

# **LAW REFORM COMMITTEE**

## **Final Report of the Sub-Committee on Corporatisation of Law Partnerships**

### 1. Structure

In its first report of 1 December 1997, this Sub-Committee after studying the pros and cons for law firms to be given the option to operate within a limited liability regime, had recommended that

- (i) law firms should be allowed to corporatise; and
- (ii) corporatisation be by way of a limited liability company.

Following discussions with the Law Society, this recommendation has since been accepted by the Law Society.

### 2. Legislative Framework

Members of this Sub-Committee unanimously supported a scheme involving minimum changes to the existing legislative framework to implement the above recommendations. These are: -

- (i) that the Legal Profession Act (Cap. 161) be amended to permit legal services to be provided through a law corporation;
- (ii) that Rules be promulgated under the Legal Profession Act on operational issues relating to the law corporation;
- (iii) that in all other respects, the law corporation be regulated by the provisions of the Companies Act (Cap. 50).

For the record, this Sub-Committee had also considered corporatisation by way of a limited liability partnership. Limited liability partnerships (as distinct from corporations) do not currently exist in Singapore and the implementation of such a scheme would take time because of the need to create a completely new legal infrastructure.

The proposed scheme is preferred as with the recommended controls outlined in this paper, it is capable of operating as effectively within the existing legal framework.

### 3. Controls

This Sub-Committee considers it imperative for the business of law corporations to be managed and controlled by practising lawyers. While a corporate structure would allow management and control (through ownership of shares) to be separated, this is not regarded as desirable at the present time. The recommended changes are designed to ensure that the business of the law corporation is under the control and management of practising lawyers.

Only practising lawyers can be directors of a law corporation. The majority of the shareholders should be practising lawyers. In deciding what should be the appropriate majority, the Sub-Committee has sought guidance from the Professional Engineers Act (Cap. 253) and the Architects Act (Cap. 12).

These Acts provide for a two-thirds majority instead of a simple or three-quarters majority. Two-thirds majority has been accepted as the appropriate level of control at the present time. Over time this level could be reviewed, as in the case of the Professional Engineers Act. The remaining one-third of the shares may be held by employees and former employees of a law corporation.

A person who holds shares in a law corporation cannot hold shares of another law corporation or be a partner or employee of any law firm. However, the relevant authority (such as the Law Society) may allow him to do so under certain circumstances - such as, during the period of negotiation for the disposal of his shares when he leaves a law corporation to practise with a law firm.

### 4. Name of Law Corporation

It is essential that the relevant authority be given power to approve the name under which a law corporation is to be known. This is to ensure that such name does not detract from the dignity of an honourable profession.

This Sub-Committee also considers it necessary for clients of the law corporation to know that its liability is limited. All official correspondence and invoices of the law corporation must carry the statement on limited liability.

5. Standards of Professional Conduct and Discipline

The law corporation is no more than a vehicle for the provision of legal services. The individuals within it who are the providers of the legal services must be qualified as required under the Legal Profession Act. This Sub-Committee recommends that they should also continue to be subject to the same standards of professional conduct and be subject to the same disciplinary controls as if they were personally providing the legal services as solicitors in a law firm.

6. Limited Liability

The benefit of limited liability acquired through practising under a law corporation is that a solicitor will only be personally liable for his own negligence and in respect of matters within his supervision or control. He would not be personally liable for the negligence of the other service providers in the law corporation. The law corporation itself will be liable for the negligence of all service providers employed by it.

7. Professional Indemnity

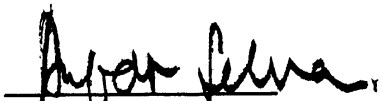
The existing rules relating to professional indemnity will have to be amended to cover law corporations. In making the amendment pursuant to Section 75A of the Legal Profession Act, the Council of the Law Society may wish to stipulate a minimum amount of coverage for law corporations. In view of its limited liability status, this Sub-Committee is of the view that the amount of coverage should not be less than \$2,000,000.

