

LEGISLATIVE COUNCIL BRIEF

Legal Practitioners (Amendment) Ordinance 2012
(22 of 2012)

Rules of the High Court (Amendment) (No. 3) Rules 2015 AND Rules of the District Court (Amendment) Rules 2015

INTRODUCTION

A The High Court Rules Committee¹ has made the Rules of the High Court (Amendment) (No. 3) Rules 2015 (“**RHC (Amendment) Rules**”, and see **Annex A**) under section 54 of the High Court Ordinance (Cap. 4).²

B 2. The District Court Rules Committee³ has made the Rules of the District Court (Amendment) Rules 2015 (“**RDC (Amendment) Rules**”, and see **Annex B**) under section 72 of the District Court Ordinance (Cap. 336).

¹ The High Court Rules Committee is constituted under section 55 of the High Court Ordinance (Cap. 4) which may make rules of court regulating and prescribing the procedure and the practice to be followed in the High Court (see also section 54(1) of the High Court Ordinance). The Committee is chaired by the Chief Judge and comprises, among others, barristers nominated by the Hong Kong Bar Association and solicitors nominated by the Law Society of Hong Kong.

² Section 28(1) of the Interpretation and General Clauses Ordinance (Cap. 1) provides that, “[w]here an Ordinance confers power on a person to make subsidiary legislation ... (c) [the] subsidiary legislation may at any time be amended by the same person and in the same manner by and in which it was made”.

³ The District Court Rules Committee is constituted under section 17 of the District Court Ordinance (Cap. 336) which may make rules of court regulating and prescribing the procedure and the practice to be followed in the District Court. The Committee is chaired by the Chief Judge and comprises, among others, a barrister nominated by the Hong Kong Bar Association and a solicitor nominated by the Law Society of Hong Kong.

JUSTIFICATIONS

3. The Legal Practitioners (Amendments) Ordinance 2012 (“**Amendment Ordinance**”) was enacted and gazetted in July 2012 to introduce limited liability partnership (“**LLP**”) for law firms in Hong Kong. The Administration intends to bring the Amendment Ordinance into operation as soon as practicable after negative vetting of the RHC (Amendment) Rules and the RDC (Amendment) Rules (collectively as the “**Amendment Rules**”).

4. The main purposes of the Amendment Rules are to give effect to the relevant provisions in the Amendment Ordinance by prescribing court procedural rules for litigations as regards LLP as set out in paragraphs 5 – 12 below.

BACKGROUND

5. For the purpose of introducing LLP in Hong Kong, the Amendment Ordinance has, among others, inserted to the Legal Practitioners Ordinance (Cap. 159) (“**LPO**”) a new Part IIAAA which adds a number of new sections to the LPO. The following is a brief summary of the salient sections of the LPO relevant to the Amendment Rules as introduced by the Amendment Ordinance. In the text that follows, “**Section**” refers to any of the new sections introduced to the LPO by the Amendment Ordinance.

Section 7AC(1)

6. 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. The Amendment Ordinance has provided an exception for LLP partners. It has, among others, inserted Section 7AC(1) as stated below:-

“A partner in a limited liability partnership is not, solely by reason of being a partner, jointly or severally liable for any partnership obligation (whether founded on tort, contract or otherwise) that arises from the provision of professional services by the partnership as a limited liability partnership as a result of a default of:-

- (a) another partner, or
- (b) an employee, agent or representative of the partnership.”

(For simplicity, LLP partners who are protected by Section 7AC(1) are referred to as “**shielded partners**” below.)

Section 7AF(3)

7. The Amendment Ordinance provides partial protection for the shielded partners. In particular, Section 7AF(3) qualifies Section 7AC(1) as follows:-

“Section 7AC(1) does not protect any interest of a partner in the partnership property from claims against the partnership.”

(For simplicity, the personal assets of an LLP partner other than his interests in the partnership property are referred to as his “**other personal assets**” below.)

8. In other words, it is only the shielded partners’ other personal assets that are protected by Section 7AC(1). A plaintiff will still be allowed to take enforcement action against all LLP partners’ interests (i.e. including the shielded partners’ interests) in the partnership property on a judgment against the LLP.

Section 7AH(a)

9. At the procedural level, the position as mentioned in paragraph 8 above is reflected in Section 7AH(a) as set out below.

“If a partner is protected from liability by section 7AC(1) –

(a) the partner is not, separately, a proper party to any proceedings brought against the partnership for the purpose of recovering damages or claiming other relief in respect of the liability;”

10. In particular, the word “separately” is included in Section 7AH(a) to make clear that Section 7AC(1) does not prevent a shielded partner from being made a party to proceedings brought by a plaintiff against the partnership as a whole (i.e. when they are brought against all LLP partners collectively, including the shielded partner). Therefore, the plaintiff may take enforcement action against the partnership property (including the shielded partner’s interests in the partnership property) on a judgment against the LLP in accordance with the policy objective of Section 7AF(3) as mentioned in paragraph 7 above. Furthermore, by providing that a shielded partner is not separately a proper party to any proceedings brought against the partnership, it restricts the plaintiff’s ability to take enforcement action against the shielded partner’s other personal assets on a judgment against the LLP.

