

**Speech by the Secretary for Justice
the Hon Wong Yan Lung, SC, JP
at the Legislative Council on 30 June 2010**

**To move the Second Reading of
the Legal Practitioners (Amendment) Bill 2010**

President,

I move that the Legal Practitioners (Amendment) Bill 2010 be read a second time.

2. The Bill proposes to amend the Legal Practitioners Ordinance (Cap. 159) to introduce limited liability partnership (LLP) for solicitors' practices in Hong Kong.

Background

3. Since 2004, the Law Society of Hong Kong ("the Law Society") has called for an early introduction of LLP. In brief, LLP is a model for doing business which confers the protection 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, I informed the Legislative Council's Panel on Administration of Justice and Legal Services ("the AJLS Panel") that the Administration proposed to introduce a bill to enable solicitor firms in Hong Kong to operate in the form of LLP.

5. The legislative proposals for introducing LLP for solicitors' practices in Hong Kong were last discussed by the AJLS Panel on 15 December 2009. The Panel urged for an early introduction of the Bill.

Reasons for introducing LLP for solicitors' practices

6. The introduction of LLP is beneficial to Hong Kong for a number of reasons. LLP offers an alternative form of business structure

to solicitors since it retains the flexible internal management of a partnership and yet enables each of the partners to practise with limited liability when they are not personally at fault themselves.

7. Many jurisdictions have already adopted legislation which allows lawyers to practise as LLPs. We believe that the introduction of LLP would attract foreign law firms that wish to operate in the form of LLP to Hong Kong.

8. For local firms, the ability to form LLP will remove inhibition and encourage sole practitioners and small solicitors' firm to join forces by practising in the form of LLP, thus offering their clients better choice and more expertise.

9. Last but not least, many perceive that it is unfair for an innocent partner to be exposed to unlimited liability due to a wrongful act of other partners when he is not responsible for supervising or controlling the activities of the other partners. LLP would prevent such unfairness by insulating the innocent partner's personal assets from claims arising from the default of the other partners of the firm in the course of business.

The effect of the Bill on liabilities of partners in LLP

10. I will now turn to the effect of the Bill on the liabilities of partners in an LLP. 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.

11. The Bill proposes to vary the existing law by providing that 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 a default of another partner, or of an employee, agent or representative of the firm.

12. The Bill provides that the protection from liability arising from a claim made by a client is available to an innocent partner 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. This is to ensure that consumers will be informed of the LLP status of a solicitors firm so that they can

make informed decisions before deciding to engage the services of a firm that is an LLP.

Liability for default of employee, agent or representative

13. The Bill is not intended to change the common law position with respect to the general principles of negligence. A partner in an LLP may still be held responsible under the common law for vicarious liability arising from the 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 by the partners can be the basis for a claim that all partners of an LLP are personally liable for the default of an employee, agent or representative.

14. In this connection, the Law Society has acknowledged that under the legislative proposal, it would “remain possible for a plaintiff to assert, and for a Court to determine, based on the particular facts of a case, that a partner is responsible for liability arising out of the negligence of an employee because of the negligence of that partner, whether by committing the act himself or through the lack of action or supervision or otherwise.”

15. The Law Society has further acknowledged that if the partners of an LLP fail to establish a proper system of supervision, that failure could be the basis for a claim that all partners of an LLP are negligent, and therefore should be liable. The allocation of liability would be a matter for the Court to decide based on the particular facts of each case and an application of the general principles of negligence.

Safeguards for Consumer Interest

16. We recognize that our legislative proposals must strike a proper balance between limiting professional liability for solicitors and safeguarding the interest of their clients as consumers of legal services. To safeguard that interest, the Bill includes measures to enhance the transparency of the operation of LLPs as well as to preserve partnership assets for meeting claims from clients. I shall highlight some of these measures.

17. A law firm must ensure that a written notice of its particulars is given to the Law Society at least 7 days before it becomes an LLP,

so that the Council of the Law Society can fulfil the statutory requirement to keep a list of LLPs, which must contain the name and business address of each LLP and the date of its becoming or ceasing to be an LLP. The Council must make the list available for public inspection, free of charge, at the office of the Council during office hours.

18. The Bill also provides that an existing law firm must notify all its existing clients within 30 days after it becomes an LLP of the fact and effect of its becoming 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.

19. 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.

20. The Bill also contains a provision which 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. It is important to preserve partnership assets in the case of LLPs because partners of an LLP will no longer be automatically jointly and severally liable for any partnership obligation arising from the default of other members of the firm. Under the Bill, such obligation would only be met by partnership assets and personal assets of the culpable partner. This provision is therefore a very important safeguard for consumer interest.

Conclusion

21. Mr President, it is in the public interest to introduce LLP for solicitors’ practices in Hong Kong. The enactment of this Bill will make a significant contribution to developing Hong Kong as a legal service hub by encouraging small local firms to join forces to diversify their practice, and by attracting more foreign LLP law firms to establish office in Hong Kong.

22. I commend the Bill to this Council.