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Paper for the House Committee meeting on 9 October 2015

**Report of the Subcommittee on
Foreign Lawyers Practice (Amendment) Rules 2015,
Solicitors' Practice (Amendment) Rules 2015 and
Limited Liability Partnerships (Top-up Insurance) Rules**

Purpose

This paper reports on the deliberations of the Subcommittee on Foreign Lawyers Practice (Amendment) Rules 2015, Solicitors' Practice (Amendment) Rules 2015 and Limited Liability Partnerships (Top-up Insurance) Rules ("the three Rules").

Background

2. The Foreign Lawyers Practice (Amendment) Rules 2015 and the Solicitors' Practice (Amendment) Rules 2015 are made by the Council ("the Council") of The Law Society of Hong Kong ("the Law Society") under section 73 of the Legal Practitioners Ordinance (Cap. 159) with the prior approval of the Chief Justice ("CJ"). The Limited Liability Partnerships (Top-up Insurance) Rules are made by the Council under section 73A(3)(fa) of Cap. 159 (added by the Legal Practitioners (Amendment) Ordinance 2012 (Ord. No. 22 of 2012) ("the Amendment Ordinance")) with the prior approval of CJ.

3. The Amendment Ordinance was enacted in 2012 to amend Cap. 159 to introduce an additional mode of operation in the form of limited liability partnership ("LLP") for solicitors. A partner in an LLP is not, solely by reason of being a partner, jointly or severally liable for any partnership obligation that arises from the provision of professional services by the partnership as an LLP

as a result of a default of another partner or an employee, agent or representative of the partnership, provided that certain conditions are satisfied. Pursuant to section 2 of the Amendment Ordinance, it comes into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

The three Rules

Foreign Lawyers Practice (Amendment) Rules 2015

Solicitors' Practice (Amendment) Rules 2015

4. Under section 4 of the Foreign Lawyers Practice Rules (Cap. 159R), a foreign firm is permitted to use as its name the name of an overseas firm of which the foreign firm is a branch. Consequently, if the firm name of the overseas parent office of a foreign firm includes "LLP" as part of its registered name, the foreign firm will be allowed to use that name in Hong Kong even though there is no legislation on LLP in force in Hong Kong.

5. Under rule 2A(2)(b) of the Solicitors' Practice Rules (Cap. 159H), a firm ("Hong Kong firm") which is established as a branch of an overseas firm is permitted to use, subject to certain conditions, the name of the overseas firm as its name.

6. After commencement of the Amendment Ordinance, foreign firms and Hong Kong firms which are not LLPs registered in Hong Kong should not be permitted to include "LLP" as part of their firm names.

7. The Foreign Lawyers Practice (Amendment) Rules 2015 amend section 4 of Cap. 159R by adding new section 4(3) and the Solicitors' Practice (Amendment) Rules 2015 amend rule 2A to Cap. 159H by adding new rule 2A(3) to provide that except for a foreign firm or Hong Kong firm that is an LLP within the meaning of section 7AB of Cap. 159 (added by the Amendment Ordinance), a foreign firm or Hong Kong firm:

- (a) must not include, in its English name, the words "limited liability partnership"; the abbreviation "L.L.P." or "LLP"; or any words or abbreviations that convey the message that the firm is an LLP within the meaning of section 7AB of Cap. 159;
- (b) must not include, in its Chinese name, the words "有限法律責任合夥"; or any words or abbreviations that convey the message that the firm is an LLP within the meaning of section 7AB of Cap. 159; and
- (c) must not include, if the firm has a name in a language other than English or Chinese, as part of that name, any words or

abbreviations that convey the message that the firm is an LLP within the meaning of section 7AB of Cap. 159.

8. In addition, the Foreign Lawyers Practice (Amendment) Rules 2015 amend section 9(1B) of Cap. 159R (added by the Amendment Ordinance) and the Solicitors' Practice (Amendment) Rules 2015 amend rule 5(1B) of Cap. 159H (added by the Amendment Ordinance) to ensure that after the coming into operation of rule 5 of the Limited Liability Partnerships (Top-up Insurance) Rules (proof of firm's compliance with section 7AD of Cap. 159 (added by the Amendment Ordinance)), there would not be any conflict or inconsistency between the requirements for provision of evidence to the Law Society to show the firm's compliance with section 7AD of Cap. 159 under section 9(1B) of Cap. 159R and rule 5(1B) of Cap. 159H, and the requirement for the same under rule 5 of the Limited Liability Partnerships (Top-up Insurance) Rules.

