

person of more than 50%, or who has an aggregate interest in shares of a licensed person of less than 50% but has control over the licensed person, proposes to dispose of any interest in shares and the disposal will result in the shareholder holding an interest in shares of less than 50% or in the shareholder ceasing to have control over the licensed person.²¹

²¹ S 89 of the FSA, S 101 of the IFSA.

The FSA also provides clarity on the definition of “interests in shares”, which would include a direct interest in shares, effective interest in shares and also aggregates legal, beneficial, direct and effective interests.²²

²² Sch. 3 of the FSA and IFSA.

Conclusion

As we know, the financial sector is developing at a much speedier pace now, and to cope with it, the FSA and IFSA are designed specifically to preserve financial stability and to further support the growth of the robust Malaysian financial system and the real economy. The canvas of the financial sector is now painted to express a principles-based approach, which combines greater supervisory judgment and intensity with high-level principles of sound practice. The bigger picture is to cater for the much more sophisticated and interconnected financial system as the financial sector revolutionises. The changes introduced will revamp the architecture under which the financial players and investors operated for the last 20 years. Time will tell whether the efforts will pay off.

An Overview of the Limited Liability Partnerships Act 2012 (“LLPA”)

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Introduction

A. The LLPA is an Act to provide for the registration, administration and dissolution of limited liability partnerships (“LLP”) and to provide for related matters.

B. The LLPA has come into force with effect from 26 December 2012.

Fundamentals Of A LLP

A. A LLP is a body corporate and has legal personality separate from that of its partners.¹

B. A LLP has perpetual succession.²

¹ Section 3(1)

² Section 3(2)

³ Section 3(3)

C. Any change in the partners of a LLP does not affect the existence, rights or liability of the LLP.³

⁴ Section 3(4)

D. A LLP has unlimited capacity and is capable of:⁴

⁵ Section 3(4)(a)

(i) suing and being sued;⁵

⁶ Section 3(4)(b)

(ii) acquiring, owing, holding and developing and disposing of property; and⁶

⁷ Section 3(4)(c)

(iii) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.⁷

⁸ Section 4

E. The Partnership Act 1961 and the rules of equity and common law applicable to partnerships are not applicable to a LLP registered under the LLPA.⁸

Formation Of A LLP

⁹ Section 6

A. Any two or more persons consisting of individuals or bodies corporate associated for carrying on any lawful business with a view to profit may form a LLP in accordance with the terms of a LLP agreement entered into between the partners (“LLP Agreement”).⁹

¹⁰ Section 8

B. A LLP may be formed for the carrying on of a professional practice.¹⁰

¹¹ Section 2

(i) professional practice¹¹ means the practice of:

¹² First Schedule

(aa) a chartered accountant;

(bb) an advocate and solicitor; and

(cc) a company secretary;¹²

¹³ Section 8(a)

(ii) the partners of a professional practice must:

(aa) consist of natural persons practising the same professional practice only;¹³

¹⁴ Section 8(b)(i)

(bb) have in force professional indemnity insurance cover for an amount as

¹⁵ Section 8(b)(ii)

approved by the Registrar of LLP¹⁴ (“**Registrar**”) (and if applicable after consultation with the governing body of the professional practice¹⁵).

¹⁶ Section 9(1)(a)

C. The mutual rights and duties of the partners of a LLP, and the mutual rights and duties of the LLP and its partners, are governed by the LLP Agreement.¹⁶

¹⁷ Section 9(2)

D. The LLP Agreement must consist of the following¹⁷:

¹⁸ Section 13(1)

(i) the name of the LLP which must end with the words “*Perkongsian Liabiliti Terhad*” or “*PLT*”¹⁸;

¹⁹ Section 9(2)(b)

(ii) the nature of business of the LLP¹⁹;

²⁰ Section 9(2)(c)

(iii) the amount of capital contribution by each partner²⁰;

²¹ Section 9(2)(d)

(iv) the partners have agreed to become partners of the LLP²¹; and

(v) unless provided otherwise in the LLP Agreement, the LLP Agreement is deemed to provide for the matters specified in the Second Schedule of the LLPA²² which include:

²² Section 9(1)(b)

(aa) all the partners are entitled to share equally in the capital and profits of the LLP²³;

²³ Item 2 of the Second Schedule

(bb) the LLP must indemnify each partner in respect of payments made and personal liabilities incurred by that partner in the ordinary course of business of the LLP or for the preservation of the business or property of the LLP²⁴;

²⁴ Item 3 of Second Schedule

(cc) every partner must take part in the management of the LLP²⁵;

²⁵ Item 4 of Second Schedule

(dd) any matter relating to the LLP shall be decided by resolution passed by a majority in number of partners and each partner shall have one vote²⁶;

²⁶ Item 8 of Second Schedule

(ee) no majority of the partners can expel any partner unless a power to do so has been expressly provided in an agreement between the partners²⁷.

