

立法會
Legislative Council

Ref : CB2/BC/2/09

LC Paper No. CB(2)2536/10-11
(These minutes have been seen
by the Administration)

Bills Committee on Legal Practitioners (Amendment) Bill 2010

Minutes of meeting
held on Thursday, 25 November 2010, at 8:30 am
in Conference Room A of the Legislative Council Building

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

Ms Adeline WAN
Senior Assistant Solicitor General

Ms Betty CHEUNG
Senior Assistant Law Draftsman

Mr Christopher NG
Senior Government Counsel

Ms Ida CHAN
Senior Government Counsel

Mr Bernard YUE
Government Counsel

Ms Karmen KWOK
Government Counsel

Attendance by invitation : Item I

The Law Society of Hong Kong

Mr Huen WONG
President

Mr Joseph LI
Chairman of the Working Party on LLPs

Mr Allan LEUNG
Member of the Working Party on LLPs

Mr David HIRSCH
Member of the Working Party on LLPs

Ms Heidi CHU
Deputy Secretary General

Clerk in attendance : Miss Mary SO
Chief Council Secretary (2) 5

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Ms Maisie LAM
Senior Council Secretary (2) 6

Action

I. Meeting with the Administration
[LC Paper Nos. CB(2)344/10-11(01) to (03)]

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

Proposed section 7AC(3) - Effects on liabilities of partners in limited liability partnership

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2. Senior Assistant Solicitor General ("SASG") said that, after the meeting with The Law Society of Hong Kong ("LS") on 16 November 2010, the Administration was prepared to remove the constructive knowledge element from the proposed section 7AC(3) of the Bill and to add a new provision to the Bill requiring a solicitor firm operating as an limited liability partnership ("LLP") to provide to its clients, as soon as practicable but not later than a specified period, a written notification confirming the identities of its responsible supervising partner in respect of each matter/case handled by the firm. Given that the issuance of notice was a relatively simple step, but crucial to protecting consumers, the consequences of failing to issue the notice would result in the firm losing its LLP status for the case concerned.

3. LS said that while it was receptive to the proposal of requiring an LLP to provide a written notification confirming the identity of its responsible supervising partner, it would be difficult for an LLP to inform its clients of the responsible handling solicitors as it was not uncommon for frequent change of the membership of the responsible team of each matter/case. LS further said that specifying the proposal in the Practice Directions of LS should provide adequate safeguard to consumers of legal services, having regard to the fact that every member of LS was absolutely bound by the Practice Directions. In appropriate cases, the Standing Committee on Compliance of LS would refer a matter to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel established under the Legal Practitioners Ordinance (Cap. 159) which had the power to order payment of fines up to a maximum of \$500,000, censure, suspend or strike a solicitor's name off the roll. Whilst disagreeing that a firm should lose its LLP status in a particular case for failing to issue the notice to the client, LS said that the client should be allowed to pursue against every partner in the LLP and it would be up to the court to decide which partner(s) should be held liable for the relevant fault. At the request of the Chairman, LS undertook to provide a sample of the notice to the Bills Committee after the meeting.

LS

4. LS further said that the conclusions made by the Administration in its paper (LC Paper No. CB(2)344/10-11(03)) regarding lost congeniality after a solicitor firm had become an LLP were contrary to the conclusions made by the authors in their article named "The Economics of Limited Liability : An Empirical Study of New York Law Firms". At the request of the Chairman, LS undertook to provide a paper summarising all the comments made by the authors in the article.

LS

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5. Referring to LS's proposal to allow the claimants to pursue against every partner in the LLP when an LLP had failed to issue the notice confirming the identity of the responsible partners, Mr LAU Kong-wah considered it unfair for the claimants to be dragged into lengthy legal proceedings and to shoulder the high legal fees. He shared the view of the Administration that the requirement for an LLP to provide to its clients a written notification confirming the identity of its responsible supervising partner in respect of each matter/case handled by the firm, as well as the consequence for failing to comply with the requirement, should be spelt out in the Bill. The Chairman indicated her preference for the proposal of LS to spell out in the Bill that LLPs must comply with the Practice Direction issued by the Council of LS in this respect, as this would obviate the need to amend the Ordinance should there be other circumstances in the future which called for a change in the practice.

