LIMITED LIABILITY PARTNERSHIPS —
A DRAFT CONSULTATION DOCUMENT[*]

Prepared for Consideration by the
Law Reform Committee of the Singapore Academy of Law

by

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A INTRODUCTION

1 The central purpose of this document is to seek views as to whether or not it would be appropriate, at this point in time or in the foreseeable future, for Singapore to adopt an additional form of business entity that confers limited liability, viz the limited liability partnership (hereafter LLP). At present, the only vehicle that caters for limited liability is the company.

B THE LIMITED LIABILITY PARTNERSHIP (LLP)

2 Simply put, the LLP is a body corporate[1] which has legal personality separate from that of its members and which combines features of both companies and partnerships. It will provide the flexibility of a partnership (hence allowing the owners or members thereof to adopt whatever form of internal organization preferred), whilst simultaneously limiting the said owners' liability with respect to the LLP to their respective stakes in the LLP itself. While there may (as shall be seen below) be variations in detail depending on the jurisdiction concerned, this is the basic essence of a LLP.

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* Taking into account developments as at January 2000. Please see a summary of the latest developments in the "Afterword", below.

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1 This is the situation with regard to the proposed UK position, although the position in Jersey is different: see below, n 27.

On limited liability partnerships generally, see S Netherway, A Begg and P Beckett, *Limited Liability for Professional Partnerships* (Bristol, Jordans, 1998) and Robert W Wood, *Limited Liability Partnerships — Formation, Operation, and Taxation* (New York, John Wiley & Sons, Inc, 1997). The latter work contains an excellent overview of the US position, where individual state statutes are quite diverse (particular reference may be made to Appendices C—H, which contain reproductions from various statutes); in the present paper, we will, however, only be concerned with general principles that are of relevance in the Singapore context.

3 It is important to note, however, that the LLP does *not* shield individual members from legal liability resulting from their *own personal acts* which are not done for and on behalf of the LLP. In other words, such members continue to be personally liable for their own negligence and other wrongful acts committed in their personal capacity.[2]

What such members are shielded against is personal and unlimited liability resulting from negligent and wrongful acts which are done for and on behalf of the LLP or which are legally attributable to the LLP.[3] In such a situation, it is the LLP which assumes liability and the members of the LLP are liable only to the extent of their respective contributions to the LLP itself. Of course, in exceptional circumstances, a member of a LLP may be personally liable for torts committed by him in the name of the LLP in the same way that a director of a company may become personally liable for tortious acts of the company, for example, where the member knowingly authorises, causes or procures the LLP to commit the tortious act.[4]

C THE LLP DISTINGUISHED FROM OTHER BUSINESS VEHICLES

(1) *The LLP Distinguished from the Limited Partnership*

4 The LLP should also not be confused with the limited partnership, which exists (for instance) under English law in the form of the Limited Partnerships Act 1907.[5] There must, in a limited partnership, be at least one general partner who will be responsible for all liability, with one or more limited partners whose liability is limited to the actual amount of their respective contributions and who cannot (during the continuance of the partnership) either draw out or receive back any part of the contribution concerned and (more importantly) who cannot take any part in the management of the partnership business. It should be mentioned that this Act is not applicable in Singapore as it is not listed in the Application of English Law Act.[6] Nor, historically, was the Act thought to be part of Singapore law under the (now

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2 And see eg Art 5(2) of the Jersey Act, below, n 10, which makes an express statement to this effect.

3 Reference may be made to Cll 4, 5 and (especially) 6 of the UK Bill, below, paragraph 6 and the Jersey Act, below, n 10, Art 15 (“Agency of partner in a limited liability partnership”).

4 See *Gabriel Peter & Partners v Wee Chong Jin* [1998] 1 SLR 374; cf *Williams v Natural Life Health Foods Ltd* [1998] 1 WLR 83. Reference should also be made to Cl 6(4) of the UK Bill, below, paragraph 6.

5 See generally DG Hemmant, *The Law of Limited Partnerships under the Limited Partnerships Act, 1907 — with the Rules, Forms and Scale of Fees Thereunder, and a Model Form of Partnership Agreement* (London, Jordan & Sons, Limited, 1908) and RC I’Anson Banks, *Lindley & Banks on Partnership* (17th ed, London, Sweet & Maxwell, 1995) at 3-4, 29-30 and 859 *et seq*.

