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Panel on Administration of Justice and Legal Services

**Background brief prepared by Legislative Council Secretariat
for the meeting on 28 March 2011**

Solicitor Corporations Rules

Purpose

This paper highlights the past discussions of the Panel on Administration of Justice and Legal Services ("the Panel") on the progress of implementation of the recommendation on the incorporation of solicitors' practices.

Background

2. In 1995, the then Attorney General's Chambers published a Consultation Paper on Legal Services which made a number of proposals regarding legal services of Hong Kong. One proposal was to allow solicitors to incorporate their practices as companies. An incorporated company is in law a separate legal entity, distinct from its members. Shareholders of a company with limited liability are only liable to the extent of the unpaid nominal capital of the shares which they own. The view expressed in the Consultation Paper was that, subject to proper safeguards, solicitors should be permitted to incorporate their practices with either limited or unlimited liability.

3. Clause 2 of the Legal Services Legislation (Miscellaneous Amendments) Bill 1996, which was enacted in June 1997, sought to add new provisions to the Legal Practitioners Ordinance (Cap. 159) to enable solicitors to incorporate their practices as solicitor corporations. These included amendments to sections 73 and 73A of the Legal Practitioners Ordinance to provide that the Council of the Law Society might make rules in respect of the establishment of solicitor corporations and fees payable to the Law Society for applications for registration as a solicitor corporation, as well as professional indemnity cover of solicitor corporations. The new provisions should take effect on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

4. The Panel held five meetings on 19 December 2000, 27 May 2002, 24 November 2003, 22 November 2004 and 31 March 2005 respectively to discuss the progress of implementation of the recommendation on the incorporation of solicitors' practices including the drafting of the Solicitor Corporations Rules ("the draft Rules"). At the Panel meeting on 24 November 2003, the Law Society briefed the Panel on specific provisions of the draft Rules, the Solicitor Corporations (Fees) Rules and the proposed consequential amendments to the Solicitors (Professional Indemnity) Rules. The Law Society further updated members on the draft Rules clause by clause at the Panel meeting on 31 March 2005.

Major issues discussed by the Panel

Preparation of the draft Rules

5. In answer to members' enquiries, the Law Society informed the Panel that in preparing the draft Rules, the Society had undertaken research on issues relating to incorporation of solicitors' practices in some overseas common law jurisdictions. The Society pointed out that consideration of the issues involved detailed discussion on the way in which solicitor corporations would conform to existing practice rules, including those relating to the Solicitors Professional Indemnity Scheme, compliance with rules of conduct as well as other regulatory matters. The ultimate objective was to ensure that proper safeguards would be provided to users of legal services, while allowing solicitors greater flexibility in the manner in which they ran their practice.

6. The Law Society further informed the Panel that it would continue to study whether limited liability partnerships for legal practice (i.e. partnership of solicitors as a legal entity of limited liability under certain circumstances), which were a new development in England and Wales, would be a better alternative than solicitor corporations for Hong Kong.

Top-up insurance

7. At the Panel meeting on 27 May 2002, the Administration informed members that it had studied the draft Rules issued by the Law Society in June 2001 for comments by its members and the Administration. The Administration considered that the major outstanding issue of concern was in relation to insurance of solicitor corporations for the protection of consumers.

8. The Administration had noted that there was no provision in the draft Rules requiring a solicitor corporation to have insurance coverage before it could be approved as a solicitor corporation. The Administration considered it

essential that, for the protection of consumers, adequate indemnity insurance should be taken out by solicitor corporations to cover civil claims made by their clients. The Administration suggested that the Law Society should consider whether the existing minimum coverage taken out by a solicitors firm was sufficient for solicitor corporations.

9. The Law Society informed the Panel that legislative amendments would be made to include solicitor corporations in the definition of "indemnified" under the Solicitors (Professional Indemnity) Rules. In its view, the cover provided by the existing Solicitors Professional Indemnity Scheme was sufficient protection for the public. Also, in addition to the mandatory \$10 million insurance coverage for each and every claim made by clients, it was not uncommon for some larger solicitors firms to take out additional indemnity insurance.

10. There was a view that the requirement of top-up insurance would defeat the legislative intent of incorporation of solicitors firms. The reason why incorporation of solicitors was contemplated was that the present system was considered to be too onerous on solicitors firms as solicitors had to pay from their own private means, if necessary, for the faults of their partners even though they had nothing to do with the negligent act.

11. The Administration had reviewed its position and advised the Panel in November 2003 that it would not insist on the requirement of top-up insurance for solicitor corporations at the present stage. Whether the need for top-up insurance should be further assessed would depend on the outcome of the Law Society's review on the existing Professional Indemnity Scheme and the practical operation of the Solicitor Corporations Rules.

