

ACRA LEGAL DIGEST

September 2006, Issue No. 11

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A WORD FROM THE EDITORIAL TEAM

Welcome to the 11th issue of our Digest.

This issue features an article on the regulatory requirements relating to place of business under the Business Registration Act (Cap. 32) and registered office under the Companies Act (Cap. 50) and the Limited Liability Partnerships Act 2005. It provides some guidance as to what these requirements are, to help businesses, companies and limited liability partnerships comply with them.

In August 2006, the Government launched its public consultation on the Limited Partnership Bill 2006. This proposed legislation is to introduce limited partnerships (LPs) as a new form of business structure in Singapore. We have thus provided a short write-up on the legal nature and the proposed reporting requirements of LPs.

Next, under the regular update on the work of the Council on Corporate Governance and Disclosure (CCDG), we bring you the new interpretations of Financial Reporting Standards (FRS) and Exposure Drafts issued by the Council. On CCDG's review of the quarter reporting requirement, we highlight that feedback received during the public consultation is available at the Council's website.

Finally, the Digest also highlights the Practice Directions issued, as well as the legislation published, by ACRA.

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
29 September 2006

1. REGULATORY REQUIREMENTS IN RESPECT OF PLACE OF BUSINESS AND REGISTERED OFFICE

1.1 Introduction

1.1.1 A person who wishes to carry on business in Singapore can do so in a variety of business structures or forms. The main business forms are — a sole proprietorship, a partnership, a company or a limited liability partnership. Each form has its advantages and its limitations. A person who wishes to start a business would be well advised to seek professional advice on which best suits his or her person's business needs. This article is concerned only with the regulatory requirements relating to the place of business or the registered office.

1.2 Regulatory Requirements under the Business Registration Act as to “Place of Business”

1.2.1 With certain exceptions¹, a person who wishes to carry on business in Singapore as a sole proprietor or in a partnership has to be registered under the Business Registration Act Cap. 32. The purpose of registration is to allow a register to be kept of all persons carrying on business in Singapore and to allow the person or persons carrying on business under a business name to be properly identified. The Business Registration Act does not regulate the conduct of the business that is registered. Registration under the Business Registration Act does not therefore confer a license to carry on any kind of business — each person must check the relevant law and with the relevant authority as to the approvals, registrations and licenses that may be necessary to carry on any particular trade or to provide any kind of service².

1.2.2 Registration under the Business Registration Act requires the registrant to provide to the Registrar of Business or ACRA (by Bizfile³) particulars of the business, including (amongst other details) —

*“the principal place of business and any other place where the business is carried on”.*⁴

1.2.3 It should be noted that the requirement is to notify the Registrar of Businesses of —

¹ See definition of “business” in section 2(1), read with the First Schedule to the Business Registration Act and section 4(1) of the Business Registration Act.

² For example, a person who wishes to run a school providing academic lessons may have to register the school under the Education Act administered by the Ministry of Education, and a person who wishes to sell telecommunication equipment may need to apply for a dealer's individual license or comply with a dealer's class license (as the case may be) under the Telecommunications Act regulated by the Info-communications Development Authority of Singapore.

³ Bizfile is the name of ACRA's electronic filing and information retrieval system and can be found at <http://www.bizfile.gov.sg>

⁴ See section 6(1)(c) of the Business Registration Act.

- (a) the principal place of business; and
- (b) any other place where the business is carried on.

1.2.4 If the registrant has only one place of business, then that place of business would be the registrant's principal place of business. However, if the registrant is carrying on business in more than one place, it is not sufficient to notify the Registrar of that one place. Rather, the particulars of each of the places where business is carried on has to be notified and the registrant must further indicate which of those places the "principal place of business" is.

1.2.5 It should be noted that if a person makes an application for registration that the person knows or has reason to believe is false because of the omission of material particulars, that person commits an offence⁵.

1.2.6 The word "place" refers to the premises or other defined space where business is carried on. It must be sufficiently precise to allow persons to be able to locate where the business is being carried on. It would not be sufficient to provide a geographical location like Jurong or Ang Mo Kio. Nor would it be sufficient to merely identify a building block if the business is being carried on in say only one unit of the building. Without going into a detailed analysis of what a "principal place of business" is⁶, the "principal place of business" would be the most important or significant place for the business, as determined through a comparison of all the places where business is carried on. On the other hand, if the registrant has no fixed or permanent place for carrying on business, then the registrant should indicate the place at which the person can usually be contacted as his place of business⁷.

