

## **LEGISLATIVE COUNCIL BRIEF**

### **LEGAL PRACTITIONERS (AMENDMENT) BILL 2010**

#### **INTRODUCTION**

Annex

At the meeting of the Executive Council on 15 June 2010, the Council ADVISED and the Chief Executive ORDERED that the Legal Practitioners (Amendment) Bill 2010, at Annex, should be introduced into the Legislative Council.

#### **JUSTIFICATIONS**

2. Under the existing law every partner in a solicitor firm is liable jointly and severally with other partners for all debts, liabilities and obligations of the firm incurred while he is a partner, including those arising from any wrongful act of other partners of the firm.

3. Since 2004, the Law Society of Hong Kong (LS) has called for an early introduction of limited liability partnership (LLP). In brief, LLP is a model for doing business which confers the privileges of limited liability on innocent partners so as to insulate their personal assets from claims arising from the default of the other partners of the firm in the course of business.

4. In late 2008, the Administration informed the Legislative Council's Panel on Administration of Justice and Legal Services ("the AJLS Panel") that it was proposed that legislation would be introduced to enable solicitor firms in Hong Kong to operate in the form of LLP.

5. The purpose of the Bill is to amend the Legal Practitioners Ordinance (Cap. 159) (“the principal Ordinance”) to introduce LLP for solicitors’ practices in Hong Kong.

## **THE BILL**

6. The main provisions of the Bill are set out below.

### **New Part IIAAA**

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

### **Proposed section 7AB**

8. 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 that is designated by a written agreement between the partners as a partnership to which the new Part IIAAA applies.

### **Proposed section 7AC**

9. 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 LLPs. 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 an LLP and the partnership obligation arises from the default of another partner, or of an employee, agent or representative of the firm.

10. 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 an LLP may still be held responsible under the common law for vicarious liability arising from a default of an employee 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 an LLP are collectively liable for negligence.

11. The proposed section 7AC(3) provides that the protection under section 7AC(1) is not available to a partner in an LLP 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 an LLP 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 an LLP at that time (see the proposed section 7AC(4)).

#### **Proposed sections 7AD to 7AH**

12. The proposed section 7AD requires that LS be notified at least 7 days before the establishment of an LLP.

13. The proposed section 7AE requires that the name of an LLP 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.

14. The proposed section 7AG requires an existing law firm to notify all its existing clients within 30 days after it becomes an LLP. 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.

15. 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.

**Proposed section 7AI**

16. The proposed section 7AI regulates the distribution of an LLP'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.

**Proposed section 7AJ**

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

**Proposed sections 7AK – 7AM**

18. 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, an LLP.

19. 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 any general law applicable to a partnership, except so far as it is inconsistent with that Part, remains applicable to an LLP.

### **Further provisions**

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

21. 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.

### **LEGISLATIVE TIMETABLE**

22. The legislative timetable will be as follows –

Publication in the Gazette	18 June 2010
First Reading and commencement of Second Reading debate	30 June 2010
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

### **IMPLICATIONS OF THE PROPOSAL**

23. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no economic, financial, civil service, productivity, environmental or sustainability implications.

24. The Bill will not affect the current binding effect of the Ordinance.

## **PUBLIC CONSULTATION**

25. The legislative proposals for introducing LLP for solicitors' practices in Hong Kong were discussed at the AJLS Panel at its meetings on 16 December 2008, 25 May 2009 and 15 December 2009. The Panel urged for an early introduction of the Bill.

26. LS, the Bar Association, the Consumer Council and the Judiciary have been consulted on the drafts of the Bill. Responses from LS, the Consumer Council and the Judiciary have been taken into account in the drafting of the Bill where appropriate. The Bar Association has confirmed that it has no comments on the Bill.

## **PUBLICITY**

27. A press release is to be issued on 17 June 2010. A spokesman will be available to answer enquiries.

## **ENQUIRY**

28. Any enquiry on this brief can be addressed to Mr Thomas Leung, Senior Government Counsel, Legal Policy Division, Department of Justice, at Tel. No. 2867 4903.

