

# 立法會 *Legislative Council*

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## **Panel on Administration of Justice and Legal Services**

### **Updated background brief prepared by the Legislative Council Secretariat for the meeting on 15 December 2009**

#### **Limited liability partnerships for legal practice**

#### **Purpose**

This paper provides information on the past discussions of the Panel on Administration of Justice and Legal Services (the Panel) relating to limited liability partnerships (LLPs) for legal practice, including the recent discussions made at its meeting on 25 May 2009 as summarized in paragraphs 10 to 16.

#### **Background**

##### Limited liability for professional practices

2. In Hong Kong, many professional practices, such as the legal and accounting professions, operate under the business model of general partnership. Under the Partnership Ordinance (Cap. 38), every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner, including those arising from any wrongful act or omission of the other partners. In other words, the personal assets of each partner are at risk to the full extent of any claim substantiated against the firm irrespective of his proportion of personal responsibility.

3. The issue of limited liability for professional practices was brought to the attention of the Panel by the Law Society of Hong Kong in June 2004, when the Law Society informed members that it was studying limited liability practices adopted in other jurisdictions. The Panel continued discussion on the relevant issues at its meeting on 23 May 2005, with particular reference to the report made by the Law Society's Working Party on LLP, which recommended the introduction of LLPs for professional practices. In brief, LLP is a model for doing business which confers the privileges of limited liability on innocent partners so as to insulate their personal assets from claims incurred by the negligence of other partners.

Research report on "Limited Liability Partnership and Liability Capping Legislation for the Practice of Law in Selected Places"

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4. At the request of the Panel, the Research and Library Services Division of the Legislative Council Secretariat (RLSD) prepared a research report on "Limited

Liability Partnership and Liability Capping Legislation for the Practice of Law in Selected Places", which was considered by the Panel at its meeting on 31 March 2005. The report examined the basic concepts of business structures to limit liability for legal practice in the United Kingdom (UK), the State of New York (NY) in the United States and New South Wales (NSW) of Australia, with particular reference to LLPs. According to the findings of the report, the LLP option is open to all types of business in UK, whilst limited to around 40 licensed professions in NY. Unlike UK and NY, NSW does not adopt LLPs but has in place liability capping legislation which limits liability capping to members of those occupational associations which have set up their own professional standards schemes approved by the Professional Standards Council.

5. An executive summary of the report and a comparison of the various attributes of LLPs and liability capping legislation in places under study are in **Appendices I and II** respectively.

#### The Administration's position on LLPs for legal practice

6. Panel members generally shared the concern that Hong Kong was lagging behind other jurisdictions in implementing professional liability reform, and urged the Administration to expedite the introduction of LLPs, which was a relatively simple system that did not necessitate a review of the more complex issues such as restricting liability for tort. The Administration, however, informed the Panel in March 2006 that it had decided that no further studies would be carried out into proposals on limiting professional liability during the remainder of the Chief Executive's term of office (ending on 30 June 2007).

7. In October 2007, the Panel agreed that it was opportune to request the Administration to reconsider its position on professional liability reform. In response to the Panel, the Secretary for Justice advised in July 2008 that the Department of Justice was prepared to consider introducing LLPs for legal professionals, and would discuss the relevant issues with the Law Society.

#### **Discussions of the Panel on LLPs for legal practice**

8. At the meeting on 16 December 2008, the Administration briefed the Panel on the developments of the legislative proposal to permit LLPs for legal practice. The Panel noted that the Law Society had no objection to the approach of amending the Legal Practitioners Ordinance (Cap. 159) (LPO) to introduce LLPs for solicitors. The Administration and the Law Society had also reached agreement on adopting a partnership rather than a corporate model of LLP, having regard to the fact that legislative amendments allowing solicitors to incorporate their practices with limited liability in the form of solicitor corporations had already been made to LPO in 1997, albeit they had not yet been brought into force pending the making of relevant rules by the Council of Law Society. The Panel also noted that under the Administration's proposal, only solicitor firms with not less than two partners could be registered as LLPs.

9. The Administration further briefed the Panel on the latest developments in taking forward the LLP proposal at its meeting on 25 May 2009. The Panel was advised that other than the issue of whether LLP partners should be held personally liable for ordinary debts of business such as rent and salaries, the Administration and the Law Society had agreed on all important matters of principle concerning the LLP proposal, including liabilities of assistant solicitors and consultants under LLPs, insurance requirements of LLPs and position of international law firms. The major issues raised at the meeting are summarized in the following paragraphs.

#### Full or partial liability shield under LLPs

10. On the issue of liability of solicitor partners on operation cost of business, the Panel noted the Administration's position that LLP partners should continue to be held liable for ordinary debts of their business (partial liability shield) as they were not unforeseeable debts over which LLP partners had no control as in the case of claims incurred by negligence of other partners. The Administration also considered that, as law firms were free to choose between the different types of business vehicles, solicitors who wished to enjoy full shield from general liabilities of the firm might opt to practise in the form of a solicitor corporation. On the other hand, the Law Society was of the view that the liability shield should be broadened to cover ordinary commercial debts of the business (full liability shield) on the following grounds -

- (a) legislation had already been enacted in 1997 to permit solicitors' practices to operate with full limited liability by means of solicitor corporations. This suggested that the concept of full limited liability was acceptable to the community, and the same level of liability protection should also be afforded to solicitor partners under the LLP model;
- (b) it was common for law firms to use service companies to carry out administrative functions such as employment of staff. The introduction of LLPs was a convenient opportunity to simplify the artificial structure of routing the engagement of administrative services through service companies; and
- (c) many overseas jurisdictions including the UK, India, Singapore and some states of the United States (such as NY) had adopted the full shield LLP model.

11. Hon Paul TSE indicated support for the Law Society's position, while Hon Albert HO considered the Administration's proposal of partial liability shield for LLPs acceptable. Mr HO opined that even if LLP partners were provided with limited liability on ordinary business debts, in reality it was likely that banks, landlords and suppliers of a LLP would request partners of the LLP to provide guarantees of specific obligations. Hence, there would not be much practical difference whether or not LLPs were provided with full liability shield. The Panel urged the Administration and Law Society to reach consensus on this matter as soon as possible.

