

<b>10.1</b>	<b>Issue</b>	Proposal for setting up a permanent entity for ARCASIA in Singapore
	<b>Action by Council</b>	For Approval to Proceed
	<b>Presented by</b>	President Rita Soh and Hon. Sec. Hui Min Chan

*Note: This proposal was prepared with the help of legal and tax advisors commissioned by ARCASIA. Legal: Ella Chong LLC (ECL), Tax: Eisner Amper Singapore*

## REASON FOR PROPOSAL

### 1 History and status of Architects Regional Council Asia, inc.

- a. "Architects Regional Council Asia, Inc." was set up in 2007 as a non-profit organization registered with the Securities and Exchange of the Philippines (no. CN200711403) on 19 July 2007 at the behest of the ARCASIA council. The company was set up for the sole purpose of establishing a bank account for ARCASIA funds with HSBC.
- b. The laborious process to change the directors and corporate officers to the latest office bearers made it difficult to comply with corporate requirements, leading HSBC to freeze the ARCASIA bank account in 2016.
- c. Since that time, the office bearers of subsequent terms have faced challenges to set up a new ARCASIA bank account. Currently, the funds are being held in temporary bank accounts and cash in hand.

### 2 Risks of maintaining the status quo

- a. Difficulty to set up ARCASIA bank account
- b. ARCASIA funds not in one place, messy accounts.
- c. Lack of bank account makes it impossible to make auditable accounts
- d. ARCASIA trademark not registered.

### 3 Reasons for setting up permanent Entity and bank account in Singapore

- a. Propose to set up a new permanent company and bank account in Singapore
- b. Business-friendly environment in Singapore, change of corporate directors and officers more straightforward.
- c. Corporate Secretary role can be provided by a service-provider and de-linked from member institutes. Avoid overburdening member institutes of corporate secretary role.
- d. Robust digital banking set up in Singapore allows each term of office bearers the ability to control the funds in the account directly from other countries.
- e. Allows subsidiary companies to be set up.
  - Subsidiary companies may also be set up as a company limited by guarantee ("CLG"), in which one of the members can be the initial Singapore entity set up by ARCASIA. If the subsidiary is set up in Singapore, other than the requirement of a local resident director and at least one member,

the exact composition of the members and directors can be determined as ARCASIA sees fit.

- In the future, ARCASIA may choose to make AEA a subsidiary company.

## **DETAILS OF PROPOSED SETUP**

### **4 Format of entity**

#### **4.1 What is a Company set up by guarantee?**

- A Company Limited by Guarantee (CLG) is one in which members of the company function as guarantors for the liabilities incurred by the company, as opposed to subscribing for shares in the case of a company limited by shares. The liability sought to be guaranteed by members is defined at the point of incorporation and can be a nominal amount as low as S\$1.00.
- The word 'MEMBER' in this case is an official terminology of the CLG and it refers to a GUARANTOR of the company. It does not refer to the current member institutes of ARCASIA. It is not necessary for the member institutes to act as guarantors of the new company.
- Key facts at a glance
  - Requires at least 2 directors, 2 members, and qualified Corporate Secretary. One director and secretary must be ordinarily resident in Singapore i.e. a Singaporean Citizen, a Singaporean Permanent Resident. A foreigner who wishes to act as a local director of a company has to be a person who has been issued a Employment Pass or a Dependant Pass.
  - Must draft a Memorandum & Articles of Association setting out the objects and by-laws of the organisation.
  - Must audit accounts annually.
  - Must hold Annual General Meetings.
  - Must file its Annual Returns with Accounting and Corporate Regulatory Authority (ACRA).
- Public companies limited by guarantee are registered with Accounting and Corporate Regulatory Authority (ACRA) and are governed by the Singapore Companies Act.

#### **4.2 Why is this the most appropriate format to incorporate ARCASIA? How does it meet the operational requirements for change of office bearers every term?**

- The main purpose of setting up the entity as a company is the company's separate legal entity.
- Firstly, any debts or liabilities incurred by the company will generally be suffered by the company alone. Members' liabilities are confined to the initial amount that they undertake to guarantee as stated in the constitution.
- Secondly, the separate legal personality of the company gives it the independent capacity to enter into agreements and allows it to have ownership of both tangible and intangible assets and property, for instance, the ARCASIA trademark.
- At the same time, the company has been set up as a CLG as the procedure for changing members is administratively and financially expedient. For a CLG, a change

in members is effected through an amendment of the company's register of members in accordance with the company's constitution. (To minimise administrative burdens, ARCASIA may consider keeping the number of members to a minimum.) Such constitutional requirements are subject to ARCASIA's preference and an example of such a requirement is the requirement of majority approval of the existing members to effect membership change.

- Thereafter, an update with ACRA through Bizfile (on the internet) has to be made to fully effect the change. No fees are payable for this update with ACRA.