Department of Justice

17 June 2010

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**LEGAL PRACTITIONERS (AMENDMENT) BILL 2010**

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**PART IIAAA**

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# 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) –

(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;

“limited liability partnership” (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.

**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 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 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.

**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).

(2) The partner or assignee who receives the distribution is liable to the partnership for –

- (a) the value of the property received by the 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.

#### **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 section 7AK(2).

**7AM. Law not inconsistent with this Part 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.

Chapter 159	LEGAL PRACTITIONERS ORDINANCE	Gazette Number	Version Date
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Section 2	Interpretation	10 of 2008	09/05/2008
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- (1) In this Ordinance, unless the context otherwise requires-
- "accountant's report" (會計師報告) means a report delivered in accordance with the provisions of section 8; (Replaced 25 of 1968 s. 2)
- "Association" (聯營組織) means an Association registered under Part IIIA; (Added 60 of 1994 s. 2)
- "Bar Council" (執委會) means the Council of the Hong Kong Bar Association; (Amended 70 of 1991 s. 2)
- "barrister" (大律師) means a person who is enrolled as a barrister on the roll of barristers and who, at the material time, is not suspended from practice;
- "client" (當事人), except in relation to non-contentious business, includes any person who as principal or on behalf of another person retains or employs, or is about to retain or employ, a solicitor, and any person who is or may be liable to pay a solicitor's costs;
- "contentious business" (爭訟事務) includes any business done by a solicitor in any court, whether as a solicitor or as an advocate;
- "costs" (訟費、事務費) includes fees, charges, disbursements, expenses and remuneration;
- "Costs Committee" (事務費委員會) means the Costs Committee appointed under section 74;
- "Council" (理事會) means, in relation to the Law Society, the council of the Society elected in accordance with the provisions of its articles of association; (Added 52 of 1980 s. 2. Amended 27 of 1998 s. 5)
- "Council of the Society of Notaries" (公證人協會理事會) means the Council of Management of that society appointed in accordance with the provisions of its articles of association; (Added 27 of 1998 s. 5)
- "Court" (法院) means the Court of First Instance; (Amended 92 of 1975 s. 59; 25 of 1998 s. 2)
- "employee" (僱員) includes a former employee; (Added 25 of 1968 s. 2)
- "foreign firm" (外地律師行) means a law firm or sole practitioner that is registered as a foreign firm under Part IIIA; (Added 60 of 1994 s. 2. Amended 23 of 1998 s. 2)
- "foreign jurisdiction" (外地司法管轄區) means a jurisdiction other than Hong Kong; (Added 60 of 1994 s. 2. Amended 23 of 1998 s. 2)
- "foreign law" (外地法律) means the law of a foreign jurisdiction; (Added 60 of 1994 s. 2. Amended 23 of 1998 s. 2)
- "foreign lawyer" (外地律師) means a person registered as a foreign lawyer under Part IIIA; (Added 60 of 1994 s. 2. Amended 23 of 1998 s. 2)
- "Hong Kong firm" (香港律師行) means a law firm in which-
- (a) all of the partners are solicitors; or
  - (b) the sole practitioner of which is a solicitor; (Added 60 of 1994 s. 2. Amended 42 of 2000 s. 2)
- "non-contentious business" (非爭訟事務) includes any business connected with sales, purchases, leases, mortgages and other matters of conveyancing;
- "notary public" (公證人) means a person who is registered on the register of notaries public and who, at the material time, is not suspended from practice;
- "Postgraduate Certificate in Laws" (法學專業證書) means a Postgraduate Certificate in Laws awarded by the University of Hong Kong, the City University of Hong Kong, the City Polytechnic of Hong Kong or The Chinese University of Hong Kong; (Added 1 of 1992 s. 2. Amended 100 of 1994 s. 5; 10 of 2008 s. 34)
- "practising certificate" (執業證書) means-

- (a) a certificate issued by the Society under section 6; (Amended 27 of 1998 s. 5)
- (b) a certificate issued by the Bar Council under section 30; and (Replaced 58 of 1976 s. 2. Amended 70 of 1991 s. 2; 27 of 1998 s. 5)
- (c) a certificate issued by the Society of Notaries under section 40E; (Added 27 of 1998 s. 5)

