

立法會
Legislative Council

Ref : CB2/BC/2/09

LC Paper No. CB(2)2209/09-10
(These minutes have been seen
by the Administration)

Bills Committee on Legal Practitioners (Amendment) Bill 2010

**Minutes of meeting
held on Wednesday, 14 July 2010, at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Dr Hon Margaret NG (Chairman)
Hon LAU Kong-wah, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Ronny TONG Ka-wah, SC
Hon Paul TSE Wai-chun
- Members absent** : Hon Albert HO Chun-yan
Hon Miriam LAU Kin-ye, GBS, JP
- Public Officers attending** : Item II

Ms Adeline WAN
Senior Assistant Solicitor General
Department of Justice

Ms Betty CHEUNG
Senior Assistant Law Draftsman
Department of Justice

Mr Christopher NG
Senior Government Counsel
Department of Justice

Mr Bernard YUE
Government Counsel
Department of Justice
- Clerk in attendance** : Miss Mary SO
Chief Council Secretary (2) 5

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Ms Catherina YU
Senior Council Secretary (2) 7

Ms Sandy HAU
Legislative Assistant (2) 5

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I. Election of Chairman

Dr Margaret NG was elected Chairman of the Bills Committee.

II. Meeting with the Administration

[Legislative Council Brief: File Ref: LP 5004/4/15C XVII, LC Paper Nos. LS79/09-10, CB(3)812/09-10, CB(2)2055/09-10(02) and (03)]

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

Proposed section 7AA - Definitions

3. Ms Audrey EU noted that the definition of "partnership obligation" ("合夥義務"), provided under the proposed section 7AA of the Legal Practitioners Ordinance (Cap. 159), stipulated that "in relation to a partnership, means any debt, obligation or liability of the partnership, other than debts, obligations or liabilities of the partners as between themselves, or as between themselves and the partnership". Ms EU asked about the reason(s) for including the term "obligation" ("義務") in the definition of "partnership obligation" and the meaning of the term in such context. Mr Paul TSE raised similar questions.

4. The Administration responded that the term "obligation" ("義務") referred to in the definition of "partnership obligation" under the proposed section 7AA meant any thing by which a person was legally bound to do and did not cover any thing by which a person was morally obliged to do. The Administration pointed out that the object of limited liability partnership ("LLP") was to protect innocent partners from personal liability arising from default of another partner of the firm and that liability of partners was provided for in the Partnership Ordinance (Cap. 38). Therefore, the definition of "partnership obligations" in the proposed section 7AA was drafted, bearing in mind the wording of the Partnership Ordinance. Section 11 of the Partnership Ordinance provided 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;.....". As the term "obligation" ("義務") was referred to in section 11 of the Partnership Ordinance, it was necessary to include that term in the

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definition of "partnership obligation" accordingly. The Administration added that the Law Society of Hong Kong ("LS") had no objection to the proposed definition of "partnership obligation".

5. Ms Audrey EU remained of the view that to include the term "obligation" ("義務") in the definition of "partnership obligation" ("合夥義務") under the proposed section 7AA would have the connotation of including obligations other than debts and legal liabilities of the partnership. Ms EU added that she had no problem with section 11 of the Partnership Ordinance as that section only referred to "debts and obligations" whilst the proposed definition of "partnership obligation" had included "debts, obligation or liability". To make clear that the liability of partners in a limited liability partnership ("LLP") was the same as that in a general partnership, the Chairman suggested amending the definition of "partnership obligation" ("合夥義務") under the proposed section 7AA along the lines that partnership obligation in relation to an LLP had the same meaning as section 11 of the Partnership Ordinance.

Admin

6. At the request of the Chairman, the Administration agreed to provide a paper addressing the following -

- (a) whether the drafting of the definition of "partnership obligation" ("合夥義務") under the proposed section 7AA could achieve the legislative intent of protecting an innocent partner from personal liability that he or she had as a partner under section 11 of the Partnership Ordinance; and
- (b) setting out the use and application of the terms "obligation", "liability" and "duty" in local legislation.

