

ACRA LEGAL DIGEST

May 2005, Issue No. 8

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A WORD FROM THE EDITORIAL TEAM

Welcome to the 8th issue of our Digest.

The Limited Liability Partnerships Act 2005 was brought into operation on 11 April 2005. Limited liability partnerships are a new business vehicle introduced in Singapore and we have taken the opportunity to include in this Digest a list of questions and answers which we hope will answer some of your questions concerning limited liability partnerships.

We have also included an update on the work of the Council on Corporate Disclosure and Governance. In addition, we have also included short notes on the 4 Practice Directions issued by ACRA in 2005.

We have also provided at the end of the Digest a “Legislation and Practice Directions Update”. The update lists new legislation (including revisions) administered, and practice directions issued, by ACRA starting from 1 January 2005 to date. We intend to include a “Legislation and Practice Directions Update” with future issues of the Digest to cover subsequent periods.

We hope you will find our Digest useful.

All information contained herein is correct at the time of publication. Please do not hesitate to send us your comments or suggestions for future topics to:
www.acra.gov.sg/feedback.

The Editorial Team
Accounting and Corporate Regulatory Authority
3 May 2005

1. QUESTIONS AND ANSWERS ON LIMITED LIABILITY PARTNERSHIPS

1.1 Commencement of Limited Liability Partnership Act 2005

The Limited Liability Partnerships Act 2005 (“LLP Act”) commenced operation on 11 April 2005. The following subsidiary legislation was also published between 7 April 2005 and 11 April 2005:

- (a) Limited Liability Partnerships Act (Commencement) Notification 2005
- (b) Appointment of Registrar, Deputy Registrar and Assistant Registrars of Limited Liability Partnerships
- (c) Business Registration (Identical Names) (Amendment) Rules 2005
- (d) Companies (Identical Names) (Amendment) Rules 2005
- (e) Limited Liability Partnerships Regulations 2005
- (f) Limited Liability Partnerships (Identical Names) Rules 2005

In addition, a Press Statement and Practice Direction No. 3 of 2005 have been released by ACRA. Please check our website at <http://www.acra.gov.sg> to view the LLP Act, the Press Statement and the Practice Direction. They can be currently accessed from our website under “Latest News”. Sample forms are also available at <http://www.acra.gov.sg/llp/sample.html>. The forms provide guidance on the types of information that should be included when submitting online transactions to ACRA.

1.2 Questions and Answers on Limited Liability Partnerships

We have prepared a set of questions and answers to explain the reasons behind the legislation. These questions touch on the reasons for introducing the Limited Liability Partnerships (“LLPs”), the protection for creditors who deal with LLPs and professional LLPs, the conversion process and the dissolution of LLPs.

1.2.1 Reasons for Introducing LLPs

<i>Q1</i>	<i>Why do we need the LLP structure when we already have one-director companies and exempt private companies? Would this be a white elephant?</i>
A1	The Company Legislation and Regulatory Framework Committee (“CLRFC”) reviewed the full range of vehicles for the conduct of business in other jurisdictions and found that Singapore lack the LLP vehicle and limited partnership vehicle. Hence, the CLRFC proposed that Singapore introduce both the LP and LLP vehicles to ensure that our legal framework is competitive with leading jurisdictions, and we have a comparable range of business options available in Singapore. This was accepted by the Government and a study team (“the team”)

	<p>was appointed to work out the details of the legal framework.</p> <p>LLPs are distinct from one-director companies as well as exempt private companies. Unlike companies, the profit sharing structure, decision making structure, and terms and conditions governing the relationship between the partners of the LLP are contained in a private agreement between the partners who own the LLP. In addition, the LLP is also not subject to full financial reporting and disclosure requirements, such as those on capital contributions and changes to capital.</p> <p>Both the United States and United Kingdom have enacted the LLP legislation, and they also have small company concepts in their legislation.</p>
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1.2.2 Protection for Small Creditors

