

立法會
Legislative Council

Ref : CB2/BC/2/09

LC Paper No. CB(2)2722/11-12
(These minutes have been seen
by the Administration)

Bills Committee on Legal Practitioners (Amendment) Bill 2010

Minutes of meeting
held on Monday, 28 May 2012, at 8:30 am
in Conference Room 3 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 Ronny TONG Ka-wah, SC
Hon Paul TSE Wai-chun, JP
- Member absent** : Hon Miriam LAU Kin-ye, GBS, JP
- 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

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

[LC Paper Nos. CB(2)2160/11-12(01) to (04), CB(2)2045/11-12(01) and (02), CB(2)1715/11-12(01), CB(2)1520/11-12(01) and (02),

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CB(2)1417/11-12(01), CB(2)1182/11-12(01), 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**).

Proposed section 7AA - Definitions

2. Senior Assistant Solicitor General ("SASG") advised that the Administration would revise its draft Committee Stage amendments ("CSAs") to the proposed section 7AC(1) to the effect that the wordings "in the course of the business of the partnership as" referred to in the proposed section 7AC(1) would be replaced with "from the provision of professional service" to make clear that an innocent partner would be protected against personal liability for the default of other members of the firm from the provision of professional service and not from other ordinary trading debts such as rent and employees' salaries arising in the course of the business of the partnership. This amendment would fully reflect the Administration's policy intent that the Bill offered partial liability shield. In the light of this, the Administration would move CSA to delete the definition of "business" (業務) from the proposed section 7AA(1), which would have become unnecessary.

3. Mr David HIRSCH of The Law Society of Hong Kong said that The Law Society of Hong Kong ("LS") did not agree to the deletion of the definition of "business" under the proposed section 7AA(1) and the replacement of "business" with "professional service" under the proposed new section 7AC(1), as "professional service" had a narrower meaning than "business". He pointed out that in the previous discussion between LS and the Administration during the formulation of the Bill two or three years ago, it was agreed that protection to an innocent partner against personal liability for the default of other members of the firm in the course of business of the partnership should be adopted to avoid any doubt that if a partner was not negligent, protection should be afforded to that partner.

4. The Chairman said that according to her understanding of the policy intent of the Administration, the LLP protection should protect innocent partners for other members' professional default but they remained to be jointly and severally liable for the firm's ordinary business obligations such as staff's salaries and rent of firm. She was of the view that the policy intent was clear and the Bills Committee raised no objection to it.

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Proposed new section 7ACE - Effect of section 7AC(1) on proceedings

5. SASG advised that the draft CSAs to add the proposed section 7ACE on effect of section 7AC(1) on proceedings to replace the proposed section 7AC(6) under the Bill would be revised to read as follows -

"If a partner is protected from liability by section 7AC(1) –

- (a) the partner is not, separately, a proper party to any proceedings brought ~~by or~~ against the partnership for the purpose of recovering damages or claiming other relief in respect of the liability; and
- (b) the proceedings may, if they could apart from this section be brought ~~by or~~ against the partnership, continue to be so brought."

SASG explained that the policy intent of the proposed new section 7ACE was to prevent innocent partner from being sued separately, but that did not mean that he/she could not be a party to any proceedings against the partnership. In fact, the latter should be allowed on the basis that he/she was a co-owner of the partnership property and a client was allowed to take enforcement actions against the partnership property. In addition, the Administration sought to make clear that it was not its policy intent to restrict innocent partners from being a proper party to proceedings brought by the partnership. As such, the Administration also sought to remove the reference "by or" in the proposed new section 7ACE.

6. Mr Joseph LI of LS raised objection to the revised draft CSA as the proposed deletion of "by or" in subsection (b) might create problem for an LLP to counterclaim a client for matters such as non-payment of legal fees or a third party such as an outside counsel for giving wrong or negligent legal advice. He also raised concern about the compatibility of the revision with Order 81 of the Rules of the High Court (Cap. 4 sub. leg. A). SASG advised that it was the Administration's plan to amend Order 81 of the Rules of the High Court, which currently only provided for procedures for general partnership, at a later stage. She further explained that the proposed deletion of "by or" meant that the Bill did not seek to prevent innocent partners from being a proper party to proceedings brought by the partnership in the two examples cited by LS.

7. Ms Audrey EU was concerned about whether the revised draft CSA would lead to an increase in undesirable satellite litigations. The Chairman questioned the necessity of the proposed new section 7ACE. In her view, a client would in most instances sue the LLP and the culpable partner(s) if he/she could identify that partner(s). She also agreed to the need for

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innocent partners to be a party to proceedings against the partnership in order that the client could take enforcement proceedings against the partnership property after obtaining judgement.