Proposed section 7AI - Provisions regulating distribution of partnership property

6. LS maintained the view as detailed in paragraph 19 of its submission dated 29 September 2010 that the proposed section 7AI was redundant because in the event that the firm became insolvent and the partners were bankrupt, the Bankruptcy Ordinance (Cap. 6) would apply. That said, if it was considered that the proposed section 7AI was necessary for consumer protection, LS was of the view that the two-year limitation period proposed by the Administration, as detailed in paragraph 14(a) of the Administration's paper (LC Paper No. CB(2)344/10-11(01)), still failed to address LS's concern that the proposed section 7AI was unlimited in time, as the date when the claimant would discover the distribution made or could with reasonable diligence had discovered it was unknown. The proposal of LS was that if an LLP made a distribution of any of its partnership property to its partners, even at that time the firm's assets were less than the amount of its contingent liabilities arising from the demands or claims made by its clients, the distribution made to the partners should not be liable to be clawed back to the firm's asset pool after the expiration of two years from the date the distribution was made. The proposal was in line with that of the Canadian precedents.

7. SASG considered LS's proposal unfair to consumers as it was common for the court to take more than two years to try a case and deliver its judgement, and it was very unlikely that the claimant would be able to discover the distribution made before the judgement was delivered. Against this background, the Administration proposed a limitation period of two years from the date the claimant discovered the distribution made, or the date the claimant could with reasonable diligence had discovered it,

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as the case might be, for the proceedings under the proposed section 7AI(3). The Administration considered this proposal apt to balance the conflicting needs of protecting innocent LLP partners and consumers. Mr Ronny TONG considered the Administration's proposal reasonable.

8. The Chairman considered it important that the drafting of the proposed section 7AI could ensure that claimants would be able to recover the judgement debt against the firm and the defaulting partner.

9. LS clarified that its proposal of limiting the claw back period to two years would not have the effect of making a judgement debt against the firm unsatisfied, as the contingent liability arising from a demand or claim against the default of a partner would continually roll over to subsequent years in the account of the LLP. It would become an actual liability if the claim was substantiated. LS's proposal was that if an LLP was unable to pay its partnership obligations as they become due as a consequence of a distribution to the innocent partners, the clawback action must be taken within two years of that distribution. LS expressed that there were two issues to consider. First, the time limit that an action to require the distribution be clawed back could be brought. The Administration's proposal was that the time limit for such action should be two years from the date the claimant discovered the distribution made. Second, the time limit that a distribution could be clawed back. The proposal of the Administration as presented at its meeting with LS held the day before this meeting was that a distribution could not be clawed back if it was made more than six years before the commencement of the action. In drawing up the proposal, reference was made to the existing provision governing the limitation of actions of contract and tort under the Limitation Ordinance (Cap. 347).

10. Mr Paul TSE said that the proposal put forward by LS to allow a two-year claw back period was sufficient to provide adequate protection for the consumers. Consumers who were concerned about the limitation of restoration of partnership property that had been distributed out were free to choose traditional partnership upon the introduction of the LLP business model for solicitors' practices. LS supplemented that at present, more than 40% of the solicitor firms in Hong Kong were practising in the form of sole proprietor and it could not be ruled out that many of them would maintain their status quo after the introduction of LLP. In addition, the proposed sections 7AE, 7AF, 7AG(1), (4) and (5) and 7AJ of the Bill had provided safeguards to ensure transparency of the LLP status of a solicitor firm so that the public could make an informed choice when engaging the services of a solicitor firm. LS would also conduct a publicity campaign jointly with the Consumer Council to educate the public on the business

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nature of LLPs and its difference with general partnership. LS further drew members' attention to the fact that in reality, rarely did a consumer claimant have to resort to the personal assets of the culpable partner, let alone the partnership property because the statutory professional indemnity scheme which provided indemnity cover of a limit of \$10 million per claim was already sufficient to settle the claim amount.

