

**Volume 79  
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**Tuesday  
25th January, 2005**

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**Read a Second time; considered in Committee; reported without amendment;  
read a Third time**

**Financial Advisers (Amendment) Bill (Cols. 494-498)**

**Read a Second time; considered in Committee; reported without amendment;  
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**CISCO (Dissolution) Bill (Cols. 498-502)**

**Read a Second time; considered in Committee; reported without amendment;  
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**Parks and Trees Bill (Cols. 502-531)**

**Read a Second time; considered in Committee; reported without amendment;  
read a Third time**

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**Read a Second time; considered in Committee; reported without amendment;  
read a Third time**

# PARLIAMENTARY DEBATES SINGAPORE

## OFFICIAL REPORT

### TENTH PARLIAMENT

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#### PART I OF SECOND SESSION

#### VOLUME 79

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*Tuesday, 25th January, 2005*

*The House met at 1.30 pm*

PRESENT:

Mr DEPUTY SPEAKER (Mr Chew Heng Ching (East Coast)).

Mr Ahmad Khalis Bin Abdul Ghani (Hong Kah).

Dr Ahmad Mohd Magad (Pasir Ris-Punggol).

Mr Ang Mong Seng (Hong Kah).

Dr Balaji Sadasivan (Ang Mo Kio), Senior Minister of State, Ministry of Information, Communications and the Arts and Ministry of Health.

Mr Alexander Chan Meng Wah (Nominated Member).

Mr Chan Soo Sen (Joo Chiat), Minister of State, Ministry of Education.

Dr John Chen Seow Phun (Hong Kah).

Mr Steve Chia Kiah Hong (Non-Constituency Member).

Mr Chiam See Tong (Potong Pasir).

Assoc. Prof. Chin Tet Yung (Sembawang).

Mr Charles Chong (Pasir Ris-Punggol).

Dr Chong Weng Chiew (Tanjong Pagar).

Mr Davinder Singh (Bishan-Toa Payoh).

Mr Arthur Fong (West Coast).

Mr Andy Gan Lai Chiang (Marine Parade).

Dr Geh Min (Nominated Member).

Mr Goh Chok Tong (Marine Parade), Senior Minister, Prime Minister's Office.

Mdm Halimah Yacob (Jurong).

Mr Hawazi Daipi (Sembawang), Senior Parliamentary Secretary to the Minister for Education and Minister for Manpower.

Mr Heng Chee How (Jalan Besar), Minister of State, Ministry of Trade and Industry.

Assoc. Prof. Ho Peng Kee (Nee Soon East), Senior Minister of State, Ministry of Law and Ministry of Home Affairs.

Mr Inderjit Singh (Ang Mo Kio), Deputy Government Whip.

Ms Indranee Rajah (Tanjong Pagar).

Prof. S Jayakumar (East Coast), Deputy Prime Minister and Minister for Law.

Mr Khaw Boon Wan (Tanjong Pagar), Minister for Health.

Dr Amy Khor Lean Suan (Hong Kah).

Assoc. Prof. Koo Tsai Kee (Tanjong Pagar), Senior Parliamentary Secretary to the Minister for Defence and Minister for the Environment and Water Resources.

*Securities and Futures (Amendment No. 2) Bill – Second Reading*

[Mr INDERJIT SINGH]

ACE has been trying to implement for the last one year. We have heard so many times of local and small and medium companies who have problems raising funds at their growth stage, after they have completed their beginning stages of start-ups. The options available to them are limited to either getting banking loans or raising private equity. In some cases, companies end up seeking public listing or through an IPO. But because of their size and the stage of their development, they end up raising very little cash. And also at the end, because of the cost of maintaining a listing, it actually appears to them that they may have made a mistake because they are not actually able to handle a listing for long, being a small company with very little cash flow or capabilities. But because of the pressing needs of these companies, they are forced to take the route of a public listing. With the amendments in the Bill, together with the combination of the private placements and also the small offering exemptions, companies will now be able to seek an alternative route and that is if it can implement a private equity exchange or OTC type of market.

