



FROM THE SECRETARIAT

律師會秘書處資訊

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FAQs on LLPs

The introduction of limited liability partnerships (“LLPs”) from 1 March 2016 serves to make available an additional choice in the mode of practice for law firms in Hong Kong. In considering whether to become an LLP, a firm may wish to clarify various issues about this new mode of practice. We stand ready to assist in whatever ways we can.

Below are some frequently asked questions to which we have responded.

1. *What is the difference between a limited liability partnership and a general partnership?*

Before the commencement of the Legal Practitioners (Amendment) Ordinance 2012 (“LPAO”) on 1 March 2016, other than sole proprietorships, law firms in Hong Kong were only permitted to operate in the form of general partnerships. In a general partnership, every partner is jointly and severally liable with his other partners for all debts, liabilities and obligations of the partnership incurred while he is a partner (ie, he is personally liable for the acts of other partners and for all debts of the firm).

The LPAO introduces LLPs as a special type of partnership available only for law firms in Hong Kong. An innocent partner of an LLP who is not in default, generally speaking, will not be personally liable for the partnership obligation that arises from the provision of professional services by the LLP as a result of a default of the other members of the firm.

2. *Will an innocent partner of an LLP be protected from the partnership’s ordinary business obligations?*

The LPAO provides a “partial liability shield” protection for the innocent partners of an LLP in relation to professional services defaults only. All the partners remain jointly and severally liable for the LLP’s ordinary business obligations, such as office rent and staff salaries.

3. *Does the Limited Partnerships Ordinance (Cap. 37) apply to LLPs?*

LLPs are not limited partnerships governed by the Limited Partnerships Ordinance. LLPs are governed by the Legal Practitioners Ordinance

有限法律責任合夥常見問題

有限法律責任合夥於2016年3月1日開始生效，為香港的律師行提供多一種執業模式。考慮是否成為有限法律責任合夥時，律師行或希望澄清有關這個新執業模式的各種事宜。我們準備好隨時提供協助。

以下是我們曾經解答過的一些常見問題。

1. 有限法律責任合夥與一般合夥有何分別？

《2012年法律執業者(修訂)條例》(LPAO)於2016年3月1日開始實施前，除了獨資經營，香港的律師行只准以一般合夥形式執業。一般合夥的每一位合夥人，對律師行在其作為合夥人期間所招致的一切債項、法律責任及義務，須與其他合夥人負上共同及個別的法律責任(即對其他合夥人的行為及對律師行的所有債項負上個別責任)。

LPAO引入有限法律責任合夥作為香港律師行專用的一種特別合夥形式。一般而言，有限法律責任合夥的無辜合夥人，不會就其律師行其他成員在提供專業服務方面的失責行為負上個人法律責任。

2. 有限法律責任合夥的無辜合夥人會受保障免於一般商業營運義務嗎？

LPAO提供「局部的法律責任保障」，只對專業服務上的失責行為保障有限法律責任合夥的無辜合夥人。所有合夥人仍須就律師行的一般商業營運義務，例如律師行租金及職員薪金等，負上共同及個別的法律責任。

3. 《有限責任合夥條例》(第37章)適用於有限法律責任合夥嗎？

有限法律責任合夥並非《有限責任合夥條例》規管的有限責任合夥。有限法律責任合夥由《法律執業者條例》(第159章)規管，由LPAO及其附屬法例修訂。然而，作為一種合夥形式，有限法律責任合夥亦受《合夥條例》

(Cap. 159), as amended by the LPAO and its subsidiary legislation. Being a form of partnership, LLPs are, however, also subject to the Partnership Ordinance (Cap. 38) and every other law that applies in relation to a partnership, unless they are inconsistent with the LPAO.

4. What does a law firm need to do to become an LLP?

Law firms must:

- (a) Designate the partnership as an LLP by partners' agreement;
- (b) Maintain top-up insurance cover of at least HK\$10 million per claim above the statutory professional indemnity cover for law firms with no aggregate limit;
- (c) Notify the Law Society seven days prior to commencement as an LLP in a prescribed form;
- (d) Ensure the name of the firm includes "LLP" and if it has a Chinese name, "有限法律責任合夥", and that it is stated clearly in the firm's office, as well as on its stationery and website;
- (e) Submit a commencement notification with more detailed particulars within 14 days of commencement (if the firm has been in practice before becoming an LLP, then the firm should submit a notification of changes instead of a commencement notification);
- (f) Advise the Business Registration Section of the Inland Revenue Department of the change of firm name together with a copy of the notification and a Law Society confirmation on the receipt of notification and complete the necessary formalities;
- (g) Submit notification to existing clients with the minimum content prescribed by the Law Society within 30 days of it becoming an LLP;
- (h) Notify clients of at least one overall supervising partner for each of their respective matters within 21 days of acceptance of instructions and keep them so informed throughout.

5. Does LPAO apply to both Hong Kong law firms and foreign law firms?

Both Hong Kong law firms and foreign law firms registered with the Law Society may become LLPs under the LPAO.

6. Can foreign lawyers be partners of an LLP?

The provisions that apply generally to the practice of Hong Kong law firms and registered foreign law firms continue to apply to those firms that have become LLPs in accordance with the LPAO.

