



THE

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30 July 2009

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Dr. Hon Margaret Ng
Chair
Panel on Administration of Justice and Legal Services
Legislative Council
Legislative Council Building
8 Jackson Road
Central
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By hand

Dear Dr. Ng,

Re : **Limited Liability Partnerships for Solicitors' Practices**

I refer to the meeting of the Panel on Administration of Justice and Legal Services held on 25 May 2009 and attach a submission by the Law Society's Working Party on Limited Liability Partnerships.

Yours sincerely,

Heidi Chu
Secretary
Working Party on Limited Liability Partnerships

Encl.

c.c. Mr. Ian Wingfield, Solicitor General, Department of Justice
Ms. Connie Lau, Chief Executive, Consumer Council

Panel on Administration of Justice and Legal Services

Limited Liability Partnerships (“LLPs”) for Solicitors’ Practice

1. This paper provides information on issues arising from the last Panel meeting on 25 May 2009.
2. The Law Society is grateful to the Consumer Council for highlighting the concerns that consumers may have on the introduction of LLPs.

LLPs – an additional choice

3. LLPs will be introduced as an additional choice in the available forms of legal practice, not as a replacement of the traditional form of partnerships.
4. An LLP survey was conducted in May 2008. The questionnaire was sent to all Hong Kong firms and the response rate was 14.8%. Out of the firms that responded, most of them (94%) indicated that they might consider converting to an LLP if the necessary legislation was passed.
5. Looking at the experience of overseas jurisdictions where different forms of legal practice including sole proprietorships, partnerships and LLPs are permissible, there is no sign of LLPs becoming the dominant form of legal practice. A table showing the percentages of LLPs in different jurisdictions is attached at **Appendix 1**.

Adequate consumer protection

6. With the introduction of LLPs, the following safeguards are proposed to protect consumers’ interests:
 - (a) Transparency

The following steps will be taken to ensure that consumers are made aware of the status of law firms practising as LLPs and the differences between LLPs and traditional partnerships so that they can make an informed choice when instructing solicitors:

- (i) It is proposed that a firm practising as an LLP must include the description “Limited Liability Partnership” or the abbreviation “LLP” as the last words or letters of its name.
- (ii) A firm of solicitors is under a general duty to keep clients informed of the name of the person conducting their cases and the partner responsible for the overall supervision of the matter. Commentaries 1 and 2 under Principle 5.17 of the *Hong Kong Solicitors’ Guide to Professional Conduct Volume 1* sets out the duty of a solicitor to keep his client properly informed:

“1. A client should be told the name and the status of the person responsible for the conduct of the matter on a day-to-day basis and the partner responsible for the overall supervision of the matter.

2. If the responsibility for the conduct or the overall supervision of the whole or part of a client's matter is transferred to another person in the firm the client should be informed.”

(iii) The Law Society proposes to carry out publicity campaign jointly with the Government and the Consumer Council to educate the public on the reasons for the introduction of limited liability partnerships and the differences with traditional partnerships. This may include:

- public seminars and talks
- explanatory leaflets for distribution to the public

(b) Professional indemnity cover

(i) For the past 10 indemnity years from 1988/89 to 2007/08, the average gross settled claim size (including large multiple claims) ranged from HK\$0.002 million to HK\$3.922 million, well below the statutory indemnity limit of HK\$10 million per claim.

(ii) From the 1994/95 indemnity year to 2 July 2009, there have been 3,321 claims on the Hong Kong Solicitors Indemnity Fund (including notifications), out of which, only 53 claimants, i.e. 1.6 %, have sought HK\$10 million or more.

(iii) Of these 53 claims:

(aa) Payout of HK\$10 million

There are 12 claims in which the Fund paid HK\$10 million (including defence cost but less the indemnified's deductible).

Of these claims, 11 were brought by companies and one by an individual.

(bb) Payout between HK\$8 million and HK\$10 million

There are 15 claims in which the actual or expected payment by the Fund (including defence costs) is or will be more than HK\$8 million but less than HK\$10 million.

Of these claims, 13 were brought by companies and 2 by individuals.

(cc) Payout of less than HK\$8 million

There are 12 claims that were settled for less than HK\$8 million (including defence costs).

Of these claims, 10 were brought by companies and 2 by individuals.

(dd) Payout that may reach HK\$10 million for open claims

There are 7 open claims in which it is anticipated that the claim payments (including defence costs) will reach HK\$10 million (including the deductible).

Of these claims, 5 were brought by companies, one by an individual and one by joint claimants, being one company and two individuals.