### Protection of consumer interests

12. Members in general were of the view that in line with the global trend LLPs should be introduced as soon as possible given that it would reduce the exposure of individual partners to financial liabilities and provide an incentive for the formation of large professional practices capable of offering a diversified range of legal services. However, adequate measures of consumer protection should be put in place in tandem with the introduction of LLPs. Members shared the view that the Law Society should provide relevant data to help members and the Administration to assess the adequacy of the existing statutory professional indemnity limit in meeting the claims of ordinary consumers against solicitors. The Administration advised the Panel that it also recognized the need to strike a proper balance between limiting professional liability and safeguarding consumer interests in the LLP proposal. To this end, provisions would be included in the legislation to enhance the transparency of the operation of LLPs, such as requiring that the name of each LLP to include the term LLP at its end. The Administration would also work out a public education programme to enhance public awareness of the nature and implications of LLPs upon the implementation of the new business model.

13. The Panel also noted the position of the Consumer Council (CC) that it did not object to the adoption of LLPs as a matter of principle, provided that there were sufficient safeguards for consumers. CC, however, considered that consumer interests had not been adequately addressed under the proposed LLP system and expressed the following concerns -

- (a) the introduction of LLPs would shift the risk of sustaining losses caused by the negligence or wrongful acts of a solicitor partner from the partnership to the consumers, as the aggrieved customer would only be able to seek remedy against the negligent partner instead of any or all of the partners of the firm as he/she was currently entitled to do so. As the proposed LLP was not a separate legal entity, it was doubtful whether an aggrieved customer could seek redress from it;
- (b) in view of the benefits of limited liability and the absence of substantial hurdle to conversion, it was likely that the majority of the local firms would be converted to LLPs, which would limit customers' choice; and
- (c) the displacement of joint and several liability by liability limited to defaulting partner would result in a disincentive for ethical scrutiny and internal control over the quality of work among members or partners of the firm.

14. To safeguard consumer interests, CC suggested that consideration should be given to -

- (a) raising the statutory professional indemnity limit and/or requiring top-up insurance for LLPs;

- (b) making an LLP a separate legal entity which was liable for the wrongful acts and omission of its members to the same extent as the members so acting;
- (c) making provisions for preservation of the assets of LLPs which could be claimed by consumers; and
- (d) making sufficient disclosure to consumers so that they could assess the risk in dealing with LLPs.

15. Members considered it important to ensure that the introduction of the new business entity would not weaken the public's confidence in the legal profession and urged the Law Society to address the concerns expressed by CC as far as practicable. In response, the Law Society advised in its submission dated 30 July 2009 (LC Paper No. CB(2)2402/08-09(01)) that -

*Transparency of operation*

- (a) a firm of solicitors was required under a general duty to keep clients informed of the name of the person conducting their cases and the partner responsible for the overall supervision of the matter. The Law Society also proposed to carry out publicity campaign jointly with the Government and CC to educate the public on the reasons for the introduction of LLPs and the differences with traditional partnerships;

*Insurance requirement on LLPs*

- (b) the existing statutory professional indemnity limit of HK\$10 million per claim which was proposed to apply equally to LLPs was generally sufficient for indemnity protection of individual consumers, as evidenced by the following statistics:
  - (i) for the past 10 indemnity years from 1988-1989 to 2007-2008, the average gross settled claim size (including large multiple claims) ranged from a few thousand Hong Kong dollars to HK\$3.9 million, well below the statutory indemnity limit of HK\$10 million per claim;
  - (ii) from the 1994-1995 indemnity year to 2 July 2009, there had been 3 321 claims on the Hong Kong Solicitors Indemnity Fund (including notifications), out of which only 53 claims (or 1.6%) had sought HK\$10 million or more (details of these 53 claims are set out in **Appendix III**); and
  - (iii) most of the claims seeking over HK\$10 million were brought by corporations rather than individuals;

- (c) as the existing statutory limit was sufficient, there was no need to further consider the suggestion of requiring an LLP to disclose its individual top up insurance coverage, which in any event was not feasible as firms were often bound by confidentiality obligations under their respective top up insurance policies;

*Professional performance*

- (d) there was no cause for concern that a partner would loosen up supervision because the firm was an LLP. The Hong Kong Solicitors' Guide to Professional Conduct provided that every partner in a firm was prima facie responsible for the acts and omissions of his firm, his partners and staff. This primary obligation would not change under LLPs; and

*Consumer choice*

- (e) judging from the experience of overseas jurisdictions where different forms of legal practice including sole proprietorships, partnerships and LLPs were permissible, there was no sign of LLPs becoming the dominant form of legal practice. A table showing the percentages of LLPs in different jurisdictions as provided by the Law Society is in **Appendix IV**.

Solicitor corporations

16. Some members expressed concern that the rules for implementing solicitor corporations had not yet been brought into force, albeit amendments to the primary legislation on solicitor corporations having been enacted in 1997. The Law Society explained that the implementation of the Solicitor Corporations Rules had been delayed by some problems encountered during the drafting process. As LLPs, which combined limited liability protection with flexibility of organization structure of general partnership, was deemed more suited to the needs of Hong Kong law firms than solicitor corporations, the Law Society had focused its efforts on the introduction of LLPs in recent years. The Law Society would continue to pursue the introduction of both LLPs and solicitor corporations to provide more options for its members. The Law Society also advised that the drafting of the Solicitor Corporations Rules for the implementation of solicitor corporations would be finalized soon.

**Latest development**

17. According to the Legislative Programme for the 2009-2010 session provided by the Administration on 22 October 2009, the Administration plans to introduce the Legal Practitioners (Amendment) Bill into LegCo for the introduction of LLPs in the first half of the current session. The Administration will further consult the Panel on the legislative proposals for the introduction of LLPs in the forthcoming meeting on 15 December 2009.

### **Relevant papers**

18. A list of the relevant papers which are available on the Legislative Council website (<http://www.legco.gov.hk>) is in **Appendix V**.

