

LLPs: To Be or Not to Be?



The concept of a Limited Liability Partnerships (LLPs) was created and implemented in the US, in the state of Texas, in 1991. However, outside of the US, it is a fairly new business concept. It was introduced in the UK in 2001, and in Japan and Singapore only in 2005. With the enactment of the Limited Liability Partnerships Act 2005 here, a new legal structure for businesses is now on offer. To come to grips with what LLPs are all about, FOCUS spoke to Shankar Iyer of Shanker Iyer & Co for some insight.

FOCUS: Why do you think LLPs have now been introduced in Singapore?

Shankar Iyer (SI): The LLP structure was introduced in Singapore in 2005 to expand the range of business vehicles available in Singapore. The Accountants Act was amended earlier this year to allow accounting firms to practice as LLPs too, although the commencement date of the Amendment Act has not yet been announced. The introduction of the LLP vehicle places Singapore amongst the more progressive and developed jurisdictions in this field and this must be seen as a positive development.

FOCUS: Has there been a general demand by the accounting profession and/or their clients to operate their practices as an LLP?

SI: I am not aware of a general demand by the profession for this, but the development will be welcomed by practitioners as it provides them with another vehicle for running their firms. One of the arguments put forward in other countries in favour of LLPs is that it retains the 'partnership' ideal, with additional benefits. The partnership agreement, for example, remains largely in place.

Another possible attraction for firms might be that non-public accountants will be able to become partners of an LLP, subject to restrictions listed in the Amendment Act. It is unlikely that any client will wish for accountants to operate as LLPs, as this structure is mainly intended for partners of firms to limit their liability.

FOCUS: How do you think clients would react to the change in legal structure – from partnership to LLP? Would they have the perception that the value of the auditor's report will fall because the auditor's liability is limited?

SI: I have discussed this with some of my US associates who operate as LLPs. They tell me that there has been virtually no reaction from clients in the US, adverse or otherwise.

There is no evidence to date to suggest that there is any perception that the value of the auditor's report will fall because of the auditor's liability is limited. In fact the auditor actually doing the work does not have any limited liability in tort for professional negligence and there are

additional safeguards for clients in terms of minimum capital in the LLP and a minimum level of professional indemnity insurance.

Singapore auditors at present are not required to take out compulsory professional indemnity insurance, unless they carry out their practice as Accounting Corporations.

FOCUS: What considerations or concerns do you have for abandoning the partnership set up in favour of taking the LLP route in relation to:

- **the conversion process**

SI: The conversion process under Singapore's LLP Act is relatively easy.

- **the administrative considerations**

SI: There are no specific administrative points to mention. Accounting firms wishing to convert to LLPs will need the consent of ACRA's Oversight Committee. Hopefully, this will not be an onerous process.

- **the reporting requirements**

SI: The only public reporting requirement different from that of a partnership at present is that the LLP needs to file a Declaration of Solvency each year. However, this is a relatively simple declaration to file and should not prove to be an obstacle to conversion to LLPs.

- **the legal and tax liabilities**

SI: The LLP will have a separate legal personality. It can sue and be sued, acquire and hold property and do other acts that a corporate body can do. The partners of an LLP are not personally liable for any debts or wrongful acts of the LLP or other partners, but are liable for their own negligence.

For tax purposes, the LLP is treated as a partnership and must prepare a partnership tax return showing income and contributed capital. Income will be taxed in the hands of the partners, in proportion to their partnership interest. This is the same basis on which partnerships are taxed at present. LLPs may not rely on Singapore's double tax treaties.

• the dissolution requirements

SI: The dissolution requirements of an LLP are much more onerous than that of a partnership. To close down an LLP, one will in effect have to go through one of the ways in which a company can be liquidated or it can apply to be struck off. It is likely, therefore, that a closure of an

LLP will be known in the public domain. The dissolution of a partnership is largely a private matter.

FOCUS: What do you think of the legal framework governing the operation of LLPs?

SI: The drafting of the LLP Act was based on laws prevailing in other countries, largely the UK, and so has a strong foundation. It is too early to comment on whether any improvements or changes are needed.

FOCUS: Do you think the laws as they stand are sufficient for LLPs to take flight? What issues still needs legal consideration or enforcement?

SI: The laws are probably sufficient enough. I believe that the level of awareness needs to increase so that the LLP structure is more widely used. Having said this, at present, Singapore's tax laws encourage the setting up of private limited companies; for example, a small business run through a company will receive full tax exemption for the first S\$100,000 of profits for its first three years. No such tax break is available to an LLP. Also, as noted above, LLPs cannot take advantage of Singapore's 50 or so double taxation treaties.

In practice, the LLPs are likely to be more suitable for the larger professional firms, as there is less close interaction between the partners.

This could have been

Your AD

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