1.2.7 Whenever there is a change in the place where the business is carried on or any change in the "principal place of business", then the particulars of the changes must be notified to the Registrar of Businesses (by Bizfile) within 14 days (or such longer period as the Registrar may allow) after the change⁸. Thus —

- (a) a registrant who moves his business operations from shop A to shop B must notify the Registrar of the change in the place of business;
- (b) a registrant who expands his business from one shop (shop A) to 2 shops (shops A and B) must notify the Registrar of the place of the new or second shop (shop B); and
- (c) a registrant who operates from shops A and B who changes the principal place of business from shop A to shop B, must notify the Registrar of the change in the "principal place of business".

⁵ See section 27(d) of the Business Registration Act. The offence is punishable with a fine not exceeding \$5,000 or imprisonment or a term of 12 months or both.

⁶ The matter has even been litigated, in the case of a revenue statute, in the United States Supreme Court – see *Commissioner of Internal Revenue v Soliman*, 506 U.S. 168 (1993).

⁷ See regulation 5 of the Business Registration Regulations Cap. 32, R 1.

⁸ See section 14(1) of the Business Registration Act.

Failure to notify the Registrar of Businesses any change in place of business or of the “principal place of business” within the time required is an offence.⁹

Service of documents

- 1.2.8 It should be noted that the principal or other place of business notified by the registrant affects how certain documents may be served on the registrant. Thus, the law¹⁰ provides that —
- (a) any “notice, written communication, certificate or other document required to be given or served under the Business Registration Act is deemed to have been duly given or served if posted by the Registrar of Businesses to the “registered principal place of business” of the addressee; and
 - (b) summons issued by the court in connection with any offence under the Business Registration Act may be served by forwarding it by registered post in a cover addressed to the person at “any address furnished by him”.

1.3 Regulatory Requirements under the Companies Act as to “Registered Office”

- 1.3.1 The Companies Act Cap. 50 regulates the setting up, maintenance and dissolution of companies. It sets out the regulatory requirements for any person who wishes to set up a company to take advantage of the benefits of incorporation (i.e. separate corporate personality, limited liability, perpetual succession, etc.). Like the Business Registration Act, the Companies Act does not regulate the conduct of the business being carried on by the company. Thus, incorporation under the Companies Act does not confer any license on the company to carry any or any particular kind of business and the officers of the company must check to ensure that the company is authorised to carry on the kinds of business activities that it carries on.
- 1.3.2 From the date of incorporation, every company incorporated under the Companies Act must have a “registered office” within Singapore¹¹. In addition, any change of the particulars of the registered office must be notified to the Registrar of Companies or ACRA (by Bizfile) within 14 days of the

⁹ See section 14, read with 27(b), of the Business Registration Act. The offence is punishable with a fine not exceeding \$5,000 or imprisonment or a term of 12 months or both. The Registrar of Businesses may impose a late lodgment fee under regulation 14(4) of, read with item 17 of the First Schedule to, the Business Registration Regulations Cap. 32, R 1.

¹⁰ See section 36 of the Business Registration Act.

¹¹ See section 142(1) of the Companies Act. Failure to comply is an offence and the company and officers in default are liable on conviction to a fine not exceeding \$5,000 and to a default penalty – see section 142(2) of the Companies Act.

change.¹² The purpose of a “registered office” is to provide a place to which all communications and notices may be addressed and a place at which the various registers and records can be kept. It is not intended to be used to identify where the company is carrying on business. So while the registered office may well be the same place where the company is carrying on business, there is nothing in the Companies Act that requires the “registered office” to be a place at which the company carries on business.

- 1.3.3 Companies and officers of companies must be aware that the obligation to have a registered office is more than just to have a postal address to which letters can be sent. There are several legal requirements that pertain to every “registered office” of every company that must be met and these are summarised below.

Opening hours

- 1.3.4 The registered office must be open and accessible to the public for not less than 3 hours during ordinary business hours every business day (that is, every day other than Saturdays, Sundays and other public holidays)¹³. Changes to the opening hours must also be notified to the Registrar of Companies (by Bizfile) unless the office is open for at least 5 hours every business day.¹⁴

Memorandum

- 1.3.5 A copy of the memorandum of the company, signed by the subscribers, must be kept at the registered office of the company¹⁵

Presence of secretary or secretary’s agent or clerk

- 1.3.6 The company secretary, or if the company has more than one company secretary, at least one of the company secretaries, or “his agent or clerk” must be present at the registered office on the days and during the hours which the registered office is accessible to the public¹⁶. This means that either —
- (a) an employee of the secretary (employed to perform clerical functions);
 - or
 - (b) a person authorised by the secretary to act on the secretary’s behalf,

¹² See section 143(1) of the Companies Act. Failure to comply is an offence and the company and officers in default are liable on conviction to a fine not exceeding \$5,000 and to a default penalty – see section 143(2) of the Companies Act. For a discussion on the legal requirements for effective change of registered office, please see *Re Specialty Laboratories Asia Pte. Ltd. (fka Specialty Laboratories Asia (Singapore) Pte. Ltd.* [2001] 2 SLR 563 and *Re Shangri-la Cruise Pte. Ltd.* [1990] SLR 799.

