March 2002 - Limited Liability Partnerships

The Ministry of Finance, Singapore set up a private-sector led study team to establish the legal framework for Limited Partnerships and Limited Liability Partnerships pursuant to the recommendation of the CLRFC (Company Legislation and Regulatory Framework Committee) to establish this new vehicle for doing business. This report on Limited Liability Partnerships was prepared before the study team was established and the recommendations in this report may differ from the eventual recommendations of the study team.

Officers from the Law Reform and Revision Division participated in the work of the MOF Study Team and were involved in drafting the consultation paper.

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LIMITED LIABILITY PARTNERSHIPS

(Consultation Paper)

LRRD No. 3/2002

LAW REFORM AND REVISION DIVISION
ATTORNEY-GENERAL'S CHAMBERS
SINGAPORE

26 March 2002

LIMITED LIABILITY PARTNERSHIPS

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LAW REFORM AND REVISION DIVISION
ATTORNEY-GENERAL'S CHAMBERS

LIMITED LIABILITY PARTNERSHIPS

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CONSULTATION PAPER

LIMITED LIABILITY PARTNERSHIPS

PART 1
INTRODUCTION

1.1 The UK Limited Liability Partnerships Act ("UK Act") became part of English Law on 6th April 2001. The Act offers businesses the option of electing a partnership structure for their operations while controlling the partners' personal risk exposure through limited liability. Prior to the enactment of the Act, businesses in the UK which required the flexible structure of partnerships had to contend with unlimited liability on the part of at least one partner, while their counterparts in the US and other jurisdictions[1] had the option of enjoying partnership flexibility coupled with limited liability for all partners.

1.2 In the US, it has been reported that limited liability partnership statutes have been enacted in all states except Vermont. The first LLP statute was enacted in Texas in 1991. During the first year, more than 1200 law firms adopted LLP status, including many of the state's largest and most prestigious firms. Over the next 3 years, the number jumped to almost 1600. The New York statute adopted in 1994 achieved a similar level of popularity. Several other states received as many as 2000 applications for LLP status during the first year it was available.[2]

1.3 In view of these international developments, the Attorney-General has instructed the Law Reform and Revision Division ("LRRD") to study whether we should introduce legislation to permit the use of limited liability partnerships ("LLPs") in Singapore.

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[1] In a paper entitled, "Limited Liability Partnerships: A New Legal Form for Business in the UK" by Philip Britton, Director, Centre of Construction Law & Management, King's College, University of London, UK; published in SLG, June 2001, the author observed that other common law jurisdictions such as Canada and Australia also permit such a business structure.

[2] See Joseph S. Naylor, "Is the Limited Liability Partnership now the entity choice for Delaware Law firms?" 24 Del. J. Corp. L. 145; See also Robert W. Hamilton, "LCs, LLPs and the Evolving Corporate Form" 66 U. Colo. L. Rev. 1065, where the author also observes that as at 1995, the LLP form has been embraced by the "Big Six" accounting firms due to the enactment of the New York LLP statute that recognized foreign LLPs. See also Robert W Wood, *Limited Liability Partnerships Formation Operation and Taxation* (New York, John Wiley & Sons, Inc, 1997)

1.4 Concurrently with this move, the Committee on Company Legislation and Regulatory Framework ("CLRFC") has also undertaken independent research on LLPs and proposed its introduction in Singapore. In paragraphs 2.1.1 to 2.1.4 of its Consultation Paper, the CLRFC outlined the reasons for its proposal:

"2.1.1 Currently, the primary business structures that exist in Singapore are sole proprietorships, partnerships, companies and branches of foreign companies. Unincorporated structures involve unlimited liability but have minimal public reporting obligations. Incorporated structures are accorded limited liability and consequently have more rigorous reporting requirements.

2.1.2 We should continue to provide the widest possible menu of business structures to facilitate the conduct of domestic and international business activities. Our review of available business structures indicates that Singapore currently lacks the tax transparent limited partnership ("LP") structure, as well as the limited liability partnership ("LLP") structure that was recently introduced in the UK ...

2.1.4 LLPs on the other hand are the preferred business structure for professions and other businesses. In order to keep their legal business framework in line with international practice, the UK recently introduced LLPs (Limited Liability Partnerships Act 2000). The LLP offers firms the ability to incorporate with limited liability whilst enabling them to organize themselves as partnerships rather than as companies, at the same time providing statutory safeguards for those dealing with this new vehicle. These statutory safeguards include the requirement for public disclosure of information about the firm, particularly its finances, and safeguards in the event of insolvency. LLPs will be owned and run by members who would have entered into an agreement with each other. The LLP agreement will be confidential. The entity will be assessed for tax as a partnership. The LLP is to be tax transparent except upon dissolution. In other respects, however, an LLP will be very similar to a company. Provisions of the UK Companies and Insolvency Acts apply with appropriate modifications to LLPs."

1.5 This paper first examines the nature of the LLP and the justification for its introduction into Singapore. Thereafter, it discusses some fundamental issues concerning the LLP which have to be dealt with by the Singapore LLP Act ("Singapore Act") and on which consultation is sought. In our study of foreign LLP laws, we have referred primarily to the following models:

- The UK Act
- Regulations issued under the UK Act ("UK Regulations")[3]
- The US Delaware Revised Uniform Partnership Act ("Delaware Act")[4]
- The California Corporations Code ("California Code"); and
- The Jersey Limited Liability Partnerships (Jersey) Law 1997 ("Jersey Act").

Please send your feedback marked "Re: Limited Liability Partnerships (Attn: Ms Julie Huan) –

- via snail mail- to Law Reform and Revision Division, Attorney-General's Chambers, 1 Coleman Street, #05-04 The Adelphi, Singapore 179803,

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- via fax, at 6332 4700, or

☐

- via e-mail, at agc_LRRD@agc.gov.sg

The closing date for this consultation is 1st June 2002.

[3] The UK Regulations came into operation on 6 April 2001.
[4] The Delaware Act, which replaced the earlier 1947 Delaware Uniform Partnership Law governs LLPs as well as general partnerships.

PART 2
NATURE OF AN LLP

2.1 The main features of an LLP as compared to a traditional partnership are set out in *Annex A*. In essence, the characteristics of an LLP are:

- The LLP is a separate legal entity formed through incorporation or registration under the governing law.

- All debts and obligations of the partnership whether arising in contract, tort or otherwise are assumed solely by the LLP as an entity.[5]

- The partners of the LLP do not assume personal liability for the debts or obligations of the partnership. Their liability is limited to the amount that they have agreed at the outset, to contribute to the LLP[6]. However, in exceptional circumstances, a partner may assume personal liability e.g. where he knowingly causes the LLP to commit a tortious act (in the same way that a director of a company assumes personal liability in such a situation) or where he exceeds his authority in acting for the LLP and the third party knows that the partner has exceeded his authority.[7]

- Property acquired by the LLP is property of the LLP and not of the partners individually.

- The LLP being a creature of statute like the corporate entity is, upon incorporation, a separate entity that can potentially last indefinitely and survive changes to its partners.[8]

- In the event of winding up of an LLP, the assets of the LLP are available for distribution to the creditors. The partners are liable to contribute to the assets of the LLP to the extent they have agreed

[5] This is the position taken by the UK Act. However, in the US, some LLP Statutes provide limited liability only in respect of tortious claims and not contractual claims.
[6] The partners will agree at the outset what each partner contributes to the LLP, and this is reflected in the LLP agreement.
[7] Section 6 of the UK Act; see also, Andrew Phang, Lee Eng Beng, "Limited Liability Partnerships – A Draft Consultation Document" available at http://www.lawnet.com.sg
[8] See Britton, above, n 1. Sections 4 and 9 of the UK Act support this position.

to do so in the partnership agreement. Any surplus will be distributed amongst the partners.[9]

[9] Part IV of and Schedule 3 to the UK Regulations apply Section 74 of the UK Insolvency Act, with appropriate modifications, to LLPs. The modified section 74 requires past and present LLPs partners to contribute to the assets of the LLP in the event of a winding up of the LLP, according to the amounts they had agreed to in the LLP agreement. The UK Regulations also apply section 107 of the UK Insolvency Act with appropriate modifications to LLPs. The modified section 107 provides for surplus assets to be distributed to the partners.

PART 3
NECESSITY OF THE LLP IN SINGAPORE

3.1 The limited liability offered by LLPs is obviously its biggest advantage. However, this feature is already offered by an incorporated company. In particular, the exempt private company offers this feature and has the added advantage of being exempted from certain compliance requirements under the Companies Act (Cap.50). Furthermore, with recent initiatives to simplify the corporate structure for smaller set-ups and to allow its usage by professionals,[10] it is important to consider whether it is still necessary to introduce the LLP.

3.2 Our overall analysis is that notwithstanding such developments, the introduction of the LLP serves useful purposes. The LLP contains features which differentiate it from an exempt private company, thereby making it more suitable for certain types of businesses. Moreover, the additional option of the LLP can only serve to improve the legal infrastructure for businesses in Singapore. Aside from encouraging more foreign businesses to set up operations in Singapore, a wider choice of business vehicles will give our own businesses some competitive advantage when they venture overseas.

3.3 The discussion below focuses on these useful features of the LLP and explores how the LLP will contribute towards maintaining a competitive legal framework for businesses in Singapore.

Tax treatment

Tax transparency

3.4 Under the UK Act[11] a trade, profession or business carried on by an LLP with a view to profit will be treated as carried on in partnership by the partners and not by the LLP as such. This means that income is taxed once at the partners' level.

[10] Such initiatives include the CLRFC's proposal to simplify maintenance requirements for small companies, and move to allow accounting or law firms to corporatise.

[11] Section 118ZA(1) of the UK Income and Corporation Taxes Act 1988 provides for this basis of taxation. This section was originally inserted by section 10(1) of the UK Act but the new wording was substituted by section 75(1) of the Finance Act 2001

3.5. In contrast, the income of a company is subject to income tax as the income of a separate legal entity, and distributed profits in the form of dividends are also taxed in the hands of shareholders. Although "double" taxation can be avoided with the careful use of section 44 of the Income Tax Act (Cap.134), the section requires the withholding of tax at a rate equal to the corporate tax rate before dividends are distributed.

3.6 Practitioners and academics have cited this as the main advantage offered by LLPs. Richard Turner, partner of Allen & Overy and Chairman of the Association of Partnership Practitioners and of its working party on LLPs, comments that "The effective rate of tax on the profits of an LLP is likely to be lower than the case of a company". He cites this as an advantage for entrepreneurial businesses and investment structures to use the LLP structure.[12]Robert Wood, the author of "Limited Liability Partnerships, Formation Operation and Taxation"[13] comments that in the US "the biggest benefit of the LLP over the C Corporation[14] is that the LLP is subject to one level of tax which is paid by the members of the LLP".

3.7 Notwithstanding the above, it should also be noted that there are tax disadvantages associated with an LLP. For example, tax incentives under the Economic Expansion Incentives (Relief from Income Tax) Act (Cap.86) currently apply only to companies. Unless the law is amended, this is a significant benefit that an LLP cannot enjoy.

Ease of conversion

3.8 The different tax basis of a company presents tax difficulties when a business carried on by a partnership is transferred to a company. This was the problem faced by Singapore law firms intending to convert to law corporations. Law firms found that if they chose to incorporate as law corporations, they could not carry forward their unabsorbed capital allowances and claiming of deductions of bad debts. While the Law Society has endeavoured to negotiate for

[12] See Richard Turner, "Limited liability partnerships A new legal entity" (2001) Practical Law for Companies p. 17-24

[13] (New York, John Wiley & Sons , Inc. 1997)

[14] The C corporation in the US is the closest equivalent of a company under Singapore law.

some form of tax concession to deal with this, the matter is still pending and remains unresolved. [15]

3.9 In contrast, since the LLP is taxed like a partnership, there is more justification for arguing that tax laws should allow the LLP to continue enjoying tax benefits of the old partnership.

3.10 The UK approach is useful to observe here. The UK Inland Revenue has stated in its Tax Bulletin, 2000[16] that when the LLP succeeds to the business of the old partnership, the members' personal business or profession will be regarded as continuing so that the "commencement and cessation" provisions will not apply. Similarly there will not be a "balancing event" (which may give rise to a balancing charge where the asset is sold for more than the written down amount) for the purposes of calculating capital allowances provisions, and tax relief for paying partnership annuities will be continued if the obligation is transferred to the LLP.

3.11 In respect of the transfer of property to the new LLP, section 12 of the UK Act provides relief from stamp duty subject to certain conditions. First, the partners in the partnership must be the same as the partners of the LLP immediately before its incorporation. Second, the proportions of property conveyed or transferred into an LLP must either be unchanged "before" and "after" the transfer, or the proportions must not have been changed for tax avoidance reasons. It has been commented that the purpose of the conditions is to ensure that "there must be complete identity between the partners in the old partnership and the members of the LLP".[17]

3.12 While there are other tax considerations relating to the conversion of a partnership to an LLP, the measures highlighted above ease the conversion of a partnership to an LLP, from the tax point of view.

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[15] LRRD understands that discussions between the Law Society (Practice Structures Committee) and the Ministry of Finance have been conducted on this issue.

[16] As reported in Geoffrey Morse, Paul Davies, Ian F. Fletcher, David Milman, Richard Morris, David A. Bennett, *Palmer's Limited Liability Partnership Law* (London Sweet & Maxwell 2002) at 44

[17] See ibid at 50

Issues for consideration

- *Should LLP partners be treated like partners of a normal partnership for purposes of taxation of profits?*
- *Should a partnership which converts to an LLP be given tax concessions in relation to the transfer of its business and assets?*
- *Notwithstanding the above, should LLP partners be treated like shareholders of a company in relation to other tax issues, in view of the other characteristics of the LLP (e.g. limited liability) which are very similar to companies?*

Flexibility and Privacy

3.13 The LLP adopts the flexibility associated with partnerships, in that LLP partners are free to create by agreement a division between partners who has particular management responsibilities and who does not. They are also able to decide issues such as how meetings are to be held for decisions to be made, and the allocation of profits among the partners. This flexibility is present irrespective of the number of partners in an LLP. This is important especially for accounting and law practices which are seeking to expand their practice in order to compete globally.

3.14 At the same time, the LLP does not contain some problems associated with traditional partnerships, e.g., lack of continuity when partners change and the resulting difficulty in making long-term investments. As stated above, the LLP, being a creature of statute is a separate entity that can potentially last indefinitely and survive changes to its members.

3.15 In contrast to the flexibility enjoyed by partnerships, a company faces the owner-management divide inherent in a corporate structure. Under principles of company law, there is a clear distinction between the roles of directors and shareholders, with management powers conferred generally on the former to the exclusion of the latter.[18] In addition, formalities such as notice of meetings, quorums, voting, proxies have to be complied with.

[18] See e.g. the Companies Act (Cap. 50) Sch 4, Table A Article 73

3.16 It may be common in exempt private companies for the same person to be both shareholder and director, in which event the distinction in roles or formalities may not be significant. However, as the company grows larger, and different persons assume the different roles, these company law rules will feature more significantly and reduce the flexibility enjoyed by shareholders.

3.17 Another advantage of the LLP structure over the corporate structure is that it affords to some extent, more privacy. The agreement between the partners of the LLP which may contain confidential matters on management or profit-sharing can remain a private document without need for filing at any registry. In contrast, the articles of association of a company has to be filed and becomes a public document.[19]

3.18 Notwithstanding this, it should be noted that it is also possible especially in the context of an exempt private company to have a shareholders' agreement which remains a private document. In addition, if the UK requirement of filing audited accounts is adopted, financial information concerning the LLP will also become public.

Business Exit Rights

3.19 The LLP statutes generally afford rights to each partner to dissociate and withdraw their contributions or capital from the LLP. There are no restrictions on the withdrawal of capital from an LLP.[20]

3.20 In contrast, a company is subject to strict rules concerning maintenance and reduction of capital. A company that has received payment for shares has no power to refund that money to its shareholders[21] unless it complies with section 73 of the Companies Act (Cap.50), which requires obtaining the court's sanction. A company is also generally prohibited from acquiring its own shares

[19] LLPs are however generally required to file an incorporation document. However this document is more akin to the memorandum of association of a company.

[20] Under section 4(3) of the UK Act, a partner may cease to be a member of the LLP in accordance with an agreement or by giving reasonable notice to other partners. If the agreement (which will remain private) provides for how his interest would be "bought out", it amounts to a withdrawal of assets from the partnership. As for the US position, under section 15-602 of the Delaware Act, a partner has power to dissociate at any time, rightfully or wrongfully, by express will. The provisions specify what is wrongful dissociation and make the partner liable in that event to pay damages caused by the dissociation, if any. If a partner is dissociated without resulting in a dissolution or winding up of the partnership business, section 15-701 provides that the partnership shall cause the dissociated partner's interest to be purchased for a buyout price determined according to the Act.

[21] Sinnasamy v Hup Aik Omnibus Co [1952] MLJ 36, CA (FM)

under section 76(1)(b) of the Companies Act except in specific situations as set out in the Act.

3.21 In the case of an exempt private company, if minority shareholders wish to exit and withdraw their capital, they must either find a willing buyer or apply to court for relief by showing undue prejudice or oppression under section 216 of the Companies Act (Cap.50).

3.22 The statutory exit rights afforded to partners of an LLP has led an academic study conducted by the University of Alabama to comment that "the corporate protection for the individual member falls far short of the partnership protections offered for the individual partner"[22]. UK writers have commented that "in effect an LLP member will always be prevented from being locked into membership"[23]

3.23 In the case of larger LLPs, Richard Turner, partner of Allen & Overy has commented that since there are no restrictions in withdrawal of capital, "there is no need for complex subordinated debt structures to allow withdrawals by investors without an unauthorised reduction of capital".[24] He cites this as a reason why LLPs are particularly useful for joint venture situations.

A Competitive Legal Infrastructure

3.24 The UK saw a need to introduce LLP legislation in order to maintain a competitive legal infrastructure for businesses in the UK. In its deliberations on the LLP bill, the House of Commons Select Committee on Trade and Industry commented on the presence of LLP legislation in other jurisdictions:

> *"By mid-1996, it was plain that the option of registration as a Jersey LLP was being seriously considered by a number of the very large professional partnerships. It was this prospect, combined with the perceived possibility that a successful mega-claim could in due course precipitate the failure of a major firm, that led to the November 1996 decision ... to bring forward LLP legislation in the UK. Whether Parliament and*

[22] See Fallany O. Stover, Susan Pace Hamill, "The LLC Verses the LLP Conundrum: Advice for Businesses Contemplating the Choice", 50 Ala. L. Rev. 813 where the authors contrast the exit rights of LLP partners with those of Limited Liability Company members. The latter's exit rights are similar to those of shareholders in a close corporation.

[23] See Morse, Davies, Fletcher, Milman, Morris, Bennett, above, n 16 at 176

[24] See Turner, above, n 12 at 23

> *Ministers like it or not, what is in no doubt is the real possibility of British firms registering offshore; if Jersey statute proves unattractive there may well be other offshore options on offer"*[25]

3.25 Although the UK LLP legislation has been criticized by many practitioners and academics[26], an informal inquiry with the UK Companies House has revealed that as at 22 February 2002, there are 1,546 LLPs registered in the England and Wales and 62 LLPs in Scotland. [27]

3.26 The argument for a competitive and modern legal infrastructure is particularly relevant to Singapore. Singapore seeks to attract foreign businesses to set up offices in Singapore to conduct domestic and international business activities. A wide range of business vehicles will increase the attractiveness of Singapore in that regard. Currently, there are 9 LLP foreign law firms operating in Singapore[28]. It would be ironical if we allowed such foreign law partnerships to enjoy their limited liability status here and yet deprive Singapore-based firms this benefit. This can only serve as a disincentive for a law practice to base its operations in Singapore.

3.27 At the same time, calls have been made for our local enterprises to be entrepreneurial and venture beyond Singapore. A wider choice of corporate vehicles through which businesses may be conducted will give our enterprises and professionals some competitive advantage when they compete with international players.

3.28 Ultimately, there is no harm giving entrepreneurs and businesses another vehicle for them to make a choice on the basis of their own commercial and tax considerations. A single factor which may appear insignificant objectively may actually influence a particular entrepreneur to choose the LLP over an exempt private company.

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[25] See Morse, Davies, Fletcher, Milman, Morris, Bennett, above, n 16 at 7

[26] See Paul Rogerson, "LLPs turn out to have a rather limited attraction" reported in the "Business A.M. October 29, 2001"; See also Alan Kelly, "Partnerships which are worrying hybrid of two existing structures" reported in "The Scotsman, July 9, 2001; See also Paul Rogerson, " KPMG moves to protect its partners with switch to LLP status" reported in "Business A.M. January 21, 2002." All reports are available at http://www.lexis.com. See also n 49 and accompanying text for criticisms made by academics.

[27] Julie Huan from LRRD had submitted an email enquiry to the UK Companies House on 22 February 2002 and received this reply.

[28] As at 21 Nov 2001, 7 US LLPs, 1 UK LLP and 1 Canadian LLP are registered in Singapore, out of a total of 60 foreign law firms. The LLPs are: Clifford Chance (Singapore) LLP; Coudert Brothers LLP; Donahue Ernst & Young LLP; Mandal, Katz, Manna & Brosnan, LLP; Milbank, Tweed, Hadley & McCloy LLP; Morrison & Foerster LLP; Pillsbury Winthrop LLP; Vinson & Elkins LLP and White & Case LLP.

PART 4
PROPOSED LLP LEGISLATION

4.1 If the LLP is to be introduced in Singapore, the Singapore Act should address the following issues:

A. Incorporation
B. Separate legal entity
C. Liability of the LLP and its partners
D. Safeguards
E. "Clawback" Provisions
F. Type of Business
G. Compulsory Insurance or Bond
H. Financial reporting
I. Suitability of Partners
J. Fiduciary duties of partners
K. Other general implementation issues

4A. Incorporation

4A.1 The UK Act provides in section 1(1) that an LLP is formed "by being incorporated under this Act". The information required for incorporation and incorporation procedure are prescribed in sections 2 and 3 of that Act. These sections are reproduced in *Annex B*.

4A.2 In a similar fashion, the Delaware Act provides in section 15-1001 that an LLP is formed through the filing of a "statement of qualification". The information required to be contained in the statement of qualification is prescribed in section 15-1001(c). This section is reproduced in *Annex B*.