Q2	<i>LLPs do not require the partners to report their capital contributions at all. Is this fair as partners of LLPs enjoy limited liability? How would parties who deal with the LLPs be protected without knowing the capital structure?</i>
A2	The team considered both the options of requiring disclosure of individual partner’s capital contributions at the point of registration and on an on-going basis. The feedback received during consultation was that such disclosures would not protect creditors. It may even be misleading, unless LLPs are subject to a regime of continuous disclosure and monitoring of their capital flows, and required to report their financial statements frequently. However, this will increase business costs and be onerous and impractical for a partnership structure. LLPs are suitable for small businesses and new start-ups where frequent capital flows are common. The general partnerships today also do not require capital contributions. Neither do leading jurisdictions like US-Delaware require such disclosure.
Q3	<i>Since LLPs enjoy limited liability and they are not required to disclose their capital, shouldn’t they be required to file financial statements that comply with the prescribed accounting standards and audited by an auditor annually?</i>
A3	The LLP is in essence a partnership with limited liability. Imposing a mandatory requirement on an LLP to audit and file its accounts will impose costs and undermine the key tenets of partnerships, which is the privacy of agreement and accounts amongst partners. Instead, whether LLPs should have their annual accounts audited is best

	dictated by the market (i.e. by the creditors and financial institutions that deal with the particular LLP).
<i>Q4</i>	<i>What are the financial reporting requirements imposed on LLPs? Are they more lax than the requirements imposed on companies?</i>
A4	<p>The financial reporting requirements imposed on LLPs include:</p> <ul style="list-style-type: none"> (a) Duty to keep proper accounting records to ensure that financial statements that reflect the true and fair view of the state of affairs of the LLP can be prepared from time to time. (b) Duty to file a declaration of solvency or insolvency annually. This information shall be publicly available. (c) Deeming the LLP to be insolvent if it is unable to file its solvency status. When this happens, the LLP may be prosecuted, as well as wound up by creditors. (d) A comprehensive winding up process modelled after that in the Companies Act to ensure fair distribution amongst creditors. (e) A claw-back mechanism to allow LLPs to recover amounts distributed within a period of three years preceding the commencement of the winding up of an LLP. <p>These requirements are not much lower than companies. Similar to LLPs, exempt private companies which are solvent are not required to report their financial statements as well. They only need to report their solvency status in the Certificate by an Exempt Private Company under section 197 of the Companies Act. In addition, small exempt private companies are exempted from mandatory audit if their annual revenue does not exceed \$ 5 million.</p>
<i>Q5</i>	<i>What other safeguards are there to ensure that parties dealing with LLPs are protected?</i>
A5	<p>Other safeguards include the mandatory requirement that the LLP shall appoint a local manager who must be a natural person as well as aged 21 years and above. In addition, the following prohibitions are imposed to prevent persons of questionable character from managing LLPs. The manager of the LLP must not be:</p> <ul style="list-style-type: none"> (a) an undischarged bankrupt (unless he has obtained Leave of the High Court or the written permission of the Official Assignee); or (b) disqualified as an unfit manager of insolvent LLPs under section 34 of the LLP Act; or (c) disqualified as a manager of a former LLP wound up on grounds of national security or interest and disqualified to act

	<p>as a manager; or</p> <p>(d) disqualified as a person who was convicted of an offence involving fraud or dishonesty, or other offence connected with the formation or management of a LLP; or</p> <p>(e) disqualified under sections 149, 149A or 154 of the Companies Act.</p>
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1.2.3 Professional LLPs

Q6	<i>How does the law protect the clients of professional LLPs should there be negligent conduct by the partners and what recourse do the clients have?</i>
A6	The same safeguards that protect creditors of non-professional LLPs apply to professional LLPs as well. In the event of a claim for negligence, the client can either make a claim against the LLP or the negligent partner, or both. However, the remaining partners will not be personally liable for the acts committed by the negligent partner.

