Registry of Companies and Businesses
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RCB Legal Digest

Aug 2003, Issue No 2.

Welcome to the second issue of our Legal Digest. In this issue, we will give an overview of Limited Partnerships and Limited Liability Partnerships. We have also compiled a list of queries received in relation to the Companies (Amendment) Act 2003 and our responses to them.

We are also pleased to inform that the draft Companies (Amendment No 2) Bill, which deals with the next phase of our reform exercise to implement most of the remaining recommendations of the CLRFC, has been put up on the MOF website for comments. It is available at http://www.mof.gov.sg/cor/index.html.

We hope you find this issue of our legal digest helpful.

Muhammad Hidhir Bin Abdul Majid
Deputy Registrar
For Registrar of Companies & Businesses

Proposed Limited Partnerships and Limited Liability Partnerships in Singapore

The business structures in existence in Singapore currently are the companies, the general partnerships, and the sole-proprietorships. The Company Legislation and Regulatory Framework Committee ("CLRFC") recommended that legislative provisions be made to introduce 2 more business structures in Singapore in order to increase the options available for businesses and investments. These new structures are the Limited Partnerships ("LP") and Limited Liability Partnerships ("LLP"). Pursuant to the recommendations from CLRFC, a study team on Limited Partnerships ("LPs") and Limited Liability Partnerships ("LLPs") was formed. The team sought public feedback between 18 June to 31 July 2003 regarding the legal framework governing LPs and LLPs in Singapore. These two new business structures

would broaden the menu of legal structures available in Singapore for domestic and international business. The LP and LLP structures would be available to all types of businesses. This would attract foreign businesses to Singapore while at the same time enable our local firms to compete more effectively overseas. The public consultation papers are available at http://www.mof.gov.sg/cor/public_LP-LLP.html

In this issue, we present an over-view of the key features of LPs and LLPs, and highlights of key issues that the public consultation process has flagged out. It is expected that the Study Team will submit its final report to the Government by the end of this year.

1. Limited Partnerships

(a) What is an LP?

The US, UK, Hong Kong, New Zealand and Australia have introduced the LP structure. In UK, the LP Act has existed since 1907 and there are currently more than 9,000 LPs there. The CLRFC recommended that Singapore adopt the UK model for LPs.

An LP is similar to a general partnership (GP) in most respects. It is not a separate legal entity and it must have at least one *general partner***. General partners have joint and unlimited personal liability for all of the company's debts and liabilities.**

The main difference is that it is possible in LPs to have ***limited partners.*** Limited partners are partners who have limited liability but in return, they *cannot take part in the management of and have no power to bind the LP*. If a registered limited partner is found to be taking part in the management of the LP, he/she will be regarded as a general partner. Limited partners are subject to certain restrictions e.g. they are not entitled to dissolve the LP by notice and they may not draw out any part of their contribution to the partnership during its lifetime. An LP must register its limited partners, their capital contributions and the method of contribution. This is to inform creditors of the identities and liabilities of the limited partners.

(b) Advantages of LPs

An LP is able to raise private equity/capital by allowing limited partners who are interested in investing in the firm, but do not wish or do not have the technical expertise to participate in the running of the business. LPs can therefore be used for private equity and fund investment and venture capital investments. LPs accord investors with limited liability, privacy (as the accounts are not publicly filed) and tax transparency (as the partnership is not treated as a distinct tax entity from the partners). LPs also enjoy lower registration and continuing compliance obligations.

(c) Liability of a limited partner

Limited partners are not allowed to participate in the management of the LP. A limited partner will lose his status if he is found to participate in the management of the LP. He will

then be regarded under the law as a general partner. In the public consultation, the team has raised the issue of whether a limited partner who participates in the management of the limited partnership should lose his limited liability status and be regarded under the law as a general partner.

The team has also recommended that a limited partner would be allowed to withdraw his capital contribution, like the US-Delaware approach. If the withdrawal is done when the LP is solvent, that is, it can pay its debts when they fall due, and its assets exceed its liabilities (including contingent liabilities), the limited partner will not be subject to any clawback after the withdrawal. If the limited partner is aware at the point of distribution, that the LP is 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 date. However, the limited partner would only be liable for debts and liabilities incurred during the period when his contribution represented an asset of the LP. The LP would also be required to inform the regulators whenever there is a reduction in its capital for purposes of greater transparency.

On the other hand, a general partner who decides to leave the LP would continue to have unlimited liability for all the liabilities incurred when he was a general partner. However, he would not be liable for the debts or obligations that are incurred after he has left the LP.

(d) Dissolution and winding up requirements

A general partnership that has been dissolved does not cease to exist but enters the winding up phase. The authority of each partner to bind the firm and the rights and obligations of the partners will continue during the winding up phase. The partnership will have this period to settle its outstanding business affairs, for instance, completion of pending contracts, payments of debts and taxes, liquidation of assets to cash, adjustment of partners' rights and final distribution to partners of their respective interests.

