

Limited Partnerships Bill

Bill No. /20xx.

Read the first time on 2006.

THE LIMITED PARTNERSHIPS ACT 2006

(No. of 2006)

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A BILL

i n t i t u l e d

An Act to provide for the establishment of limited partnerships.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Limited Partnerships Act 2006 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Interpretation

2. In this Act, unless the context otherwise requires —

“agreed contribution”, in relation to a limited partner, means any contribution (whether in the form of money, in any currency, any other property, or services) that the limited partner has agreed to
10 make to the firm in his capacity as a partner;

[Delaware para 17-101, Jersey s.18 c.f. UK s.4(2)]

“firm” has the same meaning as in the Business Registration Act;

[BR Act s.2(1)]

“general partner” means any partner of a firm who is not a limited partner as defined in this Act;

[UK s.3]

15 “limited partner”, in relation to a firm, means any partner who, under the terms of the partnership agreement, shall not be liable for the debts or obligations of the firm beyond the amount of his agreed contribution.

[c.f. UK s.4(3)]

Definition and constitution of limited partnership

20 3.—(1) From the date of commencement of this Act, limited partnerships may be formed in the manner and subject to the conditions of this Act.

[UK s.4(1)]

(2) A limited partnership must consist of —

(a) one or more general partners; and

(b) one or more limited partners.

[UK s.4(2)]

25 (3) A general partner shall be liable for all debts and obligations of the firm.

(4) Subject to subsection (5) and sections 6(2) and 10(1), a limited partner shall not be liable for the debts or obligations of the firm beyond

the amount of his agreed contribution, solely by reason of being a partner of the limited partnership.

[UK s.4(2); LLPA s.5(2)]

5 (5) If there are no remaining general partners in a limited partnership, the remaining limited partners (if any) shall be deemed to be general partners.

(6) An individual or a body corporate may be a general partner or a limited partner.

(7) For the avoidance of doubt, the reference in subsection (6) to body corporate shall exclude any trade union.

[UK s.4(4), LLPA s.7(2)]

10 **Law as to private partnerships to apply where not excluded by this Act**

15 **4.**—(1) Subject to the provisions of this Act, the Partnership Act (Cap. 391) and the rules of equity and of common law applicable to partnerships (except so far as they are inconsistent with the express provisions of the Partnership Act) shall apply to limited partnerships.

[UK s.7]

(2) In subsection (1), the reference to partnerships shall not include limited liability partnerships.

Default rules on relationship of partners inter se

20 **5.**—(1) Subject to any agreement, expressed or implied, between the partners —

(a) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the general partners;

25 (b) a partner may assign the whole or any part of his interest in the limited partnership but only to the extent that the assignee becomes entitled to receive distributions from the limited partnership that the partner would otherwise have been entitled to receive; and

30 (c) a person may be introduced as a partner without the consent of the existing limited partners.

[UK s.6(5), LLPA s.13(1)]

(2) An assignment under subsection (1)(b) shall not by itself cause the partner to cease being a partner of the limited partnership.

[LLPA s.13(2)]

Limited partner not to take part in management of firm

5 6.—(1) Subject to subsections (2) to (4), a limited partner shall not take part in the management of the partnership business, and shall not have power to bind the firm.

[UK s.6(1)]

(2) If a limited partner takes part in the management of the partnership business, he shall be liable for all debts and obligations of the firm incurred while he so takes part in the management as though he were a
10 general partner.

[UK s.6(1)]

(3) A limited partner shall not be regarded as taking part in the management of the partnership business for the purposes of this section by reason only of acting or attempting to act in one or more of the capacities specified in the Schedule.

[Delaware para 17-303]

15 (4) The Minister may, by order published in the *Gazette*, amend the Schedule.

Distributions to limited partner

20 7.—(1) Subject to the partnership agreement, a limited partner may during the continuance of the partnership, with the approval of the general partners —

(a) increase or reduce the amount of his agreed contribution; and

(b) draw out or receive back his contributions, or any part thereof.

[cf UK s.4(3)]

(2) Notwithstanding subsection (1), the limited partner shall be liable to refund any distribution of capital or profits of the firm made to him if —

25 (a) all of the general partners at the time of the distribution (referred to in this subsection as “those partners”) were insolvent at the time of the distribution or become insolvent as a result of the distribution;

(b) the limited partner knew or ought to have known at the time of the distribution that those partners were insolvent or would become insolvent as a result of the distribution; and

5 (c) those partners are adjudicated bankrupt or are ordered to be wound up within 3 years after the date of the distribution.

(3) Notwithstanding subsection (1), an agreement to reduce the amount of the agreed contribution of a limited partner shall be of no effect if—

10 (a) all of the general partners at the time of the agreement (referred to in this subsection as “those partners”) were insolvent at the time of the agreement or become insolvent as a result of the agreement;

(b) the limited partner knew or ought to have known at the time of the agreement that those partners were insolvent or would become insolvent as a result of the agreement; and

15 (c) those partners are adjudicated bankrupt or are ordered to be wound up within 3 years after the date of the agreement.

