

立法會
Legislative Council

Ref : CB2/BC/2/09

LC Paper No. CB(2)2720/11-12
(These minutes have been seen
by the Administration)

Bills Committee on Legal Practitioners (Amendment) Bill 2010

Minutes of meeting
held on Tuesday, 17 April 2012, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

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 Paul TSE Wai-chun, JP

Members absent : Hon Miriam LAU Kin-ye, GBS, JP
Hon Ronny TONG Ka-wah, SC

Public Officers attending : 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

Ms Karmen KWOK
Senior Government Counsel
Department of Justice

Mr Bernard YUE
Government Counsel
Department of Justice

Attendance by invitation : The Law Society of Hong Kong

Mr Joseph LI
Chairman of the Working Party on LLPs

Mr David HIRSCH
Member of the Working Party on LLPs

Mr Allan LEUNG
Member of the Working Party on LLPs

Mr Michael LINTERN-SMITH
Member of the Working Party on LLPs

Mr Amirali NASIR
Member of the Working Party on LLPs

Ms Heidi CHU
Secretary General

Clerk in attendance : Miss Mary SO
Chief Council Secretary (3) 3

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Ms Maisie LAM
Senior Council Secretary (2) 5

Ms Sandy HAU
Legislative Assistant (2) 5

Action

I. Meeting with The Law Society of Hong Kong and the Administration

[LC Paper Nos. CB(2)1715/11-12(01), CB(2)1520/11-12(01), CB(2)1417/11-12(01), CB(2)1182/11-12(01), CB(2)1520/11-12(02), CB(2)1311/11-12(01), CB(2)1333/11-12(01), CB(2)1258/11-12(01) to (03), CB(3)812/09-10, CB(2)1852/10-11(01), CB(2)1914/10-11(01), CB(2)2056/10-11(01) and CB(2)1938/10-11(02)]

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

2. At the invitation of the Chairman, Senior Assistant Solicitor General ("SASG") briefed members on its recent discussions with The Law Society of Hong Kong ("LS") on the clawback period, details of which were set out in paragraphs 2 to 6 of the Administration's paper (LC Paper No. CB(2)1715/11-12(01)). Specifically, SASG said that the Administration would reduce the clawback period to two years on the condition that limited liability partnerships ("LLPs") would take out top up insurance against losses in addition to the indemnity provided to partnerships under the fund established under section 3 of the Solicitors (Professional Indemnity) Rules (Cap. 159M) ("indemnity fund"). At the meeting with LS on 30 March 2012, the Administration and LS had (subject to detailed Committee Stage amendments) reached the following initial agreements on the issue of top up insurance -

- (a) compensation should be paid out of the indemnity fund before it was paid out of the top up insurance;
- (b) the top up insurance should cover all matters handled by an LLP;
- (c) the top up insurance should indemnify, among others, the firm and its partners;
- (d) the top up insurance should provide a minimum indemnity coverage of HK\$10 million per claim; and
- (e) the minimum indemnity coverage of HK\$10 million shall be specified in the Bill.

3. SASG further said that the scope and other relevant details of the additional coverage under paragraph 2(d) above would be subject to further discussion with LS.

Action

4. At the invitation of the Chairman, Mr Joseph LI of LS said that LS agreed in principle that each LLP should provide additional indemnity cover up to a limit of HK\$10 million for each and every claim with no aggregate limit as to the number of claims or the total claim amounts in any particular period, if the clawback period was reduced to two years from the date of distribution. Mr LI further said that LS considered it not necessary to change the Professional Indemnity Scheme ("PIS") to facilitate members of LS who would like to operate as LLPs to take out top up insurance for the reasons that the existing formula for calculating the contribution payable under PIS was rigid and that top up insurance for law firms was available in the private insurance market at affordable rates. Mr LI pointed out that presently law firms requiring additional coverage took out top up insurance from commercial insurers.

5. The Chairman said that if a law firm failed to pay the annual contribution to PIS, LS was empowered under the law to refuse to issue/renew a practising certificate to solicitors in the law firm. The Chairman asked about the arrangements that would be put in place by LS to ensure that LLPs would take out top up insurance.

6. Mr Joseph LI said that it was LS' intention to use administrative means such that a law firm could only maintain its LLP status if it could produce a document proving that it had taken out top up insurance that would be in force during the indemnity period (i.e. 1 October to 30 September).

7. Ms Audrey EU expressed concern about the effectiveness of using administrative means to make LLPs take out top up insurance. Ms EU pointed out that, without legal backing, LS might be subject to judicial review for denying a law firm from practicing as an LLP if the law firm had not taken out top up insurance.

8. SASG responded that detail arrangements for the implementation of the top up insurance proposal would be subject to further discussion with LS, albeit the Administration had reached initial agreement with LS that the additional minimum indemnity of HK\$10 millions for each claim with no aggregate limit should be specified in the Bill. SASG further said that consideration could be given to not according LLP protection to an LLP which did not take out top up insurance.

