

Report of the Study Team on Limited Partnerships

Summary of Recommendations on Limited Partnerships

RECOMMENDATION 1

The study team recommends that a Limited Partnership (LP) should not have a legal personality separate from the partners.

RECOMMENDATION 2

The study team recommends that the information as stated in Paragraph 7.2.3 should be provided for the registration of a LP and be made available for public inspection.

RECOMMENDATION 3

The study team recommends that a partner's contribution could be in cash or in kind, and could be made in instalments and that a partner's ownership and share in the profits and assets of the LP should purely be the subject of the agreement between the partners.

RECOMMENDATION 4

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

RECOMMENDATION 5

For General Partner

The study team recommends that a general partner should be personally liable for all the debts, obligations and liabilities of the LP incurred during the period when he is a general partner, and that where there are two or more general partners, then their liability should be joint and several.

For Limited Partner

The study team recommends that a limited partner should not by being a limited partner be personally liable for the debts, obligations or liabilities of the LP. However, if a limited partner takes part in the management of the LP's business, he should be personally liable for all debts and obligations of the LP incurred

during the period he participated in the management of the LP as though he were, for that period, a general partner. The study team also recommends that limited partners should not be regarded as participating in the management of the LP by their conduct of any one or more of the activities listed in paragraph 8.2.5 of this report. The study team also recommends that the LP legislation should provide that no claim shall be made and no action shall be commenced against the limited partner to recover or enforce any debt, obligation or liability of the LP unless it is a debt, obligation or liability incurred during the period when he participated in the management of the LP.

In addition, the study team recommends that the Minister should have power by subsidiary legislation to amend the list of safe harbour activities.

RECOMMENDATION 6

The study team recommends that liability of a limited partner to any third party dealing with the LP and arising from the limited partner's participation in the management of the LP should not depend on the third party's knowledge of the limited partner's participation in the management of the LP.

RECOMMENDATION 7

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

RECOMMENDATION 8

The study team recommends that a body corporate should be allowed to be a general or limited partner.

RECOMMENDATION 9

The study team recommends that a LP must be registered with at least two partners and at least one of whom must be a general partner. A LP where the sole remaining partner is a general partner should be allowed to continue business.

RECOMMENDATION 10

The study team recommends that an undischarged bankrupt should not be a general partner of a LP without the leave from High Court or a written permission of the Official Assignee. An undischarged bankrupt should however be allowed to become and remain a limited partner.

RECOMMENDATION 11

The study team recommends that the LP legislation should provide that (a) all the business, undertaking and assets of a partnership firm which proposes to reconstitute its business under a LP will remain vested with the persons who are partners of the partnership firm and who will become the partners of the LP on registration and (b) that the partners of the partnership firm before the transfer should continue to remain liable (jointly and severally) 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 LP.

RECOMMENDATION 12

The study team recommends that a LP should be tax transparent and the partners should be taxed on their share of the income or gains of the LP according to their personal income tax rates and that the business conducted by a LP which results from a conversion of a general partnership should be treated for tax purposes as a continuation of the business conducted by the general partnership immediately before conversion and by the same persons who were partners of the general partnership immediately before conversion.

RECOMMENDATION 13

The study team recommends that a LP should not be required to have its accounts audited and filed with the regulators. A LP should however be required to keep proper accounting records that would enable true and fair financial statements to be prepared and audited, if necessary.

RECOMMENDATION 14

The study team recommends that a limited partner should be allowed to withdraw his capital contribution, subject to the partnership agreement and the general partners’ approval. The study team also recommends that a limited partner will be liable to refund any distribution of capital or profits made to him (whether or not on cessation of his partnership) only in the event that (a) all persons who were general partners at the time of the distribution are adjudicated bankrupt or ordered to be wound up within three years after the date of distribution; and (b) all those general partners were insolvent at the time of the distribution and the limited partner knew or ought to have known at the time that they were insolvent or the distribution results in all the general partners becoming insolvent and the limited partner knew or ought to have known at the time of distribution that all the general partners would become insolvent as a result of the distribution.

RECOMMENDATION 15

The study team recommends that a partner (whether a general or limited) 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 LP subject to such limitations, restrictions or prohibitions that may be imposed by the partnership agreement. The study team recommends that the admission of any partner to the LP or the cessation of any person as a partner of the LP should be governed by the partnership agreement and that the law relating to general partnerships should apply in either case, namely, the LP as a partnership of the persons who constituted immediately before the admission or cessation would be dissolved by such admission or cessation.

RECOMMENDATION 16

The study team recommends that the law and process relating to the dissolution of LPs should be similar to that applicable to general partnerships.

RECOMMENDATION 17

The study team recommends that the law applicable to general partnerships should apply in the event of the death of a partner and that upon the death of any partner the LP as a partnership of the persons who were partners immediately before the death of the partner should be dissolved. The bankruptcy of a general partner of an LP would automatically dissolve the LP. However, since a limited partner will be able to continue to be a limited partner of the LP in the event of his bankruptcy, the bankruptcy of the limited partner should not operate to dissolve the LP.

RECOMMENDATION 18

The study team recommends that a LP may be dissolved by the Court under the circumstances listed in paragraph 13.3.2 of this report.

STUDY TEAM ON LIMITED PARTNERSHIPS

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 study team members are:

- Co-Chairmen: Mr Ronnie Quek Cheng Chye
Mr Quek See Tiat, PricewaterhouseCoopers
- Members: Mr Loh Xiang Hui, Ministry of Finance
Mr Charles Lim Aeng Cheng, Attorney-General's Chambers
Ms Joyce Chao, Attorney-General's Chambers
Mrs Toh Wee San, Accounting and Corporate Regulatory Authority
- Secretariat: Mr Dexter Tan Wui Teck, 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 the 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. This means that the debts and liabilities of a company are not the debts and liabilities of its members.