8. Filing of Accounts

This Sub-Committee fully appreciates that a law corporation formed under the Companies Act would have to comply with all requirements of the Act, including the requirement for a non-exempt company to file accounts annually with the Registrar of Companies. It is not seeking for a special exemption to be accorded to law corporations as it is of the view that a law firm opting to corporatise should be prepared to file accounts with the Registrar of Companies.

- 9 Attached to this Report are the revised drafts of
- (i) the Legal Profession (Amendment) Bill 1999;
  - (ii) the Legal Profession (Law Corporation) Rules 1999; (These Rules may have to be developed further by the relevant authority, such as the Law Society).
10. This report has been approved and is submitted by the Sub-Committee of the Law Reform Committee of the Singapore Academy of Law on Corporatisation of Law Partnerships comprising:-

Mrs Arfat Selvam  
Mr Charles Lim Aeng Cheng  
Mr Kim Seah Teck Kim  
Mr Tan Cheng Han  
Mr Alvin Yeo Khirn Hai  
Mr Jimmy Yim Wing Yuen  
Mr Foo Chee Hock



Arfat Selvam  
Chairperson

Date: 10 February 1999

No. S 000 -

LEGAL PROFESSION ACT  
(CHAPTER 161)

LEGAL PROFESSION (LAW CORPORATION) RULES 1999

ARRANGEMENT OF RULES

Rule

1. Citation and commencement
    2. Application for approval for law corporation
  3. Application for alteration of memorandum or articles
  4. Appeal to High Court
  5. Notification of particulars to relevant authority
  6. Articles of Association
- The Schedule

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In exercise of the powers conferred by section 81N of the Legal Profession Act, the Minister for Law hereby makes the following Rules:

**Citation and commencement**

1. These Rules may be cited as the Legal Profession (Law Corporation) Rules 1999 and shall come into operation on \_\_\_\_\_ 1999.

**Application for approval for law corporation**

2. An application under section 81B of the Act for approval of a company or proposed company as a law corporation and of the name or proposed name of the corporation shall be made in such form as may be determined by the relevant authority together with such documents as the relevant authority may require.

**Application for alteration of memorandum or articles**

3. An application under section 81G of the Act for approval for alteration of the memorandum or articles of association of a law corporation must be made in such form as may be determined by the relevant authority together with such documents as the relevant authority may require.

## **Appeal to High Court**

4.—(1) An appeal to the High Court under section 81J of the Act against the decision of the relevant authority shall be made by way of originating summons in Form 6 of Appendix A to the Rules of Court (Cap.322, R 5).

(2) The relevant authority shall, within 30 days of the service of the originating summons, serve on the applicant or his solicitor a certified copy of the grounds of decision and notes of proceeding.

## **Notification of particulars to relevant authority**

5.—(1) Every law corporation shall within 7 days notify the relevant authority of any change in the following particulars:

- (a) particulars of all its directors and those employees who are solicitors;
- (b) registered address and address of every branch; and
- (c) telephone and fax numbers.

(2) Every law corporation shall within 7 days furnish the relevant authority with copies of any document lodged with the Registrar of Companies.

## **Articles of Association**

6. The articles of association of a law corporation shall provide for the matters specified in the Schedule.

## **THE SCHEDULE**

Rule 6

### **MATTERS TO BE PROVIDED IN ARTICLES OF ASSOCIATION OF A LAW CORPORATION**

1. The chairman and all the directors of a law corporation shall be solicitors.
2. The office of a director who is a solicitor shall become vacant if the director ceases to be a solicitor.
3. Not less than two-thirds of each class of shares of the law corporation must be held by solicitors. The remaining portion of each class of shares of the law corporation may only be held by persons who are employees of the law corporation, or former directors or employees of the law corporation.