(ee) Payout that may be less than HK\$8 million for open claims

There are 7 open claims in which it is anticipated that the claims will settle for less than HK\$8 million (including defence costs).

All of these claims were brought by companies.

7. The above statistics support the Law Society's assertion that the existing statutory professional indemnity limit of HK\$10 million per claim which is proposed to apply equally to LLPs is generally sufficient for indemnity protection of individual consumers.
8. Further, out of the claims seeking over HK\$10 million, most of them were brought by corporations rather than individual consumers.
9. Any increase to the statutory indemnity limit of HK\$10 million per claim will inevitably lead to an increase in insurance premium. The extra cost will in turn be passed onto the consumers who will have to pay more to get higher indemnity cover.
10. As the statutory professional indemnity limit of HK\$10 million per claim which is public knowledge is already generally sufficient, the Law Society does not consider that there is a need to further consider the suggestion of requiring an LLP to disclose its individual top up insurance coverage publicly.
11. Such suggestion in any event is not feasible as firms are often bound by confidentiality obligations under their respective top up insurance policies.

Professional performance

12. The reputation of a firm and its lawyers go hand in hand. If one of the lawyers is found negligent, it will inevitably adversely affect the reputation of the firm as a whole.
13. Principle 2.03 of the *Hong Kong Solicitors' Guide to Professional Conduct Volume 1* provides that every partner in a firm is prima facie responsible for the acts and omissions of his firm, his partners and staff. This primary obligation will not change for LLPs.
14. Further, if the Solicitors Indemnity Fund pays out damages on behalf of a claim made against a partner of a firm, the firm will become "claims loaded" and this will affect the firm's loss ratio and impact on the calculation of any extra insurance premium contribution payable by the firm to the Fund.
15. There is absolutely no cause for any worry or moral hazard that a partner will loosen up supervision simply because the firm is an LLP. On the contrary, it can be perceived that the partner responsible in an LLP would be even more vigilant in the overall supervision of the matter so as to safeguard his risk exposure for negligence claims beyond the statutory indemnity limit of HK\$10 million per claim.

Urgency

16. LLPs have been adopted around the world. The adoption of LLPs helps to increase the attractiveness of a particular location for business by providing a wider choice in operation structures.
17. LLPs were first introduced in the State of Texas, USA in 1991. Since then, LLPs have spread rapidly throughout the States and many other jurisdictions. New South Wales, Australia enacted the Professional Standards Act in 1994 and introduced a scheme to cap the liability of members of the professional groups. Western Australia passed a similar Act in 1997. In Canada, Ontario introduced LLPs in 1998, Alberta in 1999. The Limited Liability Partnership Act in the UK became effective in 2001. Singapore introduced LLPs in 2005. Mainland China amended its Lawyers Act in June 2008 to allow a special mode of partnership for law firms that is akin to the concept of LLPs. India introduced LLPs in 2008.
18. To enhance the status of Hong Kong as an international financial centre, the demand for sophisticated legal services in cross jurisdictional matters is high. Failure to modernise the law and legal infrastructure in Hong Kong hinders expansion and mergers of legal practices that are conducive to the creation of synergies for more sophisticated legal services in Hong Kong.

19. It is submitted that the LLP proposal has struck a balance between the preservation of the consumer interests and the much needed infrastructure modernisation for the survival of the legal profession and the enhancement of the international status of Hong Kong.

The Working Party on LLPs
The Law Society of Hong Kong
30 July 2009

Takeup of LLPs

Jurisdiction	Mode of Practice	Percentage of LLPs
England and Wales, United Kingdom	<ul style="list-style-type: none"> - sole proprietorship - partnership - limited liability partnership - company recognised by the Solicitors Regulation Authority - Legal Disciplinary Partnership 	8.5% (as at 31 July 2008)
Ontario, Canada	<ul style="list-style-type: none"> - sole proprietorship - partnership - association - Limited Liability Partnership - Professional Corporation - Affiliation - Multi-Discipline Partnership 	8% (807 out of 10,036 active law firms on record)
Singapore	<ul style="list-style-type: none"> - sole proprietorship - firm of solicitors - limited liability law partnership - law corporation 	Approximately 4% out of the overall number of law practices
India	<ul style="list-style-type: none"> - can practise law individually - or form groups called the law firms 	A handful of law firms are registered under LLP law
New York, USA	<ul style="list-style-type: none"> - solo practitioners - partnerships - professional corporations - limited liability companies - limited liability partnerships 	No information on percentages for each category