2.2 In its October 2002 final report, the Company Legislation and Regulatory Framework Committee (CLRFC) had recommended that legislation be enacted to introduce LPs and LLPs in Singapore. The new structures will increase the options available to businesses and investments. The CLRFC's report stated that LLPs are useful as business, professional and investment vehicles, while LPs are suitable for private equity and fund investment businesses. The CLRFC also recommended that the Singapore LP Act be modeled on the UK 1907 LP Act and that LPs be made available to all types of businesses.

2.3 The study team has earlier presented its final recommendations on LLPs to the Government on 28 February 2004. All but one of the recommendations were

accepted by the Government. The study team decided to focus on the LLP structure first while waiting for the UK Law Commission to complete its review of the UK Partnership Act 1890 and the Limited Partnership Act 1907. The UK review was completed in November 2003. Taking into consideration the feedback from respondents and the UK Law Commission's recommendations, this report constitutes the study team's final recommendations on LPs

3 PUBLIC CONSULTATION

3.1 The study team issued a public consultation paper on LPs on 18 June 2003 and a total of 12 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.

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

- Ms Paula Eastwood of PricewaterhouseCoopers
- Mr Sarjit Singh and Mr Chan Wang Ho, Insolvency and Public Trustee's Office

4 NATURE OF A LIMITED PARTNERSHIP

4.1 The feature which distinguishes the LP from the LLP is that the liability of all the partners of the LLP for the debts, obligations and liabilities of the LLP is limited whereas the LP will have at least one partner whose liability will be unlimited (who in this report will be referred to as the "general partner"). The general partner of the LP will be liable for all the debts, obligations and liabilities incurred by the LP during the period when he is a general partner.

4.2 The feature which distinguishes the LP from the general partnership is that the liability of all the partners of the general partnership for the debts, obligations and liabilities of the general partnership is unlimited whereas the LP can have one or more partners who will not be personally liable for the debts, obligations and liabilities of the LP and whose liability will be limited in the manner recommended in this report (who in this report will be referred to as "limited partners").

5 APPROACH OF THE STUDY TEAM

5.1 The study team is of the view that the LP structure should be business friendly, offer benefits for its potential users (namely potential investors or owners of the business), and at the same time, offer a certain level of protection to those who will have dealings with it. In many ways, the LP structure will resemble the general partnership structure but with the added feature of limited liability for the limited partners.

5.2 The study team is of the view that the introduction of the LP (with the liability of at least one partner being unlimited) will make available an additional structure on which businesses could be set up or organised. The study team notes that the LP has become a popular vehicle overseas for investment funds. In Germany, the LP structure, otherwise known as Kommanditgesellschaft, is used for ship financing, whereby the general partner is a limited liability company with several hundred investors as the limited partners. In the UK, LPs have also been used increasingly for property investments.

5.3 Looking at the examples overseas, the study team is of the view that the LP structure would most likely appeal to a niche market i.e. the private equity and fund investment businesses. Notwithstanding this, the study team believes that the LP should be available for all businesses and not restricted to any particular industry or profession.

5.4 The LP could therefore be an attractive structure for persons who propose to conduct business as investors who do not wish to take an active role in the management of the business, and who would prefer to entrust the management of the business to any one or more person or persons who have sufficient confidence in their own skills and in the prospects of the business to assume unlimited liability.

5.5 The LP is, however, not intended to be a substitute for the general partnership firm or the LLP. The persons who choose to conduct business either as owners or investors must select from amongst the various business structures the most suitable structure on which to establish and conduct their business having regard to their objectives and the risks they are prepared to undertake.

5.6 In finalising the recommendations relating to the LP, the study team had considered whether the LP should resemble the general partnership with the feature of the limited liability for the limited partners or whether it should be a legal entity separate from its partners. This is discussed further in Section 7 below.

6 FINAL REPORT

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

7 LEGAL STRUCTURE AND REGISTRATION REQUIREMENTS

7.1 Separate legal entity

7.1.1 A partnership could be an aggregation of the individual partners or an entity separate from its partners. The UK has adopted the aggregate approach and Singapore has followed the UK model in the general partnership. However, Scotland and the US adopted the entity approach. Although the partnerships in certain countries in Europe such as Belgium, Germany, the Netherlands and Switzerland do not have a legal personality separate from the partners, they do have certain attributes which are consistent with separate legal personality such as the ability to sue and be sued, the right to hold property, as well as the postponement of a creditor's recourse against the partners until he has exhausted his remedies against partnership assets.

7.1.2 In its recent review of the UK Partnership Act and the LP Act, the UK Law Commission recommended that English law should adopt an entity approach to partnership¹, as it helps to facilitate the continuity of partnerships i.e. a partnership/LP will continue in existence in spite of changes to the members. The separate legal entity also permits the partnership/LP to hold property as well as to enter into contracts in its own name.

7.1.3 The study team considered the issue of whether a LP should adopt an entity approach in great detail. There are advantages to adopting an entity approach for LPs. A LP that has a separate legal personality from its partners would effectively confer perpetual succession and limited liability on those investors who do not choose to become general partners.

7.1.4 While the study team acknowledged that there are advantages to adopting an entity approach for LPs, the study team also recognised that there are practical difficulties and disadvantages in doing so. First, foreign investors and private equity managers are familiar with the English 1907 model as a variant of the general partnership. Therefore, these investors may not welcome the proposal to

¹ The UK Law Commission is still awaiting a further response from the Government on whether and if so when to take the Bill forward. While the UK Law Commission has recommended that LPs should be given separate legal entity status, they found it necessary to preserve the option of Special LPs to enable businesses to opt for an LP structure without separate legal personality

constitute a LP as a separate legal entity. It is therefore preferable to adopt an internationally accepted and established precedent such as the UK 1907 model with suitable modifications if the liability of at least one of the partners is to be unlimited.