4. No director or employee of a law corporation shall be a director of or be employed by any other law corporation or be a partner or employee of any law firm.
5. Except with the prior approval of the Council of the Law Society, no person who holds shares in the law corporation shall hold shares in any other law corporation or be a partner or employee of any law firm.
6. The business of the law corporation in so far as it relates to legal services, shall be under the control and management of one or more directors who are shareholders of the company.
7. No person shall transfer or dispose any share in the law corporation without the prior approval of the Board of Directors. The Board shall not grant its approval if such transfer will result in a contravention of the requirement in Part VIA of the Legal Profession Act on the holding, transfer or disposal of shares in a law corporation.
8. The Memorandum or Articles of Association shall not be amended without the approval of the Council of the Law Society.

Made this                      day of                                              1999.

GOH KIM LEONG  
*Permanent Secretary,  
Ministry of Law,  
Singapore*

[MINLAW                                              /86; AG/SL/                                              ]

(To be presented to Parliament under section 131 of the Legal Profession Act).

# A BILL

## *intituled*

An Act to amend the Legal Profession Act (Chapter 161 of the 1997 Revised Edition).

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 Legal Profession (Amendment) Act 1999 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

### **Amendment of section 2**

2. Section 2 of the Legal Profession Act (referred to in this Act as the principal Act) is amended—

- (a) by inserting, immediately after the word "solicitor's" in the last line of paragraph (a) of the definition of "client", the words "or a law corporation's";
- (b) by deleting the words "for his services" in the last line of paragraph (b) of the definition of "client" and substituting the words "or a law corporation for his or its services"; and
- (c) by inserting, immediately after the definition of "Judge", the following definition:

““law corporation" means a company approved as a law corporation under section 81B ;".

### **Amendment of section 26**

3. Section 26(1) of the principal Act is amended by inserting, immediately after paragraph (b), the following paragraph:

“(ba) unless he is or is about to be a director or employee of a law corporation;”.

### **Amendment of section 33**

4. Section 33(6) of the principal Act is amended by inserting, immediately after the word "solicitor" in the fifth line, the words ", or has the capacity or powers of a law corporation when in fact the body corporate does not,".

### **Amendment of section 37**

5. Section 37(2) of the principal Act is amended by deleting the word "and" at the end of paragraph (c), and by inserting immediately thereafter the following paragraph:



"(ca) exercise such powers or functions as may be conferred upon the Society by this Act or any other written law; and".

### **Amendment of section 72**

6. Section 72 of the principal Act is amended by inserting, immediately after subsection (1), the following subsection:

"(1A) Such rules may provide for the manner in which the matters referred to in subsection (1) shall apply to law corporations."

### **Amendment of section 75A**

7. Section 75A of the principal Act is amended—

- (a) by deleting the word "and" at the end of paragraph (a) of subsection (1);
- (b) by deleting the full-stop at the end of paragraph (b) of subsection (1) and substituting the word "; and", and by inserting immediately thereafter the following paragraph :

"(c) by a law corporation in connection with its practice or with any trust of which it is a trustee."; and

- (c) by inserting, immediately after the word "solicitors" in subsection (3)(g), the words "or law corporations".

### **Amendment of section 75C**

8. Section 75C of the principal Act is amended—

- (a) by inserting, immediately after the word "partnership" in the third line of subsection (1) and in the section heading, the words "or under a law corporation"; and
- (b) by inserting, immediately after the word "solicitor" in the third line of subsection (1)(b), the words "or law corporation".

### **New Part VIA**

9. The principal Act is amended by inserting, immediately after Part VI, the following Part:

## "PART VIA

### LAW CORPORATIONS

#### Interpretation of this Part

**81A.** In this Part, unless the context otherwise requires—

"company" has the same meaning as in the Companies Act (Cap. 50);

"law corporation" means a company approved as a law corporation under section 81B;

"law firm" means a partnership whose members are solicitors or a solicitor practising on his own account;

"legal services" means the legal services which a solicitor can lawfully perform under this Act;

"relevant authority" means the Council of the Law Society;

"solicitor" means an advocate and solicitor who has in force a practising certificate.