The limited partnership is not peculiar to the UK but is an established institutional feature in many European countries (see eg Banks, above, at 29-30) as well as in the United States of America (see eg Larry E Ribstein, “An Applied Theory of Limited Partnership” (1988) 37 Emory LJ 835).

6 Cap 7A, 1994 Rev Ed.

repealed) section 5 of the Civil Law Act: primarily because of the absence of the requisite local administrative machinery.[7]

In contrast, under a LLP, *all* partners would be able to avail themselves of the benefits of limited liability, whilst simultaneously being able to play an active role in the management of the business of the LLP itself.[8]

(2) *The LLP Distinguished from the Limited Liability Company*

5 The LLP should also be distinguished from the Limited Liability *Company* (LLC). While both have separate legal personality, the owner-management divide which is central to the LLC does not usually feature in an LLP. The LLP might therefore be preferable to the LLC in certain situations — in particular, where organizational flexibility is desired over centralized management.[9]

D RELEVANT DEVELOPMENTS IN OTHER COUNTRIES

6 The LLP is a relatively recent legal institution. Although it has been widely

received in most States in the United States of America, it is, even there, of relatively recent vintage. In more recent years, the Channel Island of Jersey has enacted a LLP Act.[10] In addition, the Alberta Law Reform Institute recently released a comprehensive report on *Limited Liability Partnerships and other Hybrid Business Entities*,[11] but which did not, however, arrive at any definitive recommendation as such; the report observed that "[u]ltimately, we think, the decision … must reflect the

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7 See eg David KK Chong, "Outline of Partnership Law in Singapore" in Christian Salbaing (ed), *Company Law and Partnership Law in Selected Asian Countries* (International Bar Association, 1986) pp 503-517 at 505 (where the then s 5(2)(b)(ii) of the Civil Law Act is cited (no UK law to be received `regulating the exercise of any business or activity by providing for registration'); Walter Woon, "The Continuing Reception of English Commercial Law" in Ch 5 of Walter Woon (ed), *The Singapore Legal System* (Longman, 1989) at 163; and Myint Soe, *Principles of Singapore Law (including Business Law)* (3rd edn, The Institute of Banking and Finance, 1996) at 558.

8 See also Wood, above, n 1 at 16.

9 See Wayne M Gazur, "The Limited Liability Company Experiment: Unlimited Flexibility, Uncertain Role" (1995) 58 Law and Contemporary Problems 135 at 166. Though cf Robert R Keatinge, Allan G Donn, George W Coleman and Elizabeth G Hester, "Limited Liability Partnerships: The Next Step in the Evolution of the Unincorporated Business Organization" (1995) 51 The Business Lawyer 147 at 207 as well as below, n 17.

10 See the Limited Liability Partnerships (Jersey) Law 1997. And see generally Philip Morris and Joanna Stevenson, "The Jersey Limited Liability Partnership: A New Legal Vehicle for Professional Practice" (1997) 60 MLR 538 as well as Netherway, Begg and Beckett, above, n 1, esp at Chh 4 and 6. Appendix 2 of this lastmentioned work also contains a copy of the 1997 Law itself.

11 Issues Paper No 4, March 1998; hereafter referred to as "the *Alberta Report*".

sort of balancing of considerations and interests that is best left to elected representatives of the people of Alberta".[12]

More significantly, in the United Kingdom, a Limited Liability Partnership Bill is presently before Parliament. Indeed, the Second Reading of this Bill only took place as recently as 9 December 1999, having been first introduced on 23 November of the same year. The Bill has since been amended in Committee in the House of Lords and was printed on 24 January 2000. It should be mentioned that there are (of course) no regulations as yet and hence, any reference to regulations will be to the proposed regulations drafted by the UK Department of Trade and Industry.[13] The reader should therefore bear in mind the fact that the substance or even very existence of any proposed regulation referred to could undergo radical changes in the future (we have in mind, in particular, the various proposed safeguards that are governed, in the main, via regulations[14]).

E THE UK BILL AS AN APPROPRIATE MODEL FOR SINGAPORE

7 Quite apart from the fact that Singapore does follow English law (in

particular, the commercial developments thereof) rather closely, more importantly, the general reasons for the introduction of the UK Bill are also of relevance in the Singapore context. Indeed, these reasons are sufficiently general as to be applicable to virtually every jurisdiction that has hitherto embraced the institution of the LLP.