The team recommends that the dissolution and winding-up procedures for general partnerships in Singapore be extended to LPs.

2. Limited Liability Partnerships

(a) What is an LLP?

An LLP is a business structure that offers all its members some form of limited liability while retaining the flexibility of operating the LLP as a traditional partnership. It is proposed that the LLP structure be made available to all types of businesses and would be useful to professionals and businessmen, who can enjoy the limited liability protection while retaining the flexibility to operate the LLP as a partnership. Leading jurisdictions such as the UK and US have introduced similar LLP structures that offer some combination of partnership structure and limited liability. The main difference between the UK model and the US model

is that in US, a LLP is treated as a partnership while in UK, the LLP is treated more like a company. The Company Legislation and Regulatory Framework Committee ("CLRFC") had earlier recommended that Singapore adopt the US Delaware model for LLPs.

(b) Advantages of LLPs

The LLP is a separate legal entity from its members; that is, it can own property in its name and remain in effect despite changes in its partners. Partners in a LLP are not liable for any debt or loss (to which joint and several liability would normally apply) of the partnership. This restriction on liability, however, does not apply to a partner's personal debt or any loss personally caused by him.

(c) Liability of the LLP and its partners

An LLP partner does not assume personal liability for the debts or obligations incurred by the partnership or other partners. If the LLP becomes insolvent, his liability is capped to the amount, which he has agreed to contribute to the LLP. However, the partner will assume unlimited personal liability when he knowingly causes the LLP to commit a tortious act.

An LLP partner would also be allowed to pay his capital contributions in instalments to facilitate the setting up of LLPs. At the same time, this will not change the liability of the LLP partner; he will remain liable for the full amount that he has agreed to contribute. This would safeguard the interests of creditors as the information would be disclosed and the partner would remain liable for the amount indicated in the registration document.

It is proposed that the US-Delaware approach be adopted. This means a LLP 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 LLP should inform the regulators whenever there is a reduction in its capital.

(d) Dissolution and winding up requirements

The death or bankruptcy of a partner will not automatically dissolve the LLP, by virtue of the fact that it is a separate legal entity, unless the partnership agreement states otherwise. It is proposed that LLPs can be dissolved by the court or voluntarily. Under voluntary dissolution, LLPs will be able to be wound up voluntarily if all the partners agree to do so. The law will not prescribe a procedure for voluntary winding up. This would give the partners greater flexibility in winding up the LLP.

(e) Seamless conversion process from companies/partnerships to LLPs

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Lastly, the team is proposing to provide a conversion process from companies and partnerships to LLPs. This would of course bring about great benefits as the conversion process is convenient and there will be transfer of assets and liabilities of the company/partnership to the LLP. One of the key issues is also the tax treatment of LLPs, which the team is considering.

FAQs - Companies (Amendment) Act

We have received many queries since our last issue on the Companies (Amendment) Act. We have consolidated the queries and put them in this issue as FAQs.

S/n	Questions	RCB's replies
1.	What is meant by consent from all members – with respect to holding an AGM under s175A. Does it mean consent from all members present at the meeting or consent from all members of the company?	The policy behind this provision is to have unanimous consent from all members before the AGM is done away with. Hence consent from all members would mean "all members of the company".. However such consent can be given both personally or via proxies. [S175A(2)]
2.	How can members object to the dispensation of AGM or demand that a meeting be held?	In short, we can say that the members can require for the holding of an AGM at three points in time: 1. They can do so within 3 months before the end of the year. The year refers to calendar year. We note that there may be an anomaly here as it is possible that the due date for an AGM is over while the calendar year is not up yet. However we note that there are two additional avenues below. [S 175A(4)] 2. They can do so within 28 days from the day on which the accounts and applicable documents are sent out. Such a right is also exercisable by the auditor. [S 203(4)] 3. They can do so within 7 days after the text of the resolution or necessary documents have been circulated to them. [S 184D(1)]
3.	(a) How do we calculate the next AGM due date if we do not hold an AGM for the current FY?	(a) The next AGM due date would be calculated based on the current date that the resolution was passed, in place of the AGM. Though legally there is no AGM date because