Council Business Division 2  
Legislative Council Secretariat  
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**Extract from research report on Limited Liability Partnership  
and Liability Capping Legislation for the Practice of Law in Selected Places**

**Executive Summary**

Nature of limited liability partnership and liability capping legislation

1. A limited liability partnership (LLP) is a vehicle for doing business, combining the limited liability feature of a limited company and the flexibility of the internal organization of a general partnership. LLPs of both the United Kingdom (UK) and the State of New York (NY) in the United States render the privilege of limited liability to the innocent members/partners, so as to insulate their personal assets from claims incurred by the faults of other members/partners.
2. The Professional Standards Act 1994 of New South Wales (NSW) is the first liability capping legislation in Australia. It enables occupational associations to establish their own professional standards schemes, requiring members to insure and implement strategies for the protection of the parties concerned in exchange for their liability capped at a specified level. The cap is to provide *"some guarantee of payment for the vast majority of claimants"*.

Eligibility

3. The LLP option is open to all types of business in the UK, whilst, in NY, the LLP structure is limited to around 40 licensed professionals. The liability capping option in NSW is limited to members of the occupational associations which have set up their own professional standards schemes, including the Solicitors Professional Standards Scheme (Solicitors Scheme).
4. In both the UK and NY, a solicitors' LLP must be owned and run by lawyers. The Law Society of England and Wales further requires that a legal practice, before rendering services through an LLP, must obtain its recognition as a recognized body and have at least one member who is *"qualified to supervise"*.

Liability

5. In both the UK and NY, an LLP is liable for the wrongful acts and omission of its members/partners to the same extent as the members/partners so acting in the ordinary course of the business of the LLP.
6. The statutes in both the UK and NY provides that members/partners of an LLP are liable for their own faults, but not for each other's acts or omissions solely by virtue of being a member/partner of that LLP.
7. The liability capping legislation of NSW gives a blanket cover to the professionals under their respective professional standards schemes, no matter whether they have personal involvement in the wrongful act or not. Under the Solicitors Scheme, the maximum liability for each claim depends on the number of principals in the legal practice.



8. The NY Partnership Law expressly provides a full shield for the innocent partners of an LLP, so that they are not liable directly or indirectly (by way of contribution and indemnification) for any liability, whether arising in tort or contract. The UK LLP Act has no provision on whether innocent members of an LLP may be liable indirectly by contribution to make good losses of working capital after the LLP has satisfied a claim out of the LLP's capital.
9. Upon the winding up of an LLP, the members/partners of an LLP in both the UK and NY are not obliged to contribute anything when the liquidator seeks contribution to enforce third party claims.
10. The Partnership Law of NY provides that a partner of an LLP is personally and fully liable for any wrongful act committed by any person under his or her "*direct supervision and control*". Both the UK LLP Act and the NSW liability capping legislation have no provision on this issue.

### Safeguards

11. In both the UK and NY, there is no compulsory insurance requirement in their respective LLP statutes. In contrast, the NSW Professional Standards Act 1994 requires professionals to hold insurance against occupational liability under each professional standards scheme and the insurance policy must comply with standards determined by the occupational association concerned.
12. The Law Society of England and Wales requires that a solicitors' LLP must have compulsory top-up insurance apart from the minimum qualifying insurance, considering that clients or third parties may have limited assets against which to claim. The Solicitors Scheme of NSW requires that a solicitor must have the benefit of insurance for an amount not less than his or her limited liability. The NY State Bar Association does not have any compulsory insurance requirement.
13. In the UK, a large number of provisions of the company and insolvency law apply to LLPs, so as to preserve the LLP assets which can be claimed by third parties and to disclose sufficient information for third parties to assess the risk they assume in dealing with LLPs. The safeguards imposed by the NY statutes emphasize the disclosure element, and have no measure to preserve the LLP assets. NSW promotes greater self-regulation through the complaints system and risk management, in order to improve the standard of professional services and protect the interests of the public.
14. The UK is the only place studied which may require an LLP member to pay back the withdrawals made during the two years prior to the commencement of winding up, if it is proved that the member knew or believed that the LLP was, or would be unable to pay its debts.
15. While both the UK and NY statutes require an LLP to submit regular reports of non-financial information, only the UK requires an annual report on financial information to be filed and applies the accounting and auditing requirements for companies to LLPs, including solicitors' LLPs.

16. Both the UK and NY statutes require that the name of an LLP must reveal its limited liability status. The NY law requires that an LLP has to publish a notice of its registration in two newspapers. The Professional Standards Act 1994 of NSW requires a person whose occupational liability is capped to notify that fact on all documents given to a client or prospective client.
17. In the UK, the Law Society of England and Wales requires that where a law firm converts from a partnership to an LLP, it has to notify its clients, either before the change or soon afterwards. In NY, there is no duty for a law firm to inform its clients about the change in liability status, although it is customary to do so.

## Appendix II

## Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places

	The United Kingdom	The State of New York	The State of New South Wales
<b>Eligibility</b>			
Is the limited liability partnership (LLP) structure/liability capping legislation available to all types of business?	<ul style="list-style-type: none"> <li>• Yes, but individual profession can determine if their members can operate through LLPs or not.</li> </ul>	<ul style="list-style-type: none"> <li>• No, it is limited to around 40 licensed professionals, including lawyers, accountants and licensed physicians.</li> </ul>	No, liability capping is limited to members of the occupational associations which have set up their own professional standards schemes and got approved by the Professional Standards Council (PSC).
Statutory requirements for establishing an LLP or a professional liability scheme	<ul style="list-style-type: none"> <li>• There must be two or more persons.</li> <li>• The business has to be a lawful business.</li> <li>• An LLP must become incorporated by registration with the Registrar of Companies. One of the proposed members must sign a statement of compliance that the persons named in the form are associated for carrying on a lawful business with a view to profit.</li> </ul>	<ul style="list-style-type: none"> <li>• There must be two or more persons.</li> <li>• The licensed professionals have to form a general partnership before applying for registration.</li> <li>• The partnership has to file with the Division of Corporations of the Department of State a registration which sets forth the name of the LLP and other particulars. A certified copy of the registration has to be filed with the licensing authority within 30 days.</li> </ul>	<ul style="list-style-type: none"> <li>• Only an occupational association may set up a professional standards scheme. Before approval, PSC must publish a notice in a daily newspaper explaining the nature of the scheme, and inviting comments.</li> <li>• The Attorney General, the court or either House of Parliament may disapprove the scheme.</li> </ul>

