

**Bills Committee on  
Legal Practitioners (Amendment) Bill 2010 (“Bill”)**

- (a) Recent Developments on Discussions with the Law Society of Hong Kong (“LS”) on the Clawback Period; and**
- (b) Latest draft CSAs to the Bill covering issues other than the Clawback Period**

**Purpose**

This paper provides updates on the following:

- (a) progress of the Administration’s recent discussions with the LS on the duration of the clawback period (“**Clawback Period**”) as mentioned in s 7AI(6) of the draft Committee Stage Amendments (“**CSAs**”) of 19 December 2011 (“**December Draft CSAs**”)<sup>1</sup>; and
- (b) our latest draft CSAs covering issues other than the Clawback Period.

**Recent discussions with the LS on Clawback Period**

2. At the BC meeting on 27 March 2012, BC Members were informed that considerable progress had been made in our discussions with the LS on the main issues of the Bill other than the Clawback Period. BC Members were further informed that the Administration had proposed to shorten the Clawback Period from 6 years to 4 years while the LS had insisted that the Clawback Period should be shortened to 2 years.

3. On 30 March 2012, the Administration met with representatives of the LS to discuss a proposal to require limited liability partnerships (“**LLPs**”) to take out top up insurance (“**Top Up Insurance**”) against losses in addition to the indemnity provided to partnerships under the fund established under s 3 of the Solicitors (Professional Indemnity) Rules, Cap 159M (“**Indemnity Fund**”) in exchange for reducing the Clawback Period to two years (“**Latest Proposal**”).

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<sup>1</sup> The December Draft CSAs is attached as Annex A to our previous BC Paper in February 2012, LC Paper No. CB(2)1182/11-12(01), s7AI(6) of the December Draft CSAs provides as follows:-

“(6) No proceedings to enforce a liability under this section may be commenced later than 6 years after the date of the distribution to which the liability relates.”

4. At the 30 March 2012 meeting as referred above, the LS and the Administration had (subject to detailed CSAs) reached the following initial agreements on the Top Up Insurance:

- (a) compensation should be paid out of the Indemnity Fund before it is paid out of the Top Up Insurance;
- (b) it should cover all matters handled by an LLP;
- (c) it should indemnify, among others, the firm and its partners;
- (d) it should provide a minimum indemnity coverage of HK\$10 million; and
- (e) the minimum indemnity coverage of HK\$10 million shall be specified in the Bill.

5. However, the scope and other relevant details of the additional indemnity coverage under paragraph 4(d) would be subject to further discussion with the Law Society.

6. The Administration will continue to work with the LS on Latest Proposal and its CSAs. Meanwhile, we would welcome any views that BC Members may have on the Latest Proposal.

#### **Latest draft CSAs covering issues other than the Clawback Period**

7. On 26 March 2012, we met with the representatives of the LS to discuss our draft CSAs covering issues other than the Clawback Period. Since then, we have further revised the CSAs to take account the discussions we had with the LS on 26 March 2012. A copy of the Bill incorporating the revised draft CSAs is attached at **Annex 1** ("**Latest Amended Bill**").

8. We would like to highlight the following principal amendments in the Latest Amended Bill for Members' attention:

#### **s 7AA(1) & s 7AG(3)**

- (a) The LS is concerned that "partnership with limited liabilities under the law of that [foreign] jurisdiction" in s7AG(3) of the Bill may be mistaken as referring a limited partnership (i.e.

rather than a limited liability partnership) under the law of that [foreign] jurisdiction. To address the LS' concern, we have sought to clarify and amend the same as "~~partnership with limited liabilities~~ limited liability partnership under the law of that [foreign] jurisdiction".

- (b) Consequentially, it is also necessary to amend s7AA(1) in order to clarify that "limited liability partnership under the law of that [foreign] jurisdiction" in s7AG(3), as amended does not fall within the meaning of a limited liability partnership as defined in s7AA of the Bill<sup>2</sup>, but to a limited liability partnership of that foreign jurisdiction.

Newly proposed s7AC(3)(c) and s7ACA on "Requirements relating to overall supervising partners"

- (c) As mentioned in paragraph 8 of our paper to the BC in February 2012, LC Paper No. CB(2)1182/11-12(01), the Administration has proposed (subject to the final LLP legislation) to remove all proposed provisions regarding designated partners in our previous CSAs and replace them by a new set of requirements concerning supervising partners ("**Requirements on Supervising Partner(s)**"). The CSAs on the Requirements on Supervising Partner(s) are now stated in the following sections of the Latest Amended Bill at Annex 1:

Newly proposed s7AC(3)(c)

- (i) s7AC(3)(c) provides that compliance with the requirements of the newly proposed s7ACA(2) (see below) at the time of the relevant default is necessary for LLP protection to apply under s7AC(1).