Section 7AC(1) and Section 7AF(3)

11. Another feature to note about Section 7AC(1) (as qualified by Section 7AF(3)) is that, whilst a shielded partner's other personal assets are protected from LLP's professional liabilities, a non-shielded partner's other personal assets are not.

Procedural rules as regards LLP partners

12. At present, the procedural rules for litigations as regards partners in Order 81 of the Rules of the High Court, and Order 81 of the Rules of the District Court (collectively as "**Order 81**") are primarily catered for general partnership, but not for LLP. The Amendment Rules amend Order 81 so as to give effect to the provisions of the Amendment Ordinance for LLP as summarized above.

THE AMENDMENT RULES

13. Given that the provisions in the RHC (Amendment) Rules and the RDC (Amendment) Rules are similar, for simplicity, in the text below, references to the Amendment Rules are to the RHC (Amendment) Rules or, as the case may be, the RDC (Amendment) Rules; references to a rule are to a rule of the RHC (Amendment) Rules or, as the case may be, a rule of the RDC (Amendment) Rules; and references to Order 81 are to Order 81 of the Rules of the High Court or, as the case may be, Order 81 of the Rules of the District Court, unless specified otherwise. The main provisions of the Amendment Rules are summarized below:-

- (a) rule 1 provides that the Amendment Rules come into operation on the day on which the Amendment Ordinance comes into operation.
- (b) rules 2 and 3, among others, add a new rule 5(6) to Order 81 as set out below.

"Execution to enforce a judgment or order given or made against a firm that is a limited liability partnership may not issue against a member of the firm unless —

- (a) the member admitted in the pleading in the proceedings that the member is a partner not protected under Part IIAAA of the Legal Practitioners Ordinance (Cap. 159) from liability for the partnership obligation in respect of which the proceedings are brought; or
- (b) the member is adjudged to be such a partner —
 - (i) in the proceedings; or
 - (ii) on an application for leave to enforce the judgment or order."

CONSULTATION

14. We have consulted the Hong Kong Bar Association (“**Bar**”) and the Law Society of Hong Kong (“**LS**”) over the course of our preparation of the Amendment Rules. Both the Bar and LS have no objections to the Amendment Rules.

IMPLICATIONS OF THE RULES

15. The Amendment Rules are in conformity with the Basic Law, including the provisions concerning human rights.

PUBLICITY

16. A press release will be issued and a spokesperson will be available for answering media enquiries.

LEGISLATIVE TIMETABLE

17. The legislative timetable is as follows:-

Publication in the Gazette	18 September 2015
Tabling at the Legislative Council for negative vetting	14 October 2015

18. The Amendment Rules will come into operation on the day on which the Amendment Ordinance comes into operation. In this connection, section 2 of the Amendment Ordinance provides that “This Ordinance comes into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette”. To this end, we aim to bring the Amendment Ordinance into operation as soon as practicable after negative vetting of the Amendment Rules.

ENQUIRIES

19. Any enquiry on this brief can be addressed to Ms Adeline Wan, Senior Assistant Solicitor General at telephone number 3918 4018 or Mr Christopher Ng, Senior Government Counsel at telephone number 3918 4030.

Department of Justice
August 2015

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Rules of the High Court (Amendment) (No. 3) Rules 2015

(Made by the Rules Committee of the High Court under section 54 of the High Court Ordinance (Cap. 4))

1. Commencement

These Rules come into operation on the day on which the Legal Practitioners (Amendment) Ordinance 2012 (22 of 2012) comes into operation.

2. Rules of the High Court amended

The Rules of the High Court (Cap. 4 sub. leg. A) are amended as set out in rule 3.

3. Order 81, rule 5 amended (enforcing judgment or order against firm)

(1) Order 81, rule 5(2)—

Repeal

“rule 6 and to the next following paragraph”

Substitute

“paragraphs (3) and (6) and rule 6”.

(2) Order 81, rule 5(4)—

Repeal

“Where”

Substitute

“Subject to paragraph (6), where”.

(3) Order 81, after rule 5(5)—

Add

“(6) Execution to enforce a judgment or order given or made against a firm that is a limited liability partnership may not issue against a member of the firm unless—

(a) the member admitted in the pleading in the proceedings that the member is a partner not protected under Part IIAAA of the Legal Practitioners Ordinance (Cap. 159) from liability for the partnership obligation in respect of which the proceedings are brought; or

(b) the member is adjudged to be such a partner—

(i) in the proceedings; or

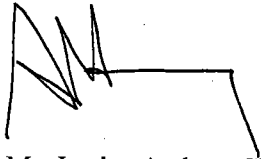
(ii) on an application for leave to enforce the judgment or order.

