LIMITED LIABILITY PARTNERSHIP ACT
2012
OVERVIEW

- INTRODUCTION
- FRAMEWORK FOR MALAYSIA
  - Formation and Registration
  - Conversion to LLP and Notification
  - Administration and Management
  - Dissolution
What is a limited liability partnership?

- A new business vehicle.
- Combine the characteristics of a company and conventional partnership offering fundamentally:
  
  i. the privilege of limited liability accorded to the partners of the LLP; and
  
  ii. the flexibility of internal management.
**GENERAL CHARACTERISTICS**

- **Is a body corporate separate from its partners and may do and suffer such acts and things as bodies corporate may lawfully do and suffer**

- **LLP**
  - Has unlimited capacity and capable of suing and being sued and capable of acquiring, owning and holding property
  - Has perpetual succession
  - Any changes in relation to the partners will not affect the existence, rights or liabilities of the LLP
RATIONAL FOR THE INTRODUCTION OF LLP IN MALAYSIA

Access to limited liability status

• To encourage entrepreneurship and to promote business growth.

Closing the gap in current framework

• To provide an alternative business vehicle to complement the traditional choices of business vehicles.
• To provide flexibility and freedom to select the best business model that suits needs and requirements of businesses on the basis of commercial criteria.

Cost effectiveness of doing business

• More affordable vis-à-vis companies
• More protection vis-à-vis sole proprietorships/firms
TARGET AUDIENCE FOR LLP IN MALAYSIA

- SMALL BUSINESSES
- PROFESSIONAL PRACTICE
- JOINT VENTURES
- VENTURE CAPITALS
WHO CAN REGISTER LLP?

LLP may be formed by any business groups to carry on any lawful business with the view to make profit. However, the main targeted business groups are:

- Small & Medium businesses
- Professionals
- Joint ventures
- Venture capitals
Amongst others the main differences are:

• Conventional Partnership is not a legal entity separate from its partners, while LLP is a legal entity separate from its partners.

• Liability of a partner is unlimited under the Partnership Act 1961 while in the case of LLP, the liability of a partner is limited to the extent of their capital contribution.

• A conventional partnership does not have perpetual succession but LLP has perpetual succession.

• In case of a conventional partnership the property of the firm belongs to the partners who are collectively entitled to it but in case of an LLP the property belongs to the LLP and not to the partners individually.
### FRAMEWORK FOR MALAYSIA

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There are many fundamental differences between an LLP and a company. Amongst others, the main differences are:

- No issuance of shares
- Flexibility in making decisions
- No formal requirement for Annual General Meetings
- No requirement to submit financial statements to SSM
- Accounts need not be audited.
FORMATION & 
REGISTRATION OF LLP
FORMATION OF LLP

- LLP may be formed:
  - by a minimum of two persons (wholly or partly individuals or bodies corporate);
  - for any lawful business with a view of profit; and
  - in accordance with the terms of the LLP agreement.

**Note:**

An LLP may, after the registration, carry on business with fewer than 2 partners for a period not exceeding 6 months or a longer period allowed by the Registrar (not exceeding 1 year) upon an application from the remaining partner.
FORMATION OF LLP

LLP for Professional Practice

First Schedule of the LLP Act 2012 describes the professions eligible to register as Professional Practice:

• Chartered Accountants regulated under the Accountants Act 1967
• Advocates & Solicitors regulated under the Legal Profession Act 1976, Advocates Ordinance of Sabah and Advocates Ordinance of Sarawak
• Secretaries regulated under the Companies Act 1965

LLP formed for professional practice must:

• consist of natural persons of the same profession; and
• have in force professional indemnity insurance as approved by the Registrar.
FORMATION OF LLP

Second Schedule of the LLP Act 2012

- The mutual rights and duties of the partners and the mutual rights and duties of a LLP and its partners shall be determined, subject to the terms of any LLP agreement, by the provisions in this schedule.

- All partners of an LLP are entitled to share equally in the capital and profits of the LLP.

