



LLPs FOR SOLICITORS

Law firms in Hong Kong take the business form of a partnership. The existing partnership law, which is built on a relationship of trust, provides that every partner in a firm is liable jointly with his partners and also severally for all debts and obligations of the firm incurred while he is a partner.

However the nature of partnership has evolved over the years in line with the change of the business environment. The traditional partnership where partners have unlimited liability for the consequences of another partner's negligence as the only mode of practice and form of business organisation is no longer appropriate.

The concept of LLPs is already very popular in many jurisdictions including the US, Canada, the UK and Singapore where they have adopted legislation that allows LLP. Hong Kong will not therefore be unique in adopting it.

The LLP model proposed for Hong Kong solicitors is a variation of the traditional partnership in that the partners of an LLP are liable for their own negligence but not for each other's acts or omissions solely by virtue of being a partner of that LLP.

Allowing law firms to operate as LLPs will provide a wider choice in legal practice structures and allow professionals to practise free of personal liability for the negligence of their partners, thereby increasing their willingness to invest in the development and expansion of their practice, and the attractiveness of Hong Kong as an international legal service centre.

Whilst simple amendments to the legislation would be required the LLP model proposed for solicitors in Hong Kong, being a form of partnership, will not affect the management structure and culture of a traditional partnership.

Further and importantly, the LLP model proposed appropriately addresses consumer interests. It does not affect the liability of a partner for his own negligence or any wrongful act of misconduct committed by him while rendering professional service on behalf of his LLP. LLPs will not in any way prevent claimants taking recovery actions against the firm or the negligent partner. At the same time, there will be continued protection of consumer interests with the Law Society's professional indemnity cover remaining in place up to an indemnity limit of HK\$10 million per claim.

Nevertheless, the LLP model serves to remove the unfairness to the innocent partners so that they will not be liable for the acts of another partner solely by reason of being a partner in the same firm.

LLPs thus help to balance the interests of the public with the interests of the innocent partners. In summary, the advantages of LLPs as an alternative mode of practice for solicitors in Hong Kong include:

- preservation of consumer interests
- fairness to innocent partners
- ability to practise free of personal liability for the negligence of their partners thereby increasing the scope of partnering choices for solicitors
- modernization of Hong Kong law to allow LLPs enhances the attractiveness of Hong Kong as a service provider centre and creates more development and expansion opportunities for Hong Kong firms
- enhancement of the competitiveness of Hong Kong as an international legal services centre
- straightforward conversion and simple amendment to existing legislation
- preservation of existing status of privacy and tax treatment in Hong Kong.

The Society has actively advocated the introduction of LLPs for solicitors since early 2005, after the report by the Working Party on LLPs has been approved by the Council. The full report is posted on the Society's website at www.hklawsoc.org.hk. The report has been sent to the Government and the LegCo Panel on Administration of Justice and Legal Services. Meetings and discussions were subsequently held with relevant parties on numerous occasions and much effort has been made in trying to obtain the Government's support on the proposal. However, in March 2006, the Department of Justice informed the Society that priority would not be given to further studies of the proposed introduction of LLPs for the time being.

May 2008

113717 v4