

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 incorporation¹. 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:

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- (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 two or more 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 State². 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 Registrar³. 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 malpractice⁴.

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 Act⁵ 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 withdrawn⁶.

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 LLP⁷.

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~