¹³ See section 142(1) of the Companies Act. Failure to comply is an offence and the company and officers in default are liable on conviction to a fine not exceeding \$5,000 and to a default penalty – see section 142(2) of the Companies Act.

¹⁴ See section 143(1) of the Companies Act.

¹⁵ See section 22(4) of the Companies Act. Failure to comply is an offence under the general penalty provision under section 407(1) of the Companies Act for which the penalty on conviction is a fine not exceeding \$1,000 – see section 407(2) of the Companies Act.

¹⁶ See section 171(3) of the Companies Act. Failure to comply is an offence under the general penalty provision under section 407(1) of the Companies Act for which the penalty on conviction is a fine not exceeding \$1,000 – see section 407(2) of the Companies Act.

must be physically present at the registered office at the relevant times;

Keeping of register of members

1.3.7 The register of members must be kept at the registered office unless —

- (i) the preparation and maintenance of the register is done at another office of the company, in which case the register may be kept at that office; or
- (ii) the company arranges some other person in Singapore to prepare and maintain the register in which case the register may be kept at the office of that person.¹⁷

1.3.8 If the company keeps a branch register of members outside Singapore, it must notify the Registrar of Companies (by Bizfile) of the situation of the office where the branch register is kept.¹⁸

Keeping of the register of directors, managers, secretaries and auditors

1.3.9 The register of directors, managers, secretaries and auditors must —

- (a) be kept at the registered office of the company; and
- (b) be open to inspection by a member of the company for free and by any other person upon the payment of a fee not exceeding \$2.¹⁹

Keeping of the register of director's shareholdings

1.3.10 The register of director's shareholdings must be kept at the registered office. This register must be open to inspection by a member of the company for free and by any other person upon the payment of a fee not exceeding \$3.²⁰

Keeping of the register of debenture holders (for companies issuing debentures)

1.3.11 For a company that issues any debentures, the register of holders of the debentures must be kept at the registered office or at some other place in Singapore. If the register is kept in a place other than the registered office, the company must notify the Registrar of Companies of the place at which the register is kept and also of any changes in the place. Except when the register is duly closed, it must be open to inspection by the registered holder of any

¹⁷ See section 191(1) of the Companies Act. Failure to comply is an offence and the company and officers in default are liable on conviction to a fine not exceeding \$1,000 and to a default penalty – see section 191(3) of the Companies Act

¹⁸ See section 196(2) of the Companies Act. Failure to comply is an offence and the company and officers in default are liable on conviction to a fine not exceeding \$1,000 and to a default penalty

¹⁹ See section 173(1) and (5) of the Companies Act. Failure to comply is an offence and the company and officers in default are liable on conviction to a fine not exceeding \$5,000 and to a default penalty – see section 173(7B) of the Companies Act

²⁰ Section 164(8) of the Companies Act. Failure to comply is an offence and the company and officers in default are liable on conviction to a fine not exceeding \$15,000 or to imprisonment not exceeding 3 years and in the case of a continuing offence to a further fine of \$1,000 for every day during which the offence continues after conviction – see section 164(1) of the Companies Act

debentures and to any holder of shares in the company.²¹ If the company keeps a branch register of debenture holders, then it must notify the Registrar of Companies of the situation of the office where the branch register is kept.²²

Keeping of register of charges (for companies creating charges)

1.3.12 For a company that creates any charge over its properties, the instrument or charge or a copy of the instrument and the register of charges must be kept at the registered office. The register of charges must be open to inspection by any creditor or member of the company without a fee any by any other person on payment of a fee not exceeding \$2 for each inspection.²³

Keeping of the register of substantial shareholders (publicly listed companies only)

1.3.13 For public companies which are listed, the register of substantial shareholders must be kept at the registered office and must be open for inspection by a member of the company without charge and by any other person on payment of a sum not exceeding \$2 for each inspection.²⁴

Keeping of minute books

1.3.14 The minute books of the company recording the matters set out below have to be kept at the registered office or the principal place of business of the company in Singapore:

- (a) minutes of all proceedings of general meetings and of meetings of its directors and of its managers;
- (b) if the company has only one director, minutes relating to the passing of resolutions by that director and the making of declarations by that director; and
- (c) minutes of resolutions passed by written means under section 184A of the Companies Act.²⁵

Keeping of accounting records

1.3.15 The accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss

²¹ See section 93(1), (2) and (3) of the Companies Act. Failure to comply is an offence and the company and officers in default are liable on conviction to a fine not exceeding \$1,000 and to a default penalty – see section 93(9) of the Companies Act.

²² See section 93(8), read with section 196(2) of the Companies Act. For penalty, see note immediately above.

