

(Draft dated 27/5/2011)

Legal Practitioners (Amendment) Bill 2010

**Committee Stage**

**[Note:** The committee stage amendments are arranged in this draft in an order that facilitates discussion. The amendments will be re-arranged to follow the usual order in the final version.]

**[CSAs not concerning “designated partner”]**

Clause 4	In the proposed Part IIAAA, in section 7AA(1), by deleting the definition of “business” and substituting –  ““business” ( ), 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;”.
Clause 4	In the proposed Part IIAAA, in section 7AA(1), by deleting the definition of “client”.
Clause 4	In the proposed Part IIAAA, in section 7AA(1), by adding -  ““distribution” ( ) means, in relation to partnership property, 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.”.
Clause 4	In the proposed Part IIAAA, in section 7AC(3)(a), by deleting “or ought reasonably to have known”.
Clause 4	In the proposed Part IIAAA, in section 7AG, by deleting subsection (6) and substituting –  “(6) In this section “existing client” ( ), in relation

	to a law firm, means a person who retains or employs the firm at the time it becomes a limited liability partnership.”
Clause 4	<p>In the proposed Part IIAAA, in section 7AI, by deleting subsection (1) and substituting -</p> <p>“(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 –</p> <ul style="list-style-type: none"> <li>(a) the partnership is or will be unable to pay its partnership obligations as they become due; or</li> <li>(b) the value of the remaining partnership property is less than the partnership obligations,</li> </ul> <p>then each of the persons is liable as provided in subsection (2).</p> <p>(1A) But a person is not liable as provided in subsection (2) if the person proves that –</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(b) the partnership arrived at the assessment after exercising reasonable diligence and based on information obtained for the purpose of the assessment or</li> </ul>

	<p>otherwise available at the time of the assessment; and</p> <p>(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.</p>
Clause 4	<p>In the proposed Part IIAAA, in section 7AI, by adding after subsection (5) -</p> <p>“(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.”</p>
Clause 4	<p>In the proposed Part IIAAA, in section 7AM(1), by deleting “continue to”.</p>

### **CSAs on “designated partner”**

Clause 4	<p>In the proposed Part IIAAA, in section 7AC(2), by deleting “The” and substituting “Subject to any written agreement between the partners to the contrary, the”.</p>
Clause 4	<p>In the proposed Part IIAAA, in section 7AC, by adding after subsection (2) -</p> <p>“(2A) Subsection (1) has effect in relation to liability for any partnership obligation arising from a matter handled by a partnership for a client only if-</p> <p>(a) throughout the period during which the matter is handled by the partnership, the partnership complies with section 7AGA(1); and</p>

	<p>(b) the partner to be protected under subsection (1) is not a designated partner for the matter at the time of the default from which the partnership obligation arises.</p> <p>(2B) To avoid doubt-</p> <p>(a) this section does not protect a partner of a partnership from any liability for any partnership obligation (whether founded on tort, contract or otherwise) arising from the partner's own default whether or not –</p> <p>(i) the partner commits the default jointly or collectively with other partners; or</p> <p>(ii) the partner's default is attributable to or is aggravated by another partner's default;</p> <p>(b) the fact that a person is not a designated partner for a matter does not in any way support any inference that any liability arising from a claim in respect of the matter does not arise from the partner's default.</p>
Clause 4	<p>By adding after proposed section 7AG-</p> <p><b>"7AGA. Designated partner for each matter</b></p> <p>(1) For each matter that is handled by the partnership for a client, there must be at least one partner of the partnership acting as designated partner throughout the</p>

period during which the matter is handled.

(2) A person is a designated partner for a matter handled by the partnership for a client only if –

(a) the person is a partner of the partnership;  
and

(b) either –

(i) the person is stated in a notice that complies with subsections (6) and (7) (*designation notice*) to be a designated partner for the matter from the effective date of the notice, and the partnership complies with the conditions specified in subsection (3) (*designation conditions*); or

(ii) the person is stated in a notice that complies with subsections (6) and (7) (*re-designation notice*) to be a designated partner for the matter from the effective date of the notice, and the partnership complies with the conditions specified in subsection (4) (*re-designation conditions*).

