

**Submission to the Bills Committee on Draft Committee Stage Amendments
to the Legal Practitioners (Amendment) Bill 2010 dated 27 May 2011**

1. The Law Society has reviewed the draft committee stage amendments (“CSAs”) to the Legal Practitioners (Amendment) Bill 2010 dated 27 May 2011.

Liability of “designated partner” – section 7AC(2A)(b)

2. The spirit of limited liability partnerships (“LLPs”) is to modernise the legal infrastructure so that an innocent partner will not have to become jointly and severally liable for others’ default solely by reason of being a partner in the same firm.
3. The Law Society acknowledges the need to strike a balance with the preservation of consumer interests. In its previous submissions, it has therefore highlighted the numerous measures adopted for consumer protection.
4. Further, the Law Society has also agreed to the latest proposal of the imposition of a notice requirement on LLPs informing their clients of the name of the responsible partner for the matter.
5. New subsection 7AC(2A)(a) of the CSAs provides that the limitation on liability does not apply unless the partnership complies (throughout the client engagement) with the procedures for designating and notifying the client of a supervising partner (called the “designated partner”). This proposal was discussed previously with the Administration and the Law Society submitted its views on the proposal in its submission dated 1 February 2011:

“(d) it does not support the proposed sanction of the loss of LLP status in respect of the matter for which the LLP fails to issue the required notice;

(e) in the event that the Bills Committee decides otherwise, it strongly urges the Bills Committee to remove the 30-day limit to the effect that if a client knew who the responsible partner was prior to the occurrence of the default, irrespective of whether it was within or beyond 30 days from the acceptance of instructions, the LLP status of the firm remains intact.”

6. The Law Society will not make further submission on the new subsection 7AC(2A)(a).
7. The Law Society is however caught by surprise by the introduction, at this late stage, of the new subsection 7AC(2A)(b) which effects a fundamental change to the LLP structure.
8. New subsection 7AC(2A)(b) provides that the limitation on liability does **not** apply to the designated partner. This means that the supervising partner will **automatically** lose the entitlement to LLP protection even though he is innocent

and in the absence of any proof of negligence on his part. Unlike the proposal entailed in the new subsection 7AC(2A)(a) which at least provides a way for a law firm to avoid losing the LLP status by ensuring compliance with the notice provision, there is no way out for an innocent supervising partner to avoid losing LLP protection.

9. The Law Society takes a strong view against this fundamental change and finds it wholly unacceptable because:
 - (a) It goes against the spirit and essence of LLPs which are introduced so that innocent partners will not be jointly and severally liable for others' default solely by reason of being a partner of the firm.
 - (b) It goes against the principle which we have all along been adhering to - the principle that the introduction of LLPs is not intended to change the common law position with respect to the proof of negligence. Based on the proposal, the supervising partner is treated automatically the same way as a negligent partner without him being proved to be negligent in any way.
10. This is akin to a regime imposing a "scapegoat" partner for each client matter with unlimited legal liability. This harsh approach is unprecedented as it is tantamount to imposing strict liability on the designated partner concerned.

Drafting comments

11. In new section 7AI(1A), the Law Society proposes that the words "*the person proves that*" be deleted because this language permanently places the burden of proof on a partner or firm, which is unnecessary and unfair.
12. In new section 7AI(1A)(c), the reference to "doubt" as to the correctness of the assessment is very vague. The Law Society proposes that the requirement be changed to:

"at the time of the distribution the person did not have, or (if the person is an assignee of a partner's share in the partnership) neither did the person nor that partner know that the assessment was incorrect."
13. The notice provisions contained in the new section 7AGA are convoluted and much more detailed and technical than necessary. There are a lot of cross references which make it very difficult to follow. The Law Society however is not in a position to redraft the entire section but would suggest that a further close examination be taken by the draftsmen to simplify and refine the provision where possible.

The Working Party on Limited Liability Partnerships
The Law Society of Hong Kong

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