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		there was none held, you may be required to input an AGM for the lodgement of AR and this date shall be the date whereby the resolution was passed. [S 175A(10)]
	(b) If co has elected not to hold an AGM, when is the deadline for filing its AR. Is it one month after the AGM due date or one month after date of written resolution?	(b) S 175A(10)(b) states that unless the contrary intention appears, a reference in any provision of this act or conclusion of an AGM of a co that has dispensed with holding of an AGM in accordance with this section shall, unless the meeting is held, be read as a reference to the date of expiry of the period within which the meeting is required by law to be held. Under S 197(1), all companies limited by shares have to lodge a return with RCB. This annual return has to be lodged within one month from its AGM. Since the company has elected not to have an AGM, the key issue is when the last date of lodgement is. It is our policy intent that such "paper AGMs" [ie written resolutions] are intended to replace the actual face to face AGM. With this in mind, S 175A(10)(b) does not apply directly as the situation would fall within the scope of a contrary intent appearing. The deadline for lodgement of AR should be one month after the written resolution (in place of the AGM).
4.	If a dormant /small EPC does not need to conduct an audit anymore, can the company remove the auditors?	Policywise, we have decided not to impose a mandatory requirement to appoint an auditor. This would be a business decision to be made by the companies. However, if the company decides to remove the auditor, they will have to follow the applicable provisions in the CA . [S 205(4)]
5.	Can the directors of a dormant company or small exempt private company choose not to pass a resolution to re-appoint the auditors at the AGM?	The law does not require a dormant or small exempt private company to appoint an auditor. However in the event that the company thinks that it is likely to revoke its dormancy or small exempt private company status, it must appoint an auditor before the next Annual General Meeting.

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		[S 205A]
6.	a) Do dormant companies still have to file their accounts / any prescribed format? b) When would the new exempt private company certificate that was published in the Companies (Amendment)(Filing of Documents) Regulations 2003 be applicable?	a) The audit exemptions relating to dormant companies are only applicable to companies whose financial years start on or after 15 May 2003. Other than this, there is no change to the disclosure requirements for dormant companies. Depending on whether the dormant company is an exempt private company or otherwise, it would still have to comply with the legal requirements to file the necessary returns and/or accounts, where applicable. However directors have to include in their annual return, a statement containing the requirements found under S 205B(4). b) A related issue was when would the new format for the Exempt Private Company certificate be relevant. By virtue of the transitional provision in the Companies (Amendment) Act 2003, the new exempt private company certificate would only be applicable for companies whose financial year start on or after 15 May 2003. All companies who are filing their exempt private companies certificates for financial years commencing before 15 May 2003 should use the old form. You can download the form from [http://www.rcb.gov.sg/allforms/EPC_before_15052003.pdf]. You can also download it from our homepage; under the "BizFile" header and then go to "Attachments to BizFile transactions" on the left. The document is available in Table 2. We also have a tutorial entitled "Tutorial – Annual Return for Local Companies" under the "BizFile" header.
7.	Why should the EPC Declaration of Solvency be signed by 1 director and 1 secretary – why not only 2 directors?	It has always been a requirement that the EPC certificate has to be endorsed by the company officers and the auditor who is an independent third party. With the removal of the audit exemption, the exempt private company certificate has to be endorsed by the company

S/n	Questions	RCB's replies
		officers that include both the company director and secretary. Being a company officer, a company secretary should be made jointly responsible for ensuring that the matters set out in the EPC certificate are true as these matters would be within his/her knowledge.
8.	If conversion (from a pte company to a public company) takes place, does it mean that the company will not have to hold its AGM under section 175A(7) & (8) [the 3-month time frame]?	Yes. In the event that a conversion takes place, and less than three months of the year remains, then the AGM need not be held. [S 175A(7) and (8)]
9.	The provisions state that an Exempt Private / Dormant company can take advantage of the audit exemption provided its financial year commences on or after 15 May 2003. What is meant by commences on or after 15 May 2003?	Section 44 of the Companies (Amendments) Act states that the section 31 and 35 (audit exemption for EP Companies and Dormant Companies) shall not apply to a company in respect of a financial year which starts before the date of commencement of the provisions. Illustration: Co A is an EPC and its financial year is 01/01/03 to 31/12/03. Will it enjoy the audit exemption? Ans: No it will not. It will however, enjoy the exemption for its subsequent financial year, 01/01/04 to 31/12/04. Co B is also an EPC and its financial year is 01/06/03 to 31/05/04. Will it enjoy the audit exemption? Ans: Yes. Co B will enjoy the audit exemption.
10.	S205B – Audit exemption for dormant companies: Is this applicable for all types of dormant companies?	Yes, Section 205B applies to all types of companies; limited/unlimited private /public companies. As long as the company did not have any significant accounting transactions for the financial year, that company will qualify for as a dormant company.
11.	a)With the removal of the requirement for professionally qualified secretaries, how would the company secretaries interpret whether a set of accounts depicts "true and	a)Confirmation whether the accounts are "true and fair" is made by the directors and not the secretary. The EPC certificate only requires that the secretary confirms that the accounts

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	fair" view? b)In the event of a default (i.e. the company declared that it was solvent, but it actually isn't), would the Registrar also prosecute the company secretary who signed the declaration?	have been presented at the annual general meeting. b)Under section 401(2), if a person wilfully makes a false or misleading statement he/she is criminally liable. Thus a secretary should not indicate that the company is solvent if he/she knew that it is not.

Finally, feedback and comments:

We welcome your comments about any issues raised in this newsletter. Feedback or suggestions for future articles may also be forwarded to The Editors at kuraishia_pakir_maideen@rcb.gov.sg.

All information contained herein is correct at the time of publication, 14th August 2003.