#### **4.3 What are the obligations or limitations to this set up?**

- As CLGs are public companies, they are subject to annual audit and Annual General Meeting ("AGM") requirements under the Companies Act.
- For audit requirements, this would generally entail the need to have the company's financial statements audited and having these audited statements submitted to the Accounting and Corporate Regulatory Authority ("ACRA").
- For AGM requirements, such meetings would have to be held within 6 months of the end of the financial year, wherein matters such as the company's financial performance and commercial strategy for the previous financial year are presented by the directors.

#### **4.4 Can this be set up as a non-profit entity?**

- There is no strict legal definition for a non-profit entity under Singapore law. Generally, companies limited by guarantee are a means by which a non-profit entities are set up, with the other alternatives being societies and charities set up by trust.

#### **4.5 What will the local resident director need to do? How do we indemnify him/her?**

Generally speaking, the responsibilities of a director are the same regardless of local residency. Some key responsibilities include:

1. Passing board resolutions to open a bank account and appoint company officers such as other directors, auditors and the corporate secretary.
2. Maintenance of statutory records and registers as required under the Companies Act. These include the records of directors, the corporate secretary, the auditor, members and managers.
3. Compliance with financial reporting obligations under the Companies Act. This entails the maintenance of financial statements, the profit and loss account, balance sheet and directors' report.
4. Ensuring the timely commencement of the AGM and timely filing of the Annual Returns and audited financial statements.

Directors when making decisions on behalf of the company are subject to various duties including the following:

1. The duty to act honestly and use reasonable diligence in the discharges of the duties of his office;
2. The duty to disclose his/her interests in a transaction with the company;

3. The duty to act in the best interests of the company; and
4. The duty to avoid conflicts of interest with the company.

The Director's indemnity can be implemented by an agreement. It can also be covered by insurance.

**4.6 How hard is it to change the director makeup every 2 years? Ballpark fees? Time? Are the documentation requirements onerous? Are there limits to eligibility, e.g. nationality?**

The change of directors must be in accordance with the Constitution set by ARCASIA. The standard Constitution implements an automatic requirement and appointment scheme which may prefer to change to an ad hoc resignation / appointment scheme. Suitable resolutions will be required to support such removal / appointments, updated in the Register of Directors of the company, and relevant returns and forms filed with ACRA.

At least one director has to be ordinarily resident in Singapore at any given point in time.

**5 Proposed members and directors of new entity**

- a. The appointment of the members and directors are at the discretion of ARCASIA.
- b. The members shall not need to change with each president's term to minimize the fees and taxes incurred. Members can be sought from the list of past presidents.
- c. Current term President, Hon Treasurer or other office bearers can be directors.
- d. The role of the Corporate Secretary should be outsourced to a professional company who provides such services.

**6 Tax issues**

**6.1 As a local corporate entity, will the membership fees and funds raised by the entity will be considered revenue and the profits subject to corporate tax in Singapore?**

- a. The basic rule is that if membership fees are over 50.% of its gross receipts, the entity will not be deemed to carry on business. If less than 50% are from members, the entire income will be deemed business receipts and taxable. However, according to Eisner Amper, if more than 50% of receipts by way of membership fees from Singapore members are claimable for personal tax deduction, the entire income from Singapore members and non-members is taxable.

**7 Cost of set up**

**7.1 Scope of work of lawyer**

- a. Reviewing ARCASIA's constitution to identify relevant provisions permitting or restricting incorporation/maintenance of the company, and proposing necessary amendments to ARCASIA's constitution, if any.
- b. Preparing incorporation documents including:
  - Company constitution
  - Associated incorporation resolutions of company

- Resolution for opening bank account (subject to standard form of selected bank)
- Incorporation forms
- Declarations of directors
- Local resident director indemnity agreement.

Item	Estimated Cost
<b>Professional legal Services</b>	USD \$6,000 - \$6,600
<b>Name application of company</b>	\$15 per name
<b>Registration of company</b>	USD \$220
<b>Notarisation for identification documents of directors</b>	Subject to prevailing market rates of the countries in which notarization will take place.
<b>Bank account opening fees</b>	Negligible with minimum deposit

## 7.2 Recurring cost

Item	Estimated Cost
<b>ANNUAL</b>	
<b>Corp Sec services (annual)</b>	USD\$1,500 - \$2,200
<b>Corporate Tax on profit (annual)</b>	17% (note that revenue from membership dues are tax exempt, except for revenues generated from Singapore sources)
<b>WITH EACH NEW TERM</b>	
<b>Professional legal Services</b>	Variable (most recurring changes in directors will not require legal input)
<b>Filing fee for change in members/directors</b>	negligible

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**Notarisation for identification documents of directors**

Subject to prevailing market rates of the countries in which notarization will take place.

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**8 Key differences from previous entity**

- a. Permanent company set up not just for the purpose of creating a bank account.
- b. Corporate secretary role outsourced to company. Member institute not burdened with change of directors or members at the start of every new term.
- c. Annual audit and formal filing to ACRA required.

