

What is a Limited Liability Partnership (“LLP”)?

LLP is a new form of partnership introduced by the Legal Practitioners (Amendment) Ordinance 2012 (the “Ordinance”) for solicitors firms and foreign law firms in Hong Kong. The Ordinance has come into operation on 1 March 2016. The main provisions of the Ordinance are found in Part IIAAA of the Legal Practitioners Ordinance (Cap. 159).

Key Difference between General Partnership and LLP

General Partnership

At present, law firms in Hong Kong typically operate in the form of a sole proprietorship or a general partnership. Under the Partnership Ordinance (Cap. 38), every partner of a general partnership is liable jointly and severally with his other partners for all debts, liabilities and obligations of the partnership incurred while he is a partner. In other words, each partner of a general partnership is personally liable for the acts of the other partners and for all debts of the firm.

LLP

In contrast, as regards an LLP which is constituted and operates according to the requirements of the Ordinance, its partners will not be personally liable for any of its liability that arises from the provision of professional services by the LLP and as a result of the negligent or wrongful acts or omissions, or misconduct (the “default”) of another partner, an employee, agent or representative of the LLP.

Conditions to be met by an LLP for protection under the Ordinance

A firm must comply with the following conditions at the time of the default in order that its innocent partners might be given protection under the Ordinance:

1. The firm was an LLP;
2. The client knew or ought reasonably to have known that the firm was an LLP;
3. The firm had maintained a top-up insurance policy of not less than HK\$10 million per claim¹; and

4. The firm had informed the client of the identity of at least one partner with responsibilities for overall supervision for the matter (“OSP”) within 21 days it accepted instructions on the relevant matter and had kept the client informed of the identity of at least one OSP for the matter throughout the time that the matter was handled by the firm.

Limitations on protection for LLP partners

In General

The protection for LLP partners under the Ordinance is also subject to the following limitations:

1. It does not protect a partner who knew of the default at the time of its occurrence and failed to exercise reasonable care to prevent its occurrence;
2. It does not protect a partner for his/her own default, and for the default of those employees, agents or representatives he/she directly supervised at the time of default; and
3. It does not protect a partner’s interests in the partnership property.

Clawing Back Past Distributions

Subject to certain exceptions in the Ordinance, if an LLP makes a distribution of its partnership property to a partner or/and an assignee of a partner’s share in the partnership, and immediately after the distribution:

1. the partnership is unable to pay its partnership obligations as they become due; or
2. the value of the remaining partnership property is less than the partnership obligations,

then each of the persons is liable to the partnership for:

- i. the value of the property received by the person as a result of the distribution; or
- ii. the amount necessary to discharge the partnership obligations at the time of the distribution,

whichever is the lesser.

Proceedings to enforce a liability above must be commenced within two years of the distribution.

Other Obligations of an LLP

A client may request an LLP to provide the client with a list of the names of:

1. all partners who are or were OSP for the matter; and
2. all other partners (if any) who are or were responsible for supervising any particular parts of the matter.

The LLP must provide the client with the list above within 21 days of the request.

How would I know whether a law firm is an LLP or not?

Existing clients

An LLP must inform each of its existing clients (or in the case of a foreign law firm which has been conducting as a limited liability partnership in a foreign jurisdiction before it has become an LLP, its existing clients in Hong Kong) within 30 days after it becomes an LLP of the fact that it has become an LLP. However, the foregoing requirement does not apply to a law firm that is constituted as an LLP when it commences business in Hong Kong.

Other relevant requirements

An LLP, if it has a Chinese name, must include the words, “有限法律責任合夥” as part of that name, and if it has an English name, must include the words, “Limited Liability Partnership”; or “LLP” or “L.L.P.” as part of that name.

In contrast, if a law firm is not an LLP and has a Chinese name, it must not include the words “有限法律責任合夥” as part of that name, and if it has an English name, it must not include “Limited Liability Partnership”, “LLP” or “L.L.P.” as part of that name. In all cases, a law firm which is not an LLP must not include, as part of its name, any words that convey that it is an LLP.

An LLP must also display its name at or outside every office or place in which it carries out business, and state its name clearly in its correspondences, notices, publications, invoices and bills of costs, and on its websites.

Limited Liability Partnership for Law Firms in Hong Kong

In addition, the Council of the Law Society (“Council”) must keep a list of law firms that are or have been LLPs, containing the following of each LLP: (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 an LLP and, if applicable, the dates from which or periods during which it has ceased to be an LLP; and the Council must make the list available for public inspection, free of charge, at the office of the Council during office hours.

Whether I should retain a general partnership or an LLP for legal services?

The Ordinance does not specify any type of legal services that must be provided by general partnership to the exclusion of LLP, or vice versa. Nor does it require general partnership and LLP to charge their fees on a different basis. The Ordinance, however, does impose a number of disclosures requirements² to enable consumers to know whether the firms they intend to engage for legal services are a general partnership or an LLP.

By nature, a consumer’s decision to engage a particular law firm for legal services is determined by many factors (e.g. the latter’s expertise to handle his legal problems) and it is a matter of personal choice for the consumer. That said, from the consumer’s perspective, a main difference between general partnership and LLP is the extent to which the consumer may pursue against the firm’s partners for its default in handling his legal matter. Generally speaking, the consumer of a general partnership may sue all partners of the firm whilst the consumer of an LLP may only sue the partner(s) of the firm who is (are) in default³. Be that as it may, the protection of innocent partners of an LLP is subject to certain conditions⁴ and limitations⁵. In particular, apart from the normal statutory professional indemnity coverage that law firms in Hong Kong are required to maintain in general (currently at HK\$10 million per claim), an LLP is also required to maintain a top-up insurance of HK\$10 million for each claim so as to enable it to pay claims of up to HK\$20 million each⁶. Furthermore, subject to certain exceptions and conditions, if an LLP is unable to meet its debts after it has made a distribution of its partnership property, the recipient(s) of that distribution might be liable to pay some or, as the case may be, all the distribution back to the LLP⁷. This helps protect consumer interests because the distribution so repaid to the LLP

might increase its assets available to compensate consumers for the firm’s default although any such claim must be commenced within two years of the distribution.

- ¹ This obligation is in addition to the normal statutory professional indemnity coverage that law firms in Hong Kong are generally required to maintain, currently at HK\$10 million per claim. In short, an LLP is required to maintain insurance coverage of at least HK\$20 million in respect of any one claim.
- ² See the section headed “How would I know whether a law firm is an LLP or not?” above.
- ³ See the section headed “Key Difference between General Partnership and LLP” above.
- ⁴ See the section headed “Conditions to be met by an LLP for protection under the Ordinance” above.
- ⁵ See the section headed “Limitations on protection for LLP partners” above.
- ⁶ Also see the third condition as mentioned in the section headed “Conditions to be met by an LLP for protection under the Ordinance” and footnote 1 above.
- ⁷ See the sub-section headed “Clawing Back Past Distributions” in the section headed “Limitations on protection for LLP partners” above.

Note: All information in this pamphlet is for general reference only. It does not constitute legal advice and is not intended to be comprehensive. Please refer to the Ordinance for the detailed legislative provisions on LLP and, where necessary, seek independent legal advice on the subject.

March 2016



Department of Justice
The Government of the Hong Kong
Special Administrative Region