There is only one issue with the Bill that I have which, I believe, will make it unattractive for an OTC type of market to be put in place. This has got to do with new section 272A where there is a limit of \$5 million to the amount that can be raised or traded for a period of 12 months for such an offering to be considered not a public offering. While this limit is fine for companies that are raising the funds, and it may also be fine for the investors who may have invested in the companies during such an offering, it is not workable for a market maker that is trying to make the OTC work simply because in the model that we think that it can work for an OTC, the market maker will have to create a very vibrant secondary market for such an OTC to be successful in any

market. For that reason, a \$5 million limit for the market maker will not work. So I hope that the Minister will consider making an exemption for market makers and exempt them from this \$5 million limit for a period of 12 months in this Bill. If we can do this, I believe that the OTC market will work. And I feel that it is about time that we had such a market in place so that we can further improve the financing environment for our companies in Singapore. It will make Singapore a lot more attractive for companies, not just local companies but also small companies from around the world, to come down here, set up base and to raise funds, either through private placements, through banking loans, through public listing and now, perhaps, through an OTC type of market.

So I urge the Minister to consider revising this \$5 million limit if he wants to see a successful OTC market developing.

Sir, I support the Bill.

**Prof. Ivan Png Paak Liang (Nominated Member):** Mr Deputy Speaker, Sir, I rise in support of the Bill.

First, let me disclose that last year I was an expert witness in a case involving a club in which shares of the club were offered to the public and this ended up in a court dispute. I think Members will know which club it was. On a point of clarification, I would like to ask the Minister whether this law or any other law will be amended so as to cover the offering of membership in clubs on a large scale, as occurred in a number of cases in our recent history and which have resulted in very unhappy experiences for members of the public who bought membership in those clubs.

**Mr Tharman Shanmugaratnam:** First, I would like to thank Mr Inderjit Singh for his points which I think are valid. We are keen to see a private equity exchange

*Limited Liability Partnerships Bill – Second Reading*

entity they are dealing with. I urge the Ministry to conduct an exercise to educate the public regarding LLP. We should ensure that LLP should not be confused with any other abbreviation, such as the LLB, which is Bachelor of Laws, or the Taiwanese version of abbreviations. I would suggest that the Ministry make certain regulations to ensure that LLP be displayed prominently in all business letters, just like the requirement to display company registration number. Furthermore, until the public is conversant with the LLP abbreviation, maybe the full text of LLP, ie, Limited Liability Partnership, should be used in business letterheads.

Sir, the creation of limited liability partnerships does add to the variety of business entities available to those wishing to set up business in Singapore. Firms will now have the option of becoming a limited liability entity with the internal flexibility of a partnership. Taking everything into consideration, such a new business environment would only be a positive step for Singapore.

Sir, I support the Bill.

**Prof. Ivan Png Paak Liang (Nominated Member):** Sir, I rise in support of the Bill. However, I would like to share a concern with the Minister and hope that it can be addressed.

I understand that in the United States and in the UK, a key attraction of a limited liability partnership is its flexibility as a way of minimising taxes. This has already been mentioned by Dr Wang Kai Yuen. I would like to emphasise this point. In particular, partners may write off partnership losses against their personal income. Roughly speaking, this would also be true of our proposed LLP.

Now, the Bill provides for transition from partnerships to LLPs and from companies to LLPs. If investors choose LLPs over partnerships, there will be no

tax revenue loss because any opportunity they had as a partnership would be available with LLPs. However, if investors choose LLPs over the limited company form, our tax revenue will be diminished. Shareholders of companies may not write off the company's losses against their personal income. But, as I have just said, LLP partners or members may write off partnership losses against their personal income. So, our Inland Revenue Authority is going to lose revenue.

As Dr Wang Kai Yuen has mentioned, the LLP form will probably not only attract professionals such as accountants and lawyers, but it is going to attract regular business like manufacturing, services, not just professional services. So the scope of this tax law is much wider than we might have thought initially.

Sir, one of our competitive edges as an economic hub is the simplicity of our tax system. We offer a simple system with very low rates; made even simpler when recently we rescinded taxation of shareholder dividends. I do hope that we do not graduate to a "first-world" system of high tax rates with complicated deductions and reliefs that would benefit only a selected group of taxpayers. I would like to ask the Minister what measures have been taken or are contemplated to void the LLP becoming a tax shelter.

