the maximum amount of the Indemnity specified in subparagraph (1) of paragraph 2 of Schedule 3 to the Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg. M) without reducing that amount for any deductibles referred to in subparagraph (2) of that paragraph.

- (2) Every limited liability partnership that is a Hong Kong firm must have in existence, in addition to the Indemnity, a policy of insurance –

- (a) under which the partnership is entitled to be indemnified to the specified extent against any loss arising from any claim in respect of any default; and

- (b) which complies with any indemnity rules made under section 73A(3)(fa).

- (3) A reference to indemnifying against a loss to the specified extent in subsection (2) means indemnifying against the part of the loss that exceeds the prescribed amount up to an amount not less than \$10,000,000 in respect of any one claim.

- (4) Every limited liability partnership that is a foreign firm must have in existence a policy of insurance –

- (a) under which the partnership is entitled to be indemnified to the specified extent against any loss

arising from any claim in respect of any default;
and

- (b) which complies with any indemnity rules made under section 73A(3)(fa).

(5) A reference to indemnifying against a loss to the specified extent in subsection (4) means indemnifying against the part of the loss that exceeds the limit of insurance coverage required under section 6 of the Foreign Lawyers Registration Rules (Cap. 159 sub. leg. S) up to an amount not less than \$10,000,000 in respect of any one claim.

(6) A policy of insurance maintained by a partnership under subsection (2) or (4) must not be subject to any limit as to the amount of liability of an insurer for claims in the aggregate or as to the number of claims.

(7) The Council may, subject to the prior approval of the [], by notice published in the Gazette amend subsections (3) and (5) by substituting another amount that is not less than \$10,000,000 for the amount in each of those subsections.

7ACB. 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) subject to paragraph (a), throughout the time that the matter is handled by the partnership, keep the client informed of the identity of at least one

overall supervising partner for the matter.

(3) During the period when a limited liability partnership is handling a matter for a client or after that period, 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;
- (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.

7ACC. 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.

7ACD. 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.

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

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

- (a) the partner is not, separately, a proper party to any proceedings brought 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 against the partnership, continue to be so brought.”.

4 In the proposed Part IIAAA, in section 7AD –

- (a) in the heading, in the Chinese text, by deleting “有限責任合夥” and substituting “有限法律責任合夥”;
- (b) in subsection (1), in the Chinese text, by deleting “有限責任合夥” (wherever appearing) and substituting “有限法律責任合夥”;
- (c) in subsection (1), by deleting paragraphs (c) and (d) and substituting –

- “(c) in the case of a Hong Kong firm –
 - (i) the name of each partner in the partnership;
 - (ii) each address at which the partnership carries on its business;
- (d) in the case of a foreign firm –
 - (i) the name of each partner in the partnership who is ordinarily resident in Hong Kong;
 - (ii) each address at which the partnership carries on its business in Hong Kong;”;
- (d) in subsection (2), in the Chinese text, by deleting “有限責任合夥” (wherever appearing) and substituting “有限法律責任合夥”;
- (e) by deleting subsection (3).

- 4 In the proposed Part IIAAA, in section 7AE –
 - (a) in the heading, in the Chinese text, by deleting “有限責任合夥” and substituting “有限法律責任合夥”;
 - (b) by deleting ““有限責任合夥”” and substituting ““有限法律責任合夥””.
- 4 In the proposed Part IIAAA, in the Chinese text, in section 7AF –
 - (a) in the heading, by deleting “有限責任合夥” and substituting “有限法律責任合夥”;
 - (b) by deleting “有限責任合夥” (wherever appearing) and substituting “有限法律責任合夥”.
- 4 In the proposed Part IIAAA, in section 7AG –
 - (a) in the heading, in the Chinese text, by deleting “有限責任合夥” and substituting “有限法律責任合夥”;
 - (b) in the heading, in the Chinese text, by deleting “客戶” and substituting “當事人”;

- (c) in subsection (1), in the Chinese text, by deleting “有限責任合夥” and substituting “有限法律責任合夥”;
- (d) in subsection (1), in the Chinese text, by deleting “客戶” and substituting “當事人”;
- (e) in subsection (2), in the Chinese text, by deleting “有限責任合夥” and substituting “有限法律責任合夥”;
- (f) in subsection (2), in the Chinese text, by deleting “客戶” and substituting “當事人”;
- (g) in subsection (3), by deleting “partnership with limited liabilities” and substituting “limited liability partnership”;
- (h) in subsection (3), in the Chinese text, by deleting “有限責任合夥” and substituting “有限法律責任合夥”;
- (i) in subsection (5), by deleting “of a law firm are affected by the law firm becoming a limited liability partnership under section 7AC.” and substituting “in a law firm are affected under sections 7AC, 7ACA, 7ACB and 7ACC by the law firm becoming a limited liability partnership.”;
- (j) in subsection (6), by deleting “(現有客戶)” and substituting “(現有當事人)”;
- (k) in subsection (6), in the Chinese text, by deleting “有限責任合夥” and substituting “有限法律責任合夥”;
- (l) in subsection (7), in the Chinese text, by deleting “客戶” (wherever appearing) and substituting “當事人”;
- (m) in subsection (8), in the Chinese text, by deleting “有限責任合夥” and substituting “有限法律責任合夥”.