**Appendix II (cont'd)**

**Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places**

	The United Kingdom	The State of New York	The State of New South Wales
<b>Eligibility (cont'd)</b>			
Legal professional body's requirements for allowing a law firm to operate through an LLP	<ul style="list-style-type: none"> <li>The law firm must obtain recognition from the Law Society of England and Wales as a recognized body, which must comply with the requirements of professional conduct and the Solicitors' Incorporated Practice Rules 2004 and ensure its members to do so.</li> <li>The Law Society of England and Wales may, by discretion, refuse an application if:                             <ul style="list-style-type: none"> <li>(a) it is not satisfied that a member of the law firm is a suitable person to be engaged in the direction or ownership of an LLP; or</li> <li>(b) it considers that it is proper in the public interest not to recognize the body.</li> </ul> </li> </ul>	The ownership of the LLP is restricted to those individuals and entities authorized to practise law in the State of New York (NY).	Not applicable.
Statutory requirements for being a member/partner of an LLP or for participating in the Professional Standards Scheme	A member can be an individual, an LLP, or a company.	<ul style="list-style-type: none"> <li>A partner can be an individual, a general partnership or LLP, or a company.</li> <li>Each partner must be a licensed professional or a licensed professional firm.</li> </ul>	<ul style="list-style-type: none"> <li>A professional must be a member of an occupational association. A professional standards scheme may provide that it applies to all persons or to a specified class of persons within an occupational association, except for those apply to be exempted.</li> <li>Each member must have the benefit of an insurance policy against occupational liability and/or business assets of value not less than the maximum amount of liability specified in a professional standards scheme.</li> </ul>

## Appendix II (cont'd)

## Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places

	The United Kingdom	The State of New York	The State of New South Wales
<b>Eligibility (cont'd)</b>			
Legal professional body's requirements for being a member/partner of an LLP or for a member to be covered by the Solicitors Professional Standards Scheme (Solicitors Scheme)	<ul style="list-style-type: none"> <li>• The only persons who may be members of a law firm operating as an LLP are:               <ol style="list-style-type: none"> <li>(a) individual solicitors with a practising certificate or an European/foreign lawyer permitted under the Law Society of England and Wales' rules;</li> <li>(b) a company/an LLP which is a recognized body and has at least one director/member who is a solicitor or a registered European lawyer (REL); and</li> <li>(c) A European corporate practice.</li> </ol> </li> <li>• An LLP must have at least one member who is "qualified to supervise".</li> </ul>	Partners must be individuals or entities authorized to practise law in NY.	<ul style="list-style-type: none"> <li>• The Solicitors Scheme is applicable to all members of the Law Society of New South Wales who are:               <ol style="list-style-type: none"> <li>(a) holding a current practising certificate; and</li> <li>(b) having the benefit of an insurance policy under which the amount payable is not less than the required maximum amount of liability specified in the Solicitors Scheme.</li> </ol> </li> <li>• Member may apply for exemption from the Solicitors Scheme.</li> </ul>
Does the court have any authority to disqualify a member/partner of an LLP, or revoke a professional standards scheme?	<ul style="list-style-type: none"> <li>• Yes, members of LLPs are subject to the same disqualification rules and penalties that apply to company directors.</li> <li>• Undischarged bankrupts are automatically disqualified. There are a number of grounds where the court is authorized to issue a disqualification order for a specified period of time.</li> <li>• If a person acts in contravention of a disqualification order, he or she is not only guilty of a criminal offence, but also personally liable for all the relevant debts of the LLP.</li> </ul>	No, the court does not have any power to disqualify a partner of an LLP, but it may order the dissolution of an LLP.	<ul style="list-style-type: none"> <li>• Yes, a person who is or is reasonably likely to be affected by a professional standards scheme may apply to the Supreme Court for an order that the scheme is void.</li> <li>• PSC may review the operation of a professional standards scheme. The concerned professional standards scheme may be amended or revoked as a result of the review.</li> </ul>

**Appendix II (cont'd)**

**Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places**

	The United Kingdom	The State of New York	The State of New South Wales
<b>Scope of liability limitation</b>			
Is an LLP a separate legal entity?	Yes.	It is not expressly stated in the legislation. The NY State Bar Association is of the view that an LLP has a separate legal personality from its partners.	Not applicable.
Liability of an LLP/a law firm under the Solicitors Scheme in general	<ul style="list-style-type: none"> <li>An LLP is liable to the same extent as a member who has incurred liabilities as a result of his or her wrongful act or omission in the course of the business of the LLP or with its authority.</li> <li>An LLP is not bound where a member acts beyond his or her authority and the third party knows that he or she has no authority to act, or the third party does not know or believe him or her to be a member of the LLP.</li> </ul>	<ul style="list-style-type: none"> <li>An LLP is liable to the same extent as a partner who has caused loss or injury of a third party, or incurred penalty by his or her wrongful act or omission in the ordinary course of the business of the LLP, or with the authority of his or her co-partners.</li> <li>An LLP is not bound if a partner so acting has no authority to act for the partnership in the particular matter, and the person with whom he or she is dealing has knowledge of the fact that he or she has no such authority.</li> </ul>	<ul style="list-style-type: none"> <li>A law firm which runs as a general partnership has its liability capped because its partners' liability is capped under the Solicitors Scheme.</li> </ul>
Are members/partners of an LLP, or those under a professional standards scheme liable for their own wrongful acts or omissions?	Yes.	Yes.	Yes, but their liabilities are capped at the level specified in the professional standards scheme.