²³ See section 138(1), (2) and (3) of the Companies Act. Failure to comply is an offence and the company and officers in default are liable on conviction to a fine not exceeding \$2,000 and to a default penalty – see section 138(4) of the Companies Act.

²⁴ See section 88(2) of the Companies Act. Failure to comply is an offence and the company and officers in default are liable on conviction to a fine not exceeding \$5,000 and in the case of a continuing offence to a further fine of \$500 for every day during which the offence continues after conviction – see section 88(5) of the Companies Act

²⁵ See section 189(1) of the Companies Act. Note the right of inspection under section 189(1), read with (3), of the Companies Act. Failure to comply is an offence under the general penalty provision under section 407(1) of the Companies Act for which the penalty on conviction is a fine not exceeding \$1,000 – see section 407(2) of the Companies Act.

accounts and balance-sheets etc. must be kept at the registered office or at such other place as the directors think fit and must be available for inspection by the directors.²⁶

Availability of documents

1.3.16 In addition, there are various provisions of the Companies Act which require certain documents to be available for inspection or to be deposited at the registered office. For example, certain special resolutions of the company,²⁷ solvency statements²⁸, requisitions for extraordinary general meetings²⁹, requisitions for notice of resolutions or statements³⁰, reports on proposals for compromise or arrangements³¹ and copies of amalgamation proposals³².

Translations of instruments

1.3.17 Where a corporation is required to make available for public inspection any “instrument, certificate, contract or document” that is not written in English, the company is required to keep a certified translation of such document in English at its registered office.³³

Service of documents

1.3.18 It should be noted that a document may be served on a company by leaving it at or sending it by registered post to the registered address of the company.³⁴ Certain documents are required to be served on the registered office e.g. reports of inspectors appointed by the Minister³⁵, applications for judicial management orders³⁶, judicial management orders³⁷, applications for winding up³⁸ and copies of winding up orders³⁹. Service on the registered address may also be required for certain other purposes.⁴⁰

²⁶ See section 199(3) of the Companies Act. Failure to comply is an offence and the company and officers in default are liable on conviction to a fine not exceeding \$2,000 or to imprisonment not exceeding 3 months and to a default penalty.

²⁷ See sections 76D(7)(a), 76DA(4)(a), of the Companies Act.

²⁸ See sections 78B(4)(b) and 78C(4b) of the Companies Act.

²⁹ See section 176(2) of the Companies Act.

³⁰ See section 183(4)(a) of the Companies Act.

³¹ See section 210(8)(b) of the Companies Act.

³² See section 215C(5)(b)(i) of the Companies Act.

³³ See section 397(1) of the Companies Act. Failure to comply is an offence under the general penalty provision under section 407(1) of the Companies Act for which the penalty on conviction is a fine not exceeding \$1,000 – see section 407(2) of the Companies Act.

³⁴ See section 387 of the Companies Act. See also section 344(6) of the Companies Act (which deals with a certain situation where there is no registered office).

³⁵ See section 233(1) of the Companies Act (relating to reports of inspectors);

³⁶ See regulation 33(1) of the Companies Regulations Cap. 50 Rg. 1.

³⁷ See regulation 40(2) of the Companies Regulations Cap. 50 Rg.1

³⁸ Rule 26(1) of the Companies (Winding Up) Rules Cap. 50 R1.

³⁹ Rule 34(2) of the Companies (Winding Up) Rules Cap. 50 R1.

⁴⁰ Service of letter of demand for determining whether company deemed to be unable to pay its debts under section 254(2)(a) of the Companies Act and letter of dissent to proposal of liquidator to accept shares, debentures etc. as consideration for sale of property of company under section 306(2) of the Companies Act.

Articles

1.3.19 The registered office may also feature in the company's articles, so an examination of the articles of a company may be necessary to determine the procedural requirements involving the registered office.

Foreign companies

1.3.20 Foreign companies are also required to have a registered address in Singapore to which all communications and notices may be addressed. It must be open and accessible to the public for not less than 5 hours between 9 a.m. and 5 p.m. each business day (that is, except for Saturdays, Sundays and other public holidays).⁴¹ Changes in relation to the registered office must be notified to the Registrar of Companies.⁴² The name of the foreign company in romanised letters and the place where the foreign company was formed or incorporated must be conspicuously exhibited outside its registered office and every place of business established in Singapore.⁴³ The branch register for registering shares of members resident in Singapore (if any) has to be kept here or at some other place in Singapore.⁴⁴

1.3.21 It should be noted that a document required to be served on a foreign company which maintains a place of business in Singapore shall be sufficiently served if addressed to the foreign company and left at or sent by post to its registered office in Singapore.⁴⁵