(3) In relation to a designation notice, the designation conditions are –

(a) the effective date of the notice must be

(i) the date on which the limited liability partnership begins to act for the client in respect of the

	<p>matter; or</p> <p>(ii) for a matter in respect of which the partnership has been acting for the client before becoming a limited liability partnership, the date on which the partnership becomes a limited liability partnership; and</p> <p>(b) the notice is given by the partnership to the client as soon as practicable, and in any event within 30 days after the effective date of the notice.</p> <p>(4) In relation to a re-designation notice, the re-designation conditions are –</p> <p>(a) at least one person is stated in the notice as becoming, or continuing to be, a designated partner for the matter from the effective date of the notice; and</p> <p>(b) the notice is given by the partnership to the client as soon as practicable, and in any event within 30 days after the effective date of the notice.</p> <p>(5) A person who is a designated partner for a matter under subsection (2) or (8) does not cease to be such until the earlier of the following–</p> <p>(a) the date on which the person ceases to be a partner of the partnership; or</p> <p>(b) the effective date of a re-designation notice if –</p> <p>(i) the notice complies with</p>
--	---

	<p>subsections (6) and (7), and the notice states that the person ceases to be a designated partner for the matter from the effective date of the notice; and</p> <p>(ii) the partnership complies with the conditions specified in subsection (4).</p> <p>(6) A designation notice or a re-designation notice in respect of a matter—</p> <p>(a) must be in writing;</p> <p>(b) must state the effective date of the notice;</p> <p>(c) in the case of a designation notice, must state who is or are the person or persons that becomes or become designated partner or partners for the matter from the effective date of the notice;</p> <p>(d) in the case of a re-designation notice, must state -</p> <p>(i) who is or are the person or persons that ceases or cease to be designated partner or partners for the matter from the effective date of the notice;</p> <p>(ii) who is or are the person or persons that becomes or continues, or become or continue, to be designated partner or partners for the matter from the</p>
--	--

	<p>effective date of the notice; and</p> <p>(e) must state the effect of section 7AC on the liabilities in respect of the matter of the designated partner or partners as named in the notice and of other partners of the partnership.</p> <p>(7) Each person referred to in subsection (6)(c) or (d)(ii) must sign the notice in the person's own name and on behalf of the partnership.</p> <p>(8) In respect of a matter handled by a limited liability partnership for a client, a partner of the partnership is a designated partner for the matter under subsection (1), even though subsection (2)(b)(i) and (ii) is not complied with, if –</p> <p>(a) but for the person becoming a designated partner in respect of the matter under this subsection, the partnership would have failed to comply with subsection (1) in respect of the matter from the date of any of the following (<i>triggering event</i>) –</p> <p>(i) the limited liability partnership begins to act for the client in respect of the matter;</p> <p>(ii) for a matter in respect of which the partnership has been acting for the client before becoming a limited liability partnership, the partnership becomes a limited liability partnership; or</p> <p>(iii) if a person is at any time the only</p>
--	---



	<p>designated partner in respect of a matter under subsection (2), the person ceases to be a partner of the partnership; and</p> <p>(b) it is proved that –</p> <p>(i) the client has the requisite knowledge specified in subsection (9) at a time specified in subsection (10); and</p> <p>(ii) the person is a partner who is not protected under section 7AC in respect of the matter and whose identity is known to the client as mentioned in subsection (9)(b)(i) or (ii).</p> <p>(9) The requisite knowledge specified for the purposes of subsection (8)(b) is actual knowledge of the following matters-</p> <p>(a) the effect of section 7AC on the liabilities of the partners of the partnership in respect of the matter; and</p> <p>(b) either –</p> <p>(i) that a partner of the partnership is not protected under section 7AC in respect of the matter, and the partner's identity; or</p> <p>(ii) that two or more partners are not protected under section 7AC in respect of the matter, and the identity of one or more of those</p>
--	---

	<p>partners,</p> <p>where the knowledge is acquired from the partner whose identity is known to the client as mentioned in paragraph (b)(i) or (ii).</p> <p>(10) The time specified for the purposes of subsection (8)(b) is any time –</p> <ul style="list-style-type: none"> <li>(a) within 30 days after the date of the triggering event; and</li> <li>(b) before the occurrence of the default from which the partnership obligation mentioned in section 7AC(1) arises.</li> </ul> <p>(11) A person who is designated partner for a matter under subsection (8) is such from the date of the triggering event.</p> <p>(12) To avoid doubt, the requirement in subsection (2)(a) does not absolve a person who is not a partner of a partnership from any liability that arises from the person holding himself or herself out as a partner of the partnership and a designated partner.</p> <p>(13) In this section-</p> <p><i>effective date</i> (), in relation to a designation notice or re-designation notice given by a limited liability partnership, is the date stated in the notice as the day from which a person named in the notice becomes, continues to be or ceases to be a designated partner for a matter specified in the notice.</p>
Clause 4	In the proposed Part IIAAA, in section 7AH, by deleting “7AF and 7AG” and substituting “7AF, 7AG and 7AGA”.

Clause 4	In the proposed Part IIAAA, in section 7AL(2), by deleting “of section” and substituting “of sections 7AC(2) and”.
----------	--