**Appendix II (cont'd)**

**Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places**

	<b>The United Kingdom</b>	<b>The State of New York</b>	<b>The State of New South Wales</b>
<b>Scope of liability limitation(cont'd)</b>			
Are the members/partners of an LLP, or the participants of the Solicitors Scheme liable for the acts or omissions of each other solely by virtue of being a member/partner of the firm?	<ul style="list-style-type: none"> <li>• No.</li> <li>• The Limited Liability Partnerships Act 2000 (LLPs Act) does not expressly confer limited liability upon members of LLPs. As an LLP is a separate legal person from its members, liability is confined to the LLP itself and the liability of individual members is separated from that of the LLP.</li> <li>• As members are agents of the LLP and not of each other, individual members will not be liable for each other's acts simply by virtue of being a member of the LLP.</li> </ul>	<ul style="list-style-type: none"> <li>• No, a partner of an LLP is not liable directly or indirectly (by way of indemnification or contribution) for liabilities arising in tort, contract or otherwise, solely by reason of being a partner of that LLP.</li> <li>• Under the NY statute, if a majority of partners in an LLP agree, all or specified partners may be liable in their capacity as partners for all or specified debts, obligations or liabilities of the LLP.</li> </ul>	<ul style="list-style-type: none"> <li>• Yes.</li> <li>• Statutory requirements are:                             <ul style="list-style-type: none"> <li>(a) The partners of a general partnership are liable for the acts and omissions of each other even if the professional standards scheme is applicable to them, albeit the level of their liability is capped.</li> <li>(b) The professional standards schemes cap civil liability arising in tort, contract or otherwise, directly or vicariously from anything done or omitted by a member of the occupational association in the performance of his or her occupation.</li> <li>(c) The capping of liability does not apply to liability for damages arising from death or personal injury to a person, a breach of trust, fraud or dishonesty, and liability which may be the subject of proceedings under Part 13 or 14 of the Real Property Act 1900.</li> </ul> </li> <li>• Solicitors Scheme requirements are:                             <ul style="list-style-type: none"> <li>(a) The level of the capped liability is determined by the number of principals in the firm.</li> </ul> </li> </ul>

## Appendix II (cont'd)

## Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places

	The United Kingdom	The State of New York	The State of New South Wales
<b>Scope of liability limitation (cont'd)</b>			
Do members/partners of an LLP bear liability indirectly by way of contribution or indemnification?	<ul style="list-style-type: none"> <li>The LLP legislation has no provision on this point. It is determined by the members' agreement.</li> </ul>	No, the legislation expressly provides that LLP partners are protected from indirect liability <i>"by way of indemnification, contribution or otherwise"</i> for claims.	Not applicable.
Are members/partners required to contribute to the assets of an LLP to satisfy third party claims in the winding up of the LLP?	<ul style="list-style-type: none"> <li>Members only have to contribute to the extent that they have agreed in the event of an LLP being wound up and they are not obliged to agree to contribute anything.</li> <li>If it is proved that a member of an LLP has withdrawn properties of the LLP during the two years prior to the commencement of the winding up of the LLP, knowing or had reasonable grounds for believing that the LLP was, or would be unable to pay its debts, the member may have to pay back those withdrawals as the court thinks proper.</li> </ul>	No, the Partnership Law exempts partners of LLPs from contributing the amount necessary to satisfy the liabilities in the event of the winding up of an LLP.	Not applicable.
Is a member/partner of an LLP liable for the acts or omissions of persons under his or her direct supervision?	<ul style="list-style-type: none"> <li>There is no statutory provision that directly imposes such liability to the members of an LLP.</li> <li>The Law Society of England and Wales' guideline states that it is dangerous to assume that the LLP status will protect solicitors from the consequences of <i>"negligent supervision of staff"</i>. The Law Society of England and Wales explains that a member of an LLP would not automatically be responsible in law for that happening. It depends on the circumstances and whether a duty of care and actual negligence could be demonstrated.</li> </ul>	Yes, each partner is personally and fully liable for <i>"any negligent or wrongful act or misconduct"</i> committed by any person <i>"under his or her direct supervision and control"</i> while rendering professional services on behalf of the LLP.	Not applicable.



## Appendix II (cont'd)

## Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places

	The United Kingdom	The State of New York	The State of New South Wales
<b>Safeguards</b>			
Is there any statutory requirement for compulsory insurance?	No, there is no compulsory insurance requirement in the LLPs Act.	No, there is no statutory insurance requirement for LLPs.	<ul style="list-style-type: none"> <li>• Yes, each professional standards scheme requires professionals to hold insurance against occupational liability and the insurance policy must comply with the standards determined by the occupational association.</li> </ul>
Does the legal professional body impose any requirement for compulsory insurance cover?	<ul style="list-style-type: none"> <li>• Yes, before one applies to the Law Society of England and Wales for recognition as an LLP, one must arrange to have a minimum qualifying insurance for the LLP, which is the same amount required for sole practitioners and general partnerships.</li> <li>• In addition, an LLP must have top-up insurance, which is compulsory for LLPs only.</li> </ul>	No, there is no compulsory insurance requirement on LLPs or its partners.	<ul style="list-style-type: none"> <li>• Yes, under the Solicitors Scheme, a solicitor must have the benefit of insurance for an amount not less than his or her limited liability.</li> <li>• The insurance policy must cover all civil liability arising in connection with the solicitors' practice.</li> </ul>
Is it a statutory requirement that the name of the law firm must disclose its limited liability partnership status?	Yes, the name of an LLP must end with the expression " <i>limited liability partnership</i> ", or the abbreviation " <i>llp</i> " or " <i>LLP</i> ".	Yes, the name of each registered LLP must contain the words " <i>Registered Limited Liability Partnership</i> " or " <i>Limited Liability Partnership</i> " or the abbreviations " <i>R.L.L.P.</i> ", " <i>RLLP</i> ", " <i>L.L.P.</i> " or " <i>LLP</i> ".	Not applicable.