#### Approval for law corporations

**81B.—(1)** A solicitor who wishes to have a company or a proposed company approved as a law corporation shall apply to the relevant authority for approval —

- (a) of the company as a law corporation; and
- (b) of the name or proposed name of the law corporation.

(2) An application shall be made in accordance with rules made under section 81N.

(3) Subject to the provisions of this Part, the relevant authority may on receiving an application in respect of a company or a proposed company under this section, approve the company or proposed company as a law corporation if—

- (a) the memorandum of association of the company or proposed company provides that the primary object of the company or proposed company is to supply legal services;
- (b) the articles of association of the company or proposed company provide for such matters as may be prescribed in the Rules made under section 81N.

(4) If the relevant authority gives approval for a proposed company to be a law corporation, the approval does not take effect until the company is formed and registered under the Companies Act (Cap.50).

#### Name of law corporation

**81C.**—(1) The relevant authority shall not approve the name or proposed name of a law corporation which detracts from the dignity of an honourable profession.

(2) Notwithstanding section 27 of the Companies Act, a law corporation which is a limited company need not have the word "Limited" or "Berhad" as part of its name and a law corporation which is a private company need not have the word "Private" or "Sendirian" as part of its name.

(3) Every law corporation shall have the words "Law Corporation" or "LLC" as part of its name.

(4) The directors of a law corporation shall ensure that every invoice or official correspondence of the law corporation bears the statement that it is incorporated with limited liability.

(5) No name of a law corporation may be changed without the prior approval in writing of the relevant authority.

### **Effect of company becoming law corporation**

**81D.**—(1) A law corporation is authorised to do anything that a solicitor can do by law and is required to do all that a solicitor is required to do by law.

(2) Subsection (1) shall not apply to the doing of anything that can only be done by a solicitor as a natural person.

(3) A solicitor who provides legal services as a director or employee of a law corporation shall be subject to the same standards of professional conduct and competence in respect of such services as if he were personally providing the legal services as a solicitor in a law firm.

(4) The mere fact that a solicitor personally provides legal services as a director or employee of a law corporation shall not affect the personal liability of that solicitor at law.

### **Relationship between client and law corporation**

**81E.**—(1) A law corporation shall have the same rights and shall be subject to the same fiduciary, confidential and ethical requirements with respect to each client of the law corporation that exist at law with respect to a solicitor and his client.

(2) Solicitor-client privilege exists between a law corporation and a client of the corporation in the same way as it exists between a solicitor and his client and extends to every solicitor who is an officer or employee of the corporation.

(3) Sections 128 to 131 of the Evidence Act (Cap.97) on professional communications shall apply to a law corporation, its officers and its employees as it applies to a solicitor.

### **Professional misconduct**

**81F.**—(1) An act or omission of a solicitor may constitute unsatisfactory professional conduct or professional misconduct even though it is only done or occurs while the solicitor provides legal services through a law corporation.

(2) The directors of the law corporation who are solicitors shall be jointly liable to disciplinary proceedings under this Act if the business of the law corporation is conducted in a manner unbefitting an honourable profession and where such conduct cannot be attributed to the act or omission of a solicitor or solicitors.

(3) No director or employee of a law corporation who is a solicitor shall be a director of or employed by any other law corporation or be a partner of or employee of a law firm.

### **Requirements as to alteration of memorandum or articles**

**81G.**—(1) The approval in writing of the relevant authority is required before the memorandum or articles of association of a law corporation are amended.

(2) An application for approval under this section must be made in accordance with the rules made under section 81N.

(3) The relevant authority may refuse approval under this section if the application fails to comply with any provision of this Part or on such other ground as may be prescribed by the rules made under section 81N.

### **Shares of a law corporation**

**81H.**—(1) No person shall transfer or dispose of any shares in the law corporation except in accordance with this section and the rules made under section 81N.