"qualified person" (合資格人士) means a person qualified for admission as a solicitor; (Added 50 of 1982 s. 2)

"register of notaries public" (公證人註冊紀錄冊) means the register kept by the Registrar in accordance with the provisions of section 40C; (Amended 27 of 1998 s. 5)

"Registrar" (司法常務官) means the Registrar of the High Court and any senior deputy registrar, deputy registrar or assistant registrar of the High Court; (Amended 25 of 1998 s. 2; 10 of 2005 s. 175)

"roll of barristers" (大律師登記冊) means the roll kept by the Registrar in accordance with the provisions of section 29;

"roll of solicitors" (律師登記冊) means the roll kept by the Registrar in accordance with the provisions of section 5;

"Society" and "Law Society" (律師會) mean The Law Society of Hong Kong; (Replaced 14 of 1970 s. 2. Amended 27 of 1998 s. 5)

"Society of Notaries" (公證人協會) means the body known as Hong Kong Society of Notaries incorporated with limited liability under the Companies Ordinance (Cap 32) and having among its objects the promotion of proper professional standards among notaries public, the regulation of the practice of notaries public and the performance or discharge of such duties or responsibilities as may be conferred on it under this Ordinance; (Added 27 of 1998 s. 5. Amended L.N. 206 of 2003)

"solicitor" (律師) means a person who is enrolled on the roll of solicitors and who, at the material time, is not suspended from practice;

"trainee solicitor contract" (實習律師合約) means a contract in writing, whether entered into before or after the commencement of this Ordinance, under which a person is employed as an articled clerk or trainee solicitor for the purpose of being admitted as a solicitor; (Added 70 of 1991 s. 2)

"unqualified person" (不合資格人士) means a person who is not a solicitor.

(Amended 70 of 1991 s. 2; 61 of 1992 s. 2)

(1A) In this Ordinance, a reference to the Department of Justice shall, in relation to any period of time before 1 July 1997, be deemed to be a reference to the then Legal Department. (Added 11 of 1999 s. 3)

(2) For the avoidance of doubt, it is hereby declared that any conduct of a trainee solicitor or employee of a solicitor which would reasonably be regarded as disgraceful, dishonourable or discreditable by a solicitor of good repute shall be deemed misconduct. (Added 25 of 1968 s. 2. Amended 1 of 1981 s. 2; 70 of 1991 s. 13)

(3) Any rules made under section 73(1)(d) or (f) shall, subject to section 73(3) and unless the context otherwise requires, apply to a qualified person as they apply to a solicitor. (Added 50 of 1982 s. 2)

Chapter 159	LEGAL PRACTITIONERS ORDINANCE	Gazette Number	Version Date
Section 73	Power of the Council to make rules	10 of 2005	08/07/2005

(1) The Council may make rules-

(a) providing for-

- (i) the professional practice, conduct and discipline of solicitors, foreign lawyers, employees of solicitors and foreign lawyers and trainee solicitors; (Replaced 60 of 1994 s. 45)
- (ii) the restriction of payment of commission to unqualified persons; and