**Appendix II (cont'd)**

**Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places**

	The United Kingdom	The State of New York	The State of New South Wales
<b>Safeguards (cont'd)</b>			
Statutory disclosure requirements regarding the limited liability status/liability capped status	<ul style="list-style-type: none"> <li>An LLP is required to paint or affix its name on the outside of every office or place in which its business is carried on, in a conspicuous position and in letters reasonably legible.</li> <li>An LLP must put its full corporate name on its business correspondence.</li> <li>An LLP must also put its registered number, place of registration, address of its registered office and the fact that it is an LLP (if its name is not spelled out in full) on its business letters and order forms.</li> <li>If an LLP uses a trading name, it must put its full corporate name, principal place of business and a list of the LLP's members (or, where there are more than 20 members, a statement that the list is open to inspection) on its business letters and other documents.</li> </ul>	<p>Within 120 days after the effective date of the registration of an LLP, a copy of the items in the application of registration or a copy of a notice containing those items has to be published in two newspapers once in each week for six successive weeks. The newspapers must be published in the county in NY in which the principal office of the registered LLP is located.</p>	<ul style="list-style-type: none"> <li>The Professional Standards Act 1994 requires a person whose occupational liability is limited to notify that fact on all documents given to a client or prospective client by carrying the statement "<i>Liability limited by a scheme approved under Professional Standards Legislation.</i>" The size of the disclosure statement is also specified in the regulations.</li> <li>PSC has further issued a policy statement guiding participants of the professional standards schemes on the kinds of documents where the disclosure statement should appear.</li> </ul>

## Appendix II (cont'd)

## Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places

	The United Kingdom	The State of New York	The State of New South Wales
<b>Safeguards (cont'd)</b>			
Legal professional body's disclosure requirements regarding the limited liability status/liability capped status	<ul style="list-style-type: none"> <li>Under section 2 of the Solicitors' Publicity Code 2001, the LLP's notepaper must include:               <ol style="list-style-type: none"> <li>the words "<i>regulated by the Law Society</i>"; and</li> <li>either a list of the members or a statement that the list is open to inspection.</li> </ol> </li> <li>"<i>The Guidance to the Professional Conduct of Solicitors (1999)</i>" requires that where a partnership converts to an LLP, the law firm has to notify its clients, either before the change or soon afterwards.</li> </ul>	The NY State Bar Association does not impose any duty on a law firm to inform its clients individually that it has converted from a general partnership into an LLP, although it is customary to do so.	Same as the statutory disclosure requirements.
Non-financial reporting	<ul style="list-style-type: none"> <li>An LLP has to deliver to the Registrar of Companies successive annual returns four weeks before the anniversary of the incorporation of the LLP. The annual return has to contain, inter alia, the followings:               <ol style="list-style-type: none"> <li>the address of the registered office of the LLP; and</li> <li>the names and usual residential addresses of the members of the LLP, and the names of those members who are designated members.</li> </ol> </li> <li>If an LLP fails to deliver an annual return in time, the LLP and its designated members are guilty of an offence and liable on summary conviction to a fine.</li> <li>The registered office and practising addresses of the LLP, the names and professional qualifications of all members of the LLP, and all subsequent changes have to be notified to the Law Society of England and Wales.</li> </ul>	<ul style="list-style-type: none"> <li>Each LLP has to, within 60 days prior to the fifth anniversary of the effective date of its registration and every five years thereafter, furnish a statement to the Department of State setting forth, inter alia, the followings:               <ol style="list-style-type: none"> <li>the name of the LLP;</li> <li>the address of the principal office of the LLP; and</li> <li>a statement that it is eligible to register as an LLP.</li> </ol> </li> <li>If the statement is not timely filed, the Department of State may proclaim that the registration to be revoked 60 days after mailing to the LLP a notice of the failure to file the statement.</li> <li>The NY State Bar Association does not require law firms operating through LLPs to file any annual report or update the changes in names of partners or other particulars with the Association.</li> </ul>	The NSW Law Society and other occupational associations subject to a professional standards scheme have to provide an annual report to PSC as to the implementation and monitoring of its risk management strategies, the effect of these strategies and any changes made or proposed to be made.

**Appendix II (cont'd)**

**Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places**

	The United Kingdom	The State of New York	The State of New South Wales
<b>Safeguards (cont'd)</b>			
Statutory requirements on financial reporting	<ul style="list-style-type: none"> <li>LLPs are subject to accounting and auditing requirements similar to those for companies.</li> <li>It is a statutory requirement that an LLP has a duty to keep proper accounting records for three years. The annual accounts and the auditor's report must be sent to every member of the LLP and filed with the Registrar of Companies.</li> <li>LLPs qualified as small and medium-sized LLPs may prepare and deliver abbreviated accounts to the Registrar of Companies. The auditing requirement may also be exempted if the turnover and balance sheet total are less than the specified amounts.</li> </ul>	<ul style="list-style-type: none"> <li>The NY Partnership Law does not impose any financial disclosure requirement on LLPs.</li> </ul>	Neither the Professional Standards Act 1994 nor the Solicitors Scheme imposes any financial disclosure requirement upon the professionals who participate in the Solicitors Scheme or other professional standards schemes.
Preservation of the legal practices' assets in the course of winding up	On the application of the liquidator, a member of an LLP may have to pay back withdrawals made during the two years prior to the commencement of the winding up if it is proved that at the time of the withdrawal, the member knew or had reasonable grounds for believing that the LLP was, or would be unable to pay its debts.	There is no statutory provision to claw back the capital withdrawn by partners of an LLP while the business is or is about to become insolvent.	Not applicable.

## Appendix II (cont'd)

## Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places

	The United Kingdom	The State of New York	The State of New South Wales
<b>Safeguards (cont'd)</b>			
Is there any statutory requirement for LLPs or participants of professional standards schemes to establish a particular complaints and disciplinary system?	No.	<ul style="list-style-type: none"> <li>The NY Partnership Law provides that businesses operating through LLPs, other than those authorized to practise law, must be under the supervision of the Regents of the University of the State of New York. These LLPs are subject to disciplinary proceedings and penalties in the same manner and to the same extent as are provided with respect to individuals and their licences relating to the applicable profession.</li> <li>The Appellate Division of the New York State Supreme Court regulates and disciplines lawyers in NY, whether they practise through LLPs or not.</li> </ul>	Yes, the Professional Standards Act 1994 provides a Model Code of complaints and disciplinary matters in Schedule 1 as default rules. Occupational associations may set up their own complaints and disciplinary systems as well. The NSW Law Society has its own complaints and disciplinary system under Part 10 of the Legal Professions Act.
Does LLP legislation or liability capping legislation require any risk management strategies to be adopted by LLPs or participants of professional standards schemes?	No.	No.	<ul style="list-style-type: none"> <li>Yes.</li> <li>Statutory requirement is: An occupational association must have a detailed list of the risk management strategies and the means by which those strategies are to be implemented.</li> <li>Solicitors Scheme requirement is: The NSW Law Society operates a Risk Management Education Program, which is designed to assist practitioners in devising appropriate risk management and practice management systems.</li> </ul>

