

**LEGAL PRACTITIONERS (AMENDMENT) BILL 2010**

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**PART IIAAA**

**LIMITED LIABILITY PARTNERSHIPS**

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## A BILL

To

Amend the Legal Practitioners Ordinance.

Enacted by the Legislative Council.

### 1. Short title

This Ordinance may be cited as the Legal Practitioners (Amendment) Ordinance 2010.

### 2. Commencement

This Ordinance comes into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

### 3. Section 2 amended (Interpretation)

Section 2(1) of the Legal Practitioners Ordinance (Cap. 159) is amended by adding –

““partnership” (合夥) includes a limited liability partnership as defined by section 7AA;”.

### 4. Part IIAAA added

The following is added immediately after section 7A –

## “PART IIAAA

### LIMITED LIABILITY PARTNERSHIPS

#### 7AA. Definitions (Part IIAAA)

(1) In this Part –

“business” (業務), –in relation to a limited liability partnership, means the business of the partnership in providing services as a Hong Kong firm or a foreign firm;

~~(a) in relation to a Hong Kong firm, means the business of practising as solicitors; and~~

~~(b) in relation to a foreign firm, means the business of practising or advising on foreign law;~~

~~“client” (客戶), in relation to a law firm, means a person who retains or employs the firm;~~

~~“default” (失責行為) means any negligent or wrongful act or omission, or any misconduct;~~

~~“distribution” ( ) means, in relation to partnership property, 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;~~

~~“limited liability partnership” (有限責任合夥) has the meaning given by section 7AB;~~

~~“partnership obligation” (合夥義務), in relation to a partnership, means any debt, obligation or liability of the partnership, other than debts, obligations or liabilities of the partners as between themselves, or as between themselves and the partnership;~~

~~“partnership property” (合夥財產) has the same meaning as in the Partnership Ordinance (Cap. 38).~~

(2) If a law firm is constituted as a limited liability partnership when it commences business in Hong Kong, a reference in this Part to the date on which it becomes a limited liability partnership is a reference to the date on which it commences business in Hong Kong.

#### **7AB. Limited liability partnership**

For the purposes of this Part, a limited liability partnership is a partnership that is for the time being –

- (a) a Hong Kong firm or a foreign firm; and
- (b) designated by written agreement between the partners as a partnership to which this Part applies.

**7AC. Effect on liabilities of partners in limited liability partnership**

(1) Subject to subsections ~~(2A)~~, (3), (4) and (5), 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 a default of any other partner in the partnership, or of an employee, agent or representative of the partnership, in the course of the business of the partnership as a limited liability partnership.

(2) Subject to any written agreement between the partners to the contrary, ~~the~~The protection of a partner from liability under subsection (1) applies irrespective of whether the liability is in the form of indemnification, contribution or otherwise.

*[This amendment to section 7AC(2) relates to the regulation of the liability of “designated partner”. The Law Society proposes its deletion.]*

(2A) Subsection (1) has effect in relation to liability for any partnership obligation arising from a matter handled by a partnership for a client only if –

- (a) throughout the period during which the matter is handled by the partnership, the partnership complies with section 7AGA(1); and
- (b) the partner to be protected under subsection (1) is not a designated partner for the matter at the time of the default from which the partnership obligation arises.

*[The addition of section 7AC(2A) relates to the regulation of the liability of “designated partner”. The Law Society proposes its deletion.]*

(2B) To avoid doubt –

- (a) this section does not protect a partner of a partnership from any liability for any partnership obligation (whether founded on tort, contract or otherwise) arising from the partner’s own default whether or not –
  - (i) the partner commits the default jointly or collectively with other partners or any employee, agent or representative of the partnership; or
  - (ii) the partner’s default is attributable to or is aggravated by a default of another partner’s default or of any employee, agent or representative of the partnership;
- (b) the fact that a person is not a designated partner for a matter does not in any way support any inference that any liability arising from a claim in respect of the matter does not arise from the partner’s default.

*[The addition of section 7AC(2B) is a restatement of the law and is unnecessary. The Law Society proposes its deletion.]*

(3) Subsection (1) does not protect a partner from liability if the partner –

- (a) ~~knew or ought reasonably to have known~~ of the default at the time of its occurrence; and
- (b) failed to exercise reasonable diligence to prevent its occurrence.

(4) Subsection (1) protects a partner from the liability arising from a claim made against the partnership by a client only if –

- (a) the partnership was a limited liability partnership at the time the cause of action for the claim accrued; and
- (b) the client knew or ought reasonably to have known that the partnership was a limited liability partnership at that time.