Dissolution of limited partnership

8.—(1) Notwithstanding section 32 of the Partnership Act (Cap. 391), a limited partner shall not be entitled to dissolve the partnership by notice.

[UK s.66(5)(e)]

20 (2) Notwithstanding section 33(1) of the Partnership Act, a limited partnership shall not be dissolved by ~~the death or~~ the bankruptcy of a limited partner.

[UK s.6(2)]

(3) Notwithstanding section 33(2) of the Partnership Act, the other partners shall not be entitled to dissolve the partnership by reason of any limited partner suffering his share to be charged for his separate debt.

[UK s.6(5)(c)]

(4) Notwithstanding section 35 of the Partnership Act, the mental incapacity of a limited partner shall not be a ground for dissolution of the partnership by the court unless the mentally incapacitated person’s share cannot be otherwise ascertained and realised.

[UK s.6(2)]

30 (5) Subsections (1) and (3) shall apply subject to any agreement expressed or implied between the partners.

[UK s.6(5)]

[(6) On application by a partner, the court may decree the dissolution of a limited partnership in any of the following cases:

- 5 (a) when a partner, other than the partner suing, becomes in any way permanently incapable of performing his part of the partnership agreement;
- (b) when a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business;
- 10 (c) when a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him;
- 15 (d) when the business of the partnership can only be carried on at a loss;
- (e) whenever in any case circumstances have arisen, which, in the opinion of the court, render it just and equitable that the partnership be dissolved;
- 20 (f) the partnership is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against national security or interest.

25 (7) For the purpose of subsection (6)(f), a certificate issued by the Minister charged with the responsibility for internal security stating that he is satisfied that the partnership referred to in the certificate is being used for purposes against national security or interest shall be conclusive evidence that the partnership is being used for such purposes.

30 (8) Section 35 of the Partnership Act (Cap. 391) shall not apply to limited partnerships.]

[PA s.35, CA s.254]

(9) In the event of the dissolution of a limited partnership, its affairs shall be wound up by the general partners unless the court otherwise orders.

[UK s.6(3)]

Accounts and audit

9.—(1) The general partners of a limited partnership shall keep such accounting and other records as will sufficiently explain the transactions and financial position of the limited partnership and enable profit and loss accounts and balance-sheets to be prepared from time to time which give a true and fair view of the state of affairs of the limited partnership.

(2) The limited partnership shall retain the records referred to in subsection (1) for 7 years after the completion of the transactions or operations to which they respectively relate.

(3) The records referred to in subsection (1) shall be kept at such place as the general partners think fit and shall at all times be open to inspection by the partners.

(4) The Registrar may, by notice in writing to any of the general partners, require that partner to produce the records referred to in subsection (1) for his inspection within such time and at such place as may be specified in that notice.

(5) If a general partner contravenes subsection (1), (2) or (3), the general partner shall be guilty of an offence and shall be liable on conviction —

(a) in the case where the offender is an individual, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both; and

(b) in any other case, to a fine not exceeding \$10,000.

(6) Any person who fails to comply with a requirement under subsection (4) shall be guilty of an offence and shall be liable on conviction —

(a) in the case where the offender is an individual, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both; and

(b) in any other case, to a fine not exceeding \$10,000.

[LLPA s.25]

Issue seven: Do you agree that limited partnerships should be required to keep accounting and other records in accordance with subsection (1)?

Registration under the Business Registration Act

5 **10.**—(1) A limited partner shall be deemed to be a general partner of the firm unless he is registered as a limited partner of the firm in accordance with section 8 or 14 of the Business Registration Act (Cap. 32).

(2) A limited partnership shall be deemed to be a general partnership unless one or more persons are registered as limited partners of the firm in accordance with section 8 or 14 of the Business Registration Act.

[c.f. UK s.5]

THE SCHEDULE

Section 6(3)

ACTS NOT REGARDED AS TAKING PART IN MANAGEMENT OF PARTNERSHIP BUSINESS

- 15 (a) Contracting with the firm.
- (b) Acting as an agent or employee of the firm within the scope of the authority conferred by the partners.
- (c) Acting as an agent or employee of a general partner of the firm or as a director, officer or shareholder of a corporate general partner of the firm.
- 20 (d) Consulting with and advising the firm or any partners of the firm with respect to the business, affairs or transactions of the firm.
- (e) Investigating, reviewing, approving or advising on the accounts or affairs of the firm or exercising any rights as a limited partner of the firm.
- (f) Acting as surety or guarantor for the firm either generally or in respect of
- 25 specific obligations.
- (g) Enforcing his rights under the partnership agreement (unless those rights are to carry out management functions).
- (h) Approving or disapproving an amendment to the partnership agreement.
- (i) Voting on, or otherwise signifying approval or disapproval of any transactions
- 30 or proposed transaction of the firm or the admission or retirement or termination of any person as partner of the firm in the exercise of rights or powers conferred in the partnership agreement.

(j) Commencing or instructing any person to commence or continue or defend any legal proceedings on behalf of the firm, if any one or more of the general partners with the authority to do so have, without good cause, refused or failed to commence, continue or defend any such proceedings.