- (iii) for the purpose of harmonizing the relationship of solicitors inter se and, with the prior approval of the Bar Council, governing the relationship of solicitors and barristers; (Amended 70 of 1991 s. 8)
- (aa) regulating the issue to solicitors of practising certificates and the fees payable for, the conditions of issue of, the manner of applying for, the period and form of, the publication of the issue and the suspension of such practising certificates and generally in relation thereto; (Added 58 of 1976 s. 13)
- (ab) providing for any continuing legal education or training that must be undertaken by solicitors; (Added 70 of 1991 s. 10)
- (b) in relation to the keeping by solicitors of accounts, providing for-
  - (i) the opening and keeping by solicitors of accounts at banks of clients' money;
  - (ii) the keeping by solicitors of accounts containing particulars and information as to moneys received, held or paid both for or on account of their clients;
  - (iii) empowering the Council to take such action as may be necessary to enable them to ascertain whether or not such rules are being complied with;
  - (iv) regulating the manner in which solicitors shall deal with money held by them in a fiduciary capacity and the books of accounts to be kept in respect thereof and for the auditing of such accounts;
  - (v) the qualifications to be held by an accountant by whom an accountant's report may be given; (Amended 25 of 1968 s. 14)
  - (vi) the nature and extent of the examination to be made by the accountant of the books and accounts of a solicitor or of his firm and of any other relevant documents with a view to the signing of a report to be delivered by the solicitor under section 8; (Amended 25 of 1968 s. 14)
  - (vii) the form of an accountant's report and the information to be contained therein in accordance with section 8(1); (Replaced 25 of 1968 s. 14)
  - (viii) the evidence, if any, which shall satisfy the Council that the delivery of an accountant's report is unnecessary and the cases in which such evidence is or is not required; (Amended 25 of 1968 s. 14; L.N. 162 of 1993)
  - (ix) specifying in such circumstances as may be set forth in the rules a different accounting period from that specified in section 8(2); and
  - (x) regulating any matters of procedure or matters incidental, ancillary or supplemental to the provisions of section 8;
- (c) providing for the conduct of an inquiry and investigations by a Solicitors Disciplinary Tribunal under section 9; (Amended 61 of 1992 s. 26)
- (caa) providing for the practice and procedure to be followed in connection with the submission of a matter by the Council to the Tribunal Convenor under section 9A(1A); (Added 23 of 2002 s. 111)
- (cab) providing for the practice and procedure to be followed in connection with the disposal of a matter by the Tribunal Convenor under section 9AB; (Added 23 of 2002 s. 111)
- (ca) respecting procedures for investigations by an inspector under section 8AA; (Added 60 of 1994 s. 45)
- (cb) requiring a solicitor, foreign lawyer, trainee solicitor or employee to whom a letter of disapproval is sent by the Council, to pay the Council's costs of investigating the conduct which resulted in the letter of disapproval; (Added 60 of 1994 s. 45)
- (d) regulating the employment of trainee solicitors and examinations, and in particular, without prejudice to the generality of the foregoing, providing for- (Amended 32 of 1972 s. 4; 1 of 1981 s. 5; 70 of 1991 s. 13)
  - (i) the manner in which any person shall qualify for admission under section 4(1)(a) including, in particular, the period of employment, if any, of a trainee solicitor in any particular case, the examination or examinations to be passed, the courses to be completed and notices and forms to be used in connection therewith; and (Amended 1 of 1981 s. 5; 70 of 1991 ss. 10 & 13; 60 of 1994 s. 45)
  - (ii) (Repealed 60 of 1994 s. 45)
- (da) respecting the admission of persons under section 4(1)(b), including the qualifications for admission, examinations and the fees to be paid for applications and examinations;

(Added 60 of 1994 s. 45)

- (db) respecting the registration of foreign lawyers, foreign firms and Associations, including applications for registration, qualification for registration, fees for application and registration, period and form of registration, conditions of registration, suspension of registration and cancellation of registration; (Added 60 of 1994 s. 45)
- (dc) respecting the practice of Hong Kong firms, foreign firms and Associations; (Added 60 of 1994 s. 45)
- (dd) prohibiting the practice of Hong Kong law by foreign lawyers and for that purpose the Council may define, limit or expand the meaning of the practice of Hong Kong law; (Added 60 of 1994 s. 45)
- (e) enabling the Council to exempt any person from compliance with the provisions of any such rules and to impose and enforce conditions upon which such exemption may be granted in any particular case; and
- (f) prescribing any thing which, under this Ordinance, is to be or may be prescribed by the Council. (Amended 52 of 1980 s. 2)

(2) Every rule made by the Council under this section shall be subject to the prior approval of the Chief Justice. (Amended 52 of 1980 s. 2)

(2A) For the avoidance of doubt, it is declared that in subsection (1)(a)(i), "professional practice" (專業執業), in relation to a solicitor, means acting as a solicitor or the business of acting as a solicitor, whether as a partner, sole practitioner, assistant solicitor or consultant in a Hong Kong firm or as an employee of a non-solicitor employer. (Added 10 of 2005 s. 185)