**TRADEMARK (FOR DISCUSSION ONLY)**

**9 Why do we need to register the ARCASIA Brand as a trademark?**

- a. The registration of the ARCASIA brand as a trademark presents ARCASIA with a few key commercial advantages.
- b. Firstly, it prevents third parties from registering and/or using the ARCASIA brand or similar trade marks on similar goods and services. This can be done by way of objecting to the registration of the said similar trade marks or by commencing legal proceedings on the basis of trade mark infringement. From our foregoing discussions, we note that the brand may be registered in respect of services such as the organization of competitions and events for architecture and design, and architectural consultation services.
- c. Secondly, it allows ARCASIA to monetize the brand by licensing or assigning the use of the brand to interested third parties. This helps to generate further revenue for the organization's use, which can then be applied for the furtherance of ARCASIA's non-profit objectives.

**10 How can we do so?**

- a. Assuming ARCASIA intends to register its brand in the 21 member countries that comprise the association, the registration process will be executed in 2 concurrent methods.
- b. For registration in countries that are members of the Madrid Protocol, a base registration may be filed in Singapore through the Intellectual Property Office of Singapore ("IPOS"). This base registration is submitted by IPOS to the World Intellectual Property Organization ("WIPO"), which is then transmitted to the other member states for registration with the respective national trade mark offices. Other than Singapore, the 12 relevant countries that are members of the Madrid Protocol are Bhutan, Brunei, Cambodia, China, Indonesia, Japan, Laos, Mongolia, Philippines, South Korea, Thailand and Vietnam.
- c. As for registration in countries that are not members of the Madrid Protocol, namely, Bangladesh, Hong Kong, Macao, Malaysia, Myanmar, Nepal, Pakistan and Sri Lanka, a direct application has to be filed with the respective national trade mark offices.

**11 Cost**

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- a. Please find attached a preliminary cost estimate for the abovementioned filing process in 21 countries for 1 trade mark in 2 classes (Class 41 for organization of competitions and events for architecture and design and Class 42 for architectural consultancy services).



**Trade Mark Application  
Order Form**

**Ella Cheong LLC**  
300 Beach Road  
#31-04/05 The Concourse  
Singapore 199555

Date: 11/10/2019

Ref: ESG2017-0321

Country	Unit Price (SGD)	#Marks	#Classes	#Units	Price (SGD)
Singapore	1,700.00	1	2	2	3,400.00
International	10,900.00	1	2	1	10,900.00
Bangladesh	1,950.00	1	2	2	3,900.00
Hong Kong	2,550.00	1	2	2	5,100.00
Macao	1,400.00	1	2	2	2,800.00
Malaysia	1,500.00	1	2	2	3,000.00
Myanmar	2,550.00	1	2	2	5,100.00
Nepal	1,500.00	1	2	2	3,000.00
Pakistan	2,100.00	1	2	2	4,200.00
Sri Lanka	2,000.00	1	2	2	4,000.00

**REMARKS**

"International": For filing in 13 countries that are members of the Madrid Protocol, the quotation is based on the filing of an international application in Singapore which is then transmitted to the 12 other member states (Bhutan, Brunei, Cambodia, China, Indonesia, Japan, Laos, Mongolia, Philippines, South Korea, Thailand and Vietnam). For the other 8 non-member countries of the Madrid Protocol, a direct application has to be filed with their respective national registries, hence the separate fees.

**TERMS OF SERVICE**

- All prices are quoted inclusive of professional fees, official fees (for a specification not exceeding 10 items per class) and miscellaneous disbursements. Notarisation / legalisation costs are not included unless expressly stated.
- Prices cover only straightforward basic applications based on full information from Client. Registration is not guaranteed. If further work is involved (eg, preliminary searches, notarisation, legalisation, drafting of specification, translations, priority claims, late filing of documents, official objections/queries, extensions of time, oppositions, etc), additional fees shall be billed to and payable by Client in accordance with the further work done on a time and cost basis.
- All invoices issued pursuant to this Order are payable immediately in full without deduction of any taxes, levies and charges, notwithstanding any payment terms stated thereon. All amounts paid are strictly non-refundable under any circumstances.
- Performance of this Order by us is subject to
  - us receiving this Order duly signed by Client by the "Confirmation deadline";
  - our Terms of Engagement which Client acknowledges receipt of and is hereby incorporated by reference;
  - us receiving all necessary instructions required for performance of this Order; and
  - us receiving prompt payment by Client.
- Our service fees are subject to change without notice and we are not obliged to offer the same or similar prices under this Order Form for future orders.
- Please note that GST/SST indicated is only an estimate as official fees incorporated in the Price may not be subject to GST/SST.

<b>Sub-total</b>	45,400.00
Less: discount	-4,050.00
<b>Total before tax (in SGD)</b>	<u>41,350.00</u>
Add: 7% GST (est)	2,894.50
<b>Total after tax (in SGD)</b>	<u><u>44,244.50</u></u>

**PAYMENT SCHEDULE**

50% upon confirmation	22,122.25
50% upon report of filing	22,122.25

**CLIENT'S APPROVAL AND ACCEPTANCE**

I/We have read, understand and agree to be bound by these Terms of Service.

Client's Name: \_\_\_\_\_

Authorised Signatory: \_\_\_\_\_

Designation: \_\_\_\_\_

**CLIENT'S AUTHORISED SIGNATURE**

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