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In the proposed Part IIAAA, by deleting section 7AH and substituting –

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

Sections 7ACA, 7ACB, 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 73A or contained in The Hong Kong Solicitors' Guide to Professional Conduct.”.

4 In the proposed Part IIAAA, in section 7AI –

(a) by deleting subsection (1) and substituting –

“(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 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.”;
- (b) in subsection (2), by deleting “The partner or assignee who receives the distribution” and substituting “A person who is liable under subsection (1)”;
 - (c) in subsection (2)(a), by deleting “partner or assignee as” and substituting “person as”;
 - (d) in subsection (4), by deleting “(whether actual or contingent)” and substituting “whether actual or contingent”;
 - (e) in subsection (5), in the Chinese text, by deleting “有限責任合夥” and substituting “有限法律責任合夥”;
 - (f) by adding –
 - “(6) No proceedings to enforce a liability under this section may be commenced later than 2 years after the date of the distribution to which the liability relates.”.

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In the proposed Part IIAAA, in the Chinese text, in section 7AJ –

- (a) in the heading, by deleting “有限責任合夥” and substituting “有限法律責任合夥”;
- (b) in subsections (1), (2)(c) and (4), by deleting “有限責任合夥” (wherever appearing) and substituting “有限法律責任合夥”.

- 4 In the proposed Part IIAAA, in the Chinese text, in section 7AK(1), by deleting “有限責任合夥” (wherever appearing) and substituting “有限法律責任合夥”.
- 4 In the proposed Part IIAAA, in section 7AL –
- (a) in subsection (1), in the Chinese text, by deleting “有限責任合夥” and substituting “有限法律責任合夥”;
 - (b) in subsection (2), by deleting “of section” and substituting “of sections 7ACD and”.
- 4 In the proposed Part IIAAA, in section 7AM –
- (a) in the heading, by deleting “**continues to apply**” and substituting “**applies**”;
 - (b) in subsection (1) –
 - (i) by deleting “continue to”;
 - (ii) in the Chinese text, by deleting “有限責任合夥” and substituting “有限法律責任合夥”.
- 5 In the proposed section 73(1)(df), in the Chinese text, by deleting “有限責任合夥” and substituting “有限法律責任合夥”.
- New By adding immediately after clause 5 –
- “5A. Section 73A amended (Indemnity rules)**
- (1) Section 73A(3) is amended by adding –
 - “(fa) may make provision for the better carrying out of section 7ACA;”.
 - (2) Section 73A(3)(h) is amended by adding “, or have been,” after “are being”.
- 6 In the English text, by deleting the cross-heading “*Consequential*

Amendment” and substituting “*Consequential Amendments*”.

New By adding after “*Consequential Amendments*” –

“Solicitors’ Practice Rules

5B. Rule 5 amended (Particulars relating to firms)

(1) Rule 5 of the Solicitors’ Practice Rules (Cap. 159 sub. leg. H) is amended by adding –

“(1B) A principal in a firm that is a limited liability partnership within the meaning of Part IIAAA of the Ordinance must also, within 14 days of commencing the firm, provide the Society with evidence of the firm’s compliance with the insurance requirement in section 7ACA of the Ordinance.”.

(2) Rule 5 is amended by adding –

“(2A) If at any time a firm that is a limited liability partnership within the meaning of Part IIAAA of the Ordinance does not have in existence a policy of insurance as is required under section 7ACA of the Ordinance, a principal in the firm must notify the Society in writing within 14 days of the occurrence of that fact.”.

(3) Rule 5(5) is amended by repealing “particulars under subrules (1), (2) and (3)” and substituting “particulars, evidence and notification under subrules (1), (1B), (2), (2A) and (3)”.

Foreign Lawyers Practice Rules

5C. Section 9 amended (Reporting of particulars)

(1) Section 9 of the Foreign Lawyers Practice Rules (Cap. 159 sub. leg. R) is amended by adding –

“(1B) A principal of a foreign firm that is a limited liability partnership within the meaning of Part IIAAA of

the Ordinance must, within 14 days after the establishment of a place of business by the firm, provide the Society with evidence of the firm's compliance with the insurance requirement in section 7ACA of the Ordinance.”.

(2) Section 9 is amended by adding –

“(2A) If at any time a foreign firm that is a limited liability partnership within the meaning of Part IIAAA of the Ordinance does not have in existence a policy of insurance as is required under section 7ACA of the Ordinance, a principal of the firm must notify the Society in writing within 14 days of the occurrence of that fact.”.

(3) Section 9(6) is amended by repealing “particulars required to be given under subsections (1), (2) and (3)” and substituting “particulars, evidence and notification required to be given under subsections (1), (1B), (2), (2A) and (3)”.