4A.3 Currently, any person who wishes to carry on business in Singapore through a partnership is required by sections 3 and 5 of our Business Registration Act (Cap.32) to apply for registration with the Registry of Businesses. The information required for registration is prescribed in section 6 of that Act. It is pertinent to note that the Business Registration Act does not determine when a partnership is formed, but merely requires registration by it before commencement of business.

4A.4 The LLP is different from a normal partnership in that it is an entity distinct from its partners. Therefore, it would be necessary for the

Singapore Act to prescribe when an LLP comes into existence. The abovementioned provisions in the UK Act or Delaware Act could serve as models for adoption. As for the information required to be furnished, the list in section 6 of the Business Registration Act (Cap.32) is as comprehensive as the equivalent in the UK and Delaware Acts. We would therefore recommend that a provision similar to section 6 of the Business Registration Act be incorporated into the Singapore Act for LLPs.

4A.5 As regards the name of the LLP, section 2(1) of the Schedule to the UK Act provides that:

> *"The name of a limited liability partnership must end with —*
>
> *(a) the expression "limited liability partnership", or*
>
> *(b) the abbreviation of "llp" or "LLP"."*

This is similar to section 20(3) of our Accountants Act (Cap.2) which requires every accounting corporation to have either the words "Public Accounting Corporation" as part of its name or the acronym "PAC" at the end of its name. We recommend that a similar provision be incorporated into the Singapore Act as it cautions persons who deal with the LLP about the status of the entity they are dealing with.

4A.6 On this issue, it appears that during the UK House of Commons debate on the UK Bill, there was a proposal that an LLP which chooses to end its name with the abbreviation "llp" or "LLP" be required to state that it is a "limited liability partnership" in all its stationary or other communication to the public.[29]

4A.7 While this proposal was subsequently withdrawn in UK, we think that it serves as an important safeguard since the LLP and the limited liability of its partners is a new and unfamiliar concept to the business community. To address a similar concern for accounting corporations, our Accountants Act currently provides in section 29(4) that an accounting corporation must have on "every invoice or official correspondence ... the statement that it is incorporated with limited

[29] *See* Phang above, n 7 at 16.

liability".[30] We recommend the adoption of a similar provision in the Singapore Act for LLPs.

4A.8 Support for our view can be found in the Jersey Act where Article 81C(4) requires an LLP to have the words, "registered as a limited liability partnership in Jersey" clearly stated on "all its correspondence, invoices, statements and other public documents."

Issues for Consideration

- *Should the Singapore Act prescribe when an LLP comes into existence?*
- *What types of information should be required for incorporation? Should it be equivalent to or more than the information required under section 6 of the Business Registration Act for registration of businesses?*
- *Should an LLP be required to end its name with "limited liability partnership", "llp" or "LLP"?*
- *Should an LLP be required to state in all its official correspondence that it is incorporated with limited liability?*

4B. Separate legal entity

4B.1 Both the UK Act and Delaware Act contain an explicit statement that the LLP is a separate entity distinct from its partners.

4B.2 Section 1(2) of the UK Act provides that:

> *"A limited liability partnership is a body corporate (with legal personality separate from that of its members) …"*

Section 15-201(a) of the Delaware Act provides that:

> *"A partnership is a separate legal entity which is an entity distinct from its partners unless otherwise provided in a statement of partnership existence and in a partnership agreement."*

4B.3 Consistent with this notion of separate legal personality, the Delaware Act goes further to provide in section 15-203 that "property

[30] A similar requirement for law corporations is provided in section 81C(4) of our Legal Profession Act (Cap. 161).

acquired by a partnership is property of the partnership and not of the partners individually". While silent on partnership property, the UK Act provides further in section 1(3) that the LLP entity has "unlimited capacity". These provisions are reproduced in *Annex C* for reference.

4B.4 The separate legal personality of the LLP is a fundamental concept which should be explicitly stated in the Singapore Act. We therefore recommend the adoption of features of both the UK Act and Delaware Act, for completeness and clarity.

Issues for consideration

- *Should the Singapore Act state explicitly that the LLP is a separate legal entity?*

4C. Liability of the LLP and its partners

4C.1 Section 15-306(c) of the Delaware Act provides that:

> *"An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment or otherwise, for such an obligation solely by reason of being or so acting as a partner."*

4C.2 When first enacted, the Delaware Act had a section 15-306(d) which provided that "Section 15-306(c) shall not affect the liability of a partner … for such partner's own negligence or willful misconduct". In a subsequent amendment to the Act, section 15-306(d) was deleted. The rationale was that this was clear through general law principles for personal misconduct.

4C.3 In contrast, the UK Act does not deal explicitly with this issue, presumably since it is a logical consequence flowing from the separate legal personality of the LLP. Section 6 of that Act states that every member is an agent of the LLP. That section also deals with the personal liability of a member who commits a wrongful act

or omission and provides that the LLP is liable to the same extent as the member. [31]

4C.4 We recommend the adoption of a provision similar to section 15-306(c) of the Delaware Act. The Delaware provision clearly states the assumption of liability by the LLP, and that a partner does not assume personal liability solely by reason of being a partner of the LLP. However, to make it clear that general law principles still apply and attach personal liability to partners who are negligent or fraudulent, it may be prudent to adopt the deleted section 15-306(d) of the Delaware Act.

Issues for Consideration

- *Should the Singapore Act state explicitly that all obligations, whether arising in contract tort or otherwise are assumed by the LLP and not by the partners individually?*
- *Should there also be a provision to ensure that general law principles still apply to the particular partner who acts wrongfully?*

4D. Safeguards

4D.1 The limited liability enjoyed by partners in an LLP is significant. While this is clearly advantageous to the LLP partners, it raises concerns amongst third parties who deal with the LLP, notably clients, business associates and possibly public consumers (if the LLP produces goods or provides services for public consumption).

4D.2 In a traditional partnership, each partner assumes personal liability and risks having his assets attached for recovery of partnership debts. It has been argued that this threat of unlimited personal liability benefits third parties dealing with the partnership. Clients or consumers benefit from professional competence "guaranteed" by the threat of negligence suits. Business associates benefit from due performance of contracts, again "guaranteed" by the threat of judgment debts being enforced against the personal assets of the partners.

[31] Section 6(2) of the UK also provides that an LLP is not bound by the acts of a member if he acted without authority and the third party knew that the member had no such authority to act.

4D.3 In contrast, the partners of an LLP and their assets are "shielded" from personal suits. Absent fraud (where personal liability still attaches to the fraudulent partner), the LLP, and not the individual partner is sued. Recovery of claims can be made only against the limited assets of the LLP.

4D.4 Bearing in mind the limited assets available for distribution, LLP statutes have incorporated safeguards to protect the interests of third parties. These safeguards are primarily aimed towards the following objectives:

- Preserving (or increasing) the LLP assets which can be claimed against by third parties while the LLP is a going concern, as well as during the course of winding up; and

- Imposing sufficient disclosure requirements on the LLPs so that third parties are fully informed as to the financial viability of the entity they are dealing with. With this information, they will be able to make a proper and independent assessment of the business risks that they assume in dealing with the LLP.

4D.5 The latter objective is a principle of disclosure-based regimes which advocate that the function of the regulator or law is not to make a decision on the "merits" of every entity registered, but simply to mandate sufficient disclosure by such entities. The onus is on the investor to make his own independent assessment of the financial viability of the entity based on the information disclosed. Singapore has made conscious efforts to move its capital markets from a merit-based to a disclosure-based regime. It is envisaged that the LLP infrastructure must be one which is consistent with such a regime.

4D.6 While the safeguards are important, there is a need to guard against imposing too stringent requirements on LLPs. If compliance is too onerous, the usefulness of the LLP as an alternative corporate structure is reduced. In the discussion which follows, we have sought to balance these opposing needs.

4E. "Clawback" provisions

4E.1 These provisions seek to preserve the assets of the LLP available for distribution to creditors in the event of liquidation.

4E.2 Part IV of, and Schedule 3 to, the UK Regulations apply the provisions in the First Group of Parts of the UK Insolvency Act 1986 (with appropriate modifications) to LLPs. The most notable modification is the insertion of an additional section 214A.

4E.3 Section 214A provides that withdrawals made by LLP partners during the 2 years prior to the commencement of winding up will be subject to clawback if it is proved that at the time of the withdrawal, the partner knew or had reasonable grounds for believing that the LLP was, or would be unable to pay its debts.[32] At the same time, to ensure that partners of viable LLPs are not thereby deterred from attempting to trade through temporary financial difficulties, the burden of proof rests on the liquidator and the court will not be able to declare in favour of the liquidator if there remained a reasonable prospect that the firms would avoid going into insolvent liquidation.[33] The section is reproduced in *Annex D*.

4E.4 Our equivalent of section 214A can be found in section 99 of the Bankruptcy Act (Cap.20) (for individuals) and section 329 of the Companies Act (Cap.50) (for companies).

4E.5 We recommend the adoption of similar provisions in the Singapore Act to ensure that the assets of an LLP are not fraudulently depleted to the detriment of creditors with valid claims.

Issues for consideration

- *Should the Singapore Act contain "clawback" provisions in order to preserve the assets of the LLP available for distribution to the creditors in the event of liquidation?*

4F. Type of business

4F.1 The UK Act[34] and the Delaware Act allow all businesses to use the LLP structure. However, the California and New York LLP statutes restrict the use of the LLP structure to professionals. The term

[32] The term, "unable to pay its debts" is defined in section 123 of the UK Insolvency Act.
[33] Section 214A(2).
[34] There was initially a proposal in the UK that the LLP be allowed only for professional partnerships. However, after public consultation, this restriction was removed. While no official reasons were given, it is not difficult to imagine that there might have been significant pressure by the business community for the LLP to be extended to all types of businesses.

"professional" is used with variation in these statutes, but it generally refers to licensed physicians, accountants and lawyers.[35]

4F.2 There are sound reasons justifying this restriction on the use of the LLP:

- One view is that if the LLP is open to all forms of businesses, the limited liability protection afforded to its partners could potentially be abused by the partners to conduct fraudulent or "fly-by night" schemes. This risk is minimised if it is limited to professionals who have their professional standing at stake and their activities limited to the provision of professional services.

- In support of this view, it should be noted that professionals are generally required to comply with high standards of conduct imposed by relevant legislation. These standards ensure that there is a high level of integrity in the operation of the professional practice. For example, law firms are subject to strict rules contained in the Legal Profession Act (Cap.161) and imposed by the Law Society concerning management of client's funds. As for accounting firms, aside from being subject to rules containing high standards of disclosure, the accounting profession is increasingly being pressured to disclose even more key financial information about their business operations to conform with international market practice.

4F.3 However, there are difficulties with this approach:

- First, it runs counter to an important objective of having the LLP, which is to encourage entrepreneurship. New business ideas inevitably fall outside the scope of traditional professional services. Moreover, the LLP contains features which are particularly useful to entrepreneurial start-ups. The limited liability protection will encourage bolder experimentation, while safeguards prevent fraudulent or reckless behavior. There is flexibility in management and profit-sharing arrangements. In

[35] Section 16101 of the California Code defines a " Registered limited liability partnership" as a partnership....that....(ii) is licensed under the laws of the state to engage in the practice of architecture, practice of public accountancy, or, the practice of law" . See also Wood, above, n 13 at 52 - where it is reported that the New York statute limits applicability to licensed "professionals", and the term "professionals" means attorneys, counsellors-at-law, licensed physicians, as well as professions designated in the New York Education Law (which include many occupations in the area of health, architecture, engineering and other areas)

addition, the tax transparency of the LLP structure would translate into a lower effective rate of tax on profits, as compared to a company.

- Second, even established professional practices are now seeking to expand the range of services provided to their clients. Accounting and law firms in some jurisdictions are seeking to provide complementary services such as information technology or management consultancy services. If LLPs are restricted to professionals, the question arises as to whether such related businesses of these professionals can be housed under the same LLP structure.

- Third, the difficult issue remains as to which professionals should qualify to enjoy this benefit. If accountants and lawyers qualify on the basis that they are subject to strict rules on conduct, the same can be said for financial advisors, securities brokers, real estate agents and many others forms of businesses. It may be difficult to justify the cost of setting up a whole legal infrastructure for LLPs, only to avail this option to a select few.

In view of these considerations, it may be untenable for the Singapore Act to extend the LLP option only to professionals. It may be more useful to adopt the UK approach of allowing all businesses to register as LLPs, but impose other safeguards to minimize the incidence of fraud.

Issues for consideration

- *Should the Singapore Act allow all businesses to use the LLP structure?*
- *If not, what forms of businesses should be permitted to use the LLP structure and on what justification?*

4G. Compulsory insurance or bond

4G.1 In order to increase the assets available for distribution in the event of a successful claim against the LLP, several statutes impose a minimum bond or compulsory insurance.

4G.2 Article 6 of the Jersey Act requires an LLP to make financial provision for a sum of £5 million to be paid by a bank/insurance

company to creditors of the LLP upon the dissolution of the LLP. Failure to arrange for such payment triggers the removal of the protection of limited liability – the partners become severally and jointly liable for payment of debts of the LLP. This bond requirement has been reported to be "at the upper end of similar bond conditions found in American State LLP legislative schemes, and can be regarded as a partnership law equivalent to the maintenance of capital doctrine in company law."[36]

4G.3 As for the US, it has been reported that the California Code requires for law firm LLPs a minimum insurance amount of US$100,000 per lawyer up to a maximum of US$7.5 million for claims asserted in any one calendar year.[37] Interestingly, the Delaware legislators have gone in the opposite direction. The Delaware Act eliminated a former requirement under the prior 1947 Delaware Uniform Partnership Law that an LLP carry at least a specified amount of liability insurance or designate/segregate at least a specified amount of assets to cover certain liabilities.[38]

4G.4 In discussions on the UK Act, a proposal for a minimum bond was raised. This was subsequently rejected on the basis that the requirement to put up such capital was onerous and likely to deter firms from choosing the LLP option. In addition, the more difficult question of "how much was enough" to meet the needs generated by a major insolvency remained unsolved.[39]

4G.5 We agree with the UK approach. We would add that the amount of bond or insurance required depends largely on the type of business conducted and therefore a standard amount imposed on all businesses through an LLP statute may not fulfil the intended objective.

4G.6 However, bond or insurance requirements are important. They are even more vital in the context of the LLP where unlike a traditional partnership, the successful claimant cannot sue the partners personally to recover his losses. We would therefore recommend

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[36] See Phillip Morris and Joanna Stevenson, "The Jersey Limited Liability Partnership: A new legal vehicle for Professional Practice" (1997) 60 MLR 538, 548

[37] See Wood, above, n 13 at 42

[38] This was required under section 1546 of the 1947 Act. See Mathew J.O'Toole, "Delaware's New General Partnership Law" available at http://www.state.do.us/corp/genpart.htm.

[39] See the Second Reading of the UK Limited Liability Partnerships Bill in the House of Lords: *Hansard (House of Lords)* at Cols 1421—1422 (9 December 1999), *per* Lord McIntosh of Haringey (this is available at the UK Parliament Website at http://www.parliament.the stationery-office.co.uk/).

that where such requirements are currently applicable to a profession, a review of these requirements be undertaken by the relevant authority to ensure that they are adequate and apply in full force to professionals which elect the LLP option.

4G.7 In this context, it is useful to note by way of example that all lawyers holding a practising certificate issued by the Law Society in Singapore are currently required to take out a prescribed minimum insurance coverage for potential civil liability. This minimum insurance coverage depends on whether the lawyers practise through a traditional partnership or a law corporation. The latter category (which offers the advantage of limited liability) attracts a higher minimum insurance coverage.[40] It would appear that the same considerations should apply to LLPs.

Issues for consideration

- *Should the Singapore Act contain a standard insurance or bond requirement applicable to LLPs?*
- *Should such insurance or bond requirements be imposed through professional rules applicable to each profession? If so, should current requirements be reviewed for application to professionals electing the LLP option?*

4H. Financial reporting

4H.1 The jurisdictions surveyed have taken divergent views on the necessity and extent of financial reporting requirements to be imposed on LLPs.

4H.2 In the UK model, Part II of, and Schedule 1 to, the UK Regulations apply the provisions of Part VII of the UK Companies Act 1985 to LLPs with appropriate modifications. These modified provisions impose accounting and auditing requirements on LLPs which are similar to those for companies. The justification for this strict requirement appears to be that such full disclosure of financial affairs is "absolutely fundamental [as a] price for limited liability".[41]

[40] Details of the compulsory insured amounts are set out in the Legal Profession (Professional Indemnity Insurance) Rules 2000.

[41] This was stated by Lord Sharman during the second reading of the UK Bill. His statement read as follows: "I believe that it is absolutely fundamental that the price for limitation of liability is disclosure of financial affairs. It is not fair for customers to have to deal with a company or entity

4H.3 The Delaware Act in contrast, does not impose any financial disclosure requirement. While section 15-1003 of the Delaware Act requires the LLP to file an Annual Report, the required information relates only to non-financial items, such as the name, address and number of partners of the LLP.

4H.4 The Jersey Act has taken a middle ground. Article 9 of the Jersey Act provides that:

> *"(1) A limited liability partnership shall keep for 10 years accounting records which are sufficient to show and explain its transactions and are such as to disclose with reasonable accuracy at any time its financial position.*
>
> *(2) Subject to the partnership agreement, it shall not be necessary for a limited liability partnership to appoint an auditor or have its accounts audited."*

Jersey officials have attempted to justify the absence of a requirement for audited accounts on the grounds that it is still open for clients of the LLP to negotiate for a higher level of financial reporting than that required by law.[42]

4H.5 In line with having a disclosure-based regime, we endorse the view that mandatory financial disclosure by LLPs is a necessary safeguard. Disclosure of key financial information is a fair quid pro quo for the grant of the privilege of limited liability. Support for this position can be seen in our Companies Act (Cap.50) which requires every incorporated company, (including private companies where there are no public investors) to maintain proper accounting records which present a true and fair view of the financial state of affairs of the company.[43] The more contentious issue is whether there should be mandatory independent verification of such accounts through an auditing requirement.

4H.6 The UK approach is useful in that it provides much assurance to third parties. Such a prudent approach may be necessary if the LLP

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with limited liability about which they are unable to ascertain its financial wherewithal." *See also,* Phang, above, n 7.

[42] See Phillip Morris and Joanna Stevenson, "The Jersey Limited Liability Partnership: A new legal vehicle for Professional Practice" (1997) 60 MLR538, 548

[43] See sections 210 and 203 of the Companies Act.

is to be extended to all forms of businesses. However, the UK approach imposes a heavy compliance burden on the LLP. To that extent, it reduces the usefulness of the LLP as a viable alternative business vehicle for small set-ups.

4H.7 In the Singapore context, this issue must be considered in conjunction with recent initiatives being proposed for exempt private companies.

4H.8 Currently, under our Companies Act, an exempt private company is required to produce audited accounts to be laid before its shareholders at its Annual General Meeting.[44] The CLRFC has proposed to remove the statutory requirement for audited accounts for exempt private companies. It had considered whether a cost-benefit analysis would support such a statutory requirement and had taken the view that a requirement for auditing may be better determined by market forces, external creditors or shareholders.[45] If the CLRFC proposal is implemented, it will mean that a exempt private company is not required by law to have its accounts audited. However, the exempt private company will still have to keep accounting records that would sufficiently explain the state of affairs of the company and enable true and fair profit and loss accounts and balance sheets to be prepared. In addition, it may still need to have its accounts audited if a minimum percentage of shareholders pass a resolution to that effect.[46]

4H.9 If the CLRFC proposal is implemented, to impose an auditing requirement on all LLPs would result in a situation where the small set-up may find it more viable to incorporate as a exempt private company, rather than register as an LLP. The usefulness of the LLP option is then greatly reduced.

4H.10 Moreover, in the case of professions who are subject to a strict code of conduct or existing bond or insurance requirements, one can argue that with these safeguards in place, there is no real necessity for the LLP law to impose on LLPs an additional burden of having its accounts audited.

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[44] Sections 175, 201 and 203 of the Companies Act require all companies to hold an Annual General Meeting once in every calendar year and the audited accounts of the company must be laid before the company at its general meeting

[45] See paragraph 5 of the CLRFC Consultation Paper.

[46] The CLRFC paper had proposed this "opt-in" approach which apparently is adopted by Hong Kong. See paragraph 5.2 of the CLRFC Consultation paper

4H.11 The above considerations raise a separate issue of whether our laws should impose a cap on the maximum number of partners in an LLP. If there is no cap[47], the LLP could potentially be a vehicle for large set-ups akin to a "non-exempt" private company, where the justification for imposing an auditing requirement is stronger.

4H.12 It can been observed from the above that there are conflicting interests inherent in this issue, and divergent approaches adopted by the jurisdictions surveyed. In view of this, it may be useful to consider a new approach in the form of a two-tier financial disclosure requirement. By way of illustration, this could function as follows:

- A general high default standard applies to all LLPs.
- Deviation from the high default standard to a lower standard is permitted for Specified LLPs
- Specified LLPs include:

  (a) an LLP where all of its partners carry on a professional practice under a licence, permit or other approval granted by a recognised authority; and which practice is subject to a code of conduct or requirement of financial provision for payment to creditors; and

  (b) if the CLRFC proposal is implemented, an LLP in which there are not more than 20 partners, none of whom are corporations (for alignment with exempt private companies).

Issues for consideration

- *Should the Singapore Act contain one single disclosure requirement or a two- tier disclosure requirement?*
- *If the former, what should this standard be — audited accounts or simply accounts which present a true and fair view of the financial state of affairs?*
- *If the latter, what should be the high default standard and what should be the lower standard?*

[47] The UK Act does not restrict the number of partners in an LLP. In addition, the UK Government has announced plans to remove the current limit on the number of partners for partnerships and limited partnerships.

- *What categories of persons should the lower standard be applied to?*
- *Should the Singapore Act contain any restriction in the number of partners in an LLP?*

4I. Suitability of partners

4I.1 Part III of the UK Regulations applies the provisions of the UK Company Directors Disqualification Act 1986 to LLPs with appropriate modifications. Therefore, LLP partners in the UK are subject to the same disqualifications and penalties that currently apply to company directors, and may be disqualified from being a partner of the LLP or a director of a company under those provisions. These disqualifications relate to the unsuitability of a person resulting from his conviction of certain offences, persistent breaches of company legislation, his being guilty of fraud in the management of a company, and other situations.