Unregistered companies

1.3.22 In the case of the winding up of unregistered companies⁴⁶, the principle place of business shall be treated as the registered office for the purposes of the winding up.⁴⁷

1.4 Regulatory Requirements under the Limited Liability Partnerships Act as to "Registered Office"

1.4.1 It is a requirement for every limited liability partnership ("LLP") registered under the Limited Liability Partnerships Act 2005 (the "LLP Act") to have a registered office in Singapore to which all communications and notices may be addressed.⁴⁸ The address of the registered office is one of the requirements for

⁴¹ See section 370(1) of the Companies Act. Failure to comply is an offence and every officer of the company in default and every agent of the company who authorises or permits the default is liable on conviction to a fine not exceeding \$1,000 and to a default penalty – see section 386 of the Companies Act.

⁴² See section 372(1)(d) of the Companies Act. For penalty, see note immediately above.

⁴³ See section 375(1)(a) of the Companies Act. For penalty, see note above.

⁴⁴ See section 379(1) of the Companies Act. Failure to comply is an offence and every officer of the company in default and every agent of the company who authorises or permits the default is liable on conviction to a fine not exceeding \$1,000 and to a default penalty – see section 379(3) of the Companies Act.

⁴⁵ See section 376(a) of the Companies Act.

⁴⁶ See definition in section 350 of the Companies Act. It includes a foreign company and any partnership, association or company consisting of more than 5 members (but does not include a company incorporated under Companies Act or corresponding previous law).

⁴⁷ See section 351(a) of the Companies Act.

⁴⁸ See section 26(1) of the LLP Act.

registration under the LLP Act⁴⁹ and changes to the address of the registered office only take effect upon lodgment of the notice of change (by Bizfile) with the Registrar of LLPs or ACRA⁵⁰. An LLP is also required to notify the Registrar of LLPs (by Bizfile) of any change in the particulars of the registered office within 14 days (or such longer period as the Registrar may allow) of the change⁵¹.

1.4.2 A document may be served on a LLP by leaving it at or sending it by registered post to the registered office.⁵² In addition, certain documents are required to be served at the registered address⁵³.

1.5 Permissible places for place of business or registered office

1.5.1 Where can a “place of business” or a registered office be? The Business Registration Act does not regulate where a “place” of business can be. The Companies Act and the LLP Act also do not regulate where a “registered office” can be. However, that does not mean that a person can carry on business or set up a registered office in any place because there may be other laws which regulate where any or any particular kind of business or business activity can be carried on or where an office can be.

1.5.2 A registrant under the Business Registration Act who wishes to carry on any particular kind of business must make his or her own enquiries to ensure that the law permits the carrying on of any particular kind of business at any particular place. A company and an LLP must also make their own enquiries as to whether the law permits a registered office to be set up in any particular place. For example, as a general rule, residential premises cannot be used as a place of business. However, there are specified exemptions under various schemes such as the Small Business Guidelines and the Home Office Scheme (operated by the Housing and Development Board for HDB premises and Urban Redevelopment Authority for private premises⁵⁴).

1.6 Conclusion

1.6.1 It is hoped that this article provides some guidance as to the requirements that apply in relation to the place of business and the principal place of business for entities registered under the Business Registration Act and in relation to the

⁴⁹ See section 15(1)(c) of the LLP Act.

⁵⁰ See section 26(3) of the LLP Act.

⁵¹ See section 28(1) of the LLP Act. Failure to comply is an offence and the LLP is liable on conviction to a fine not exceeding \$5,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day during which the offence continues after conviction.

⁵² See section 26(2) of the LLP Act. See also section 38(8) of the LLP Act (which deals with a certain situation where there is no registered office).

⁵³ E.g. service of letter of demand for determining whether company deemed to be unable to pay its debts under paragraph 3(2)(a) of the Fifth Schedule to the LLP Act and letter of dissent to proposal of liquidator to accept shares, debentures etc. as consideration for sale of property of LLP under paragraph 53(2) of the Fifth Schedule to the LLP Act.

⁵⁴ For further information, please contact the respective statutory bodies.

registered office for companies and LLPs. It is hoped that businesses, companies and LLPs will take steps to ensure that they comply with the relevant legal requirements.

2. LIMITED PARTNERSHIP AS A BUSINESS ENTITY

2.1 Introduction

2.1.1 The Government launched its public consultation of the Limited Partnership Bill 2006 in August 2006, which ended on 6 September 2006. The consultation paper, Limited Partnerships Bill and related amendments, list of issues for consultation and the prescribed reply are available at http://www.mof.gov.sg/consultation_current/public_con_lp_bill_2006.html.