8. Mr Ronny TONG and Ms Audrey EU were of the view that the drafting of the proposed new section 7ACE(a) could be improved to make clearer that an innocent LLP partner should not be jointly or severally liable to any proceedings brought against the partnership for the purpose of recovering damages or claiming other relief in respect of the liability.

Way forward

9. In response to the Chairman, Mr Michael LINTERN-SMITH of LS advised that LS did not have any objection for the Administration to proceed to resume the Second Reading debate of the Bill on the basis of its proposed amendments to the proposed section 7AC(1) and the proposed new section 7ACE. It would however invite the Administration to consider reverting to the original drafting of the proposed section 7AC(1) and retain the definition of "business" in the proposed section 7AA(1).

10. The Chairman requested the Administration to discuss with the legal advisor to the Bills Committee to address the concerns raised by members and LS on the drafting of the proposed section 7AC(1) and the proposed new section 7ACE. The Chairman said that if the legal advisor considered that the Administration's further amendments to the Bill, if any, were in order, no further meeting would be held. Subject to the view of the legal advisor on any further amendment, the Bills Committee completed scrutiny of the Bill.

11. Members agreed that the Bills Committee would report its deliberations on the Bill to the House Committee on 1 June 2012 supporting the resumption of the Second Reading debate on the Bill at the Council meeting of 13 June 2012. The Chairman added that the deadline for giving notice to move CSAs was 4 June 2012.

II. Any other business

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

**Proceedings of the meeting of the
Bills Committee on Legal Practitioners (Amendment) Bill 2010
on Monday, 28 May 2012, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject	Action required
000000 - 000523	Chairman Mr Ronny TONG	Opening remarks	
000524 - 001008	Admin Chairman	Briefing by the Administration on the latest draft Committee Stage amendments ("CSAs") proposed by the Administration (LC Paper Nos. CB(2)2160/11-12(02) and (03))	
002140 - 003414	Chairman The Law Society of Hong Kong (LS")	LS's objection to the latest revision made by the Administration in the proposed section 7AC(1) and the proposed new section 7ACE in the draft CSAs	
003415 - 003804	Admin Chairman	The Administration's explanation of the policy intent of the latest amendments to the proposed new section 7ACE in the draft CSAs	
003805 - 005019	Ms Audrey EU Chairman Admin	Discussions on the relationship between the proposed section 7AC and the proposed new section 7ACE	
005020 - 005841	Mr Ronny TONG Chairman Admin	Discussions on the drafting of the proposed new section 7ACE in the draft CSAs	
005842 - 010106	Mr Paul TSE Chairman Admin	In response to Mr Paul TSE, the Administration's explanation on the reasons why it proposed to delete the words "by or" in the proposed new section 7ACE(b) in the draft CSAs	
010107 - 010204	Mr Ronny TONG Chairman	Paper provided by the Administration on the proposed section 7AI(1) of the Bill (LC Paper No. CB(2)2160/11-12(01)) Information provided by LS on issues raised at the meeting on 21 May 2012 (LC Paper No. CB(2)2160/11-12(04))	
010205 - 010323	Chairman Mr Ronny TONG	The legislative timetable	
010324 - 010441	Chairman LS	LS disagreed to the latest revisions made by the Administration to the proposed section 7AC(1) in the draft CSAs	
010442 - 010813	Mr Ronny TONG Chairman LS	LS's position that it would not render its support for the Ordinance if the Administration did not revert to the original wordings of the proposed new section 7ACE and the proposed section 7AC(1), and retain the definition of "business" in the proposed section 7AA(1) in the draft CSAs	

Time marker	Speaker	Subject	Action required
010814 - 011343	Chairman Mr Albert HO Mr Paul TSE Mr Ronny TONG	The way forward	
011344 - 011637	LS Chairman Admin	LS's re-clarification of its position that it did not object to the Administration to proceed to resume the Second Reading debate of the Bill on the basis of the latest CSAs proposed by the Administration, but it would invite the Administration to consider reverting to the original wordings of the proposed section 7AC(1) and retain the definition of "business" in the proposed section 7AA(1)	
011638 - 011903	Chairman Admin Mr Ronny TONG	The Administration was requested to discuss with the legal advisor to the Bills Committee to address the concern raised by members and LS on the drafting of the proposed section 7AC(1) and the proposed new section 7ACE	Admin (para. 10 of the minutes refers)
011904 - 012011	Chairman	Resumption of the Second Reading debate of the Bill Concluding remarks	

Council Business Division 2
Legislative Council Secretariat
30 August 2012