Newly proposed s7ACA(1)

- (ii) s7ACA(1) provides that an LLP must, throughout the time it handles a matter for a client, have at least one overall supervising partner on the matter ("**OSP**").

<sup>2</sup> s7AA(1) of the Bill states that a limited liability partnership "has the meaning given by section 7AB", and s7AB states the following:

"For the purposes of this Part, a limited liability partnership is a partnership that is for the time being-

(a) a Hong Kong firm or a foreign firm; and

(b) designated by written agreement between the partners as partnership to which this Part applies."

Newly proposed s7ACA(2)

- (iii) s 7ACA(2)(a) provides that an LLP must inform the client of the identity of at least 1 OSP within 21 days after accepting instructions on a matter.
- (iv) S7ACA(2)(b) provides that if there is any change of the OSP(s) as informed to client pursuant to s7ACA(2), the LLP must inform the client of the change within 7 days.

Newly proposed s7ACA(3)

- (v) s7ACA(3) allows a client to request the person, as specified in s7ACA(4), to provide him with the names of 1) other OSP(s) on the matter, if any, and 2) other partners responsible for supervising any particular parts of the matter.
- (vi) s7ACA(4)(a) provides that a client may make the request under s7ACA(3) to the OSP as last informed to the client by the LLP.
- (vii) s7ACA(4)(b) provides that a client may make the request under s7ACA(3) to the LLP where each OSP as last informed to the client by the LLP has ceased to be a partner of the LLP.
- (viii) s7ACA(5) requires the person who received a request by the client pursuant to s7ACA(3) to provide, to the best of the person's knowledge, the information to the client within 21 days.

s7ACB(2)

- (d) s7ACB(2) is amended from the previous draft s7ACA(2) in the December Draft CSAs. The latest amendments are highlighted (in revision mode) below for BC Members' ease of reference:

“Section 7AC(1) does not protect a partner from liability arising from a default in respect of a matter handled by the partnership if the default is-

- (a) the partner's default; or

- (b) a default of an ~~an partner~~, employee, agent or representative of the partnership who was under the direct supervision of the partner in respect of the matter at the time of the default."
- (e) At the 11<sup>th</sup> BC meeting held on 9 March 2012, representatives of the LS requested that the word "partner" be removed and the word "direct" be added before supervision in the above section. We have duly considered the LS' request and agreed to remove reference to "partner" in the above section on the basis that generally speaking a solicitor is expected to have reached a reasonably high level of competence to become a partner. Hence, on balance, we consider it reasonable not to deny a partner LLP protection for the default of another partner under his supervision. Furthermore, we have also agreed to add the word "direct" to clarify the scope of that provision concerning the liability of supervising partners. In this connection, we noted that the Ontario Partnership Act has similarly confined supervision to "direct supervision".<sup>3</sup>

s7AI (1A)

- (f) The following shows the latest amendments to s7AI(1A) of the December Draft CSAs:

"(1A) However, a person who receives a distribution as described in subsection (1) is not liable ~~as provided in subsection (2)~~ under that subsection if the person proves that –

- (a) immediately before making the distribution, the limited liability partnership made a reasonable assessment that the financial position of the partnership would not be as described in subsection (1) immediately after the distribution; and
- (b) the partnership arrived at the assessment after exercising reasonable diligence and based on information obtained for the purpose of the assessment or otherwise available at the time of the assessment; and
- (c) ~~at the time of the distribution the person did not have, or (if the person is an assignee of a partner's share in the partnership) neither the person nor that partner had, any reason to doubt the correctness of that assessment."~~

- (g) The LS has objected to s7AI(1A)(c) (as deleted above) on the basis that the partner concerned would have difficulty disproving that he has any reason to doubt the correctness of the relevant

<sup>3</sup> S10(3) of the Ontario Partnerships Act provides, among others, the following:

"Subsection (2) does not relieve a partner in a limited liability partnership from liability for,...

