

Corporate Commercial | Funds and Investment Management

Public Consultation on Proposed Amendments to Limited Partnerships Act

Introduction

A limited partnership ("**LP**") is a vehicle for doing business in Singapore, comprising at least one general partner who takes on unlimited liability for the partnership's obligations (usually the fund manager), and one or more limited partners (investors) who are not personally liable for the partnership's obligations beyond their agreed commitments, provided they do not take part in the management of the LP.

LPs are popular amongst investment funds due to the relative ease of day-to-day administration and management and flexibility in the capital structure. Their features include:

1. Limitation of liability for investors;
2. Greater privacy than companies;
3. Greater flexibility than companies; and
4. Tax transparency, as the partnership is not treated as a distinct tax entity from the partners.

In Singapore, LPs are governed by the Limited Partnerships Act ("**LP Act**"). On 4 October 2021, the Accounting and Corporate Regulatory Authority ("**ACRA**") announced a [public consultation](#) running from 4 October 2021 to 1 November 2021 on 14 proposed changes to the LP Act, as set out in [Annex A](#) of the consultation documents, to:

1. make the limited partnership vehicle more attractive to fund LPs; and
2. update existing provisions in the LP Act for all types of LPs.

In this Update, we examine key proposed amendments below.

Amendments Relating to Fund LPs

(a) Specific definition for fund LPs

A crucial proposed change is the introduction of a specific definition for a fund LP, which will follow the existing definition of "relevant limited partnership" as defined in Regulation 12 of the Limited Partnerships Regulations ("**LP Regulations**"), namely, a LP established primarily for the purpose of establishing a fund for investment where the fund is managed by (a) a general partner who is a licensed fund manager; or (b) a licensed fund manager appointed to manage the fund by the general partner.

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With the new definition, ACRA proposes to allow an existing LP that meets the definition of a fund LP to apply to be designated as a fund LP, and seeks views on whether there are any specific issues that should be addressed in legislation upon such designation.

(b) Expansion of safe harbour activities

Limited partners may not take part in the management of the LP, as otherwise they will be liable for all debts and obligations of the LP incurred in the period they do so as though they were a general partner. However, there are exceptions for "safe harbour activities" listed in the First Schedule to the LP Act ("**Safe Harbour List**"), whereby limited partners will not lose their limited liability status solely by reason of engaging in such activities.

ACRA proposes that new activities be added and that the scope of some existing safe harbour activities be expanded in respect of fund LPs, as set out in [Annex B](#) of the consultation documents. Examples are:

- New activities
 - Serving on a board/committee of (a) the LP; (b) the LP's general partner; and (c) the LP's limited partners
 - Appointing/nominating a person to serve on a board/committee of the above, as well as revoking such appointment
- Expanded scope for existing activities
 - Enabling limited partners to not only contract with the LP, but to contract with the general partner or other limited partners
 - Enabling limited partners to not only act as an agent or employee of the LP within the scope of authority conferred by the partners, but also as a "contractor"

(c) Disapplying fiduciary duties to limited partners

ACRA proposes to reverse the current default position where a limited partner is subject to sections 28 and 30 of the Partnerships Act, which impose a duty on partners to render accounts and not to compete with the partnership respectively. It also proposes to clarify that limited partners do not owe fiduciary duties to the LP or other partners.

Nonetheless, LPs would still be able to impose the above duties on limited partners through the partnership agreement, if commercially desired.

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(d) Regulating transfer of interests

Currently, the LP Act does not regulate when a transfer of interest is validly made, and this is left to market practice. ACRA proposes to have the general partner's consent be required for a transfer of a limited partner's interest, subject to the partnership agreement. Such transfer would result in the admission of a replacement limited partner and would not result in a technical dissolution of the limited partnership.

(e) Introduction of a re-domiciliation regime

Unlike companies and variable capital companies ("VCCs"), fund LPs do not have a re-domiciliation framework in place. ACRA proposes to introduce such a framework with the following criteria:

- The fund manager is either Singapore-based or is a global fund manager with a presence in Singapore; and
- The fund must meet minimum requirements similar to that imposed for re-domiciliation of a VCC.

Amendments Relating to All LPs

(a) Expansion of entities who may be a general or limited partner

Currently, only individuals or corporations may be a general or limited partner. ACRA proposes to introduce additional forms that a general or limited partner can take, i.e. (a) LPs; (b) non-Singapore LPs with a legal personality; and (c) non-Singapore LPs without a legal personality. If the general partner takes the form in (a) and (c), a local manager is required to be appointed by the general partner.

(b) Clarifying that a general or limited partner can be acting in the capacity of a trustee or representative capacity

ACRA proposes to expressly state that a general or limited partner can be acting in the capacity of a trustee or representative capacity. In addition, ACRA seeks views on whether there should be a distinction drawn between corporate limited partners and corporate general partners, such that corporate general partners would not be allowed to act in the capacity of a trustee or representative capacity.