²⁷ Item 12 of Second Schedule

Registration Of A LLP

- ²⁸ Section 10(1) A. A person may apply for registration of a LLP to the Registrar by submitting the documents specified and paying the fee as prescribed, by the Registrar.²⁸
- ²⁹ Section 10(3) B. A LLP formed for the purposes carrying on a professional practice shall be accompanied by an approval letter from the relevant governing body (e.g. the Malaysian Bar in the case of an advocate and solicitor in West Malaysia).²⁹
- ³⁰ Section 11(3) C. A LLP is duly registered under the LLPA once a notice of registration has been issued by the Registrar.³⁰

Liabilities Of A Partner

- ³¹ Section 21(2) A. A partner is not personally liable for any obligation of a LLP, i.e. the obligation is solely the obligation of the LLP.³¹
- ³² Section 21(3) B. A partner is personally liable for his/her own wrongful act or omission but he/she is not personally liable for the wrongful act or omission of any other partner.³²
- ³³ Section 21(4) C. If a partner is personally liable as a result of his/her own wrongful act or omission the LLP is liable to the same extent as the partner.³³
- ³⁴ Section 21(5) D. The liabilities of a LLP shall be borne out of the property of the LLP.³⁴
- ³⁵ Section 23(1) E. Every partner of a LLP is the agent of the LLP³⁵ and the LLP may disclaim liability for anything done by a partner if:
- ³⁶ Section 23(2)(a) (i) the partner is acting without authority; and³⁶
- ³⁷ Section 23(2)(b)(i) (ii) the person dealing with the partner knows that the partner has no authority³⁷
- ³⁸ Section 23(2)(b)(ii) or does not know that he is a partner of the LLP.³⁸

Conversion From Conventional Partnership To LLP, etc.

- ³⁹ Section 2 A. A partnership registered under the Registration of Businesses Act 1956 and a partnership formed for the purposes of carrying on any professional practice may convert to a LLP.³⁹ An application for conversion requires inter alia
- ⁴⁰ Section 31(1)(b) an approval letter from the relevant governing body.⁴⁰
- ⁴¹ Section 30(1)(a) B. A private company may convert to a LLP if:
- (i) there is no subsisting security interest at the time of its application for conversion; and⁴¹
- ⁴² Section 30(1)(b) (ii) the partners of the LLP to be converted comprise all the shareholders of the private company only.⁴²
- ⁴³ Section 31(2)(a) An application for conversion requires a statement signed by all its shareholder⁴³ including a statement that all of its creditors have agreed with the application for conversion⁴⁴ and the Registrar may require the statement to be verified.⁴⁵
- ⁴⁴ Section 31(2)(a)(vi)
- ⁴⁵ Section 31(3)
- ⁴⁶ Section 32(2) C. The Registrar may refuse to register a conversion if he is not satisfied with the particulars or information furnished.⁴⁶
- ⁴⁷ Section 33(1)(c) D. Upon registration, the conventional partnership or private company shall be deemed to be dissolved⁴⁷ (and shall be removed from the register of business or register of companies maintained under the relevant Act, as the case may be⁴⁸)
- ⁴⁸ Section 33(1)(d) and take effect as a LLP under the LLPA.⁴⁹
- ⁴⁹ Section 33(1)(a)

⁵⁰ Section 34⁵¹ Section 35

E. Any pending proceeding by or against the conventional partnership or private company on the date of registration may be continued, completed and enforced by or against the LLP.⁵⁰ The same applies to any conviction, ruling, order or judgment.⁵¹

⁵² Section 36

F. Any agreement entered into by the conventional partnership or private company prior to the date of registration shall continue in force and enforceable by or against the LLP as if the LLP were named as a party thereto on and after the date of registration as a LLP.⁵²

⁵³ Section 40

G. However, any approval, permit or licence issued under any written laws prior to the date of registration as a LLP will no longer be applicable to the LLP.⁵³

⁵⁴ Section 41(1)

H. Every partner of a conventional partnership continues to be personally liable with the LLP for any liability or obligation incurred by the conventional partnership prior to the conversion or which arose from any contract entered into prior to the conversion.⁵⁴ Once any such liability or obligation has been discharged by the partner, that partner is entitled to be fully indemnified by the LLP unless provided otherwise in any agreement with the partners.⁵⁵

⁵⁵ Section 41(2)

Winding-Up Of A LLP

⁵⁶ Section 49(1)

A. The provisions in the Companies Act 1965 relating to a receivership and winding-up by the Court of a company limited by shares shall apply to the receivership and winding-up of a LLP.⁵⁶

⁵⁷ Section 50(1)

B. Voluntary winding-up of a LLP is governed by the LLPA,⁵⁷ i.e. when a LLP has ceased to operate and has discharged all its debts and liabilities a partner of the LLP may apply to the Registrar for a declaration of dissolution of the LLP.⁵⁸ A creditor may object the proposed dissolution within thirty (30) days of the date of publication or posting of the notice of dissolution.⁵⁹

⁵⁸ Section 50(2)⁵⁹ Section 50(5)