(b) the negligent or wrongful act or omission of a person under the partner's direct supervision;" (emphasis added)

assessment. We have reconsidered the issue and agreed to delete the subsection based on the reason as put forwarded by the LS.

s7AI(1B)

- (h) In paragraphs 8 & 9 of our previous BC Paper, LC Paper No. CB(2)1520/11-12(01), we explained why we could not agree to accept the LS' proposal to introduce safe harbour provisions for distributions made by an LLP based on the following:

- “(a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances;
- (b) a fair valuation; or
- (c) any other method that is reasonable in the circumstances.”

- (i) The LS has since agreed not to insist on its stance but to convert the above safe harbour provisions as factors that the courts may consider instead. We welcome the LS' latest position on this issue and have added S7AI(1B) to reflect this latest development.

9. We have sent the draft revised CSAs for the LS' review and await its comments. Meanwhile, we would welcome any views that BC Members may have on the Latest Amended Bill.

**Department of Justice**  
**April 2012**

#371060-v9A

**A BILL**

**To**

**Amend the Legal Practitioners Ordinance.**

Enacted by the Legislative Council.

**1. Short title**

This Ordinance may be cited as the Legal Practitioners (Amendment) Ordinance 2010.

**2. Commencement**

This Ordinance comes into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

**3. Section 2 amended (Interpretation)**

Section 2(1) of the Legal Practitioners Ordinance (Cap. 159) is amended by adding –

““partnership” (合夥) includes a limited liability partnership as defined by section 7AA;”.

**4. Part IIAAA added**

The following is added immediately after section 7A –

**“PART IIAAA**

**LIMITED LIABILITY PARTNERSHIPS**

**7AA. Definitions (Part IIAAA)**

(1) In this Part –

“business” (業務), in relation to a limited liability partnership, means the business of the partnership in providing services as a Hong Kong firm or a foreign firm;

~~“business” (業務) —~~

~~(a) — in relation to a Hong Kong firm, means the business of practising as solicitors; and~~

~~(b) — in relation to a foreign firm, means the business of practising or advising on foreign law;~~

~~“client” (客戶), in relation to a law firm, means a person who retains or employs the firm;~~

“default” (失責行為) means any negligent or wrongful act or omission, or any misconduct;

“distribution” (分發), in relation to partnership property, means a transfer of money or other partnership property by a partnership to a partner, whether as a share of profits, return of contributions to capital, repayment of advances or otherwise;

“limited liability partnership” (有限法律責任合夥), except for the reference in section 7AG(3) to a limited liability partnership under the law of a foreign jurisdiction, (有限責任合夥) has the meaning given by section 7AB;

“partnership obligation” (合夥義務), 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;



“partnership property” (合夥財產) has the same meaning as in the Partnership Ordinance (Cap. 38).

(2) If a law firm is constituted as a limited liability partnership when it commences business in Hong Kong, a reference in this Part to the date on which it becomes a limited liability partnership is a reference to the date on which it commences business in Hong Kong.

#### **7AB. Limited liability partnership**

For the purposes of this Part, a limited liability partnership is a partnership that is for the time being –

- (a) a Hong Kong firm or a foreign firm; and
- (b) designated by written agreement between the partners as a partnership to which this Part applies.

#### **~~7AC. Effect on liabilities of partners in limited liability partnership~~**

~~(1) Subject to subsections (3), (4) and (5), a partner in a limited liability partnership is not, solely by reason of being a partner, jointly or severally liable for any partnership obligation (whether founded on tort, contract or otherwise) that arises from a default of any other partner in the partnership, or of an employee, agent or representative of the partnership, in the course of the business of the partnership as a limited liability partnership.~~

~~(2) The protection of a partner from liability under subsection (1) applies irrespective of whether the liability is in the form of indemnification, contribution or otherwise.~~

~~(3) Subsection (1) does not protect a partner from liability if the partner—~~

- ~~(a) knew or ought reasonably to have known of the default at the time of its occurrence; and~~

~~(b) — failed to exercise reasonable diligence to prevent its occurrence.~~

~~(4) — Subsection (1) protects a partner from the liability arising from a claim made against the partnership by a client only if —~~

~~(a) — the partnership was a limited liability partnership at the time the cause of action for the claim accrued; and~~

~~(b) — the client knew or ought reasonably to have known that the partnership was a limited liability partnership at that time.~~

~~(5) — Subsection (1) does not protect any interest of a partner in the partnership property from claims against the partnership.~~

~~(6) — If a partner is protected from liability under subsection (1) —~~

~~(a) — the partner is not 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 brought by or against the partnership.~~

**7AC. Protection from liability of partners in limited liability partnership**

(1) A partner in a limited liability partnership is not, solely by reason of being a partner, jointly or severally liable for any partnership obligation (whether founded on tort, contract or otherwise) that arises in the course of the business of the partnership as a limited liability partnership from a default of —

(a) another partner; or

(b) an employee, agent or representative of the partnership.

