



Financial Services Commission
Mauritius

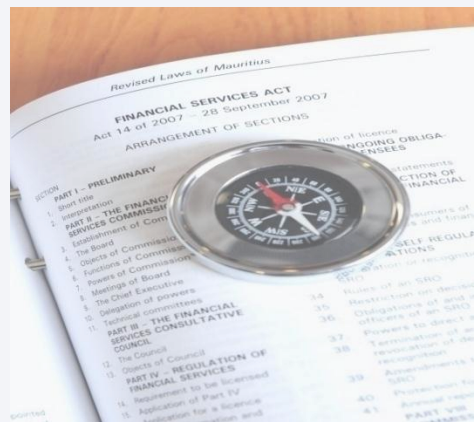
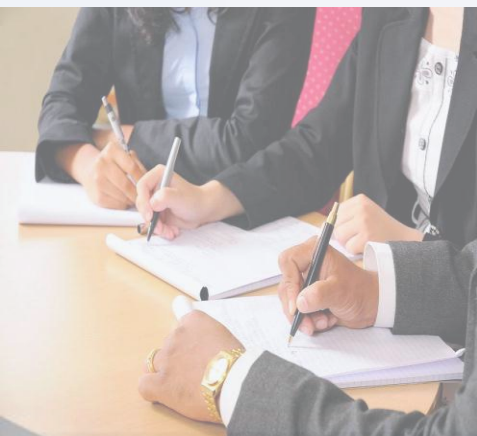


Limited Liability Partnership

- Concept paper - **FOR DISCUSSION PURPOSES**

Presented by Legal Team

Date: 4 March 2013



AGENDA

- Introduction
- About Limited Liability Partnership (“LLP”)
- Specificity of the Mauritian context
- Introduction of the LLP Regime in Mauritius and its feasibility
- Issues to consider
- Way Forward

Introduction



Introduction

- VPM – Budget speech
 - To further diversify the financial services sector, a new Limited Liability Partnerships Bill will be introduced.

- FSC
 - Policy of consultation and dialogue with stakeholders.

- LLP Concept paper
 - i. presents the concept of LLP;
 - ii. analyses those jurisdictions where LLP has been introduced and those where it has been turned down;
 - iii. the specificity of the Mauritian context along with the relevance of LLP;
 - iv. the best model to choose for Mauritius;
 - v. the safeguards in the regulation of LLP; and
 - vi. the list of issues to consider when opting for the introduction of LLP in Mauritius.

About Limited Liability Partnerships ("LLPs")

About LLPs

- **What is a LLP?**

It is a business structure that operates similar to a partnership organisational structure - separate legal personality from its members

Each member has limited personal liability and is responsible for his own actions while conducting business.

- **Target Groups:**

Traditionally tailored for professionals such as lawyers, accountants and doctors.

About LLPs

Jurisdictions where LLPs have been introduced

This section gives an overview of the legislative framework of some countries where LLPs have been introduced.

Jurisdiction	Legislation
United States	The Revised Uniform Partnership Act (1997)
United Kingdom	Limited Liability Partnerships Act 2000
Singapore	Limited Liability Partnerships Act 2005
India	Limited Liability Partnership Act 2008
Jersey	Limited Liability Partnerships (Jersey) Law 1997
Panama	Limited Liability Partnership Law 1966
Japan	Limited Liability Partnership Act (2005)

About LLPs

Some reasons why jurisdictions have adopted LLPs

- Useful Vehicle
- Flexible Legal Structure
- Limited Liability Protection

About LLPs

Some reasons why jurisdictions have adopted LLPs

- Suitability for professionals
- Pass-through Income
- Operational costs & other financial advantages
- Conditions and restrictions in some jurisdictions

About LLPs

Some reasons why jurisdictions have not adopted LLPs

- Idea of limited liability was controversial;
- General view that a general partnership is very different from a limited liability company in the sense that investors in a partnership are experienced professionals who should know what they are doing and they have unlimited liability;
- Audit failures behind most great corporate scandals like Enron, WorldCom and most of the collapses behind the latest financial crisis
- UK first rejected the proposition to introduce LLP for its jurisdiction to appear clean and transparent
- Other considerations

A background image showing several people in business attire sitting around a table, writing on documents. The image is semi-transparent, allowing the text to be clearly visible. The people are focused on their work, with their hands and pens visible as they write on papers.

Specificity of the Mauritian context

Specificity of the Mauritian context

- Mixed common law / civil law jurisdiction
- Small country but numerous professional service providers
- An International Financial Centre – what about foreign professionals ?
- Joint ventures between international law firms and Mauritian law firms

A background image showing several people in business attire sitting around a table, writing on documents. The image is semi-transparent, allowing the text to be clearly visible.

