

# LIMITED LIABILITY PARTNERSHIPS BILL 2011

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# A BILL

## *i n t i t u l e d*

An Act to provide for the registration, administration and dissolution of limited liability partnerships and to provide for related matters.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

### PART I

#### PRELIMINARY

#### **Short title and commencement**

**1.** (1) This Act may be cited as the Limited Liability Partnerships Act 2011.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

#### **Interpretation**

**2.** In this Act, unless the context otherwise requires—

“annual declaration” means a declaration required to be lodged by a limited liability partnership under section 68;

“approved liquidator” has the meaning assigned to it in the Companies Act 1965 [*Act 125*] and includes the Director General of Insolvency when acting as a liquidator of a limited liability partnership;

“body corporate” means any body corporate formed or incorporated or existing within Malaysia or outside Malaysia and includes any foreign company, limited liability partnership and foreign limited liability partnership registered under this Act but does not include—

- (a) any body corporate that is incorporated within Malaysia and is by notice of the Minister published in the *Gazette* declared to be a public authority or an instrumentality or agency of the Government of Malaysia or of any State or to be a body corporate which is not incorporated for commercial purposes;
- (b) any corporation sole;
- (c) any society registered under any written law relating to co-operative societies; and
- (d) any trade union registered under any written law as a trade union;

“Commission” means the Companies Commission of Malaysia established under the Companies Commission of Malaysia Act 2001 [*Act 614*];

“conventional partnership” means a partnership registered under the Registration of Businesses Act 1956 [*Act 197*] and a partnership established by two or more persons for the purposes of carrying on any professional practice;

“Court” means the High Court or a judge of the High Court;

“Director General of Customs and Excise” means the Director General of Customs and Excise appointed under section 3 of the Customs Act 1967 [*Act 235*];

“Director General of Insolvency” has the meaning assigned to it in the Bankruptcy Act 1967 [*Act 360*];

“distribution” means distribution of dividends, profits, returns or refunds of capital by the limited liability partnership, whether in cash or in kind;

“document” has the meaning assigned to it in the Evidence Act 1950 [*Act 56*];

“financial year” means the period in respect of which any profit and loss account of a limited liability partnership is made up, whether that period is a year or not;

“Inland Revenue Board” means the Inland Revenue Board of Malaysia established under the Inland Revenue Board of Malaysia Act 1995 [*Act 533*];

“limited liability partnership” means a limited liability partnership registered under section 11 or a foreign limited liability partnership registered under section 45;

“limited liability partnership agreement”, in relation to a limited liability partnership, means a written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners among themselves and their rights and duties in relation to the limited liability partnership;

“Minister” means the Minister charged with the responsibility for domestic trade;

“partner”, in relation to a limited liability partnership, means any person who has been admitted as a partner in the limited liability partnership in accordance with the limited liability partnership agreement, and includes a salaried partner whether or not he is an employee of the limited liability partnership;

“prescribed” means prescribed by the Minister by regulations made under this Act;

“private company” has the meaning assigned to it in the Companies Act 1965;

“professional practice” means the practice as specified in the first column of the First Schedule which is governed by the written law as specified in the second column of the First Schedule, respectively;

“property”, in relation to a limited liability partnership, includes land, money, goods, choses in action, goodwill, and every valuable thing, whether corporal or incorporeal, movable or immovable, and whether situated in Malaysia or elsewhere and also includes obligations, servitudes, and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to the property;

“register” means any register kept and maintained under this Act;

“Registrar” means the Registrar of Limited Liability Partnerships as designated under subsection 5(1) and includes any Assistant Registrar appointed under subsection 5(2).

## PART II

### FUNDAMENTALS OF A LIMITED LIABILITY PARTNERSHIP

#### **Separate legal personality and capacity**

**3.** (1) A limited liability partnership is a body corporate and shall have legal personality separate from that of its partners.

(2) A limited liability partnership shall have perpetual succession.

(3) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

(4) A limited liability partnership shall have unlimited capacity and shall be capable of—

- (a) suing and being sued;
- (b) acquiring, owning, holding and developing or disposing of property; and
- (c) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.



### **Non-applicability of partnership law**

4. The provisions of the Partnership Act 1961 [*Act 135*], and the rules of equity and of common law applicable to partnerships, shall not be applicable to a limited liability partnership registered under this Act.

## **PART III**

### **FORMATION AND REGISTRATION**

#### **Appointment of the Registrar of Limited Liability Partnerships, etc.**

5. (1) The Chief Executive Officer of the Commission shall be the Registrar of Limited Liability Partnerships.

(2) The Commission may appoint, on such terms and conditions as it may determine, from amongst the persons in the employment of the Commission such number of Assistant Registrars or other employees for the proper administration of this Act, and may revoke the appointment of any person so appointed.

(3) Subject to the general direction and control of the Registrar and to such restrictions and limitations as may be prescribed, anything appointed or authorized or required by this Act to be done or signed by the Registrar may be done or signed by an Assistant Registrar and shall be as valid and effectual as if done or signed by the Registrar.

(4) No person dealing with an Assistant Registrar shall be concerned to see or inquire whether any restrictions or limitations have been prescribed, and every act or omission of an Assistant Registrar so far as it affects any such person shall be as valid and effectual as if done or omitted by the Registrar.

#### **Formation of limited liability partnerships**

6. Subject to sections 7 and 8, any two or more persons, consisting of, wholly or partly, individuals or bodies corporate, associated for carrying on any lawful business with a view to profit may form a limited liability partnership in accordance with the terms of the limited liability partnership agreement.

**Carrying on business with less than minimum partners**

7. (1) A limited liability partnership may carry on business with fewer than two partners for a period not exceeding six months or a longer period as may be determined by the Registrar upon an application from the remaining partner, provided that the period so extended by the Registrar does not exceed one year.

(2) If a limited liability partnership carries on business with fewer than two partners for a period longer than the period referred to in subsection (1), a person shall, notwithstanding subsections 21(1) and (2), be personally liable, jointly and severally with the limited liability partnership, for any obligation of the limited liability partnership incurred during the period that the limited liability partnership so carries on business after the period referred to in subsection (1) if, at the time the obligation was incurred, the person—

- (a) was a partner of the limited liability partnership; and
- (b) knew or ought to have known that the limited liability partnership was carrying on business with fewer than two partners for a period longer than the period referred to in subsection (1).

(3) If a limited liability partnership carries on business with fewer than two partners for a period longer than the period referred to in subsection (1)—

- (a) the limited liability partnership; and
- (b) the person who is a partner during the period that the limited liability partnership so carries on business after the period referred to in subsection (1) and is cognizant of the fact that it is carrying on business with fewer than two partners during that period,

commit an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit.

(4) Upon conviction of the limited liability partnership under subsection (3), the court may order the limited liability partnership to be dissolved and its name to be struck-off the register.

### **Partnership for professional practice**

**8.** A limited liability partnership may be formed for the purpose of carrying on a professional practice which partners shall—

- (a) consist of natural persons who are practising the same professional practice and no one else; and
- (b) have in force professional indemnity insurance cover for an amount of not less than the amount—
  - (i) approved by the Registrar; or
  - (ii) in the case where the professional practice is governed by a governing body as specified under the third column of the First Schedule, approved by the Registrar after consultation with the governing body.