Limited Liability Partnerships (Top-up Insurance) Rules

9. Section 7AD of Cap. 159 sets out the top-up insurance requirement for an LLP. The policy of insurance required to be maintained by an LLP must comply with any indemnity rules made under section 73A(3)(fa) of Cap. 159. The Limited Liability Partnerships (Top-up Insurance) Rules are the rules so made to provide for the better carrying out of section 7AD.

10. Rule 3 of the Limited Liability Partnerships (Top-up Insurance) Rules provides that a policy of insurance required to be maintained under section 7AD of Cap. 159 must be written by a company authorized under section 8 of the Insurance Companies Ordinance (Cap. 41) to carry on, in or from Hong Kong, insurance business of the nature specified in class 13 in Part 3 of the First Schedule to Cap. 41 (i.e. general liability), the society of underwriters known in the United Kingdom ("UK") as Lloyd's, or an association of underwriters approved by the Insurance Authority appointed under section 4 of Cap. 41.

11. Rule 4 of the Limited Liability Partnerships (Top-up Insurance) Rules sets out the scope of the top-up insurance requirement which is as follows:

- (a) for an LLP that is a Hong Kong firm, the policy of insurance must provide indemnity in respect of any description of civil liability whatsoever incurred in connection with its Practice¹, in a manner and to the extent similar to the indemnity provided to a solicitor under the fund established under rule 3 of Cap. 159M; and
- (b) for an LLP that is a foreign firm, the policy of insurance must provide indemnity in respect of services rendered by the firm, in a

¹ Practice is defined to have the meaning given by rule 2 of the Solicitors (Professional Indemnity) Rules (Cap. 159M)

manner and to the extent similar to the indemnity provided to a foreign lawyer under section 6 of the Foreign Lawyers Registration Rules (Cap. 159S).

12. Rule 5 of the Limited Liability Partnerships (Top-up Insurance) Rules requires a principal in a firm that is an LLP to provide to the Law Society evidence that it requires to show the firm's compliance with section 7AD of Cap. 159. Such evidence must be provided in the form and manner specified by the Law Society within a specified period and may be provided by one principal on behalf of all the other principals.

The Subcommittee

13. At the House Committee meeting held on 5 June 2015, Members agreed that a subcommittee should be formed to study the three Rules. The membership list of the Subcommittee is in the **Appendix**.

14. Under the chairmanship of Hon Dennis KWOK, the Subcommittee has held two meetings, including one meeting with the Law Society.

15. To allow time for the Subcommittee to complete its work, a motion was moved by Hon Dennis KWOK, on behalf of the Subcommittee, at the Council meeting of 24 June 2015 to extend the scrutiny period of the three Rules from the Council meeting of 24 June 2015 to the first meeting of the next legislative session scheduled for 14 October 2015.

Deliberations of the Subcommittee

Commencement of the Amendment Ordinance

16. Members note that pending finalization of the two sets of subsidiary legislation for LLP, the first set being the three Rules and the second set being subsidiary legislation made to effect consequential amendments to Order 81 of the Rules of the High Court (Cap. 4A) and Order 81 of the Rules of the District Court (Cap. 336H), the Law Society hopes that the Amendment Ordinance could come into operation on 1 January 2016. According to the Law Society, the High Court Rules Committee and the District Court Rules Committee have approved the proposed amendments to Cap. 4A and Cap. 336H. Upon signing of the subsidiary legislation concerned by CJ, arrangements would be made by the Department of Justice to gazette the subsidiary legislation as soon as practicable for negative vetting by the Legislative Council.

Liabilities of partners in an LLP

17. Members note that a partner in an LLP is not, solely by reason of being a partner, jointly or severally liable for any partnership obligation that arises from the provision of professional services by the partnership as an LLP as a result of a default of another partner or an employee, agent or representative of the partnership, provided that certain conditions are satisfied. Question has been raised as to what these conditions are.

