

**LEGAL PRACTITIONERS (AMENDMENT) BILL 2010****CONTENTS**

Clause	Page
1. Short title.....	C613
2. Commencement.....	C613
3. Section 2 amended (Interpretation).....	C613
4. Part IIAAA added	

**PART IIAAA****LIMITED LIABILITY PARTNERSHIPS**

7AA. Definitions (Part IIAAA) .....	C615
7AB. Limited liability partnership.....	C615
7AC. Effect on liabilities of partners in limited liability partnership .....	C615
7AD. Advance notice to Society in respect of limited liability partnership.....	C617
7AE. Name of limited liability partnership .....	C619
7AF. Notification of name by limited liability partnership	C619
7AG. Notice by limited liability partnership to existing clients.....	C619
7AH. Other requirements relating to practice of law firm in rules made under section 73.....	C621
7AI. Provisions regulating distribution of partnership property .....	C621
7AJ. List of limited liability partnerships .....	C623
7AK. No dissolution of partnership, etc. ....	C623
7AL. This Part to prevail over inconsistent agreement .....	C625
7AM. Law not inconsistent with this Part continues to apply .....	C625

Clause		Page
5.	Section 73 amended (Power of the Council to make rules) ....	C625

*Consequential Amendment*

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

6.	Schedule amended (Scheduled items) .....	C627
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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)—
- (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;
- “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 (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) 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.

(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.

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

Sections 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.

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

(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) The partner or assignee who receives the distribution is liable to the partnership for—

(a) the value of the property received by the 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.

#### **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 section 7AK(2).

**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.