Further, and for reasons that will be apparent shortly, we are of the view that the UK Bill constitutes the most balanced approach towards the adoption of a legal regime for LLPs in the Singapore context. Hence, the focus will be on the UK Bill, although comparative material will also be discussed, where relevant.

F ARGUMENTS FAVOURING THE INTRODUCTION OF THE LLP IN THE SINGAPORE CONTEXT

8 Before briefly detailing the general reasons mentioned in the preceding paragraph in favour of the introduction of the LLP, it should be mentioned that, in the specifically Singapore context, the introduction of the LLP would be consistent with the desired aim of encouraging entrepreneurship, particularly in relation to 'cutting-edge' ideas and industries where the need for a large organization is (in the first instance, at least) non-existent or minimal and where (on the contrary) the flexibility afforded by an organization such as the LLP might be ideal. Further, the provision of limited liability encourages bolder experimentation which is (in turn) tempered by the provision of

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12 See ibid at viii.

13 See generally Cl 16 of the UK Bill as well as below, n 23. The regulations mentioned are the draft Limited Liability Partnerships Regulations 1999.

14 See generally below, paragraphs 13 and 14.

safeguards[15] that serve to deter any possible recklessness and abuse of the benefits of incorporation.

More generally, but consistently with the point just made, the introduction of the LLP might be said to be consistent with the maintenance of a competitive and up-to-date legal framework for doing business both within and without Singapore itself. Further, there is really no reason in policy or principle why, given the wide acceptability of the LLC,[16] a partnership should not also be given body corporate status and conferred the privilege of limited liability, provided that sufficient safeguards are put in place. In essence, the main difference between the LLP and the LLC is their respective internal organisational structures, and this is a neutral factor in relation to the privilege of limited liability. It should also be noted that even incorporation as a LLC might not be attractive compared to conducting business as a LLP; as one writer aptly puts it (in the American context):[17]

> "[T]he LLP form offers features that are particularly attractive for professional firms including, among other things, stronger default rights to participate in management, fewer financial restrictions to accommodate distribution of revenues to income- generating partners, greater acceptance by professional licensing agencies, and easy conversion to limited liability without having to redraft partnership agreements to fit a new statute. Indeed, the LLP might end up as *the* alternative to incorporation because of its greater flexibility, linkage with a substantial existing body of partnership law, and the generally favorable status of general partnership under tax[18] and regulatory statutes."

9 Turning to other reasons in favour of the LLP, it has been observed, insofar as professional partnerships are concerned, that (in the UK at least), although professionals have the option to incorporate, few have opted for this route and "[t]hat may be because it is considered that the structure of a company does not lend itself to successful professional/client relationships, because there may be a conflict between the need to act in the interest of shareholders and the need to act in the interests of a client. It may also be because the particular advantages of the partnerships structure have made firms reluctant to reorganise as a company."[19]

10 However, professional partnerships do in fact desire access to limited liability. Indeed, the applicable considerations giving rise to concern over the possibility of

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15 See generally below, paragraphs 13 and 14.

16 On the LLC, see generally above, paragraph 5.

17 See Larry E Ribstein, "The Emergence of the Limited Liability Company" (1995) 51 The Business Lawyer 1 at 48 (emphasis in the original text).

18 Though cf below, paragraph 15.

19 See the Second Reading of the UK Limited Liability Partnerships Bill in the House of Lords: *Hansard (House of Lords)* at Cols 1421—1422 (9 December 1999), *per* Lord McIntosh of Haringey (this is available at the UK Parliament Website at http://www.parliament.the-stationery-office.co.uk/).

unlimited liability (summarised below by the "Explanatory Notes" to the UK Limited Liability Partnerships Bill[20]) are also applicable to partnerships generally:[21]

"(a) a general increase in the incidence of litigation for professional negligence and in the size of claims;[22]

(b) the growth in the size of partnerships; since in a very large partnership, not all the partners will be personally known to one another;

(c) the increase in specialisation among partners and the coming together of different professions within a partnership;

(d) the risk to a partner's personal assets when a claim exceeds the sum of the assets and insurance cover of the partnership."

G THE LLP AS A GENERAL BUSINESS VEHICLE

11 Notwithstanding the primary concern of professional partnerships themselves (see paragraphs 9 and 10, above), the present UK Bill does *not* restrict the vehicle of the LLP to professionals. It should, however, be noted that this was *not* the case with the original draft bill issued by the UK Department of Trade and Industry.[23] Further, and taking but two examples, the relevant New York legislation[24] is confined to firms providing professional services only and the relevant Californian legislation is confined to professional law or accounting partnerships.[25]

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20 Available at the UK Parliament Website: see above, n 19.