- The LLP must indemnify each partner in respect of payments made and personal liabilities incurred by that partner:
  (a) in the ordinary and proper conduct of the business of the LLP; and
  (b) in or about anything necessarily done for the preservation of the business or property of the LLP.
FORMULATION OF LLP

Second Schedule of the LLP Act 2012

- Every partner may take part in the management of the LLP.
- No partner shall be entitled to remuneration for acting in the business or management of the LLP.
- No person may be introduced as a partner without the consent of all existing partners.
- No person shall assign all or part of his or its interest in the LLP without the consent of all existing partners.
- Any matter or issue relating to the LLP shall be decided by resolution passed by a majority in number of partners, and for this purpose, each partner shall have one vote.
FORMATION OF LLP

Second Schedule of the LLP Act

- Each partner shall render true accounts and full information of all things affecting the LLP to any other partner or that other partner's legal representatives.
- If a partner, without the consent of the LLP, carries on any business of the same nature as and competing with the LLP, the partner must account for and pay over to the LLP all profits made by the partner in that business.
- Every partner must account to the LLP for any benefit derived by that partner without consent of the LLP from any transaction concerning the LLP, or from any use by that partner of the property, name or any business connection of the LLP.
- No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.
The following matters may be considered to be included in the LLP agreement:

- Form & Manner of Contribution between partners
- Profit & loss sharing ratio
- The manner as to how the business should be carried out
- Admission & cessation of partners.
- Details of partners accountable/authorized for banking matters.
- Specific decisions like investment, taking/giving loan, disposition of property of LLP etc to be made by majority partners.
- Requirement of disclosure of substantial interest of Partner in transactions to be entered by the LLP.
- Manner of dispute resolution
Appointment of Compliance Officer

- Every LLP must appoint at least one compliance officer.
- Compliance officer must be either one of the partners or persons qualified to act as a secretary under the Companies Act 1965.
- Compliance officer must be—
  - A citizen or PR of Malaysia; and
  - Ordinarily resides in Malaysia.
- A person is disqualified to act as a compliance officer if he is an undischarged bankrupt or is disqualified to act as a director or secretary under the Companies Act 1965.
- Consent to act must be lodged with the Registrar.
REGISTRATION OF LLP

- Information required for registration:
  - proposed name of LLP
  - nature of business
  - address of registered office
  - name and details of partners
  - name and details of compliance officer
  - approval letter from governing bodies (in cases of professional practice).
REGISTRATION OF LLP

Approval letter from governing bodies (in cases of professional practice).

- Approval letter confirming the following details of the proposed LLP
  - Current partners (including membership number)
  - Registered address
  - Registration date with governing bodies (including any reference number)
  - Insurance coverage
REGISTRATION OF LLP

Registration to be done by Compliance Officer

- A registration of LLP is required to be done by the Compliance Officer appointed by the LLP
- Compliance Officer is required to be registered with SSM

Regulation 6 of the LLP Regulations 2012

- Where any document is required to be lodged with the Registrar by the partners or the LLP, it shall be lodged by a compliance officer of the LLP on behalf of the partners or the LLP, as the case may be.
REGISTRATION OF LLP BY CHARTERED ACCOUNTANTS
(New Registration of Audit Firm)

Complete the necessary registration process with MIA first and obtain approval letter from MIA to form LLP as required under section 10(3) of the LLP Act 2012

Register LLP via MyLLP Portal

For Audit Firm apply AF number separately similar to the current practice in complying with Regulation 8A of the Companies Regulations 1966

Submit details of LLP registration and AF number to MIA
REGISTRATION OF LLP BY CHARTERED ACCOUNTANTS (New Registration of Non-Audit Firm)

Complete the necessary registration process with MIA first and obtain approval letter from MIA to form LLP as required under section 10(3) of the LLP Act 2012

Register LLP via MyLLP Portal

Submit details of LLP registration to MIA
CONVERSION INTO LLP
CONVERSION OF PRIVATE COMPANY INTO LLP

Eligibility criteria:

- Same shareholders and no one else.
- There is no subsisting security interests in its assets.
- At the date of application, the private company is solvent.
- All outstanding statutory fees to government agencies has been settled.
- Advertisement has been placed in a widely circulated newspaper and the Gazette.
- All creditors agreed to the conversion.
CONVERSION TO LLP

Who can convert?