4I.2 In Singapore, the Companies Act (Cap.50) also imposes several disqualifications on directors of companies. The grounds of disqualification provided in sections 148,149, 154 and 155 of the Companies Act are similar to the UK provisions described above.

4I.3 The disqualifications in the UK and Singapore statutes serve an important purpose. They prevent persons deemed unsuitable by the law to manage companies, from actually mismanaging a company and then avoiding liability through the corporate structure.

4I.4 Since the same risk appears in an LLP structure, it would be useful to follow the UK approach to apply such disqualifications to LLP partners. It is important that the relationship between the disqualifications in the Companies Act and those applying to the LLPs be made clear at the outset. A breach of these provisions as a director of a company should attract a disqualification not only as a director of a company but also as a partner of the LLP, and vice versa. This would ensure that the underlying objective mentioned in paragraph 4I.3 above is fulfilled.

Issues for consideration

- *Should the Singapore Act apply the disqualifications currently applicable to company directors to LLP partners?*
- *If so, should a person who triggers a disqualification order in his capacity as director also be disqualified from being a partner of an LLP and vice versa?*

4J. Fiduciary duties of partners

4J.1 Just as shareholders (and arguably stakeholders) of a company are protected through fiduciary duties imposed on directors who manage the company, partners and third parties dealing with an LLP must be protected against dishonest or disloyal acts by other partners.

4J.2 Section 15-404 of the Delaware Act imposes the fiduciary duties of loyalty and care on partners of an LLP. The duty of loyalty is defined in subsection (b) to include accounting to the partnership and holding as a trustee any property, profit or benefit derived from the conduct and winding up of the partnership business. It also means refraining from competing with the partnership, or acting for a party having an interest adverse to the partnership. The duty of care is defined in subsection (c) to mean refraining from grossly negligent or reckless conduct, intentional misconduct or a knowing violation of the law. The section is reproduced in *Annex E*.

4J.3 As for the UK Act, Schedule 2 of the UK Regulations applies section 459 of the UK Companies Act 1985 so that there is a remedy for the partners of an LLP should they suffer unfair prejudice.

4J.4 In Singapore, sections 29 and 30 of our Partnership Act (Cap.391) impose duties on every partner of a traditional partnership to account to the firm for private profits and to refrain from competing with the firm. By virtue of section 19, these duties may be varied by the consent of all the partners. These sections are reproduced in *Annex E*.

4J.5 We recommend that the Singapore Act contain provisions to impose both the duty of care and the duty of loyalty on partners. For the duty of loyalty, sections 29 and 30 of the Partnership Act can be used as a starting point, but further expanded along the lines of the Delaware Act. Our reasons are:

- A codification of duties imposed on LLP partners adds certainty and clarity to the law.

- Unlimited liability serves as an incentive for partners to act with the requisite level of care to safeguard their own assets. This incentive may be weakened when partners enjoy the advantage of limited liability in an LLP. Therefore, a statutory duty of care becomes necessary.

Issues for consideration

- *Should the Singapore Act contain an exhaustive codification a the duties of loyalty and care to be imposed on partners of an LLP?*

4K. Other general implementation issues

4K.1 The LLP is a new entity which contains features of both a company and a partnership. Therefore aside from the issues highlighted above, it is important to consider the applicability of all other laws on the LLP entity.

4K.2 Owing to its separate legal personality, it would appear that the starting position would be for the LLP to be treated like a company. For example, the Rules of Court (R 5, Cap.322) relating to service of documents would apply to LLPs in the same way as they do to companies. In addition, the provisions in the Companies Act (Cap.50) relating to execution of documents, registration of charges, power to enter into arrangements and reconstructions should apply to the LLP.

4K.3 On the other hand, in relation to taxation of profits, the LLP is treated in other jurisdictions like a partnership. If our authorities adopt a similar approach, some provisions of the Income Tax Act (Cap.134) would apply to the LLP as if it were a partnership.

4K.4 In this regard, it is pertinent to note that the UK Act applies several other UK Statutes, such as the Income and Corporation Taxes Act 1988, Inheritance Tax Act 1984, Stamp Duties Act and Financial Services and Markets Act 2000 to LLPs. Other provisions of the UK Insolvency Act and UK Companies Act (aside from those

highlighted in this paper) are also made applicable to LLPs. For easy reference, the UK Act and a substantial portion of the UK Regulations[48] are reproduced and attached to this paper as *Annex F* and *Annex G*, respectively.

4K.5 It would therefore appear necessary to consider the provisions of our equivalent of these statutes to determine the extent of their applicability to the LLP.

4K.6 Finally, there remains the important issue of how the LLP Act should be structured to deal with every aspect of this new entity. The UK approach is to have a basic LLP Act dealing with key elements of the new entity and to apply all other relevant legislation to LLPs through regulations. These regulations state how the provisions of these other legislation should be modified to apply to the LLP. However, this approach has been criticized. Academics have commented that "it is by no means clear that simply adapting existing partnership, company and corporate insolvency provisions with a few adjustments and additions will be as easy in practice as the [UK] DTI has indicated." [49]

4K.7 An alternative approach would be to have all provisions applicable to the LLP contained in one "massive" Act for completeness. This appears to be the approach adopted by the Delaware Act. Although ideal, the feasibleness of this approach must be studied carefully.

4K.8 Related to this issue is the question as to which government agency should be responsible for the registry of LLPs. Since the LLP is a vehicle for the conduct of business, our view (subject to the views of the Ministry of Finance) is that the Registry of Companies and Businesses has the expertise and capability to fulfil this role.

[48] Annex G contains Parts 1 to VII of the UK Regulations. The Schedules to the UK Regulations can be obtained from http://www.legislation.hmso.gov.uk/si/si2001/20011090.htm

[49] See Morse, Davies, Fletcher, Milman, Morris, Bennett above, n 16 at 9, where the authors also comment that many areas of difficulty remain and that the rationale and product are not the same.

Issues for consideration

- *As a starting position, should the LLP be treated like a company? What statutes and which particular provisions thereof (other than those discussed in this Paper) should apply to an LLP as if it were a company?*
- *What statutes and which particular provisions thereof (other than those discussed in this paper) should apply to the LLP as if it were a partnership?*
- *How should the Singapore Act be structured to deal with every aspect of the LLP entity? Should we adopt the UK approach of having a basic LLP Act to deal with key elements of the LLP and then apply all other relevant legislation through regulations? Or should there be one comprehensive Act which governs every aspect of the LLP?*
- *Who should be responsible for the registry of LLPs?*

PART 5
CONCLUSION

5. The LLP is a new creature which seeks to combine the benefits of limited liability with the flexibility of a partnership. To ensure that these benefits are not used to the detriment of third parties dealing with the LLP, the Singapore Act must impose adequate safeguards. At the same time, compliance requirements should not be unduly excessive. The challenge is to find an appropriate balance to ensure that the LLP becomes a useful alternative option for businesses.

Please see overleaf for the consolidated list of issues for consideration.

LIST OF ISSUES

1. *Should LLP partners be treated like partners of a normal partnership for purposes of taxation of profits? (See paras. 3.4 to 3.7)*

2. *Should a partnership which converts to an LLP be given tax concessions in relation to the transfer of its business and assets? (See paras. 3.8 to 3.12)*

3. *Notwithstanding the above, should LLP partners be treated like shareholders of a company in relation to other tax issues, in view of the other characteristics of the LLP (e.g. limited liability) which are very similar to companies? (See paras. 3.8 to 3.12)*

4. *Should the Singapore Act prescribe when an LLP comes into existence? (See para. 4A)*

5. *What types of information should be required for incorporation? Should it be equivalent or more than the information required under section 6 of the Business Registration Act for registration of businesses? (See para. 4A)*

6. *Should an LLP be required to end its name with "limited liability partnership", "llp" or "LLP"? (See para. 4A)*

7. *Should an LLP be required to state in all its official correspondence that it is incorporated with limited liability? (See para. 4A)*

8. *Should the Singapore Act state explicitly that the LLP is a separate legal entity? (See para.4B)*

9. *Should the Singapore Act state explicitly that all obligations, whether arising in contract tort or otherwise are assumed by the LLP and not by the partners individually? (See para. 4C)*

10. *Should there also be a provision to ensure that general law principles still apply to the particular partner who acts wrongfully? (See para. 4C)*

11. *Should the Singapore Act contain "clawback" provisions in order to preserve the assets of the LLP available for distribution to the creditors in the event of liquidation? (See para. 4E)*

12. *Should the Singapore Act allow all businesses to use the LLP structure? (See para. 4F)*

13. *If not, what forms of businesses should be permitted to use the LLP structure and on what justification? (See para. 4F)*

14. *Should the Singapore Act contain a standard insurance or bond requirement applicable to LLPs? (See para. 4G)*

15. *Should such insurance or bond requirements be imposed through professional rules applicable to each profession? If so, should current requirements be reviewed for application to professionals electing the LLP option? (See para. 4G)*

16. *Should the Singapore Act contain one single disclosure requirement or a two- tier disclosure requirement? (See para. 4H)*

17. *If the former, what should this standard be — audited accounts or simply accounts which present a true and fair view of the financial state of affairs? (See para. 4H)*

18. *If the latter, what should be the high default standard and what should be the lower standard? (See para. 4H)*

19. *What categories of persons should the lower standard be applied to? (See para. 4H)*

20. *Should the Singapore Act contain any restriction in the number of partners in an LLP? (See para. 4H)*

21. *Should the Singapore Act apply the disqualifications currently applicable to company directors to LLP partners? (See para. 4I)*

22. *If so, should a person who triggers a disqualification order in his capacity as director also be disqualified from being a partner of an LLP and vice versa? (See para. 4I)*

23. *Should the Singapore Act contain an exhaustive codification of the duties of loyalty and care to be imposed on partners of an LLP? (See para.4J)*

24. *As a starting position, should the LLP be treated like a company? What statutes and which particular provisions thereof (other than those discussed in this Paper) should apply to an LLP as if it were a company? (See para.4K)*

25. *What statutes and which particular provisions thereof (other than those discussed in this paper) should apply to the LLP as if it were a partnership? (See para.4K)*

26. *How should the Singapore Act be structured to deal with every aspect of the LLP entity? Should we adopt the UK approach of having a basic LLP Act to deal with key elements of the LLP and then apply all other relevant legislation through regulations? Or should there be one comprehensive Act which governs every aspect of the LLP?(See para.4K)*

27. *Who should be responsible for the registry of LLPs? (See para.4K)*

FEATURES OF AN LLP (Comparative Table)

Issue	Traditional Partnership under Singapore Law	Limited Liability Partnership	UK (1) UK-LLPA (2) Jersey – Limited Liability Partnerships (Jersey) Law 1997 ("Jersey Law")	US laws (1) Delaware Revised Uniform Partnership Act ("DRUPA") (2) Other US states' statutes
Formation	Formed by partnership agreement Requirement to be registered with RCB, governed by the Singapore Partnership Act (Cap.391) ("PA")	Formed by incorporation	UK-LLPA s.1(2) "formed by being incorporated under the this Act"	DRUPA s.15-1001 On filing a statement of qualification
Liability	Partners assume personal liability (joint and several) for all debts and obligations of the partnership. s.9 of the PA	The LLP, as a separate entity assumes liability for any debt chargeable to the partnership, whether arising in tort, contract or otherwise. Partners do not assume personal liability, but only limited liability (to the extent of each partner's contributions to the LLP) In exceptional circumstances the partner may assume personal liability for tortious acts, if he knowingly causes the LLP to commit the tortious act.	UK-LLPA s. 1(2) A limited liability partnership is a body corporate (with legal personality separate from that of its members). Under Jersey Law: The LLP assumes the liability. Partner of the LLP is not liable for any debt or loss (to which joint and several liability would normally apply) of the partnership. This restriction on liability does not apply to a partner's personal debt or any loss personally caused by him	DRUPA : s.15-306(c) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment or otherwise, for such an obligation solely by reason of being or so acting as a partner. California Corporations Code : Partner in an LLP is not liable for debts or obligations chargeable to a partnership whether arising in tort contract or otherwise, that are assumed by the partnership while it is an LLP, by reason of being a partner of the LLP
Partnership Property	Held by the named owner but on account of the firm, & must be held and applied exclusively for the purposes of the partnership and in accordance with the partnership agreement. s. 20 of PA	LLP holds the property	UK-LLPA s.1: LLP is a legal entity with unlimited capacity. Implicit from this is that the LLP, and not the partners hold property.	DRUPA s.15-203 .. Unless otherwise provided ... property acquired by a partnership is property of the partnership and not of the partners individually.
Survival of partnership	Dissolved by the death, bankruptcy of any partner or by any partner giving notice to dissolve partnership s. 32 and 33 of the PA	Being a creature of statute, the LLP can potentially last indefinitely and survive changes to its partners	UL-LLPA s. 4 and 9 support this position	
Liability to contribute in the event of winding up	Assets of the firm are to be applied in payment of the debts and liabilities of the firm. Surplus assets due to partners after deducting what may be due from them as partners. s. 39 of the PA However in view of personal liability, the partners may be sued personally for payment of the debts of the partnership	Assets of the LLP are available for distribution to creditors. Members of the LLP are liable to contribute to the assets of the LLP to the extent that they have agreed to do so with the other members, in the limited liability partnership agreement.	UK-LLPA: s.14 & Part IV and Sch 3 of rules : s. 74 UK Insolvency Act as modified effects this.	DRUPA s.15-807 ... the assets of the partnership, including the contributions of the partners .... must be applied ... to pay the partnership's obligations to creditors.... Any surplus must be applied to pay .. the net amount distributable to partners ...

Annex A

INCORPORATION PROCEDURE (Comparative Table)

Issue	UK Limited Liability Partnerships Act/ UK Regulations	US Delaware Revised Uniform Partnership Act
Incorporation Procedure	**1**.—(2) A limited liability partnership is a body corporate (with legal personality separate from that of its members) which is formed by being incorporated under this Act; …….. **2.**—(1) For a limited liability partnership to be incorporated — (a) two or more persons associated for carrying on a lawful business with a view to profit must have subscribed their names to an incorporation document, (b) there must have been delivered to the registrar either the incorporation document or a copy authenticated in a manner approved by him, and (c) there must have been so delivered a statement in a form approved by the registrar, made by either a solicitor engaged in the formation of the limited liability partnership or anyone who subscribed his name to the incorporation document, that the requirement imposed by paragraph (a) has been complied with. (2) The incorporation document must — (a) be in a form approved by the registrar (or as near to such a form as circumstances allow), (b) state the name of the limited liability partnership, (c) state whether the registered office of the limited liability partnership is to be situated in England and Wales, in Wales or in Scotland, (d) state the address of that registered office, (e) state the name and address of each of the persons who are to be members of the limited liability partnership on incorporation, and	**s. 15-1001. Statement of qualification.** (a) A partnership may become a limited liability partnership pursuant to this section. (b) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions. (c) After the approval required by subsection (b), a partnership may become a limited liability partnership by filing a statement of qualification. The statement of qualification must contain: (1) the name of the partnership; (2) the address of the registered office and the name and address of the registered agent for service of process required to be maintained by section 15-111 of this chapter; (3) the number of partners of the partnership; (4) a statement that the partnership elects to be a limited liability partnership; and (5) the future effective date or time (which shall be a date or time certain) of the statement of qualification if it is not to be effective upon the filing of the statement of qualification. (d) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement of qualification or a future effective date or time specified in the statement of qualification. The status as a limited liability partnership remains

Issue	UK Limited Liability Partnerships Act/ UK Regulations	US Delaware Revised Uniform Partnership Act
	(f) either specify which of those persons are to be designated members or state that every person who from time to time is a member of the limited liability partnership is a designated member. (3) If a person makes a false statement under subsection (1)(c) which he — (a) knows to be false, or (b) does not believe to be true, he commits an offence. **3.**—(1) When the requirements imposed by paragraphs (b) and (c) of subsection (1) of section 2 have been complied with, the registrar shall retain the incorporation document or copy delivered to him and, unless the requirement imposed by paragraph (a) of that subsection has not been complied with, he shall — (a) register the incorporation document or copy, and (b) give a certificate that the limited liability partnership is incorporated by the name specified in the incorporation document. (2) The registrar may accept the statement delivered under paragraph (c) of subsection (1) of section 2 as sufficient evidence that the requirement imposed by paragraph (a) of that subsection has been complied with. (3) The certificate shall either be signed by the registrar or be authenticated by his official seal. (4) The certificate is conclusive evidence that the requirements of section 2 are complied with and that the limited liability partnership is incorporated by the name specified in the incorporation document.	effective, regardless of changes in the partnership, until it is canceled pursuant to section 15-105(d) of this chapter or revoked pursuant to section 15-1003 of this chapter. (e) A partnership is a limited liability partnership if there has been substantial compliance with the requirements of this subchapter. The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (c). (f) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership. (g) An amendment or cancellation of a statement of qualification is effective when it is filed or on a future effective date or time specified in the amendment or cancellation. (h) If a person is included in the number of partners of a limited liability partnership set forth in a statement of qualification, a statement of foreign qualification or an annual report, the inclusion of such person shall not be admissible as evidence in any action, suit or proceeding, whether civil, criminal, administrative or investigative, for the purpose of determining whether such person is liable as a partner of such limited liability partnership. The status of a partnership as a limited liability partnership and the liability of a partner of such limited liability partnership shall not be adversely affected if the number of partners stated in a statement of qualification, a statement of foreign qualification or an annual report is erroneously stated provided that the statement of qualification, the statement of foreign qualification or the annual report was filed in good faith.

Issue	UK Limited Liability Partnerships Act/ UK Regulations	US Delaware Revised Uniform Partnership Act
	Name to indicate status 2.—(1) The name of a limited liability partnership must end with — (a) the expression "limited liability partnership", or (b) the abbreviation "llp" or "LLP".	**s 15-108. Name of partnership** (b) The name of a limited liability partnership shall contain as the last words or letters of its name the words "Limited Liability Partnership," the abbreviation "L.L.P.' or the designation "LLP".

SEPARATE LEGAL ENTITY (Comparative Table)

Issue	UK Limited Liability Partnerships Act/ UK Regulations	US Delaware Revised Uniform Partnership Act
Separate legal entity	**1.**—(1) There shall be a new form of legal entity to be known as a limited liability partnership. (2) A limited liability partnership is a body corporate (with legal personality separate from that of its members) which is formed by being incorporated under this Act; and — (a) in the following provisions of this Act (except in the phrase "oversea limited liability partnership"), and (b) in any other enactment (except where provision is made to the contrary or the context otherwise requires), references to a limited liability partnership are to such a body corporate. (3) A limited liability partnership has unlimited capacity.	**s. 15-201. Partnership as entity.** (a) A partnership is a separate legal entity which is an entity distinct from its partners unless otherwise provided in a statement of partnership existence and in a partnership agreement. **s. 15-203. Partnership property.** Unless otherwise provided in a statement of partnership existence and in a partnership agreement, property acquired by a partnership is property of the partnership and not of the partners individually.

"CLAWBACK" PROVISIONS (Comparative Table)

Issue	UK Limited Liability Partnerships Act/ UK Regulations	US Laws
"Clawback" provisions	**214A. Adjustment of withdrawals** (1) This section has effect in relation to a person who is or has been a member of a limited liability partnership where, in the course of the winding up of that limited liability partnership, it appears that subsection (2) of this section applies in relation to that person. (2) This subsection applies in relation to a person if – (a) within the period of two years ending with the commencement of the winding up, he was a member of the limited liability partnership who withdrew property of the limited liability partnership, whether in the form of a share of profits, salary, repayment of or payment of interest on a loan to the limited liability partnership or any other withdrawal of property, and (b) it is proved by the liquidator to the satisfaction of the court that at the time of the withdrawal he knew or had reasonable ground for believing that the limited liability partnership – (i) was at the time of the withdrawal unable to pay its debts within the meaning of section 123, or (ii) would become so unable to pay its debts after the assets of the limited liability partnership had been depleted by that withdrawal taken together with all other withdrawals (if any) made by any members contemporaneously with that withdrawal or in contemplation when that withdrawal was made. (3) Where this section has effect in relation to any person the court, on the application of the liquidator, may declare that that person is to be liable to make such contribution (if any) to the limited liability partnership's assets as the court thinks proper.	The California Corporations Code (Uniform Partnership Act of 1994) offers some protection against fraudulent transfers. An LLP may not make a distribution if after giving effect to the distribution, the LLP would not be able to pay its debts, or its liabilities would exceed its assets[50].

[50] *See* Wood, Limited Liability Partnerships – Formation, Operation, and Taxation (New York, John Wiley & Sons, Inc, 1997).

Issue	UK Limited Liability Partnerships Act/ UK Regulations	US Laws
	(4) The court shall not make a declaration in relation to any person the amount of which exceeds the aggregate of the amounts or values of all the withdrawals referred to in subsection (2) made by that person within the period of two years referred to in that subsection. (5) The court shall not make a declaration under this section with respect to any person unless that person knew or ought to have concluded that after each withdrawal referred to in subsection (2) there was no reasonable prospect that the limited liability partnership would avoid going into insolvent liquidation. (6) For the purposes of subsection (5) the facts which a member ought to know or ascertain and the conclusions which he ought to reach are those which would be known, ascertained, or reached by a reasonably diligent person having both: (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that member in relation to the limited liability partnership, and (b) the general knowledge, skill and experience that that member has. (7) For the purposes of this section a limited liability partnership goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up. (8) In this section "member" includes a shadow member. (9) This section is without prejudice to section 214.	

FIDUCIARY DUTIES (Comparative Table)

Issue	UK Limited Liability Partnerships Act/ UK Regulations	US Delaware Revised Uniform Partnership Act
Fiduciary duties Sections 29 and 30 of the Singapore Partnership Act (Cap. 391) impose fiduciary duties on partners of traditional partnerships. **Accountability of partners for private profits** **29.** –(I) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property, name or business connection. (2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner. **Duty of partner not to compete with firm.** **30.** If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.	UK Regulations apply section 459 of the UK Companies Act (as modified) to LLPs. Section 459 of the UK Companies Act 1985 allows a member of a company to apply to count for relief on the ground that the company's affairs have been conducted in a manner which is "unfairly prejudicial to the interests of some part of the members".	**s. 15-404. General standards of partner's conduct.** (a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (b) and (c). (b) A partner's duty of loyalty to the partnership and the other partners is limited to the following: (1) to account to the partnership and hold as trustee for it any property, profit or benefit derived by the partner in the conduct or winding up of the partnership business or affairs or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity; (2) to refrain from dealing with the partnership in the conduct or winding up of the partnership business or affairs as or on behalf of a party having an interest adverse to the partnership; and (3) to refrain from competing with the partnership in the conduct of the partnership business or affairs before the dissolution of the partnership.