(2) Not less than two-thirds of any class of shares in a law corporation shall be held by solicitors and the remaining portion of any class of shares may only be held by persons who are employees or former directors or employees of the law corporation.

(3) No share in a law corporation may be held by a person as nominee for another person.

(4) Except with the prior approval of the relevant authority, any person who holds shares in a law corporation shall not—

(a) hold shares in any other law corporation; or

(b) be a partner or employee of any law firm.

(5) No security may be created over any share in a law corporation.

(6) A solicitor who, is pursuant to disciplinary proceedings under this Act, suspended from practice or struck off the roll, shall not hold any shares in the law corporation unless the relevant authority on the solicitor's application grants him a grace period to transfer or dispose his shares in the law corporation.

(7) Where a solicitor has been suspended from practice or struck off the roll pursuant to disciplinary proceedings under this Act, he shall not directly or indirectly, take part in or be concerned in the management or practice of the law corporation.

(8) Any transfer or disposal made in contravention of subsections (1) to (7) shall be null and void.

(9) Notwithstanding subsections (2) and (7), where a solicitor has for any reason ceased to hold a practising certificate, the relevant authority may, upon application made by the solicitor or by the law corporation grant him a grace period of not more than 2 years to transfer his shares in the law corporation and he shall be treated as a solicitor for the purposes of computing whether the two-thirds of any class of shares in the law corporation are held by solicitors.

### **Additional grounds for winding up law corporation**

**81I.**—(1) A law corporation may be wound up under the Companies Act (Cap.50) on any of the following grounds:

- (a) the corporation ceases to satisfy the requirements of this Act or the rules made under section 81N relating to a law corporation; or
- (b) the business of the corporation has been conducted in a manner not befitting the profession.

(2) The grounds for winding up referred to in subsection (1) are additional to those prescribed by the Companies Act.

(3) An application to wind up a law corporation on a ground specified in subsection (1) may be made only by the Attorney-General or the relevant authority.

### **Right of appeal against decisions of the relevant authority under this Part**

**81J.**—(1) An applicant, for approval by the relevant authority of—

- (a) a company or proposed company as a law corporation;
- (b) an amendment to the memorandum or articles of association of a law corporation; or
- (c) a change in the name of a law corporation,

may appeal to the High Court against a decision of the relevant authority.

(2) An applicant making an appeal under subsection (1) must comply with rules made under section 81N for the purposes of this section.

(3) On the hearing of an appeal, the High Court may —

- (a) confirm the decision of the Council; or
- (b) direct the Council to grant the application for approval, either unconditionally or subject to conditions specified by the Court,

and may make such order as to the payment of costs by the Council or by the applicant as it thinks fit.

### **Roll of law corporations**

**81K.**—(1) The relevant authority is required—

(a) to keep a roll of all law corporations approved under section 81B in such form and manner as it thinks fit and to have custody of the roll and all documents relating to it; and

(b) to allow any person to inspect the roll during ordinary office hours without payment.

(2) The relevant authority, is required to enter on the roll of law corporations the name of the law corporation.

(3) The High Court may, at any time, order the relevant authority to replace on the roll of law corporations the name of a law corporation whose name has been struck off or removed from that roll.

### **This Part to prevail over inconsistent provisions of memorandum and articles**

**81L.** This Part and any rules made under section 81N for the purposes of this Part shall prevail over any inconsistent provision of the memorandum and articles of association of a law corporation.

### **Application of Companies Act to law corporations**

**81M.** Nothing in this Part, with the exception of section 81C(2) and 81I, shall affect the operation of the Companies Act (Cap.50) in relation to its application to a company that is a law corporation.