Introduction of the LLP Regime in Mauritius and its feasibility

LLP Model for Mauritius

Guidance from certain Jurisdictions:

- United Kingdom
- Singapore
- Jersey
- India

LLP Model for Mauritius

Criteria	United Kingdom	Singapore	Jersey	India
Separate legal entity	√	√	√	√
Limited Liability to all partners	√	√	√	√
Partnership Agreement - optional	√	√	√	√
Taxability	√	√	√	√ (LLP taxed)
Accounting and filing requirements	√	√	√	√
Restriction of LLP to certain professions only	Open to all types of business	Any individual or body corporate may be a partner in an LLP	Open to any person who is willing to contribute effort and skill to the business ...	Provided person is of sound mind, is not insolvent etc....
Minimum of 2 partners, no maximum limit	√	√	Any number of persons may be partners in a limited liability partnership.	√
Creditors Protection	√	√	√	√
Insolvency clawback	√	√	√	

LLP Model for Mauritius

The criteria to be considered are :

- Separate legal entity
- Limited liability to all partners
- Partnership Agreement –optional
- Taxability
- Accounting and filing requirements
- Restriction of LLP to certain professions only
- Minimum of 2 partners, no maximum limit
- Specified financial provision for creditors
- Insolvency clawback

Features & Characteristics of LLPs

- Every Partner Equal
- Limited Liability Protection
- “Pass Through” Taxation of Profits
- Interest Deductions
- Depreciation Deductions
- Operation Expense Deductions

Comparison with other vehicles

- **Société en Commandite Simple (“SCS”) v/s Limited Partnership (“LP”) v/s LLP**

Structure/ Features	SCS	LP	LLP
Formation	By deed either by a notary (public document) or by the members (private deed).	<ol style="list-style-type: none"> 1. LP has legal personality when it is registered. 2. All LPs shall have a Partnership agreement which shall be binding on the parties. 	LLP has a legal personality.
Partners	<ol style="list-style-type: none"> 1. Two distinct categories of partners: <ol style="list-style-type: none"> i. commandités ii. commanditaires 2. Status of commandité and commanditaire may not be cumulated in the same partner in a SCS. 	<ol style="list-style-type: none"> 1 There shall be a Limited partner and a general partner. 2. A partner can be both a Limited partner and a general partner at the same time 	Has a single type of partner, the Limited Partner.

Comparison with other vehicles

- **LLP v/s Limited Partnership (“LP”) v/s Sociétés en Commandite Simple (“SCS”)**

Structure /Features	SCS	LP	LLP
Obligation of Partners	A commanditaire whose name is included in the name of the societe is indefinitely and jointly liable to the social debts.	A GP shall be liable to all the debts of the LP without limitation whereas a LP shall be liable only to the amount contributed in the LP.	LLP's members have a collective ("Joint") responsibility wrt to the LLP but no individual ("several") responsibility for each other's actions.
Dissolution	<p>1.After the death of one of the commandités, if he is not replaced by another commandité (within a period of a year) and assuming that it leaves only minor heirs, dissolution as of right.</p> <p>2.Bankruptcy, prohibition to pursue a commercial occupation, incapacity of a commandité</p> <p>3.SCS continues despite death of a commanditaire</p>	A LP shall be dissolved where: <ol style="list-style-type: none"> i. it has been specified in partnership agreement ii. expiry of a fixed term iii. there is an agreement of the majority GP iv. death, legal retirement, resignation, removal, bankruptcy of a GP. 	A LLP shall be dissolved inter alia where: <ol style="list-style-type: none"> i. it has been specified in partnership agreement ii. expiry of a fixed term iii. upon a court order

Safeguards

- Appropriate safeguards in the legislation have to be provided to maintain a balanced approach towards the adoption of a legal regime for LLPs:-
 - Use of appropriate words to advertise its status;
 - Registration requirements;
 - Financial disclosure;
 - Provision for members of the LLP to be sued for wrongful and fraudulent trading;
 - Regulations for dealing with insolvency as well as winding-up of the LLP;
 - ‘Clawback’ provisions;
 - Requirement of a bond.

A photograph of a business meeting. Several people are seated around a table, focused on writing in notebooks. The image is semi-transparent, with the text 'Issues for consideration' overlaid in the center. The people are wearing professional attire, including suits and blouses. One person in the foreground is wearing a gold watch and a ring. The background is slightly blurred, emphasizing the activity of writing.

Issues for consideration

Issues for consideration

- Use of the LLP structure
- Registration Requirements
- Disclosure and Reporting Requirements
- Liability of a partner
- Dissolution and winding up
- Financial provision for creditors
- Mandatory Professional Indemnity cover

See Concept paper (item 11.) for details

Way Forward



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Process and Timeframe

Process	Time Frame
Presentation of Concept Paper to the Consultative Committee	4 th March 2013
Deadline for submission of comments	20 th March 2013
Setting up and Meeting of the Consultative Committee	22 nd March 2013
Preparation of Draft Bill by FSC	15 th April 2013
Comments received from Consultative Committee	22 nd April 2013
Finalisation of Draft & submission to SLO	2 nd May 2013
Finalisation of Bill by SLO & tabling in Parliament	15 th June 2013

Feedback and Comments

- **On:-**

1. Use of the LLP structure
2. Registration Requirements
3. Disclosure and Reporting Requirement
4. Liability of a partner
5. Dissolution and winding up
6. Financial provision for creditors

See Concept paper (item 11.) for details

- To be sent to:-

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THANK YOU FOR YOUR KIND ATTENTION

Vision

“To be an internationally recognised Financial Supervisor committed to the sustained development of Mauritius as a sound and competitive Financial Services Centre”



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