(7) In paragraph (6)—

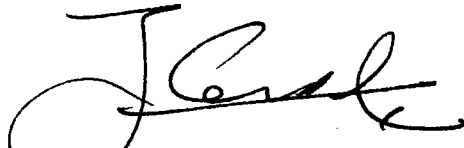
limited liability partnership (有限法律責任合夥) has the meaning given by section 7AA(1) of the Legal Practitioners Ordinance (Cap. 159);

partnership obligation (合夥義務) has the meaning given by section 7AA(1) of the Legal Practitioners Ordinance (Cap. 159).”.

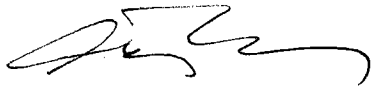
Made this 14th day of July 2015.



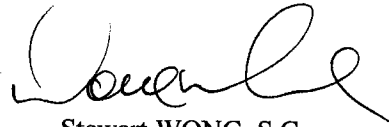
The Hon. Mr. Justice Andrew CHEUNG
Chief Judge of the High Court



The Hon. Mr. Justice Johnson LAM V.P.




The Hon. Mr. Justice Thomas AU



Stewart WONG, S.C.



Liza Jane CRUDEN



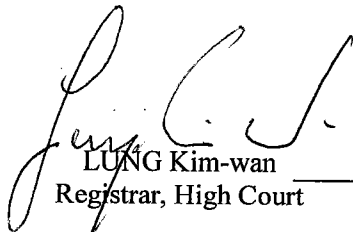
Nigel FRANCIS



Brian GILCHRIST



Herbert LI



LUNG Kim-wan
Registrar, High Court

Explanatory Note

These Rules amend rule 5 of Order 81 of the Rules of the High Court (Cap. 4 sub. leg. A), mainly by adding a new paragraph (6). The new paragraph (6), as read with the definitions in the new paragraph (7), provides to the effect that where a judgment or order is given or made against a firm that is a limited liability partnership, execution to enforce it may not issue separately against a member of the firm who is protected under Part IIAAA of the Legal Practitioners Ordinance (Cap. 159) from liability for the partnership obligation.

Rules of the District Court (Amendment) Rules 2015

(Made by the District Court Rules Committee under section 72 of the District Court Ordinance (Cap. 336))

1. Commencement

These Rules come into operation on the day on which the Legal Practitioners (Amendment) Ordinance 2012 (22 of 2012) comes into operation.

2. Rules of the District Court amended

The Rules of the District Court (Cap. 336 sub. leg. H) are amended as set out in rule 3.

3. Order 81, rule 5 amended (enforcing judgment or order against firm)

(1) Order 81, rule 5(2)—

Repeal

“paragraph (3)”

Substitute

“paragraphs (3) and (6)”.

(2) Order 81, rule 5(4)—

Repeal

“Where”

Substitute

“Subject to paragraph (6), where”.

(3) Order 81, after rule 5(5)—

Add

“(6) Execution to enforce a judgment or order given or made against a firm that is a limited liability partnership may not issue against a member of the firm unless—

(a) the member admitted in the pleading in the proceedings that the member is a partner not protected under Part IIAAA of the Legal Practitioners Ordinance (Cap. 159) from liability for the partnership obligation in respect of which the proceedings are brought; or

(b) the member is adjudged to be such a partner—

(i) in the proceedings; or

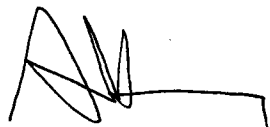
(ii) on an application for leave to enforce the judgment or order.

(7) In paragraph (6)—

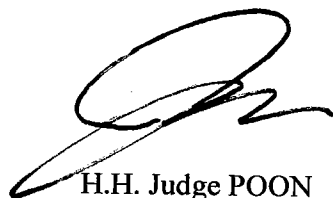
limited liability partnership (有限法律責任合夥) has the meaning given by section 7AA(1) of the Legal Practitioners Ordinance (Cap. 159);

partnership obligation (合夥義務) has the meaning given by section 7AA(1) of the Legal Practitioners Ordinance (Cap. 159).”.

Made this 14th day of July 2015.



The Hon. Mr. Justice CHEUNG
Chief Judge of the High Court



H.H. Judge POON



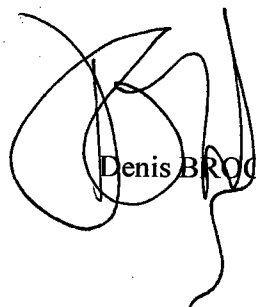
H.H. Judge LEUNG



H.H. Judge KO



Elaine LIU



Denis BROCK



Simon LUI

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These Rules amend rule 5 of Order 81 of the Rules of the District Court (Cap. 336 sub. leg. H), mainly by adding a new paragraph (6). The new paragraph (6), as read with the definitions in the new paragraph (7), provides to the effect that where a judgment or order is given or made against a firm that is a limited liability partnership, execution to enforce it may not issue separately against a member of the firm who is protected under Part IIAAA of the Legal Practitioners Ordinance (Cap. 159) from liability for the partnership obligation.