### **Rules on law corporations**

**81N.** The Minister may, after consulting the relevant authority, make rules for the purposes of this Part."

### **Amendment of First Schedule**

**10.** The First Schedule to the principal Act is amended —

(a) by deleting the word "or" at the end of paragraph 1 (1)(a)(ii);

(b) by deleting the coma at the end of sub-paragraph (iii) of paragraph 1(1)(a) and substituting the word "; or", and by inserting immediately thereafter the following subparagraph:

"(iv) a law corporation,";

(c) by inserting, immediately after the word "solicitor's" in the fifth line of paragraph 1 (1)(a), the words "or that law corporation's";

(d) by deleting the word "or" at the end of paragraph 1 (1)(h);

(e) by deleting the full-stop at the end of sub-paragraph (i) of paragraph 1(1) and substituting the word "; or", and by inserting immediately thereafter the following subparagraph:

“(j) the name of a law corporation has been removed or struck off from the roll of law corporations.”;

(f) by deleting sub-paragraph (1) of paragraph 4 and substituting the following sub-paragraph:

(1) Where the powers conferred by Part II are exercisable in relation to a solicitor or a law corporation, the powers shall continue to be exercisable in the case of a solicitor, after his death or after his name has been removed from or struck off the roll and, in the case of a law corporation, after its name has been removed from or struck off from the roll of law corporations.”;

(g) by inserting, immediately after the word "he" in paragraph 6(2)(a), the words "or it";

(h) by inserting, immediately after the word "representative" in paragraph 10(1), the words "or the law corporation"; and

(i) by inserting, immediately after the word "representatives" in the fifth line of paragraph 12, the words "or the law corporation".

### **Amendment of Second Schedule**

**11.** The Second Schedule to the principal Act is amended by deleting the word "him" in paragraphs 1(1) and 7 and substituting in each case the words "the solicitor or law corporation".

### **Miscellaneous amendments**

**12.** The principal Act is amended —

(a) by inserting, immediately after the words "solicitor" and "solicitors" wherever they appear in the following provisions, the words "or a law corporation":

Sections 2 (definition of "client") (a) and (b) (sixth line), 25(1)(a)(ii)(third line), 75A(3)(f) and (6), 85(1) to (5) (second line) and (6) (second line), 88(4)(b), 92, 136(1), (3) (second line), paragraph 1(1)(c) of First Schedule, paragraphs 1(1), 5(1) 7, 8(a), 9(1) (third line) and 10 of Second Schedule;

(b) by inserting, immediately after the word "solicitor" wherever it appears in the following provisions, the words "or the law corporation":

Sections 85(5) (third line), 88(1), (3), (4) (seventh line) and (5), 136(3) (third line), paragraph 3(b), (c) and (d) of First Schedule, paragraph 2(1)(a) and (3) of Second Schedule;

(c) by inserting, immediately after the word "firm" wherever it appears in the following provisions, the words "or the law corporation":

Sections 32(3), 73(2)(a) and (b), (3) and (4), 77(2), 79(1), 110(1) and (2), paragraphs 3(a), 4(2), 5(1), 6(2)(a), (c) and (3), 8, 9(1)(a), (b) and (5) of First Schedule, paragraphs 1(1) and 9(1) of Second Schedule;

- (d) by inserting, immediately after the words "certificate" and "certificates" wherever they appear in the following provisions, the words "and all law corporations":

Sections 75A(2)(c), (3)(b) and (c);

- (e) by deleting the word "him" wherever it appears in the following provisions and substituting the words "the advocate and solicitor or law corporation":

Sections 75A(3)(f), 88(3) and (5);

- (f) by inserting, immediately after the word "solicitor" wherever it appears in the following provisions, the words "or that law corporation":

Paragraph 1(1) (eighth line) of First Schedule and paragraph 8(b) of Second Schedule; and

- (g) by inserting, immediately after the word "his" wherever it appears in the following provisions, the words "or the corporation's":

Paragraph 9(1)(a) of First Schedule and paragraph 2(1)(a) of Second Schedule.

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## EXPLANATORY STATEMENT

### EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.