7.1.5 More importantly, the study team is concerned about the issue of the treatment of LPs by overseas tax authorities. The study team notes that the popularity or attractiveness of the English LP structure as a vehicle for venture capital and private equity stems mainly from the fact that it is tax transparent. Hence, the study team is concerned that if the LP has a separate legal personality, this might result in the partnership being treated as an opaque entity for tax purposes. This would have potentially adverse tax consequences for investors in overseas jurisdictions, and these investors would, as a result, decline to use a Singapore LP for a private equity or venture capital fund. This would greatly affect the take-up rate of the LP structure in Singapore.

7.1.6 After consulting with the investment fund industry as well as the accounting professionals from other jurisdictions, the study team learnt that overseas tax authorities do take into consideration whether the LP is a separate legal entity in determining whether to treat it as transparent for tax purposes. For instance, in the UK, Japan and Germany, while legal separation may not be the most critical issue for tax purposes, it will count for non-transparency in a tie-breaker situation. In New Zealand, the fact that the LP is constituted as a separate legal entity will deprive the investor of the benefit of the tax losses of the LP.

7.1.7 Therefore, the study recommends the LP should not have a legal personality separate from its partners. This will expand the choices of partnership structures in Singapore for the persons who propose to be owners or investors in any business. The investors who do not wish to incur unlimited liability for the debts and obligations of the partnership but who are unable to fully enjoy the tax benefits under the laws of any foreign jurisdiction applicable to them if the partnership is a separate legal entity will find the LP structure useful especially if a corporate entity could become a general partner.

7.1.8 As the LP will not be a legal entity separate from the partners, the limited partners may be sued on the contracts or debts of the LP and would have to rely on the LP legislation to limit or exclude their liability. This gives rise to the question of whether they can rely on the LP legislation in any foreign jurisdiction in which they may be sued on the contracts or debts of the LP especially if the governing law of the transaction entered into by the LP is not Singapore law. However, investors, who are uncertain whether they can rely on the provisions of the LP legislation which insulate them as limited partners in the event that they are sued

in any foreign jurisdiction for the debts and obligations of the LP, may instead elect to use the LLP.

7.1.9 Nevertheless, the study team is of the view that the Government should continue to monitor the legal developments in the UK and other jurisdictions with respect to partnerships and at the same time, conduct a holistic review of the entire regime of the laws relating to partnerships in Singapore. This will help ensure any change would be embarked upon in the context of a review of partnership law in general and that the various partnership structures remain relevant and viable business vehicles for businesses.

RECOMMENDATION 1

The study team recommends that a Limited Partnership (LP) should not have a legal personality separate from the partners.

7.2 Information for registration

7.2.1 The UK Law Commission recommends that a LP should be constituted from the date of registration of the LP as stated in the certificate of registration, and that the registration document should set out the following information, i.e. the name of the LP, the name and address of the proposed general partner(s), the name of each limited partner, the amount of capital contribution made by the limited partner to the LP, the address of its registered office and the date of formation of the partnership (if the partnership exists before registration). The registration document must be signed by all the partners and will be available for inspection by any member of the public.

7.2.2 In US-Delaware, the certificate of limited partnership merely states the name of the LP, the address of its registered office, the name and address of each general partner in the LP, and the name and address of the registered agent.

7.2.3 After considering the information requirements in the UK and US-Delaware and comparing this to the requirements in the Singapore's Business Registration Act ("BR Act") as well as the registration requirements for an LLP, the study team recommends that the information provided for the registration of a LP should include the following:

- (a) the name of the LP;
- (b) an address in Singapore to which all correspondence and notices may be addressed and at which all documents can be served on the LP;

- (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) in relation to each partner, a statement as to whether the partner is a general partner or limited partner.

7.2.4 In the June 2003 consultation paper, the study team had recommended that the LP's principal place of business be included in the registration. However, after considering the public feedback, the study team is of the view that instead of a principal place of business, it should be sufficient for the LP to stipulate an address in Singapore as the address for service on the LP of notices and other documents. The study team sees no need for any requirement to register a principal place of business. A place of business implies that every business must be conducted from a particular geographical location. This is not necessarily the case in the modern era. In any event, companies incorporated under the Companies Act are not required to register their principal place of business. Section 142 of the Companies Act only requires that every company must have an office within Singapore to which all communications and notices may be addressed. This is consistent with the practice in US-Delaware and Jersey², and will help to attract foreign businesses to set up LPs in Singapore.

7.2.5 Unlike the UK, the study team recommends that the LP legislation should not impose any requirement to disclose or register the capital contributions of the partners given that the persons dealing with the LP are more likely to see their protection as resting on the unlimited liability of the general partners rather than the capital base of the LP. This is also consistent with the study team's recommendation for LLPs. The study team notes that no one is compelled to be a supplier or customer of the LP and any person who requires such information or any other information regarding the LP or its partners may always elect not to enter into any transaction with the LP if the information sought is not provided. In any event, a disclosure of capital contributions will not in itself serve to indicate to persons dealing or proposing to deal with the LP the current financial state of the business or of the partners whose liability are unlimited. Information relating to capital contributions is historic in nature and the financial state of the LP at any point in time depends on its assets and liabilities at that time and not on the amount of the capital contributions made up to that time.

RECOMMENDATION 2

² The island of Jersey is part of the Channel Islands. It is a dependency of the Crown, owing allegiance to the Sovereign, but without incorporation into the United Kingdom.

