

LEGAL PRACTITIONERS (AMENDMENT) ORDINANCE 2012

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PART IIAAA

LIMITED LIABILITY PARTNERSHIPS

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 22 OF 2012

L.S.

C. Y. LEUNG
Chief Executive
19 July 2012

An Ordinance 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 2012.

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. Section 6 amended (Practising certificates—solicitors)

Section 6(3) is amended by repealing “section 73A” and substituting “section 73A (other than subsection (3)(*fa*))”.

5. Section 7 amended (Qualifications for practising as solicitor)

Section 7(d) is amended by repealing “section 73A” and substituting “section 73A (other than subsection (3)(fa))”.

6. Part IIAAA added

The following is added immediately after section 7A—

“PART IIAAA

LIMITED LIABILITY PARTNERSHIPS

7AA. Definitions (Part IIAAA)

- (1) In this Part—
- “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 7AL(3) to a limited liability partnership under the law of a foreign jurisdiction, 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. 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 from the provision of professional services by the partnership as a limited liability partnership as a result of 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;
(c) the partnership had complied with section 7AD; and
(d) the partnership had complied with section 7AE(2) for the matter in respect of which the default occurred.

**7AD. Top-up insurance requirement for
limited liability partnership**

(1) In this section—

“Indemnity” (基本彌償) has the same meaning as it has in the Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg. M);

“prescribed amount” (訂明款額) means the maximum amount of the Indemnity specified in subparagraph (1) of paragraph 2 of Schedule 3 to the Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg. M) without reducing that amount for any deductibles referred to in subparagraph (2) of that paragraph.

(2) Every limited liability partnership that is a Hong Kong firm must have in existence, in addition to the Indemnity, a policy of insurance—

- (a) under which the partnership is entitled to be indemnified to the specified extent against any loss arising from any claim in respect of any default; and
(b) which complies with any indemnity rules made under section 73A(3)(fa).

(3) A reference to indemnifying against a loss to the specified extent in subsection (2) means indemnifying against the part of the loss that exceeds the prescribed amount up to an amount not less than \$10,000,000 in respect of any one claim.

(4) Every limited liability partnership that is a foreign firm must have in existence a policy of insurance—

(a) under which the partnership is entitled to be indemnified to the specified extent against any loss arising from any claim in respect of any default; and

(b) which complies with any indemnity rules made under section 73A(3)(*fa*).

(5) A reference to indemnifying against a loss to the specified extent in subsection (4) means indemnifying against the part of the loss that exceeds the limit of insurance coverage required under section 6 of the Foreign Lawyers Registration Rules (Cap. 159 sub. leg. S) up to an amount not less than \$10,000,000 in respect of any one claim.

(6) A policy of insurance maintained by a partnership under subsection (2) or (4) must not be subject to any limit as to the amount of liability of an insurer for claims in the aggregate or as to the number of claims.

(7) The Council may, subject to the prior approval of the Chief Justice, by notice published in the Gazette amend subsections (3) and (5) by substituting another amount that is not less than \$10,000,000 for the amount in each of those subsections.

7AE. 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) subject to paragraph (a), throughout the time that the matter is handled by the partnership, keep the client informed of the identity of at least one overall supervising partner for the matter.

(3) During the period when a limited liability partnership is handling a matter for a client or after that period, 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;
- (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.

7AF. Limitations on section 7AC(1) 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.

7AG. 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.

7AH. Effect of section 7AC(1) on proceedings

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

- (a) the partner is not, separately, a proper party to any proceedings brought 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 against the partnership, continue to be so brought.

7AI. 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) in the case of a Hong Kong firm—
 - (i) the name of each partner in the partnership;
 - (ii) each address at which the partnership carries on its business;
- (d) in the case of a foreign firm—
 - (i) the name of each partner in the partnership who is ordinarily resident in Hong Kong;
 - (ii) each address at which the partnership carries on its business in Hong Kong;
- (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.

7AJ. 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” 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.”.

7AK. 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.