Issue	UK Limited Liability Partnerships Act/ UK Regulations	US Delaware Revised Uniform Partnership Act
		(c) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business or affairs is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law. (d) A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing. (e) A partner does not violate a duty or obligation under this chapter or under the partnership agreement solely because the partner's conduct furthers the partner's own interest. (f) A partner may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume 1 or more specific obligations of, provide collateral for and transact other business with, the partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner. (g) This section applies to a person winding up the partnership business or affairs as the personal or legal representative of the last surviving partner as if the person were a partner.

Limited Liability Partnerships Act 2000

2000 Chapter 12

Limited Liability Partnerships Act 2000

2000 Chapter 12

ARRANGEMENT OF SECTIONS

Limited Liability Partnerships Act 2000

2000 Chapter 12 – *continued*

An Act to make provision for limited liability partnerships.
[20th July 2000]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

Introductory

Limited liability partnerships.

1. - (1) There shall be a new form of legal entity to be known as a limited liability partnership.

(2) A limited liability partnership is a body corporate (with legal personality separate from that of its members) which is formed by being incorporated under this Act; and-

(a) in the following provisions of this Act (except in the phrase "oversea limited liability partnership"), and

(b) in any other enactment (except where provision is made to the contrary or the context otherwise requires),

references to a limited liability partnership are to such a body corporate.

(3) A limited liability partnership has unlimited capacity.

(4) The members of a limited liability partnership have such liability to contribute to its assets in the event of its being wound up as is provided for by virtue of this Act.

(5) Accordingly, except as far as otherwise provided by this Act or any other enactment, the law relating to partnerships does not apply to a limited liability partnership.

(6) The Schedule (which makes provision about the names and registered offices of limited liability partnerships) has effect.

Incorporation

Incorporation document etc.

2. - (1) For a limited liability partnership to be incorporated-

(a) two or more persons associated for carrying on a lawful business with a view to profit must have subscribed their names to an incorporation document,

(b) there must have been delivered to the registrar either the incorporation document or a copy authenticated in a manner approved by him, and

(c) there must have been so delivered a statement in a form approved by the registrar, made by either a solicitor engaged in the formation of the limited liability partnership or anyone who subscribed his name to the incorporation document, that the requirement imposed by paragraph (a) has been complied with.

(2) The incorporation document must-

(a) be in a form approved by the registrar (or as near to such a form as circumstances allow),

(b) state the name of the limited liability partnership,

(c) state whether the registered office of the limited liability partnership is to be situated in England and Wales, in Wales or in Scotland,

(d) state the address of that registered office,

(e) state the name and address of each of the persons who are to be members of the limited liability partnership on incorporation, and

(f) either specify which of those persons are to be designated members or state that every person who from time to time is a member of the limited liability partnership is a designated member.

(3) If a person makes a false statement under subsection (1)(c) which he-

(a) knows to be false, or

(b) does not believe to be true,

he commits an offence.

(4) A person guilty of an offence under subsection (3) is liable-

(a) on summary conviction, to imprisonment for a period not exceeding six months or a fine not exceeding the statutory

maximum, or to both, or

(b) on conviction on indictment, to imprisonment for a period not exceeding two years or a fine, or to both.

Incorporation by registration.

3. - (1) When the requirements imposed by paragraphs (b) and (c) of subsection (1) of section 2 have been complied with, the registrar shall retain the incorporation document or copy delivered to him and, unless the requirement imposed by paragraph (a) of that subsection has not been complied with, he shall-

(a) register the incorporation document or copy, and

(b) give a certificate that the limited liability partnership is incorporated by the name specified in the incorporation document.

(2) The registrar may accept the statement delivered under paragraph (c) of subsection (1) of section 2 as sufficient evidence that the requirement imposed by paragraph (a) of that subsection has been complied with.

(3) The certificate shall either be signed by the registrar or be authenticated by his official seal.

(4) The certificate is conclusive evidence that the requirements of section 2 are complied with and that the limited liability partnership is incorporated by the name specified in the incorporation document.

Membership

Members.

4. - (1) On the incorporation of a limited liability partnership its members are the persons who subscribed their names to the incorporation document (other than any who have died or been dissolved).

(2) Any other person may become a member of a limited liability partnership by and in accordance with an agreement with the existing members.

(3) A person may cease to be a member of a limited liability partnership (as well as by death or dissolution) in accordance with an agreement with the other members or, in the absence of agreement with the other members as to cessation of membership, by giving reasonable notice to the other members.

(4) A member of a limited liability partnership shall not be regarded for any purpose as employed by the limited liability partnership unless, if he and the other members were partners in a partnership, he would

be regarded for that purpose as employed by the partnership.

Relationship of members etc.

5. - (1) Except as far as otherwise provided by this Act or any other enactment, the mutual rights and duties of the members of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its members, shall be governed-

(a) by agreement between the members, or between the limited liability partnership and its members, or

(b) in the absence of agreement as to any matter, by any provision made in relation to that matter by regulations under section 15(c).

(2) An agreement made before the incorporation of a limited liability partnership between the persons who subscribe their names to the incorporation document may impose obligations on the limited liability partnership (to take effect at any time after its incorporation).

Members as agents.

6. - (1) Every member of a limited liability partnership is the agent of the limited liability partnership.

(2) But a limited liability partnership is not bound by anything done by a member in dealing with a person if-

(a) the member in fact has no authority to act for the limited liability partnership by doing that thing, and

(b) the person knows that he has no authority or does not know or believe him to be a member of the limited liability partnership.

(3) Where a person has ceased to be a member of a limited liability partnership, the former member is to be regarded (in relation to any person dealing with the limited liability partnership) as still being a member of the limited liability partnership unless-

(a) the person has notice that the former member has ceased to be a member of the limited liability partnership, or

(b) notice that the former member has ceased to be a member of the limited liability partnership has been delivered to the registrar.

(4) Where a member of a limited liability partnership is liable to any person (other than another member of the limited liability partnership) as a result of a wrongful act or omission of his in the course of the business of the limited liability partnership or with its authority, the limited liability partnership is liable to the same extent as the member.

Ex-members.

7. - (1) This section applies where a member of a limited liability partnership has either ceased to be a member or-

(a) has died,

(b) has become bankrupt or had his estate sequestrated or has been wound up,

(c) has granted a trust deed for the benefit of his creditors, or

(d) has assigned the whole or any part of his share in the limited liability partnership (absolutely or by way of charge or security).

(2) In such an event the former member or-

(a) his personal representative,

(b) his trustee in bankruptcy or permanent or interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985) or liquidator,

(c) his trustee under the trust deed for the benefit of his creditors, or

(d) his assignee,

may not interfere in the management or administration of any business or affairs of the limited liability partnership.

(3) But subsection (2) does not affect any right to receive an amount from the limited liability partnership in that event.

Designated members.

8. - (1) If the incorporation document specifies who are to be designated members-

(a) they are designated members on incorporation, and

(b) any member may become a designated member by and in accordance with an agreement with the other members,

and a member may cease to be a designated member in accordance with an agreement with the other members.

(2) But if there would otherwise be no designated members, or only one, every member is a designated member.

(3) If the incorporation document states that every person who from time to time is a member of the limited liability partnership is a

designated member, every member is a designated member.

(4) A limited liability partnership may at any time deliver to the registrar-

(a) notice that specified members are to be designated members, or

(b) notice that every person who from time to time is a member of the limited liability partnership is a designated member,

and, once it is delivered, subsection (1) (apart from paragraph (a)) and subsection (2), or subsection (3), shall have effect as if that were stated in the incorporation document.

(5) A notice delivered under subsection (4)-

(a) shall be in a form approved by the registrar, and

(b) shall be signed by a designated member of the limited liability partnership or authenticated in a manner approved by the registrar.

(6) A person ceases to be a designated member if he ceases to be a member.

Registration of membership changes.

9. - (1) A limited liability partnership must ensure that-

(a) where a person becomes or ceases to be a member or designated member, notice is delivered to the registrar within fourteen days, and

(b) where there is any change in the name or address of a member, notice is delivered to the registrar within 28 days.

(2) Where all the members from time to time of a limited liability partnership are designated members, subsection (1)(a) does not require notice that a person has become or ceased to be a designated member as well as a member.

(3) A notice delivered under subsection (1)-

(a) shall be in a form approved by the registrar, and

(b) shall be signed by a designated member of the limited liability partnership or authenticated in a manner approved by the registrar,

and, if it relates to a person becoming a member or designated member, shall contain a statement that he consents to becoming a member or designated member signed by him or authenticated in a

manner approved by the registrar.

(4) If a limited liability partnership fails to comply with subsection (1), the partnership and every designated member commits an offence.

(5) But it is a defence for a designated member charged with an offence under subsection (4) to prove that he took all reasonable steps for securing that subsection (1) was complied with.

(6) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Taxation

Income tax and chargeable gains.

10. - (1) In the Income and Corporation Taxes Act 1988, after section 118 insert-

"Limited liability partnerships

Treatment of limited liability partnerships.

118ZA. For the purposes of the Tax Acts, a trade, profession or business carried on by a limited liability partnership with a view to profit shall be treated as carried on in partnership by its members (and not by the limited liability partnership as such); and, accordingly, the property of the limited liability partnership shall be treated for those purposes as partnership property.

Restriction on relief.

118ZB. Sections 117 and 118 have effect in relation to a member of a limited liability partnership as in relation to a limited partner, but subject to sections 118ZC and 118ZD.

Member's contribution to trade.

118ZC. - (1) Subsection (3) of section 117 does not have effect in relation to a member of a limited liability partnership.

(2) But, for the purposes of that section and section 118, such a member's contribution to a trade at any time ("the relevant time") is the greater of-

(a) the amount subscribed by him, and

(b) the amount of his liability on a winding up.

(3) The amount subscribed by a member of a limited liability partnership is the amount which he has contributed to the limited liability partnership as capital, less so much of that amount (if any) as-

(a) he has previously, directly or indirectly, drawn out or received back,

(b) he so draws out or receives back during the period of five years beginning with the relevant time,

(c) he is or may be entitled so to draw out or receive back at any time when he is a member of the limited liability partnership, or

(d) he is or may be entitled to require another person to reimburse to him.

(4) The amount of the liability of a member of a limited liability partnership on a winding up is the amount which-

(a) he is liable to contribute to the assets of the limited liability partnership in the event of its being wound up, and

(b) he remains liable so to contribute for the period of at least five years beginning with the relevant time (or until it is wound up, if that happens before the end of that period).

Carry forward of unrelieved losses.

118ZD. - (1) Where amounts relating to a trade carried on by a member of a limited liability partnership are, in any one or more chargeable periods, prevented from being given or allowed by section 117 or 118 as it applies otherwise than by virtue of this section (his "total unrelieved loss"), subsection (2) applies in each subsequent chargeable period in which-

(a) he carries on the trade as a member of the limited liability partnership, and

(b) any of his total unrelieved loss remains outstanding.

(2) Sections 380, 381, 393A(1) and 403 (and sections 117 and 118 as they apply in relation to those sections) shall have effect in the subsequent chargeable period as if-

(a) any loss sustained or incurred by the member in the trade in that chargeable period were increased by an amount equal to so much of his total unrelieved loss as remains outstanding in that period, or

(b) (if no loss is so sustained or incurred) a loss of that amount were so sustained or incurred.

(3) To ascertain whether any (and, if so, how much) of a member's total unrelieved loss remains outstanding in the subsequent chargeable period, deduct from the amount of his total unrelieved loss the aggregate of-

(a) any relief given under any provision of the Tax Acts (otherwise than as a result of subsection (2)) in respect of his total unrelieved loss in that or any previous chargeable period, and

(b) any amount given or allowed in respect of his total unrelieved loss as a result of subsection (2) in any previous chargeable period (or which would have been so given or allowed had a claim been made)."

(2) In section 362(2)(a) of that Act (loan to buy into partnership), after "partner" insert "in a limited partnership registered under the Limited Partnerships Act 1907".

(3) In the Taxation of Chargeable Gains Act 1992, after section 59 insert-

"Limited liability partner-ships.

59A. - (1) Where a limited liability partnership carries on a trade or business with a view to profit-

(a) assets held by the limited liability partnership shall be treated for the purposes of tax in respect of chargeable gains as held by its members as partners, and

(b) any dealings by the limited liability partnership shall be treated for those purposes as dealings by its members in partnership (and not by the limited liability partnership as such),

and tax in respect of chargeable gains accruing to the members of the limited liability partnership on the disposal of any of its assets shall be assessed and charged on them separately.

(2) Where subsection (1) ceases to apply in relation to a limited liability partnership with the effect that tax is assessed and charged-

(a) on the limited liability partnership (as a company) in respect of chargeable gains accruing on the disposal of any of its assets, and

(b) on the members in respect of chargeable gains accruing on the disposal of any of their capital interests in the limited liability partnership,

it shall be assessed and charged on the limited liability partnership as if subsection (1) had never applied in relation to it.

(3) Neither the commencement of the application of subsection (1) nor the cessation of its application in relation to a limited liability partnership is to be taken as giving rise to the disposal of any assets by it or any of its members."

(4) After section 156 of that Act insert-

"Cessation of trade by limited liability partnership.

156A. - (1) Where, immediately before the time of cessation of trade, a member of a limited liability partnership holds an asset, or an interest in an asset, acquired by him for a consideration treated as reduced under section 152 or 153, he shall be treated as if a chargeable gain equal to the amount of the reduction accrued to him immediately before that time.

(2) Where, as a result of section 154(2), a chargeable gain on the disposal of an asset, or an interest in an asset, by a member of a limited liability partnership has not accrued before the time of cessation of trade, the member shall be treated as if the chargeable gain accrued immediately before that time.

(3) In this section "the time of cessation of trade", in relation to a limited liability partnership, means the time when section 59A(1) ceases to apply in relation to the limited liability partnership."

Inheritance tax.

11. In the Inheritance Tax Act 1984, after section 267 insert-

"Limited liability partner-ships.

267A. For the purposes of this Act and any other enactments relating to inheritance tax-

(a) property to which a limited liability partnership is entitled, or which it occupies or uses, shall be treated as property to which its members are entitled, or which they occupy or use, as partners,

(b) any business carried on by a limited liability partnership shall be treated as carried on in partnership by its members,

(c) incorporation, change in membership or dissolution of a limited liability partnership shall be treated as formation, alteration or dissolution of a partnership, and

(d) any transfer of value made by or to a limited liability partnership shall be treated as made by or to its members in partnership (and not by or to the limited liability partnership as such)."

Stamp duty.

12. - (1) Stamp duty shall not be chargeable on an instrument by which property is conveyed or transferred by a person to a limited liability partnership in connection with its incorporation within the period of one year beginning with the date of incorporation if the following two conditions are satisfied.

(2) The first condition is that at the relevant time the person-

(a) is a partner in a partnership comprised of all the persons who are or are to be members of the limited liability partnership (and no-one else), or

(b) holds the property conveyed or transferred as nominee or bare trustee for one or more of the partners in such a partnership.

(3) The second condition is that-

(a) the proportions of the property conveyed or transferred to which the persons mentioned in subsection (2)(a) are entitled immediately after the conveyance or transfer are the same as those to which they were entitled at the relevant time, or

(b) none of the differences in those proportions has arisen as part of a scheme or arrangement of which the main purpose, or one of the main purposes, is avoidance of liability to any duty or tax.

(4) For the purposes of subsection (2) a person holds property as bare trustee for a partner if the partner has the exclusive right (subject only to satisfying any outstanding charge, lien or other right of the trustee to resort to the property for payment of duty, taxes, costs or other outgoings) to direct how the property shall be dealt with.

(5) In this section "the relevant time" means-

(a) if the person who conveyed or transferred the property to the limited liability partnership acquired the property after its incorporation, immediately after he acquired the property, and

(b) in any other case, immediately before its incorporation.

(6) An instrument in respect of which stamp duty is not chargeable by virtue of subsection (1) shall not be taken to be duly stamped unless-

(a) it has, in accordance with section 12 of the Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it is duly stamped, or

(b) it is stamped with the duty to which it would be liable apart from that subsection.

Class 4 national insurance contributions.

13. In section 15 of the Social Security Contributions and Benefits Act 1992 and section 15 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Class 4 contributions), after subsection (3) insert-

"(3A) Where income tax is (or would be) charged on a member of a limited liability partnership in respect of profits or gains arising from the carrying on of a trade or profession by the limited liability partnership, Class 4 contributions shall be payable by him if they would be payable were the trade or profession carried on in partnership by the members."

Regulations

Insolvency and winding up.

14. - (1) Regulations shall make provision about the insolvency and winding up of limited liability partnerships by applying or incorporating, with such modifications as appear appropriate, Parts I to IV, VI and VII of the Insolvency Act 1986.

(2) Regulations may make other provision about the insolvency and winding up of limited liability partnerships, and provision about the insolvency and winding up of oversea limited liability partnerships, by-

(a) applying or incorporating, with such modifications as appear appropriate, any law relating to the insolvency or winding up of

companies or other corporations which would not otherwise have effect in relation to them, or

(b) providing for any law relating to the insolvency or winding up of companies or other corporations which would otherwise have effect in relation to them not to apply to them or to apply to them with such modifications as appear appropriate.

(3) In this Act "oversea limited liability partnership" means a body incorporated or otherwise established outside Great Britain and having such connection with Great Britain, and such other features, as regulations may prescribe.

Application of company law etc.

15. Regulations may make provision about limited liability partnerships and oversea limited liability partnerships (not being provision about insolvency or winding up) by-

(a) applying or incorporating, with such modifications as appear appropriate, any law relating to companies or other corporations which would not otherwise have effect in relation to them,

(b) providing for any law relating to companies or other corporations which would otherwise have effect in relation to them not to apply to them or to apply to them with such modifications as appear appropriate, or

(c) applying or incorporating, with such modifications as appear appropriate, any law relating to partnerships.

Consequential amendments.

16. - (1) Regulations may make in any enactment such amendments or repeals as appear appropriate in consequence of this Act or regulations made under it.

(2) The regulations may, in particular, make amendments and repeals affecting companies or other corporations or partnerships.

General.

17. - (1) In this Act "regulations" means regulations made by the Secretary of State by statutory instrument.

(2) Regulations under this Act may in particular-

(a) make provision for dealing with non-compliance with any of the regulations (including the creation of criminal offences),

(b) impose fees (which shall be paid into the Consolidated Fund), and

(c) provide for the exercise of functions by persons prescribed by

the regulations.

(3) Regulations under this Act may-

(a) contain any appropriate consequential, incidental, supplementary or transitional provisions or savings, and

(b) make different provision for different purposes.

(4) No regulations to which this subsection applies shall be made unless a draft of the statutory instrument containing the regulations (whether or not together with other provisions) has been laid before, and approved by a resolution of, each House of Parliament.

(5) Subsection (4) applies to-

(a) regulations under section 14(2) not consisting entirely of the application or incorporation (with or without modifications) of provisions contained in or made under the Insolvency Act 1986,

(b) regulations under section 15 not consisting entirely of the application or incorporation (with or without modifications) of provisions contained in or made under Part I, Chapter VIII of Part V, Part VII, Parts XI to XIII, Parts XVI to XVIII, Part XX or Parts XXIV to XXVI of the Companies Act 1985,

(c) regulations under section 14 or 15 making provision about oversea limited liability partnerships, and

(d) regulations under section 16.

(6) A statutory instrument containing regulations under this Act shall (unless a draft of it has been approved by a resolution of each House of Parliament) be subject to annulment in pursuance of a resolution of either House of Parliament.

Supplementary

Interpretation.

18. In this Act-

"address", in relation to a member of a limited liability partnership, means-

(a) if an individual, his usual residential address, and

(b) if a corporation or Scottish firm, its registered or principal office,

"business" includes every trade, profession and occupation,

"designated member" shall be construed in accordance with section 8,

"enactment" includes subordinate legislation (within the meaning of the Interpretation Act 1978),

"incorporation document" shall be construed in accordance with section 2,

"limited liability partnership" has the meaning given by section 1(2),

"member" shall be construed in accordance with section 4,

"modifications" includes additions and omissions,

"name", in relation to a member of a limited liability partnership, means-

(a) if an individual, his forename and surname (or, in the case of a peer or other person usually known by a title, his title instead of or in addition to either or both his forename and surname), and

(b) if a corporation or Scottish firm, its corporate or firm name,

"oversea limited liability partnership" has the meaning given by section 14(3),

"the registrar" means-

(a) if the registered office of the limited liability partnership is, or is to be, situated in England and Wales or in Wales, the registrar or other officer performing under the Companies Act 1985 the duty of registration of companies in England and Wales, and

(b) if its registered office is, or is to be, situated in Scotland, the registrar or other officer performing under that Act the duty of registration of companies in Scotland, and

"regulations" has the meaning given by section 17(1).

Commencement, extent and

19. - (1) The preceding provisions of this Act shall come into force on

short title.

such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed for different purposes.

(2) The Secretary of State may by order made by statutory instrument make any transitional provisions and savings which appear appropriate in connection with the coming into force of any provision of this Act.

(3) For the purposes of the Scotland Act 1998 this Act shall be taken to be a pre-commencement enactment within the meaning of that Act.

(4) Apart from sections 10 to 13 (and this section), this Act does not extend to Northern Ireland.

(5) This Act may be cited as the Limited Liability Partnerships Act 2000.

SCHEDULE

NAMES AND REGISTERED OFFICES
PART I
NAMES

Index of names
1. In section 714(1) of the Companies Act 1985 (index of names), after paragraph (d) insert-

"(da) limited liability partnerships incorporated under the Limited Liability Partnerships Act 2000,".

Name to indicate status
2. - (1) The name of a limited liability partnership must end with-

(a) the expression "limited liability partnership", or

(b) the abbreviation "llp" or "LLP".