The study team recommends that the information as stated in Paragraph 7.2.3 should be provided for the registration of a LP and be made available for public inspection.

7.3 Partner's Capital Contribution

7.3.1 In the UK, “relevant capital contribution” means a capital contribution consisting of either or both of “a sum or sums of money, and property which has an agreed capital value”. In fact, in the UK, it is common practice for limited partners to make a nominal contribution and to finance the LP by making advances to it. In US-Delaware³ and Jersey, besides cash and property, a partner's contribution may also be in the form of services rendered. 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 LPs to conduct their business activities. Hence, the study team recommends that a limited partner should be allowed to contribute in kind, subject to the partnership agreement.

7.3.2 The study team also recommends that partners should be allowed to make their contributions in instalments and a partner's share of the profits and assets of the LP should be determined solely by the agreement of the partners.

RECOMMENDATION 3

The study team recommends that a partner's contribution could be in cash or in kind and could be made in instalments and that a partner's ownership and share in the profits and assets of the LP should purely be the subject of the agreement between the partners.

7.4 Disclosure of limited liability status

7.4.1 The study team recognises that the public and persons who deal or propose to deal with a business entity must be informed of the nature of the entity. The reason for this is to inform potential third parties that they are dealing with an entity with limited liability.

7.4.2 Therefore, consistent with the recommendation made in relation to LLPs, the study team recommends that LPs should be required to include either the words “Limited Partnership” and/or the abbreviation “LP” as part of their name. In addition, every invoice, order, receipt or business correspondence of the LP should

³ In US-Delaware, a person is even allowed to be admitted as a limited partner and receive an interest in the LP without making a contribution or being obliged to make a contribution to the LP.

state its registration number which serves as a unique identifier and that it is registered as a LP.

RECOMMENDATION 4

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

8 LIABILITY OF PARTNERS

8.1 General Partner

8.1.1 The essential feature of the LP as compared with the LLP is that there must be at least one general partner and the person who is the general partner will also be personally liable for the debts, obligations and liabilities of the LP incurred during the period when he is a general partner. Where there are two or more general partners, then each of them should be jointly and severally liable for those debts, obligations and liabilities incurred during the relevant period.

8.2 Limited Partners

8.2.1 In order to avoid the complexities inherent in imposing and applying a limitation to the liability of a limited partner for the debts, obligations or liabilities of the LP (which is not to be a legal entity separate from its partners), the study team is of the view that a limited partner should not by virtue of being a limited partner of the LP be personally liable to any person for the debts, obligations or liabilities of the LP. The persons who deal with the LP would always have recourse to the general partners of the LP.

8.2.2 The study team also considered the issue of whether the limited partners should be allowed to participate in the management of the LP since the liabilities incurred by the LP are in effect the liabilities of the general partners.

8.2.3 The UK 1907 LP Act and the Jersey and the US-Delaware legislation impose personal liability on a limited partner for the debts and obligations of the LP if he participates in the management of the LP as though he were a general partner. The study team agrees that a similar approach should be adopted and therefore recommends that a limited partner who takes part in the management of the LP should be liable for all debts and obligations of the LP incurred during the

period he participated in the management of the LP as though he were, for that period, a general partner.

8.2.4 The study team notes that it would be difficult to prescribe an exhaustive and complete list or description of the activities which constitutes taking part in the management of the LP. The UK 1907 LP Act gives little guidance as to what activities short of management are permissible for limited partners. By contrast, several jurisdictions such as Jersey and US-Delaware have provided detailed statutory lists of activities (referred to as safe harbour activities) which will not in any event be regarded as “participation in management”. The study team agrees that it will be useful to set out in the LP legislation a list of "safe harbour" activities so that limited partners can be certain and can take comfort from the fact that they will not be regarded having participated in the management of the LP by their conducting any one or more of these activities.

8.2.5 In coming up with the list of "safe harbour" activities, the study team looked at the Jersey model, the US-Delaware model and the UK Law Commission’s model. Having drawn reference from the various models, the study team recommends that the following should be included in the list of safe harbour activities:

- (a) contracting with the LP;
- (b) acting as an agent or employee of the LP within the scope of the authority conferred by the partners;
- (c) acting as an agent or employee of a general partner or as a director, officer or shareholder of a corporate general partner;
- (d) consulting with and advising the LP or any partners of the LP with respect to the business, affairs or transactions of the LP;
- (e) investigating, reviewing, approving or advising on the accounts or affairs of the LP or exercising any rights as a limited partner of the LP;
- (f) acting as surety or guarantor for the LP either generally or in respect of specific obligations;
- (g) enforcing his rights under the partnership agreement (unless those rights are to carry out management functions);
- (h) approving or disapproving an amendment to the partnership agreement;
- (i) voting on, or otherwise signifying approval or disapproval of any transaction or proposed transaction of the LP or the admission or retirement or termination of any person as partner of the LP in the exercise of rights or powers conferred in the partnership agreement; and
- (j) commencing or instructing any person to commence or continue or defend any legal proceedings on behalf of the general partners of the LP, if any one or more of the general partners with the authority to do so

have, without good cause, refused or failed to commence, continue or defend any such proceedings.

8.2.6 The list is not intended to be an exclusive nor exhaustive list, therefore the LP legislation should clearly state that any activity which does not fall within the list does not necessarily constitute participation in management.

8.2.7 In order to preserve the flexibility to deal with changing business practice and climate, the study team also recommends that the Minister should be empowered to amend the list, (by adding, modifying or omitting a permitted activity), through subsidiary legislation.

