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**Consumer Council's Submission to
the Legislative Council
Panel on Administration of Justice and Legal Services**

Limited Liability Partnership (LLP) for Legal Practice

Introduction

1. In light of the discussion at the Panel Meeting on 25 May 2009 and the Law Society's confirmation that the proposed LLP System will apply only to liability arising from negligence of a partner, the Council resubmits its views on the said issue as follows. This submission shall supersede the Council's earlier submission sent to the Panel on 21 May 2009.
2. The Council does not object to the adoption of limited liability partnership ("LLP") as a matter of principle, provided that there are sufficient safeguards for consumers.
3. Nonetheless, as the Council observes, consumer interests have not been adequately addressed under the proposed LLP system.
4. The Council is given to understand that LLP is a business structure proposed for legal practices, which confers privileges of limited liability on innocent partners so as to insulate their personal assets from claims incurred by the negligence of other partners.
5. It is noted from the 2nd page of the attachment to the Law Society's letter dated 24 March 2009 to the Panel Chair ("the Letter") that the proposed LLP is not a separate legal entity. It follows that it cannot sue or be sued.
6. It is stated on page 4 of the Letter that an LLP survey was conducted in May 2008 and "some of the firms that responded were international law firms and expressed support for the introduction of LLPs in Hong Kong". There is no mention of the degree of support amongst local law firms from which ordinary consumers would turn to for legal services. Nevertheless, the benefits of limited liability and the absence of substantial hurdle to conversion would make LLP an attractive option too for local law firms. It appears from the attachment to the Letter that conversion to LLP will be

simple - there will be no requirement for financial disclosure or prior approval of the Law Society on formation, nor is there additional implication on taxation. As such, there is a possibility that majority of the local law firms will be converted to LLPs.

Council's concerns

Consumers' chance of recovery

7. One of the Council's major concerns is that the change from general partnership status to limited liability partnership status of a solicitors firm would mean a shift of the risk of sustaining losses, caused by negligence of a partner of a solicitors firm committed during the course of his practice, from the partnership to the consumers.
8. Under such a change, a consumer aggrieved by the negligence a partner would be able to seek remedy against that partner only instead of any or all of the partners of the firm as he or she is currently entitled to. As the proposed LLP is not a separate legal entity, the Council wonders if the aggrieved consumer can seek redress from it. Therefore, the change from general partnership to LLP would diminish the consumer's chance of recovery.
9. The Council recognizes that the Professional Indemnity Scheme ("the Scheme") will render certain protection to consumers in securing recovery for a negligence claim against defaulting partners of LLP.
10. However, the Council is given to understand that the statutory indemnity is proposed to remain to be capped at HK\$10 million per claim. In the current general partnership system, a consumer seeking to recover the outstanding award for a negligence claim in excess of the limit of indemnity may enforce it against any or all of the partners.
11. A consumer of LLP would find lesser chance of recovery of the outstanding award for a negligence claim in excess of the limit of indemnity, particularly, where the defaulting partner has no financial capacity to satisfy the claims or his whereabouts cannot be located.

12. It is also noted that the statutory limit has been kept unchanged since 1994. The Council wonders whether the present limit is still adequate to meet the current demands (for instance, the value of properties has increased considerably since 1994 and there are now a significant number of transactions involving properties worth over \$10 million). We consider that should LLP be introduced, the Scheme should be reviewed to ensure that the interests of consumers for legal services are sufficiently safeguarded.

Unfairness in bearing risks

13. On the other hand, it seems to be often the case that a consumer seeking to retain the service of a solicitors firm places trust on the partnership rather than a particular partner. He is usually referred to the legal clerks or assistant solicitors of the firm for the services. He has no idea on which partner is going to handle or supervise his case; not to mention, the handling partner's professional competence and financial capacity in satisfying claims. He is not in a position to make any choice amongst the partners. To him, it is the firm with which they entered into the contract for legal services.
14. The partners of a firm are supposed to know each other well. They are in a position to decide whether or not to enter into partnership and place their trust in one another. In contrast, such knowledge of the partners' competence etc. is not generally available to the average consumers of legal service.
15. To minimize the risk of failing to recover from the handling partner for losses caused by his negligence, when hiring the legal services, a consumer under the LLP system may have to ascertain whether his handling partner is with "deep pocket". However, it is difficult to envisage that consumers will have any means to ascertain the actual financial viability of the handling partner.
16. Therefore, it would be unfair to consumers to bear the risk of sustaining losses caused by negligence of the defaulting partner, which is used to be borne by the partnership.

Consumers' choice

17. Currently, in terms of chance of recovery from professional negligence, consumers would feel more secured to retain a partnership than a sole proprietorship. It is the Council's concern that the introduction of LLP may limit consumer's choice. As mentioned, it is quite likely that LLP would become a prevailing business model for law firms. Under such circumstances, consumers will be left effectively not much of a choice but to retain the service of a LLP. However, in terms of liability there may not be difference between a LLP and a sole proprietorship.

Destruction of the unlimited liability framework

18. As noted from the said letter of 24 March 2009 from the Law Society to the Panel Chair, another vehicle of limited liability, namely the Solicitor Corporation, is proposed. It is intended to provide an option for sole proprietorship to turn itself into a limited liability entity.
19. The Council is concerned that there will be not much left for the unlimited liability framework to function as an optimal safeguard for consumer interests as it did for hundreds of years.

Impact on professional and ethical performances

20. Further, the Council is also concerned about whether the displacement of joint and several liability by liability limited to defaulting partner would result in a disincentive for ethical scrutiny and internal control over the quality of work among members or partners of the firm.
21. We are of the view that the joint and several liability of general partnership has the advantage of ensuring that partners would maintain a direct interest in the business of the partnership and the conduct of their fellow partners and employees. It is conducive to the assurance of observance of both ethical and professional responsibilities.

Conclusion

22. At the present stage, with information available to the Council, it is suggested that consideration should be given to:
- (i) raising the statutory indemnity limit and /or requiring for top-up insurance for LLPs;
 - (ii) making LLP a separate legal entity which is liable for the wrongful acts

- and omission of its members to the same extent as the members so acting;
- (iii) making provisions for preservation of the assets of LLP which can be claimed by consumers;
 - (iv) making sufficient disclosure to consumers so that they can assess the risks in dealing with LLPs.
23. The Council is looking forward to a proposal that would duly address the consumer interests and assure high professional and ethical standards of the legal practice.

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