## Appendix II (cont'd)

## Comparison of the various attributes of the limited liability partnership and liability capping legislation in selected places

	The United Kingdom	The State of New York	The State of New South Wales
<b>Impact</b>			
Impact of the use of LLPs/ Solicitors Scheme by the legal practices on clients and third parties concerned	<p>The Law Society of England and Wales' views:</p> <ul style="list-style-type: none"> <li>• Since the liability of LLPs is backed by compulsory insurance and the Solicitors' Compensation Fund as for general partnerships, it makes no difference to clients and third parties in respect of making claims against a law firm, whether it operates through an LLP or not.</li> <li>• However, the ability of the claimant to get fully paid may be affected because, if a claim exceeds the firm's insurance cover and the LLP's assets are exhausted, the claimant cannot claim against the personal assets of individual lawyers of that LLP.</li> </ul>	<p>The NY State Bar Association's views:</p> <ul style="list-style-type: none"> <li>• The limited liability status of a law firm does not affect its liability or the availability of its assets to pay a debt. It has no such information on the impact of law firms practising as LLPs on their clients.</li> </ul>	<p>PSC's views:</p> <ul style="list-style-type: none"> <li>• It is not aware of any large claim across professions that is above the limitation amount since the introduction of professional standards schemes.</li> <li>• A recent survey shows that most claimants are fully compensated for damages and only corporate clients might experience limits on their claims against professions, but they have the capacity to self-insure and manage risk.</li> </ul>
Impact of the use of LLPs/ Solicitors Scheme by the legal practices on solicitors and law firms	<p>The Law Society of England and Wales' views:</p> <ul style="list-style-type: none"> <li>• The insurance premium for an LLP is not lower than that for a general partnership because the risk to the LLP itself (and hence to the insurer) is no less. Instead, it believes that the premium is likely to be higher because an insurer would be more difficult to enforce payment of the final premium when the LLP fails.</li> <li>• The statutory requirement to file financial information will accelerate the breaking down of the culture of secrecy about law firms' financial affairs.</li> </ul>	<p>The NY State Bar Association's views:</p> <ul style="list-style-type: none"> <li>• It has no such information on the impact of law firms practising as LLPs on the firms and the solicitors themselves. The limited liability status of a law firm does not change its need for insurance to protect its own assets. In the case of a partner of an LLP, he or she still needs to protect himself or herself for those claims to which the limited liability status is not applicable.</li> </ul>	<p>PSC's views:</p> <ul style="list-style-type: none"> <li>• As the legal profession has a well-developed system of regulation before the commencement of the Solicitors Scheme, it is difficult to identify the direct impact of the Solicitors Scheme on legal practitioners and the legal profession of NSW as a whole.</li> <li>• Some law firms have to take out more insurance to fit within the Solicitors Scheme.</li> <li>• PSC has not collected data on whether the insurance costs are reduced as a result of the Solicitors Scheme.</li> </ul>

**Extract from the submission from the Law Society's  
Working Party on Limited Liability Partnerships dated 30 July 2009**

(b) Professional indemnity cover

(i) For the past 10 indemnity years from 1988/89 to 2007/08, the average gross settled claim size (including large multiple claims) ranged from HK\$0.002 million to HK\$3.922 million, well below the statutory indemnity limit of HK\$10 million per claim.

(ii) From the 1994/95 indemnity year to 2 July 2009, there have been 3,321 claims on the Hong Kong Solicitors Indemnity Fund (including notifications), out of which, only 53 claimants, i.e. 1.6 %, have sought HK\$10 million or more.

(iii) Of these 53 claims:

(aa) Payout of HK\$10 million

There are 12 claims in which the Fund paid HK\$10 million (including defence cost but less the indemnified's deductible).

Of these claims, 11 were brought by companies and one by an individual.

(bb) Payout between HK\$8 million and HK\$10 million

There are 15 claims in which the actual or expected payment by the Fund (including defence costs) is or will be more than HK\$8 million but less than HK\$10 million.

Of these claims, 13 were brought by companies and 2 by individuals.

(cc) Payout of less than HK\$8 million

There are 12 claims that were settled for less than HK\$8 million (including defence costs).

Of these claims, 10 were brought by companies and 2 by individuals.

(dd) Payout that may reach HK\$10 million for open claims

There are 7 open claims in which it is anticipated that the claim payments (including defence costs) will reach HK\$10 million (including the deductible).

Of these claims, 5 were brought by companies, one by an individual and one by joint claimants, being one company and two individuals.

- (ee) Payout that may be less than HK\$8 million for open claims

There are 7 open claims in which it is anticipated that the claims will settle for less than HK\$8 million (including defence costs).

All of these claims were brought by companies.

7. The above statistics support the Law Society's assertion that the existing statutory professional indemnity limit of HK\$10 million per claim which is proposed to apply equally to LLPs is generally sufficient for indemnity protection of individual consumers.
8. Further, out of the claims seeking over HK\$10 million, most of them were brought by corporations rather than individual consumers.
9. Any increase to the statutory indemnity limit of HK\$10 million per claim will inevitably lead to an increase in insurance premium. The extra cost will in turn be passed onto the consumers who will have to pay more to get higher indemnity cover.
10. As the statutory professional indemnity limit of HK\$10 million per claim which is public knowledge is already generally sufficient, the Law Society does not consider that there is a need to further consider the suggestion of requiring an LLP to disclose its individual top up insurance coverage publicly.
11. Such suggestion in any event is not feasible as firms are often bound by confidentiality obligations under their respective top up insurance policies.