(2) But if the incorporation document for a limited liability partnership states that the registered office is to be situated in Wales, its name must end with-

(a) one of the expressions "limited liability partnership" and "partneriaeth atebolrwydd cyfyngedig", or

(b) one of the abbreviations "llp", "LLP", "pac" and "PAC".

Registration of names
3. - (1) A limited liability partnership shall not be registered by a name-

(a) which includes, otherwise than at the end of the name, either of the expressions "limited liability partnership" and "partneriaeth atebolrwydd cyfyngedig" or any of the abbreviations "llp", "LLP", "pac" and "PAC",

(b) which is the same as a name appearing in the index kept under section 714(1) of the Companies Act 1985,

(c) the use of which by the limited liability partnership would in the opinion of the Secretary of State constitute a criminal offence, or

(d) which in the opinion of the Secretary of State is offensive.

(2) Except with the approval of the Secretary of State, a limited liability partnership shall not be registered by a name which-

(a) in the opinion of the Secretary of State would be likely to give the impression that it is connected in any way with Her Majesty's Government or with any local authority, or

(b) includes any word or expression for the time being specified in regulations under section 29 of the Companies Act 1985 (names needing approval),

and in paragraph (a) "local authority" means any local authority within the meaning of the Local Government Act 1972 or the Local Government etc. (Scotland) Act 1994, the Common Council of the City of London or the Council of the Isles of Scilly.

Change of name
4. - (1) A limited liability partnership may change its name at any time.

(2) Where a limited liability partnership has been registered by a name which-

(a) is the same as or, in the opinion of the Secretary of State, too like a name appearing at the time of registration in the index kept under section 714(1) of the Companies Act 1985, or

(b) is the same as or, in the opinion of the Secretary of State, too like a name which should have appeared in the index at that time,

the Secretary of State may within twelve months of that time in writing

direct the limited liability partnership to change its name within such period as he may specify.

(3) If it appears to the Secretary of State-

(a) that misleading information has been given for the purpose of the registration of a limited liability partnership by a particular name, or

(b) that undertakings or assurances have been given for that purpose and have not been fulfilled,

he may, within five years of the date of its registration by that name, in writing direct the limited liability partnership to change its name within such period as he may specify.

(4) If in the Secretary of State's opinion the name by which a limited liability partnership is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public, he may in writing direct the limited liability partnership to change its name within such period as he may specify.

(5) But the limited liability partnership may, within three weeks from the date of the direction apply to the court to set it aside and the court may set the direction aside or confirm it and, if it confirms it, shall specify the period within which it must be complied with.

(6) In sub-paragraph (5) "the court" means-

(a) if the registered office of the limited liability partnership is situated in England and Wales or in Wales, the High Court, and

(b) if it is situated in Scotland, the Court of Session.

(7) Where a direction has been given under sub-paragraph (2), (3) or (4) specifying a period within which a limited liability partnership is to change its name, the Secretary of State may at any time before that period ends extend it by a further direction in writing.

(8) If a limited liability partnership fails to comply with a direction under this paragraph-

(a) the limited liability partnership, and

(b) any designated member in default,

commits an offence.

(9) A person guilty of an offence under sub-paragraph (8) is liable on

summary conviction to a fine not exceeding level 3 on the standard scale.

Notification of change of name
5. - (1) Where a limited liability partnership changes its name it shall deliver notice of the change to the registrar.

(2) A notice delivered under sub-paragraph (1)-

(a) shall be in a form approved by the registrar, and

(b) shall be signed by a designated member of the limited liability partnership or authenticated in a manner approved by the registrar.

(3) Where the registrar receives a notice under sub-paragraph (2) he shall (unless the new name is one by which a limited liability partnership may not be registered)-

(a) enter the new name in the index kept under section 714(1) of the Companies Act 1985, and

(b) issue a certificate of the change of name.

(4) The change of name has effect from the date on which the certificate is issued.

Effect of change of name
6. A change of name by a limited liability partnership does not-

(a) affect any of its rights or duties,

(b) render defective any legal proceedings by or against it,

and any legal proceedings that might have been commenced or continued against it by its former name may be commenced or continued against it by its new name.

Improper use of "limited liability partnership" etc.
7. - (1) If any person carries on a business under a name or title which includes as the last words-

(a) the expression "limited liability partnership" or "partneriaeth atebolrwydd cyfyngedig", or

(b) any contraction or imitation of either of those expressions,

that person, unless a limited liability partnership or oversea limited

liability partnership, commits an offence.

(2) A person guilty of an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Similarity of names

8. In determining for the purposes of this Part whether one name is the same as another there are to be disregarded-

(1) the definite article as the first word of the name,

(2) any of the following (or their Welsh equivalents or abbreviations of them or their Welsh equivalents) at the end of the name-

"limited liability partnership",
"company",
"and company",
"company limited",
"and company limited",
"limited",
"unlimited",
"public limited company", and
"investment company with variable capital", and

(3) type and case of letters, accents, spaces between letters and punctuation marks,

and "and" and "&" are to be taken as the same.

Statutory Instrument 2001 No. 1090
Limited Liability Partnerships Regulations 2001

STATUTORY INSTRUMENTS

2001 No. 1090

PARTNERSHIP

LIMITED LIABILITY PARTNERSHIPS

Limited Liability Partnerships Regulations 2001

Made 19th March 2001
Coming into force 6th April 2001

ARRANGEMENT OF REGULATIONS

PART VI

Default Provision and Expulsion
7. Default provision for limited liability partnerships.
8. Expulsion.

PART VII

Miscellaneous
9. General and consequential amendments.
10. Application of subordinate legislation.

SCHEDULES

Schedule 1 - Modifications to Part VII of the Companies Act 1985.

Schedule 2 -
Part I Modifications to provisions of the Companies Act 1985 applied to limited liability partnerships.
Part II Modifications to the Company Directors Disqualification Act 1986.

Schedule 3 - Modifications to the Insolvency Act 1986.

Schedule 4 - Application of provisions to Scotland.

Schedule 5 - General and consequential amendments in other legislation.

Schedule 6 - Subordinate legislation applied.

Whereas a draft of these Regulations has been approved by a resolution of each House of Parliament pursuant to section 17(4) of the Limited Liability Partnerships Act 2000[1];

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 14, 15, 16 and 17 of the Limited Liability Partnerships Act 2000 and all other powers enabling him in that behalf hereby makes the following Regulations:

PART I

CITATION, COMMENCEMENT AND INTERPRETATION

Citation and commencement

1. These Regulations may be cited as the Limited Liability Partnerships Regulations 2001 and shall come into force on 6th April 2001.

Interpretation

2. In these Regulations -

"the 1985 Act" means the Companies Act 1985[2];

"the 1986 Act" means the Insolvency Act 1986[3];

"the 2000 Act" means the Financial Services and Markets Act 2000[4];

"devolved", in relation to the provisions of the 1986 Act, means the provisions of the 1986 Act which are listed in Schedule 4 and, in their application to Scotland, concern wholly or partly, matters which are set out in Section C.2 of Schedule 5 to the Scotland Act 1998[5] as being exceptions to the reservations made in that Act in the field of insolvency;

"limited liability partnership agreement", in relation to a limited liability partnership, means any agreement express or implied between the members of the limited liability partnership or between the limited liability partnership and the members of the limited liability partnership which determines the mutual rights and duties of the members, and their rights and duties in relation to the limited liability partnership;

"the principal Act" means the Limited Liability Partnerships Act 2000; and

"shadow member", in relation to limited liability partnerships, means a person in accordance with whose directions or instructions the members of the limited liability partnership are accustomed to act (but so that a person is not deemed a shadow member by reason only that the members of the limited partnership act on advice given by him in a professional capacity).

PART II

ACCOUNTS AND AUDIT

Application of the accounts and audit provisions of the 1985 Act to limited liability partnerships

3. - (1) Subject to paragraph (2), the provisions of Part VII of the 1985 Act (Accounts and Audit)[6] shall apply to limited liability partnerships.

(2) The enactments referred to in paragraph (1) shall apply to limited liability partnerships, except where the context otherwise requires, with the following modifications -

(a) references to a company shall include references to a limited liability partnership;

(b) references to a director or to an officer of a company shall include references to a member of a limited liability partnership;

(c) references to other provisions of the 1985 Act and to provisions of the Insolvency Act 1986 shall include references to those provisions as they apply to limited liability partnerships in accordance with Parts III and IV of these Regulations;

(d) the modifications set out in Schedule 1 to these Regulations; and

(e) such further modifications as the context requires for the purpose of giving effect to those provisions as applied by this Part of these Regulations.

PART III

COMPANIES ACT 1985 AND COMPANY DIRECTORS DISQUALIFICATION ACT 1986

Application of the remainder of the provisions of the 1985 Act and of the provisions of the Company Directors Disqualification Act 1986 to limited liability partnerships

4. - (1) The provisions of the 1985 Act specified in the first column of Part I of Schedule 2 to these Regulations shall apply to limited liability partnerships, except where the context otherwise requires, with the following modifications -

(a) references to a company shall include references to a limited liability partnership;

(b) references to the Companies Acts shall include references to the principal Act and regulations made thereunder;

(c) references to the Insolvency Act 1986 shall include references to that Act as it applies to limited liability partnerships by virtue of Part IV of these Regulations;

(d) references in a provision of the 1985 Act to other provisions of that Act shall include references to those other provisions as they apply to limited liability partnerships by virtue of these Regulations;

(e) references to the memorandum of association of a company shall include references to the incorporation document of a limited liability partnership;

(f) references to a shadow director shall include references to a shadow member;

(g) references to a director of a company or to an officer of a company shall include references to a member of a limited liability partnership;

(h) the modifications, if any, specified in the second column of Part I of Schedule 2 opposite the provision specified in the first column; and

(i) such further modifications as the context requires for the purpose of giving effect to that legislation as applied by these Regulations.

(2) The provisions of the Company Director Disqualification Act 1986[7] shall apply to limited liability partnerships, except where the context otherwise requires, with the following modifications -

(a) references to a company shall include references to a limited liability partnership;

(b) references to the Companies Acts shall include references to the principal Act and regulations made thereunder and references to the companies legislation shall include references to the principal Act, regulations made thereunder and to any enactment applied by regulations to limited liability partnerships;

(d) references to the Insolvency Act 1986 shall include references to that Act as it applies to limited liability partnerships by virtue of Part IV of these Regulations;

(e) references to the memorandum of association of a company shall include references to the incorporation document of a limited liability partnership;

(f) references to a shadow director shall include references to a shadow member;

(g) references to a director of a company or to an officer of a company shall include references to a member of a limited liability partnership;

(h) the modifications, if any, specified in the second column of Part II of Schedule 2 opposite the provision specified in the first column; and

(i) such further modifications as the context requires for the purpose of giving effect to that legislation as applied by these Regulations.

PART IV

WINDING UP AND INSOLVENCY

Application of the 1986 Act to limited liability partnerships

5. - (1) Subject to paragraphs (2) and (3), the following provisions of the 1986 Act, shall apply to limited liability partnerships -

(a) Parts I, II, III, IV, VI and VII of the First Group of Parts (company insolvency; companies winding up),

(b) the Third Group of Parts (miscellaneous matters bearing on both company and individual insolvency; general interpretation; final provisions)[8].

(2) The provisions of the 1986 Act referred to in paragraph (1) shall apply to limited liability partnerships, except where the context otherwise requires, with the following modifications -

(a) references to a company shall include references to a limited liability partnership;

(b) references to a director or to an officer of a company shall include references to a member of a limited liability partnership;

(c) references to a shadow director shall include references to a shadow member;

(d) references to the 1985 Act, the Company Directors Disqualification Act 1986, the Companies Act 1989[9] or to any provisions of those Acts or to any provisions of the 1986 Act shall include references to those Acts or provisions as they apply to limited liability partnerships by virtue of the principal Act;

(e) references to the memorandum of association of a company and to the articles of association of a company shall include references to the limited liability partnership agreement of a limited liability partnership;

(f) the modifications set out in Schedule 3 to these Regulations; and

(g) such further modifications as the context requires for the purpose of giving effect to that legislation as applied by these Regulations.

(3) In the application of this regulation to Scotland, the provisions of the 1986 Act referred to in paragraph (1) shall not include the provisions listed in Schedule 4 to the extent specified in that Schedule.

PART V

FINANCIAL SERVICES AND MARKETS

Application of provisions contained in Parts XV and XXIV of the 2000 Act to limited liability partnerships

6. - (1) Subject to paragraph (2), sections 215(3),(4) and (6), 356, 359(1) to (4), 361 to 365, 367, 370 and 371 of the 2000 Act shall apply to limited liability partnerships.

(2) The provisions of the 2000 Act referred to in paragraph (1) shall apply to limited liability partnerships, except where the context otherwise requires, with the following modifications -

(a) references to a company shall include references to a limited liability partnership;

(b) references to body shall include references to a limited liability partnership; and

(c) references to the 1985 Act, the 1986 Act or to any of the provisions of those Acts shall include references to those Acts or provisions as they apply to limited liability partnerships by virtue of the principal Act.

PART VI

DEFAULT PROVISION

Default provision for limited liability partnerships

7. The mutual rights and duties of the members and the mutual rights and duties of the limited liability partnership and the members shall be determined, subject to the provisions of the general law and to the terms of any limited liability partnership agreement, by the following rules:

(1) All the members of a limited liability partnership are entitled to share equally in the capital and profits of the limited liability partnership.

(2) The limited liability partnership must indemnify each member in respect of payments made and personal liabilities incurred by him -

(a) in the ordinary and proper conduct of the business of the limited liability partnership; or

(b) in or about anything necessarily done for the preservation of the business or property of the limited liability partnership.

(3) Every member may take part in the management of the limited liability partnership.

(4) No member shall be entitled to remuneration for acting in the business or management of the limited liability partnership.

(5) No person may be introduced as a member or voluntarily assign an interest in a limited liability partnership without the consent of all existing members.

(6) Any difference arising as to ordinary matters connected with the business of the limited liability partnership may be decided by a majority of the members, but no change may be made in the nature of the business of the limited liability partnership without the consent of all the members.

(7) The books and records of the limited liability partnership are to be made available for inspection at the registered office of the limited liability partnership or at such other place as the members think fit and every member of the limited liability partnership may when he thinks fit have access to and inspect and copy any of them.

(8) Each member shall render true accounts and full information of all things affecting the limited liability partnership to any member or his legal representatives.

(9) If a member, without the consent of the limited liability partnership, carries on any business of the same nature as and competing with the limited liability partnership, he must account for and pay over to the limited liability partnership all profits made by him in that business.

(10) Every member must account to the limited liability partnership for any benefit derived by him without the consent of the limited liability partnership from any transaction concerning the limited

liability partnership, or from any use by him of the property of the limited liability partnership, name or business connection.

Expulsion

8. No majority of the members can expel any member unless a power to do so has been conferred by express agreement between the members.

PART VII

MISCELLANEOUS

General and consequential amendments

9. - (1) Subject to paragraph (2), the enactments mentioned in Schedule 5 shall have effect subject to the amendments specified in that Schedule.

(2) In the application of this regulation to Scotland -

(a) paragraph 15 of Schedule 5 which amends section 110 of the 1986 Act shall not extend to Scotland; and

(b) paragraph 22 of Schedule 5 which applies to limited liability partnerships the culpable officer provisions in existing primary legislation shall not extend to Scotland insofar as it relates to matters which have not been reserved by Schedule 5 to the Scotland Act 1998.

Application of subordinate legislation

10. - (1) The subordinate legislation specified in Schedule 6 shall apply as from time to time in force to limited liability partnerships and -

(a) in the case of the subordinate legislation listed in Part I of that Schedule with such modifications as the context requires for the purpose of giving effect to the provisions of the Companies Act 1985 which are applied by these Regulations;

(b) in the case of the subordinate legislation listed in Part II of that Schedule with such modifications as the context requires for the purpose of giving effect to the provisions of the Insolvency Act 1986 which are applied by these Regulations; and

(c) in the case of the subordinate legislation listed in Part III of that Schedule with such modifications as the context requires for the purpose of giving effect to the provisions of the Business Names Act 1985 and the Company Directors Disqualification Act 1986 which are applied by these Regulations.

(2) In the case of any conflict between any provision of the subordinate legislation applied by paragraph (1) and any provision of these Regulations, the latter shall prevail.

Annex G

Kim Howells,
Parliamentary Under-Secretary of State, for Consumers and Corporate Affairs, Department of Trade and Industry

19th March 2001

SUMMARY OF ISSUES FOR CONSULTATION

REGISTRATION REQUIREMENTS

Issue 1

Do you agree that we can allow a partner of a limited liability partnership to pay for his contribution in kind, as long as the information is properly disclosed in the registration document?

Issue 2

Do you agree that a partner in a limited liability partnership should be allowed to pay his contribution in installments, subject to proper disclosure of this information?

Issue 3

Do you agree that a limited liability partnership in Singapore should be required to include the words “Limited Liability Partnership” or the abbreviation “LLP” in its business name and letterheads?

Issue 4

Do you agree that we should retain the 20-partner limit for limited liability partnerships for now, but empower the Minister to increase the limit in the future?

Issue 5

Do you think that we should statutorily require limited liability partnerships in Singapore to have at least two partners?

Issue 6

Do you agree that the disqualification criteria for company directors in the Companies Act should apply to the partners of a limited liability partnership?

Issue 7

Do you agree that the proposed conversion process for an existing company to a limited liability partnership is sufficient?

Issue 8

Do you agree that the proposed conversion process for an existing partnership to a limited liability partnership is sufficient? Do you agree that the one-year transition period for the waiver of stamp duty is sufficient?

DISCLOSURE AND REPORTING REQUIREMENT

Issue 9

Do you agree that a limited liability partnership should not be required by law to have its accounts audited and filed with the regulators? Do you think the law should require a limited liability partnership to prepare financial statements that comply with the prescribed accounting standards?

LIABILITY OF A PARTNER

Issue 10

Do you agree that while a partner in a limited liability partnership will not be personally liable for the malpractice of other partners in the firm, the partner who is negligent and fraudulent should be subject to unlimited personal liability according to general principles of law?

Issue 11

Do you agree that if a partner knew, at the point of distribution, that the limited liability partnership was not solvent, he should be liable to repay the amount distributed for a period of 3 years after the distribution date?

Issue 12

Do you agree that an assignment by a partner of a limited liability partnership should only operate as a transfer of his economic interest (e.g. rights to profits), and not a transfer of his partnership status? Should such assignments require the consent of the other partners in the limited liability partnership?

DISSOLUTION AND WINDING UP

Issue 13

Do you agree that the death or bankruptcy of a partner should not automatically dissolve the limited liability partnership?

Issue 14

Do you agree that the Court should be allowed to wind up a limited liability partnership if it is satisfied that: (a) the limited liability partnership is unable to carry on business in conformity with the partnership agreement; or (b) it is equitable to do so?

Issue 15

Do you agree that a limited liability partnership should be allowed to wind up voluntarily if all the partners agree to do so? Do you agree that the law need not prescribe a procedure for voluntary winding up?

PUBLIC CONSULTATION PAPER ON LIMITED LIABILITY PARTNERSHIPS IN SINGAPORE

1 INTRODUCTION

The Study Team on Limited Partnerships ("LPs") and Limited Liability Partnerships ("LLPs") was set up by the Ministry of Finance in November 2002. Its terms of reference are to work out the details of the legal framework governing LP and LLP. The team members are:

Co-Chairmen : Mr Ronnie Quek Cheng Chye, Allen & Gledhill
Mr Quek See Tiat, PricewaterhouseCoopers
Members : Mr Chee Hong Tat, Ministry of Finance
Ms Julie Huan, Attorney-General's Chambers
Mr Ong Pang Chan, Ministry of Finance
Ms Suria Suriakumari Sidambaram, Registry of Companies and Businesses
Ms Toh Wee San, Registry of Companies and Businesses

2 BACKGROUND

2.1 There are currently two forms of business structures in Singapore: business firms (i.e. sole proprietorships and general partnerships) and companies. A business firm is not a separate legal entity from its owners. Business owners have unlimited and joint liability for all the debts and liabilities incurred by their firms and by their business partners. A company, on the other hand, is a separate legal entity from its members. This means that a member's personal liability is separate from the company and from other members. In addition, a member's liability is limited to the capital that he has invested in the company.

2.2 The Company Legislation and Regulatory Framework Committee ("CLRFC") had recommended that legislation be enacted to introduce LPs and LLPs into Singapore. These new structures will increase the options available for businesses and investments. The CLRFC's report indicated that LLPs are useful as business, professional and investment vehicles, while LPs can be used for private equity and fund investment businesses. The CLRFC further recommended that the Singapore LLP Act be modelled on the US Delaware Revised Uniform Partnership Act (the "Delaware Code") and that LLPs be made available to all types of businesses.

2.3 This consultation paper focuses on LLPs. There is a separate consultation paper on LPs and this is available at **http://www.mof.gov.sg/cor/public_LP-LLP.html**. In

reviewing the requirements under the LLP Act, the team started with the US-Delaware Code, and considered whether adjustments were required to suit our local needs. The following areas are presented in this consultation paper: (a) registration requirements; (b) disclosure and reporting requirements; (c) liability of partners and (d) dissolution requirements. The team is also studying the tax treatment of LPs and LLPs and will be including the recommendations in its report to the Government.

2.4 The team would like to invite the business community, professionals, academics and all interested persons to comment on its preliminary views in this consultation paper. Respondents are also welcome to surface other related issues pertaining to the LLPs. We would appreciate it if all responses could be received before **31 July 2003**. Feedback can be submitted via email to **MOF_LP_LLP@mof.gov.sg** or via fax to **6337 4134**.

3 NATURE OF A LIMITED LIABILITY PARTNERSHIP

3.1 The LLP is a business structure that offers all its members limited liability while allowing them to retain the flexibility of operating the LLP as a traditional partnership. Unlike a general partnership or an LP, the LLP is a separate legal entity from its members. This means that it can own property in its name and survive changes to its partners. An LLP partner does not assume personal liability for the debts or obligations incurred by the partnership or other partners. His liability is capped to the amount which he has agreed to contribute to the LLP. However, the partner will assume unlimited liability when he knowingly causes the LLP to commit a tortious act.

3.2 Jurisdictions such as the UK and US have introduced the LLP as a business vehicle. The UK introduced the LLP Act in 2000, providing businesses with a new structure that has the features of a company, but which is taxed and operated as a partnership. In the US, the model that has been most widely adopted is the Delaware model. Several researchers have commented that the popularity of the Delaware model stems from its approach, which regards LLPs primarily as partnerships instead of treating them as companies, as in the UK.