2.1.2 The feedback received is presently under consideration. This write-up provides a brief overview of the legal nature and the proposed reporting requirements of Limited Partnerships (LPs)

2.2 Background

2.2.1 In October 2002, the Company Legislation and Regulatory Framework Committee (CLRFC)¹ recommended that legislation be enacted to introduce LPs in Singapore. The purpose is to increase the options available to businesses and investments. LPs are suitable for private equity and fund investment businesses.

2.3 Nature of LPs

2.3.1. An LP will have at least one partner whose liability will be unlimited (referred to as the “general partner”). This means that the general partner will be liable for all the debts, obligations and liabilities incurred by the LP during the period when he is a general partner.

2.3.2 An LP can also 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 (referred to as the “limited partners”). Limited partners are not allowed to take part in the management of the LP and have no power to bind the LP.

2.3.3 A body corporate is allowed to be a general or limited partner.

2.3.4. There is no upper limit on the total number of partners in an LP.

¹ CLRFC was appointed by the Ministry of Finance, the Attorney-General’s Chambers and the Monetary Authority of Singapore in December 1999. The terms of reference were “to undertake a comprehensive and coherent review of our company law and regulatory framework and recommend a modern company law and regulatory framework for Singapore which accords with global standards and which will promote a competitive economy”. Information taken from <http://www.mof.gov.sg/cor/clrfc.html>.

2.4 Legal Structure

- 2.4.1 An LP does not have a legal personality separate from the partners. This means that the general partner will have to bear all responsibility under the law and is liable for the debts and obligations of the LP. However the limited partner shall only be limited by the amount paid or agreed to be paid. This is the unique feature of an LP structure.

2.5 Liability of Partners

General Partner

- 2.5.1 The general partner will be personally liable for the debts, obligations and liability 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 will be jointly and severally liable for those debts, obligations and liabilities incurred during the relevant period.

Limited Partners

- 2.5.2 The limited partners will not 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 will 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.

2.6 Tax Treatment

- 2.6.1 An LP is tax transparent and the partners will be taxed on their share of the income or gains of the LP according to their personal income tax rates.

2.7 Accounting Records and Financial Reporting

- 2.7.1 An LP is not required to have its accounts audited and filed with ACRA. However, the LP is required to keep proper accounting records that would enable true and fair financial statements to be prepared and audited, if necessary.

2.8 Dissolution

- 2.8.1 There are various ways an LP can be dissolved.
- (a) By expiration or notice –
 - (i) if the LP term has expired;
 - (ii) if the adventure or undertaking has been terminated;
 - (iii) when a partner gives notice to the other or others of his intention to dissolve the partnership (this does not apply to limited partners).

- (b) By a partner's death, bankruptcy (this only applies for the general partner because a limited partner who is bankrupt is allowed to continue as a limited partner in an LP) or if any partner suffers his share of the partnership property to be charged under this Act for his separate debt.
- (c) By the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.
- (d) By Court-ordered dissolution as follows –
 - (i) The Court is of the opinion that it is not reasonably practicable to carry on the partnership business in conformity with the partnership agreement;
 - (ii) The Court is of the opinion that it is just and equitable to wind up the LP; and
 - (iii) 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.

2.9 Conclusion

2.9.1 It is hoped that the business community will find the LP structure to be business friendly by offering benefits for its users as well as a reasonable level of protection to those who deal with LPs. The LP structure resembles the general partnership but it has added feature of limited liability for the limited partners. It will be an attractive structure for persons who wish to conduct business as investors who do not wish to take an active role in the management of the business and who prefer to entrust the management of the business to any one or more persons who have sufficient confidence to assume unlimited liability.

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

3.1 Issuance of Financial Reporting Standards (FRSs)

3.1.1 The CCDG issued the following new Interpretations of Financial Reporting Standards (INT FRS), arising from recent pronouncements issued by the International Financial Reporting Interpretations Committee (IFRIC) of the International Accounting Standards Board (IASB):

- (a) INT FRS 108 *Scope of FRS 102*. FRS 102 *Share-based Payment* applies to all share-based payment transactions in which the entity receives or acquires goods or services, except for transactions excluded from its scope

(e.g. transactions in which the entity acquires goods as part of the net assets acquired in business combinations). For the applicable transactions, FRS 102 requires an entity to recognise the transactions in its financial statements, including transactions with employees or other parties to be settled in cash, other assets, or equity instruments of the entity. INT FRS 108 is based on Interpretation 8 *Scope of IFRS 2* issued by IFRIC in Jan 06. INT FRS 108 clarifies that FRS 102 applies to arrangements where an entity makes share-based payments for nil or inadequate consideration; and

- (b) INT FRS 109 *Reassessment of Embedded Derivatives*. INT FRS 109 is based on Interpretation 9 *Reassessment of Embedded Derivatives* issued by IFRIC in Mar 06. FRS 39 *Financial Instruments: Recognition and Measurement* describes an ‘embedded derivative’ as ‘a component of a hybrid (combined) instrument that also includes a non-derivative host contract – with the effect that some of the cash flows of the combined instrument vary in a way similar to a stand-alone derivative.’ FRS 39 requires an entity, when it *first* becomes a party to a contract, to assess whether any embedded derivatives contained in the contract are required to be separated from the host contract and accounted for as a derivative, based on specific conditions imposed. INT FRS 109 clarifies that reassessment is prohibited unless there is a change in the terms of the contract that significantly modifies the cash flows that would otherwise be required under the contract, in which case reassessment is required.