Accordingly, the partners of a Hong Kong law firm, be it a general partnership or an LLP, must all be Hong Kong solicitors and the partners of a registered foreign law firm in Hong Kong, be it a general partnership or an LLP, must all be registered foreign lawyers.

7. Does an existing law firm have to cease practice before converting to an LLP?

If an existing law firm decides to become an LLP, it is not required to cease practice before its conversion to an LLP. The Law Society will not treat the conversion by an existing firm to an LLP as cessation of practice for the existing firm.

(第38章)及其他有關合夥的適用法例規管，除非與LPAO有相違背之處。

4. 律師行如何成為有限法律責任合夥？

律師行必須：

- (a) 合夥人協議指明合夥關係為有限法律責任合夥；
- (b) 在法定的專業彌償限額之外，為每宗申索投購不少於1,000萬港元加額保險，不設總額方面限制；
- (c) 開始有限法律責任合夥前最少7天以指定方式通知律師會；
- (d) 確保律師行的名稱包含「LLP」字樣，如有中文名稱，包含「有限法律責任合夥」字樣，並在律師行地址、文案和網站清晰註明；
- (e) 開始後14天內提交載有更詳細資料的開業通知(如律師行在成為有限法律責任合夥前已執業，則應提交變更通知，而非開業通知)；
- (f) 通知稅務局商業登記署更改公司名稱，交通知副本及律師會收到通知的確認函，並完成所需手續；
- (g) 成為有限法律責任合夥後30日內通知現有客戶，內容須符合律師會的最低規定；
- (h) 接受指示後21天內把最少一名整體監督合夥人的身份通知客戶，並在整段期間保持客戶知悉其身份。

5. LPAO適用於香港及外地律師行嗎？

已向律師會註冊的香港律師行及外地律師行，均可根據LPAO成為有限法律責任合夥。

6. 外地律師可擔任有限法律責任合夥的合夥人嗎？

一般適用於香港律師行和註冊外地律師行執業的規定，繼續適用於按照LPAO成為有限法律責任合夥的律師行。

因此，香港律師行的合夥人，不論是一般合夥或有限法律責任合夥，必須全數為香港律師，而香港註冊外地律師行的合夥人，不論是一般合夥或有限法律責任合夥，必須全數為註冊外地律師。

7. 現有律師行轉為有限法律責任合夥前，需否停止執業？

現有律師行決定轉為有限法律責任合夥，轉變前毋需停止執業。現有律師行轉為有限法律責任合夥，律師會不會將之視為現有律師行停止執業。

現有律師行必須於轉為有限法律責任合夥前7天通知律師會。轉為有限法律責任合夥後14天內，律師行必須知會律師會，提交變更通知，詳列律師行資料的相應變

The existing firm is required to give seven days' advance notice to the Law Society prior to its conversion to an LLP. Within 14 days of its conversion, the firm must notify the Law Society of its change to an LLP. It should file a Notification of Changes detailing all the consequential changes to the particulars of the firm together with a declaration on its compliance with the top-up insurance requirement and a revised business registration certificate on the change of the name of the firm.

8. What will trigger the loss of LLP protection?

A partner of an LLP will not enjoy LLP protection if:

- (a) he knew of the default at the time of its occurrence and failed to exercise reasonable care to prevent its occurrence; or
- (b) the default is the default of the partner himself or an employee / agent / representative of the LLP under his direct supervision (in which case he will be vicariously liable); or
- (c) the LLP had failed to comply with the relevant provisions of the LPAO at the time of the default including, for instance:
 - failing to maintain the required top-up insurance cover;
 - failing to inform the client of the identity of at least one overall supervising partner for the matter in respect of which the default occurred within 21 days after the firm accepts instructions and throughout the time that the matter is handled by the firm; or
 - the client, at the time of the default, did not know or ought not reasonably to have known that the firm was an LLP.

The Information Packages on LLPs are posted on the Law Society website under the tab "Admission and Registration" (within the sections "Hong Kong law firms" and "Foreign law firms").

更，並附上聲明保證遵守加額保險的要求，和更改律師行名稱的修訂商業登記證。

8. 甚麼會導致失去有限法律責任合夥的保障？

在以下情況，有限法律責任合夥的合夥人將不受有限法律責任合夥保障：

- (a) 該合夥人在失責行為發生時知道該行為而沒有採取合理程度的謹慎以阻止該行為發生；或
- (b) 失責行為是由該合夥的僱員 / 代理人 / 代表所作出，而這些僱員 / 代理人 / 代表是由合夥人直接負責監督的(如此一來他將負上轉承法律責任)；或
- (c) 在失責行為發生時，該有限法律責任合夥未符合LPAO的有關規定，例如：
 - 未能維持所需的加額保險；
 - 未能在接受指示後21天內，及在律師行處理該事宜的整段期間，把最少一名整體監督合夥人的身份通知客戶；或
 - 在失責行為發生時，客戶不知道或理應不知道該律師行為有限法律責任合夥。

有限法律責任合夥的資料套已上載至律師會網站「入會及註冊」(「香港律師行」及「外地律師行」欄目內)。