8.2.8 As the LP will not be an entity separate from its partners, the LP legislation should address the legal relationship between the partners of the LP and the persons who deal with the LP and consequently, the incidence of the liability of the partners to those persons for the transactions of the LP in a manner consistent with the recommendations in this report. Therefore, it may be appropriate for the LP legislation to stipulate that the contracts and agreements of the LP with persons who deal with the LP constitute contracts and agreements with the persons who at the time are the general partners and do not constitute the contracts and agreements of the limited partners.

RECOMMENDATION 5

For General Partner

The study team recommends that a general partner should be personally liable for all the debts, obligations and liabilities of the LP incurred during the period when he is a general partner, and that where there are two or more general partners, then their liability should be joint and several.

For Limited Partner

The study team recommends that a limited partner should not by being a limited partner be personally liable for the debts, obligations or liabilities of the LP. However, if a limited partner takes part in the management of the LP's business, he should be personally liable for all debts and obligations of the LP incurred during the period he participated in the management of the LP as though he were, for that period, a general partner. The study team also recommends that limited partners should not be regarded as participating in the management of the LP by their conduct of any one or more of the activities listed in paragraph 8.2.5 of this report. The study team also recommends that the LP legislation should provide that no claim shall be made and no action shall be commenced against the limited partner to recover or enforce any debt, obligation or liability of the LP unless it is a

debt, obligation or liability incurred during the period when he participated in the management of the LP.

In addition, the study team recommends that the Minister should have power by subsidiary legislation to amend the list of safe harbour activities.

8.3 Knowledge of the third party

8.3.1 The study team considered whether the liability of the limited partner for any debt or obligation of the LP should be contingent on the third party's knowledge that the limited partner is taking part in the management of the LP at the time when the debt or obligation is incurred or contracted.

8.3.2 In Jersey and US-Delaware, the liability of the limited partner for the debts or obligations of the LP is dependent on the knowledge of the third party of his participation in management. Thus, Article 19(4) of the Limited Partnerships (Jersey) Law 1994 (Jersey LP Act) provides that a limited partner shall be liable "only to a person who transacts with the LP with *actual knowledge* of the participation of the limited partner in the management of the LP and who then *reasonably believed* that the limited partner to be a general partner". Similarly, s17-303(a) of the Delaware LP Act states that if a limited partner does participate in the control of the business, he or she is "liable only to persons who transact business with the LP reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner". This is different from the UK approach where the liability of the limited partner is *not contingent* on the knowledge of the third party.

8.3.3 The argument in favour of the Jersey and US-Delaware approach is that a third party should not benefit merely because a limited partner takes part in the management of the firm, when the decision of the third party to deal with the LP has been made on the basis that the general partners (and the general partners alone) are liable. However, the study team is of the view that the reason for imposing liability on the limited partner is to deter the limited partner from taking part in the management of the LP. Hence, this liability should not depend on the particular knowledge and belief of a particular third party.

RECOMMENDATION 6

The study team recommends that liability of a limited partner to any third party dealing with the LP and arising from the limited partner's participation in the management of the LP should not depend on the third party's knowledge of the limited partner's participation in the management of the LP.

8.4 No upper limit to the total number of partners

8.4.1 The study team notes that in Jersey, the UK and US-Delaware, the law does not prescribe an upper limit on the number of partners in a LP. The UK no longer imposes a limit on the number of partners for all types of partnerships since 2001. In Germany, it is also common for a Kommanditgesellschaft⁴ (which is used for ship financing) to have several hundred investors as the limited partners.

8.4.2 Feedback from the public consultation also indicated that there should not be an upper limit on the number of partners in a LP. In particular, the venture capital community commented that a limit to the number of partners would be an “awkward and time consuming obstacle” in terms of establishing and running funds.

8.4.3 Having considered the feedback from the respondents and the practices in other leading jurisdictions, the study team recommends that the law should not prescribe any upper limit on the total number of partners of the LP. This is also consistent with the arrangement for LLPs.

RECOMMENDATION 7

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

8.5 Composition of a limited partnership – General partner

8.5.1 In the UK, US-Delaware and Jersey, LPs are allowed to have corporate partners. Article 3(3) of the Jersey LP Act expressly states that a “body corporate may be a general or a limited partner.” This is different from the UK 1907 LP Act which provides that a body corporate may be a limited partner but is silent as to whether a body corporate may be a general partner.

8.5.2 The study team is of the view that in line with the practice in other jurisdictions, a body corporate may be a general or limited partner in a LP. The study team sees no reason for precluding corporate entities from becoming a general partner of a LP where the law does not preclude corporate entities from becoming partners of a general partnership. Indeed, the law also does not prohibit the setting up of a general partnership in which all the partners are corporate entities.

⁴ The equivalent of a LP in Germany.

8.5.3 The study team also notes that since the identities of the partners of a LP is registered, the persons dealing or proposing to deal with the LP can find out whether any of the partners of a LP are corporate entities and they are free to decide not to have any dealings or further dealings with the LP.

8.5.4 Similar to a natural person who is a general partner, a corporate entity which is a general partner will also be liable for all the debts and obligations of the LP and may be sued and become subject to insolvency proceedings being taken against it if it is unable to settle and discharge all those debts and liabilities.⁵

RECOMMENDATION 8

The study team recommends that a body corporate should be allowed to be a general or limited partner.

8.6 One-partner LP

8.6.1 In Jersey and the UK, a LP must consist of at least two partners, one of whom must be a general partner⁶. Consistent with the treatment in other countries, it was proposed in the June 2003 consultation paper that at the point of registration, a LP should be constituted with one or more general partners and one or more limited partners. However, should the LP subsequently be left with only one partner, it will not be automatically dissolved if the sole remaining partner is a general partner. A LP with only one partner who is a general partner will be treated no differently, by law, from a sole proprietorship. This should eliminate the need for the LP to re-register itself once other persons are admitted as partners.

