

Limited Liability Partnership in Malaysia

INTRODUCTION

This article aims to provide an overview on the salient features of a limited liability partnership (“LLP”) in Malaysia. LLP is governed under the Limited Liability Partnerships Act, 2012 (“LLPA 2012”) and Limited Liability Partnerships Regulations, 2012 (“LLPR 2012”). Albeit LLP exhibits the characteristics of a conventional partnership and private limited company, LLPA 2012 expressly ruled out that the rules of equity and of common law applicable to partnerships, shall not be applicable to a limited liability partnership registered under LLPA 2012.

There are 5 types of business entities in Malaysia ie. sole proprietorship, partnership, limited liability partnership, private limited company and public company. Each of these business entities are governed by different laws and regulations enacted in this Malaysia.

DIFFERENCE BETWEEN A LIMITED LIABILITY PARTNERSHIP & CONVENTIONAL PARTNERSHIP

Section 3 of the Partnership Act, 1961 defines partnership to be the relation which subsists between persons carrying on business in common with a view of profit. Conventional partnership does not confer any limited liability on the partners and a partner will be liable for any debt incurred by the other partner in the course of the partnership business¹. Tindal CJ in *Green v Beesley*² aptly said, “I have always understood the definition of partnership to be a mutual participation in profit and loss.”.

Conversely, LLP has a separate legal personality and capacity from that of its partners, akin to a private limited company. Section 3 of the LLPA 2012 provides that a limited liability partnership shall have unlimited capacity and shall be capable of:

- ◆ suing and being sued;
- ◆ acquiring, owning, holding and developing or disposing of property; and
- ◆ doing and suffering such other acts and things as body corporate may lawfully do and suffer.

Thus, a partner in this context is not personally liable for the wrongful act or omission of any other partner of the limited liability partnership. Nevertheless, a partner of a LLP will be held liable for his own wrongful act or omission in the course of the LLP business.



REGISTRATION AND FORMATION OF A LIMITED LIABILITY PARTNERSHIP

Registration of a LLP shall be made to the Companies Commission of Malaysia (CCM) accompanied by prescribed fees, documents and statement to be signed by all partners containing the following particulars:

- ◆ the name of the proposed limited liability partnership;
- ◆ the general nature of the proposed business of the limited liability partnership;
- ◆ the proposed registered office of the limited liability partnership;
- ◆ the name, nationality and the usual place of residence of every person who is to be a partner and, where any of the partners is a body corporate, the corporate name, place of incorporation, establishment or origin, registration number and registered office of the body corporate;
- ◆ the name, nationality and the usual place of residence of every person who is to be a compliance officer of the limited liability partnership; and
- ◆ such other relevant information as may be specified by CCM.

In addition to the above, a foreign LLP shall lodge the following with CCM:

- ◆ a certified copy of the certificate of registration or any other similar document; and
- ◆ a certified copy of its charter or instrument defining its constitution, if any.



LLP or foreign LLP shall consist of 2 or more persons (wholly or partly), individuals or body corporate and a LLP shall appoint at least 1 compliance officer from amongst its partners or persons qualified to act as secretaries under the Companies Act, 2016 who is a citizen of permanent resident of Malaysia and ordinarily resides in Malaysia. The compliance officer shall be responsible to do all acts, matters and things as required under the LLPA 2012 and LLPR 2012 including without limitation to lodge on behalf of the LLP, all kinds of documents, instruments and indentures in accordance to the directions imposed by the Companies Commission of Malaysia.

It is pertinent to note that unless otherwise proven, a compliance officer shall be personally liable to all penalties including administrative penalties imposed on the LLP. In any event where there are no compliance officers is appointed, then all partners shall be deemed as the compliance officers of the LLP.

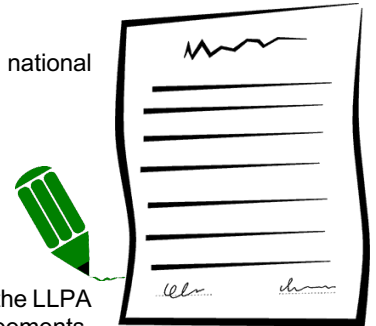
¹ *Tham Kim Fai @ Tham Kim Fay v Ng Kon Seong* [2006] 7 MLJ 1
² [1835] 2 Ring NC 108 at 112

Once LLP is established, the LLP or foreign LLP is required and shall continue to oblige to the requirements as set out under the LLPA 2012 and LLPR 2012 including amongst others to register of changes in particulars, keeping of registers, statutory and accounting records and to lodge annual declaration with CCM.

LIMITED LIABILITY PARTNERSHIP AGREEMENT

Section 9 of the LLPA 2012 states that a limited liability partnership agreement shall be in the national language or English language and shall consists of the following particulars:

- ◆ the name of the limited liability partnership;
- ◆ the nature of business of the limited liability partnership;
- ◆ the amount of capital contribution by each partner; and
- ◆ that the partners have agreed to become partners of the limited liability partnership.



Nevertheless, LLPA 2012 further provides a safety net via default provisions in Second Schedule of the LLPA 2012 to govern the mutual rights and duties of the partners in the absence of any written agreements. Amongst the notable protections accorded to the partners in a LLP business are:

- ◆ All the partners of a limited liability partnership are entitled to share equally in the capital and profits of the limited liability partnership.
- ◆ No partner shall be entitled to remuneration for acting in the business or management of the limited liability partnership.
- ◆ Any matter or issue relating to the limited liability partnership shall be decided by resolution passed by a majority in number of partners, and for this purpose, each partner shall have one vote.
- ◆ If a partner, without the consent of the limited liability partnership, carries on any business of the same nature as and competing with the limited liability partnership, the partner must account for and pay over to the limited liability partnership all profits made by the partner in that business.
- ◆ No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

CONCLUSION

Whilst the existing law and regulations in Malaysia in relation to limited liability partnerships may have provided provisions for the formation, operation, management, dissolution and disputes of a limited liability partnership, it is pertinent to have in place a tailor made limited liability partnership agreement to govern the relationship amongst the partners and the making of provisions for the management, operations and the conduct of affairs of a LLP business. This is also to attain certainty where partners could have formalized any prior dialogues, discussions and agreements to avoid unnecessary disputes. As a matter of prudence, the LLPA 2012 and LLPR 2012 shall be used as the minimum benchmark for any arrangement of similar nature.

All information in this Newsletter is correct as at **30 November 2019** unless otherwise stated.

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