

**LIMITED LIABILITY PARTNERSHIPS ACT
SINGAPORE**

27 February 2006

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Memorandum on Limited Liability Partnerships

1. Introduction

The Limited Liability Partnerships Act 2005 (No 5 of 2005) ("**LLP Act**") was passed by Parliament on 25 January 2005. It came into effect on 11 April 2005. The LLP Act introduces a new business entity, namely a limited liability partnership ("**LLP**").

2. Features of an LLP

2.1 An LLP has the following features conferred under section 4 of the LLP Act:

2.1.1 It is a body corporate which is formed by registration under the LLP Act.

2.1.2 It has legal personality separate from its partners.

2.1.3 It has perpetual succession.

2.2 Changes in the partners of an LLP do not affect the existence, the rights and the liabilities of an LLP.

3. Capacity

3.1 By virtue of section 5 of the LLP Act, an LLP has the capacity to:

3.1.1 Sue and be sued.

3.1.2 Acquire, own, hold and develop or dispose of both movable and immovable property.

3.1.3 Have a common seal.

3.1.4 Do and suffer acts and things as bodies corporate may lawfully do and suffer.

3.1.5 Ratify any contract or transaction purporting to be entered into by the LLP prior to its formation as an LLP or by any person on behalf of an LLP prior to its formation.¹

4. Non applicability of partnership law

4.1 Except as otherwise provided in the LLP Act, the law relating to partnerships does not apply to an LLP. [section 6]

4.2 However, some areas in which the law relating to partnerships are similar to that relating to LLPs are as follows:

4.2.1 The acts of partners of both general partnerships and LLPs are binding on the partnership and LLP respectively except where:

- (i) the partner had no authority to act; and

¹ Pursuant to section 5 of the LLP Act, section 41 (except subsection (9)) of the Companies Act applies to an LLP as it applies to a company under the Companies Act.

- (ii) the third party knew of the lack of his authority; or did not know or believe him to be a partner; [section 9 of the LLP Act / section 5 of the Partnership Act (Cap. 391)]

4.2.2 Both LLPs and partnerships require a minimum of two partners; [section 22 of the LLP Act / section 2 of the Partnership Act]

4.2.3 Unless otherwise provided in the limited liability partnership agreement or the partnership agreement respectively, partners of both LLPs and general partnerships share equally in the capital and the profits of the business. [section 10 read with paragraph 2 of the First Schedule to the LLP Act / section 24 of the Partnership Act]

5. Liability of an LLP

5.1 An LLP is solely responsible for its obligations whether arising in contract, tort or otherwise. [section 8 (1)]

5.2 The liabilities of the LLP are to be met out of the property of the LLP [section 8(5)]

6. Partners

6.1 Minimum number

An LLP is required to have a minimum of two partners. [section 22]

6.2 Who may be partners

Any individual or body corporate (excluding a trade union) may be a partner in an LLP. [section 7]

6.3 Limited liability of partners

6.3.1 A partner is not personally liable for indemnification, contribution, assessment or otherwise with respect to an obligation of an LLP whether arising in contract, tort or otherwise *solely* by reason of being a partner of the LLP. [section 8(1) and (2)]

6.3.2 However, a partner remains liable in tort for his own wrongful act or omission. He is not liable for the wrongful acts or omissions of other partners of the LLP. [section 8(3)]

6.4 Partnership liability in tort

An LLP is liable for wrongful act or omission of a partner acting in the course of business of the LLP or with its authority. [section 8(4)]

6.5 Powers of partners

Every partner is the agent of the LLP and his acts bind the LLP except where:

- (i) the partner had no authority to act for the LLP; and
- (ii) the person with whom the partner was dealing knew of the lack of his authority or did not know or believe him to be a partner of the LLP. [section 9]

6.6 Relationships of partners

6.6.1 The mutual rights and duties of the partners of an LLP is governed by:

- (i) the limited liability partnership agreement; or
- (ii) in the absence of agreement, by the relevant provisions contained in the First Schedule to the LLP Act. [section 10]

7. Managers

7.1 Minimum number

Every LLP is required to have at least one manager who is a natural person of full age and capacity and who is ordinarily resident in Singapore. [section 23(1)].

