

Legal Framework of Limited Liability Partnerships and Limited Liability Companies in Singapore

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What is an LLP?

A body corporate

- Formed by registration under the Limited Liability Partnerships Act – S4(1)

Has legal personality separate from that of its partners – S4(1)

Has perpetual succession – S4(2)

- the existence, rights or liabilities of the LLP are not affected by any change in partners – S4(3)

Has the necessary capacity in its own right to:

- sue and be sued – S5(1)(a)
- acquire, hold and deal with property – S5(1)(b)

What does having “Limited Liability” in an LLP mean?

Obligation of the LLP remains “solely the obligation of the limited liability partnership” – S8(1)

- No partner is “personally liable, directly or indirectly, by way of indemnification, contribution, assessment or otherwise” solely by reason of being a partner of the LLP – S8(2)
- Liabilities incurred by the LLP are to be satisfied solely out of the property of the LLP – S8(5)

Authority of partners to bind the LLP

- Each and every partner is an agent of the LLP – S9(1)
- The LLP is legally bound by the actions of each partner
- Exception
 - partner has no/insufficient authority for the action – S9(2)(a); and
 - the third-party dealing with partner knows this – S9(2)(b)
- Authority of partner to bind LLP does not cease upon the partner ceasing to be a partner, unless the third party has notice of this or notice thereof has been delivered to the Registrar – S9(3)

Relationship of partners in an LLP

- Governed primarily by the limited liability partnership agreement with respect to mutual rights and duties
 - S10(1)(a)
- But to the extent the matters in the First Schedule are not covered by the limited liability agreement, the First Schedule shall apply
 - S10(1)(b)

Setting up the LLP

Mode of formation

- By registration under the LLP Act – S4(1)

Prerequisite factors – S14

- Minimum 2 persons
- Associated for purpose of conducting lawful business
- View to profit

Management and administration of the LLP – Manager(s)

- Minimum number of one manager – S23(1)
- Eligibility:
 - Natural person - S23(1)
 - Of full age and capacity – S23(1)
 - Is “*ordinarily resident in Singapore*” – S23(1)
 - Must not be undischarged bankrupt – save with leave of Singapore High Court or permission of OA – S33(1)
- Appointment pre-requisite
 - Written consent to act as manager – S23(2)

Management and administration of the LLP – Manager(s)

- Manager's duties S23(3)(a)
 - to lodge an annual declaration of his opinion as regards the solvency of the LLP - S24
 - to ensure that the name, registration number and status of limited liability of the LLP appear on all its invoices and official correspondence - S27
 - to lodge changes in particulars registered with the Registrar - S28

Accounts and records

- 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” – S25(1)

They must be open at all times to inspection by the partners
– S25(3).

Winding up of the LLP

- LLP may be wound up voluntarily by resolution of the Partners or by an order of the Court – S30 (1)
- Clawback Obligation – para 84 of 5th Schedule
 - Any distribution from LLP to partner (any payment of dividends, distribution of profits or return or refund of capital whether in cash or in kind) made within 3 years before the commencement of winding up of LLP
 - Conditional Obligation
 - Partner who receives the distribution must know or ought to have known that LLP was insolvent at the time or that the LLP will become insolvent as a result of the distribution

Winding up of the LLP

- Liquidator of LLP has same rights in relation to transactions entered into prior to liquidation as a liquidator of a company
 - Unfair preference
 - Undervalue transactions
 - Extortionate credit transactions
 - Fraudulent trading

Advantages of an LLP

- Limited liability
- Privacy
- Tax transparency

Limited Liability Company

- A body corporate established by registration under the Companies Act – S19(5)
- Has legal personality separate from that of its shareholders – S19(5)
- Has full capacity to carry on and undertake any business or activity and do any act or enter into any transactions – S23(1)
- Has perpetual succession and capacity to sue and be sued and to acquire and hold property – S19(5)
- Liability of shareholders is limited to the amount, if any, unpaid on the shares held by them – S22(3)

Setting up of Limited Liability Company

Mode of Formation

- By registration of memorandum under the Companies Act

Prerequisite factors

- At least one person must be a subscriber to the proposed memorandum – S17(1)

Manner of Registration

- Submit to the Registrar the memorandum and articles of association of the proposed company – S19(1)
- Pay the prescribed fee
- Submit a declaration that all requirements for formation of company have been fulfilled and that the identity of subscriber(s) have been verified

Setting up of Limited Liability Company

The Memorandum of a limited liability company must state

- The name of the company – S22(1)
- That the company is limited by shares – S22(1)
- The identity of the subscriber(s) – S22(1)
- That the subscriber(s) desire to form the company and take the stated number of shares in the capital of the company

Management and administration of Limited Liability Company¹⁵

Directors

- Must have at least one director – S145(1)
- Only a natural person of full age and capacity can be a director – S145(2)
- At least one of the directors must be ordinarily resident in Singapore – S145(1)

Powers of Directors

- The business of the company shall be managed by or under direction of the directors who may exercise all the powers of a company except any power that the Companies Act or the memorandum or articles of the company require the company to exercise in general meeting – Section 157A

Management and administration of Limited Liability Company¹⁶

Duties of Directors

- Statutory duties include
 - the duty to act honestly and use reasonable diligence in the discharge of the duties of his office – S157(1)
 - the duty to disclose director's shareholdings in the company – S165
 - the duty to convene annual general meetings and extraordinary general meeting – S175 and S176

Common law fiduciary duties

Management and administration of Limited Liability Company¹⁷

Accounts and Records of Company

- The company must “keep such accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance sheets and other documents required to attached thereto to be prepared from time to time” – S199(1)
- The company must at least one every calendar year submit at a general meeting an audited profit and loss account and balance sheet prepared in accordance with the prescribed accounting standards together with the auditor’s report – S201

Management and administration of Limited Liability Company¹⁸

Winding Up of Company

- By a special resolution of the shareholders – S290
- By the Court on any one of several grounds including insolvency – S254
- Liquidator of the company has rights in relation to transactions entered into prior to winding up which constitute unfair preference, undervalue transaction, extortionate credit transaction or fraudulent trading

Management and administration of Limited Liability Company¹⁹

Judicial Management of the Company

- Court may appoint a judicial manager to manage the business and affairs of the company in the event that the Company is insolvent and the appointment is likely to achieve any one of the following objectives – S227B:
 - the survival of the company or the whole or part of its undertaking as a going concern
 - the approval of a compromise or arrangement between the company and its creditors and or shareholders
 - a more advantageous realization of the company's assets than in a winding up

Singapore Legislation

- Available at www.singaporelaw.com.sg

Questions?



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Thank you

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