(2) Subsection (1) applies irrespective of whether the liability is in the form of indemnification, contribution or otherwise.

(3) Subsection (1) applies only if at the time of the default–

(a) the partnership was a limited liability partnership;

(b) the client knew or ought reasonably to have known that the partnership was a limited liability partnership; and

(c) the partnership had complied with section 7ACA(2) for the matter in respect of which the default occurred.

**7ACA. Requirements relating to overall supervising partners**

(1) For each matter handled by a limited liability partnership for a client there must, throughout the time it is handled, be at least one partner who is responsible for the overall supervision of the matter ( *overall supervising partner*).

(2) For each matter handled by a limited liability partnership for a client, the partnership must –

(a) not later than 21 days after the partnership accepts instructions on the matter, inform the client of the identity of at least one overall supervising partner for the matter; and

(b) where there is any change of the overall supervising partner or partners notified under this subsection, inform the client within 7 days from the change .

(3) When a limited liability partnership is handling a matter for a client, or after the partnership has done so, the client may request a

person specified in subsection (4) to provide the client with a list of the names of –

- (a) all other partners (if any) who are or were (as appropriate) overall supervising partners for the matter; and
- (b) all other partners (if any) who are or were (as appropriate) responsible for the supervision of any particular parts of the matter.

(4) The following persons are specified for the purposes of subsection (3) –

- (a) any overall supervising partner for the matter, as last informed to the client by the partnership; or
- (b) if each person last informed to the client by the partnership to be an overall supervising partner for the matter is no longer a partner in the partnership, the partnership.

(5) A person specified in subsection (4) must, not later than 21 days from receiving a request under subsection (3), provide the client with the list referred to in subsection (3) to the best of the knowledge of the person.

#### **7ACB. Limitations on section 7AC protection**

(1) Section 7AC(1) does not protect a partner from liability if the partner –

- (a) knew of the default at the time of its occurrence; and
- (b) failed to exercise reasonable care to prevent its occurrence.

(2) Section 7AC(1) does not protect a partner from liability arising from a default in respect of a matter handled by the partnership if the default is –

- (a) the partner's default; or
- (b) a default of an employee, agent or representative of the partnership who was under the direct supervision of the partner in respect of the matter at the time of the default.

(3) Section 7AC(1) does not protect any interest of a partner in the partnership property from claims against the partnership.

**7ACC. Indemnification under partnership agreement not affected**

Nothing in this Part affects any right of a partner in a limited liability partnership to be indemnified by another partner, or any obligation of a partner to indemnify another partner, under a written agreement made between the partners.

**7ACD. Effect of section 7AC(1) on proceedings**

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

- (a) the partner is not 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.

**7AD. Advance notice to Society in respect of limited liability partnership**

(1) A law firm must ensure that, at least 7 days before the date on which it becomes a limited liability partnership, a written notice of the following particulars is given to the Society –

- (a) the date on which the firm becomes a limited liability partnership;
- (b) the name of the partnership;
- (c) the name of each partner in the partnership;
- (d) each address at which the partnership carries on its business;
- (e) any other particulars prescribed by rules made under section 73.

(2) A law firm must ensure that, at least 7 days before the date on which it ceases to be a limited liability partnership, a written notice of that date is given to the Society.

~~(3) Subsection (1) does not apply to a foreign firm that is constituted as a limited liability partnership when it commences business in Hong Kong.~~

#### **7AE. Name of limited liability partnership**

A limited liability partnership must –

- (a) if it has a Chinese name, include the words “有限法律責任合夥”~~“有限責任合夥”~~ as part of that Chinese name; and
- (b) if it has an English name, include the following as part of that English name –
  - (i) the words “Limited Liability Partnership”;
  - or
  - (ii) the abbreviation “LLP” or “L.L.P.”.

**7AF. Notification of name by limited liability partnership**

(1) A limited liability partnership must display its name, in a clearly visible and legible manner, at or outside every office or place in which it carries on its business.