7.2 Disqualification

7.2.1 The manager must not be:

- (i) an undischarged bankrupt (unless he has obtained leave of the High Court or the written permission of the Official Assignee). [section 33]
- (ii) disqualified as an unfit manager of insolvent LLPs which have gone into liquidation under section 34 (2) read with sections 34(7), 34(8) and 34(9) of the LLP Act.
- (iii) disqualified as a manager of a former LLP wound up on grounds that the LLP is being used for purposes against national security or interest under section 35 of the LLP Act.
- (iv) disqualified as a person who has been convicted of offences involving fraud or dishonesty punishable with imprisonment for three months or more, other offences connected with the formation or management of an LLP or any offence in relation to carrying on of any business of the LLP with intent to defraud creditors of the LLP or creditors of any other person or for any fraudulent purpose. [section 36]
- (v) disqualified under sections 149 (unfit directors of insolvent companies), 149A (directors of companies wound up on grounds of national security or interests) or 154 (directors of companies convicted of any offence in relation to: (i) fraud or dishonesty punishable with imprisonment for three months or more; (ii) the formation or management of a corporation; (iii) breach of director's duty under section 157 of the Companies Act, or (iv) not keeping proper books of account throughout a specified period immediately before the winding up of a company) of the Companies Act. [section 37]

7.3 Consent

Every proposed manager is required to give his or its consent to act as such and to confirm that he or it is not disqualified from acting as a manager. The consent has to be lodged with the Registrar. [section 23(1)]

7.4 Responsibilities of manager

- 7.4.1 The manager is answerable for the matters to be dealt with by the LLP under section 24 (annual declaration of solvency or insolvency), section 27 (publication of name, registration number, and limited liability statement on invoices and official correspondence) and section 28 (registration of changes in particulars registered in respect of any LLP) of the LLP Act. [section 23(3)(a)]
- 7.4.2 Personally liable for all penalties imposed on the LLP for contravention of the abovementioned sections unless he satisfies the court hearing the matter that he should not be so liable. [section 23(3)(b)]

8. Accounting Records

- 8.1 The LLP is required to keep such accounting and other records as will sufficiently explain the transactions and financial position of the LLP and enable profit and loss accounts and balance sheets to be prepared from time to time which give a true and fair view of the state of affairs of the LLP. [section 25]
- 8.2 The records of any transaction will have to be maintained for 7 years after the completion of the transaction. [section 25(2)]
- 8.3 The LLP is not required to prepare profit and loss account or balance sheet or to have them audited if they were prepared.

9. Advantages of an LLP compared to a company under the Companies Act

- 9.1 It is easier to administer an LLP as there is no obligation, *inter alia*, to maintain statutory registers, conduct meetings and maintain minutes. It is also cheaper to administer an LLP as it has lower compliance costs than a company.
- 9.2 There is no statutory obligation to appoint officers of an LLP other than a manager. The manager whilst having certain statutory responsibilities, does not have the fiduciary duties and responsibilities that directors have.
- 9.3 There is no statutory obligation to enter into a limited liability partnership agreement. If the partners of an LLP enter into a limited liability partnership agreement to regulate the LLP, the agreement need not be lodged with the Registrar of Limited Liability Partnerships ("**Registrar**") unlike the case of a company where its Memorandum and Articles of Association have to be lodged with the Registrar of Companies and thereupon become public record.
- 9.4 Whilst an LLP has an obligation to maintain accounting and other records, it is not, unlike in the case of a company, required to prepare any profit and loss accounts and balance sheet or to have them audited or to lodge those accounts with the Registrar. There is however a statutory obligation for a manager of an LLP to lodge annually and within 15 months preceding the last filing and in the case of the first filing, within 15 months of registration, a declaration of solvency or insolvency of the LLP.
- 9.5 As LLPs are not regulated by the Companies Act or the law relating to partnerships, the partners have more freedom in prescribing the terms of management and control of an LLP by agreement. In particular, there is more flexibility in the arrangements that can be

made with respect to management, capital contribution, return and distribution of capital and profits and profit-sharing arrangements within the LLP structure.

- 9.6** A body corporate may be a partner in an LLP, which may be attractive for some businesses.
- 9.7** An LLP is treated, for taxation purposes, as if it is a traditional partnership rather than a separate legal entity. Losses sustained by the LLP can be allocated to the partners for set-off against their other Singapore-sourced income.

10. Disadvantages of an LLP compared to a company under the Companies Act

- 10.1** The LLP is not a suitable business structure to raise funds from the public because it is partnership and there is no requirement for any accounts to be prepared, audited and filed.
- 10.2** The LLP may not be able to secure credit readily if no accounts are be prepared, audited and provided.\
- 10.3** The LLP will not be able to avail itself of the insolvency restructuring and rehabilitation processes under Sections 210 (schemes of arrangement) or 227A (judicial management) of the Companies Act.

11. Further information

Should you require any further information, please contact Ronnie Quek at +65 68907639 or ronnie.quek@allenandgledhill.com

27 February 2006

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