12. The Law Society also explained that amendments would be made to the Solicitors (Professional Indemnity) Rules, which would put the solicitors and their staff working in a solicitor corporation in the same position as though they were practicing through the existing form of sole proprietorship or partnership. Any claims against a solicitor corporation would proceed against the Solicitors Indemnity Fund in the normal way.

Requirement in relation to member and director of a solicitor corporation

13. Under rule 3(1)(d)(i) of the draft Rules, every member and every director of a solicitor corporation must be an individual who was a solicitor holding a current practising certificate which was not subject to any condition other than the condition that he should comply with the Continuing Professional Development Rules and any other continuing legal education rules made under

section 73 of the Legal Practitioners Ordinance. The Law Society pointed out that with the coming into force of the Practising Certificate (Special Conditions) Rules, which enabled the Society to impose conditions on the practising certificate of a solicitor, concern had been raised as to whether the conditions imposed by the Law Society would bar the solicitor from becoming a member or director of a solicitor corporation. The Law Society advised that its Council would further consider the matter and would introduce relevant amendments to the draft Rules, if necessary.

14. The Law Society also pointed out that rule 3(2) of the draft Rules required that a solicitor corporation established by a sole practitioner must have a second member. A suggestion was made to the Law Society to review the drafting of rule 3(2) in the light of the relevant statutory requirements under the Companies Ordinance to achieve consistency.

15. At the Panel meeting on 31 March 2005, the Law Society affirmed that according to rules 10(1) and 10(2), a member of a solicitor corporation who was suspended from practice would be allowed to have the shares registered in his name continue to be so registered for not longer than six months. During those six months, the solicitor would be prohibited from exercising any voting right in respect of the shares. It implied that if a member of the corporation was suspended from practice for more than six months, the shares would be de-registered from his name after the expiry of the first six months of suspension and he could not own the shares any more. What the other partners would do towards a partner who was not entitled to practice would be a matter for the individual partnerships. In the absence of any partnership agreement, the provisions of the Partnership Ordinance (Cap. 38) would apply. The Law Society also advised that there were no statutory provisions in the draft Rules concerning whether a partner suspended from practice could continue to receive income from the partnership.

16. The Law Society also advised that under rule 8(1), a member of a solicitor corporation should not create a charge or other third party interest over any shares in the corporation. A third party by court action created a charge over the shares in the corporation, however, would not be in breach of rule 8(1).

Legislative timetable

17. The Law Society informed the Panel at its meeting on 24 November 2003 that it had sought the views of its members on the draft Rules. Its members would be consulted again if the Law Society Council considered that further amendments to the draft Rules were necessary. The finalized Rules would then be submitted to the Chief Justice for approval and gazetted. The Law Society

expected that this could be done by early 2004. At the Panel meeting on 31 March 2005, the Law Society further informed that it hoped that the draft Rules which would be subject to the negative vetting procedure of the Legislative Council ("LegCo") could be brought into operation before the end of the 2004-2005 legislative session.

18. When the Panel was updated on the development of implementing limited liability partnerships for legal practice ("LLP") in December 2008, members enquired why the rules for implementing solicitor corporations had not yet been brought into force given that laws had already been enacted on solicitor corporations in 1997. The Law Society explained that since the amendments to the relevant principal legislation on solicitor corporations were enacted in 1997, the Companies Ordinance (Cap. 32) had been amended to allow a limited company to have only one member and one director, which had implications on the structure of solicitor corporations. In addition, amendments were also required to be made to the Solicitors (Professional Indemnity) Rules to set out the respective liabilities of directors and staff members of solicitor corporations. In the past few years, the Law Society had focused its efforts on the introduction of LLP as it offered the protection most sought after by solicitors, namely, the protection of innocent partners from personal liability for acts and omissions of other partners. Nonetheless, the Law Society had recently started to work on the drafting of the rules on solicitor corporations again.

Recent development

19. In its letter dated 28 January 2011 to the LegCo Secretariat, the Law Society has enclosed the latest set of the draft Rules, together with a set of Solicitors' (Professional Indemnity) (Amendment) (No. 2) Rules 2010. According to the Law Society, the latest version of the draft Rules is substantially the same as the draft Rules considered by the Panel in March 2005. The Law Society wishes to consult the Panel on the latest version before submitting it to the Chief Justice for approval.

Relevant papers

20. A list of the relevant papers on the LegCo website is in the **Appendix**.

Relevant papers on Solicitor Corporations Rules

Committee	Date of meeting	Paper
Panel on Administration of Justice and Legal Services	19.12.2000 (Item V)	Agenda Minutes
	27.5.2002 (Item V)	Agenda Minutes
	24.11.2003 (Item V)	Agenda Minutes
	22.11.2004 (Item VII)	Agenda Minutes
	31.3.2005 (Item V)	Agenda Minutes
	16.12.2008 (Item VI)	Agenda Minutes

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