(5) Subsection (1) does not protect any interest of a partner in the partnership property from claims against the partnership.

(6) If a partner is protected from liability under subsection (1) –

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

**7AD. Advance notice to Society in respect of limited liability partnership**

(1) A law firm must ensure that, at least 7 days before the date on which it becomes a limited liability partnership, a written notice of the following particulars is given to the Society –

- (a) the date on which the firm becomes a limited liability partnership;
- (b) the name of the partnership;
- (c) the name of each partner in the partnership;
- (d) each address at which the partnership carries on its business;
- (e) any other particulars prescribed by rules made under section 73.

(2) A law firm must ensure that, at least 7 days before the date on which it ceases to be a limited liability partnership, a written notice of that date is given to the Society.

(3) Subsection (1) does not apply to a foreign firm that is constituted as a limited liability partnership when it commences business in Hong Kong.

**7AE. Name of limited liability partnership**

A limited liability partnership must –

- (a) if it has a Chinese name, include the words “有限責任合夥” as part of that Chinese name; and
- (b) if it has an English name, include the following as part of that English name –
  - (i) the words “Limited Liability Partnership”;
  - or
  - (ii) the abbreviation “LLP” or “L.L.P.”.

**7AF. Notification of name by limited liability partnership**

(1) A limited liability partnership must display its name, in a clearly visible and legible manner, at or outside every office or place in which it carries on its business.



(2) A limited liability partnership must state its name, in a clearly visible and legible manner, in its correspondence, notices, publications, invoices and bills of costs, and on its websites.

**7AG. Notice by limited liability partnership to existing clients**

(1) Except as provided in subsection (2), a law firm must, within 30 days after it becomes a limited liability partnership, by written notice inform each of its existing clients of that fact.

(2) A specified foreign firm must, within 30 days after it becomes a limited liability partnership, by written notice inform each of its existing clients in Hong Kong of that fact.

(3) For the purposes of subsection (2), a foreign firm is a specified foreign firm if, before becoming a limited liability partnership, it has been carrying on, in a foreign jurisdiction, the practice of law as a partnership with limited liabilities under the law of that jurisdiction.

(4) A written notice issued under this section must be in a form specified by the Council.

(5) The form specified under subsection (4) must include a brief statement stating how liabilities of partners of a law firm are affected by the law firm becoming a limited liability partnership under section 7AC.

(6) In this section, “existing client” (現有客戶), in relation to a law firm, means a person who is a client of the firm at the time the firm becomes a limited liability partnership.

(7) For the purposes of subsection (2), an existing client of a specified foreign firm is its existing client in Hong Kong if –

- (a) the client is a body corporate, and it has its registered office or a place of business in Hong Kong; or

(b) the client is not a body corporate, and the last correspondence address provided by the client to the firm is in Hong Kong.

(8) This section does not apply to a law firm that is constituted as a limited liability partnership when it commences business in Hong Kong.

**7AGA. Designated partner for each matter**

(1) For each matter that is handled by a limited liability partnership for a client, there must be at least one partner of the partnership acting as designated partner throughout the period during which the matter is handled.

*[The addition of section 7AGA(1) relates to the regulation of the liability of “designated partner”. The Law Society proposes its deletion.]*

(2) A person is a designated partner for a matter handled by the partnership for a client only if –

- (a) the person is a partner of the partnership; and
- (b) the person is stated in a notice to be a designated partner for the matter from the effective date of the notice, and the relevant requirements are complied with in respect of the notice.

(3) The relevant requirements for the purposes of subsection (2)(b) and (4)(b) are –

- (a) the notice must be in writing;
- (b) the notice must state its effective date;
- (c) the notice must state who is or are the person or persons that becomes or become, or continues or continue to be, designated partner or partners for the

matter from the effective date of the notice, and there must be at least one such person;

- (d) the notice must state who is or are the person or persons (if any) that ceases or cease to be designated partner or partners for the matter from the effective date of the notice;
- (e) the notice must state the effect of section 7AC on the liabilities in respect of the matter of the designated partner or partners as named in the notice under paragraph (c) and of other partners of the partnership;
- (f) each person referred to in paragraph (c) must sign the notice in the person's own name and on behalf of the partnership; and
- (g) the notice must be given by the partnership to the client as soon as practicable, and in any event within 30 days after the effective date of the notice.

(4) A person who is a designated partner for a matter under subsection (2)(b) or (5) ceases to be such only on the earlier of the following –

- (a) the date on which the person ceases to be a partner of the partnership; or
- (b) the effective date of a notice if –
  - (i) the relevant requirements specified in subsection (3) are complied with in respect of the notice; and
  - (ii) the notice states that the person ceases to be a designated partner for the matter from the effective date of the notice.