### **Limited liability partnership agreement**

**9.** (1) Except as otherwise provided by this Act, the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of the limited liability partnership and its partners, shall be governed—

- (a) by the limited liability partnership agreement; and
- (b) in the absence of agreement as to any matter set out in the Second Schedule, by any provision relating to that matter as set out in the Second Schedule.

(2) The limited liability partnership agreement shall be in the national language or English language, and shall consist of the following particulars:

- (a) the name of the limited liability partnership;
- (b) the nature of business of the limited liability partnership;
- (c) the amount of capital contribution by each partner; and
- (d) that the partners have agreed to become partners of the limited liability partnership.

**Application for registration**

**10.** (1) A person may apply for registration of a limited liability partnership to the Registrar and the application shall be accompanied by the prescribed fee and such documents as may be specified by the Registrar.

(2) The application under subsection (1) shall include a statement which is signed by every person who is to be a partner of the limited liability partnership containing the following particulars:

- (a) the name of the proposed limited liability partnership;
- (b) the general nature of the proposed business of the limited liability partnership;
- (c) the proposed registered office of the limited liability partnership;
- (d) 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;
- (e) 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
- (f) such other relevant information as may be specified by the Registrar.

(3) Where a limited liability partnership is formed for the purposes of carrying on any professional practice, the application under subsection (1) shall be accompanied by an approval letter from the relevant governing body as specified in the third column of the First Schedule, where applicable.

(4) The Registrar may, in any particular case, require the statement and approval letter referred to in subsections (2) and (3) respectively, to be verified in such manner as the Registrar considers fit.

## **Registration of limited liability partnerships**

**11.** (1) Upon being satisfied that the application under section 10 has complied with the requirements of registration under this Act, the Registrar shall—

- (a) register the limited liability partnership and allocate a registration number for the limited liability partnership; and
- (b) issue a notice of registration in such form as the Registrar may determine.

(2) On and from the date of registration specified in the notice of registration issued under subsection (1), there shall be a limited liability partnership by the name and registration number as specified in the notice.

(3) The notice of registration under subsection (1) is conclusive evidence that the requirements of this Act in respect of the registration have been complied with and that the limited liability partnership is duly registered under this Act.

(4) Upon application by a limited liability partnership and on payment of the prescribed fee, the Registrar may issue to that limited liability partnership a certificate of registration in such form as the Registrar may determine.

(5) The registration of any limited liability partnership shall not be taken to imply that the requirements of any other written law in relation to any business carried on by that limited liability partnership have been complied with.

## **Power to refuse registration**

**12.** (1) Notwithstanding any provision of this Act, the Registrar shall refuse to register a limited liability partnership under this Act where he is satisfied that—

- (a) the registration of the limited liability partnership would be contrary to the national security or interest; or
- (b) the proposed business is likely to be used for—
  - (i) a charitable purpose;

- (ii) an unlawful purpose; or
- (iii) purposes prejudicial to public peace, welfare or good order or morality in Malaysia.

(2) Any person aggrieved by the decision of the Registrar under subsection (1) may, within thirty days of the date of the decision, appeal to the Minister whose decision shall be final.

### **Name of limited liability partnership**

**13.** (1) The name of a limited liability partnership shall end with the words “Perkongsian Liabiliti Terhad” or the abbreviation “PLT”.

(2) Except with the consent of the Minister, a limited liability partnership shall not be registered under a name that in the opinion of the Registrar is—

- (a) undesirable;
- (b) identical to an existing body corporate or business;
- (c) identical to a name that is being reserved under this Act or the Companies Act 1965; or
- (d) a name of a kind that the Minister has directed the Registrar not to accept for registration.

(3) The Registrar shall publish in the *Gazette* any direction referred to in paragraph (2)(d).

### **Reservation of names**

**14.** (1) A person may apply to the Registrar for the reservation of a name as—

- (a) the name of the proposed limited liability partnership prior to its registration; or
- (b) the name to which a limited liability partnership proposes to change its name under section 15.

(2) Upon being satisfied that the name is not one which may be refused on any ground referred to in subsection 13(2) and on payment of the prescribed fee, the Registrar may reserve the name for a period of thirty days from the date of lodgment of the application or such longer period as the Registrar may allow.

### **Change of name of limited liability partnership**

**15.** (1) A limited liability partnership may change its name to a name that is acceptable by the Registrar in accordance with section 13.

(2) Where a limited liability partnership changes its name under this section, the Registrar shall—

(a) enter the new name in the register in place of the former name; and

(b) issue a notice of confirmation of the change of name.

(3) The change of name under this section shall have effect from the date on which the notice of confirmation was issued under paragraph (2)(b).

(4) A change of name of a limited liability partnership under this Act does not—

(a) affect any rights or obligations of the limited liability partnership; or

(b) render defective any legal proceedings by or against the limited liability partnership.

(5) Any legal proceedings that might have been continued or commenced against the limited liability partnership by its former name may be continued or commenced against it by its new name.

### **Power of Registrar to require change of names**

**16.** (1) The Registrar may direct a limited liability partnership to change its name, if in his opinion, the name by which the limited liability partnership is registered is a name which is prohibited from registration under subsection 13(2).

(2) If a direction is issued under subsection (1), the limited liability partnership shall comply with the direction within thirty days from the date of the direction or such longer period as the Registrar may allow.

(3) Any limited liability partnership which fails to comply with a direction given under subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Registration of changes in particulars**

**17.** (1) If any change is made or occurs in the registered particulars of a limited liability partnership, the limited liability partnership shall notify the Registrar of such change within fourteen days or such further period as the Registrar may on application allow.

(2) The Registrar may, upon receipt of the notification referred to in subsection (1) and on payment of the prescribed fee, register such change.

(3) Notwithstanding subsection (1), if any person who ceases to be a partner in a limited liability partnership reasonably believes that the limited liability partnership has not notified the fact of the cessation to the Registrar such partner may lodge the notification of cessation with the Registrar.

(4) The Registrar may, in any particular case, require a notification lodged under subsection (1) to be rectified by the limited liability partnership in such manner as the Registrar considers fit.

(5) A limited liability partnership which fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.



**Registered office**

**18.** (1) A limited liability partnership shall at all time have a registered office in Malaysia to which all communications and notices may be addressed.

(2) A limited liability partnership may change the address of its registered office from time to time by lodging a notice of change with the Registrar in accordance with section 17.

(3) Notwithstanding subsection (2), until the end of a period of thirty days beginning on the date on which a change of address of a limited liability partnership is registered, a person may validly serve any document on the limited liability partnership at its previous registered office.

(4) A limited liability partnership and its partners who fail to comply with subsection (1) commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

**Registers and documents to be kept at registered office**

**19.** (1) A limited liability partnership shall keep at its registered office—

- (a) a notice of registration issued under paragraph 11(1)(b);
- (b) a register of the name and address of each partner and compliance officer;
- (c) a copy of the most recent annual declaration;
- (d) a copy of any statement lodged with the Registrar under this Act;
- (e) a copy of any certificate, if any, issued by the Registrar under this Act;
- (f) a copy of the limited liability partnership agreement and any amendment thereto;

- (g) a copy of any instrument relating to any charge created by the limited liability partnership; and
- (h) any other documents that the Registrar may, from time to time, require to be kept.

(2) The documents kept under subsection (1) shall be made available for inspection and copying during ordinary business hours at the request of a partner.

(3) A limited liability partnership which fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Publication of names**

**20.** (1) Every limited liability partnership shall display its name and registration number outside its registered office and place of business.

