

**立法會**  
*Legislative Council*

LC Paper No. CB(4)201/15-16

Ref.: CB4/SS/20/14

**Paper for the House Committee meeting on 20 November 2015**

**Report of the Subcommittee on  
Rules of the High Court (Amendment)(No. 3) Rules 2015 and  
Rules of the District Council (Amendment) Rules 2015**

**Purpose**

This paper reports on the deliberations of the Subcommittee on Rules of the High Court (Amendment)(No. 3) Rules 2015 and Rules of the District Council (Amendment) Rules 2015.

**Background**

2. Under the Partnership Ordinance (Cap. 38), partners of a firm are, generally speaking, jointly and severally liable for the wrongful acts or omissions for which the firm is liable. Limited liability partnership ("LLP") is introduced for law firms in Hong Kong by the Legal Practitioners (Amendments) Ordinance 2012 ("Amendment Ordinance") which was enacted in July 2012. The new Part IIAAA to the Legal Practitioners Ordinance (Cap. 159) added by the Amendment Ordinance has the effect of limiting the liability of innocent partners of LLP law firms, namely as regards partnership obligation arising from the provision of professional services by the LLP and as a result of the default of the other partners of the firm.

3. Under the new section 7AC(1) in Part IIAAA of Cap. 159, a partner of a law firm which is an LLP is not, solely by reason of being a partner of such firm, jointly or severally liable for any partnership obligation (whether founded on tort, contract or otherwise) arising from a default of another partner, an employee, agent or representative of the firm in the provision of professional services. By the new section 7AF(3) of Cap. 159, an innocent partner's interest in the partnership property may still be subject to the enforcement of a judgment or order given or made in the related legal proceedings against the LLP. However,

the innocent partner's personal assets will be protected and not be subject to the enforcement action in the relevant proceedings.

4. At present, the procedural rules in Order 81 of the Rules of the High Court (Cap. 4A), and Order 81 of the Rules of the District Court (Cap. 336H) are primarily catered for general partnership, not for LLP.

5. The Rules Committee of the High Court has made the Rules of the High Court (Amendment) (No. 3) Rules 2015 under section 54 of the High Court Ordinance (Cap. 4) (L.N. 175 of 2015), and the District Court Rules Committee has made the Rules of the District Court (Amendment) Rules 2015 under section 72 of the District Court Ordinance (Cap. 336) (L.N.176 of 2015) ("the Amendment Rules"). The main purpose of the Amendment Rules is to give effect to the relevant provisions in the Amendment Ordinance by prescribing court procedural rules for litigations as regards LLP.

## **The Rules**

Rules of the High Court (Amendment) (No. 3) Rules 2015 (L.N. 175 of 2015)  
Rules of the District Court (Amendment) Rules 2015 (L.N. 176 of 2015)

6. L.N. 175 of 2015 and L.N. 176 of 2015 amend rule 5 of Order 81 of Cap. 4A and Cap. 336H respectively, mainly by adding a new paragraph (6) to the relevant rules. The effect is that any execution to enforce a judgment or order given or made against a law firm which is an LLP may not issue separately against a partner who is protected under Part IIAAA of Cap. 159 from liability for the partnership obligation unless (a) such partner admits in the pleading in the relevant proceedings that he is not protected under Part IIAAA of Cap. 159 or (b) such partner is adjudged by the court as not so protected.

## **Commencement**

7. Both L.N. 175 of 2015 and L.N. 176 of 2015 will come into operation on the day on which the Amendment Ordinance comes into operation. Section 2 of the Amendment Ordinance provides that it will come into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

## **The Subcommittee**

8. At the House Committee meeting held on 9 October 2015, Members agreed that a subcommittee should be formed to study the Rules of the High Court (Amendment) (No. 3) Rules 2015 and the Rules of the District Court

(Amendment) Rules 2015. The membership list of the Subcommittee is in **Appendix I**.

9. Under the chairmanship of Hon Dennis KWOK, the Subcommittee has held one meeting with the representatives from the Department of Justice ("DoJ").

10. To allow more time for the Subcommittee to prepare its report for the House Committee, Hon Dennis KWOK moved a motion at the Council meeting of 4 November 2015 to extend the scrutiny period of L.N. 175 of 2015 and L.N. 176 of 2015 from the Council meeting of 11 November 2015 to that of 2 December 2015.

### **Deliberations of the Subcommittee**

#### Target commencement date of the Legal Practitioners (Amendments) Ordinance 2012

11. The Subcommittee notes that after the completion of the negative vetting process of L.N. 175 of 2015 and L.N. 176 of 2015 in early December 2015, and, having consulted the Law Society of Hong Kong and taking into account the time for preparing the commencement notice to give effect to the Amendment Ordinance, the Administration expects that the Amendment Ordinance, together with L.N. 175 of 2015 and L.N. 176 of 2015, would come into operation on 1 March 2016.

#### Drafting style of the rules

12. The Subcommittee notes that the Administration has adopted a narrative drafting approach in the preparation of L.N. 175 of 2015 and L.N. 176 of 2015, in particular paragraphs 6(b) of these two legal notices, to make them more readable.

13. The Subcommittee has completed the scrutiny of L.N. 175 of 2015 and L.N. 176 of 2015 and supports these two amendment rules.

**Advice sought**

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

Council Business Division 4  
Legislative Council Secretariat  
17 November 2015

**Subcommittee on  
Rules of the High Court (Amendment) (No. 3) Rules 2015 and Rules of the  
District Court (Amendment) Rules 2015**

**Membership List**

<b>Chairman</b>	Hon Dennis KWOK
<b>Members</b>	Hon Albert HO Chun-yan Hon Abraham SHEK Lai-him, GBS, JP  (Total : 3 members)
<b>Clerk</b>	Mr Daniel SIN
<b>Legal Adviser</b>	Mr YICK Wing-kin
<b>Date</b>	22 October 2015