(3) No rule made under subsection (1)(b), (c) or (d) shall apply to a person to whom section 75(1) applies insofar as such person is acting in the course of the employment which gives rise to the application of that section. (Amended 50 of 1982 s. 5; 60 of 1994 s. 45)

Chapter 159AD	SUMMARY DISPOSAL OF COMPLAINTS (SOLICITORS) RULES	Gazette Number	Version Date
Schedule	SCHEDULE	L.N. 251 of 2003; L.N. 163 of 2004	01/11/2004

[sections 2 & 3]

#### SCHEDULED ITEMS

**Legal Practitioners Ordinance (Cap 159)**

Item	Description	Fixed penalty \$	Fixed investigation cost \$
1	Section 8(1)	10000	15000

**Solicitors' Practice Rules (Cap 159 sub. leg. H)**

Item	Description	Fixed penalty \$	Fixed investigation cost \$
1.	Rule 2B(2)	10000	15000
2.	Rule 2B(3)	10000	15000
3.	Rule 4A(a)	10000	15000
4.	Rule 4A(b)	10000	15000
5.	Rule 4B(1)	10000	15000
6.	Rule 4B(2)	10000	15000
7.	Rule 4B(4)	10000	15000
8.	Rule 5(1)	10000	15000
9.	Rule 5(1A)	10000	15000
10.	Rule 5(2)	10000	15000
11.	Rule 5(3)	10000	15000
12.	Rule 5D(a)	10000	15000
13.	Rule 5D(b)	10000	15000
14.	Rule 5D(c)	10000	15000
15.	Rule 5D(d)	10000	15000
16.	Rule 5D(e)	10000	15000
17.	Rule 5D(f)	10000	15000
18.	Rule 5D(g)	10000	15000

**Solicitors (Professional Indemnity) Rules  
(Cap 159 sub. leg. M)**

Item	Description	Fixed penalty \$	Fixed investigation cost \$
1.	Rule 8(1)(a)	10000	15000

**Foreign Lawyers Practice Rules (Cap 159 sub. leg. R)**

Item	Description	Fixed penalty \$	Fixed investigation cost \$
1.	Section 5(1)	10000	15000
2.	Section 5(2)	10000	15000
3.	Section 6(a)	10000	15000
4.	Section 6(b)	10000	15000
5.	Section 7(4)	10000	15000
6.	Section 8(1)	10000	15000
7.	Section 8(3)	10000	15000
8.	Section 9(1)	10000	15000

9.	Section 9(1A)	10000	15000
10.	Section 9(2)	10000	15000
11.	Section 9(3)	10000	15000

**Continuing Professional Development Rules  
(Cap 159 sub. leg. W)**

Item	Description	Fixed penalty \$	Fixed investigation cost \$
1.	Section 5(1)	10000	15000
2.	Section 5(2)	10000	15000

**Practice Directions 1990 issued by the Society**

Item	Description	Fixed penalty \$	Fixed investigation cost \$
1.	Practice Direction B1	10000	15000
2.	Practice Direction C3, paragraph (2)	10000	15000
3.	Practice Direction D2, paragraph (1)	10000	15000
4.	Practice Direction D5, paragraph (4)	10000	15000
5.	Practice Direction D7, paragraph (1)	10000	15000
6.	Practice Direction D7, paragraph (2)	10000	15000
7.	Practice Direction D8, paragraph (1)	10000	15000
8.	Practice Direction D8, paragraph (2)	10000	15000
9.	Practice Direction F1, paragraph (1)	10000	15000
10.	Practice Direction G1, paragraph (1)	10000	15000
11.	Practice Direction G1, paragraph (2)	10000	15000
12.	Practice Direction G1A, paragraph (1)	10000	15000
13.	Practice Direction G2, paragraph (1)	10000	15000
14.	Practice Direction H1, paragraph (2)	10000	15000

**The Hong Kong Solicitors' Guide to Professional Conduct**

Item	Description	Fixed penalty \$	Fixed investigation cost \$
1.	Principle 13.09	10000	15000
2.	Principle 14.02	10000	15000