(2) Notwithstanding subsection (1), the Registrar may, on the application of a limited liability partnership, exempt the limited liability partnership from all or any requirements under subsection (1) if he is satisfied that it is not practicable for the limited liability partnership to do so.

(3) The name and registration number of the limited liability partnership shall appear on every letterhead, invoice, bill, publication including electronic medium, website or other official documents issued by the limited liability partnership.

(4) If a limited liability partnership has changed its name under section 15, the former name of the limited liability partnership shall appear beneath its present name on every letterhead, invoice, bill, publication including electronic medium, website or other official documents issued by the limited liability partnership for a period of twelve months from the date of such change.

(5) A limited liability partnership which fails to comply with this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a

continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

## PART IV

### MANAGEMENT OF A LIMITED LIABILITY PARTNERSHIP

#### **Limited liability of partners**

**21.** (1) Any obligation of a limited liability partnership whether arising in contract, tort or otherwise, is solely the obligation of the limited liability partnership.

(2) A partner is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment or otherwise, for an obligation referred to in subsection (1) solely by reason of being a partner of the limited liability partnership.

(3) Subsections (1) and (2) shall not affect the personal liability of a partner in tort for his own wrongful act or omission, but a partner shall not be personally liable for the wrongful act or omission of any other partner of the limited liability partnership.

(4) Where a partner of a limited liability partnership is liable to any person, other than another partner of the limited liability partnership, as a result of that partner's wrongful act or omission in the course of the business of the limited liability partnership or with its authority, the limited liability partnership is liable to the same extent as the partner.

(5) The liabilities of the limited liability partnership shall be borne out of the property of the limited liability partnership.

#### **Liability of partners when limited liability partnership is insolvent**

**22.** (1) Notwithstanding anything under this Act, a partner or former partner of a limited liability partnership who receives a distribution from the limited liability partnership—

(a) when the limited liability partnership is insolvent and knew or ought to have known at the time of the distribution that the limited liability partnership was insolvent; or

- (b) which results in the limited liability partnership becoming insolvent and knew or ought to have known at the time of distribution that the limited liability partnership would become insolvent as a result of the distribution,

shall be personally liable to the limited liability partnership for the amount or value of the distribution if it was received within a period of two years before the commencement of the winding-up of the limited liability partnership.

(2) For the purposes of this section—

- (a) a limited liability partnership is insolvent if it is, at that time, unable to pay its debts as they become due in the normal course of business; and
- (b) a partner or former partner shall be deemed to have received a distribution if the distribution is received by that partner or former partner's assignee or nominee.

### **Power of partner to bind the limited liability partnership**

**23.** (1) Every partner of a limited liability partnership is the agent of the limited liability partnership.

(2) Notwithstanding subsection (1), a limited liability partnership is not bound by anything done by a partner in dealing with a person if—

- (a) the partner is acting without authority; and
- (b) the person with whom the partner is dealing—
  - (i) knows that the partner has no authority; or
  - (ii) does not know that he is a partner of the limited liability partnership.

(3) Where a person has ceased to be a partner of a limited liability partnership, the former partner is to be regarded, in relation to any person dealing with the limited liability partnership, as still being a partner of the limited liability partnership unless—

- (a) the person dealing with the limited liability partnership knows that the former partner has ceased to be a partner of the limited liability partnership; or

- (b) a notice that the former partner has ceased to be a partner of the limited liability partnership has been lodged with the Registrar by the limited liability partnership or the former partner.

(4) For the purposes of subsection (2), no person is deemed to have notice of any lack of authority of a partner by reason only that the fact is made available by the Registrar for inspection.

### **Cessation of partnership interest**

**24.** (1) A partner of a limited liability partnership may cease to be a partner—

- (a) in accordance with the limited liability partnership agreement; or
- (b) in the absence of such agreement, by that partner giving thirty days' notice to the other partners of that partner's intention to resign as a partner.

(2) Without affecting the generality of subsection (1)—

- (a) a partner of a limited liability partnership shall cease to be a partner upon the death or dissolution of the partner; and
- (b) in the case of a limited liability partnership which is formed for the purposes of carrying on any professional practice, a partner shall cease to be a partner if he has been disqualified from carrying out the professional practice under the relevant governing law as specified in the third column of the First Schedule.

(3) Where a partner of a limited liability partnership ceases to be a partner, unless otherwise provided in the limited liability partnership agreement, such partner, his personal representative or its liquidator, as the case may be, shall be entitled to receive from the limited liability partnership an amount—

- (a) equal to the former partner's capital contribution to the limited liability partnership and that former partner's right to share in the accumulated profits of the limited liability partnership after the deduction of losses of the limited liability partnership; and

- (b) determined as at the date the former partner ceased to be a partner.

(4) Where a partner ceases to be a partner, such partner, or his personal representative or its liquidator, as the case may be, shall cease involvement in the management of the limited liability partnership.

(5) Any former partner, or the former partner's personal representative or liquidator who fails to comply with subsection (4) commits an offence.

### **Bankruptcy of partner**

**25.** (1) If a partner of a limited liability partnership is adjudicated a bankrupt—

- (a) his bankruptcy shall not by itself cause him to cease being a partner of the limited liability partnership;
- (b) the Director General of Insolvency or trustee of the estate of the bankrupt partner shall be entitled to receive distribution from the limited liability partnership which the bankrupt partner is entitled to receive under the limited liability partnership agreement; and
- (c) the bankrupt partner, the Director General of Insolvency or trustee of the estate of the bankrupt partner shall not interfere in the management of the limited liability partnership.

(2) Notwithstanding paragraph (1)(c), a bankrupt partner may take part in the management of the limited liability partnership—

- (a) with the leave of the Director General of Insolvency; or
- (b) with the leave of the Court provided that a notice of intention to apply for leave has been served on the Director General of Insolvency and the Director General of Insolvency is heard on the application.

(3) A bankrupt partner who has been adjudicated bankrupt outside Malaysia shall not take part in the management of the limited liability partnership unless the leave of the Court has been obtained.

(4) Any person who fails to comply with paragraph (1)(c) or subsection (3) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

### **Assignment of interests**

**26.** (1) Unless otherwise provided in the limited liability partnership agreement, a partner may assign the whole or any part of that partner's interest in the distribution from the limited liability partnership but only to the extent that the partner would have been entitled to receive.

(2) An assignment under subsection (1) shall not by itself—

- (a) cause the partner to cease being a partner of the limited liability partnership; and
- (b) entitle the assignee to interfere in the management of the limited liability partnership.

### **Compliance officer**

**27.** (1) A limited liability partnership shall appoint at least one compliance officer from amongst its partners or persons qualified to act as secretaries under the Companies Act 1965 who—

- (a) is a citizen or permanent resident of Malaysia; and
- (b) ordinarily resides in Malaysia.

(2) Every limited liability partnership shall ensure that the particulars of every person who acts as a compliance officer of the limited liability partnership and his consent to act as such are lodged with the Registrar.

(3) The compliance officer shall give notice in writing of his intention to vacate the office to the limited liability partnership.

(4) Upon giving the notice under subsection (3), the compliance officer may lodge with the Registrar notice of his intention to vacate the office.

(5) Where the compliance officer has lodged the notice with the Registrar under subsection (4), the compliance officer shall cease to be the compliance officer of the limited liability partnership on the expiry of one month from the date of the lodgment of the notice.