Proposed section 7AC - Effect on liabilities of partners in limited liability partnership

Admin

7. Assistant Legal Adviser 6 ("ALA6") said that it was unclear when a partner in a law firm might start to enjoy the protection accorded by LLP. He pointed to the fact that the protection under the proposed section 7AC(4) was not related to the notice requirements under the proposed section 7AG. As such, the requirement of giving notice to existing clients within 30 days after a firm had become an LLP would seem like a formality only. For instance, an existing client had gone to a law firm and seen the display of LLP in the name of the law firm before he received the requisite notice sometime later. At the request of the Chairman, the Administration undertook to provide a paper explaining whether the proposed section 7AC(3) and (4) had achieved the legislative intent of protecting an innocent partner of an LLP against personal liability for the default of other members of the firm on the one hand and

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protecting consumer interests on the other.

Proposed section 7AK - No dissolution of partnership, etc.

8. ALA6 said that although the proposed section 7AK provided that a partnership's existence as a partnership, and the pre-existing rights and liabilities of the partnership and of its partners, would not be affected by the fact that it became or ceased to be an LLP, it was unclear what the consequences in respect of partnership property would be upon a law firm became an LLP.

9. Mr Paul TSE said that this was primarily an accounting issue but not a legal issue. He said that LS might make rule under the proposed section 7AD(1)(e) to require a law firm to provide an account of its assets and liabilities on the date it became an LLP. He emphasised that the foregoing was only his personal thought and it was not his suggestion on this issue.

III. Date of next meeting

10. Subject to members' availability, the next meeting would be held on 14 or 17 September 2010. Members further agreed to invite the Bar Association, the Consumer Council and LS, which had previously given their views on the proposed legislation to introduce LLP for solicitors' practices in Hong Kong to the Panel on Administration of Justice and Legal Services, to provide written submission on the Legal Practitioners (Amendment) Bill 2010 ("the Amendment Bill") and to make oral representation on the Amendment Bill at the September 2010 meeting.

(Post-meeting note: The next meeting has been scheduled for 17 September 2010 at 2:30 pm.)

11. There being no other business, the meeting ended at 9:47 am.

Council Business Division 2
Legislative Council Secretariat
27 August 2010

**Proceedings of the meeting of the
Bills Committee on Legal Practitioners (Amendment) Bill 2010
on Wednesday, 14 July 2010, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000227	Dr Margaret NG Mr LAU Kong-wah Ms Audrey EU	Election of Chairman	
000228 - 000501	Chairman	Opening remarks	
000502 - 000909	Admin	Briefing on the Legal Practitioners (Amendment) Bill 2010 ("the Amendment Bill")	
000910 - 004830	Ms Audrey EU Admin ALA6 Mr Paul TSE Chairman	<i>Proposed section 7AA - Definitions</i> The Administration was requested to provide a paper addressing the following - (a) whether the drafting of the definition of "partnership obligation" ("合夥義務") under the proposed section 7AA could achieve the legislative intent of protecting an innocent partner from personal liability that he or she had as a partner under section 11 of the Partnership Ordinance; and (b) setting out the use and application of the terms "obligation", "liability" and "duty" in local legislation.	Admin (para. 6 of the minutes refers)
004831 - 005829	ALA6 Chairman Admin Mr Paul TSE	<i>Proposed section 7AC - Effect on liabilities of partners in limited liability partnership</i> The Administration was requested to provide a paper explaining whether the proposed section 7AC(3) and (4) had achieved the legislative intent of protecting an innocent partner of an LLP against personal liability for the default of other members of the firm on the one hand and protecting consumer interests on the other. Mr Paul TSE declared that he was a legal practitioner.	Admin (para. 7 of the minutes refers)
005830 - 005930	ALA6 Mr Paul TSE Chairman Admin	<i>Proposed section 7AK - No dissolution of partnership, etc.</i> Mr Paul TSE said that the Law Society of Hong Kong might make rule under the proposed section 7AD(1)(e) to require a law firm to provide an account of its assets and liabilities on the date it became an LLP. He emphasised that the foregoing was only his personal thought and it was not his suggestion on this issue.	

Time marker	Speaker	Subject	Action required
005931 - 011901	Chairman Ms Audrey EU Admin Mr Paul TSE	Date of next meeting	

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