8.6.2 All respondents supported this recommendation, as allowing a LP with one partner to continue to operate will enhance flexibility for businesses and reduce costs necessarily incurred in winding up the LP. The study team is of the view that a LP with one partner who is a general partner should be allowed to continue business.

8.6.3 In the June 2003 public consultation paper, it was also proposed that as a safeguard, the sole remaining partner in the LP should be a natural person and not a corporation. Some respondents commented that this was unnecessary because a corporation is fully liable for its debts and liabilities, since it is not entitled to any discharge. Hence, the mere fact that the last remaining partner is a corporation does not per se prejudice the interests of creditors.

⁵ This means that a limited company is liable as a general partner to the full extent of its assets.

⁶ Article 3(2), Limited Partnerships (Jersey) Law 1994

8.6.4 Given that it is currently possible for a company to register a sole proprietorship, the study team agrees with the respondents that there is no need for the sole remaining partner of a LP to be a natural person.

RECOMMENDATION 9

The study team recommends that a LP must be registered with at least two partners and at least one of whom must be a general partner. A LP where the sole remaining partner is a general partner should be allowed to continue business.

8.7 Suitability of partners

8.7.1 In Singapore, the study team notes that section 22 of the BR Act provides that an undischarged bankrupt should not participate in the management of any business without the leave of the High Court or the written permission of the Official Assignee (OA). As proposed in the June 2003 public consultation paper, the study team is of the view that similarly, an undischarged bankrupt should not become a general partner of a LP without leave from the High Court or the OA. This will ensure that people who are deemed unsuitable by law to manage businesses will not try to circumvent the system by becoming general partners in a LP.

8.7.2 Unlike the partners in an LLP, general partners in a LP should not be subject to the disqualification criteria for company directors in the CA. The rationale for the disqualification criteria is to preclude those persons deemed unsuitable by law to manage a business from being involved in the management of the business where they could be insulated from liability by relying on the separate legal entity of the LLP or the company. The study team believes the disqualification criteria for company directors should not be extended to apply to general partners of LPs because the general partners will be personally liable for the debts, obligations and liabilities of the LP incurred during the period when they are general partners.

8.7.3 Though an undischarged bankrupt is not allowed to act as a general partner of the LP, the study team is of the view that he should not be precluded from becoming a *limited partner* of the LP. This should not give rise to any concern if, as recommended in this report, a limited partner is prohibited from taking part in the management of the LP. In the situation where a limited partner is an undischarged bankrupt, his creditor (through the OA) will receive the economic interest of the bankrupt's interest in the LP.

RECOMMENDATION 10

The study team recommends that an undischarged bankrupt should not be a general partner of a LP without the leave from High Court or a written permission of the Official Assignee. An undischarged bankrupt should however be allowed to become and to remain as a limited partner.

9 “CONVERSION” TO LP

9.1.1 The Delaware LP Act does not set any rules on how an existing company/partnership should go about transferring its business, assets and liabilities to the LP. The Delaware LP Act merely provides that prior to filing a certificate of “conversion” to LP with the Secretary of State, the “conversion” should be approved internally by the company/partnership and that there should be a partnership agreement that includes the approval of the person who will be the general partner of the LP upon “conversion”⁷. To safeguard the interests of the persons who were creditors prior to the “conversion”, the “conversion” to a LP should not affect any obligations or liabilities of the other entity incurred prior to its “conversion” to a LP, or the personal liability of any person incurred prior to such a “conversion”.

9.1.2 The UK 1907 LP Act also does not provide for a “conversion” process from a company/partnership to a LP. This is because in the UK, a LP is deemed as a general partnership unless it registered as such with the Registrar of Companies. Therefore if a partnership exists before registration, the registration will confer limited liability status on the limited partners, and the pre-existing partnership will be constituted as a LP.

9.1.3 In the light of the practice in other jurisdictions, the study team recommends that there should be a seamless “conversion” process for a general partnership to a LP. To protect creditors’ interests, partners of the general partnership before “conversion” should continue to remain jointly and severally liable for the liabilities and obligations of the partnership which were incurred prior to, or which arise from any contract entered into prior to the “conversion” into a LP.

9.1.4 In the June 2003 consultation paper, the study team expressed the view that it would not be practical to provide for a seamless “conversion” process from a company to a LP. It would be unduly complicated to provide for conversion from a legal entity into an unincorporated business since title and ownership of assets (including real estate) which was vested in a corporate entity would have to be

⁷ Section 17-217, Delaware Limited Partnerships Act

vested in an unincorporated business and similarly the liabilities of the legal entity subsisting before conversion would have to be assumed by the unincorporated business, namely the partners of LP. This will give rise to the issues as to whether the assets should be vested in all the partners or only the general partners or some of them and whether all the liabilities should be vested only in the general partners and whether if they are vested in general partners, the general partners are entitled to be indemnified by the limited partners if all the assets are vested in all partners based on their share of the profits. Based on the feedback from the public consultation, the study team understands that the lack of a “conversion” process from a company to a LP should have a minimal impact on the business community as existing companies are unlikely to convert to LPs, since this will mean the loss of the limited liability protection for at least those of its shareholders who become general partners. Furthermore, the study team doubts that any shareholder of a company whose liability is limited would readily agree to become a general partner and assume unlimited personal liability not only for the liabilities of the LP arising from transactions effected by the LP but for the liabilities the company subsisting before conversion which will have to be assumed by at least the general partners the LP.

