Limited Liability Partnership (LLP@PLT): New Business Vehicle for The Malaysian Legal And Accounting Private Practice

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ABSTRACT
Prior to 2012, the business practice and legal frameworks in Malaysia were primarily carried out in the form of sole proprietorships, partnerships and registered company. However, with the development of the economy, the general partnership structure was found to be no longer suitable for some of businesses, particularly professional ones. The rising cost of conducting trade and litigation has forced partners to take precautions with regards to liabilities connected with doing business. This led to the introduction of limited liability partnership (LLP). In Malaysia, the Limited Liability Partnership (LLP) Act was enacted in February 2012; it introduced a new business vehicle in the local market. LLPs are seen as alternative business vehicles for professionals in Malaysia who are not allowed to carry out business in the form of companies, namely lawyers and accountants. Such restriction is provided by the professional’s regulatory body such as the Bar Council and the Malaysian Institute of Accountants. With the introduction of LLP, these two professions are allowed to enjoy quasi limited liability by carrying out their private practice in the form of LLP. This paper discusses the legal framework of Malaysian LLP and how it is useful for the legal and accounting private practice.

Keywords: Limited liability partnership, professional businesses, Malaysia

INTRODUCTION
LLP is a fascinating and innovative business vehicle or legal framework that blends some elements of corporate structure with
some elements of partnership structure. It is an additional option of business vehicle for general and several professionals businesses. In Malaysia, lawyers and accountants are not allowed to carry out private practice in the form of incorporated companies. Such restrictions are provided by legislations regulating professional membership and other professional regulatory frameworks under the Legal Profession Act 1976 and the Accountant Act 1967.

BUSINESS RESTRICTIONS ON PROFESSIONALS

In Malaysia, there are two categories of professional who are not allowed to carry out their legal or accounting practice by way of incorporation or under incorporated companies. They are advocates and solicitors and the accountants. Such restrictions are derived from the rules and provisions of respective legislations that govern these professions and their professional practice.

Section 18 of the Accountants Act 1967 clearly states that, with reference to accountants:

Without prejudice to any other provisions of this Act or rules or by-laws no member shall -
(a) allow any person not being a member to practice in his name as a chartered accountant;
(b) be a director or a shareholder in a company incorporated under the Companies Act, 1965, or any other written law, being a company which carries on a business of auditing, nor shall he use a trade or association name under which to practise the profession;
(c) in any way, practice as a chartered accountant or licensed accountant other than:
   (i) in his own name;
   (ii) in the name or names of his partner or partners being chartered accountants or licensed accountants; or
   (iii) in the name of a firm existing at the time of the coming into operation of this Act or formed thereafter provided that the partners in Malaysia are eligible to be registered as chartered accountants or licensed accountants;

Rule 2 of the Malaysian Institute of Accountants (Membership and Council) Rules 2001[P.U.(A)343/2001] (as amended by the Malaysian Institute of Accountants (AMENDMENT) RULES 2002 [P.U.(A)258/2002]), provides that “member in public practice” means a chartered accountant or licenced accountant who, as a sole proprietor or in a partnership, provides or is engaged in public practice services in return for a fee or reward for such services otherwise than as an employee. The exclusion of the word ‘company’ in both the Accountants Act 1967 and the Malaysian Institute of Accountants (Membership and Council) Rules explicitly provides that the business vehicles in which the accounting private practice could be carried out is only either the sole proprietorship or partnership.

As for advocates and solicitors, the main regulation that governs the
professional practice is the Legal Profession Act (LPA) 1976. The Bar Council also issues rules and rulings pertaining to the practice, conduct and etiquette of advocates and solicitors (collectively “Rulings”). These Rulings are generally made ad-hoc as a result of specific queries made by advocates and solicitors or members of the public. Chapter 1 of the Rulings, clause 1.01(1) clearly provides that all references to a “firm” or a “law firm” mean a firm of advocates and solicitors whether a partnership or a sole proprietorship. Again, similar to the ruling for accountants, the exclusion of company structure from the definition of the term ‘firm’, clearly indicates that the legal private practice can only be carried out in the form of sole proprietorship or partnership.