(5) A partner (*relevant partner*) of a limited liability partnership is a designated partner for a matter under subsection (1), even though subsection (2)(b) is not complied with, if –

(a) any of the following (*triggering event*) occurs, namely –

(i) the limited liability partnership begins to act for the client in respect of the matter;

(ii) if the partnership has been acting for the client in respect of the matter before becoming a limited liability partnership, the partnership becomes a limited liability partnership; or

(iii) a person who is a designated partner under subsection (2)(b) and is for the time being the only designated partner in respect of the matter ceases to be a partner of the partnership;

(b) the partnership would have failed to comply with subsection (1), in respect of the matter from the date of the triggering event, but for the relevant partner becoming a designated partner in respect of the matter under this subsection; and

(c) it is proved that the client has the requisite knowledge specified in subsection (6) and that the knowledge is acquired from the relevant partner at a time specified in subsection (7).

(6) The requisite knowledge specified for the purposes of subsection (5)(c) is actual knowledge of –

(a) the effect of section 7AC on the liabilities of the partners of the partnership in respect of the matter; and

(b) the fact that the relevant partner is designated, with effect from the date of the triggering event, as a partner of the partnership who is not protected under section 7AC in respect of the matter.

(7) The time specified for the purposes of subsection (5)(c) is any time –

(a) within 30 days after the date of the triggering event;  
and

(b) before the occurrence of the default that gives rise to the partnership obligation against which protection under section 7AC is sought.

(8) A person who is a designated partner for a matter under subsection (5) is such from the date of the triggering event.

(9) To avoid doubt, the requirement in subsection (2)(a) does not absolve a person who is not a partner of a partnership from any liability that arises from the person holding himself or herself out as a partner of the partnership and a designated partner.

(10) In this section, “effective date” ( ), in relation to a notice given by a limited liability partnership, is the date stated in the notice as the day from which a person named in the notice becomes, continues to be or ceases to be a designated partner for a matter specified in the notice.

*[The addition of section 7AGA(2) to (10) relates to the notice requirement of the “designated partner” which is tied in with the regulation of the liability of “designated partner”. The Law Society proposes its deletion.]*

**7AH. Other requirements relating to practice of law firm in rules made under section 73**

Sections 7AD, 7AE, 7AF, 7AG and 7AGA 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.

*[The addition of “7AGA” to section 7AH relates to the regulation of the liability of “designated partner”. The Law Society proposes its deletion.]*

**7AI. Provisions regulating distribution of partnership property**

(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 or will be unable to pay its partnership obligations as they become due; or

*[The assessment of the ability of the partnership to repay its partnership obligations as they become due should be current and hence only present tense “is” should be used. The Law Society proposes to delete “will be” in section 7AI(1)(a).]*

(b) the value of the remaining partnership property is less than the partnership obligations,  
then each of the persons is liable as provided in subsection (2).

(1A) But a person who receives the distribution as described in subsection (1) is not liable as provided in subsection (2) 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;

*[There must be certainty and predictability for the claw back mechanism to work. The Law Society proposes amending section 7AI(1A) by deleting the last four words in the preamble “the person proves that” and by amending subsection (a) as follows:*

*“immediately before making the distribution, the limited liability partnership made an assessment that the financial position of the partnership would not be as described in subsection (1) immediately after the distribution on the basis of:*

- (a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances;*
- (b) a fair valuation; or*
- (c) any other method that is reasonable in the circumstances.”]*

- (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; and

(c) 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 the person nor that partner had, any reason to doubt the correctness of that assessment.

*[7AI(1A)(b) and (c) will not be necessary if section 7AI(1A)(a) is amended as above. The Law Society proposes its deletion.]*

~~(1) If a limited liability partnership makes a distribution of any of its partnership property to a partner, or to an assignee of a partner's share in the partnership, as a consequence of which –~~

~~(a) the partnership would be unable to pay its partnership obligations as they become due; or~~

~~(b) the value of the remaining partnership property would be less than the partnership obligations;~~

~~then the partner or assignee is liable as provided in subsection (2):~~

(2) A person who receives the distribution as described in subsection (1)~~The partner or assignee who receives the distribution is liable to the partnership for –~~

(a) the value of the property received by the person~~partner or assignee~~ as a result of the distribution; or

(b) the amount necessary to discharge the partnership obligations at the time of the distribution,

whichever is the lesser.