**Mr Raymond Lim Siang Keat:** Mr Deputy Speaker, Sir, I thank the Members for their support and the comments that they have made. I would like to thank Dr Wang Kai Yuen for an erudite exposition of the history of LLP and the various issues involved. And Dr Ahmad Magad who anticipated my speech on the Stamp Duties Act, because he has raised an issue which actually relates to the Stamp Duties Act, and I commend him for that. I will also address that here. And, of course, **Prof. Ivan Png** who actually brought up an issue which we discussed

*Limited Liability Partnerships Bill – Second Reading*

[Mr RAYMOND LIM SIANG KEAT]

last November. So we have a spectrum of issues here.

Dr Ahmad Magad brought up the issue of whether two years is too long a grace period in the case where there is only one remaining LLP partner. Like what Dr Wang Kai Yuen has said, we had extensive public consultation on this. What is interesting is that the public feedback was: is it too short? Their consideration was that when we do international benchmarking, the US Delaware model is the most popular model, and there when they are down to one partner, they do not get deregistered. They remain an LLP. So it is a one-partner LLP; in other words, it is for an indefinite period. So we use that as one particular benchmark. The UK has it as six months. Some say that it is a bit too short.

So, based on consultation, we decided that, as the Member has pointed out, it is really a misnomer to have an LLP with only one partner. The common understanding of a partnership is a voluntary association of two persons coming together to set up a business for profit. That is why we have a two-partner LLP. Once we settle on that and we have a two-partner LLP, what do we do then when we are down to one partner? So we need to give a grace period. The key thing is to ensure that there is sufficient time for the remaining partner to find someone else. We were told that one consideration is that sometimes it takes more than six months, when it comes to a partner who is deceased, for the Letters of Administration or Probate to be done. So, on balance, we said, let us give them two years to find a partner or wind up the LLP.

Dr Ahmad Magad also brought up the point about the liability of partners and

asked for clarification. On the liability of partners, when a partner is personally liable for a wrongful omission or act, he is not limited to the capital contribution. This means he is personally liable to the full extent of his net worth. So, if a partner is professionally negligent, he is personally liable. So it is not limited to his contribution.

The LLP itself will also be liable for the partner's act. It is only the innocent partner, like I mentioned in my speech, who will not be held liable. The fact that a person is a partner in an LLP does not make him personally liable for the actions of the other partner who has committed a wrongful omission or act.

The Member asked why is there clause 9. The reasoning behind clause 9 is that the LLP should not be bound if a partner has no authority to act in a particular matter. I think that is quite reasonable. We should not bind the LLP if a partner has no authority on that particular matter.

Dr Ahmad Magad also brought up the point about conversion, which I said he anticipated in my next speech on stamp duties, but I will take it here. He is quite right that when it comes to conversion, what we have done is that when a general partnership is converted into an LLP, with the same partners and the same business, we will provide a seamless conversion. So all the assets and liabilities will be vested in the LLP.

On the issue of stamp duties, we have made a concession. In such a conversion and the LLP has chargeable properties, the stamp duty would be waived.

Dr Ahmad Magad and Dr Wang brought up the issue of creditors' interest, that we should protect creditors, given the fact that we are now giving partnerships limited liability. This is a valid concern and we took that into

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account. Whenever we have a new business form, we have to strike a balance between the users of the business form – owners, investors – and those who are dealing with it – the creditors, suppliers, customers, clients. We have to balance it. And when we want to strike a balance, we reference it back to the objective of this new business form. As I have mentioned, the objective of this new business form is to have the flexibility of a partnership with the interposition of limited liability. So we have to ensure this, when we are striking a balance. As Dr Wang has said, we did a thorough scan of all the different legislation on how best to balance this. We wanted to make sure that we do not increase the business compliance cost or introduce a lot of features of a company into this structure, which will then defeat the whole idea of having a partnership, and we had to balance it, as both Members correctly pointed out, so that there are sufficient safeguards to protect creditors. I have mentioned earlier some of the safeguards that will be put into the Act.

Dr Wang asked whether there is a definition of declaration of solvency in the Bill. There is, if you look at clause 24 of the Bill which defines what it means by that – that you should be able to pay your debts over the normal course of your business. So it gives a sense of what it means. To give a sense of perspective on this too, is the declaration of solvency enough? He said we are transiting from general partnership and now we have limited liability partnership. If you look at what is happening in Singapore today, it is not really difficult to get limited liability. Most companies in Singapore are exempt private companies and they do not file their accounts if they can have a declaration of solvency. Partnerships today, like legal firms or accountancy firms, can form themselves into a limited law corporation or a public accountant

corporation. And, again, the reporting requirements are not much different from what we have in the LLP.