## Appendix IV

### Takeup of LLPs

Jurisdiction	Mode of Practice	Percentage of LLPs
England and Wales, United Kingdom	<ul style="list-style-type: none"> <li>- sole proprietorship</li> <li>- partnership</li> <li>- limited liability partnership</li> <li>- company recognised by the Solicitors Regulation Authority</li> <li>- Legal Disciplinary Partnership</li> </ul>	8.5% (as at 31 July 2008)
Ontario, Canada	<ul style="list-style-type: none"> <li>- sole proprietorship</li> <li>- partnership</li> <li>- association</li> <li>- Limited Liability Partnership</li> <li>- Professional Corporation</li> <li>- Affiliation</li> <li>- Multi-Discipline Partnership</li> </ul>	8% (807 out of 10,036 active law firms on record)
Singapore	<ul style="list-style-type: none"> <li>- sole proprietorship</li> <li>- firm of solicitors</li> <li>- limited liability law partnership</li> <li>- law corporation</li> </ul>	Approximately 4% out of the overall number of law practices
India	<ul style="list-style-type: none"> <li>- can practise law individually</li> <li>- or form groups called the law firms</li> </ul>	A handful of law firms are registered under LLP law
New York, USA	<ul style="list-style-type: none"> <li>- solo practitioners</li> <li>- partnerships</li> <li>- professional corporations</li> <li>- limited liability companies</li> <li>- limited liability partnerships</li> </ul>	No information on percentages for each category

**Source : Submission from the Law Society's Working Party on Limited Liability Partnerships dated 30 July 2009**

## Limited liability partnerships for legal practice

## Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
Panel on Administration of Justice and Legal Services	9 November 2004	Minutes of meeting [LC Paper No. CB(2)245/04-05]
	31 March 2005	<p>Research Report on "Limited Liability Partnership and Liability Capping Legislation for the Practice of Law in Selected Places" prepared by the Research and Library Services Division of the Legislative Council Secretariat [RP04/04-05]</p> <p>Submission from the Hong Kong Institute of Certified Public Accountants [LC Paper No. CB(2)1099/04-05(01)] <i>(English version only)</i></p> <p>Minutes of meeting [LC Paper No. CB(2)1590/04-05]</p>
Legislative Council	4 May 2005	Official Record of Proceedings of the Council on an oral question raised by Hon TAM Heung-man on "Reform in Professional Liability"
Panel on Administration of Justice and Legal Services	23 May 2005	Administration's paper on "Limiting liability of professional practices" [LC Paper No. CB(2)1613/04-05(03)]
		Background brief on "Limited liability for professional practices" prepared by the Legislative Council Secretariat [LC Paper No. CB(2)1613/04-05(01)]
		Report of the Working Party on Limited Liability Partnership of the Law Society of Hong Kong [LC Paper No. CB(2)1613/04-05(02)] <i>(English version only)</i>
		Minutes of meeting [LC Paper No. CB(2)2232/04-05]

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
	--	<p>Letter dated 24 June 2005 from the Consumer Council on "Limited Liability Partnership"  <a href="#">[LC Paper No CB(2)2210/04-05(01)]</a>  <i>(English version only)</i></p>
	27 March 2006	<p>Administration's paper on "Limitation of liability"  <a href="#">[LC Paper No. CB(2)1371/05-06(01)]</a></p> <p>Background brief on "Limited liability for professional practices" prepared by the Legislative Council Secretariat  <a href="#">[LC Paper No. CB(2)1490/05-06(03)]</a></p> <p>Submission from the Hong Kong Institute of Certified Public Accountants on "Limited liability for professional practices"  <a href="#">[LC Paper No. CB(2)1490/05-06(04)]</a>  <i>(English version only)</i></p> <p>Letter dated 24 March 2006 from the Law Society of Hong Kong on "Limited liability partnerships"  <a href="#">[LC Paper No. CB(2)1559/05-06(02)]</a>  <i>(English version only)</i></p> <p>Minutes of meeting  <a href="#">[LC Paper No. CB(2)2048/05-06]</a></p>
Legislative Council	5 July 2006	<p><a href="#">Official Record of Proceedings of the Council on a written question raised by Hon TAM Heung-man on "Reform on Professional Liability System"</a></p>
Panel on Administration of Justice and Legal Services	--	<p>Administration's letter dated 22 February 2008 to the Panel on "Limited Liability for Professional Practices"  <a href="#">[LC Paper No. CB(2)1176/07-08(01)]</a>  <i>(English version only)</i></p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
	--	Administration's letter dated 10 July 2008 to the Panel Chairman on "Limited Liability for Professional Practices" [LC Paper No. CB(2)2642/07-08(01)] (English version only)
	16 December 2008	Administration's paper on "Limited liability partnership for legal practice" [LC Paper No. CB(2)438/08-09(07)]  Background brief on "Limited liability for professional practices" prepared by the Legislative Council Secretariat [LC Paper No. CB(2)438/08-09(08)]  Minutes of meeting [LC Paper No. CB(2)837/08-09]  <u>Follow-up papers</u>  Administration's letter dated 24 February 2009 on consultation of limited liability partnerships outside the legal sector [LC Paper No. CB(2)965/08-09(01)]  Law Society of Hong Kong's letter dated 24 March 2009 on its current position on solicitor corporations and various issues relating to the proposal on limited liability partnerships for legal practice [LC Paper No. CB(2)1199/08-09(01)] (English version only)  Administration's letter dated 3 April 2009 on a number of issues relating to the proposal on limited liability partnerships for legal practice [LC Paper No. CB(2)1250/08-09(01)]

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
	25 May 2009	<p>Administration's paper on "Limited liability partnerships for legal practice" [LC Paper No. CB(2)1608/08-09(01)]</p> <p>Background brief on "Limited liability partnerships for legal practice" prepared by the Legislative Council Secretariat [LC Paper No. CB(2)1608/08-09(02)]</p> <p>Submission from the Consumer Council dated June 2009 [LC Paper No. CB(2)1915/08-09(01)]</p> <p>Minutes of meeting [LC Paper No. CB(2)1902/08-09]</p> <p><u>Follow-up paper</u></p> <p>Law Society of Hong Kong's submission dated 30 July 2009 providing information on the respective percentage of different types of business entities adopted by solicitors' practices in overseas jurisdictions which allowed LLPs and relevant statistics on the adequacy of the current statutory professional limit in meeting claims against solicitors [LC Paper No. CB(2)2402/08-09(01)] (English version only)</p>