3.3 The team is of the view that the introduction of the LLP serves several useful purposes. First, the LLP contains features that are suitable for some businesses, such as professional firms, start-ups and family-owned businesses. The introduction of LLPs would also enhance the business legal infrastructure in Singapore. This would help us attract more foreign businesses to Singapore and enable our local firms to compete more effectively internationally.

4 REGISTRATION REQUIREMENTS

4.1 Information required for registration

4.1.1 In the UK, LLPs are required to submit an incorporation document to the Registrar at the point of incorporation[1]. The incorporation document sets out the name of the LLP, the address of its registered office, the name, address and date of birth of each partner as well as details of the designated members[2]. The incorporation document must be signed by all the partners and lodged with the Registrar. The incorporation document will be available for inspection by any member of the public.

4.1.2 The team is of the view that it is important for the total capital contribution of the LLP to be disclosed, as this serves to inform potential creditors of the limits of the LLP's limited liability. The team recommends that the following information be required for the registration of an LLP:

(a) the name of the LLP;
(b) the general nature of its business;
(c) the principal place of business from which the LLP's business is conducted;
(d) the name and address of every partner. Where the partner is a corporation, the corporation's name, registration number and registered office;
(e) the term, if any, for the which the LLP will exist, and the date of its commencement; and
(f) the total capital contributed to LLP (including how much of the contributions have been made in cash and how much by way of other forms of consideration).

Issue 1

Do you agree that we can allow a partner of a limited liability partnership to pay for his contribution in kind, as long as the information is properly disclosed in the registration document?

4.1.3 The team recommends that, as with the proposed arrangement for LPs, an LLP partner should be allowed to pay his capital contributions in installments. This will not change the liability of the LLP partner; he will remain liable for the full amount that he has agreed to contribute. The team feels that this arrangement would facilitate the setting up of LLPs. At the same time, creditors' interests would not be compromised, as the information will be disclosed and the partner will remain liable for the amount indicated in the registration document.

Issue 2

[1] The Registrar of LLPs in the UK is the same as the Registrar of companies.

[2] Designated members have the same rights and duties towards the LLP as any other member. The law however places extra responsibilities on the designated members i.e. they are responsible for appointing auditors, delivering accounts to the Registrar, notifying the Registrar of any changes in the LLP and acting on behalf of the LLP if it is dissolved etc.

Do you agree that a partner in a limited liability partnership should be allowed to pay his contribution in installments, subject to proper disclosure of this information?

4.2 Disclosure of limited liability status

4.2.1 A necessary safeguard for any limitation of liability is that the nature of the entity is sufficiently disclosed e.g. limited liability companies have to identify themselves with the word "Limited" or the abbreviation "Ltd". In Jersey, the UK and US-Delaware, an LLP must identify itself with the words "Limited Liability Partnership" or the abbreviation "LLP". In addition, the LLP must state its name and registration number, in legible lettering, on all its stationary or communications to the public.

4.2.2 The team recommends that LLPs in Singapore be required to include the words "Limited Liability Partnership" or the abbreviation "LLP" in their business names and letterheads. This would alert a potential third party to the fact that he is dealing with a partnership whose partners have limited liability.

Issue 3

Do you agree that a limited liability partnership in Singapore should be required to include the words "Limited Liability Partnership" or the abbreviation "LLP" in its business name and letterheads?

4.3 Composition of limited liability partnership

4.3.1 In Jersey, the UK and US-Delaware, the law does not prescribe an upper limit on the number of partners in an LLP. Under the Singapore Companies Act, partnerships of more than 20 persons have to be registered as companies[3], with an exception for partnerships formed for the purpose of carrying on a profession or calling which can only be carried on by those who possess qualifications prescribed by law[4]. In other words, professional partnerships such as legal and accounting firms are not subject to the 20-partner limit.

4.3.2 Most of the members of the team are of the view that we should retain the 20-partner limit for now, as this is similar to the current limit for general partnerships and exempt private companies in Singapore. This should be sufficient to meet the needs of the non-professional partnerships. To facilitate future adjustments, the team further recommends that the Minister be empowered by the LLP Act to increase the limit.

Issue 4

[3] Section 17(3), Singapore Companies Act

[4] Section 14(4) , Singapore Companies Act

Do you agree that we should retain the 20-partner limit for limited liability partnerships for now, but empower the Minister to increase the limit in the future?

4.3.3 In Jersey and the UK, an LLP must consist of at least two partners. Article 21 of the Limited Liability Partnerships (Jersey) Law 1997 ("Jersey LLP Act") provides that an LLP "*shall be dissolved immediately upon there ceasing to be two or more partners in the partnership.*" In the UK, if an LLP is left with one partner and that partner knowingly allows the LLP to continue with him as the sole partner for more than 6 months, he loses the protection of limited liability. In US-Delaware, an LLP must start with two or more partners, but if the LLP is subsequently left with one partner, it appears that the LLP can still continue to operate.

4.3.4 The team is still considering whether we should statutorily require LLPs in Singapore to have at least two partners. One view is that as a partnership is by definition "*a voluntary association of two or more persons who jointly own and carry on a business for profit*", a one-member LLP will be a misnomer and may be misleading and confusing. It will also be inconsistent with international practice as described above. The other view is that we should allow LLPs to operate with one partner. This will be more convenient for some businessmen, who may otherwise have to find an additional partner before they can form an LLP. Proponents of this view feel that as the government has already accepted the CLRFC's proposal to allow private companies to incorporate with just one shareholder and one director (who can be the same person), an LLP should be allowed to operate with one partner. The team would like to seek further views on this matter before finalising its recommendation.

Issue 5

Do you think that we should statutorily require limited liability partnerships in Singapore to have at least two partners?

4.4 Suitability of partners

4.4.1 In the UK, LLP partners are subject to the same disqualifications and penalties that currently apply to company directors. These disqualifications relate to the unsuitability of a person resulting from his conviction on certain offences, persistent breaches of company legislation, fraudulent conduct in the management of the company etc.

4.4.2 In Singapore, the Companies Act also contains disqualification criteria for company directors. The team recommends that these disqualification criteria be extended to apply to LLP partners. This acts as a safeguard to prevent people, who are deemed unsuitable by law to manage businesses, from becoming LLP partners. This arrangement is similar to the approach in the UK.

Issue 6

Do you agree that the disqualification criteria for company directors in the Companies Act should apply to the partners of a limited liability partnership?

4.5 Conversion from a company or general partnerships to a limited liability partnership

4.5.1 In US-Delaware, a corporation or general partnership can easily convert to an LLP, by filing a certificate of conversion with the Secretary of State[5]. The Delaware Code does not set any rules on how an existing company/partnership should go about transferring its business, assets and liabilities to the LLP. However, it lays down certain basic safeguards to protect creditors' interest e.g. all the debts and obligations of the previous entity must be attached to the LLP. This means that a partner in a general partnership cannot avoid his liability by simply converting the general partnership to an LLP.

4.5.2 The UK LLP Act does not provide for a conversion process. However, it does provide that any general partnership converting to an LLP will receive relief from stamp duty on any property transferred in the first year, subject to certain conditions. In addition, where an LLP succeeds to a business previously carried on by an existing partnership, there should be no cessation of trade for income tax purposes.

4.5.3 The team recommends that the law should provide a seamless process for a company that is converting to an LLP. The company should be able to retain its company name and registration number. The LLP legislation should also provide for the transfer of the assets and liabilities of the company to the LLP.

4.5.4 Some safeguards are proposed. First, the company must obtain unanimous consent from all its shareholders before the conversion. The company should also publicly announce the conversion, so that third parties will be aware of the change in its status. The team further recommends that the legislative conversion process should only apply to companies that have not granted any charges registered under section 131 of Companies Act. This is because companies which have granted charges will not be able to preserve the rights of the chargees when it converts to an LLP [6]. A final safeguard is that the capital contributed to the LLP should be no less than the capital remaining in the company at the time of conversion. This is important for creditor protection since the creditors' only recourse now is to the assets of the LLP.

[5] Section 15-1001, Delaware Revised Uniform Partnership Act

[6] To maintain the simple structure of the LLP, the study team is of the view that the LLP should not be required to maintain a register of charges like a company. This will mean that any security over its assets will have to be created through other means e.g. registration under the Bills of Sale Act (Cap. 24), and the practical consequence of this is that the LLP will not be able to grant floating charges over its assets.

4.5.5 In the case of general partnerships, the team recommends that there should be a seamless conversion process for a general partnership to an LLP. This will allow the partnership to retain its business name and business registration number. In coming up with the conversion process, the team considered the fact that an LLP is a separate legal entity but a partnership is not. One area of complication is the treatment of properties and assets. In a general partnership, properties and assets are held in the name of the partners. In an LLP, the properties and assets can be held in the name of the LLP. To facilitate the conversion, we propose that the LLP Act provides that whenever a partnership converts to an LLP, all the properties and assets that are vested in the partnership will be deemed to vest in the LLP. In addition, all the liabilities and obligations of the partnership will be transferred to the LLP. To protect creditors, the team recommends that the partners (who were previously partners of the general partnership) should continue to have unlimited liability for the debts and obligations that arose prior to or that arose out of a contract entered into prior to the formation of the LLP. In other words, a partner in a general partnership cannot avoid his liability by simply converting the general partnership to an LLP. This is similar to the arrangements in US-Delaware.

4.5.6 One of the key conversion issues is the tax treatment of LLPs, e.g. whether a partnership is allowed to carry forward its tax losses and allowances when it converts to an LLP. The team is of the view that tax relief should be provided to facilitate the conversion of partnerships to LLPs. The team recommends allowing an LLP to assume the tax attributes of the partnership, e.g. capital allowances and accrued expenses, that were previously incurred by the partnership. There should be no time limit for the LLP to utilise these tax attributes. We also propose having a window period of one year, during which stamp duty on the transfer of assets and properties from the partnership to the LLP would be waived. The one-year window period will commence from the date the LLP vehicle becomes available[7].

Issue 7

Do you agree that the proposed conversion process for an existing company to a limited liability partnership is sufficient?

Issue 8

Do you agree that the proposed conversion process for an existing partnership to a limited liability partnership is sufficient? Do you agree that the one-year transition period for the waiver of stamp duty is sufficient?

[7] Unlike normal general partnerships, certain professional partnerships i.e. law firms an accounting firms may not be able to avail themselves to the LLP until their respective governing profession Acts have been amended. Thus, there may be different date of availability.

5 DISCLOSURE AND REPORTING REQUIREMENTS

5.1 Filing and audit requirements

5.1.1 In Jersey, all LLPs are required to maintain accounting records but there is no statutory requirement for the accounts to be audited or filed with the Registrar[8]. In US-Delaware, an LLP is only required to file an annual report, containing information relating to non-financial items such as the name, address and number of partners in the LLP.

5.1.2 In the UK, the accounting and audit requirements for LLPs are similar to those of companies. This approach of treating LLPs as if they were companies has been criticised and cited as a reason why the UK LLP model is not as widely used.

5.1.3 The team prefers the Jersey and US-Delaware arrangements over the UK arrangement. Thus an LLP, like a general partnership, would not be required by law to have its accounts audited, or file with the regulators. However, it would be required to keep proper accounting records that would enable true and fair financial statements to be prepared and audited if necessary. As an additional safeguard, the team is considering whether an LLP should also be required to prepare financial statements that comply with the prescribed accounting standards i.e. the Financial Reporting Standards.

Issue 9

Do you agree that a limited liability partnership should not be required by law to have its accounts audited and filed with the regulators? Do you think the law should require a limited liability partnership to prepare financial statements that comply with the prescribed accounting standards?

6 LIABILITY OF A PARTNER

6.1 Liability of the Limited Liability Partnership and its partners

6.1.1 In US-Delaware, section 15-306(c) of the Delaware Code provides that, "*an obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort or otherwise, is solely the obligation of the partnership. A person is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment or otherwise, for such an obligation solely by reason of being or acting as a partner*." This means that a partner of an LLP is not personally liable for claims against the firm arising from negligence or other forms of malpractice, unless the partner was personally involved in the negligence or malpractice.

[8] Article 9, Limited Liability Partnerships (Jersey) Law 1997

6.1.2 The UK LLP Act does not deal explicitly with this issue as it is deemed as a logical consequence flowing from the separate legal personality of the LLP. Section 6 of the UK LLP Act 2000 states that every member of an LLP is an agent of the LLP and where a member of the LLP is liable to any person, the LLP is liable to the same extent as the member.

6.1.3 The team is of the view that, unlike in the case of a general partnership, an LLP partner should not be personally liable for the malpractice of other partners in the firm. If the LLP becomes insolvent, a partner's liability will be limited to the amount that he has agreed to contribute. However, general law principles will apply to LLPs and hence, a partner who is negligent or fraudulent could still be sued without any limit to his liability, i.e. he is personally liable.

Issue 10

Do you agree that while a partner in a limited liability partnership will not be personally liable for the malpractice of other partners in the firm, the partner who is negligent and fraudulent should be subject to unlimited personal liability according to general principles of law?

6.2 Capital withdrawal

6.2.1 Section 214A of the UK Insolvency Act provides that withdrawals made by LLP partners during the 2 years prior to the commencement of winding up will be subject to clawback, if the partner knew or had reasonable grounds for believing that the LLP was, or would be unable to pay its debts at the time of withdrawal. The clawback applies to all forms of withdrawals, i.e. profits, salaries, interests on loans to the LLP etc.

6.2.2 In Jersey, a partner of an LLP is allowed to withdraw his capital. Article 5(3) of the Jersey LLP Act provides that if the partner withdraws his capital when the LLP is insolvent, or if the LLP becomes insolvent as a result of the withdrawal, the partner will be liable to repay the entire amount withdrawn. There is no time limit to the clawback period. Jersey also provides in Article 5(4) that a partner is liable to repay the amount withdrawn if the LLP becomes insolvent within 6 months after the withdrawal and the withdrawal was other than in the ordinary course of business.

6.2.3 Withdrawal of capital contributions is also allowed in US-Delaware. However, the capital withdrawn is subject to clawback if the LLP fails the assets test, i.e. its liabilities exceed its assets. Section 15-309(b) of the Delaware Code provides that if the partner of the LLP knew, at the point of withdrawal, that the LLP had failed the assets test, he will have an obligation to repay the amount withdrawn for a period of 3 years after the withdrawal date. In US-Delaware, the clawback provision applies to most types of distribution, including profits. However, compensation for benefits or payments made

in the ordinary course of business pursuant to a bona fide retirement or benefits program are not subject to clawback.

6.2.4 The team is in favour of adopting the US-Delaware approach. A partner would be allowed to withdraw his capital contribution from the LLP. If the withdrawal is done when the LLP is solvent (i.e. it can pay its debts when they fall due; and its assets exceed its liabilities, including contingent liabilities), the partner will not be subject to any clawback after the withdrawal. However, if the partner knew at the point of distribution, that the LLP was not solvent, he would be liable to repay the amount distributed (which includes distributed profits and capital withdrawn) for a period of 3 years after the distribution. The partner would only be liable for debts and liabilities incurred during the period when his contribution represented an asset of the LLP, as that is the period when he is involved as a partner of the firm. For greater transparency, the team further recommends that the LLP should inform the regulators whenever there is a reduction in its capital.

Issue 11

Do you agree that if a partner knew, at the point of distribution, that the limited liability partnership was not solvent, he should be liable to repay the amount distributed for a period of 3 years after the distribution date?

6.3 Assignment/assignation by partners

6.3.1 In US-Delaware, sections 15-502 and 15-503 of the Delaware Code provide that a partnership interest is personal property and that only a partner's economic interest may be transferred. The transferee only has the right to receive distributions but cannot participate in management or inspect the LLP's books or records. Similarly in the UK, a transferee is entitled to receive distributions but may not participate in the management or administration of the LLP. The effect is that a partner cannot unilaterally assign his partnership status such that the transferee becomes a partner in his place.

6.3.2 The team agrees with the practices in the UK and US-Delaware, i.e. an LLP partner should only be allowed to transfer his economic interests to a third party but not his partnership status. If an LLP partner wants to transfer his partnership status to another person, this should be regarded as a change in the composition of the LLP, i.e. the transferor retires from the firm and the transferee is admitted as a new partner, and this requirement/admission is in turn governed by the LLP agreement. As for the transfer of an economic interest, the team invites views on whether this should require the consent of the other partners.

Issue 12

Do you agree that an assignment by a partner of a limited liability partnership should only operate as a transfer of his economic interest (e.g. rights to profits), and not a transfer of his partnership status? Should such assignments require the consent of the other partners in the limited liability partnership?

7 DISSOLUTION AND WINDING UP

7.1 Death or bankruptcy of a partner

7.1.1 In the UK, the death or bankruptcy of a partner will not dissolve the LLP, by virtue of the fact that it is a separate legal entity. Article 20 of the Jersey LLP Act provides that unless the partnership agreement states otherwise, the death or bankruptcy of a partner will not result in the dissolution of the LLP. Similarly, in US-Delaware, the death or bankruptcy of a partner will not dissolve the LLP.

7.1.2 The team agrees with the arrangements in these jurisdictions. We recommend that the death or bankruptcy of a partner should not automatically dissolve the LLP.

Issue 13

Do you agree that the death or bankruptcy of a partner should not automatically dissolve the limited liability partnership?

7.2 Power of Court to order dissolution

7.2.1 In the UK, an LLP may be wound up by the Court under any of the following circumstances:

(a) it has determined that it be wound up by the Court;
(b) it has not commenced business within a year from its incorporation or suspends its business for a whole year;
(c) the number of members falls below 2;
(d) it is unable to pay its debts; or
(e) the Court is of the opinion that it is just and equitable that the LLP be wound up.

7.2.2 In US-Delaware, sections 15-801(5) and (6) of the Delaware Code provide that there are only 2 main grounds for dissolution by the Court, i.e. “when it is not reasonably practicable to carry on the partnership business … in conformity with the partnership agreement” or “when the Court of Chancery (is of the view) that it is equitable to wind up the partnership business or affairs.”

7.2.3 The team recommends adopting the US-Delaware model, as the grounds provided are broad and general enough to cover most circumstances.

Issue 14

Do you agree that the Court should be allowed to wind up a limited liability partnership if it is satisfied that: (a) the limited liability partnership is unable to carry on business in conformity with the partnership agreement; or (b) it is equitable to do so?

7.3 Voluntary dissolution

7.3.1 Section 84(1) of the UK Insolvency Act states that an LLP may be wound up voluntarily when it "determines that it is to be wound up voluntarily". It is regarded as a members' voluntary liquidation when the designated members of the LLP believe that it is solvent and they make a statutory declaration of solvency. The dissolution process is similar to the process for companies. The provisions include the appointment of a liquidator by the LLP, the preparation of a statement of affairs to be laid before the creditors etc.

7.3.2 In US-Delaware, section 15-801 of the Delaware Code provides the grounds for the voluntary dissolution of an LLP. For instance, an LLP may be wound up on the occurrence of a terminating event as provided for in the partnership agreement or an event that makes it unlawful for business to be continued. US-Delaware does not prescribe the procedure for voluntary winding up. Section 15-803 of the Delaware Code envisages that the partners of the LLP themselves will wind up the LLP. It does, however, provide that the Court may order judicial supervision of the winding up process.

7.3.3 The team is of the view that we should allow an LLP to be wound up voluntarily if all the partners agree to do so. The law need not prescribe a procedure for voluntary winding up. This would give the partners greater flexibility in winding up the LLP.

Issue 15

Do you agree that a limited liability partnership should be allowed to wind up voluntarily if all the partners agree to do so? Do you agree that the law need not prescribe a procedure for voluntary winding up?

Report of the Study Team on Limited Liability Partnerships

Summary of Recommendations on Limited Liability Partnerships

RECOMMENDATION 1

The study team recommends that the limited liability partnership ("LLP") should be a separate legal entity from its partners that comes into existence upon registration with the Registrar of LLPs. The LLP should have unlimited legal capacity to contract and conduct business and with perpetual succession.

The study team also recommends that the following information should be provided for registration of a LLP and be made available for public inspection:

(a) the name of the LLP;
(b) the registered place of business of the LLP;
(c) the name, address and nationality of every partner, and where a partner is a corporation, the corporation's name, country of incorporation, registration number and registered office; and
(d) the person appointed as the designated compliance officer.

RECOMMENDATION 2

The study team recommends that a partner's contribution can take the form of cash and property.

RECOMMENDATION 3

The study team recommends that the words "Limited Liability Partnership" and/or the abbreviation "LLP" should constitute a part of the name of every LLP and that every invoice, order, receipt or business correspondence of any LLP should state its registration number and that it is registered as a LLP.

RECOMMENDATION 4

The study team recommends that the law should not prescribe any upper limit on the total number of partners in a LLP.

RECOMMENDATION 5

The study team recommends that a LLP should have at least two partners. In the event that there are less than two partners, the sole remaining partner should be given a grace period of two years to either find a new partner or to commence winding up the LLP. If he does not find a new partner or commence to wind up the LLP within that grace period, he should be liable for all the liabilities and obligations of the LLP incurred after the end of the grace period and the Court may also order the winding up of the LLP.

RECOMMENDATION 6

The study team recommends that the disqualification criteria for company directors in the Companies Act should apply in determining whether the Court should disqualify any person from managing a LLP. A person who is the subject of a disqualification order under the LLP Act or the Companies Act should be automatically disqualified from being involved in the management of a LLP. In deciding whether to issue a disqualification order, the Court will take into consideration the person's conduct in other companies and LLPs.

RECOMMENDATION 7

The study team recommends that the LLP legislation should provide for (a) the transfer to and vesting in the LLP of all the business, undertaking and assets of a partnership firm or company which proposes to reconstitute its business under the LLP and (b) the assumption by the LLP at the same time of the liabilities and obligations of the partnership firm or company subsisting at the time. Both the transfer and assumption should take effect upon the registration of the LLP. The study team also recommends that the partners of the firm before the transfer should continue to remain liable (jointly and severally together with the LLP) for the liabilities and obligations of the firm which were incurred prior to or which arise from any contract entered into prior to the "conversion" into the LLP and that the partners should be entitled to be indemnified by the LLP in respect of those liabilities and obligations.

