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TO ALL MEMBERS

TECHNICAL

Limited Liability Partnership (LLP)

The Finance (No.2) Bill 2012 (the Bill) proposes to amend the definition of 'person' in the Income Tax Act, 1967 (ITA) to include an LLP. An LLP is defined in the Bill as "*a limited liability partnership registered under section 11 of the [Limited Liability Partnerships Act 2012](#) (LLP Act) or a foreign limited liability partnership registered under section 45 of the LLP Act.*"

An LLP is a hybrid of a corporation and a partnership. The following are some salient features of an LLP as provided in the LLP Act:

1. Legal status (Section 3)

An LLP is a body corporate which has a legal personality separate from that of its partners and has perpetual succession; and its existence, rights and liabilities are not affected by any change in its partners.

It has unlimited capacity and is capable of -

- Suing and being sued;
- Acquiring, owning, holding and developing or disposing of properties;
- Doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

2. Formation & Registration (Sections 6, 10-12, 45)

Any two or more persons (individuals or bodies corporate) associated for carrying on any lawful business with a view to profit may form an LLP in accordance with the terms of the LLP agreement.

Application for registration is made to the Registrar of LLP, who is also the Chief Executive Officer of the Companies Commission of Malaysia (CCM). Upon application and payment of the prescribed fee, the Registrar may issue to that LLP a certificate of registration, or he may refuse to register the LLP for specified reasons [section 12(1)]. The name of an LLP shall end with the words "*Perkongsian Liabiliti Terhad*" or "**PLT**".

3. Liability of Partners (Sections 21-23)

A partner is not personally liable for an obligation of the LLP (arising in contract, tort or otherwise) solely by reason of being a partner of the LLP. This does not absolve him from liabilities to a 3rd party arising from his wrongful act or omission in the course of business of the LLP or with its authority. An LLP is liable to the same extent as the partner and the liabilities shall be borne out of the property of the LLP.

Every partner of an LLP is regarded as the agent of the LLP and the LLP is bound by anything done by a partner in dealing with a third party, **unless**

- (i) the partner is acting without authority, and
- (ii) the third party with whom the partner is dealing
 - (a) knows that the partner has no authority or
 - (b) does not know that he is a partner of the LLP.

4. Cessation of Partnership Interest (Section 24)

A partner of an LLP may cease to be a partner –

- in accordance with the LLP agreement; or
- in the absence of such an agreement, by that partner giving 30 days' notice of his/her intention to retire as partner to the other partners.

5. Appointment of Compliance Officer (Sections 27 and 46)

An LLP shall appoint at least one compliance officer from amongst its partners, or persons qualified to act as secretaries under the Companies Act, 1965 who is a citizen or permanent resident of Malaysia and ordinarily resides in Malaysia.

The compliance officer is responsible for complying with the requirements to:

- Register any changes in the registered particulars of the LLP;
- Keep and maintain documents which must be kept at the registered office of the LLP;
- Ensure that the name and registration number of the LLP is displayed outside its registered office.

6. Partners' Annual Declaration and Accounts (Sections 46, 68-69)

A declaration by any 2 partners, stating their opinion on whether or not it appears that the LLP will be able to pay its debts as they become due in the normal course of business, must be lodged with the Registrar within 90 days of the end of the financial year.

An LLP must keep such accounting and other records as is sufficient to explain its financial position and enable accounts to be prepared which give a true and fair view of the state of affairs of the LLP.

7. Dissolution and Striking Off (Sections 47-51)

An LLP may be dissolved:

- By way of Court Order; or
- Where the LLP has ceased to operate and has discharged all debts and liabilities, by making an application to the Registrar (by a partner) for voluntary dissolution after compliance with requirements set out in section 50(3).

The Registrar may serve notice on the LLP to strike off its name from the register for reasons specified in section 51(1), which includes the circumstance that the LLP is not carrying on business or is not in operation, or it has contravened the LLP Act.

A foreign LLP shall lodge with the Registrar of LLP a notice of the fact that it has ceased to have a place of business or to carry on business in Malaysia within 7 days after the date of cessation.

8. LLP for Professional Practice (Section 8)

An LLP may be formed for the purpose of carrying on a professional practice, which partners must consist of natural persons practising the same profession and no one else, and have in force professional indemnity insurance approved by the registrar, or approved by the registrar in consultation with the relevant governing body of the profession.

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