(2) A limited liability partnership must state its name, in a clearly visible and legible manner, in its correspondence, notices, publications, invoices and bills of costs, and on its websites.

**7AG. Notice by limited liability partnership to existing clients**

(1) Except as provided in subsection (2), a law firm must, within 30 days after it becomes a limited liability partnership, by written notice inform each of its existing clients of that fact.

(2) A specified foreign firm must, within 30 days after it becomes a limited liability partnership, by written notice inform each of its existing clients in Hong Kong of that fact.

(3) For the purposes of subsection (2), a foreign firm is a specified foreign firm if, before becoming a limited liability partnership, it has been carrying on, in a foreign jurisdiction, the practice of law as a limited liability partnership~~partnership with limited liabilities~~ under the law of that jurisdiction.

(4) A written notice issued under this section must be in a form specified by the Council.

(5) The form specified under subsection (4) must include a brief statement stating how liabilities of partners in a law firm are affected under sections 7AC, 7ACA and 7ACB by the law firm becoming a limited liability partnership~~of a law firm are affected by the law firm becoming a limited liability partnership under section 7AC.~~

(6) In this section, “existing client” (現有當事人)(現有客戶), in relation to a law firm, means a person who is a client of the firm at the time the firm becomes a limited liability partnership.

(7) For the purposes of subsection (2), an existing client of a specified foreign firm is its existing client in Hong Kong if –

- (a) the client is a body corporate, and it has its registered office or a place of business in Hong Kong; or
- (b) the client is not a body corporate, and the last correspondence address provided by the client to the firm is in Hong Kong.

(8) This section does not apply to a law firm that is constituted as a limited liability partnership when it commences business in Hong Kong.

**~~7AH. Other requirements relating to practice of law firm in rules made under section 73~~**

~~Sections 7AD, 7AE, 7AF and 7AG are in addition to, and do not affect, any other provisions relating to the practice of a law firm as prescribed by rules made under section 73.~~

**7AH. Other requirements relating to practice of law firm not affected**

Sections 7ACA, 7AD, 7AE, 7AF and 7AG are in addition to, and do not affect, any other provisions relating to the practice of a law firm as prescribed by rules made under section 73 or contained in The Hong Kong Solicitors’ Guide to Professional Conduct.



**7AI. Provisions regulating distribution of partnership property**

~~(1) — If a limited liability partnership makes a distribution of any of its partnership property to a partner, or to an assignee of a partner's share in the partnership, as a consequence of which —~~

~~(a) — the partnership would be unable to pay its partnership obligations as they become due; or~~

~~(b) — the value of the remaining partnership property would be less than the partnership obligations,~~

~~then the partner or assignee is liable as provided in subsection (2).~~

(1) If a limited liability partnership makes a distribution of any of its partnership property to one or more persons (each being a partner or an assignee of a partner's share in the partnership), and immediately after the distribution —

(a) the partnership is or will be unable to pay its partnership obligations as they become due; or

(b) the value of the remaining partnership property is less than the partnership obligations,

then each of the persons is liable to the partnership to the extent specified in subsection (2).

(1A) However, a person who receives a distribution as described in subsection (1) is not liable under that subsection if the person proves that —

(a) immediately before making the distribution, the limited liability partnership made a reasonable assessment that the financial position of the partnership would not be as described in subsection (1) immediately after the distribution; and

(b) the partnership arrived at the assessment after exercising reasonable diligence and based on information obtained for the purpose of the assessment or otherwise available at the time of the assessment.

(1B) In determining whether the partnership made a reasonable assessment as referred to in subsection (1A)(a), a court may have regard to all the circumstances of the case including, without limitation, whether the assessment was based—

- (a) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances;
- (b) on a fair valuation; or
- (c) on any other method that is reasonable in the circumstances.

(2) A person who is liable under subsection (1)~~The partner or assignee who receives the distribution~~ is liable to the partnership for –

- (a) the value of the property received by the person as partner or assignee as a result of the distribution;  
or
- (b) the amount necessary to discharge the partnership obligations at the time of the distribution,

whichever is the lesser.

(3) Proceedings to enforce any of the liabilities arising under this section as a result of the distribution may be brought by –

- (a) the partnership;
- (b) any partner in the partnership; or

- (c) any person to whom the partnership owes any partnership obligation at the time of the distribution.

(4) In this section, a reference to partnership obligation is a reference to partnership obligation (whether actual or contingent).

