

**Panel on Administration of Justice and Legal Services**  
**Law Amendment and Reform (Miscellaneous Provisions) Bill**  
**Proposed amendment to section 9AA of**  
**the Legal Practitioners Ordinance**

**The Issue**

At the last meeting of the AJLS Panel on 27 January 2003, the issue of whether the proposed amendment to section 9AA of the Legal Practitioners Ordinance (“the Ordinance”) should be dropped from the Law Amendment and Reform (Miscellaneous Provisions) Bill (“the Bill”) was discussed.

2. This paper seeks to provide members of the Panel with the details of the issue and the proposed way forward.

**Solicitor Corporations**

3. In 1995, the Administration published a Consultation Paper on Legal Services, which proposed, amongst other things, that solicitors be allowed to incorporate their practices as companies, namely, as separate legal entities. The main advantage is that a solicitor corporation can raise capital, borrow money and enter into contracts in its own capacity as a legal person.

4. With the support of those consulted, the Administration introduced amendments to the Ordinance, and the Legal Services (Miscellaneous Amendments) Bill was enacted at the end of June 1997 (“the 1997 Bill”). The amendments provide that the Law Society may in accordance with the Law Society Council’s rules approve or refuse to approve an application for the setting up of a solicitor corporation. However, these amendment provisions have yet to come into operation as the relevant rules, which are prepared by the Law Society, have not been put in place.

**The Draft Solicitor Corporations Rules (“the Draft Rules”)**

5. The Draft Rules were last examined by the Panel on 27 May 2002. The Draft Rules provide that to enable a sole practitioner to establish a solicitor corporation and to comply with the requirements of the Companies Ordinance (Cap. 32) that a company must have two members and two directors, the second member may be any other individual person, whether a solicitor or not.

6. The Draft Rules also provide that the second member director would need to execute a declaration of trust in favour of the sole practitioner in respect of the one share that he holds, and the management and control should remain with the sole practitioner.

7. The Panel was concerned that a person not being a solicitor could become a member director of the corporation. Members of the public may not be aware that the second member director is only a trustee of the solicitor's practice and that he is not involved in the operation and management of the solicitor corporation. The role of this non-legally qualified member director would therefore need to be clarified.

**The Proposed Amendment to Section 9AA of the Legal Practitioners Ordinance, Cap. 159 (“the proposed amendment”) and additional safeguards in the Draft Rules**

8. In response, the Law Society suggested that section 9AA (introduced by the 1997 Bill) of the Ordinance be amended to add “officer”, which is defined under section 2(1) of the same Ordinance to include the non-legally qualified director, manager, executive or secretary of the corporation, to the list of persons involved in a solicitor corporation, whose misconduct will be subject to the disciplinary framework of the Law Society.

9. In order to allay the concerns further raised by the Panel relating to the control of a solicitor corporation by a second member director, the Law Society has also agreed to add to the Draft Rules a proviso, which clearly states that :

- (i) a solicitor corporation shall at all times be managed and controlled by the sole practitioner; and
- (ii) no person shall be appointed and act as the second member director unless approved by the Law Society Council.

**Implications of One-director Companies introduced in the Companies (Amendment) Bill 2002**

10. Members of the Panel also queried the implications of one-director companies as introduced in the Companies (Amendment) Bill 2002 on the proposed amendment.

11. As it is uncertain when the amendments to the Companies Ordinance are likely to take effect, the Law Society takes the view that it is still necessary to comply with the requirement for a second director under the current legislation.

**The Administration's Views**

12. The Administration is of the view that the proposed additional proviso in the Draft Rules (para. 9 above) would provide additional safeguards against the non-solicitor member director taking control of the accounts and management of a solicitor corporation.

13. The Administration agrees with Law Society that before the Companies (Amendment) Bill 2002 is enacted and comes into operation, the current two members and directors requirement will still have to be satisfied for the purposes of the amendments proposed in the Bill and in the Draft Rules.

14. The Administration also takes the view that further discussion as to whether there should be non-solicitor member directors of a solicitor corporation can take place when the Draft Rules come before the Panel again. If the Panel and the House Committee were to accept the agreed approach, then the legislation in the Ordinance would already be in place.

15. Against this background, the Administration recommends that the proposed amendment should continue to proceed and remain in the Bill.

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Department of Justice  
February 2003