7AL. 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 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, 7AD, 7AE and 7AF by the law firm becoming a limited liability partnership.

(6) In this section, “existing client” (現有當事人), 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.

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

Sections 7AD, 7AE, 7AI, 7AJ, 7AK and 7AL 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 73A or contained in The Hong Kong Solicitors' Guide to Professional Conduct.

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

(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 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 (4).

(2) 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.

(3) In determining whether the partnership made a reasonable assessment as referred to in subsection (2)(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.

(4) A person who is liable under subsection (1) is liable to the partnership for—

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

(5) 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.

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

(7) 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.

(8) No proceedings to enforce a liability under this section may be commenced later than 2 years after the date of the distribution to which the liability relates.

7AO. 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.

7AP. 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.

7AQ. 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 7AG and 7AP(2).

**7AR. Law not inconsistent with this
Part applies**

(1) All relevant laws, except so far as they are inconsistent with this Part, 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).”.

**7. 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 7AI(1)(e);
and
- (ii) regulating any matters of procedure or matters incidental,
ancillary or supplemental to the provisions of Part IIAAA;”.

8. Section 73A amended (Indemnity rules)

(1) Section 73A(3) is amended by adding—

“(fa) may make provision for the better carrying out of section 7AD;”.

(2) Section 73A(3)(h) is amended by adding “, or have been,” after “are being”.

Consequential Amendments

Solicitors’ Practice Rules

**9. Rule 5 amended (Particulars relating
to firms)**

(1) Rule 5 of the Solicitors’ Practice Rules (Cap. 159 sub. leg. H) is amended by adding—

“(1B) A principal in a firm that is a limited liability partnership within the meaning of Part IIAAA of the Ordinance must, within 14 days of commencing the firm, provide the Society with evidence of the firm’s compliance with the insurance requirement in section 7AD of the Ordinance.”.

(2) Rule 5 is amended by adding—

“(2A) If at any time a firm that is a limited liability partnership within the meaning of Part IIAAA of the Ordinance does not have in existence a policy of insurance as is required under section 7AD of the Ordinance, a principal in the firm must notify the Society in writing within 14 days of the occurrence of that fact.”

(3) Rule 5(5) is amended by repealing “particulars under subrules (1), (2) and (3)” and substituting “particulars, evidence and notification under subrules (1), (1B), (2), (2A) and (3)”.

Foreign Lawyers Practice Rules

10. Section 9 amended (Reporting of particulars)

(1) Section 9 of the Foreign Lawyers Practice Rules (Cap. 159 sub. leg. R) is amended by adding—

“(1B) A principal of a foreign firm that is a limited liability partnership within the meaning of Part IIAAA of the Ordinance must, within 14 days after the establishment of a place of business by the firm, provide the Society with evidence of the firm’s compliance with the insurance requirement in section 7AD of the Ordinance.”

(2) Section 9 is amended by adding—

“(2A) If at any time a foreign firm that is a limited liability partnership within the meaning of Part IIAAA of the Ordinance does not have in existence a policy of insurance as is required under section 7AD of the Ordinance, a principal of the firm must notify the Society in writing within 14 days of the occurrence of that fact.”

(3) Section 9(6) is amended by repealing “particulars required to be given under subsections (1), (2) and (3)” and substituting “particulars, evidence and notification required to be given under subsections (1), (1B), (2), (2A) and (3)”.

Summary Disposal of Complaints (Solicitors) Rules

11. 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—

LEGAL PRACTITIONERS (AMENDMENT)
ORDINANCE

Ord. No. 22 of 2012 A2779

“2.	Section 7AI(1)	10,000	15,000
3.	Section 7AI(2)	10,000	15,000
4.	Section 7AJ(a)	10,000	15,000
5.	Section 7AJ(b)	10,000	15,000
6.	Section 7AK(1)	10,000	15,000
7.	Section 7AK(2)	10,000	15,000
8.	Section 7AL(1)	10,000	15,000
9.	Section 7AL(2)	10,000	15,000”.