(6) Notwithstanding any provision of this Act, where no compliance officer is appointed then all partners shall be deemed as the compliance officer of the limited liability partnership.

(7) A compliance officer shall be—

- (a) answerable for the doing of all acts, matters and things as are required to be done by the limited liability partnership under sections 17, 19 and 20; and
- (b) personally liable to all penalties including administrative penalties imposed on the limited liability partnership for any contravention of those sections unless he satisfies the court hearing the matter that he should not be so liable.

(8) Where a limited liability partnership has more than one compliance officer—

- (a) anything that is required by this Act to be done by the compliance officer may be done by any one of the compliance officers; and
- (b) anything which constitutes an offence by the compliance officer under this Act constitutes an offence by each of the compliance officers.

### **Disqualification to act as a compliance officer**

**28.** (1) A person shall not act as a compliance officer if—

- (a) he is an undischarged bankrupt; or
- (b) he is disqualified to act as a director or secretary under the Companies Act 1965.



(2) A person who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

## PART V

### CONVERSION TO LIMITED LIABILITY PARTNERSHIPS

#### **Conversion from conventional partnership to limited liability partnership**

**29.** (1) A conventional partnership may convert to a limited liability partnership if and only if the partners of the limited liability partnership to which the conventional partnership is to be converted, comprises all the partners of the conventional partnership and no one else.

(2) In this Part, “convert”, in relation to a conventional partnership converting to a limited liability partnership, means a transfer of the properties, interests, rights, privileges, liabilities, obligations and the undertaking of the conventional partnership to the limited liability partnership.

#### **Conversion from private company to limited liability partnership**

**30.** (1) A private company may convert to a limited liability partnership if and only if—

- (a) there is no security interest in its assets subsisting or in force at the time of application; and
- (b) the partners of the limited liability partnership to which it is to be converted comprises all the shareholders of the private company and no one else.

(2) In this Part, “convert”, in relation to a private company converting to a limited liability partnership, means a transfer of the properties, interests, rights, privileges, liabilities, obligations and the undertaking of the private company to the limited liability partnership.

**Statements to be lodged**

**31.** (1) A conventional partnership may apply to convert to a limited liability partnership by lodging with the Registrar—

- (a) a statement signed by all of its partners in such medium and form as the Registrar may determine containing the following particulars:
  - (i) the name and registration number of the conventional partnership, where applicable;
  - (ii) the date on which the conventional partnership was registered under the Registration of Businesses Act 1956 or any other written law; and
  - (iii) that as at the date of the application, the conventional partnership appears to be able to pay its debts as they become due in the normal course of business; and
- (b) a statement and an approval letter referred to in subsections 10(2) and (3), respectively.

(2) A private company may apply to convert to a limited liability partnership by lodging with the Registrar—

- (a) a statement signed by all of its shareholders in such medium and form as the Registrar may determine containing the following particulars:
  - (i) the name and registration number of the private company;
  - (ii) the date on which the private company was incorporated under the Companies Act 1965;
  - (iii) that as at the application date, the private company appears to be able to pay its debts as they become due in the normal course of business;
  - (iv) that as at the application date, all outstanding statutory fees or any amount owing to any government agency has been settled;

- (v) that the private company has placed an advertisement in at least one widely circulated newspaper in Malaysia and published a notification in the *Gazette* of its intention to convert to a limited liability partnership; and
  - (vi) that all of its creditors have agreed with the application to convert to a limited liability partnership; and
- (b) a statement referred to in subsection 10(2).

(3) The Registrar may, in any particular case, require the statement referred to in subsection (1) or (2) to be verified in such manner as the Registrar considers fit.

### **Registration of conversion**

**32.** (1) On receiving the statement from the conventional partnership or private company under section 31, the Registrar may, subject to the provisions of this Act, register the limited liability partnership and issue a notice of registration in such form as the Registrar may determine stating that the limited liability partnership is, on and from the date specified in the notice, registered under this Act.

(2) Nothing in this section shall be construed as to require the Registrar to register a limited liability partnership if he is not satisfied with the particulars or other information furnished under the provisions of this Act.

### **Effect of registration**

**33.** (1) On and from the date of registration—

- (a) there shall be a limited liability partnership by the name specified in the notice of registration, with all the attributes described in Part II of this Act and subject to the provisions of this Act;
- (b) all properties vested in the conventional partnership or private company, all interests, rights, privileges, liabilities and obligations relating to the conventional partnership or private company, and the whole of the undertaking of

the conventional partnership or private company, as the case may be, shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed;

- (c) the conventional partnership or private company shall be deemed to be dissolved; and
- (d) the conventional partnership, if registered under the Registration of Businesses Act 1956, shall be removed from the register of businesses maintained under that Act, and the private company shall be removed from the register of companies maintained under the Companies Act 1965.

(2) If any property to which paragraph (1)(b) applies is registered with a relevant authority, the limited liability partnership 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 limited liability partnership in such medium and form as the Registrar may determine.

(3) In this Part, “date of registration” means the date as specified in the notice of registration issued under subsection 32(1).

### **Pending proceedings**

**34.** All proceedings by or against the conventional partnership or private company, as the case may be, which are pending on the date of registration may be continued, completed and enforced by or against the limited liability partnership.

### **Continuance of conviction, ruling, order or judgment**

**35.** Any conviction, ruling, order or judgment in favour of or against the conventional partnership or private company may be enforced by or against the limited liability partnership.

### **Existing agreements**

**36.** Every agreement to which the conventional partnership or private company was a party immediately before the date of registration, whether or not of such nature that the rights and liabilities thereunder could be assigned, shall have effect as from that day as if—

- (a) the limited liability partnership were a party to such an agreement instead of the conventional partnership or private company; and
- (b) for any reference to the conventional partnership or private company, as the case may be, there were substituted in respect of anything to be done on or after the date of registration a reference to the limited liability partnership.

### **Existing contracts, etc.**

**37.** All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements subsisting immediately before the date of registration relating to the conventional partnership or private company, or to which the conventional partnership or private company is a party, shall continue in force on and after that date as if they relate to the limited liability partnership and shall be enforceable by or against the limited liability partnership as if the limited liability partnership were named therein or were a party thereto instead of the conventional partnership or private company.

### **Continuance of employment**

**38.** Every contract of employment to which section 36 or 37 applies shall continue in force on or after the date of registration as if the limited liability partnership were the employer under the contract of employment instead of the conventional partnership or private company, as the case may be.

### **Existing appointment, authority or power**

**39.** (1) Every appointment of the conventional partnership or private company in any role or capacity which is in force immediately before the date of registration shall take effect and operate from that date as if the limited liability partnership were appointed.

(2) Any authority or power conferred on the conventional partnership or private company which is in force immediately before the date of registration shall take effect and operate from that date as if it were conferred on the limited liability partnership.

### **Non-application of sections 33 to 39**

**40.** Sections 33 to 39 shall not apply to any approval, permit or licence issued under any written law to the conventional partnership or private company which is in force immediately before the date of registration of the limited liability partnership.

### **Liabilities and obligations of partners before conversion**

**41.** (1) Notwithstanding sections 33 to 39, every partner of a conventional partnership that has converted to a limited liability partnership shall continue to be personally liable, jointly and severally with the limited liability partnership, for the liabilities and obligations of the conventional partnership which were incurred prior to the conversion or which arose from any contract entered into prior to the conversion.