LIMITED LIABILITY PARTNERSHIPS (LLP)

LLP is a business approach that combines the best features of the partnership framework and corporate structure. It enjoys all the attributes of a body corporate, namely separate legal entity, limited liability, perpetual succession and legal entity but at the same time retaining the internal flexibility of a partnership. There are many types of LLPs; the type mainly depends on the legal status of the LLP. For example, in the United Kingdom (UK), the Jersey LLP (the Isle of Jersey is an offshore of the UK) has the status of a legal person but not a body corporate whilst in the UK itself, the LLP is an entity with a body corporate status. In India and in the United States of America (USA), the LLP is a legal entity with the status of a partnership. In the Southeast Asian region, only Malaysia and Singapore have LLPs and in both countries LLP are legal entities with a body corporate status.

An interesting feature of the LLPs is that whatever legal status it has, the internal regulation of all LLPs is based upon the partners’ agreement, which is akin to a partnership agreement. However, despite adopting similar internal regulation as to a partnership, partnership laws are not applicable to the LLPs.

It is also important to highlight that the legal entity of all LLPs albeit their different legal status provides LLPs similar attributes to a company, namely separate legal entity, perpetual succession, rights to take legal proceedings, rights to own properties and power to limit liabilities of its partners. Nonetheless, the scope of the partners’ limited liability in LLPs is merely partial and not full limited liability as is the case for companies. In all LLPs, defaulted partners are jointly liable with the LLP for claims for losses resulting from wrongful act or omission whilst partners who did not commit the default are released from any liability to the LLP and to the third parties. The application of quasi limited liability is also one of the differences between LLPs and partnerships.

The tax status of LLPs is generally similar to that of partnerships, whereby the partners are taxed on the income they received and the LLPs are not taxable, except for Malaysian LLPs, and the tax status is similar to that of a company.
TABLE 1
Attributes of LLP

<table>
<thead>
<tr>
<th>Attribute</th>
<th>Explanation</th>
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</thead>
<tbody>
<tr>
<td>Legal Status</td>
<td>A legal person either as a body corporate or a non-body corporate or a partnership.</td>
</tr>
<tr>
<td>Limited Liability</td>
<td>Partial Limited Liability- The LLP is liable for all debts of the business but the defaulted partner shall also be jointly liable for the debts incurred by the LLP for his default.</td>
</tr>
<tr>
<td>Registration</td>
<td>• Must be registered with the Registrar (SSM)</td>
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<td></td>
<td>• No submission or incorporation document</td>
</tr>
<tr>
<td>Disclosure Requirement</td>
<td>• No audit requirement and no submission of audited account to Registrar</td>
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<td></td>
<td>• Have to keep a proper keeping of accounts and documents</td>
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<tr>
<td></td>
<td>• Have to submit annual declaration of solvency</td>
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<tr>
<td>External Regulation</td>
<td>• Regulated by the LLP Act</td>
</tr>
<tr>
<td></td>
<td>• Winding Up procedures- applies the Companies Act</td>
</tr>
<tr>
<td>Internal Regulation</td>
<td>• Regulated by an agreement between the partners</td>
</tr>
<tr>
<td></td>
<td>• Default rules of the LLP Act only applies in absence of the agreement</td>
</tr>
<tr>
<td>Composition of Partners</td>
<td>• Minimum two person but there is no maximum number of partners</td>
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<td></td>
<td>• There must be at least one Compliance officer (has statutory responsibilities akin to a Company Secretary)</td>
</tr>
<tr>
<td>Protection of Third Parties</td>
<td>• Claims against the LLP</td>
</tr>
<tr>
<td></td>
<td>• Claw-back mechanism</td>
</tr>
<tr>
<td>Tax Regime</td>
<td>• Either similar to a Company or to a Partnership</td>
</tr>
</tbody>
</table>

LLPs IN MALAYSIA

The Malaysian LLP is one of the products of the Companies Commission of Malaysia (CCM) under its Corporate Law Reform Programme (CLRC). In 2003, CLRC published a consultative document (CD) for an alternative business vehicle for small businesses and venture capital arrangements. In 2008, they published the second consultative document and pursuant to the feedback, CCM published the draft bill of LLP in 2009. The LLP Act was passed by the Parliament in 2012. Different from other countries that adopted LLP as the abbreviation for limited liability partnerships, the Malaysian LLP used the abbreviation PLT or “Perkongsian Liabiliti Terhad”, the translation of LLP in the Malay language.