Dr Wang brought up the point – I think this is an important point – that notification is important. Now that there is going to be limited liability, we have to notify. And the Bill provides that, in your name or the partnership, you have to put down "limited liability partnership" or "LLP". In the case of a conversion, ie, when you are converting from a general partnership into an LLP, for a period of one year, in all your official correspondence you must state that you have now been converted into a limited liability partnership, so as to put those people who have been dealing with you on notice.

Dr Wang raised another point. He said that he was concerned whether with this limited liability partnership, the quality of the legal profession or accountancy profession will start to fall. I think that there are incentives to maintain high standards. One of them would be the fact that the limited liability partner would still be personally liable for his wrongful acts or omissions. So it is not as though that with limited liability partnership, when he is professionally negligent, that is actually capped. It is not capped. So, as I said earlier, he is liable to the full extent of his net worth. The other thing, of course, is that the LLP is simply a business form, a vehicle. The relevant professions will continue to regulate to ensure that standards are maintained. He mentioned the legal profession. That, again, the relevant authorities will regulate them.

What about having insurance? This is again a compliance cost issue, and we think that we have sufficient safeguards. No jurisdiction has imposed insurance on LLPs.

*Limited Liability Partnerships Bill – Second Reading*

[Mr RAYMOND LIM SIANG KEAT]

Dr Wang asked why is it that in the UK LLP Act, they made references to the Companies Act, and not in our case. We have drafted it differently. We have drafted it as self-contained, as he said, all in, whereas in the UK, their starting point is that the LLP is a company, and therefore they made a lot of references to the Companies Act. In our case, as I said, we have treated the LLP as essentially a partnership; hence the difference. And why have we done this? It is because we scan the existing LLP structures to ensure, in terms of business efficacy, we do not make the same mistakes as others have made. The feedback has been that the UK LLP Act has been criticised because it is too close to being a company.

**Prof. Png** brought up basically the point about tax treatment. As I said, we actually addressed that in the House last November. But just to clarify that, if you look at it at one particular level, this is really a timing issue. Because right now what we have is part of our tax feature, that companies can carry forward their losses against future profits. So, in the case of the LLP, we allow the particular LLP partners to offset their losses against their non-LLP income. So there is a cap, but you bring it a bit forward. Future losses can be offset against future LLP income. So it is principally a timing issue.

I thank Members once again for their contributions and support of the Bill.

**Dr Wang Kai Yuen:** May I seek a clarification from the Minister? Regarding the personal liability of a partner who is personally liable for malpractice or fraudulent act, the Minister has mentioned that the partner is personally liable and there is no cap. However, to bring that partner to court, I understand that he or she would have to be prosecuted under a different set of law, and probably the law

of tort, which requires a different onus of proof, and makes it much more difficult to pursue the wrongdoing, whereas under partnership, of course, those do not exist. In creating LLP, perhaps we could also look into this consideration.

**Mr Raymond Lim Siang Keat:** Yes, the LLP provision is simply, as I said, forming a business structure. So, in terms of legal liability, professional negligence, he is quite right, it is under the law of tort. I think, similarly, in a general partnership, and it is not an LLP, if a particular partner is professionally negligent, again it is under the law of tort. The only difference now is that in an LLP, the other partners are not personally liable for your actions.

**Prof. Ivan Png Paak Liang:** Just a clarification from the Minister. It is not just a matter of timing because, as the Minister pointed out, the losses of the LLP can be written off against personal income. So, if you take two vehicles, a company that is sustaining losses that is going to go under and an LLP which is sustaining losses, someone may buy the LLP just for the losses to write off against their income, then it is not just a matter of timing, there is actually a revenue loss.

**Mr Raymond Lim Siang Keat:** Yes, that is why we cap it at the capital contribution. He is quite right that this is a possible tax avoidance issue, and the way we have tried to address that is to put a capital contribution cap on that. But this is something that we will monitor, because this is a new Bill, and we will look at developments and, if we need to, we would tighten it. From the revenue perspective, I am reluctant to facilitate tax avoidance schemes. So if this is the case, we will tighten it up.

Question put, and agreed to.

Bill accordingly read a Second time and committed to a Committee of the whole House.