(c) Regulating assignment and transfer of interests

ACRA proposes to regulate when an assignment of an interest is validly made in respect of all LPs, rather than leaving it to market practice. Specifically, an assignment of a right, debt, or other chose in action by a limited partner would require the general partner's consent (subject to the partnership

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agreement), while a partnership interest would be transferable in whole or in part in accordance with the partnership agreement.

(d) Not requiring limited partners to obtain a court order for winding up the LP

Currently, the affairs of an LP must be wound up by the general partners unless otherwise ordered by the court. ACRA proposes to allow limited partners, to appoint a third party to wind up the LP if the general partner is unable to do so, subject to the agreement of the partners. With this amendment, limited partners can appoint a third party to wind up the LP without getting a court order, thereby reducing the regulatory burden.

(e) Allowing a grace period for a replacement general partner to be appointed

Currently, a LP will be dissolved upon the death or bankruptcy of a general partner (subject to the terms of any agreement between the partners). ACRA proposes to allow a grace period of 30 days for a replacement general partner to be appointed, allowing for continuity of partnership and to avoid a disruption of business.

However, ACRA seeks views on this proposal, noting issues such as the inability to make management decisions during the grace period, as well as the position of creditors' claims (as the general partner is liable for such claims).

Concluding Remarks

The consultation contains significant proposed amendments to the LP Act, running the gamut from introducing new treatments for fund LPs such as a re-domiciliation framework, to reducing the regulatory burden in areas such as fiduciary duties and the dissolution of a LP.

Parties concerned about the proposed amendments or who wish to seek clarification or provide feedback on the same should feel free to submit their concerns to ACRA before 1 November 2021, or alternatively to contact the partners below, who are well-placed to assist with any queries.

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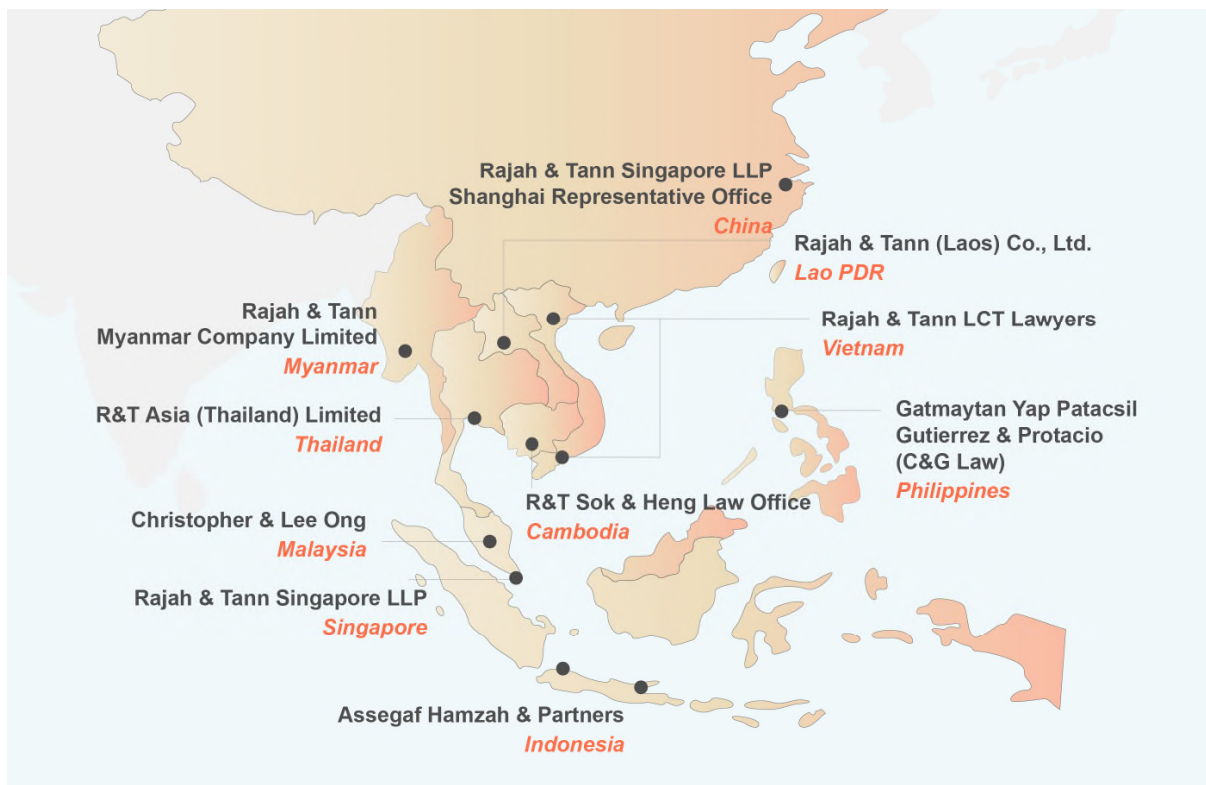
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