21 See ibid at paragraph 9.

22 And see eg Jennifer J Johnson, "Limited Liability for Lawyers: General Partners Need Not Apply" (1995) 51 The Business Lawyer 85 at 85 and 88.

23 See generally *Limited Liability Partnerships Draft Bill — a consultation document* (located on the internet at http://www.dti.gov.uk/cld/llp). In addition to a draft Bill, draft Regulations also accompanied this particular document (the Limited Liability Partnerships Regulations 1999). Cl 2 of the proposed Bill in this particular document envisaged that members of LLPs would be members of and/or subject to supervision by a "a regulatory body". It is interesting to note that the document itself stated that "[t]here was *strong support* from the *professions* for a GB LLP vehicle", although it is equally interesting to note that "[t]he *majority* of clients/regulators *did not comment* on the need for an LLP vehicle — *where they did, support for and against was evenly split*": see Chapter Two (entitled "Responses to the 1997 consultation document") at paragraph 2.2 (emphasis added). Indeed, this document expressed some ambiguity in its final decision and called for more views on the general approach mooted, viz to restrict access to the LLP as an option to regulated businesses. The UK government ultimately concluded that there should be no such restriction: hence, the general approach adopted by the present Bill: see above, n 19 at Col 1421.

24 See generally Wood, above, n 1 at Appendix G.

25 See Wood, above, n 1 at 64.

We would recommend that the present UK approach be followed, ie that the LLP be extended to *all* businesses, *but with requisite safeguards*.[26] If one accepts the general arguments favouring the introduction of the LLP outlined above, there would be no reason to restrict the LLP to professional or specific businesses. The LLP should be made available as a general business vehicle.

H THE SCOPE OF LIMITED LIABILITY

12 We have hitherto operated (at least implicitly) on the assumption that LLPs have limited liability in *all* situations. However, this is not the case with all LLP legislation; the divergence is particularly evident in the LLP legislation of the various US jurisdictions. To briefly summarise, there are at least three broad categories of protection that may be afforded by LLP legislation,[27] as follows:

(i) First, liability is limited *only* with respect to liability for the *tortious* acts of other members of the LLP. However, as a joint article put it, "the possibility that a plaintiff might circumvent the liability

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26 For possible safeguards, see below, paragraphs 13 and 14.

27 And see eg Johnson, above, n 22 at 107—109. Reference may also be made to Wood, above, n 1 at 12—13, 14—16, 38—40 and 62—63; as well as Keatinge, Donn, Coleman and Hester, above, n 9 at 175—180.

And see the material parts of Cl 1 of the UK Bill, which read as follows:

"(2) A limited liability partnership is a body corporate (with legal personality separate from that of its members) which is formed by being incorporated under this Act

…

(3) A limited liability partnership has unlimited capacity.

(4) The members of a limited liability partnership have such liability to contribute to its assets in the event of its being wound up as is provided for by virtue of this Act."

But cf Art 2(4) of the Jersey Act, above, n 10, where it is provided that "a limited liability partnership is a legal person (*other than a body corporate*) distinct from the parties of whom it is for the time being composed" (emphasis added).

Also of interest, perhaps, is the following suggested draft provision in proposed amendments to the US Uniform Partnership Act (reproduced in Wood, above, n 1 at 245):

"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 partner is not personally liable, directly or indirectly, including by way of contribution or otherwise, for such a partnership obligation solely by reason of being or so acting as a partner. This subsection applied notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership …"

limitations by filing a malpractice claim under a contract theory remained troublesome".[28]

(ii) Secondly, protection is provided "against tort claims and all claims resulting from the provision of … services, whether arising in tort or in contract".[29] A joint article, however, raises the pertinent issue as to whether or not *strict* liability would be covered under such a category.[30]

(iii) Thirdly, and this is the position adopted by the Jersey legislation as well as the proposed UK Bill, liability is limited with respect to *all* situations, ie that limited liability is provided "for any debt chargeable to the partnership, whether arising in tort, contract, or otherwise"[31] — a "full shield" statute,[32] so to speak.