RECOMMENDATION 11

The study team recommends that the LP legislation should provide that (a) all the business, undertaking and assets of a partnership firm which proposes to reconstitute its business under a LP will remain vested with the persons who are partners of the partnership firm and who will become the partners of the LP on registration and (b) that the partners of the partnership firm before the transfer should continue to remain liable (jointly and severally) 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 LP.

10 TAX TREATMENT

10.1 Taxation framework for LP

10.1.1 As in US-Delaware and the UK, the study team recommends that a LP like the LLP should be tax transparent. General and limited partners of the LP should be taxed on their share of the LP’s income or gains, according to their personal income tax rates.

10.1.2 Furthermore, the persons who are the partners of the LP immediately after conversion from a general partnership should not be disadvantaged or prejudiced by the conversion. Therefore, for tax purposes, the business conducted by the

general partnership immediately before conversion should be regarded as continuing after conversion into the LP and as the business of the same partners.

RECOMMENDATION 12

The study team recommends that a LP should be tax transparent and the partners should be taxed on their share of the income or gains of the LP according to their personal income tax rates and that the business conducted by a LP which results from a conversion of a general partnership should be treated for tax purposes as a continuation of the business conducted by the general partnership immediately before conversion and by the same persons who were partners of the general partnership immediately before conversion.

11 ACCOUNTING RECORDS AND AUDIT

11.1 Accounting records and need for audit

11.1.1 In the UK and US-Delaware, LPs do not need to publish their accounts or have them audited. In Jersey, a LP is required to keep accounting records which are sufficient to show and explain its transactions and are such as to disclose with reasonable accuracy at any time the financial position of the LP. In addition, unless the partnership agreement otherwise provides, a LP in Jersey is not statutorily required to appoint an auditor or have its accounts audited.

11.1.2 The study team recommends that, similar to a general partnership and an LLP, a LP should not be required by law to have its accounts audited or filed with the regulators. This should be the subject of the agreement between the partners. However, the LP should be required to keep proper accounting records that would enable true and fair financial statements to be prepared and audited if necessary.

RECOMMENDATION 13

The study team recommends that a LP should not be required to have its accounts audited and filed with the regulators. A LP should however be required to keep proper accounting records that would enable true and fair financial statements to be prepared and audited, if necessary.

12 CAPITAL WITHDRAWAL & ASSIGNMENT OF PARTNERSHIP

12.1 Capital withdrawal

12.1.1 In Jersey, a limited partner is allowed to withdraw his capital contribution, provided that at the time of and immediately following such withdrawal, the LP is solvent. Article 17(2) of the Jersey LP Act provides that for a period of six months from the date of withdrawal, the limited partner is required to repay the amount withdrawn if at the point of withdrawal the LP was insolvent. The “claw back” amount would then be used to discharge a debt or obligation of the LP that was incurred during the period that the contribution represented an asset of the LP.

12.1.2 In US-Delaware, a limited partner is also allowed to withdraw his capital contribution. It is however provided that a LP shall not make a distribution to a limited partner when the liabilities of the LP exceed the fair value of the assets of the LP i.e. when the LP is insolvent. A limited partner who received a distribution when the LP is insolvent and who knew at the time of distribution that the LP is insolvent, is liable to the LP for the amount of distribution, for a period of three years from the date of distribution.

12.1.3 In the UK, section 4(3) of the UK 1907 LP Act provides that “a limited partner shall not during the continuance of the partnership, either directly or indirectly, draw out or receive back any part of his contribution, and if he does so draw out or receive back any such part (he) shall be liable for the debts and obligations of the firm up to the amount so drawn out or received back”. In its review of the partnership structure, the UK Law Commission recommends that while a person remains a limited partner, he is not entitled either directly or indirectly, to withdraw or receive back any part of his capital contribution to the LP. If a limited partner withdraws or receives back all or part of his capital contribution, he should be personally liable for the partnership obligations incurred while he is a limited partner, with his liability limited to the amount of the capital contribution withdrawn.

12.1.4 With regard to the duration of liability, the UK Law Commission recommends that a limited partner should not incur liability for withdrawal of his capital contribution on ceasing to be a limited partner in the LP. However, there *should not* be a time limit on the limited partner’s liability arising from withdrawal of his capital contribution while he remains a limited partner. Hence, where a limited partner has received all or part of his capital contribution while he remains a limited partner, he will retain secondary liability for the LP’s obligations to the extent of that withdrawal until that liability is extinguished by limitation or prescription⁸. The study team finds that this will encourage the limited partners, who wish to withdraw any part of their capital, to terminate their partnership and withdraw all their capital and secure re-admission as limited partners with reduced capital contribution. Furthermore, there should not be any distinction for this

⁸ Prescription refers to the limitation of time beyond which an action, debt, or crime is no longer valid or enforceable.

purpose between capital distribution and profit distribution especially if there is no requirement to replace or replenish capital depleted by losses.

12.1.5 Given that the persons dealing with the LP will generally look towards the general partners of the LP to fulfill all the debts, liabilities and obligations of the LP, the study team hence recommends that a limited partner should be allowed to withdraw his capital contribution, subject to the conditions set out in the partnership agreement, with the approval of the general partners.

12.1.6 In relation to limited partner, the study team believes that the regime for the return of distributions contained in the Limited Liability Partnerships Act 2005 should be adopted in relation to LP. As the general partners of the LP will always be liable for all the debts, obligations and liabilities of the LP, the study team recommends that a limited partner be liable to refund any distribution of capital or profits made to him (whether or not on cessation of his partnership) only in the event that (a) all persons who were general partners at the time of the distribution are adjudicated bankrupt or ordered to be wound up within three years after the date of distribution; and (b) all those general partners were insolvent at the time of the distribution and the limited partner knew or ought to have known at the time that they were insolvent or the distribution results in all the general partners becoming insolvent and the limited partner knew or ought to have known at the time of distribution that all the general partners would become insolvent as a result of the distribution.