(5) This section does not affect a payment made as reasonable compensation for current services provided by a partner to the partnership, to the extent that the payment would be reasonable if paid to a person who is an employee of, but not a partner in, the partnership as compensation for similar services.

(6) No proceedings to enforce a liability under this section may be commenced later than [ ] years after the date of the distribution to which the liability relates.

#### **7AJ. List of limited liability partnerships**

(1) The Council must keep a list of law firms that are or have been limited liability partnerships.

(2) The list must, in relation to each such law firm, contain –

- (a) its name;
- (b) each address at which it carries on its business or, if it has ceased its business, each address at which it last carried on its business; and
- (c) the date on which it first became a limited liability partnership and, if applicable, the dates from which or periods during which it has ceased to be a limited liability partnership.

(3) As soon as practicable after becoming aware of any matter that would require the list to be updated, the Council must update the list accordingly.

(4) For the purpose of enabling any member of the public to

ascertain whether a law firm is, or has been, a limited liability partnership and to ascertain the particulars of the partnership, the Council must make the list available for public inspection, free of charge, at the office of the Council during office hours.

**7AK. No dissolution of partnership, etc.**

(1) The fact that a partnership becomes, or ceases to be, a limited liability partnership –

- (a) does not cause the partnership –
  - (i) to be dissolved; or
  - (ii) to cease continuing in existence as a partnership; and
- (b) does not affect any of the rights and liabilities (whether actual or contingent) of the partnership, or of any person as a partner, that have been acquired, accrued or incurred before the partnership becomes, or ceases to be, a limited liability partnership.

(2) Subsection (1)(a) operates subject to any written agreement between the partners to the contrary.

**7AL. This Part to prevail over inconsistent agreement**

(1) In relation to a limited liability partnership, this Part prevails over any inconsistent provisions in any agreement between any persons, whether as partners in the partnership or otherwise.

(2) To avoid doubt, this section does not affect the operation of sections 7ACC and of section 7AK(2).

**7AM. Law not inconsistent with this Part  
applies~~continues to apply~~**

(1) All relevant laws, except so far as they are inconsistent with this Part, ~~continue to apply~~ in relation to a partnership that is a limited liability partnership.

(2) In this section, “relevant laws” (有關法律) means the Partnership Ordinance (Cap. 38) and every other law that applies in relation to a partnership (whether an enactment, or a rule of equity or of common law).”.

**5. Section 73 amended (Power of the Council to make rules)**

Section 73(1) is amended by adding –

“(df) in relation to the practice of limited liability partnerships –

- (i) prescribing particulars for the purposes of section 7AD(1)(e); and
- (ii) regulating any matters of procedure or matters incidental, ancillary or supplemental to the provisions of Part IIAAA;”.

***Consequential Amendment***

**Summary Disposal of Complaints (Solicitors) Rules**

**6. Schedule amended (Scheduled items)**

The Schedule to the Summary Disposal of Complaints (Solicitors) Rules (Cap. 159 sub. leg. AD) is amended, under the heading “**Legal Practitioners Ordinance (Cap. 159)**”, by adding –

“2.	Section 7AD(1)	10,000	15,000
3.	Section 7AD(2)	10,000	15,000
4.	Section 7AE(a)	10,000	15,000
5.	Section 7AE(b)	10,000	15,000

6.	Section 7AF(1)	10,000	15,000
7.	Section 7AF(2)	10,000	15,000
8.	Section 7AG(1)	10,000	15,000
9.	Section 7AG(2)	10,000	15,000”.

### **Explanatory Memorandum**

The purpose of this Bill is to amend the Legal Practitioners Ordinance (Cap. 159) (“the principal Ordinance”) to introduce limited liability partnerships for law firms in Hong Kong.

#### **Preliminary provisions**

2.       Clauses 1 and 2 provide for the short title and commencement.
3.       Clause 3 adds to section 2(1) of the principal Ordinance a new definition of “partnership” to make it clear that a reference to this term throughout the principal Ordinance and its subsidiary legislation generally includes a limited liability partnership.

New Part IIAAA of the principal Ordinance

4. Clause 4 adds to the principal Ordinance a new Part IIAAA on limited liability partnerships, which consists of the proposed sections 7AA to 7AM.