RECOMMENDATION 8

The study team recommends that a LLP should be tax transparent and the partners should be taxed on their share of the income or gains of the LLP according to their personal income tax rates.

RECOMMENDATION 9

The study team recommends that a LLP registered for the purpose of the transfer to it of all the business, assets and liabilities of a partnership firm should be allowed to claim the tax attributes incurred previously, with no time limit imposed on the utilisation and that a LLP constituted for the purpose of the transfer to it of all the business, assets and liabilities of a company, should be able to claim the tax attributes incurred previously at least for the initial period. Both such partnerships and companies should also enjoy relief from stamp duty with respect to any transfer of property to the LLP in connection with any "conversion", at least for the initial period.

RECOMMENDATION 10

The study team recommends that the LLP legislation should not impose any obligation on the LLP or its partners to prepare and/or file its financial statements or to have its accounts audited. However, a LLP should be required to keep proper accounting records that will enable true and fair financial statements to be prepared. The LLP should also be required to file with the Registrar annually, a declaration as to whether or not it is solvent.

RECOMMENDATION 11

The study team recommends that a partner of a LLP should not by reason only of being a partner of the LLP be held personally liable for the conduct of other partners or the transactions or liabilities of the LLP. However, his liability to any person for his own wrongful acts or omissions, including negligence, in the situations where the law imposes liability on him to such person should not be affected or extinguished merely on the basis that the acts or omissions were carried out or occur in his role as a partner of the LLP.

RECOMMENDATION 12

The study team recommends that a partner should be liable to refund any distribution made by the LLP to the partner (or his assignee) of any profits or capital of the LLP within three years prior to the commencement of the winding up of the LLP if the partner knows or ought to have known that the LLP was at the time of the distribution insolvent or would be rendered insolvent by the distribution.

RECOMMENDATION 13

The study team recommends that a partner of a LLP should not be allowed to transfer his partnership but should be allowed to transfer or assign to any person his right to receive any payment or distribution in respect of his partnership

interest in the LLP subject to such limitations, restrictions or prohibitions that may be imposed by the partnership agreement.

RECOMMENDATION 14

The study team recommends that the LLP should not be dissolved or wound up by the death or bankruptcy of a partner subject to Recommendation 5.

RECOMMENDATION 15

The study team recommends that a LLP may be wound up by the Court ("compulsory winding up") under the following circumstances:

(a) the number of partners of the LLP is below two for a continuous period of two years;
(b) the LLP is unable to pay its debts;
(c) the Court is of the opinion that it is not reasonably practicable to carry on the partnership business in conformity with the partnership agreement;
(d) the Court is of the opinion that it is just and equitable to wind up the LLP; or
(e) the LLP is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against national security or interest.

The study team also recommends that in a Court-ordered dissolution of a LLP, the Official Receiver should act as the liquidator of the LLP if no other person has been appointed as the liquidator or in the event there is no liquidator.

RECOMMENDATION 16

The study team recommends that a LLP should be allowed to voluntarily wind up (a) if all the partners agree to do so or (b) in accordance with the partnership agreement. The LLP Act will provide the procedure for the voluntary winding up of LLPs. These procedures should be modelled after the existing winding up regime for companies that are incorporated in Singapore.

Report of the Study Team on Limited Liability Partnerships

1 INTRODUCTION

The Study Team on Limited Partnerships (LPs) and Limited Liability Partnerships (LLPs) was appointed by the Ministry of Finance in November 2002. Its terms of reference are to work out the details of the legal framework governing LP and LLP. The study team members are:

Co-Chairmen:	Mr Ronnie Quek Cheng Chye, Allen & Gledhill Mr Quek See Tiat, PricewaterhouseCoopers
Members:	Mr Chee Hong Tat, Ministry of Finance [until 31 Aug 2003] Mr Tan Hoe Soon, Ministry of Finance [until 29 Feb 2004] Mr Ong Pang Chan, Ministry of Finance Ms Julie Huan, Attorney-General's Chambers Ms Suriakumari Sidambaram, Registry of Companies and Businesses Ms Toh Wee San, Registry of Companies and Businesses
Secretariat	Mr Dexter Tan Wui Teck, Ministry of Finance Mrs Tng-Tjen Su Tju, Ministry of Finance

2 BACKGROUND

2.1 There are currently two principal business structures in Singapore: firms (comprising sole proprietorships and general partnerships) and companies. A firm is not a separate legal entity from its owners. The owners of a firm have unlimited liability for all the debts and liabilities incurred by the firm. A company, on the other hand, is a separate legal entity from its members and therefore the debts and liabilities of a company are not the debts and liabilities of its members.

2.2 The Company Legislation and Regulatory Framework Committee (CLRFC) had recommended that legislation be enacted to introduce LPs and LLPs in Singapore. The new business structures will increase the options available to businessmen and investors. The CLRFC's report stated that LLPs are useful as business, professional and investment vehicles and LPs can be used for private

equity and fund investment businesses. The CLRFC also recommended that the Singapore LLP Act be modeled on the US Delaware Revised Uniform Partnership Act (the Delaware Code) and that the LLP structure be made available to all types of businesses.

3 PUBLIC CONSULTATION

3.1 The study team issued two consultation papers on LPs and LLPs on 18 June 2003 and a total of 19 responses were received during the public consultation exercise, which ended on 31 July 2003. The responses gave general support to the study team's recommendations. The team would like to take this opportunity to express our appreciation to all respondents for their valuable comments. A list of the respondents is attached at Appendix I.

3.2 The study team would also like to record and acknowledge the contributions of the following who had unstintingly participated and provided helpful insights:

- Associate Professor Hans Tjio, National University of Singapore
- Ms Paula Eastwood of PricewaterhouseCoopers
- Mr Charles Lim Aeng Cheng, Attorney-General's Chambers
- Mr Sarjit Singh and Mr Chan Wang Ho, Insolvency and Public Trustee's Office

3.3 The study team has completed its work on LLPs and this report constitutes the team's final recommendations on LLPs. A separate final report on LPs will be published later this year.

4 NATURE OF A LIMITED LIABILITY PARTNERSHIP

4.1 The objective was to create in the LLP a business structure which confers limited liability on its investors or partners while allowing them to retain the flexibility of operating the LLP as a partnership firm and which has perpetual succession. Therefore, the LLP would be a legal entity separate from that of the partners of the LLP, and with its own rights and liabilities distinct from those of the partners. The LLP structured as a legal entity separate from the partners of the LLP effectively shelters the individual partners from personal liability for the acts of another partner carried out in the course of business and for the debts and liabilities of the LLP. However, the LLP should not insulate a partner of the LLP from the liability which he would otherwise incur under general principles of law

by his own wrongful acts or omissions, even though such acts or omissions of his are carried out or occur in his role as a partner of the LLP.

4.2 Whilst a LLP is similar to a company in certain respects, it should not be subject to the existing companies legislation and should be the subject of a separate statutory enactment. Many provisions in the Companies Act (such as those relating to share capital, management, meetings and resolutions) should not apply to the LLP given the objective for the creation of the LLP as a business structure. Unlike a company, the profit-sharing and decision-making structure and the terms of association of the owners of the LLP, namely the partners (including their rights and duties as between and amongst themselves) could and should be the subject of private agreement amongst them.

4.3 Jurisdictions such as the UK and US have introduced the LLP as a business structure. The UK introduced their LLP Act in 2000, providing businesses with a new structure that have the features of a company, but which is taxed and operated as a partnership. In the US, the LLP legislation that has been most widely adopted is the Delaware model. The popularity of the Delaware model stems from its approach, which regards LLPs primarily as partnerships instead of treating them as companies, as in the UK.

5 APPROACH OF THE STUDY TEAM

5.1 The study team has carefully considered all feedback received during the public consultation exercise. The creation of any business structure involves the consideration of the balance between the requirements of its potential users (namely the potential investors or owners of the business) and the protection of persons dealing with the structure (whether as customers, suppliers, lenders or otherwise). The balance should be set with reference to the objective and purpose for which the structure is created. In finalising its recommendations, the team was guided by the objective to create a new business vehicle that is business friendly (offering their owners privacy, flexibility and ease in making and revising the arrangements which relate to capital contributions, profit sharing, management and control and privacy of these arrangements) and at the same time, offers a certain level of creditors' protection. The public disclosure requirements relating to the LLP should be kept to a minimum to maintain privacy of the arrangements between and amongst the partners and to minimise the business and compliance costs of the LLP structure. The team is of the view that the objective of creating the LLP structure would be undermined if it is invested with all the features and incidents of a company. While there should be safeguards to maintain a certain level of creditors' protection, the principle of caveat emptor should apply since every person is free to decide whether or not to deal with any particular business.

5.2 The study team agrees with the CLRFC that the introduction of LLPs will make available an additional structure on which businesses could be set up or organised. The LLP contains features that render it a more suitable business structure for some businesses, such as professional firms, start-ups and small family-owned businesses. Local firms and businesses could be structured or restructured into LLPs to avail themselves of the benefits of limited liability together with the privacy of arrangements which regulate decision making, ownership rights and terms of association as well as perpetual succession. It will also assist in attracting more foreign businesses wanting to be structured as a LLP to Singapore. The LLP is not a substitute for the limited liability company as a business structure for all situations. For example, the LLP structure may not be suitable for businesses which require substantial investments and/or varied or public participation either as its investors, lenders or suppliers. The persons who choose to conduct business as owners or investors must select from amongst the various business structures or vehicles (the LLP being only one of them) the most appropriate business structure on which to establish and conduct the business they have in mind, having regard to all relevant considerations.

6 FINAL REPORT

6.1 This final report on LLPs presents the study team's recommendations on the following matters: (a) legal structure and registration requirements; (b) disclosure and reporting requirements; (c) liability of partners and (d) dissolution requirements.

7 LEGAL STRUCTURE AND REGISTRATION REQUIREMENTS

7.1 Legal structure and information required for registration

7.1.1 In Jersey, the UK and US-Delaware, the LLP is a separate legal entity from its partners and it only comes into existence from the date of registration/incorporation with the regulator. Being a separate legal entity, the LLP is able to hold property, sue and be sued in its own name and enjoy perpetual succession and therefore the death, retirement or bankruptcy of a partner will not dissolve the LLP. Consistent with the approach in other jurisdictions, the study team recommends that a Singapore LLP should also be a legal entity separate from its partners with unlimited legal capacity to contract and conduct business. It should come into existence as from the date of registration with the Registrar of LLPs.

7.1.2 In the UK, LLPs are required to submit an incorporation document to the Registrar of LLPs at the point of incorporation[1]. The incorporation document sets out the name of the LLP, the address of its registered office, the name, address and date of birth of each partner as well as details of the designated members. The designated members are responsible for appointing auditors, delivering accounts to the Registrar, notifying the Registrar of any changes in the LLP and acting on behalf of the LLP if it is dissolved etc. The incorporation document must be signed by all the partners and lodged with the Registrar. The incorporation document will be available for inspection by any member of the public.

7.1.3 On the other hand, in US-Delaware, partners are required to submit a LLP statement of qualification, which only sets out the name of the LLP, the address of its registered office, the number of partners in the LLP, and the name and address of the registered agent.

7.1.4 After considering the information requirements in the UK and US-Delaware, and comparing this to the requirements in the Singapore's Business Registration Act, the study team recommends that the following information should be provided for the registration of a LLP and be made available for public inspection:

(a) the name of the LLP;
(b) the registered place of business of the LLP;
(c) the name, address and nationality of every partner, and where a partner is a corporation, the corporation's name, country of incorporation, registration number (where available) and registered office; and
(d) the person appointed as the designated compliance officer.

Similar to the UK model, the registration document should be endorsed by all the partners.

7.1.5 The UK LLP Act requires that at least two members of the LLP must be designated as designated members who would be liable for the failure of the LLP to comply with specific provisions of the LLP Act. The study team believes that the LLP should have at least one designated compliance officer who will be responsible for all regulatory filings and submissions. The designated compliance officer should be a natural person of full age and capacity and ordinarily resident in Singapore but he need not be a partner of the LLP. In the light of the duties imposed on the designated compliance officer, no person should be designated as a designated compliance officer of a LLP without his consent.

[1] The Registrar of LLPs in the UK is the same as the Registrar of Companies.

7.1.6 Finally, in line with the practice in US-Delaware, the study team recommends that there should not be a need for the LLP to either disclose the individual partner's capital contribution or the total capital contribution of the LLP. This is consistent with the current law applicable to partnerships which does not impose any requirement to publicly report or disclose partners' capital contribution.

RECOMMENDATION 1

The study team recommends that the limited liability partnership ("LLP") should be a separate legal entity from its partners that comes into existence upon registration with the Registrar of LLPs. The LLP should have unlimited legal capacity to contract and conduct business and with perpetual succession.

The study team also recommends that the following information should be provided for registration of a LLP and be made available for public inspection:

(a) the name of the LLP;
(b) the registered place of business of the LLP;
(c) the name, address and nationality of every partner, and where a partner is a corporation, the corporation's name, country of incorporation, registration number and registered office; and
(d) the person appointed as the designated compliance officer.

7.2 Contribution in kind

7.2.1 The practice of allowing partners to contribute in kind is common in other jurisdictions such as Jersey, the UK and US-Delaware. During the consultation, all respondents supported the study team's recommendation to allow a partner to contribute in kind. The study team agrees with the comments and believes that this will provide businessmen with more flexibility when they set up LLPs to conduct their business activities. A partner's contribution may either take the form of cash or property.

RECOMMENDATION 2

The study team recommends that a partner's contribution can take the form of cash and property.

7.3 Disclosure of limited liability status

7.3.1 A safeguard for any limitation of liability is that the nature of the entity must be sufficiently disclosed. This is to inform potential third parties that they are dealing with an entity with limited liability. LLPs in Jersey, the UK and US-Delaware have to identify themselves with the words "Limited Liability Partnership" or the abbreviation "LLP". In the UK, a LLP must also have (i) its name, (ii) its place of registration and its registration number, and (iii) the address of the registered office, in legible lettering, on all its stationery or communication to the public.

7.3.2 The study team recommends that LLPs in Singapore should be required to include either the words "Limited Liability Partnership" or the abbreviation "LLP" as part of their name. In addition, every invoice, order, receipt or business correspondence of the LLP should state its registration number which serves as a unique identifier and that it is registered as a LLP. The statement will serve to inform a potential contracting party or creditor of the fact that he is dealing with a limited liability entity, and not a general partnership with unlimited liability.

RECOMMENDATION 3

The study team recommends that the words "Limited Liability Partnership" and/or the abbreviation "LLP" should constitute a part of the name of every LLP and that every invoice, order, receipt or business correspondence of any LLP should state its registration number and that it is registered as a LLP.

7.4 No upper limit to the total number of partners

7.4.1 Currently, section 17(3) of the Companies Act prohibits the formation of partnerships with more than 20 partners, except for a partnership formed for the purpose of carrying on any profession or calling which can only be carried on by those who possess qualifications prescribed by law. Therefore, firms which provide professional services such as legal and accounting firms are not subject to the 20-partner limit. This restriction is a legacy from the UK law, and it was created to prevent the abuses by certain deed of settlement companies in the 18th and 19th centuries.

7.4.2 In the June public consultation paper, the study team recommended that the 20-partner limit for LLPs be retained, with exceptions for professional LLPs. At the same time, the study team suggested that Minister should be empowered to increase the limit, to facilitate future adjustments.

7.4.3 Some respondents have expressed the view that the 20-partner limit is too restrictive and prevents the future expansion of the business. Specifically, respondents commented that a rapidly changing business environment may

necessitate additional funding and additional partners for a LLP to embark on the business opportunities which arise. A regulatory limit on the number of partners may constrain the growth of the LLP if the limit is not increased in time for the LLP to secure additional partners and funds to embark on those opportunities.

7.4.4 The study team notes that the existing limit on the number of partners in a partnership in Singapore is more stringent than that in the other leading jurisdictions. In New Zealand, the limit on the number of partners was removed in 1993 as it was seen as an impediment to business expansion. The UK no longer imposes a limit on the number of partners for all types of partnerships since 2001. Countries such as US-Delaware, Denmark, France and Germany also do not impose any limits on the number of partners.

7.4.5 The study team carefully considered the implications to the various stakeholders of a LLP if the 20-partner limit is lifted. A view had been expressed that the risk of fraud increases with the number of partners. The study team is of the view that if at all the size of the partnership increases the risk of fraud being perpetrated by some of the partners, any such concern can be and should be addressed in the agreement between the partners of the LLP (with respect to the implementation of appropriate internal controls and measures affecting the management and conduct of the LLP business) and not by the imposition of a statutory limit on the total number of partners.

7.4.6 The study team therefore recommends that the law should not prescribe any upper limit on the total number of partners in a LLP. The team believes it should be for businesses to decide the appropriate number of persons who would be partners. The study team also notes that currently, partnerships are able to readily circumvent the 20-partner limit either through the creation of parallel partnerships or trustee arrangements whereby a partner of the firm is constituted as a trustee of his partnership interest for a number of beneficiaries.

RECOMMENDATION 4

The study team recommends that the law should not prescribe any upper limit on the total number of partners in a LLP.

7.5 One-partner LLP

7.5.1 In Jersey and the UK, a LLP must consist of at least two partners. Article 21 of the Limited Liability Partnerships (Jersey) Law 1997 ("Jersey LLP Act") states that a LLP "*shall be dissolved immediately upon there ceasing to be two or more partners in the partnership*." In the UK, if a LLP is left with one partner and that partner knowingly allows the LLP to continue with him as the sole partner for

more than six months, he loses the protection of limited liability. In US-Delaware, the LLP Act is silent on the legal consequences arising from the situation where a LLP has only one partner. It would appear that there is no express requirement for a LLP to maintain at least two partners.

7.5.2 In the June public consultation paper, the study team raised the issue of whether a LLP should be statutorily required to have at least two partners. Some respondents supported the idea of a one-partner LLP while others favoured a LLP having at least two partners. The respondents who supported the idea of a one-partner LLP expressed the view that this will increase business flexibility and avoid the costs necessarily incurred in winding up the LLP when the number of partners falls below two. They pointed out that the Government had accepted the CLRFC's recommendation to allow a private company to incorporate with one shareholder and one director who need not be different persons. They commented that as a LLP shares certain key attributes of a company (e.g. limited liability, separate legal entity etc), there should not then be any requirement that the LLP must have at least two partners.

7.5.3 However, the respondents who did not favour a one-partner LLP structure expressed the view that a one-partner LLP is a misnomer because a partnership is by definition, "*a voluntary association of <u>two or more</u> persons who jointly own and carry on a business for profit*". They also highlighted that such a practice will not be in line with international norms.

7.5.4 Undeniably, allowing one-partner LLP will provide greater convenience to the LLP, as it need not cease and wind up its business if the sole remaining partner is unable to find a new partner. However, it should not be difficult for the remaining partner to secure a new partner within an adequate grace period if there is a viable business. Furthermore, this issue must be considered with reference to the main objective of the creation of the LLP structure, namely to confer limited liability on owners of businesses who would otherwise be partners of a firm with unlimited liability. The interposition of a legal entity separate from its partners is merely a device to confer limited liability on the partners. For the same reason, the comparison with the one director and one shareholder company is not appropriate.

7.5.5 After due consideration of the responses, the study team recommends that the LLP should have at least two partners but should be given a grace period of two years to either find a new partner or to wind up in the event that the LLP has only one partner, failing which the sole remaining partner should be liable for all the liabilities and obligations of the LLP incurred after the end of the grace period and the Court may order the winding up of the LLP. The two-year grace period should be a sufficient timeframe for the sole remaining partner to either find a new partner or to commence winding up the LLP.

RECOMMENDATION 5

The study team recommends that a LLP should have at least two partners. In the event that there are less than two partners, the sole remaining partner should be given a grace period of two years to either find a new partner or to commence winding up the LLP. If he does not find a new partner or commence to wind up the LLP within that grace period, he should be liable for all the liabilities and obligations of the LLP incurred after the end of the grace period and the Court may also order the winding up of the LLP.

7.6 Suitability of partners

7.6.1 In the UK, LLP partners are subject to the same disqualifications and penalties that apply to company directors. These disqualifications relate to the unsuitability of a person resulting from his conviction on certain offences, persistent breaches of company/LLP legislation, fraudulent conduct in the management of the company/LLP etc. Furthermore, a company director who was disqualified under the UK Companies Act will be automatically disqualified from managing a LLP and vice versa.

7.6.2 In Singapore, the study team notes that the Companies Act also contains disqualification criteria for company directors. The rationale for the disqualification criteria is to prevent persons deemed unsuitable by the law to manage companies, from mismanaging a company and then avoiding liability through the corporate structure. As the partners of a LLP will enjoy limited liability, the study team is of the view that the same disqualification criteria be extended to apply to LLP partners who manage the LLP. Furthermore, a director who mismanages a company and thereby becomes subject to a disqualification order should not be allowed to manage a LLP.

7.6.3 In addition, the study team recommends that the Court, in making a disqualification order under the LLP Act, should take into consideration not only of the partner's conduct in managing the LLP but also his conduct in managing other LLPs or companies, as it involves an overall assessment of the person's corporate demeanour and conduct. This is consistent with the arrangement in the Singapore Companies Act and the UK.

RECOMMENDATION 6

The study team recommends that the disqualification criteria for company directors in the Companies Act should apply in determining whether the Court should disqualify any person from managing a LLP. A person who is

the subject of a disqualification order under the LLP Act or the Companies Act should be automatically disqualified from being involved in the management of a LLP. In deciding whether to issue a disqualification order, the Court will take into consideration the person's conduct in other companies and LLPs.

7.7 "Conversion" to a LLP

7.7.1 In US-Delaware, a corporation or general partnership can easily convert to a LLP, by filing a certificate of conversion with the Secretary of State[2]. The Delaware Code does not prescribe any rules or procedures which facilitate the transfer by an existing firm of its business, assets and liabilities to the LLP. The UK LLP Act also does not provide for a conversion process or provisions which operate to effect a transfer of the business, assets and liabilities but confers tax relief for the transfer of business, assets and liabilities. A transfer of business, assets and liabilities of a partnership firm to a LLP established under the UK LLP Act would still have to be effected between the partnership firm and the LLP. This would also be required in the case where a partnership firm chooses to transfer all its business, assets and liabilities to a company. Furthermore, under the existing law a transfer of obligations without the agreement of the person to whom the obligation is owed would not bind such person.