(2) If any such partner discharges any liability or obligation referred to in subsection (1), that partner shall be entitled, subject to any agreement with the limited liability partnership to the contrary, to be fully indemnified by the limited liability partnership in respect of such liability or obligation.

### **Notice of conversion in invoices and correspondence**

**42.** (1) The limited liability partnership shall ensure that for a period of twelve months commencing fourteen days after the date of registration, every invoice or official correspondence of the limited liability partnership 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 a limited liability partnership; and
- (b) the name and registration number, if applicable, of the conventional partnership or private company from which it was converted.

(2) A limited liability partnership which fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

**Existing statutory books, registers, records, etc.**

**43.** (1) 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 limited liability partnership and kept at its registered office for a period of seven years from the date of registration.

(2) A limited liability partnership and every partner of the limited liability partnership who fail to comply with subsection (1) commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

PART VI

FOREIGN LIMITED LIABILITY PARTNERSHIPS

**Foreign limited liability partnerships**

**44.** (1) A foreign limited liability partnership shall not carry on business in Malaysia unless it is registered as a foreign limited liability partnership under this Act.

(2) A foreign limited liability partnership shall not be regarded as carrying on business in Malaysia for the reason only that within Malaysia it carries on activities as specified in the Third Schedule.

(3) A person who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

**Registration of foreign limited liability partnerships**

**45.** (1) For the purpose of registration of a foreign limited liability partnership, in addition to the requirements under section 10, the foreign limited liability partnership shall lodge with the Registrar—

- (a) a certified copy of the certificate of registration or any other similar document in its place of incorporation, establishment or origin; and
- (b) a certified copy of its charter or instrument defining its constitution, if any.

(2) Upon being satisfied that the requirements of this Act have been complied with and on payment of the prescribed fee, the Registrar shall—

- (a) register the foreign limited liability partnership and allocate a registration number for the foreign limited liability partnership; and
- (b) issue a notice of registration in such form as the Registrar may determine.

**Requirements of foreign limited liability partnerships**

**46.** (1) Notwithstanding anything under this Act, a foreign limited liability partnership shall appoint at all times at least one compliance officer from amongst its partners or persons qualified to act as secretaries under the Companies Act 1965 who—

- (a) is a citizen or permanent resident of Malaysia; and
- (b) ordinarily resides in Malaysia.

(2) A foreign limited liability partnership shall ensure that the particulars of every person who acts as compliance officer of the foreign limited liability partnership and his consent to act as such are lodged with the Registrar.

(3) The compliance officer shall give notice in writing of his intention to vacate the office to the foreign limited liability partnership.



(4) Upon giving the notice under subsection (3), the compliance officer may lodge with the Registrar a notice of his intention to vacate the office.

(5) Where the compliance officer has lodged a notice under subsection (4), the compliance officer shall cease to be the compliance officer of the foreign limited liability partnership on the expiry of one month from the date of the lodgment of the notice.

(6) A foreign limited liability partnership and every partner of the foreign limited liability partnership who fail to comply with subsection (1) commit an offence under this Act.

(7) A foreign limited liability partnership shall have a registered office in Malaysia to which all communications and notices may be addressed.

(8) In addition to the requirements under section 19, the foreign limited liability partnership shall keep at the registered office the following documents:

- (a) a certified copy of the certificate of registration or any other similar document in its place of incorporation, establishment or origin; and
- (b) a certified copy of its charter or instrument defining its constitution, if any.

(9) A foreign limited liability partnership shall lodge with the Registrar a declaration as specified in subsection 68(1) annually within thirty days of the anniversary of its registration under the Act or any other period as the Registrar may upon application allow.

(10) A foreign limited liability partnership which fails to comply with subsection (9) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

**Cessation of business in Malaysia**

**47.** (1) If a foreign limited liability partnership ceases to have a place of business or to carry on business in Malaysia, it shall lodge with the Registrar a notice of that fact within seven days after the date of cessation.

(2) The cessation of business shall take effect upon the lodgement of the notice under subsection (1).

(3) On and from that date of the lodgement of the notice under subsection (1), the obligation of the foreign limited liability partnership to lodge any document with the Registrar shall cease except those documents that ought to have been lodged before such date.

(4) The Registrar shall only remove the name of the foreign limited liability partnership from the register upon the expiration of six months from the date of the lodgement of the notice under subsection (1).

**Liquidation or dissolution of foreign limited liability partnerships in place of incorporation, establishment or origin**

**48.** (1) If a foreign limited liability partnership goes into liquidation or is dissolved in its place of incorporation, establishment or origin, the foreign limited liability partnership shall, within one month after the commencement of the liquidation or the dissolution or within such further period as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar—

- (a) a notice of such liquidation or dissolution;
- (b) where a foreign liquidator is appointed to the foreign limited liability partnership in its place of incorporation, establishment or origin, a notice of such appointment; and
- (c) where an approved liquidator is appointed to the foreign limited liability partnership, a notice of such appointment.

(2) Upon receipt of the notice under paragraph (1)(a)—

- (a) where an approved liquidator has been appointed, the Registrar shall forthwith endorse the appointment; or

(b) where an approved liquidator has not been appointed, the Registrar shall forthwith appoint an approved liquidator and until such time that an approved liquidator is appointed to the foreign limited liability partnership, the foreign liquidator referred to in subsection (1) shall have the powers and functions of an approved liquidator.

(3) If the foreign limited liability partnership fails to lodge the notice under paragraph (1)(a), the Registrar may, at any time thereafter, appoint an approved liquidator to the foreign limited liability partnership.

(4) Upon the endorsement of appointment or appointment of an approved liquidator under subsection (2), or appointment of an approved liquidator under subsection (3), the Court shall be deemed to have ordered that the foreign limited liability partnership be wound-up.

(5) The approved liquidator shall get in all properties of the foreign limited liability partnership situate or recoverable in Malaysia and shall, in doing so, have all the powers of an approved liquidator of a company under the Companies Act 1965.

(6) The approved liquidator shall advertise in one widely circulated newspaper in the national language and one widely circulated newspaper in the English language inviting all creditors to make their claims to the foreign limited liability partnership within a period of not less than thirty days from the date of the advertisement.

(7) Before paying or transferring to a foreign liquidator referred to under subsection (1) any properties got in within Malaysia, the approved liquidator shall make payments in the following order:

- (a) firstly, the remuneration of the approved liquidator;
- (b) secondly, all penalties, costs, fees and charges due and owing to the Registrar;
- (c) thirdly, all wages and salary of any employee of the foreign limited liability partnership, at the time of the appointment of the approved liquidator, a sum not exceeding fifteen thousand ringgit;

- (d) fourthly, all amount in respect of workers' compensation, employees' superannuation or provident fund scheme, or social security contribution under any written law relating to workers' compensation, employees' superannuation or provident fund scheme, or social security contribution accrued before the appointment of the approved liquidator;
- (e) fifthly, all remuneration payable to any employee in respect of vacation leave, or in the case of his death to any other person in his right, accrued in respect of any period before the appointment of the approved liquidator; and
- (f) sixthly, the amount due of all federal taxes assessed under any written law,

and such penalties, costs, fees, charges, taxes and debts shall be a charge upon the properties of the foreign limited liability partnership in priority to all other charges and claims whatsoever.

