

## SUMMARY OF ISSUES FOR CONSULTATION

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### REGISTRATION REQUIREMENTS

#### Issue 1

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

#### Issue 2

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

#### Issue 3

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

#### Issue 4

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

#### Issue 5

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

#### Issue 6

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

#### Issue 7

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

#### Issue 8

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

## **DISCLOSURE AND REPORTING REQUIREMENT**

### Issue 9

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

## **LIABILITY OF A PARTNER**

### Issue 10

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

### Issue 11

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

### Issue 12

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

## **DISSOLUTION AND WINDING UP**

### Issue 13

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

Issue 14

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

Issue 15

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

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# PUBLIC CONSULTATION PAPER ON LIMITED LIABILITY PARTNERSHIPS IN SINGAPORE

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## 1 INTRODUCTION

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

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

## 2 BACKGROUND

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

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

2.3 This consultation paper focuses on LLPs. There is a separate consultation paper on LPs and this is available at [http://www.mof.gov.sg/cor/public\\_LP-LLP.html](http://www.mof.gov.sg/cor/public_LP-LLP.html). In

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

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

### **3 NATURE OF A LIMITED LIABILITY PARTNERSHIP**

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

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

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

## **4 REGISTRATION REQUIREMENTS**

### **4.1 Information required for registration**

4.1.1 In the UK, LLPs are required to submit an incorporation document to the Registrar at the point of incorporation<sup>1</sup>. 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<sup>2</sup>. The incorporation document must be signed by all the partners and lodged with the Registrar. The incorporation document will be available for inspection by any member of the public.

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

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

### **Issue 1**

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

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

### **Issue 2**

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<sup>1</sup> The Registrar of LLPs in the UK is the same as the Registrar of companies.

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

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

## **4.2 Disclosure of limited liability status**

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

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

### **Issue 3**

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

## **4.3 Composition of limited liability partnership**

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

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

### **Issue 4**

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<sup>3</sup> Section 17(3), Singapore Companies Act

<sup>4</sup> Section 14(4), Singapore Companies Act

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

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

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

#### **Issue 5**

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

#### **4.4 Suitability of partners**

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

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

## **Issue 6**

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

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

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

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

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

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

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<sup>5</sup> Section 15-1001, Delaware Revised Uniform Partnership Act

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

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

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

### **Issue 7**

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

### **Issue 8**

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

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

## 5 DISCLOSURE AND REPORTING REQUIREMENTS

### 5.1 Filing and audit requirements

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

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

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

### Issue 9

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

## 6 LIABILITY OF A PARTNER

### 6.1 Liability of the Limited Liability Partnership and its partners

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

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<sup>8</sup> Article 9, Limited Liability Partnerships (Jersey) Law 1997

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

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

### **Issue 10**

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

## **6.2 Capital withdrawal**

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

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

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

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

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

### **Issue 11**

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

## **6.3 Assignment/assignment by partners**

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

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

### **Issue 12**

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

## **7 DISSOLUTION AND WINDING UP**

### **7.1 Death or bankruptcy of a partner**

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

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

### **Issue 13**

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

### **7.2 Power of Court to order dissolution**

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

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

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

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

**Issue 14**

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

**7.3 Voluntary dissolution**

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

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

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

**Issue 15**

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