



THE
LAW SOCIETY
OF HONG KONG
香港律師會

3/F WING ON HOUSE · 71 DES VOEUX ROAD
CENTRAL · HONG KONG DX-009100 Central 1
香港中環德輔道中71號
永安集團大廈3字樓

TELEPHONE (電話) : (852) 2846 0500
FACSIMILE (傳真) : (852) 2845 0387
E-MAIL (電子郵件) : sg@hklawsoc.org.hk
WEBSITE (網頁) : www.hklawsoc.org.hk

Our Ref : SG/FA/857575
Your Ref :
Direct Line :

28 May 2012

(by email : adelinewan@doj.gov.hk and
christopherng@doj.gov.hk)

President
會長

Dieter Yih
葉禮德

Vice-Presidents
副會長

Ambrose S.K. Lam
林新強
Stephen W.S. Hung
熊運信

Council Members
理事

Junius K.Y. Ho
何君堯
Huen Wong
王桂壙
Peter C.L. Lo
羅志力
Michael J. Lintern-Smith
史密夫
Billy W.Y. Ma
馬華潤
Sylvia W.Y. Siu
蕭詠儀
Cecilia K.W. Wong
黃吳潔華
Kenneth S.Y. Ng
伍成業
Joseph C.W. Li
李超華
Amirali B. Nasir
Melissa K. Pang
彭韻僊
Thomas S.T. So
蘇紹聰
Angela W.Y. Lee
李慧賢
Brian W. Gilchrist
喬柏仁
Gavin P. Nesbitt
倪廣恒
Denis G. Brock
白樂德
Charles C.C. Chau
周致聰

Secretary General
秘書長

Heidi K.P. Chu
朱潔冰

Deputy Secretary General
副秘書長

Christine W.S. Chu
朱穎雪

Department of Justice,
1/F., High Block,
Queensway Government Offices,
66 Queensway, Hong Kong.

Attn : Ms. Adeline Wan/Mr. Chris Ng

Dear Adeline/Chris,

Legal Practitioners (Amendment) Bill 2010

We refer to the discussion at the Bills Committee meeting this morning.

We strongly object to the latest amendments made to section 7AC (including section 7AA) and section 7ACE of the Legal Practitioners (Amendment) Bill 2010.

Section 7AC

We note that in the latest CSAs, section 7AC(1) has been revised as follows:

“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 in the course of the business of the partnership from the provision of professional services by the partnership as a limited liability partnership.....”

This is a substantive change that is being proposed at a very late stage. The DOJ and the Law Society discussed the reference to the word “business” in this clause more than two years ago while reviewing the draft Bill, and the Law Society thought this language was settled; the DOJ should not be re-opening the discussion at this late stage. The Law Society objects to this change for the following reasons:

同心展關懷

caringorganisation

Awarded by The Hong Kong Council of Social Service
香港社會服務聯會頒發

Incorporated in 1907 as a company limited by guarantee



- (a) The introduction of the new term of “professional services” invites unnecessary questions on what type of services ought or ought not to be included;
- (b) The previous definition of “business” is much more clearly drafted and thus more preferable as it is clear that the obligations cover those that arise from the services provided as a law firm;
- (c) “Professional services” not only creates ambiguity as to its exact ambit, it also potentially narrows the scope of obligations from that intended in the previous version which was mutually agreed long ago.
- (d) The change has nothing to do with the issue of a “partial shield” versus a “full shield”. Regardless of the language used, Section 7AC(1) only protects a partner from liability arising out of the negligence of another partner, not from other obligations of the partnership.

Section 7ACE

The latest CSAs amended section 7ACE (formerly section 7ACD) as follows:

- “ *If a partner is protected from liability by section 7AC(1)*
- (a) *the partner is not a proper party, separately, 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 so brought.”*

We do not consider that the addition of the word “separately” is meaningful because of the following reasons:

- (a) The provision aims at providing a legal basis to protect an innocent partner from being dragged by a claimant into litigation as a fishing expedition.
- (b) This protection is fair and has been mutually agreed. The original wording of the provision was in the Bill since it was gazetted two years

ago. We did not see any problem with it then, nor do we see any problem with it now.

- (c) Procedurally, a claimant can still take out proceedings against an LLP or against partners of the LLP. Nevertheless, this provision serves to enable any partner who enjoys LLP protection to rely on this specific provision as a legal basis to refute being made a party to the proceedings.
- (d) This is the policy intent and should be expressly provided for in the principal legislation. Where necessary, consequential amendments to the subsidiary practice or procedural rules under RHC Order 81 could be made to implement the policy and we have no objection to such consequential amendments.
- (e) As pointed out by some members of the Bills Committee at the meeting on 28 May 2012, the addition of the word “separately” only confuses the interpretation of the provision. The original wording of section 7ACE should be kept intact.
- (f) Further, subsection (b) provides that proceedings which could be brought in circumstances where the innocent partner does not enjoy LLP protection can continue to be brought. This subsection has therefore already addressed the concern that the proceedings could not be brought against the innocent partner with respect to his share of the partnership assets.

We object to the deletion of “by or” in the provision because of the following reasons:

- (a) The deletion of “by or” effectively means that the protection of the innocent partner not being dragged into litigation will be narrowed down to only proceedings against the partnership.
- (b) The inclusion of the words “by or” in subsection (b) is important to make it clear that the partnership retains the ability to make claims in litigation, despite the limitations in subsection (a). For example, in a negligence action against the partnership, the partnership may wish or need to bring counterclaims and/or proceedings against third parties.

To conclude, we strongly object to the amendments made to section 7AC(1) and section 7AA on the deletion of the definition of "business" and to section 7ACE (formerly 7ACD) in the latest CSAs. On the basis of the above reasons, the original wording of section 7AC(1) and section 7ACE (formerly section 7ACD) should be retained with no changes.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Heidi Chu', with a stylized flourish at the end.

Heidi Chu
Secretary General