(8) The foreign limited liability partnership shall be deemed to continue to exist in Malaysia until the winding-up of its affairs in Malaysia is completed.

## PART VII

### WINDING-UP, DISSOLUTION AND STRIKING-OFF

#### **Receivership and winding-up by the Court**

**49.** (1) Subject to sections 47 and 48—

- (a) in the case of receivership of a limited liability partnership, the provisions of Part VIII (in so far as they relate to a company limited by shares) of the Companies Act 1965 shall apply; and
- (b) in the case of winding-up of a limited liability partnership by the Court, the provisions of Divisions 2 and 4 of Part X (in so far as they relate to a company limited by shares) of the Companies Act 1965 and the Companies (Winding-up) Rules 1972 [*P.U. (A) 289/1972*] shall apply.

(2) The application of Part VIII and Divisions 2 and 4 of Part X (in so far as they relate to a company limited by shares) of the Companies Act 1965, and the Companies (Winding-up) Rules 1972 under subsection (1) shall be subject to such modifications and adaptations as may be necessary, and in particular the following modifications:

- (a) references to a “company” shall be taken as references to a limited liability partnership;
- (b) references to a “director” or to a “member” of a company shall be taken as references to a partner of a limited liability partnership;
- (c) references to the “memorandum” and “articles of a company” shall be taken as references to the partnership agreement of a limited liability partnership;
- (d) references to a “resolution” of a company shall be taken as references to a determination or decision of a limited liability partnership; and
- (e) references to “shares” of any member of a company shall be taken as references to the interest of any partner of a limited liability partnership.

### **Voluntary winding-up**

**50.** (1) This section shall apply to a voluntary winding-up of a limited liability partnership.

(2) Where a limited liability partnership has ceased to operate and has discharged all its debts and liabilities, a partner of the limited liability partnership may, after giving notice in accordance with subsection (4), apply in writing to the Registrar for a declaration of dissolution of the limited liability partnership.

(3) An application for a declaration of dissolution shall be made within seven days from the date of the publication or notification referred to in subsection (4), whichever is the later, and shall be accompanied by—

- (a) a statutory declaration made by one of the partners of the limited liability partnership stating—
  - (i) that the limited liability partnership has ceased to operate and has discharged all its debts and liabilities, other than those owed to its partners; and

- (ii) that the notice required under subsection (4) has been given in accordance with that subsection;
- (b) a copy of the notice given under subsection (4); and
- (c) a written notice from the Inland Revenue Board stating that it has no objection to the Registrar making a declaration of dissolution of the limited liability partnership.

(4) Before making an application to the Registrar under this section, the applicant shall ensure that a notice to the effect that the applicant proposes to apply to the Registrar for a declaration of dissolution of the limited liability partnership—

- (a) has been published in at least one widely circulated Malaysian newspaper in the national language and one widely circulated Malaysian newspaper in the English language; and
- (b) has been sent by registered post to each partner of the limited liability partnership to the last-known address of the partner.

(5) A partner or creditor may make a written objection against the proposed dissolution of the limited liability partnership to the Registrar within thirty days of the date of publication or posting of the notice, whichever is the later.

(6) On receipt of a written objection to the dissolution of the limited liability partnership under subsection (5), the Registrar shall forthwith notify the applicant for the declaration of dissolution of the receipt of the objection and of the identity of the objector.

(7) The Registrar may, by notice in writing, declare that the limited liability partnership is dissolved if—

- (a) no objection is received under subsection (5);
- (b) the partner or creditor, as the case may be, withdraws the objection made under subsection (5); or
- (c) the Registrar decides that the objection made under subsection (5) is without justification.

(8) Upon declaration of dissolution of the limited liability partnership under subsection (7), the Registrar shall notify the limited liability partnership that, subject to the limited liability partnership agreement, it is entitled to distribute its surplus assets among its partners according to their respective rights and interests.

(9) The limited liability partnership shall notify the Registrar that its surplus assets have been distributed in accordance with subsection (8) within fourteen days after the distribution is completed.

(10) The declaration of dissolution under subsection (7) shall only take effect upon receipt of the notification referred to under subsection (9) by the Registrar.

(11) Notwithstanding the declaration of dissolution under subsection (7) and the distribution of assets under subsection (8), the liability of the limited liability partnership shall continue and may be enforced as if the limited liability partnership had not been dissolved.

### **Power of Registrar to strike-off limited liability partnerships from the register**

**51.** (1) Notwithstanding any provision of this Act, if the Registrar has reason to believe that—

- (a) a limited liability partnership is not carrying on business or is not in operation;
- (b) a limited liability partnership has contravened this Act;
- (c) it is prejudicial to the national interests for a limited liability partnership to remain on the register;
- (d) there is no liquidator acting in cases of winding-up by the Court as specified under paragraph 49(1)(b); or
- (e) the affairs of a limited liability partnership are fully wound-up under section 49 or 50 and there are no assets or the assets available are not sufficient to pay the costs of obtaining an order of the Court dissolving the limited liability partnership,

he may serve a notice on the limited liability partnership notifying that its name may be struck-off the register unless the limited liability partnership gives reasons why its name should not be struck-off the register within thirty days of the date specified in the notice or a longer period as extended by the Registrar.

(2) The Registrar may strike the name of the limited liability partnership off the register after the expiration of the period specified in the notice or such longer period as extended under subsection (1), if he—

- (a) receives a confirmation from the limited liability partnership or its partner that the limited liability partnership is no longer carrying on business or is not in operation;
- (b) receives no reply from the limited liability partnership to the notice referred to in subsection (1); or
- (c) is not satisfied with the reasons as to why the name of the limited liability should not be struck-off.

(3) Where the name of a limited liability partnership has been struck-off the register under this section—

- (a) the liability of every partner continues and may be enforced as if the name of the limited liability partnership had not been struck-off; and
- (b) the limited liability partnership is deemed to have been dissolved.

### **Revocation of dissolution**

**52.** (1) Where a limited liability partnership has been dissolved under section 49, 50 or 51, any partner, creditor or aggrieved person at any time within two years from the date of the dissolution may apply to the Court for revocation of the dissolution on the grounds that—

- (a) the limited liability partnership has not discharged all its debts and liabilities; or
- (b) it is just and reasonable that the dissolution of the limited liability partnership be revoked.



(2) If the Court is satisfied with the application made under subsection (1), the Court may order that the dissolution of the limited liability partnership be revoked and upon a sealed copy of the order being delivered to the Registrar for registration, the limited liability partnership shall be deemed to have continued in existence as if it had not been dissolved.

(3) The Court may, by the order made under subsection (2), give such directions and make such provisions as it deems just for placing the limited liability partnership and all other persons affected by the dissolution in the same position as nearly as may be as if the limited liability partnership had not been dissolved.

### **Power of Registrar to represent dissolved limited liability partnerships in certain circumstances**

**53.** (1) The Registrar may represent a limited liability partnership which has been dissolved under section 49, 50 or 51 or its approved liquidator to do or cause to be done any administrative action to carry out, complete or give effect to any dealing, transaction or matter which the limited liability partnership if still existing would be legally or equitably bound to carry out, complete or give effect thereto.

(2) When the Registrar executes or signs any relevant instrument or document in carrying out the administrative action under subsection (1), he shall state that he has done so in pursuance of this section and the execution or signature shall have the same force, validity and effect as if the limited liability partnership if existing had duly executed such instrument or document.