7.7.2 Currently, the properties and assets of a partnership firm are held by the partners as tenants in common (or in the name of one or more partners on trust for the partners) because a partnership is not a legal entity. As the LLP would be a legal entity separate from its partners and is able to enter into contracts and hold properties in its own name, any "conversion" must necessarily involve the transfer to and vesting in the LLP of all the business, undertaking and assets of the partnership to the LLP and the assumption by the LLP at the same time of all the liabilities and obligations of the partnership subsisting at the time. The transfer must also include all the contracts, properties and assets held by any of the partners in trust for the partnership. The study team therefore recommends that the LLP legislation provide for (a) the transfer to and vesting in the LLP of all (but not part) of the business, undertaking and assets of the partnership firm which proposes to reconstitute its business under the LLP and (b) the assumption by the LLP at the same time of all (but not part) of the liabilities and obligations of the partnership firm subsisting at the time and for both the transfer and assumption to take effect upon the registration of the LLP.

7.7.3 The study team recognises that the creditors of the partnership firm should not be prejudiced by the "conversion" and should not therefore lose their right of

[2] Section 15-1001, Delaware Revised Uniform Partnership Law

recourse against the persons who were partners before the “conversion” with respect to the liabilities and obligations incurred or contracted by the partnership firm before the "conversion". Therefore, the study team recommends that the partners of the firm before “conversion” should continue to remain liable (jointly and severally together with the LLP) for the liabilities and obligations of the firm which were incurred prior to, or which arise from any contract entered into prior to the “conversion” into the LLP. The effect is that the liability of a partner in a partnership firm for those debts and obligations will not be extinguished or limited by, as a result of the "conversion" into LLP. However, as all the assets of the firm are transferred to the LLP, it would be appropriate for the partners to be conferred a right to be indemnified by the LLP in respect of those liabilities or obligations. This is similar to the provisions in US-Delaware.

7.7.4 For a partnership “converting” to a LLP, the team also recommends that where possible, it should be allowed to keep its business name and business registration number. This will save partnerships the administrative inconvenience of re-registering itself.

7.7.5 The study team notes that some companies may have been incorporated by their members purely to avail themselves of limited liability protection and who would otherwise have elected to set up business under a LLP structure if the laws had provided for it at the time. Therefore, it would be desirable for the LLP legislation to also facilitate the "conversion" of a company to a LLP. For instance, the LLP legislation should, like the Delaware Code, provide for the transfer of all the business, undertaking, assets and liabilities of the company to the LLP. This will provide clarity and certainty to companies wishing to “convert” to the new structure. However, as all the business, assets and liabilities of the company would be transferred on "conversion", it would in this case be pointless to provide for the company to be jointly liable with the LLP for the debts and obligations existing prior to “conversion” and which would be transferred to the LLP.

7.7.6 For the “conversion” of a company into a LLP, to ensure that the shareholders' and creditors’ interests are protected, the study team recommends that certain safeguards should be imposed. The unanimous consent of all the company's shareholders to the “conversion” must first be obtained and the LLP should be required to state in its invoices, orders, receipts and business correspondence for a period of one year that it had been “converted” from a company. This will serve to inform the persons who continue to deal with the company after the "conversion" of the change in its status.

RECOMMENDATION 7

The study team recommends that the LLP legislation should provide for (a) the transfer to and vesting in the LLP of all the business, undertaking and assets of a partnership firm or company which proposes to reconstitute its business under the LLP and (b) the assumption by the LLP at the same time of the liabilities and obligations of the partnership firm or company subsisting at the time. Both the transfer and assumption should take effect upon the registration of the LLP. The study team also recommends that the partners of the firm before the transfer should continue to remain liable (jointly and severally together with the LLP) for the liabilities and obligations of the firm which were incurred prior to or which arise from any contract entered into prior to the "conversion" into the LLP and that the partners should be entitled to be indemnified by the LLP in respect of those liabilities and obligations.

8 TAX TREATMENT

8.1 Taxation framework for LLP

8.1.1 In US-Delaware and the UK, LLPs are taxed as partnerships instead of corporations. In US-Delaware, LLPs are even given the choice to decide whether they prefer to be taxed as corporations or as partnerships.

8.1.2 For the tax treatment of LLP, the study team's main focus is on what should be the broad taxation framework for LLP, namely, the basis on which a LLP will be taxed and the tax treatment for a partnership that converts into a LLP etc.

8.1.3 The study team recommends that similar to the arrangement in US-Delaware and the UK, a LLP should be tax transparent. This means that though a LLP is a separate legal entity, the LLP itself will not be subject to taxation. The LLP is also not the employer of its partners. Instead, the partners of the LLP should be treated for tax purposes as if they remain partners under a general partnership and are taxed on their share of the LLP's income or gains, according to their personal income tax rates.

RECOMMENDATION 8

The study team recommends that a LLP should be tax transparent and the partners should be taxed on their share of the income or gains of the LLP according to their personal income tax rates.

8.2 Concessionary tax measures for "conversion" of partnership/company to LLP

8.2.1 In the UK, tax reliefs are given to facilitate partnerships converting to LLPs. For example, stamp duty is not chargeable on an instrument by which property is conveyed or transferred by a person to a LLP in connection with any "conversion" of any partnership to the LLP within a period of one year from the date of registration of the LLP. In addition, where a LLP succeeds to a business previously carried on by an existing partnership, there should be no cessation of trade for income tax purposes.

8.2.2 As a LLP is to be taxed as a general partnership, the study team is of the view that the framework for partnerships “converting” into LLPs should not be more onerous than existing treatment for succeeding partnerships. Hence, consistent with the approach that LLPs are to be regarded as partnerships, the team proposes that succeeding LLPs should be allowed to claim tax attributes (e.g. capital allowances, accruals deductibility) incurred by the previous partnership, with no time limit imposed on utilisation. This continuing effect would only be applicable to existing partnerships that were incorporated after 1 January 1969. This is to streamline the treatment for partnerships and LLPs in future because these pre-1969 partnerships are subject to cessation provision under the Income Tax Act (ITA) by virtue of their coming to being before the introduction of preceding year of assessment concept in our present ITA. The study team believe this should not create any serious difficulty or inconvenience as there are not many pre-1969 partnerships currently in existence. The team is also of the view that there should be a relief from stamp duty in respect of any transfer in connection with the "conversion" of a partnership into a LLP, at least for the initial period. The study team notes that the partnerships which provide certain professional services are regulated by particular statutory enactments and these partnerships who wish to "convert" into LLPs will not be able to do so until the law regulating their profession is amended accordingly. Therefore, the study team recommends that this should be taken into account in determining the period during which they would be able to enjoy relief from stamp duty if the relief is only granted for an initial period. To further facilitate the “conversion”, the team recommends that LLPs resulting from “conversion” of partnerships should be allowed to retain its original GST registration number.

8.2.3 Although the taxation framework for a company is different from that of a partnership or LLP, the companies should not be deprived of the benefits of "conversion" to LLP. This is because as stated in paragraph 7.7.5 above, some of these companies would not have been established as companies if the laws permitted LLPs at the time. Therefore, the companies that elect to "convert" should be allowed to claim the tax attributes incurred previously, at least for the initial period. It should also be allowed to enjoy stamp duty waiver for transfers effected in connection with the “conversion”.

8.2.4 If loss relief were to be granted to partners of on-going LLPs, the limit of loss relief claimed should be restricted to the partner's actual paid up contribution and should not take into account committed amounts which has not been contributed to the LLP. In the UK, partners of a LLP are allowed to claim relief for the interest on the loans that they have obtained to invest in the LLP. The team recommends that IRAS should also consider granting interest relief to LLPs.

RECOMMENDATION 9

The study team recommends that a LLP registered for the purpose of the transfer to it of all the business, assets and liabilities of a partnership firm should be allowed to claim the tax attributes incurred previously, with no time limit imposed on the utilisation and that a LLP constituted for the purpose of the transfer to it of all the business, assets and liabilities of a company, should be able to claim the tax attributes incurred previously at least for the initial period. Both such partnerships and companies should also enjoy relief from stamp duty with respect to any transfer of property to the LLP in connection with any "conversion", at least for the initial period.

9 ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

9.1 Accounting records and audit

9.1.1 In Jersey, all LLPs are required to maintain accounting records. However there is no statutory requirement for the accounts to be audited or filed with the Registrar[3]. In US-Delaware, a LLP is required to file an annual report, containing information relating to non-financial items such as the name, address and number of partners in the LLP.

9.1.2 In the UK, a LLP is treated like a company and is required to prepare and file audited accounts. Like companies, exemptions from audit and from some aspects of disclosure apply for certain "small" and "medium" sized LLPs. The relevant size thresholds mirror those for companies in each case and any increases in the thresholds for companies will apply to LLPs equally. This financial disclosure requirement and the appropriateness of applying corporate accounting standards to professional partnerships have deterred some professional partnerships from structuring themselves as LLPs in the UK. The team notes that the UK approach of treating LLPs as if they were companies has been criticised and is often cited as a reason why the UK LLP model is not as widely used.

[3] Article 9, Limited Liability Partnerships (Jersey) Law 1997

9.1.3 In the June consultation paper, the team also asked whether a LLP should be required to prepare financial statements that comply with the prescribed accounting standards i.e. the Financial Reporting Standards (FRS). Most respondents who commented on this did not agree. They are of the view that this would add to the costs of doing business under a LLP in that the LLP would have to engage an accountant to prepare financial statements which comply with the FRS.

9.1.4 The study team recommends that Singapore should adopt the Jersey and US-Delaware arrangements. This means that a LLP, like a partnership, should not be required by the LLP legislation to have its accounts audited or filed with the regulator. The LLP should however be required to keep proper accounting records that will enable true and fair financial statements to be prepared. For creditors' protection, the LLP should also be required to file with the Registrar annually, a declaration as to whether or not it is solvent.

RECOMMENDATION 10

The study team recommends that the LLP legislation should not impose any obligation on the LLP or its partners to prepare and/or file its financial statements or to have its accounts audited. However, a LLP should be required to keep proper accounting records that will enable true and fair financial statements to be prepared. The LLP should also be required to file with the Registrar annually, a declaration as to whether or not it is solvent.

10 LIABILITY OF A PARTNER

10.1 Liability of the LLP and its partners

10.1.1 In US-Delaware, a partner of a LLP is not personally liable for claims against the firm arising from negligence or other forms of malpractice, unless the partner was personally involved in the negligence or malpractice[4].

10.1.2 In the UK, every member of the LLP is deemed as an agent of the LLP. Therefore, persons dealing with a partner of a LLP will contract with the LLP rather than with the partner of the LLP. The liability arising from the contract should therefore be the liability of the LLP and not its partners.

[4] Section 15-306(c) of the Delaware Code provides that "*an obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, or tort or otherwise, is solely the obligation of the partnership. A person is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment or otherwise, for such an obligation solely by reason of being or acting as a partner*."

10.1.3 The study team recommends that a partner of a LLP should not by reason only of being a partner of the LLP be held personally liable for the conduct of other partners of the LLP or the transactions of the LLP. However, the LLP structure should not insulate a partner from the liability which he would otherwise incur to any person **(**which may include the LLP and or a person dealing with the LLP**)** under law by his own wrongful acts or omissions even though such acts or omissions of his are carried out or occur in his role as a partner of the LLP.

10.1.4 In the event that the LLP becomes insolvent, a partner's liability for the transactions and liabilities of the LLP should be limited to the amount of his capital contribution to the LLP subsisting at the time.

RECOMMENDATION 11

The study team recommends that a partner of a LLP should not by reason only of being a partner of the LLP be held personally liable for the conduct of other partners or the transactions or liabilities of the LLP. However, his liability to any person for his own wrongful acts or omissions, including negligence, in the situations where the law imposes liability on him to such person should not be affected or extinguished merely on the basis that the acts or omissions were carried out or occur in his role as a partner of the LLP.

11.1 Capital withdrawal

11.1.1 The UK Insolvency Act[5] provides that withdrawals made by LLP partners during the two years prior to the commencement of winding up will be subject to a clawback, if the partner knew or had reasonable grounds for believing that the LLP was, or would be unable to pay its debts at the time of withdrawal. The clawback applies to all forms of withdrawals (including profits, salaries, interests on loans to the LLP).

11.1.2 In Jersey, it was provided that where any LLP property, including a share in the profits, is withdrawn by a partner at a time when the LLP is insolvent, or if the LLP becomes insolvent as a result of the withdrawal, the partner should be liable, with his liability limited to an amount equal to the value of the withdrawal, less any amount previously recovered from him. Jersey also provide that six months prior to the insolvency of a LLP, any partner who is found withdrawing partnership property, other than in the ordinary business affairs of the LLP, would be liable for the amount withdrawn[6].

[5] Section 214A of the UK Insolvency Act.
[6] Article 5(3) and 5(4) of the Jersey LLP Act

11.1.3 In US-Delaware, if a partner of a LLP knew, at the point of withdrawal, that the LLP had failed the asset test (namely, its liabilities exceed its assets), he has an obligation to repay the amount withdrawn for a period of three years after the withdrawal date. This clawback provision applies to most types of distribution, including share of profits. However, compensation for benefits or payments made in the ordinary course of business pursuant to a bona fide retirement or benefits programme are not subject to clawback.

11.1.4 The study team recommends that a partner should not be required to repay any distributions made when the LLP is solvent and is not rendered insolvent thereby. The LLP is solvent if it can pay its debts as and when they become due and payable and the fair value of its assets exceeds its liabilities. However if at the time of any distribution, the LLP was insolvent or is rendered insolvent thereby and the partner receiving the distribution knew or ought to know this, then the partner should be liable to repay the amount paid or distributed if the payment or distribution occurred within three years prior the commencement of the winding up of the LLP and if they comprise any of the following:

(a) distribution of profits of the LLP; and
(b) withdrawal or refund of capital contributed by any partner.

The study team believes that the liability of a partner or his assignee to refund any repayment of any loan made to the LLP and any payment of any interest on such loan should be determined with reference to the law relating to unfair preference which should apply in the event of the liquidation of the LLP.

11.1.5 During the consultation, the team received differing comments from respondents on the proposed clawback period. Some proposed that the clawback period should be pegged to the usual time bar of six years, so as to offer a reasonable degree of protection to creditors of the insolvent LLP. Others however expressed the view that the three years clawback period is too long and proposed that it should be reduced to one year. The team believes three years is a suitable timeframe as there is a need to balance the need to provide certainty to partners in the conduct of their affairs and at the same time provide protection to creditors of the LLP. The limitation period imposed by the Limitation Act will however continue to apply to actions against a partner for personal liability for his own misconduct or breach of duty owed to the LLP or the persons dealing with the LLP[7].

RECOMMENDATION 12

[7] Under common law, the limitation period for actions in contract and tort is six years from the date on which the cause of action arose.

The study team recommends that a partner should be liable to refund any distribution made by the LLP to the partner (or his assignee) of any profits or capital of the LLP within three years prior to the commencement of the winding up of the LLP if the partner knows or ought to have known that the LLP was at the time of the distribution insolvent or would be rendered insolvent by the distribution.

11.2 Assignment by partners

11.2.1 In US-Delaware, sections 15-502 and 15-503 of the Delaware Code provide that a partnership interest is personal to the partner and only a partner's right to receive any payments or distributions in respect of his partnership interest may be transferred. The transferee only has the right to receive the payments or distributions but cannot participate in management or inspect the LLP's books or records. Similarly in the UK, a transferee is entitled to receive distributions but may not participate in management or administration of the LLP. The effect is that a partner cannot unilaterally assign his status as a partner (with the accompanying rights e.g. management rights) such that the transferee becomes a partner in his place.

11.2.2 The study team agrees with the practice in the UK and US-Delaware, i.e. a partner of a LLP should only be allowed to transfer or assign to any person his right to receive any payment or distribution in respect of his partnership interest, but not his status as a partner. If a new partner is to be introduced in place of an old one, this should be regarded as a change in the composition of the partners of the LLP namely, by retirement of a partner and admission of a new partner. This should be governed by the partnership agreement.

11.2.3 In the June consultation paper, the team asked whether the consent of the other partners in the LLP should be sought before a partner can transfer his economic interests to a third party. Most respondents are of the view that consent of the other partners are needed, however they differ on whether this consent should be unanimous (100%), a qualified majority (75%) or a simple majority (50%). The study team proposes this should be the subject of the contractual agreement between the partners and should not be prescribed by the LLP legislation.

RECOMMENDATION 13

The study team recommends that a partner of a LLP should not be allowed to transfer his partnership but should be allowed to transfer or assign to any person his right to receive any payment or distribution in respect of his

partnership interest in the LLP subject to such limitations, restrictions or prohibitions that may be imposed by the partnership agreement.

12 DISSOLUTION AND WINDING UP

12.1 Death or bankruptcy of a partner

12.1.1 In the UK, the death or bankruptcy of a partner will not dissolve the LLP, to the extent where the number of partners in the partnership does not fall below two. Article 20 of the Jersey LLP Act also provides that unless the partnership agreement states otherwise, the death or bankruptcy of a partner will not result in the dissolution of the LLP. Similarly, in US-Delaware, the death or bankruptcy of a partner will not lead to an automatic dissolution. This is consistent with the principle that the LLP is a separate entity from its partners.

12.1.2 The study team hence recommends that LLP should not be affected by the death or bankruptcy of a partner subject to Recommendation 5. Normal partnership tax treatment will apply with regard to the death or bankruptcy of a partner (in this case, the deceased partner's interest in the partnership would devolve to his estate).

RECOMMENDATION 14

The study team recommends that the LLP should not be dissolved or wound up by the death or bankruptcy of a partner subject to Recommendation 5.

12.2 Power of the Court to order dissolution

12.2.1 In the UK, a LLP may be wound up by the Court ("compulsory winding up") under any of the following circumstances:

(a) it has determined that it may be wound up by the Court;
(b) it has not commenced business within a year from its incorporation or has suspended its business for a whole year;
(c) the number of members falls below two;
(d) it is unable to pay its debts; or
(e) the Court is of the opinion that it is just and equitable that the LLP be wound up.

12.2.2 In US-Delaware, sections 15-801(5) and 15-801(6) of the Delaware Code provide that there are only two main grounds for dissolution by the Court. These are "when it is not reasonably practicable to carry on the partnership business…in

conformity with the partnership agreement" or "when the Court of Chancery (is of the view) that it is equitable to wind up the partnership business or affairs".

12.2.3 The study team is of the view that similar to the UK and US-Delaware, the LLP Act should specify the circumstances whereby the Court may wind up a LLP. The team proposes that the grounds for a Court-ordered dissolution should be:

(a) the number of partners is below two for a continuous period of two years;
(b) the LLP is unable to pay its debts;
(c) the Court is of the opinion that it is not reasonably practicable to carry on the partnership business in conformity with the partnership agreement;
(d) the Court is of the opinion that it is just and equitable that the LLP be wound up; or
(e) the LLP is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against national security or interest.

12.2.4 The team notes that currently, in a Court-ordered dissolution of a company, if no private liquidator is appointed, the Official Receiver would be appointed as the liquidator for the company. The same arrangement exists in the UK, where the Official Receiver becomes the liquidator of the LLP, by virtue of his office, until another person is appointed the liquidator. Hence the team recommends that in the event of a Court-ordered winding up of a LLP, the Official Receiver shall be the liquidator of the LLP if no other person is appointed as the liquidator or if there is no liquidator.

RECOMMENDATION 15

The study team recommends that a LLP may be wound up by the Court ("compulsory winding up") under the following circumstances:

(a) the number of partners of the LLP is below two for a continuous period of two years;
(b) the LLP is unable to pay its debts;
(c) the Court is of the opinion that it is not reasonably practicable to carry on the partnership business in conformity with the partnership agreement;
(d) the Court is of the opinion that it is just and equitable to wind up the LLP; or

(e) the LLP is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against national security or interest.

The study team also recommends that in a Court-ordered dissolution of a LLP, the Official Receiver should act as the liquidator of the LLP if no other person has been appointed as the liquidator or in the event there is no liquidator.

12.3 Voluntary dissolution

12.3.1 Section 84(1) of the UK Insolvency Act states that a LLP may be wound up voluntarily when it "determines that it is to be wound up voluntarily". It is regarded as a members' voluntary liquidation when the designated members of the LLP believe that it is solvent and they make a statutory declaration of its solvency. In the UK, the dissolution process of a LLP is similar to the process for a company. Hence, there is a need for the LLP to appoint a liquidator, prepare a statement of affairs which would be laid before the creditors etc.

12.3.2 In US-Delaware, section 15-801 of the Delaware Code provides the grounds for the voluntary dissolution of a LLP. For instance, a LLP may be wound up on the occurrence of a terminating event as provided for in the partnership agreement or an event that makes it unlawful for business to be continued. US-Delaware does not prescribe the procedure for voluntary winding up but it does provide that the Court of Chancery may order judicial supervision of the winding up process.

12.3.3 In the June public consultation paper, the study team proposed that a LLP should be allowed to wind up voluntarily if all the partners agree to do so. All the respondents agree to voluntary dissolution for a LLP. However, they opined that in doing so, the partners of the LLP should be required to undertake certain procedures in order to protect the interests of creditors. They suggested that, for consistency, the procedures should be similar to those required for companies, such as filing a declaration of solvency with the Registrar and the publication of a notice at the commencement of the winding up procedures.

12.3.4 The study team has considered the suggestions from the respondents and agrees that the LLP legislation should prescribe procedure for voluntary winding up and that the winding up regime should mirror that of companies. The procedures should serve to provide clarity to LLPs as well as protect the interests of creditors.

12.3.5 Unlike companies, judicial management and schemes of arrangements will not be applicable to LLPs since a LLP is essentially a partnership with limited liability through the interposition of a legal entity between the partners and the persons dealing with the partnership business. The provisions governing receivership will, however, be applicable to LLPs and will be duplicated in the LLP Act. This is because the purpose of receivership is to pay off the creditors on whose behalf the appointment of the receiver was made, and upon successful conclusion of the receivership, the LLP is still an existing entity and may continue its business.

RECOMMENDATION 16

The study team recommends that a LLP should be allowed to voluntarily wind up (a) if all the partners agree to do so or (b) in accordance with the partnership agreement. The LLP Act will provide the procedure for the voluntary winding up of LLPs. These procedures should be modelled after the existing winding up regime for companies that are incorporated in Singapore.

~The End~