

**Consumer Council's Submission to
the Bills Committee of the Legislative Council**

**Legal Practitioners (Amendment) Bill 2010 -
Limited Liability Partnership (LLP) for Legal Practice**

Introduction

1. The Council has previously made its submissions on the introduction of LLP for legal practice in May 2009. It would like to take this opportunity to submit its views on the Legal Practitioners (Amendment) Bill 2010 which is proposed for the introduction and regulation of the LLP.
2. The Council reiterates its position that it would not oppose the introduction of LLP for legal practice provided that consumer interest would be sufficiently safeguarded.

Requirements for protection of limited liability

3. The Council welcomes the proposed s.7AC(3) which provides that the protection of limited liability under s.7AC(1) will not be available to a partner in a LLP if he or she knew or ought reasonably to have known of the default of any other party at the time of its occurrence, and failed to exercise reasonable diligence to prevent its occurrence. This proposed provision will hopefully have the positive effect of enhancing incentive for ethical scrutiny and internal control over the quality of work among members or partners of the firm.
4. The Council also supports the proposed s.7AC(4) which provides that a partner may be protected from the liability arising from a claim made by a client only if (a) the partnership was a LLP 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 LLP at that time.
5. The requirement as stated in (a) may prevent the abuse of converting a general partnership into a LLP so as to limit the liability of the partners when a cause of action of a claim against the firm has actually accrued or is likely to have accrued.

6. Further, the requirement as stated in (b) may encourage a law firm to inform its clients of the fact that it is a LLP as early as possible and ensure the compliance of the provisions under the proposed ss.7AE, 7AF and 7AG respectively concerning the presentation of the name of LLP, the display of the name by LLP and the notice by a LLP to its existing clients. The Council expects that these provisions may help ensure that consumers are aware that they are dealing with a LLP instead of a general partnership.

Preservation of LLP's property

7. An aggrieved consumer may turn to the LLP, apart from the defaulting partner, for compensation for loss or damage. The Council notes that it is important to preserve the property of a LLP to meet the liabilities arising from the default of a partner. The Council therefore supports the proposed s.7AI which regulates distribution of partnership property for the purpose of preserving property of a LLP to meet its liabilities.

Right to seek redress against LLP

8. It is also desirable to bring home to the consumers aggrieved by the default of a partner of a LLP committed in the course of its business their right to seek redress against the LLP.

9. It is provided in the proposed s.7AM that all relevant laws applicable to a partnership, except in so far as they are inconsistent with the proposed LLP provisions, remain applicable to a LLP, and Partnership Ordinance is expressly referred to as one of the relevant laws. Moreover, the proposed s.7AC(5) provides that the limited liability protection does not apply to any interest of a partner in the partnership property from claims against the partnership.

10. The Council understands that a legally trained person could locate the relevant provision (i.e. s.12) in the Partnership Ordinance, read that provision together with the proposed s.7AC(5) of the Bill, and come to the conclusion that a LLP is liable to the same extent as the partner who committed a wrongful act or omission in the course of the LLP's business or with its authority, and that the liabilities of the LLP shall be met out of its property. However, it would not be a task achievable by an average consumer. Therefore, a direct and express provision clearly spelling out the liability of a LLP as mentioned is

preferred.

Limit of the professional indemnity scheme

11. The Council is of the view that the Professional Indemnity Scheme does render certain protection to consumer in securing recovery for negligence claim from the defaulting partner. Such protection would be even more vital to a consumer of LLP where the defaulting partner has no financial capacity to satisfy the claims or his whereabouts cannot be located; and the partnership property is not adequate to satisfy the claim or the outstanding award.

12. The Council is given to understand that, previously most of the claims seeking over the HK\$10 millions indemnity limit were brought by corporations rather than individual consumers. However, the recent sharp rise in the prices of private residential properties seems to suggest that it may not always be the case.

13. As such, the Council submits that the statutory indemnity limit should be regularly reviewed in order to address any change of circumstances that may call for a rise of the limit.

September 2010
Consumer Council