11. SASG responded that it would be difficult to predict at this stage the number of solicitor firms which would opt to practise in the form of LLPs. It should however be noted that the introduction of LLP would provide significant protection for innocent partners when comparing to the present solicitor practices where all partners were jointly and severally liable for all partnership obligations. However, from the perspective of a client, it meant that the personal assets of innocent partners of an LLP would be ring-fenced against claims made against the firm and its other members by clients. Thus, it was necessary to balance the needs to protect innocent LLP partners on the one hand and consumers on the other hand.

II. Any other business

Admin

12. Members agreed to hold the next meeting on a date to be fixed after the meeting. Members also noted the Administration's intention to resume the Second Reading debate on the Bill within the current legislative session. At the request of the Chairman, SASG undertook to provide a paper setting out the position of the Administration on the issue of constructive knowledge and distribution of partnership property, taking into account the views of LS, to the Bills Committee before the next meeting.

13. There being no other business, the meeting ended at 10:10 am.

**Proceedings of the meeting of the
Bills Committee on Legal Practitioners (Amendment) Bill 2010
on Thursday, 25 November 2010, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000633	Chairman	Opening remarks	
000634 - 000951	Admin Chairman	Briefing by the Administration on its response to the request of the Bills Committee made at the meeting on 17 September 2010 to illustrate the problems, if any, encountered by Alberta, British Columbia and Manitoba which did not impose liability on a partner of a limited liability partnership ("LLP") based on his constructive knowledge of a default by other member(s) of LLP [LC Paper No. CB(2)344/10-11(03)]	
000952 - 001449	Admin Chairman	Briefing by the Administration on the policy intent on distribution of partnership property under the proposed section 7AI and the practical implications of the proposed section on solicitors' practice [LC Paper No. CB(2)344/10-11(02)]	
001450 - 001801	Admin Chairman Mr LAU Kong-wah	Briefing by the Administration on its response to the submission from The Law Society of Hong Kong ("LS") to the Bills Committee dated 29 September 2010 [LC Paper No. CB(2)344/10-11(01)]	
001802 - 002521	Admin Chairman Mr LAU Kong-wah	The Administration explained its position on the requirement for an LLP to provide to its clients a written notification confirming the identity of the responsible supervising partner in respect of each matter/case the firm handled, and the consequence of failure to notify	
002522 - 003856	LS Chairman Admin	LS's response to the Administration's proposals concerning the proposed section 7AC(3)	
002857 - 003757	Chairman LS	LS undertook to provide a sample form of LLP's written notice; and relevant materials concerning the conclusion made by the authors of the article named "The Economics of Limited Liability: An Empirical Study of New York Law Firms" to the Bills Committee for reference	LS (paras. 3 and 4 of the minutes refer)
003756 - 004342	Chairman LS	LS explained its position on the distribution of partnership property	
004343 - 011044	Mr Albert HO Chairman LS Mr Ronny TONG Mr Paul TSE Mr LAU Kong-wah	Discussions on LS's proposal that the period within which partnership property that had been distributed might be clawed back should be limited to within two years from that distribution	

Time marker	Speaker	Subject	Action required
011045 - 011449	Admin Chairman Mr LAU Kong-wah	The Administration's response to LS's proposal on the claw back period of partnership property	
011450 - 012027	Mr LAU Kong-wah Admin Chairman	Mr LAU's view that the mandatory requirement for an LLP to provide to its clients a written notification confirming the identity of its responsible supervising partner in respect of each matter/case the firm handled, as well as the consequence for not complying with the requirement, should be clearly spelt out in the Bill	
012028 - 013143	Mr Paul TSE Admin Chairman LS	Mr TSE's view that there was no cause for concern that the interest of the consumers of legal service would be adversely affected with the introduction of LLP	
013144 - 014041	Chairman Admin Mr LAU Kong-wah Mr Paul TSE	Date of next meeting The Administration undertook to provide a paper setting out its position on constructive knowledge and distribution of partnership property, having taken into account the views of LS, before the next meeting	Admin (para. 12 of the minutes refers)

Council Business Division 2
Legislative Council Secretariat
24 August 2011