

CONSULTATION PAPER
ON THE DRAFT CIVIL LAW (AMENDMENT) BILL 2008

**(TO LOWER THE AGE OF CONTRACTUAL CAPACITY
FROM 21 YEARS TO 18 YEARS)**

25th AUGUST 2008 – 19th SEPTEMBER 2008

Introduction

1. The current minimum age of contractual capacity is tied to the age of majority, which is 21 years in Singapore. Over the years, the Pro-Enterprise Panel has received feedback that the legal barriers preventing young people from starting and conducting a business should be removed. The Government agrees that the current laws place unnecessary restriction on young people wishing to undertake business, and should be revised as part of the broader efforts to support an entrepreneurial society.
2. After a careful study, the Ministry of Finance (“MOF”) has proposed de-linking the age of majority from the age of contractual capacity and to reduce the age of contractual capacity from 21 years to 18 years.
3. To give effect to this proposal, MOF and the Ministry of Law (“MinLaw”) have completed drafting the amendments to the Civil Law Act as well as the consequential amendments to a number of other affected Acts that would be needed.
4. MOF and MinLaw invite interested parties to provide their feedback on this proposal and the amendments contained in the draft Civil Law (Amendment) Bill (“Bill”) which is annexed to this Consultation Paper.
5. The consultation period ends on Friday, 19 September 2008. You may send your feedback in electronic or hard copy form to:

Legal Policy Division
Ministry of Law
100 High Street
#08-02, The Treasury
Singapore 179434

Fax: 6332 8842
E-mail: MLAW_Consultation@mlaw.gov.sg

6. MOF and MinLaw reserve the right to make public all or parts of any written submission unless confidentiality is specifically requested for the whole or any part of the submission.

Scope of the draft Civil Law (Amendment) Bill

7. The draft Bill contains the following key provisions:
- (a) to give to contracts entered into by minors who have attained the age of 18 years the same effect as if they were contracts entered into by persons of full age;
 - (b) to make consequential and related amendments to certain other written laws so as to allow such minors to carry out certain business-related activities; and
 - (c) to allow such minors to bring, defend, conduct or intervene in certain legal proceedings or actions in their own names and without a litigation guardian, as if they were of full age.

(a) New section 35: New ability to contract

8. The proposed section 35(1) provides that every contract entered into by a minor who has attained the age of 18 years will have effect as if he were a person of full age, unless otherwise provided by the section itself or by any other written law. A contract made by such a minor will therefore be binding on and enforceable against him as if he were a person of full age.

9. The proposed section 35(3) states that the lowering of contractual age will not affect or limit:

- (i) a minor's lack of legal capacity to make a valid and binding contract arising from reasons other than his age; or
- (ii) any provision in any other written law that stipulates an age requirement for the purposes of that written law.

10. As the ability to make contracts extends over a wide range of matters, it is not possible to draft the legislation specific to contracts for business purposes only; business needs could also potentially be extensive. The draft Bill therefore specifically ring-fences the following two areas:

- (i) Sale and purchase of land - Minors below 21 years are at present not able to hold land nor to sell their beneficial interests in land. In view of the legal complexity surrounding this issue¹, no change

¹ If a minor is conferred land, for example by gift or inheritance, the Settled Estates Act creates an automatic trust by operation of law. The minor is not able to deal with his interest save with the sanction of court.

is proposed for minors 18 years and above. The draft Bill instead allows them to contract for leases not exceeding 3 years², and to additionally engage in the sale and purchase of land through the vehicle of a company³. This should be sufficient for their business needs until they reach 21 years. The proposed section 35 hence expressly states that the ability of an 18-year old to contract will not apply to contracts for the sale, purchase, mortgage, assignment or settlement of any land or a lease of land for more than 3 years. Only contracts for a lease of land for 3 years or less will be binding on the minor [new section 35(4)(b) of the draft Bill];

- (ii) Contracts where they may not sue or be sued without a guardian - At present, minors can only sue or be sued through a guardian. The draft Bill provides for lowering the age for them to sue on their own in some circumstances. For consistency, wherever they sue or are sued without a guardian, they are allowed to settle the lawsuits [proposed section 35(4)(d) of the draft Bill].

(b) Consequential and related amendments to fulfil business needs

11. The draft Bill also proposes consequential and related amendments to certain other written laws. These amendments are meant to facilitate minors who have attained the age of 18 years entering into valid and binding contracts and engaging in certain business-related activities e.g. be employed under a contract, be liable for bills of exchange, be allowed to sign a lease of up to 3 years (and for these leases not to be treated as settled estates under the Settled Estates Act), and be allowed to act as directors of companies or managers of limited liability partnerships [Clause 3 of the draft Bill].

(c) New section 36: Litigation

12. Under section 2(2) of the Limitation Act (Cap 163) and Order 76 of the Rules of Court (Cap 332), a minor is deemed to be a person under a disability. Section 24 of the Limitation Act extends the limitation period in respect of certain legal proceedings or actions for persons under disability, while Order 76 of the Rules of Court makes special provisions for persons under disability involved in litigation (e.g. a person under a disability must sue or defend via a

² Consequential amendments to the Conveyancing and Law of Property Act and Settled Estates Act are suggested in tandem.

³ The Companies Act will be amended to permit this. Minors aged 18 may be directors of companies.

litigation guardian; any compromise or settlement of a claim on behalf of a person under a disability must be approved by the court, etc.)

13. The proposed section 36 (1)(a) allows a minor who has attained the age of 18 years to litigate in his own name, as if he were of full age, in the types of legal proceedings or actions specified in the Schedule appearing just after the proposed section 36(2) in the draft Bill. These are legal proceedings or actions that arise from the contracts to which he is a party, or from the commercial activities which he is allowed to engage in by virtue of the Bill.

14. The draft Bill also makes it clear that a minor who has attained the age of 18 years will not be considered to be a person under disability for the purpose of any legal proceeding or action specified in the Schedule to which he is a party. The proposed Section 36(1)(b):

- (a) frees such a minor from the requirements –
 - (i) under Order 76, Rule 10 of the Rules of Court that a minor must litigate through a litigation guardian; and
 - (ii) under Order 76, Rules 10 and 11 of the Rules of Court that the court's approval must be obtained for the compromise or settlement of any claim by or against a minor; and
- (b) exclude the application, in respect of such a minor, the extension of the limitation period for minors under section 24 of the Limitation Act.

15. The Schedule may be amended by the Minister for Law from time to time to expand the list of legal proceedings or actions to which the proposed section 36 applies.

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Ministry of Finance and Ministry of Law

25th Aug 2008