1.2.4 Conversion Process

Q7	<i>For conversion cases, how do we ensure that parties dealing with an LLP are not prejudiced by the change in status, especially the <u>liability status</u>? Are converting entities obliged to inform their creditors and do creditors have a choice to terminate any agreements they had with the unlimited liability partnership?</i>
A7	<p>The second and third schedules of the LLP Act contain provisions to facilitate an orderly and seamless conversion process. An existing partnership or company can elect to use the conversion process to convert to an LLP. When this happens, the assets and liabilities will be transferred to the LLP by operation of law. There will also be continuity in tax liabilities and benefits.</p> <p>To ensure that creditors' interests are not prejudiced, a creditor of the partnership firm will not lose his or her right of recourse against the persons who were partners before the conversion with respect to the liabilities and obligations incurred or contracted by the firm before the conversion. In fact, creditors will also have an added recourse against the LLP. Imposing an obligation on unlimited liability partnerships to seek creditors' approval or allowing creditors to terminate agreements that they had with the unlimited liability partnership will not be workable.</p>

	Other safeguards include imposing mandatory requirements that all converting entities have to obtain unanimous consent from all partners or shareholders. In addition, the converting company shall not have any outstanding security interest in its assets at the point of application.
Q8	<i>How would parties who deal with LLPs know that they are LLPs, and whether they are new or converted LLPs?</i>
A8	Every LLP shall ensure that its name is followed by the words “limited liability partnership” or the acronym “LLP”. In addition, an LLP’s invoices and official correspondence shall bear the name of the LLP, the registration number and a statement that it is registered with limited liability. In addition, an LLP that was formed upon conversion from a business or company shall also include in its invoices and official correspondence a statement that the LLP was, as from the date of registration, converted from a company to an LLP and the name and registration number of the former entity from which it was converted. This additional statement shall be displayed for 12 months commencing 14 days after the date of registration of the LLP.

1.2.5 Dissolution of LLPs

Q9	<i>What happens to the partnership interest following the death or dissolution of a partner?</i>
A9	Subject to the partnership agreement providing otherwise, the statute has provided that on the death or dissolution of a partner, the remaining partner shall pay the former partner, estate of the former partner or its liquidators (as the case may be) an amount equal to the former partner’s capital contribution to the LLP plus his share of the accumulated profit minus losses, determined at the cessation of partnership.
Q10	<i>What happens when there is only one partner left?</i>
A10	LLPs are required to have two partners. In the event that an LLP is left with only one partner, the sole remaining partner will be given a grace period of up to two years to look for a new partner, failing which the sole remaining partner shall assume unlimited liability incurred after the end of the grace period. This is also a valid ground for the court to wind up the LLP.

<i>Q11</i>	<i>If the Companies Act allows one director companies, why can't we allow one person LLP?</i>
A11	As stated under A1, the structure and reporting requirements imposed on companies are more onerous than that of an LLP. It is not appropriate to equate a company to an LLP. A one partner LLP is a misnomer, as a partnership is a “voluntary association of two or more persons who jointly own and carry on a business for profit”. We think it should not be difficult to get a partner within the grace period if it is a viable business.

1.2.6 LLPs – A New Business Vehicle

<i>Q 12</i>	<i>So where does the LLP stand? Is it closer to a partnership or a company? How should one decide whether it is suitable?</i>
A12	The LLP is a partnership structure that enjoys limited liability, with the prescribed safeguards in place. Hence, the legislation contains features from the company regime as well. The key advantages include limited liability for its partners and higher flexibility for the management of the partnership. However, the disadvantages include some degree of apprehension from parties who transact with you as this is a novel concept, limited scope for expansion if the business wishes to proceed for public listing, as well as a lesser degree of privacy as one still has to report your annual solvency status. We hope this set of FAQs will help you better appreciate the advantages and disadvantages so that you choose a vehicle that is best suited for your needs. We also strongly encourage you to seek professional advice for complex commercial transactions or, when in doubt, on the interpretation of the LLP legislation.

2. UPDATE ON THE WORK OF THE COUNCIL ON CORPORATE DISCLOSURE AND GOVERNANCE

2.1 Statement on “Prescribing Accounting Standards in Singapore”

The Council on Corporate Disclosure and Governance (CCDG) issued a statement on “Prescribing Accounting Standards in Singapore” in March 2005. The statement sets out the policy intention of adopting international Financial Reporting Standards (IFRSs) and International Accountants Standards (IASs) issued by the International Accountant Standards Board (IASB) and ensuring convergence with international standards. The statement also describes the

process for prescribing Financial Reporting Standards (FRSs) and Interpretations of FRSs. The statement is available at <http://www.ccdg.gov.sg/account.htm>.