(3) Proceedings to enforce any of the liabilities arising under this section as a result of the distribution may be brought by –

(a) the partnership;

(b) any partner in the partnership; or



(c) any person to whom the partnership owes any partnership obligation at the time of the distribution.

(4) In this section, a reference to partnership obligation is a reference to partnership obligation (whether actual or contingent).

(5) This section does not affect a payment made as reasonable compensation for current services provided by a partner to the partnership, to the extent that the payment would be reasonable if paid to a person who is an employee of, but not a partner in, the partnership as compensation for similar services.

(6) No proceedings to enforce a liability under this section may be commenced later than 6 years after the date of the distribution to which the liability relates.

*[The Law Society considers it only reasonable to impose a limit of two years to be in line with the bankruptcy relation back period.]*

#### **7AJ. List of limited liability partnerships**

(1) The Council must keep a list of law firms that are or have been limited liability partnerships.

(2) The list must, in relation to each such law firm, contain –

- (a) its name;
- (b) each address at which it carries on its business or, if it has ceased its business, each address at which it last carried on its business; and
- (c) the date on which it first became a limited liability partnership and, if applicable, the dates from which or periods during which it has ceased to be a limited liability partnership.

(3) As soon as practicable after becoming aware of any matter that would require the list to be updated, the Council must update the list accordingly.

(4) For the purpose of enabling any member of the public to ascertain whether a law firm is, or has been, a limited liability partnership and to ascertain the particulars of the partnership, the Council must make the list available for public inspection, free of charge, at the office of the Council during office hours.

**7AK. No dissolution of partnership, etc.**

(1) The fact that a partnership becomes, or ceases to be, a limited liability partnership –

- (a) does not cause the partnership –
  - (i) to be dissolved; or
  - (ii) to cease continuing in existence as a partnership; and
- (b) does not affect any of the rights and liabilities (whether actual or contingent) of the partnership, or of any person as a partner, that have been acquired, accrued or incurred before the partnership becomes, or ceases to be, a limited liability partnership.

(2) Subsection (1)(a) operates subject to any written agreement between the partners to the contrary.

**7AL. This Part to prevail over inconsistent agreement**

(1) In relation to a limited liability partnership, this Part prevails over any inconsistent provisions in any agreement between any persons, whether as partners in the partnership or otherwise.

(2) To avoid doubt, this section does not affect the operation of sections 7AC(2) and 7AK(2).

*[The addition of “7AC(2)” to section 7AL relates to the regulation of the liability of “designated partner”. The Law Society proposes its deletion.]*

**7AM. Law not inconsistent with this Part  
continues to apply**

(1) All relevant laws, except so far as they are inconsistent with this Part, ~~continue to apply~~ in relation to a partnership that is a limited liability partnership.

(2) In this section, “relevant laws” (有關法律) means the Partnership Ordinance (Cap. 38) and every other law that applies in relation to a partnership (whether an enactment, or a rule of equity or of common law).”.

**5. Section 73 amended (Power of the Council to make rules)**

Section 73(1) is amended by adding –

- “(df) in relation to the practice of limited liability partnerships –
- (i) prescribing particulars for the purposes of section 7AD(1)(e); and
  - (ii) regulating any matters of procedure or matters incidental, ancillary or supplemental to the provisions of Part IIAAA;”.

*Consequential Amendment*

**Summary Disposal of Complaints (Solicitors) Rules**

**6. Schedule amended (Scheduled items)**

The Schedule to the Summary Disposal of Complaints (Solicitors) Rules (Cap. 159 sub. leg. AD) is amended, under the heading “**Legal Practitioners Ordinance (Cap. 159)**”, by adding –

“2.	Section 7AD(1)	10,000	15,000
3.	Section 7AD(2)	10,000	15,000
4.	Section 7AE(a)	10,000	15,000
5.	Section 7AE(b)	10,000	15,000
6.	Section 7AF(1)	10,000	15,000
7.	Section 7AF(2)	10,000	15,000
8.	Section 7AG(1)	10,000	15,000
9.	Section 7AG(2)	10,000	15,000”.

**Explanatory Memorandum**

The purpose of this Bill is to amend the Legal Practitioners Ordinance (Cap. 159) (“the principal Ordinance”) to introduce limited liability partnerships for law firms in Hong Kong.

Preliminary provisions

2. Clauses 1 and 2 provide for the short title and commencement.
3. Clause 3 adds to section 2(1) of the principal Ordinance a new definition of “partnership” to make it clear that a reference to this term throughout the principal Ordinance and its subsidiary legislation generally includes a limited liability partnership.