### **Outstanding assets of dissolved limited liability partnerships to vest in Registrar**

**54.** (1) Notwithstanding any written law to the contrary, where a limited liability partnership has been dissolved under section 49, 50 or 51 and there remains any outstanding property which was vested in the limited liability partnership or to which it was entitled or over which it had a disposing power at the time it was so dissolved but which was not got in, realized upon or otherwise

disposed of or dealt with by the limited liability partnership or its approved liquidator, the property shall be vested in the Registrar for all the estate and interest therein, legal or equitable, at the date the limited liability partnership was dissolved together with all claims, rights and remedies thereof.

(2) Where any claim, right or remedy of the approved liquidator may under this Act be made, exercised or availed of only with the approval or concurrence of the Court or some other person, the Registrar may, for the purposes of this section, make, exercise or avail himself of that claim, right or remedy without such approval or concurrence.

(3) The Minister may, by regulations, prescribe the manner in which the Registrar may deal with the property vested under subsection (1) including the manner the property is to be sold or otherwise disposed of, the defrayment of incidental costs incurred and the commission to be remunerated to the Registrar.

(4) The moneys received by the Registrar in selling or otherwise disposing the property shall be applied in defraying all costs, expenses, commission and fees incidental thereto and thereafter the surplus, if any, shall be dealt with as if they were unclaimed moneys under the laws relating to unclaimed moneys.

## PART VIII

### ENFORCEMENT

#### **Provision of information**

**55.** (1) Notwithstanding any other written law, if the Registrar has reasonable grounds to believe that any person—

- (a) has any information or document that is relevant to the performance of the Registrar's functions and powers under this Act or its subsidiary legislation; or
- (b) is capable of giving any evidence which the Registrar has reasonable grounds to believe is relevant to the performance of the Registrar's functions and powers under this Act or its subsidiary legislation,

the Registrar may, by written notice, order that person—

- (A) to give any such information to the Registrar in the manner and form and within the period as specified in the notice or such extended period as the Registrar may grant;
- (B) to produce any such documents, whether in physical form or in electronic media, to the Registrar in the manner and within the period as specified in the notice or such extended period as the Registrar may grant;
- (C) to make copies of any such documents and to produce those copies to the Registrar in the manner and within the period as specified in the notice or such extended period as the Registrar may grant;
- (D) if the person is an individual, to appear, at a private hearing, before the Registrar at a time and place specified in the notice to give any evidence, either orally or in writing, and produce any documents, whether in physical form or in electronic media, in the manner and within the period as specified in the notice or such extended period as the Registrar may grant;
- (E) if the person is a body corporate or a public body, to cause a competent officer of the body to appear, at a private hearing, before the Registrar at a time and place specified in the notice to give any evidence, either orally or in writing, and produce any documents, whether in physical form or in electronic media, in the manner and within the period as specified in the notice or such extended period as the Registrar may grant; or
- (F) if the person is a partnership, to cause an individual who is a partner in the partnership or an employee of the partnership to appear, at a private hearing, before the Registrar at a time and place specified in the notice to give any evidence, either orally or in writing, and produce any documents, whether in physical form or in electronic media, in the manner and within the period as specified in the notice or such extended period as the Registrar may grant.

(2) Any person required to provide information or documents under subsection (1) shall ensure that the information or documents provided are true, accurate and complete and such person should provide a representation to that effect, including a representation that he is not aware of any other information or document which would make the information or document provided untrue or misleading.

(3) A person who fails to comply with an order of the Registrar in accordance with this section commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

### **Power to conduct inspection**

**56.** (1) For the purpose of ascertaining whether a limited liability partnership, its partners or compliance officer is complying with this Act, the Registrar shall have access to any place or building and may inspect and make copies of or take extracts from any book, minute book, register or other document required by the Registrar or under this Act to be kept by the limited liability partnership.

(2) For the purposes of this section, the Registrar may by notice in writing require any partner or compliance officer of a limited liability partnership or any person to produce to him such books, minute books, registers or other documents as are in the custody or under the control of that partner, compliance officer or person.

(3) A limited liability partnership or any person who—

- (a) fails to produce any book, minute book, register or other document as required by the Registrar under this section; or
- (b) obstructs, intimidates, distracts, harasses or hinders the Registrar while exercising any of the powers under this section,

commits an offence.

## **Power of investigation**

**57.** (1) The Registrar may investigate the commission of any offence under this Act or its subsidiary legislation.

(2) In any case relating to the commission of an offence under this Act or its subsidiary legislation, the Registrar carrying out an investigation may exercise all or any of the powers in relation to police investigation, except the power to arrest without warrant, given by the Criminal Procedure Code [*Act 593*].

## **Search and seizure with warrant**

**58.** (1) If it appears to a Magistrate, upon written information on oath from the Registrar and after such inquiry as he considers necessary, that there is reasonable cause to believe that an offence under this Act or its subsidiary legislation is being or has been committed on any premises, so that any evidence or thing which is necessary to the conduct of an investigation into an offence may be found in any premises, the Magistrate may issue a warrant authorizing the Registrar named in the warrant to enter the premises at any reasonable time by day or by night, with or without assistance and if need be by force and there to search for and seize any such evidence or thing, provided that nothing shall authorize any court other than the Court to grant a warrant to search for a postal article, telegram or other document in the custody of the postal or telegraph authorities.

(2) Without affecting the generality of subsection (1), the warrant issued by the Magistrate may authorize the search and seizure of—

- (a) copies of any books, accounts or other documents, including computerized data, which contain or are reasonably suspected to contain information as to any offence so suspected to have been committed; or
- (b) any other document, equipment, instrument or matter that is reasonably believed to furnish evidence of the commission of the offence.

(3) The Registrar conducting a search under subsection (1) may, for the purpose of investigating into the offence, search any person who is in or on the premises.

(4) The Registrar making a search of a person under subsection (3) or section 59 may seize, or take possession of, and place in safe custody all things other than the necessary clothing, found upon the person, and any other things, for which there is reason to believe were the instruments or other evidence of the crime, and they may be detained until the discharge or acquittal of the person.

(5) No person shall be searched except by another person of the same gender, and such search shall be conducted with strict regard to decency.

(6) If, by the reason of its nature, size or amount, it is not practicable to remove any book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter seized under this section, the Registrar shall by any means seal such book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter in the premises or container in which it is found.

(7) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (6) or removes any book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or matter under seal or attempts to do so commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

### **Search and seizure without warrant**

**59.** If the Registrar is satisfied upon information received that he has reasonable cause to believe that by reason of delay in obtaining a search warrant under section 58 the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, the Registrar may enter the premises and exercise in, upon and in respect of the premises all the powers referred to in section 58 in as full and ample a manner as if he were authorized to do so by a warrant issued under that section.

### **Access to computerized data**

**60.** (1) The Registrar conducting a search under section 58 or 59 shall be given access to computerized data whether stored in a computer or otherwise.

(2) For the purposes of this section, “access” —

- (a) includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of computerized data; and
- (b) has the meaning assigned to it by subsections 2(2) and (5) of the Computer Crimes Act 1997 [*Act 563*].

### **Warrant admissible notwithstanding defects**

**61.** A search warrant issued under this Act shall be valid and enforceable notwithstanding any defect, mistake or omission therein or in the application for such warrant and any equipment, instrument, material, book, record, account, document or thing seized under such warrant shall be admissible in evidence in any proceedings under this Act or its subsidiary legislation.

