

立法會
Legislative Council

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The Law Society of Hong Kong)

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**Subcommittee on
Foreign Lawyers Practice (Amendment) Rules 2015,
Solicitors' Practice (Amendment) Rules 2015 and
Limited Liability Partnerships (Top-up Insurance) Rules**

**Minutes of the second meeting
held on Tuesday, 7 July 2015, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon Dennis KWOK (Chairman)
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP

Clerk in attendance : Miss Mary SO
Chief Council Secretary (4)2

Attendance by invitation : Item I
The Law Society of Hong Kong

Mr Joseph LI
Chairman
Working Party on Limited Liability Partnerships

Mr Michael LINTERN-SMITH
Member
Working Party on Limited Liability Partnerships

Ms Heidi CHU
Secretary General

Staff in attendance : Ms Wendy KAN
Assistant Legal Adviser 6

Mr Oscar WONG
Senior Council Secretary (4)2

Miss Vivian YUEN
Legislative Assistant (4)2

I. Meeting with The Law Society of Hong Kong

The Subcommittee deliberated (index of proceedings attached at the **Annex**).

Issues discussed

Commencement of the Legal Practitioners (Amendment) Ordinance 2012

2. Mr Joseph LI said that pending finalization of the two sets of subsidiary legislation for limited liability partnership ("LLP"), the first set being the Foreign Lawyers Practice (Amendment) Rules 2015, the Solicitors' Practice (Amendment) Rules 2015 and the Limited Liability Partnerships (Top-up Insurance) Rules), and the second set being subsidiary legislation made to effect consequential amendments to Order 81 of the Rules of the High Court (Cap. 4A) and Order 81 of the Rules of the District Court (Cap. 336H), The Law Society of Hong Kong ("the Law Society") hoped that the Legal Practitioners (Amendment) Ordinance 2012 ("the Amendment Ordinance"), which introduced an additional mode of operation in the form of LLP for solicitors, could come into operation on 1 January 2016.

3. Responding to the Chairman's enquiry on the progress of introducing amendments to Order 81 of Cap. 4A and Order 81 of Cap. 336H for LLP, Ms Heidi CHU said that the High Court Rules Committee and the District Court Rules Committee had approved the proposed amendments to Cap. 4A and Cap. 336H and upon signing of the subsidiary legislation concerned, arrangements would be made by the Department of Justice to gazette the subsidiary legislation subject to negative vetting by the Legislative Council as soon as practicable.

Liabilities of partners in an LLP

4. Dr Priscilla LEUNG noted that a partner in an LLP was not, solely by

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reason of being a partner, jointly or severally liable for any partnership obligation that arose from the default of another partner or an employee, agent or representative of the partnership in the course of business, provided that certain conditions were satisfied. In other words, an innocent partner would be protected against personal liability for the default of other members of the firm. Dr LEUNG asked what these conditions were.

5. Mr Joseph LI responded that the conditions were set out in section 7AC of the Legal Practitioners Ordinance (Cap. 159) (added by the Amendment Ordinance). One of the conditions was that the partnership must have complied with the top-up insurance requirement set out in section 7AD of Cap. 159 (added by the Amendment Ordinance) to have in place on top of the statutory professional indemnity limit per claim of \$10 million under the existing Solicitors Indemnity Fund ("the Fund"), another \$10 million of top-up insurance cover. The Law Society considered that providing effectively a maximum of \$20 million per claim for an LLP was adequate as past statistics of the Fund showed that over 90% of the claims sought from the Fund were less than \$10 million per claim. A maximum amount of \$20 million which a client of an LLP could seek per claim was also comparable to the professional indemnity insurance requirement per claim for an LLP in Singapore and the United Kingdom ("UK"). To better safeguard the interests of clients of LLP, a policy of insurance required to be maintained must be written by a company authorized under section 8 of the Insurance Companies Ordinance (Cap. 41) to carry on, in or from Hong Kong, insurance business of the nature specified in class 13 in Part 3 of the First Schedule to Cap. 41 (i.e. general liability), the society of underwriters known in the UK as Lloyd's, or an association of underwriters approved by the Insurance Authority appointed under section 4 of Cap. 41 (rule 3 of the Limited Liability Partnerships (Top-up Insurance) Rules).

6. Mr LI further said that another condition under section 7AC of Cap. 159 was that the client knew or ought reasonably to have known that the partnership was an LLP. To ensure that a client knew or ought reasonably to have known that the partnership was an LLP, an LLP must, if it had a Chinese name, include the words "有限法律責任合夥" as part of that Chinese name, and if it had an English name, include the words "Limited Liability Partnership" (or the abbreviation) as part of that English name, display its name at every place of business of the partnership, and state its name in its correspondence and other publications as required by section 7AJ and section 7AK of Cap. 159 (added by the Amendment Ordinance). To this end, it was also necessary to make the Foreign Lawyers Practice (Amendment) Rules 2015 and the Solicitors' Practice (Amendment) Rules 2015.