We would suggest that if LLP legislation is enacted, it should adopt the broadest scope/category, viz category (iii) above, given that such course is consistent with the general arguments favouring the introduction of the LLP as outlined above, and there is no reason in principle or policy why such a category ought not to be adopted.[33]

It should also be noted that under most US state LLP laws, the partner is shielded from liability with respect to acts committed by an employee or agent of the partnership so long as that particular employee or agent is *not* under that (protected) partner's direct supervision and control.[34] As has been pertinently pointed out, "[t]his latter element is extremely important because it offers liability protection for acts of *nonpartners* as well as for the misfeasance of partners".[35] We would therefore also suggest that if LLP legislation is enacted, this position ought to be adopted.

I POSSIBLE SAFEGUARDS

13 The UK Bill provides several safeguards; these include:

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28 See Keatinge, Donn, Coleman and Hester, above, n 9 at 177.

29 See Johnson, above, n 22 at 109.

30 See Keatinge, Donn, Coleman and Hester, above, n 9 at 179.

31 See Johnson, above, n 22 at 109. Though cf Keatinge, Donn, Coleman and Hester, above, n 9 at 178—180, where the rubric "no vicarious liability" is preferred instead; this is to allow for the possibility that strict liability may not otherwise be covered (see also the preceding note).

32 See Johnson, above, n 22 at 109.

33 See also Keatinge, Donn, Coleman and Hester, above, n 9 at 180.

34 See Wood, above, n 1 at 15.

35 See ibid (emphasis added).

(i) The requirement that the LLP utilise appropriate words to advertise its status.[36]

(ii) The requirement that the LLP be registered, with its requisite records being kept up-to-date.[37]

(iii) The (important) requirement that the LLP render financial disclosure equivalent to that required of companies.[38]

(iv) Provision for members of the LLP to be sued for wrongful and fraudulent trading.[39]

(v) Regulations for dealing with insolvency as well as winding-up of the LLP.[40]

(vi) The provision of 'clawback' provisions: members of the LLP may be subject to a clawback inasmuch as the liquidator may apply to the court to recover withdrawals of property of the LLP made by a member within two years prior to the winding-up when the member concerned knew or had reasonable grounds for believing that the LLP was insolvent or would be made insolvent by the said withdrawal.[41]

There was, originally, proposed a requirement that each member of the LLP personally guarantee that they would be able to contribute (within a specified limit) to the LLP's assets in order to make good any deficit of assets below a specified sum on liquidation. However, no provision to this effect was ultimately included in the Bill; as it was put during the Second Reading of the Bill:[42]

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36 See esp Cl 1(6) read with Part I, paragraph 2 of the Schedule to the UK Bill. See also generally Art 7 of the Jersey Act, above, n 10, esp Art 7(9) as well as Wood, above, n 1 at 35.

37 See esp Cll 2, 3 and 9.

38 See Cl 14 read with Part 5 and Schedule 2 of the draft Limited Liability Partnerships Regulations 1999 (as proposed by the UK Department of Trade and Industry; and see above, n 23). Under the Jersey Act, however, there is no requirement that the LLP appoint an auditor or have its accounts audited (see Art 9(2)), although the firm must maintain accounting records sufficient to show and explain its transactions as well as financial position with reasonable accuracy at any given point in time (see Art 9(1)). And see the criticism of Morris and Stevenson, above, n 10 at 548.

39 See Cl 14 .

40 See Cl 13 read with Pt 7 and Sch 4 of the Regulations.

41 See generally Cl 14 of the Bill read with Part 7 and Schedule 4 of the draft regulations proposed by the UK Department of Trade and Industry (see above, n 23). Reference may also be made to Art 5(3) and (4) of the Jersey Act, above, n 10.

42 See above, n 19 at Col 1422, *per* Lord McIntosh of Haringey.

> "I note that an LLP will have no shareholders and we doubt very much whether a realistic level of capital maintenance exists to provide reasonable protection for creditors without there being a detrimental impact on the firm's ability to set up in and carry on business."

14 The Jersey legislation suggests yet another possible safeguard: the requirement of a bond (of £5 million) that will be made available for the benefit of creditors upon the dissolution of the partnership.[43] It should also be noted that in certain US LLP statutes, there is a requirement that the LLP maintain some form of security (including the maintenance of insurance cover).[44] However, the proposed UK Bill does not contain this requirement. It has been observed that the ascertainment of an appropriate amount is difficult, that it may be insufficient to meet the needs generated by a major insolvency, and that the bond requirement itself might deter (particularly smaller, but not necessarily less able) businesses from registering as LLPs.[45] One issue that arises here is whether the other safeguards mentioned in the preceding paragraph (in particular, the requirements for financial disclosure, the regulations for dealing with insolvency and winding-up, as well as the 'clawback' provisions) would be sufficient without the further (or alternative) requirement of a bond.

