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LAWFLASH

CHARITIES: INCREASED CORPORATISATION AND ITS IMPACT ON THE PRO BONO SPACE

August 25, 2017

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The increased adoption of a corporate structure by charities has resulted in enhanced pro bono opportunities for law firms in Singapore.

Non-profit groups in Singapore such as charitable, business, and religious organisations have traditionally been registered as societies or operate as trusts. As charities in Singapore continue to grow in size and outreach, we have observed a marked trend towards adopting the Company Limited by Guarantee (CLG) structure.

The CLG structure appears to be gaining favour due to the distinct advantages it offers, namely the separate legal entity status, and the liability of members being limited to the sum (often nominal) that each of them guarantees.

The emergence of the CLG structure as the preferred legal structure for charities in Singapore has resulted in increased pro bono opportunities for law firms in Singapore. While pro bono work has traditionally been viewed as the bastion of litigation lawyers, the process of corporatising charities is something that corporate lawyers can meaningfully and skilfully contribute towards, whether for new charities looking to set up as CLGs, or existing charities looking to transition to the CLG structure.

We set out in brief the steps involved in the corporatisation of charities in Singapore.

CORPORATISATION PROCESS

The corporatisation process involves (i) the incorporation of the CLG with the Accounting and Corporate Regulatory Authority of Singapore (ACRA); (ii) the application for charity and "Institutions of a Public Character" (IPC) status for the CLG; and (iii) the transfer of assets and liabilities of the existing charity to the CLG.

The incorporation of the CLG involves the online reservation of the proposed company name of the CLG

with ACRA, execution of the constitution of the company and other incorporation documents, and the online incorporation of the CLG via ACRA Bizfile. The constitution of the CLG (being its governing instrument) will need to provide for the CLG's purposes, which must be exclusively charitable. As such, the charity should work closely with the Commissioner of Charities (COC) or its sector administrator, as the case may be, for review and approval of its governing instrument during the incorporation process. Any subsequent amendments to the governing instrument must be approved by the COC or the sector administrator.

The CLG must apply for charity status within three months after incorporation. The application for registration as a charity is submitted online via the Charity Portal and processed by the COC's office or the sector administrator, depending on the CLG's category of primary activity. Only exempt or registered charities may proceed to apply for IPC status.

The final plank of the process is to transfer assets and liabilities from the existing charity to the CLG. Some assets may be transferred by simple delivery (for example, furniture and stationary), while others may require formal agreements, third party consent and/or registration (for example, intellectual property, land and contracts). The overarching terms of the transfer will generally be governed by the main transfer document, and novation or assignment agreements may need to be prepared depending on the assets and liabilities being transferred. This is where corporate lawyers have the opportunity to flex their specialist knowledge and expertise and add value to the charities that they are assisting.

IMPACT ON THE PRO BONO SPACE

Since 2016, Morgan Lewis Stamford has advised more than five charities on adopting the CLG structure. This has given several of our corporate lawyers the opportunity to use their well-honed legal skills to contribute towards meaningful pro bono work. Of note is that Morgan Lewis Singapore advised the Law Society of Singapore on the transfer of assets and liabilities to a newly incorporated CLG, as part of the Law Society's successful efforts to corporatise its Pro Bono Legal Services initiative earlier this year. In addition to drafting the transfer of charitable undertaking agreement, Morgan Lewis Singapore advised on legal issues (including those related to the transfer of personal data and employees) that arose in the process.

We hope to continue to build on this CLG-related expertise that we have developed within our pro bono practice, and in the process, give our corporate lawyers a meaningful avenue to get involved in pro bono matters.

CONTACTS

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