7. Mr LI pointed out that whilst the object of section 7AC of Cap. 159 was

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to protect an innocent partner against personal liability for the default of other members of the firm, this provision was not intended to change the common law position with respect to the law of negligence. For example, a partner in an LLP might still be held vicariously liable for the default of an employee who was under the partner's supervision. The protection under section 7AC of Cap. 159 would however not be available to a partner in an LLP if he or she knew of the default at the time of its occurrence and failed to exercise reasonable care to prevent its occurrence (section 7AF of Cap. 159 (added by the Amendment Ordinance)).

8. Dr Priscilla LEUNG further enquired whether the Amendment Ordinance would protect an innocent partner against liability arising from the criminal act of another partner of the firm in connection with the practice of the firm, say, stealing money from the client. Mr Joseph LI replied that a partner in a limited liability partnership would not, solely by reason of being a partner, be jointly and severally liable for any partnership obligation that arose from the practice as a result of default of another partner. As for the criminal act of an individual partner, he was solely responsible for his/her own criminal conduct. Other partners should not be held criminally liable unless there was a criminal conspiracy by the partners concerned.

9. Mr Paul TSE enquired whether foreign law firms registered in Hong Kong would also have to comply with the Limited Liability Partnerships (Top-up Insurance) Rules made under section 73A(3)(fa) of Cap. 159 (added by the Amendment Ordinance) if they wished to operate in the form of LLP. Mr Joseph LI replied in the positive to ensure a level playing field for both local and foreign law firms.

Publicity and education of the Amendment Ordinance

10. Dr Priscilla LEUNG said that as LLP was a new business model for solicitors firms in Hong Kong, the Law Society should educate the public on the advantages and disadvantages of instructing a law firm which operated as an LLP. Mr Joseph LI replied that the Law Society planned to carry out publicity work to educate the public on the advantages and disadvantages of instructing such a law firm as well as apprising its members of the requirements to operate as an LLP prior to the coming into operation of the Amendment Ordinance.

Contributions to the Fund

11. The Chairman said that some small solicitors' firms and solicitors in solo practice had commented on the high contributions they had to make to the Fund. Although contributions to the Fund had been reduced by some 33% in the past

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five years, the Chairman urged the Council of the Law Society ("the Council") to consider further reducing the contributions to the Fund payable by all law firms having regard to the fact that the Fund had a surplus of some \$2.1 billion.

12. Mr Michael LINTERN-SMITH agreed to relay to the Council the suggestion of reducing the contributions required to be paid by all law firms. Mr LINTERN-SMITH however pointed out that it was incumbent upon the Council to adopt an extremely prudent approach in managing the Fund to avoid the recurrence of requiring members of the Law Society to make extra contributions to the Fund in April and July 2003 due to the collapse of the reinsurer of the Fund in March 2001 and to safeguard the welfare of the public.

Scrutiny of the Foreign Lawyers Practice (Amendment) Rules 2015, the Solicitors' Practice (Amendment) Rules 2015 and the Limited Liability Partnerships (Top-up Insurance) Rules

13. Members considered that the drafting and policy aspects of the three pieces of subsidiary legislation were in order.

II. Any other business

Reporting to the House Committee

14. As the Subcommittee had completed its work, members noted that a report on the deliberations of the Subcommittee would be submitted to the House Committee at its meeting scheduled for 9 October 2015.

15. There being no other business, the meeting ended at 5:10 pm.

**Subcommittee on Foreign Lawyers Practice (Amendment) Rules 2015,
Solicitors' Practice (Amendment) Rules 2015 and
Limited Liability Partnerships (Top-up Insurance) Rules**

**Proceedings of the second meeting
on Tuesday, 7 July 2015, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
Meeting with The Law Society of Hong Kong			
001326 - 001553	Mr Dennis KWOK Mr Joseph LI Ms Heidi CHU	Commencement of the Legal Practitioners (Amendment) Ordinance 2012 ("the Amendment Ordinance")	
001553- 002054	Mr Dennis KWOK Mr Michael LINTERN-SMITH	Contributions to the Solicitors Indemnity Fund	
002054- 003226	Dr Priscilla LEUNG Mr Joseph LI Mr Dennis KWOK	Liabilities of partners in a limited liability partnership	
003226- 003716	Mr Dennis KWOK Mr Paul TSE Ms Heidi CHU Mr Joseph LI	Scrutiny of the Foreign Lawyers Practice (Amendment) Rules 2015, the Solicitors' Practice (Amendment) Rules 2015 and the Limited Liability Partnerships (Top-up Insurance) Rules	
003716- 003844	Dr Priscilla LEUNG Mr Joseph LI	Publicity and education of the Amendment Ordinance	
003844- 003944	Mr Dennis KWOK Clerk	Reporting to the House Committee on 9 October 2015	