- Conventional partnerships:
  - registered under the Registration of Businesses Act 1956; or
  - any partnership established by two or more persons for the carrying on any professional practice

- Private companies incorporated under the Companies Act 1965.
CONVERSION FROM CONVENTIONAL PARTNERSHIP TO LLP

• Eligibility criteria:
  
  ➢ Same partners and no one else.
  
  ➢ At the date of application, the conventional partnership appears to be able to pay its debts.
  
  ➢ In cases of professional practice, the approval letter from the governing body.
CONVERSION FROM CONVENTIONAL PARTNERSHIP TO LLP

- Effect of conversion:
  ✓ Vesting of assets of the conventional partnership into the LLP;
  ✓ Pending proceedings may be continued, completed and enforced against or by the LLP.
  ✓ Any conviction, ruling, order or judgement against the conventional partnership may be enforced by or against the LLP.
  ✓ Existing appointment, authority or power shall continue to have effect as if the LLP were appointed.
  ✓ Existing agreements, contracts shall have effect as though the LLP were a party.
  ✓ LLP continue to be liable for liabilities and obligations incurred prior to the conversion.

Note:
Conversion as of right is not applicable to matters in relation to approval, permit or licence issued under any written law to the conventional partnership which is in force immediately before the date of registration of the LLP.
CONVERSION FROM PRIVATE COMPANY TO LLP

- Eligibility criteria:
  - Same shareholders and no one else.
  - There is no subsisting security interests in its assets.
  - At the date of application, the private company is solvent.
  - All outstanding statutory fees to government agencies has been settled.
  - Advertisement has been placed in a widely circulated newspaper and the Gazette.
  - All creditors agreed to the conversion.
## CONVERSION FROM PRIVATE COMPANY TO LLP

- **Effect of conversion:**
  - Vesting of assets of the private company into the LLP;
  - Pending proceedings may be continued, completed and enforced against or by the LLP.
  - Any conviction, ruling, order or judgement in favour or against the Private Company may be enforced by or against the LLP.
  - Existing appointment, authority or power shall continue to have effect as if the LLP were appointed.
  - Existing agreements, contracts shall have effect as though the LLP were a party.
  - LLP continue to be liable for liabilities and obligations incurred prior to the conversion.

**Note:**
Conversion as of right is not applicable to matters in relation to approval, permit or licence issued under any written law to the private company which is in force immediately before the date of registration of the LLP.
CONVERSION TO LLP

Requirements after the conversion

- If any property is registered with a relevant authority, the LLP shall, as soon as practicable after the date of registration, take all necessary steps as required by the relevant authority to notify that relevant authority of the conversion and of the particulars of the LLP.

- The LLP shall ensure that for a period of twelve months commencing fourteen days after the date of registration, every invoice or official correspondence of the LLP bears the following:

  (a) a statement that it was, as from the date of registration, converted from a conventional partnership or private company, as the case may be, to LLP; and

  (b) the name and registration number of the former entity, if applicable.
CONVERSION TO LLP

Additional requirement for conversion from Private Company to LLP

All statutory books, registers and other records that are required to be maintained or kept by a private company under the companies Act 1965 shall be transferred to the LLP and kept at its registered office for a period of seven years from the date of registration.
REGISTRATION OF LLP BY CHARTERED ACCOUNTANTS
(Converting an existing Audit Firm to LLP)

1. Obtain approval letter from MIA to convert to LLP as required under section 10(3) of the LLP Act 2012
2. Register LLP via MyLLP Portal
3. For Audit firm retain existing AF number
4. Submit details of LLP registration to MIA
5. Inform SSM to update status in the Register of Audit Firm under Regulation
REGISTRATION OF LLP BY CHARTERED ACCOUNTANTS
(Converting an existing Non-Audit Firm to LLP)

Obtain approval letter from MIA to convert to LLP as required under section 10(3) of the LLP Act 2012

Register LLP via MyLLP Portal

Submit details of LLP registration to MIA
ADMINISTRATION OF LLP
PARTNERS: DUTIES AND LIABILITIES

- Any individual or body corporate can be a partner.
  - “Partner” means any person admitted as a partner in accordance to the LLP agreement and includes salaried partner.