18. The Law Society has advised that the conditions are set out in section 7AC(3) of Cap. 159 (added by the Amendment Ordinance). One of the conditions is that at the time of default, the partnership must have complied with the top-up insurance requirement set out in section 7AD of Cap. 159 to have, in place on top of the statutory professional indemnity limit per claim of \$10 million under the existing Solicitors Indemnity Fund ("the Fund"), another \$10 million of top-up insurance cover. The Law Society considers that providing effectively a maximum of \$20 million per claim for an LLP is adequate, as past statistics of the Fund shows that over 90% of the claims sought from the Fund are less than \$10 million per claim. A maximum amount of \$20 million which a client of an LLP could seek per claim is also comparable to the professional indemnity insurance requirement per claim for an LLP in Singapore and UK. To better safeguard the interests of clients of LLP, a policy of insurance required to be maintained must be written by a company authorized under section 8 of Cap. 41 to carry on, in or from Hong Kong, insurance business of the nature specified in class 13 in Part 3 of the First Schedule to Cap. 41 (i.e. general liability), the society of underwriters known in UK as Lloyd's, or an association of underwriters approved by the Insurance Authority appointed under section 4 of Cap. 41 (rule 3 of the Limited Liability Partnerships (Top-up Insurance) Rules).

19. The Law Society has further advised that another condition under section 7AC(3) of Cap. 159 is that at the time of the default, the client knew or ought reasonably to have known that the partnership was an LLP. To ensure that a client knows or ought reasonably to have known that the partnership is an LLP, an LLP must, if it has a Chinese name, include the words "有限法律責任合夥" as part of that Chinese name, and if it has an English name, include the words "Limited Liability Partnership" (or the abbreviation) as part of that English name, display its name at every place of business of the partnership, and state its name in its correspondence and other publications as required by section 7AJ and section 7AK of Cap. 159 (added by the Amendment Ordinance). To this end, it is also necessary to make the Foreign Lawyers Practice (Amendment) Rules 2015 and the Solicitors' Practice (Amendment) Rules 2015.

20. The Law Society has pointed out that whilst the object of section 7AC of Cap. 159 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 law of negligence. For example, a partner in an LLP may still be held vicariously liable for the default of an employee who is under the partner's supervision. The protection under section 7AC of Cap. 159 would however not be available to a partner in an LLP if he or she knew of the default at the time of its occurrence and failed to exercise reasonable care to prevent its occurrence (section 7AF of Cap. 159 (added by the Amendment Ordinance)).

21. On the question as to whether the Amendment Ordinance would protect an innocent partner against liability arising from the criminal act of another partner of the firm in connection with the practice of the firm, say, stealing money from the client, the Law Society has advised that a partner in an LLP is solely responsible for his/her own criminal conduct. Other partners should not be held criminally liable unless there is a criminal conspiracy by the partners concerned.

Publicity and education of the Amendment Ordinance

22. As LLP is a new business model for solicitors' firms in Hong Kong, Dr Hon Priscilla LEUNG has suggested that the Law Society should educate the public on the advantages and disadvantages of instructing a law firm which operates as an LLP.

23. The Law Society has advised that it plans to carry out publicity work to educate the public on the advantages and disadvantages of instructing such a law firm as well as apprising its members of the requirements to operate as an LLP prior to the coming into operation of the Amendment Ordinance.

Contributions to the Fund

24. Hon Dennis KWOK urges the Council to consider further reducing the contributions to the Fund payable by all law firms, having regard to the fact that the Fund has a surplus of some \$2.1 billion, as some small solicitors' firms and solicitors in solo practice have commented on the high contributions they have to make to the Fund.

25. The Law Society has agreed to relay to the Council the suggestion of reducing the contributions required to be paid by all law firms. The Law Society has however pointed out that it is incumbent upon the Council to adopt an extremely prudent approach in managing the Fund to avoid the recurrence of requiring members of the Law Society to make extra contributions to the Fund in April and July 2003 due to the collapse of the reinsurer of the Fund in March 2001 and to safeguard the welfare of the public.

Recommendation

26. The Subcommittee supports the three Rules and will not propose any amendment.

Advice sought

27. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 4
Legislative Council Secretariat
29 September 2015

**Subcommittee on
Foreign Lawyers Practice (Amendment) Rules 2015,
Solicitors' Practice (Amendment) Rules 2015 and
Limited Liability Partnerships (Top-up Insurance) Rules**

Membership list

Chairman Hon Dennis KWOK

Members Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP

(Total : 3 Members)

Clerk Mary SO

Legal adviser Wendy KAN