New Part IIAAA of the principal Ordinance

4. Clause 4 adds to the principal Ordinance a new Part IIAAA on limited liability partnerships, which consists of the proposed sections 7AA to 7AM.
5. The proposed section 7AA provides for the interpretation of expressions used in the new Part IIAAA.
6. The proposed section 7AB sets out the meaning of a “limited liability partnership” in the Bill, namely, a Hong Kong firm or a foreign firm (both terms are defined in section 2(1) of the principal Ordinance) that is designated by written agreement between the partners as a partnership to which the new Part IIAAA applies.
7. Under the Partnership Ordinance (Cap. 38), every partner in a firm is liable jointly and severally for certain wrongful acts or omissions for which the firm becomes liable. The proposed section 7AC varies this rule for law firms that are limited liability partnerships. According to the proposed section 7AC(1), a person will not, solely by reason of being a partner, become jointly or severally liable for any partnership obligation if the firm is a limited liability partnership and the partnership obligation arises from the default of another partner, or of an employee, agent or representative of the firm.
8. The object of the proposed section 7AC(1) is to protect an innocent partner against personal liability for the default of other members of the firm. This provision is not intended to change the common law position with respect to the general principles of negligence (see the proposed section 7AM). For example, a partner in a limited liability partnership may still be held responsible under the common law for vicarious liability arising from a default of an employee, agent or representative who is under the supervision of the partner. Also, a failure to establish a proper system of staff supervision can be the basis for a claim that all partners of a limited liability partnership are jointly and severally liable for negligence.
9. The proposed section 7AC(3) further provides that the protection under section 7AC(1) is not available to a partner in a limited liability partnership if he

or she knew or ought reasonably to have known of a default at the time of its occurrence, and failed to exercise reasonable diligence to prevent its occurrence. Moreover, a partner may be protected from the liability arising from a claim made by a client only if the partnership was a limited liability partnership 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 a limited liability partnership at that time (see the proposed section 7AC(4)).

10. Under the proposed section 7AD, a law firm must ensure that a written notice of its relevant particulars is given to The Law Society of Hong Kong (“the Law Society”) at least 7 days before it becomes, or ceases to be, a limited liability partnership. However, a foreign firm constituted as a limited liability partnership when it commences business in Hong Kong is not required to give a separate notice under the proposed section 7AD(1) because it will have already provided the relevant particulars to the Law Society for prior approval of its registration under Part IIIA of the principal Ordinance.

11. The proposed section 7AE requires that the name of a limited liability partnership must contain the words “有限責任合夥” if it is in Chinese, and the words “Limited Liability Partnership” (or the abbreviation) if it is in English. That name must be displayed at every place of business of the partnership and stated in its correspondence and other publications as required by the proposed section 7AF.

12. The proposed section 7AG requires an existing law firm to notify all its existing clients within 30 days after it becomes a limited liability partnership. However, an existing foreign firm only needs to notify its existing clients in Hong Kong if it has already been practising law as a partnership with limited liabilities under the law of another jurisdiction.

13. The proposed section 7AH makes it clear that any other requirements relating to the practice of law firms as prescribed by rules made by the Council

of the Law Society under section 73 of the principal Ordinance will not be affected by the proposed sections 7AD, 7AE, 7AF and 7AG.

14. The proposed section 7AI regulates the distribution of a limited liability partnership's property in circumstances where, as a result of the distribution, the partnership would be unable to pay its obligations as they become due, or the value of the remaining partnership property would be less than its obligations.

15. Under the proposed section 7AJ, the Council of the Law Society is required to keep a list of limited liability partnerships and to make the relevant information available for public inspection.

16. The proposed section 7AK provides that a partnership's existence as a partnership (subject to any contrary agreement between the partners), and the pre-existing rights and liabilities of the partnership and of its partners, will not be affected by the fact that it becomes, or ceases to be, a limited liability partnership.

17. While the proposed section 7AL further states that the new Part IIAAA prevails over inconsistent provisions in any agreement, the proposed section 7AM makes it clear that all relevant laws applicable to a partnership, except so far as they are inconsistent with that Part, remain applicable to a limited liability partnership.

#### Further provisions

18. Clause 5 amends section 73 of the principal Ordinance to empower the Council of the Law Society to make rules respecting the practice of limited liability partnerships for giving full effect to the new Part IIAAA.

19. Clause 6 makes a consequential amendment to the Summary Disposal of Complaints (Solicitors) Rules (Cap. 159 sub. leg. AD) so that a complaint against a breach of any requirement in the proposed sections 7AD to 7AG may be submitted to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel for disposal under the summary procedure provided by those Rules.