5. The proposed section 7AA provides for the interpretation of expressions used in the new Part IIAAA.

6. The proposed section 7AB sets out the meaning of a “limited liability partnership” in the Bill, namely, a Hong Kong firm or a foreign firm (both terms are defined in section 2(1) of the principal Ordinance) that is designated by written agreement between the partners as a partnership to which the new Part IIAAA applies.

7. Under the Partnership Ordinance (Cap. 38), every partner in a firm is liable jointly and severally for certain wrongful acts or omissions for which the firm becomes liable. The proposed section 7AC varies this rule for law firms that are limited liability partnerships. According to the proposed section 7AC(1), a person will not, solely by reason of being a partner, become jointly or severally liable for any partnership obligation if the firm is a limited liability partnership and the partnership obligation arises from the default of another partner, or of an employee, agent or representative of the firm.

8. The object of the proposed section 7AC(1) is to protect an innocent partner against personal liability for the default of other members of the firm. This provision is not intended to change the common law position with respect to the general principles of negligence (see the proposed section 7AM). For example, a partner in a limited liability partnership may still be held responsible under the common law for vicarious liability arising from a default of an employee, agent or representative who is under the supervision of the partner. Also, a failure to establish a proper system of staff supervision can be the basis for a claim that all partners of a limited liability partnership are jointly and severally liable for negligence.

9. The proposed section 7AC(3) further provides that the protection under section 7AC(1) is not available to a partner in a limited liability partnership if he

or she knew or ought reasonably to have known of a default at the time of its occurrence, and failed to exercise reasonable diligence to prevent its occurrence. Moreover, a partner may be protected from the liability arising from a claim made by a client only if the partnership was a limited liability partnership at the time the cause of action for the claim accrued, and the client knew or ought reasonably to have known that the partnership was a limited liability partnership at that time (see the proposed section 7AC(4)).

10. Under the proposed section 7AD, a law firm must ensure that a written notice of its relevant particulars is given to The Law Society of Hong Kong (“the Law Society”) at least 7 days before it becomes, or ceases to be, a limited liability partnership. However, a foreign firm constituted as a limited liability partnership when it commences business in Hong Kong is not required to give a separate notice under the proposed section 7AD(1) because it will have already provided the relevant particulars to the Law Society for prior approval of its registration under Part IIIA of the principal Ordinance.

11. The proposed section 7AE requires that the name of a limited liability partnership must contain the words “有限責任合夥” if it is in Chinese, and the words “Limited Liability Partnership” (or the abbreviation) if it is in English. That name must be displayed at every place of business of the partnership and stated in its correspondence and other publications as required by the proposed section 7AF.

12. The proposed section 7AG requires an existing law firm to notify all its existing clients within 30 days after it becomes a limited liability partnership. However, an existing foreign firm only needs to notify its existing clients in Hong Kong if it has already been practising law as a partnership with limited liabilities under the law of another jurisdiction.

13. The proposed section 7AH makes it clear that any other requirements relating to the practice of law firms as prescribed by rules made by the Council



of the Law Society under section 73 of the principal Ordinance will not be affected by the proposed sections 7AD, 7AE, 7AF and 7AG.

14. The proposed section 7AI regulates the distribution of a limited liability partnership's property in circumstances where, as a result of the distribution, the partnership would be unable to pay its obligations as they become due, or the value of the remaining partnership property would be less than its obligations.

15. Under the proposed section 7AJ, the Council of the Law Society is required to keep a list of limited liability partnerships and to make the relevant information available for public inspection.

16. The proposed section 7AK provides that a partnership's existence as a partnership (subject to any contrary agreement between the partners), and the pre-existing rights and liabilities of the partnership and of its partners, will not be affected by the fact that it becomes, or ceases to be, a limited liability partnership.

17. While the proposed section 7AL further states that the new Part IIAAA prevails over inconsistent provisions in any agreement, the proposed section 7AM makes it clear that all relevant laws applicable to a partnership, except so far as they are inconsistent with that Part, remain applicable to a limited liability partnership.

#### Further provisions

18. Clause 5 amends section 73 of the principal Ordinance to empower the Council of the Law Society to make rules respecting the practice of limited liability partnerships for giving full effect to the new Part IIAAA.

19. Clause 6 makes a consequential amendment to the Summary Disposal of Complaints (Solicitors) Rules (Cap. 159 sub. leg. AD) so that a complaint against a breach of any requirement in the proposed sections 7AD to 7AG may be submitted to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel for disposal under the summary procedure provided by those Rules.