

For discussion
on 16 December 2008

**Legislative Council Panel on
Administration of Justice and Legal Services**

Limited liability partnership for legal practice

This paper provides information on the latest developments of a proposal to permit limited liability partnerships (LLP) for legal practices.

Background

2. The issue of LLP for legal practices has been raised by the Law Society of Hong Kong (LS). In August 2004, a Working Party on Limited Liability Partnership established under the LS, produced a report (Report)¹, recommending the introduction of LLP for professional practices. The Report examines different models of LLP adopted in a number of other jurisdictions and recommends a partnership model (as against a corporate model) of LLP for solicitors' practices in Hong Kong.²

Limited liability partnerships

3. In brief, LLP is a model for doing business which confers the privileges of limited liability on innocent partners so as to insulate their personal assets from claims incurred by the negligence of other partners. This is to be contrasted with the position under the existing law where partners are personally, jointly and severally liable for such claims.

4. Under the existing law, the partnership aspects of a solicitor firm are governed by the Partnership Ordinance (Cap. 38), which provides that every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner, including those arising from any wrongful act or omission of the other partners.³ In other words,

¹ See LC Paper No. CB(2)1613/04-05(02).

² Ibid., at para. 4.5.

³ Sections 11 and 12 of Cap. 38.

the personal assets of each partner in the firm are at risk to the full extent of any claim substantiated against the firm irrespective of his proportion of personal responsibility.

5. Many jurisdictions have already adopted legislation that permits the formation of LLP. These jurisdictions include many states of the United States (e.g. New York and Texas) and provinces of Canada (e.g. Alberta and Ontario), the UK and Singapore. However, it should be noted that the form and regulation of LLP in various jurisdictions differ in many aspects. The LLP in some jurisdictions have more in common with general partnerships; while some other jurisdictions have adopted a model of LLP that bears close resemblance to a limited company.

6. In 1997, amendments were made to the Legal Practitioners Ordinance (Cap. 159) to allow solicitors to incorporate their practices with limited liability in the form of solicitor corporations.⁴ The new provisions on solicitor corporations are found in Part IIAA and Part IIAB of Cap. 159, which, pending the making of relevant rules by the Council of the LS, have not yet been brought into force. Bearing in mind that solicitors will have the option to practise in the form of solicitor corporations, the Department of Justice (DoJ) takes the view that a partnership model of LLP should be adopted for solicitors in Hong Kong.

Panel meeting on 20 October 2008

7. At the meeting of the LegCo Panel on Administration of Justice and Legal Services on 20 October 2008, Members were briefed by the Secretary for Justice (SJ) that DoJ was prepared to consider promoting a bill to provide for LLP for solicitors firms and had been in discussion with the LS on the related policy and legislative issues.

Recent developments

8. Prior to the meeting on 20 October 2008, DoJ had already been considering the legislative proposals put forward by the LS, and had to decide on the legislative vehicle. This did not prove to be a straightforward exercise.

9. The LS had proposed the enactment of a stand-alone ordinance on LLP to provide an option for all partnerships to have limited liability,

⁴ The amendments were introduced by the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 (Ord. No. 94 of 1997).

irrespective of their trade and profession. That would not have been consistent with SJ's policy objective and would have been outside the scope of his policy responsibility.

10. Having conducted an internal consultation within DoJ, the Solicitor General wrote to the LS on 10 November 2008, suggesting that the Legal Practitioners Ordinance (Cap. 159) be amended to introduce LLP for solicitors. By a letter dated 14 November 2008, the LS confirmed that it had no objection to the proposed approach.

The way forward

11. DoJ is now considering details of the legislative proposals and is in the course of preparing draft drafting instructions (DDIs). It is envisaged that we need to consult the LS and some other Government departments on certain details of the proposals before the DDIs can be finalised. For example, one of the issues that we need to resolve is whether solicitor partners should be held personally liable for debts and obligations arising from the ordinary course of business, such as rent and salaries of employees. We also need to consult other Government departments on matters such as the registration requirements and the tax treatment for LLP.

12. Given the time that will be required for the further consultation and for the drafting process of the proposed bill and the fact that SJ will introduce two other Bills into the Legislative Council in the current legislative session (i.e. the Arbitration Bill and the Legal Practitioners (Amendment) Bill 2009 on higher rights of audience for solicitors), we estimate that the proposed bill to amend Cap. 159 for the introduction of LLP would be introduced early in the 2009 – 2010 session.

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