3.1.2 The INT FRSs are available at
http://www.ccdg.gov.sg/frs/in_index_new.htm.

3.2 Issuance of Exposure Drafts and Invitations to Comment

3.2.1 The CCDG issued the following Exposure Drafts (ED) for public comment in May and Jul 06. The EDs are available at <http://www.ccdg.gov.sg/draft.htm>.

- (a) ED of proposed amendments to FRS 23 *Borrowing Costs* – The ED was issued in May 06 for public comment and is closely based on the ED issued by IASB. Briefly, the ED seeks to improve the accounting treatment for borrowing costs and marks another step towards convergence of IFRS with US GAAP. The ED proposes to require an entity to capitalise borrowing costs directly attributable to the acquisition, construction or production of a qualifying asset as part of the cost of that asset. The current option of immediately expensing those borrowing costs under FRS 23 would be removed; and
- (b) ED of proposed amendments to FRS 32 *Financial Instruments: Disclosure and Presentation* and FRS 1 *Presentation of Financial Statements* relating to financial instruments puttable at fair value and obligations arising on liquidation – The ED was issued in Jul 06 for

public comment and is closely based on the ED issued by IASB. Briefly, the ED seeks to improve financial reporting of particular types of financial instruments that have characteristics similar to ordinary shares and are at present classified as financial liabilities. These include: (i) ordinary shares that are puttable to (i.e. redeemable from) the issuer at fair value; (ii) ordinary shares of limited life entities; and (iii) partners' interests in a partnership that must liquidate upon exit of a partner (e.g. on retirement or death). These instruments are generally classified as liabilities under FRS 32, rather than equity.

3.2.2 The CCDG had reviewed the comments received and submitted its responses to IASB for the following EDs and Draft Interpretations (ED INT FRS):

- (i) ED INT FRS *Interim Financial Reporting and Impairment*;
- (ii) ED of Proposed Amendments to FRS 102 relating to vesting conditions and cancellations; and
- (iii) ED FRS *Operating Segments*.

3.2.3 The CCDG will be reviewing comments received and responses to IASB for the ED of proposed amendments to FRS 1 *Presentation of Financial Statements* (relating to 'A Revised Presentation').

3.2.4 The CCDG issued an Invitation to Comment in May 06 on the IFRIC Due Process Handbook. The Draft IFRIC Due Process Handbook sets out IFRIC's policies and procedures related to its due process. The Invitation to Comment can be assessed at the CCDG website at:
http://www.ccdg.gov.sg/news/media_release_21.htm.

3.2.5 CCDG had reviewed comments received and submitted its responses to IASB for the following Invitations to Comment:

- (i) IASB Discussion Paper on 'Management Commentary';
- (ii) IASB Discussion Paper on 'Measurement Bases for Financial Accounting – Measurement on Initial Recognition'; and
- (iii) IASB staff questionnaire on financial instruments.

3.3 Review of the Quarterly Reporting Requirement

3.3.1 CCDG had reviewed the feedback received on the public consultation on the review of the quarterly reporting requirement and submitted its recommendations to the Ministry of Finance. The list of respondents to the public consultation and summary of feedback received are available at the CCDG website at:
<http://www.ccdg.gov.sg/news/feedback.htm>.

4. PRACTICE DIRECTION NO. 4 OF 2006 - INTERPRETATION OF REQUIREMENT TO PREPARE ACCOUNTS UNDER SECTION 201(1A), (3) AND (3A) OF THE COMPANIES ACT (CAP. 50)

4.1 ACRA issued Practice Direction No. 4 of 2006 on 27 April 2006. This PD supersedes PD No. 9 of 2005. It provides guidance on section 201(1A), (3) and (3A) of the Companies Act on the requirement for company to prepare accounts which comply with Accounting Standards and which give a true and fair view.

4.2 The PD elaborates on the issues raised and the interpretation taken in PD No. 9 of 2005. It sets out the accounts to be prepared for the following:-

- (i) A company that is not a holding company under the Companies Act but is a parent under Financial Reporting Standards 27;
- (ii) A company that is a holding company under the Companies Act and a parent under Financial Reporting Standards 27; and
- (iii) A company that is a holding company under the Companies Act but is not a parent under Financial Reporting Standards 27.