J OTHER CONSIDERATIONS

(1) *Taxation*

15 The issue of *taxation* is a factor to consider as to whether the LLP is an appropriate business vehicle. In the Singapore context, there is envisaged that there will be no general tax advantage, particularly if the UK position is adopted: the LLP concerned will continue to be taxed as if it were a partnership.[46] However, this (in turn) applies only to partners in the LLP who are being taxed at or very near the topmost marginal tax rate.

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43 See above, n 10, Art 6. See also Netherway, Begg and Beckett, above, n 1 at 188.

44 See Wood, above, n 1 at 63—64.

45 See above, n 19 at Col 1422, *per* Lord McIntosh of Haringey.

46 And see Cl 10 of the UK Bill. It may be noted that in the American context, the major concerns have centred on tax (see eg generally Richard L Parker, "Corporate Benefits Without Corporate Taxation: Limited Liability Company and Limited Partnership Solutions to the Choice of Entity Dilemma" (1992) 29 San Diego Law Rev 399; Gazur, above, n 9; Ribstein, above, n 17; and the *Alberta Report*, above, n 11 at 57). Generally speaking, the main aim was to avoid double taxation. This problem is now, however, academic since business entities can now simply choose the form of organization they desire to be classified as for the purposes of taxation.

(2) *Logistics and Costs*

16 Whether or not the LLP structure is desirable also depends on the projected *logistics and costs*.[47] This would impact on whether or not there is a requirement of a bond.[48] In addition, the following observations during the Second Reading of the UK Bill are apposite:[49]

> "The Bill will probably apply only to large partnerships. The disadvantage for small businesses being limited liability partnerships, compared with being limited liability companies, is that a limited liability partnership is a narrower form of limited liability. I presume that there will be a degree of personal liability to third parties for negligence which, in the main, does not apply to company directors. There is certainly more liability on insolvency resulting from the claw-back provisions mentioned by the Minister under which limited liability partnership members will be ordered to contribute to the assets on insolvency."

It has, on the other hand, been pointed out that there are relatively fewer problems when a regular partnership is converted into a LLP.[50]

(3) *Differences in Companies and Insolvency Legislation*

17 A large part of the UK Bill and the proposed regulations have been prepared with reference to the current UK companies and insolvency legislation. Much care has to be taken that the draft legislation and regulations may be readily adapted for application in Singapore, in view of the significant differences in our companies and insolvency legislation. Our Companies Act is still based on the UK Companies Act of 1948, and is quite different in many respects from the present UK Companies Act of 1985. In particular, our provisions relating to accounts and audit[51] are quite different from the current English legislation. Further, quite a few provisions of our Companies Act are modelled on Australian provisions rather than English provisions.

Even more different is our insolvency legislation. Unlike the UK Insolvency Act 1986 which incorporates all provisions relating to corporate and personal insolvency into a single unified Act, our insolvency legislation is still separately located in our Companies Act and Bankruptcy Act. There are currently many differences between the insolvency legislation of the two jurisdictions. Notably, the UK legislation

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47 See, in relation to the Jersey Act, Netherway, Begg and Beckett, above, n 1 at 151—152. Obviously, the situation in Singapore and even the respective situations amongst different firms within Singapore itself will differ.

48 See above, paragraph 14, as well as Netherway, Begg and Beckett, above, n 1 at 156.

49 See above, n 19 at Col 1429, *per* Lord Haskel.

50 See Wood, above, n 1 at 11.

51 Part VI, Singapore Companies Act (Cap 50, 1994 Rev Ed).

contains provisions for voluntary arrangements for companies and administrative receivership; our legislation has neither of these regimes. Our Judicial Management provisions are different in key respects from the UK Administration regime, and our 'insolvent trading' provision is dissimilar to the UK 'wrongful trading' provision. Also, there is no longer any meaningful correspondence between our provisions relating to the disqualification of directors and the UK provisions.

The differences in the respective companies and insolvency legislation summarised above do not, of course, pose an insurmountable obstacle in the introduction of the LLP to Singapore. However, they do mean that the UK Bill and proposed regulations must be scrutinised and reconciled with our companies and insolvency regimes before being adapted for use in Singapore.