Admin

9. The Chairman requested the Administration to provide a paper on the implementation of the top up insurance proposal for discussion at the next meeting.

Action

10. Mr LAU Kong-wah asked LS whether it had discussed with the insurance industry about the cost for an LLP to provide additional indemnity cover of up to HK\$10 million for each and every claim.

11. Mr Joseph LI replied that LS had sought some preliminary information from a leading insurance broker about the cost of providing indemnity cover of up to HK\$10 million for each and every claim. According to the insurance broker, the indicative cost should be lower if the same indemnity cover was insured under the PIS and should not exceed 0.05% of the annual turnover of an LLP.

12. Mr LAU Kong-wah asked LS whether it would consult its members on the top up insurance proposal. Mr Joseph LI replied that it was LS' plan to do so.

13. Mr LAU Kong-wah asked the Administration whether consumer interests would be compromised under its latest proposal to require LLPs to take out top up insurance in exchange for reducing the clawback period from six to four years and then to two years.

14. SASG responded that if a claim against the default of a partner of an LLP was substantiated, the claim would first be settled under the PIS which currently had a statutory indemnity limit of HK\$10 million in respect of any one claim. The liability of any remaining claim amount not covered by the PIS would be covered by the partnership property, followed by the defaulting partner if the value of the partnership property was still unable to cover the claim amount after the distribution from the partnership property was clawed back from the innocent partners. Given that the result of clawback proceedings was uncertain and having regard to the statistics provided by LS that the great majority of past claims were less than HK\$10 million per claim, the Administration considered that requiring LLPs to provide additional indemnity cover of up to HK\$10 million (which, together with PIS, providing a total coverage of HK\$20 million) for each and every claim would in fact provide better safeguard to consumers. SASG further said that a relevant factor considered by the Administration for reducing the clawback period to two years was that the great majority of the members of LS had insisted they would only accept a two years' clawback period.

Admin

15. The Chairman requested the Administration to provide a paper explaining why its latest proposal was more practicable from the standpoint of consumers.

Action

II. Date of next meeting

16. Members agreed to tentatively hold the next meeting in early May 2012.

(Post meeting note: The next meeting was scheduled on 21 May 2012 at 8:30 am.)

Council Business Division 2
Legislative Council Secretariat
30 August 2012

**Proceedings of the meeting of the
Bills Committee on Legal Practitioners (Amendment) Bill 2010
on Tuesday, 17 April 2012, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject	Action required
000000 - 000620	Chairman	Opening remarks	
000621 - 001023	Admin	Briefing by the Administration on its recent discussions with The Law Society of Hong Kong ("LS") on the clawback period (paragraphs 2 to 6 of LC Paper No. CB(2)1715/11-12(01))	
001024 - 001153	Chairman LS	LS's stance on the Administration's proposal to require limited liability partnerships ("LLPs") to take out top up insurance in addition to the professional liability insurance requirements under the current legislation in exchange for a further shortening of the clawback period from four years to two years	
001154 - 001833	Chairman LS	Discussion on whether the requirement for LLPs to take out top up insurance would require amendments to the existing contribution assessment formula contained in the Solicitors (Professional Indemnity) Rules which governed the Professional Indemnity Scheme	
001834 - 002448	Mr LAU Kong-wah Chairman LS Admin	Preliminary market information obtained by LS on the cost of the proposed top-up cover of HK\$10 million for each and every claim with no aggregate limit, both in terms of the total number and amount of claims in any particular period Mr LAU Kong-wah's concern about whether consumer interests would be compromised under the top up insurance proposal with the shortening of the clawback period to two years	
002449 - 003208	Mr LAU Kong-wah LS Chairman	Whether LS would consult its members on the top up insurance proposal	
003209 - 004158	Ms Audrey EU Chairman Admin	The Administration's elaborations on the minimum indemnity coverage of HK\$10 million in respect of any one claim, which should not be subject to any limit as to the amount of liability for claims in the aggregate or as to the number of claims made against the partnership in any particular period Ms Audrey EU's concern about the effectiveness of using administrative means to require LLPs to take out top up insurance	

Time marker	Speaker	Subject	Action required
004159 - 004711	Chairman	The Administration was requested to provide a paper - (a) detailing the implementation of the top up insurance proposal, including safeguards to ensure compliance by LLPs; and (b) explaining why the top up insurance proposal would provide better safeguards to consumers	Admin (paras. 9 and 15 of the minutes refers)
004712 - 004805	Mr Albert HO Chairman	The impact of the top up insurance proposal on solicitor firms	
004806 - 005224	Chairman LS Admin	Date of next meeting	

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30 August 2012