Other than the PLT, the limited liability partnerships structure is also available in Labuan (a Malaysian offshore). The Labuan LLPs are regulated under the Labuan Limited Partnership and Limited Liability Partnerships Act (LP and LLPA) 2010. The Labuan LLPs and PLTs are generally similar but have different tax regimes.

Labuan LLP

Under the LP and LLPA 2010, any two or more persons may form a Labuan
limited liability partnership for any lawful purpose. To register a Labuan LLP, there must be at least one designated partner who has the duty to submit all relevant documents to the Authority. The name of a Labuan LLP shall end with the words "Labuan Limited Liability Partnership" in full or in abbreviation "(Labuan) L.L.P." or "(Labuan) LLP. The Labuan LLP has the status of a body corporate and also enjoys all attributes similar to those of a company. However, similar to PLT, only partial limited liability is applicable for partners in a Labuan LLP, whereby only innocent partners are protected against third party claims whilst the defaulted partner is jointly and the LLP are liable to the third party.

With regards to tax status, a Labuan LLP is categorised as a Labuan entity and as such, the entity is subject to tax under the Labuan Business Activity Tax Act 1990 (LBATA). The tax rate for trading as a Labuan entity is 3% whilst a Labuan entity conducting non-trading activity is not subjected to taxation.

Perkongsian Liabiliti Terhad (PLT)
The Malaysian PLT is similar to the LLP of the UK, India and Singapore, whereby the PLT has a status of body corporate and enjoys all attributes of a company. With regards to limited liability, the LLP Act 2012 clearly provides that all partners have limited liability in respect of claims against the PLT but such protection is only available to innocent partners. Any defaulted partners shall be jointly liable with the PLT for claims made by third parties.

Although, PLT has many similarities to a company, the formalities required for registration and operation of PLTs are less than those of a company. The PLT are not required to be audited but have to ensure the keeping of proper accounts for a period of seven years. The PLT must also have a compliance officer that has statutory responsibilities to submit certain documents to the Registrar.

With regards to the tax regime, PLT is treated the same as a company, which means that for chargeable income above RM500,000, the PLT is subject to a tax rate of 25%.

Pertaining to internal arrangements, partners of a PLT have all the rights to decide their internal regulation via a partners’ agreement but in the absence of any agreement between the partners, default rules as provided for in LLP Act 2012 are applicable.

Professionals’ PLT
The First Schedule of the LLP Act 2012 only provides three types of professional practice that may be registered as a PLT, namely advocate and solicitors, accountants and company secretary. However, section 92 provides for the Minister to add or alter the First Schedule, which indicates that other professionals who are interested to form a PLT may request that the minister include their respective professions in the First Schedule.
The main difference between the professional PLT and the general PLT is the requirement of membership. In a professional PLT, members must be of the same profession such as all advocates and solicitors or all company secretaries. Partners in a professional PLT are also subjected to their respective professional body’s regulations and in the application for registration as a professional PLT, the partners must attach an approval letter from its respective governing body. A professional PLT may also not limit its liability below the compulsory level of insurance as approved by the Registrar of LLP.

**CONCLUSION**

For professionals specified in the First Schedule of the LLP Act 2012, the PLT is indeed good news as it allows them to conduct their business with fewer risks compared to what is provided for in the existing partnership/firm structure. The body corporate status provided for by the PLT allows professionals to improve and increase capital structure and to expand their business. The ‘internal management’ structure of the PLT is seen as an advantage for professionals as it allows them to regulate their relationship via agreement and not be regimented as is a company.

The quasi limited liability regime of the PLT is designed to ensure that professionals are still personally liable for their own default but not for that of other partners; this is sufficient to protect third parties, in particular clients and public interest. Despite the flexibilities, it is clear that the PLT does not compromise the integrity and high duty of care expected from professionals as partners may still be made liable for default.

The introduction of PLTs in Malaysia is also timely to cater for the globalisation of professional practices, which allows the PLT to take foreigners as partners as there is no restriction against the participation of foreigners.
REFERENCES