K POSSIBLE ARGUMENTS AGAINST THE INTRODUCTION OF LLP IN THE SINGAPORE CONTEXT

18 One possible deterrent to the adoption of the LLP vehicle (in the UK context) is the *disclosure requirement*.[52] However, it should be pointed out that the actual internal arrangements of the partnership, as embodied within the partnership agreement, need not be published by the LLP itself. More importantly, notwithstanding the loss of some privacy, this requirement constitutes an important safeguard that is given (in part) in return for the privilege of limited liability, and is particularly helpful to third parties who are contemplating dealing with the LLP concerned; hence, this obviates any charge that the privilege (here, of limited liability) is conferred without any corresponding burden or trade-off.[53]

Further, the requirement of financial disclosure is also present with respect to businesses that are entitled to limited liability as companies. Indeed, as already mentioned above, the requirement is akin to that embodied in the present company law.

19 The other proposed safeguards might also give rise to possible criticism.[54] However, the Singapore Legislature would be free to either modify or even refuse to accept specific proposals.[55] But we suggest that the requirement of financial disclosure (considered in the preceding paragraph) ought to be adopted in any event and for the reasons already mentioned.

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52 See above, n 38.

53 See, to like effect, *per* Lord Sharman, during the Second Reading of the Bill, above, n 19 at Col 1427, as follows: "I believe that it is absolutely fundamental that the price for limitation of liability is disclosure of financial affairs. It is not fair for customers to have to deal with a company or entity with limited liability about which they are unable to ascertain its financial wherewithal."

54 See generally above, paragraphs 13 and 14.

55 We have in mind, in particular, the 'clawback' provisions and the bond requirement: see above, paragraphs 13 and 14, respectively.

20 With the recent introduction of legislative amendments to the Legal Profession Act[56] allowing for the corporatisation of law partnerships,[57] the question arises as to whether or not we should simply review whether or not other professions such as the accounting profession should be permitted to corporatise as well. However, it is suggested that there is no reason in principle why the LLP might not be introduced as an *alternative* option. More importantly, we have already suggested that the LLP ought to be extended to *all* businesses in any event — an approach that has (as we have seen) found favour in the UK context.[58]

21 There are, of course, other considerations, such as prohibitive logistics and costs.[59] However, these are inevitable business considerations that will invariably vary from business to business, and should therefore be left to the business concerned for final decision.

It may also be noted that grave reservations have been expressed about the very concept of limited liability itself,[60] with a possible suggestion (in the absence of limited liability) of insurance being taken out by all firms.[61] However, the principle of limited liability (at least insofar as companies are concerned) is too well-established and any move to eradicate it would militate against the need to promote trade and commerce in general as well as innovation in the various fields in particular.

L SUMMARY OF PROVISIONAL RECOMMENDATIONS ON WHICH WE INVITE COMMENTS

22 Notwithstanding the arguments against the introduction of the LLP in the Singapore context,[62] we provisionally recommend that the introduction of the LLP should be seriously considered by the Singapore Legislature for the various reasons canvassed above.[63]

23 We further recommend, provisionally, that the relevant local legislation be based on the UK model which appears most appropriate to the Singapore context for, *inter alia*, the following reasons.

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56 Cap 161, 1997 Rev Ed.

57 See the Legal Profession (Amendment) Bill (Bill No 41/99); read for the First Time on 23 November 1999.

58 See above, paragraph 11.

59 Cf above, paragraph 16.

60 See *per* Lord Phillips of Sudbury during the Second Reading of the UK Bill, above, n 19 at Cols 1432-1434.

61 See ibid.

62 See above, paragraphs 18—21, where the possible objections are also considered.

63 See above, paragraphs 8—10.

(i) It allows *all* businesses to avail themselves of the LLP as a business vehicle,[64] and this is wholly consistent with a major reason in favour of the introduction of the LLP in the Singapore context, viz to encourage business entrepreneurship and innovation.[65]

(ii) The scope of limited liability is generous and, again, this is wholly consistent with the major reason mentioned in sub-paragraph (i) above.[66]

(iii) The UK model also provides adequate general safeguards[67] that ensure that the generous approach towards limited liability mentioned in sub-paragraph (ii) above is not abused. However, a significant issue that remains for consideration is whether or not yet another possible safeguard (viz the requirement of a bond[68]), which was not adopted by the UK Bill, ought to be introduced either in addition or as an alternative to the other safeguards.