12.1.7 Since the LP is not a legal entity separate from the partners, the provisions which give effect to this recommendation may take the form of a recourse against the limited partners by the liquidator or assignee in bankruptcy of the estate of the persons who were the general partners at the time of the distribution and may have to address the prospect of multiple claims against a limited partner by the liquidators or assignees of the two or more insolvent general partners to recover a distribution made to the limited partner. However, the study team takes the view that it would not be appropriate for the provisions for recovery to confer on the various creditors of the LP a right of direct recourse against the limited partners for the distributions made to them.

RECOMMENDATION 14

The study team recommends that a limited partner should be allowed to withdraw his capital contribution, subject to the partnership agreement and the general partners' approval. The study team also recommends that a limited partner will be liable to refund any distribution of capital or profits made to him (whether or not on cessation of his partnership) only in the event that (a) all persons who were general partners at the time of the distribution

are adjudicated bankrupt or ordered to be wound up within three years after the date of distribution; and (b) all those general partners were insolvent at the time of the distribution and the limited partner knew or ought to have known at the time that they were insolvent or the distribution results in all the general partners becoming insolvent and the limited partner knew or ought to have known at the time of distribution that all the general partners would become insolvent as a result of the distribution.

12.2 Assignment by limited partners

12.2.1 Section 6(5)(b) of the UK 1907 LP Act provides that a “limited partner may, with the consent of the general partners, assign his share in the partnership, and upon such assignment the assignee should become a limited partner with all the rights of the assignor.” In the UK Law Commission’s report, it was proposed that an assignee of a limited partner’s share should be able to become a limited partner in a LP in place of the assignor if either (a) the general partner agrees to the substitution or, if there is more than one general partner, all of them agree to it; or (b) the substitution is made in accordance with the partnership agreement.

12.2.2 However, the study team is of the view that a partnership is a relationship between the persons who are partners and this is more so given that the LP is not an entity separate from its partners. Therefore no partner should be allowed to transfer to another person his status (and obligations) as partner. As the LP is not a separate legal entity and a contract made with the LP is a contract made with the partners of the LP at the time of the contract, the study team is of the view that law relating to general partnerships should apply to any change in the partners of the LP, namely the LP as a partnership of the persons who were partners immediately before the change is dissolved and a new LP is constituted whenever any person ceases to be a partner or any person is admitted as a partner..

12.2.3 Nevertheless, the study team is of the view that a partner (whether a general or limited partner) should be allowed to assign his right to receive any payment or distribution (whether of profits, capital or otherwise) in respect of his partnership interest in the LP to a third party, provided he adheres to the restrictions and conditions set out in the partnership agreement.

RECOMMENDATION 15

The study team recommends that a partner (whether a general or limited) 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 LP subject to such limitations, restrictions or prohibitions that may be imposed by the partnership agreement. The study team recommends that the

admission of any partner to the LP or the cessation of any person as a partner of the LP should be governed by the partnership agreement and that the law relating to general partnerships should apply in either case, namely, the LP as a partnership of the persons who constituted immediately before the admission or cessation would be dissolved by such admission or cessation.

13 DISSOLUTION AND WINDING UP

13.1 General winding up rules and procedures of a LP

13.1.1 As a LP is not a legal entity separate from its partners, the study team recommends that the law and process relating to the dissolution of LPs should be similar to that applicable to general partnerships.

RECOMMENDATION 16

The study team recommends that the law and process relating to the dissolution of LPs should be similar to that applicable to general partnerships.

13.2 Death or bankruptcy of a partner

13.2.1 Section 6(2) of the UK 1907 LP Act provides that the death or bankruptcy of a limited partner will not dissolve the LP.

13.2.2 Since the LP is not a legal entity separate from its partners, the law applicable to general partnerships should apply in the event of the death of a partner in the same way as it applies in the event that a person ceases to be a partner, namely, the LP as a partnership of the persons who were partners immediately before such death is dissolved upon the death of the partner. If a person is not allowed to be a general partner of the LP in the event that he is adjudged bankrupt without the leave of the Court, then the LP as constituted by the persons who were partners immediately before the bankruptcy should be dissolved on bankruptcy. However, the same consequence should not apply to the bankruptcy of a limited partner if as recommended by the study committee, an undischarged bankrupt should be allowed to become and remain as a limited partner of the LP.

RECOMMENDATION 17

The study team recommends that the law applicable to general partnerships should apply in the event of the death of a partner and that upon the death of

any partner the LP as a partnership of the persons who were partners immediately before the death of the partner should be dissolved. The bankruptcy of a general partner of an LP would automatically dissolve the LP. However, since a limited partner will be able to continue to be a limited partner of the LP in the event of his bankruptcy, the bankruptcy of the limited partner should not operate to dissolve the LP.

13.3 The Power of the Court to order dissolution

13.3.1 Section 35 of the UK Partnership Act, as well as section 35 of the Singapore Partnership Act, provides the grounds on which a court may order the dissolution of a partnership. In US-Delaware, section 17-802 of the Delaware LP Act provides that “the Court of Chancery may decree the dissolution of a LP whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement”.

13.3.2 The study team proposes that the grounds for a Court-ordered dissolution be as follows:-

- (a) The Court is of the opinion that it is not reasonably practicable to carry on the partnership business in conformity with the partnership agreement;
- (b) The Court is of the opinion that it is just and equitable to wind up the LP; and
- (c) The LP is being used for unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against national security or interest.

RECOMMENDATION 18

The study team recommends that a LP may be dissolved by the Court under the circumstances listed in paragraph 13.3.2 of this report.

~The End~