2.2 Issuance of FRSs

The CCDG issued the following new and revised accounting standards on 16 March 2005. These are available at <http://www.ccdg.gov.sg/frs/index.htm>:

- (a) FRS 40 *Investment Property*. The objective of FRS 40 is to prescribe the accounting treatment for investment property and related disclosure requirements. FRS 40 is based on the improved International Accounting Standard (IAS) 40 *Investment Property* issued by the International Accounting Standards Board (IASB), which is effective for annual periods beginning on or after 1 January 2005. In view of feedback from key stakeholders, including the property industry, the CCDG recognised that companies may need more time to review their business models and valuation methods to embrace the standard. The CCDG also recognised that the investing community may need time to better understand the impact of FRS 40 on companies' financial statements. Hence, the CCDG decided to adopt FRS 40 for annual periods beginning on or after 1 January 2007. Companies, however, can choose to apply FRS 40 before the effective date of this standard.
- (b) Amendments to FRS 39 *Financial Instruments: Recognition and Measurement* relating to transition and initial recognition of financial assets and financial liabilities. The objective of FRS 39 is to establish principles for recognising and measuring financial assets, financial liabilities and some contracts to buy or sell non-financial items. The amendments to FRS 39 are based on the limited amendments to IAS 39 *Financial Instruments: Recognition and Measurement* issued by the IASB in December 2004. The amendments provide transitional relief from retrospective application of the 'day 1' gain and loss recognition requirements. The amendments allow, but not require, entities to adopt an approach to transition that is easier to implement than that in the current version of FRS 39. The amendments also enable entities to eliminate differences between the IASB's standards and US requirements.
- (c) Amendments to the scope of INT FRS 12 *Consolidation – Special Purpose Entities*. INT FRS 12 interprets the principles under FRS 27 *Consolidated and Separate Financial Statements* on the circumstances when an entity should consolidate a special purpose entity (SPE). The amendment to the scope of INT FRS 12 is based on amendments to the scope of SIC-12 *Consolidation – Special Purpose Entities* issued by the

International Financial Reporting Interpretations Committee (IFRIC) in November 2004. The amendment removes the scope exclusion in INT FRS 12 for equity compensation plans, in line with FRS 102 *Share-based Payment* coming into operation for annual periods beginning on or after 1 January 2005.

2.3 Public Consultation on Proposed Revisions to the Code of Corporate Governance

The CCDG conducted a public consultation on the proposed revisions to the Code of Corporate Governance from 1 December 2004 to 15 February 2005. The CCDG and the Review Committee (which was set up by the CCDG to consider revisions to the Code) will consider the feedback received in finalising the revisions to the Code. The CCDG aims to complete its review and submit its recommendations to the Ministry of Finance by first half of 2005.

3. PRACTICE DIRECTION NO. 1 OF 2005 – APPLICATION FOR REGISTRATION AS A PUBLIC ACCOUNTANT

ACRA issued Practice Direction No. 1 of 2005 on 15 March 2005. The Practice Direction provides guidance on the following requirements for registration as a public accountant under the Accountants Act:

- (a) Structured practical experience;
- (b) Proficiency in local laws; and
- (c) Course on ethics and professional practice subjects.

A copy of the Practice Direction is available at <http://www.acra.gov.sg/legislation/practice1803.html>. Full details of the requirements for registration can be found on ACRA's website at <http://www.acra.gov.sg/accounting/applications1.html>.

4. PRACTICE DIRECTION NO. 2 OF 2005 – PRACTICE MONITORING PROGRAMME

ACRA issued Practice Direction No. 2 of 2005 on 7 April 2005.

This Practice Direction sets out the auditing standards and pronouncements that the Public Accountants Oversight Committee has adopted as prescribed standards for the Practice Monitoring Programme. The Practice Direction also highlights the common significant findings that were noted in the practice monitoring reviews conducted in 2004.

All public accountants are expected to take note of the common significant findings and make the necessary improvements to their practice with immediate effect. In particular, public accountants are expected to comply with SSA 230 on “Documentation”, which requires the public accountant to document matters which are important in providing evidence to support the audit opinion.