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64 See above, paragraph 11.

65 See above, paragraph 8.

66 See ibid.

67 See generally above, paragraphs 13 and 14.

68 See above, paragraph 14.

AFTERWORD:

1 Interim Decision by the Law Reform Committee of the Singapore Academy of Law:

This draft document was considered by the Law Reform Committee of the Singapore Academy of Law on 27 May 2000 and it was decided to defer any recommendation for adoption of the Limited Liability Partnership as an additional form of business entity for the foreseeable future.

2 A Short Summary of Further Developments in the UK Context:

The LLP Bill has recently been discussed in the House of Commons. As already mentioned, this is an ongoing process. A great many issues were raised as members of the House sought to amend the Bill. Only some of the more salient proposals will be highlighted here.

First, and on a general level, there is a *fundamental issue of policy as to whether or not default provisions (in the absence of agreement) should be on the face of the statute itself or in regulations instead. More specifically*, there is also the issue as to which provisions of the existing (UK) *Partnership Act* might be relevant as constituting the *content* of these *default* provisions.

The UK *government* stand (at least at present) appears to be that the *Act proper* should deal as little as possible with the substantive law of partnership as such, and that default provisions should be in the *regulations* instead (see (the amended) Cl 5(1)(b) read with Cl 15 (c) (formerly Cl 14) in the latest version of the Bill). It was *not* seeking to *rewrite* the partnership law. The Law Lord concerned observed that "[w]e seek to make as few changes as possible, other than those which are necessary to meet the demand from business and the professions for a new entity of this kind. For that reason, we have fundamentally resisted attempts … to introduce into the Bill very substantial elements of partnership law". The *basic approach* (or "first line of defence" as the Law Lord concerned put it) would be *the agreement amongst the members of the LLP itself*.

On *insolvency*, it was observed (in the House of Commons) that the appropriate parts of the UK insolvency law would be applied, as it would be *inappropriate* to apply to a *body corporate* the dissolution provisions of a *partnership*. As already mentioned, we need to be mindful of what precise provisions are appropriate to the *Singapore* context, given the *differences* between Singapore and UK law.

Under Cl 2(2) of the Bill, the form of incorporation must now be approved by the *Registrar of Companies*.

Another issue that is unresolved at the moment is whether or not the Bill should include an express duty of *good faith* to be owed by each member of the LLP (still out for *consultation*).

Insofar as Cl 6(2)(b) is concerned, the *test of authority is narrowed*, with the *deletion* of the words "or believes". In the words of the Law Lord concerned:

> "The effect is to strengthen the position of persons dealing with an LLP, so that the LLP will be bound by a member's actions unless the member had no authority to act, and the person dealing with that member knew that he had no authority or did not know or believe him to be a member of the LLP.
>
> We have concluded that this strikes a better balance between the Interests of the third party and those of the member."

There were amendments as to *taxation* but, as earlier mentioned, we think that it would be preferable if we could *obtain feedback* from the *local tax experts*. One of the purposes in the UK provision is to prevent taxation becoming the sole or main purpose of establishing an LLP as well as to prevent avoidance of tax.

There was also a proposed amendment to the effect that where the name of the LLP ended with the abbreviation "llp" or "LLP", any notepaper, invoice, circular or other communication in whatever medium should legibly state thereon that it is a "limited liability partnership": particularly because some people would be *unfamiliar* with the concept of LLPs. This amendment was later withdrawn, although the Law Lord concerned did state that there would be an amendment to require firms which use the abbreviation "LLP" after their names to mention on their business letters and order forms that they are limited liability partnerships. It is proposed that we should monitor this situation and incorporate this safeguard as well if it is decided to implement LLP legislation in the local context.

Finally, the issue was raised as to whether the LLP should be required to buy out an outgoing member's share of the capital. The government position appears to be in the *negative*. There were difficulties of valuation and (perhaps more importantly) the danger of putting the LLP itself into financial difficulties. Of course, provision for such an eventuality in the *agreement itself* would be ideal.

3 **The UK Limited Liability Partnerships Act 2000**:

After finalization of the account of the developments mentioned in the preceding paragraph, the UK Bill was enacted as the UK Limited Liability Partnerships Act 2000 (Chapter 12); it received the Royal Assent on 20 July 2000. The final Act is substantially the same as the latest version of the Bill referred to in the preceding paragraph.