

立法會
Legislative Council

LC Paper No. LS79/09-10

**Paper for the House Committee Meeting
on 2 July 2010**

**Legal Service Division Report on
Legal Practitioners (Amendment) Bill 2010**

I. SUMMARY

- 1. Objects of the Bill** To amend the Legal Practitioners Ordinance (Cap. 159) to introduce limited liability partnerships for law firms in Hong Kong and to make provisions therefor.
- 2. Comments**

 - (a) The Bill would add a new Part, i.e. Part IIAAA, to the Ordinance.
 - (b) The limited liability accorded to a partner of a limited liability partnership (LLP) is applicable, subject to conditions, only to an individual partner's liability arising from the default of another partner, employee, agent or representative of LLP in the course of its business. The liabilities of LLP as a partnership remain unlimited.
 - (c) No other changes of law affecting a partnership's or a partner's liabilities, e.g. vicarious liability and negligence, would be effected.
- 3. Public Consultation** The Law Society of Hong Kong (LSHK), the Bar Association, the Consumer Council and the Judiciary have been consulted.
- 4. Consultation with LegCo Panel** The Administration briefed the Panel on Administration of Justice and Legal Services on the legislative proposal and its discussion with the LSHK on 16 December 2008, 25 May and 15 December 2009.
- 5. Conclusion** In view of the significant impact of the provisions on solicitors' practices in Hong Kong, Members may wish to form a Bills Committee to study the legal and practical effects of the Bill.

II. REPORT

Objects of the Bill

To amend the Legal Practitioners Ordinance (Cap. 159) (the Ordinance) to introduce limited liability partnerships for law firms in Hong Kong and to make provisions therefor.

LegCo Brief Reference

2. File Ref.: LP 5004/4/15C XVII issued by the Department of Justice dated 17 June 2010.

Date of First Reading

3. 30 June 2010.

Comments

4. Under the existing law every partner in a solicitors' firm is liable jointly and severally with other partners for all debts, liabilities and obligations of the firm incurred while he is a partner, including those arising from any wrongful act of other partners of the firm. LLP is a form of business association which confers limited liability on the innocent partners so as to save their personal assets from claims arising from the default of other partners in the course of LLP's business.

5. The Bill would add a new Part, i.e. Part IIAAA, to the Ordinance. Its provisions would define "limited liability partnership" (LLP), delineate the effect on liabilities of partners in LLP, set procedural requirements for establishing LLP, regulate distribution of partnership assets and the effect of establishing or cessation of LLP on previously existing partnership. If enacted, the amendment ordinance is to come into operation on a date to be appointed by the Secretary for Justice by notice published in the Gazette.

6. LLP as a partnership still has unlimited liabilities and does not have any special status in relation to its legal liabilities. The provisions of the Bill only modify the legal liabilities of a partner in a solicitors' firm constituted as LLP. A partner of LLP would not, solely by reason of being a partner, be jointly or severally liable for any partnership obligation, whether founded on tort, contract or other areas of the law, arising from a default of any other partner, employee, agent or representative of LLP in the course of its business (new section 7AC).

7. The protection afforded to a partner of LLP under the new section 7AC is

subject to conditions. First, the partner must not have actual or constructive knowledge of the default giving rise to the liability at the time of its occurrence and must not fail to exercise reasonable diligence to prevent its occurrence (new section 7AC(3)). Second, the cause of action must accrue when the partnership is LLP and the client has actual or constructive knowledge of the fact that the partnership is LLP (new section 7AC(4)). This means that the Bill once enacted will not have retrospective effect. These rules are relatively simple but there is room for disputing whether the conditions are fulfilled. In legal practice, rarely would default be constituted by a single act at a specific point of time. It may be difficult to determine when knowledge would be knowledge after the occurrence. It is also not clear whether a partner is absolved from any obligations to salvage or remedy a position caused by another partner's default before it becomes wholly irreversible.

8. The Bill does not affect any other areas of the law giving rise to the liabilities of a partnership (new section 7AM). The rules at common law, e.g. vicarious liability, agency and the tort of negligence, are not changed. Contracting out of the provisions of the Bill is not allowed (new section 7AL). Provisions of the Bill would prevail over inconsistent provisions in the partnership agreement.

9. The requirements for establishing LLP as stated in the Bill appear to be simple. All that is required is a partnership agreement designating the partnership as LLP (new section 7AB(b)) with at least 7 days' advance notice given to the Law Society of Hong Kong (LSHK) (new section 7AD). Existing clients must be notified within 30 days in writing in a form to be specified by LSHK (new section 7AG). LLP must include in its name "Limited Liability Partnership" or the abbreviation "LLP" or "L.L.P." (new section 7AE). LLP must display its name at or outside every office or place in which it carries on its business and in its correspondence, notices, publications, invoices and bills of costs, and on its websites (new section 7AF). It is, however, unclear when a partner may start to enjoy the protection accorded by the Bill, e.g. an existing client has gone to a LLP's office and seen the display of name before he receives the requisite notice sometime later.

10. Distribution of partnership property of LLP to a partner or an assignee of a partner's share will make that partner or assignee liable to LLP if such distribution would cause LLP to be insolvent (new section 7AI). The establishment or cessation of LLP would not dissolve the pre-existing partnership (new section 7AK). It is, however, unclear what the consequences will be if a new partner is admitted upon LLP is constituted. The Council of LSHK must maintain a list of law firms that are or have been LLP for public inspection free of charge (new section 7AJ(1)). It is also empowered by amendments to the existing section 73 to make rules to prescribe particulars to be included in the notice to LSHK under the new section 7AD(1)(e) and to regulate any matters of procedure or matters incidental, ancillary or supplemental to the provisions of Part IIAAA (clause 5).

Public Consultation

11. According to the Administration, LSHK, the Bar Association, the Consumer Council and the Judiciary have been consulted on the drafts of the Bill. The responses of LSHK, the Consumer Council and the Judiciary have, where appropriate, been taken into account in the drafting of the Bill. The Bar Association has also confirmed that it has no comments on the Bill.

Consultation with LegCo Panel

12. On 16 December 2008, the Administration informed the Panel on Administration of Justice and Legal Services (the Panel) of its decision to introduce a bill to amend the Ordinance to introduce LLP in Hong Kong. The Administration briefed the Panel on 25 May 2009 regarding the developments in taking forward the legislative proposal. Panel members in general were of the view that in line with the global trend, LLP should be introduced as soon as possible, but adequate measures of consumer protection should be put in place. At members' request, LSHK submitted a paper to the Panel which elaborated on the proposed measures to safeguard consumer interests and provided relevant data on the adequacy of the existing statutory professional indemnity limit in meeting the claims of ordinary consumers against solicitors.

13. When the Administration further updated the Panel on 15 December 2009 in respect of its discussion with LSHK, members were advised that there remained a number of outstanding issues to be resolved. These included sanctions for LLP firms that had failed to comply with the consumer protection measures, whether such measures should be placed in the primary legislation or in the subsidiary legislation, whether LSHK should enjoy statutory immunity for errors or omissions in the supply of information under the list of LLPs, and provisions of the draft Bill requiring LLP to maintain sufficient cash flow to cover its expenditure and liabilities, and restricting the drawing of assets from LLP.

Conclusion

14. In view of the significant impact of the provisions of the Bill on solicitors' practices in Hong Kong, Members may wish to form a Bills Committee to study the legal and practical effects of the Bill.

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