4.3 A copy of the Practice Direction is available at:
http://www.acra.gov.sg/legislation/pdf/PD_no4_2006.pdf

5. PRACTICE DIRECTION NO. 5 OF 2006 - NOTIFICATION UNDER SECTION 62B(7) OF THE COMPANIES ACT (CAP. 50)

5.1 ACRA has received feedback that companies may require more time to file the Notification under section 62B(7) of the Companies Act (Cap 50), after issuing Practice Direction No. 1 of 2006 on 12th January 2006. PD No. 1 of 2006 informed that companies that have received share premiums and have capital redemption reserves may update these amounts to the share capital using the new form called “Notification of Share Capital” within 6 months after 30th Jan 2006 or before confirming their Summary of Returns.

5.2 This PD, issued on 1 August 2006, informs the public of ACRA’s decision to allow a further 1 month period until 31st August 2006 for companies to file the above Notification if they wish to. It also spells out the procedure for filing the Notification on or after 1st August 2006.

5.3 No fee or penalty is payable for lodgements made on or before 31st August 2006. Any company that wants to lodge the Notification after 1st September 2006 will have to apply for extension in writing, supported with reasons for the delay. A fee of \$30 under item 112 of the Second Schedule of the Act is payable for the application. If the application is granted, the Notification must

be lodged with the General Lodgement form and a filing of \$10 as prescribed under item 114 is also payable.

- 5.4 A copy of the Practice Direction is available at:
http://www.acra.gov.sg/legislation/pdf/PD5_of_2006.pdf

6. PRACTICE DIRECTION NO. 6 OF 2006 - ACRA LAUNCHES NEW FUNCTIONS IN PA ONLINE – PHASE 2B

- 6.1 ACRA issued Practice Direction 6 of 2006 on 7 August 2006. This PD informs the public that the following transactions could be performed online via the Bizfile website (<http://www.bizfile.gov.sg>) with effect from 14 August 2006:

Public Accounting Firm

- (a) Approval of Public Accounting Firm;
- (b) Change in Practice Names;
- (c) Revocation of Approval of Public Accounting Firm;
- (d) Change in Particulars of Public Accounting Firm;

Public Accounting Corporation

- (e) Approval of Public Accounting Corporation;
- (f) Change in Particulars of Public Accounting Corporation;
- (g) Revocation of approval of Public Accounting Corporation;
- (h) Submission of Summary Returns and Annual Returns by Public Accounting Corporation;

Information Services

- (i) Letter of confirmation for public accounting firm and public accounting corporation;
- (j) Letter of confirmation for public accountant;
- (k) Business Profile of public accounting firm/public accounting corporation;
- (l) Business Profile of public accounting firm/public accounting corporation – with certificate of production;
- (m) List of public accountants practising in a specific public accounting firm / public accounting corporation;
- (n) List of public accounting firm / public accounting corporation that has changed name;
- (o) Principal place of business of public accounting firm/public accounting corporation;
- (p) List of live or defunct public accounting firm / public accounting corporation.

- 6.2 With the launch of these new functions, paper applications/notifications/request pertaining to the transactions listed above would no longer be accepted from 14 August 2006 (Monday).

- 6.3 The following user guides are available on ACRA's website <http://www.acra.gov.sg> (under "Latest News"):
- (a) Transactions relating to Public Accounting Firm; and
 - (b) Transactions relating to Public Accounting Corporation.

- 6.4 A copy of the Practice Direction is available at:
http://www.acra.gov.sg/legislation/pdf/PD6_of_2006.pdf

7. ACRA LEGISLATION AND PRACTICE DIRECTIONS UPDATE (16 APRIL 2006 TO 29 SEPTEMBER 2006)

Legislation Published

S/n	Subsidiary Legislation	G.N. No.	Date Published	Operative Date
Companies Act (Cap 50)				
1.	Companies (Accounting Standards) (Amendments No. 3) Regulations 2006	S250/2006	28 April 2006	10 May 2006
2.	Companies (Central Depository System) (Section 130D-Supplementary Provision for Business Trust) Regulations 2006	S293/2006	29 May 2006	2 June 2006
3.	Companies (Accounting Standards) (Amendments No. 4) Regulations 2006	S297/2006	5 June 2006	15 June 2006

Practice Directions Issued

S/n	Practice Direction	Date Issued
1.	No. 4 of 2006 Interpretation of Requirement to Prepare Accounts under Section 201(1a), (3) and (3a) of the Companies Act (Cap. 50)	27 April 2006
2.	No. 5 of 2006 Notification under Section 62B(7) of the Companies Act (Cap. 50)	1 August 2006
3.	No. 6 of 2006 ACRA Launches New Functions in PA Online – Phase 2b	7 August 2006



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