The practice direction is published at:

http://www.acra.gov.sg/legislation/pdf/pd2_2005.pdf

5. PRACTICE DIRECTION NO. 3 OF 2005 – INTRODUCTION OF LIMITED LIABILITY PARTNERSHIPS

ACRA issued Practice Direction No. 3 of 2005 on 8 April 2005. The Practice Direction sets out the following matters in relation to Limited Liability Partnerships (LLPs):

- (a) Salient features of the LLPs, the LLP Act and the subsidiary legislation made under it;
- (b) The electronic filing system for LLPs and details of its phased implementation by ACRA;
- (c) Similar names prohibition for LLPs;
- (d) The procedures to be adopted where no specific transaction form is found in Bizfile;
- (e) Helpdesk facilities; and
- (f) Contingency plans.

A copy of the Practice Direction is available at:

<http://www.acra.gov.sg/legislation/practice0305.html>.

6. PRACTICE DIRECTION NO. 4 OF 2005 – APPLICATIONS FOR EXEMPTIONS UNDER SECTION 201 AND 202 OF THE COMPANIES ACT, CAP 50

ACRA issued Practice Direction No. 4 of 2005 on 30 April 2005. The Practice Direction serves to identify:

- (a) The legal requirements relating to financial reporting imposed on companies;
- (b) The policies supporting these requirements; and

- (c) The criteria and conditions imposed by ACRA for applications for exemption under sections 201(14) and 202 of the Companies Act Cap. 50.

The practice direction is published at:

http://www.acra.gov.sg/legislation/pdf/pd4_2005.pdf

7. ACRA LEGISLATION AND PRACTICE DIRECTIONS UPDATE (1 JANUARY 2005 TO 30 APRIL 2005)

Acts Brought Into Operation

S/n	Act	Act No.	Date Passed by Parliament	Operative Date
1	Limited Liability Partnerships Act	5/2005	25 January 2005	11 April 2005

Bills Introduced

S/n	Bill	Bill No.	Date Introduced
1	Trust Companies Bill ¹	1/2005	25 January 2005
2	Companies (Amendment) Bill	11/2005	18 April 2005

Subsidiary Legislation Revised

S/n	Subsidiary Legislation	Operative Date
1	Companies (Filing of Documents) Regulations Cap 50, Rg7	31 March 2005
2	Companies (Identical Names) Rules Cap 50, R3	31 March 2005
3	Companies (Accounts of Public Listed Holding Companies)(Substitution of Period) Order Cap 50, O3	31 March 2005
4	Companies Act – Directions under s27(1)(d) – Consolidation Cap 50, Dir 1	31 March 2005

¹ This legislation will be administered by MAS.

Subsidiary Legislation Published

S/n	Subsidiary Legislation	G.N. No.	Date Published	Operative Date
Companies Act (Cap 50)				
1	Companies (Amendment of Second Schedule) Notification 2005	S57/2005	31 January 2005	1 February 2005
2	Companies (Accounting Standards)(Amendment) Regulations 2005	S124/2005	16 March 2005	16 March 2005
3	Companies (Identical Names) (Amendment) Rules 2005	S240/2005	8 April 2005	11 April 2005
Business Registration Act				
4	Business Registration (Identical Names) (Amendment) Rules 2005	S239/2005	8 April 2005	11 April 2005
Limited Liability Partnerships Act				
5	Limited Liability Partnerships Act (Commencement) Notification 2005	S235/2005	7 April 2005	11 April 2005
6	Limited Liability Partnerships Regulations 2005	S244/2005	11 April 2005	11 April 2005
7	Limited Liability Partnerships (Identical Names) Rules 2005	S245/2005	11 April 2005	11 April 2005

Practice Directions Issued

S/n	Practice Direction	Date Issued
1	No. 1 of 2005 Application for Registration as a Public Accountant	15 March 2005
2	No. 2 of 2005 Practice Monitoring Programme	7 April 2005

S/n	Practice Direction	Date Issued
3	No. 3 of 2005 Introduction of Limited Liability Partnerships	8 April 2005
4	No. 4 of 2005 Application for Exemptions Under Section 201 and 202 of the Companies Act, Cap 50	30 April 2005



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