- Every partner is an agent of an LLP.

- Any obligation arising from contract or tort will be the liability of the LLP and not the partners.

- A partner however will be jointly liable for his own wrongful act or omission in the course of the business of the LLP.

- Liabilities of LLP will be borne out of the property of the LLP.
PARTNERS: DUTIES AND LIABILITIES

- However, the LLP is not bound by what the partner has done in dealing with a person if:
  - the partner acted without authority; and
  - the person with whom the partner was dealing knows; or
    that the partner acted without authority or does not know that he is a partner of the LLP.

- A former partner is still regarded as a partner of an LLP unless—
  - the person with whom the partner was dealing knows that the partner has ceased to be a partner; or
  - Notice of cessation has been lodged with Registrar.
• Automatic cessation:
  - Upon death/dissolution of a partner; and
  - in the case of a professional practice, the partner has been disqualified from carrying out the professional practice.

• Voluntary cessation:
  - a partner may cease to be a partner in accordance with the LLP agreement; or
  - in the absence of such an agreement, by giving a 30 days notice to the other partners.

• Bankruptcy of a partner will not cause a partner to cease being a partner.
LLP must appoint at least one compliance officer who must be either one of the partners or persons qualified to act as a secretary under the CA 1965 who is a citizen or PR of Malaysia and ordinarily resides in Malaysia.

Statutory duties of a compliance officer:
- Registering any changes in registered particulars of LLP;
- Keeping and maintaining registers/records of the LLP; and
- Ensuring publication of names of the LLP

Will be personally liable for the contravention of the statutory duties unless the court is satisfied that he is no so liable.
OTHER COMPLIANCE REQUIREMENTS

- Registered office
  - LLP must have a registered office in Malaysia at all times.
- Keeping of certain registers and statutory records at the registered office
  - Notice of registration and Register of partners
  - Copies of LLP Agreement, annual declaration/any statement lodged with the Registrar
  - Instrument of charges.
- Auditing of accounts will be optional. LLP must keep accounting and other records to sufficiently explain its financial position i.e. to give a true and fair view of the state of the affairs of the LLP.
OTHER MATTERS
Power to issue guidelines, practice notes, etc.

- The Registrar has power to issue notices, circulars, guidelines, or practice notes in respect of any provisions under the LLP Act 2012.

- The Registrar has power to take administrative actions against persons who have failed to comply/give effect to the notice, circular, guideline or practice note issued.
PUBLICATION OF LLP NAME ON OFFICIAL DOCUMENTS

**Letterhead**

ABC & CO PLT (LLPxxxxxxx-LCA) & AF xxxx
(Formerly known as ABC & Co registered under the Accountants Act 1967)

**Signing Audit Report**

-Sgd-
ABC & Co PLT (LLPxxxxxxx-LCA)

AF xxxx
Kuala Lumpur
Date

Mr xxx
605/04/2013
Chartered Accountant
OTHERS
• Malaysian Code on Corporate Governance 2012

- Specifically targeted at companies listed on Bursa Malaysia (LC). Though it is not mandatory, but LC are required to explain in the annual report how they have complied with and justify for non-observance of any of the recommendations.

- All companies are encouraged to adopt the principles and recommendations of MCCG 2012 and make good corporate governance an integral part of the business dealings and culture.

- For LC with financial year ending 31.12.2012 onwards
The status quo is not an option!

The Way Forward

October 2011