### **List of things seized**

**62.** (1) Except as provided in subsection (2), where any equipment, instrument, material, book, record, account, document or thing is seized under this Part, the Registrar shall as soon as practicable prepare a list of the things seized and of the places in which they are respectively found and deliver a copy of the list signed by him to the occupier of the premises which has been searched, or to his agent or employee, at the premises.

(2) Where the premises are unoccupied, Registrar shall whenever possible post a list of the things seized conspicuously on the premises.

**Release of things seized**

**63.** (1) If any equipment, instrument, material, book, record, account, document or thing has been seized under this Act, the Registrar who effected the seizure, may at any time after that release the equipment, instrument, material, book, record, account, document or thing to the person as he determines to be lawfully entitled to the equipment, instrument, material, book, record, account, document or thing if he is satisfied that the equipment, instrument, material, book, record, account, document or thing is not otherwise required for the purpose of any proceedings under this Act or its subsidiary legislation, or for the purpose of any prosecution under any other written law, and in such event neither the Registrar nor the Federal Government or any person acting on behalf of the Registrar or Government shall be liable to any proceedings by any person if the seizure and the release of the equipment, instrument, material, book, record, account, document or thing had been effected in good faith.

(2) A record in writing shall be made by the Registrar effecting the release of any equipment, instrument, material, book, record, account, document or thing under subsection (1) specifying in detail the circumstances of and the reason for the release and he shall send a copy of the record to the Public Prosecutor and to the Inspector-General of Police within seven days of the release.

**Power to require attendance of person acquainted with case**

**64.** (1) The Registrar making an investigation under this Act or its subsidiary legislation may by order in writing require the attendance before himself of any person who appears to the Registrar to be acquainted with the facts and circumstances of the case, and such person shall attend as so required.

(2) Any person who fails to comply with the order given under subsection (1) commits an offence under this Act.

**Examination of person acquainted with case**

**65.** (1) The Registrar making an investigation under this Act or its subsidiary legislation may examine orally any person supposed to be acquainted with the facts and circumstances of the case.



(2) The person examined under subsection (1) shall be legally bound to answer all questions relating to such case put to him by the Registrar, but such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to the questions.

(4) The Registrar examining a person under subsection (1) shall first inform the person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section shall, wherever possible, be reduced into writing and signed by the person making it or affixed with his thumbprint, as the case may be—

- (a) after it has been read to him in the language in which he made it; and
- (b) after he has been given an opportunity to make any correction he may wish.

(6) If the person examined refuses to sign or affix his thumb print on the statement as required under subsection (5), the Registrar shall endorse thereon under his hand the fact of such refusal and the reason therefore, if any, stated by the person examined.

### **Admissibility of statements in evidence**

**66.** (1) If any person is charged with an offence under this Act or its subsidiary legislation, any statement, whether the statement amounts to a confession or not or whether it is oral or in writing, made at any time, whether before or after the person is arrested and whether in the course of an investigation under this Act or not and whether or not wholly or partly in answer to questions, by that person to or in the hearing of the Registrar or other person, shall be admissible in evidence at his trial and, if the person charged tenders himself as witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit.

(2) No statement under subsection (1) shall be admissible or used—

- (a) if the making of the statement appears to the court to have been caused by an inducement, threat or promise having reference to the charge against such person proceeding from a person in authority and sufficient in the opinion of the court to give the person charged grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him; or
- (b) in the case of a statement made by the person after his arrest, unless the court is satisfied that he was cautioned in the following words or words to the like effect:

“It is my duty to warn you that you are not obliged to say anything or to answer any question, but anything you say, whether in answer to a question or not, may be given in evidence.”.

(3) A statement made by a person before there is time to caution him shall not be rendered inadmissible in evidence merely by reason of his not having been cautioned if he is cautioned as soon as possible after that.

(4) Notwithstanding anything to the contrary contained in any written law, a person accused of an offence to which subsection (1) applies shall not be bound to answer any questions relating to the case after any caution as referred to in paragraph (2)(b) has been administered to him.

### **No cost or damages arising from seizure to be recoverable**

**67.** No person shall, in any proceedings before any court in respect of any equipment, instrument, material, book, record, account, document or thing seized in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

PART IX

GENERAL

**Annual declaration**

**68.** (1) Every limited liability partnership shall lodge with the Registrar a declaration, containing the particulars as determined by the Registrar and accompanied by such documents as are required to be included in the declaration, by any two of its partners that in their opinion, the limited liability partnership —

(a) appears as at that date to be able to pay its debts as they become due in the normal course of business; or

(b) does not appear as at that date to be able to pay its debts as they become due in the normal course of business.

(2) The declaration referred to in subsection (1) shall be lodged annually within ninety days from the end of the financial year of the limited liability partnership.

(3) In the case of the first annual declaration, it shall be lodged not later than eighteen months from the date of the registration of the limited liability partnership.

(4) Notwithstanding subsections (2) and (3), the Registrar may, on application by a limited liability partnership and if he thinks fit, grant an extension of time for the lodging of the declaration referred to in subsection (1).

(5) If a limited liability partnership fails to lodge the declaration referred to in subsection (1) within the time or extended time referred to in subsection (2), (3) or (4), as the case may be, the limited liability partnership commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

(6) Any person who makes a declaration referred to in paragraph (1)(a) without having reasonable grounds for his opinion commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(7) Any person who, in connection with a declaration made under this section, makes a statement or furnishes information, whether directly or indirectly that is false or misleading in a material particular, when he knows or ought to have known that the statement or information is false or misleading in a material particular, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine of not less than two hundred and fifty thousand ringgit and not more than five hundred thousand ringgit or to both.

(8) If an offence under subsection (5), (6) or (7) is committed with intent to defraud creditors of the limited liability partnership or for a fraudulent purpose, the person shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one million ringgit or to both.

### **Accounting and other records to be kept**

**69.** (1) Every limited liability partnership shall keep such accounting and other records as will sufficiently explain the transactions and financial position of the limited liability partnership and enable profit and loss accounts and balance-sheets to be prepared from time to time which give a true and fair view of the state of affairs of the limited liability partnership.

(2) The limited liability partnership shall retain the accounting and other records referred to in subsection (1) for a period of not less than seven years from the end of the financial year in which the transactions or operations to which those records relate are completed.

(3) The accounting and other records referred to in subsection (1) shall be kept at the registered office or such other place as the partners think fit provided that the Registrar is duly notified of that other place and the accounting and other records shall at all times be open to inspection by the partners.

(4) The Registrar may, by notice in writing to the limited liability partnership or any of its partners, require the limited liability partnership or that partner to produce the accounting and other records referred to in subsection (1) for his inspection within such time and at such place as may be specified in that notice.

(5) Subject to the limited liability partnership agreement, the accounts of a limited liability partnership shall not be required to be audited.

(6) If a limited liability partnership fails to comply with subsection (1), the limited liability partnership and every partner of the limited liability partnership commit an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(7) If a limited liability partnership fails to comply with subsection (2) or (3), the limited liability partnership and every partner of the limited liability partnership commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

(8) Any person who fails to comply with subsection (4) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

## **Registers**

**70.** (1) The Registrar shall, subject to this Act, keep such registers as he considers necessary in such form as he thinks fit.

(2) Any person may, on payment of the prescribed fee—

- (a) inspect any document lodged with the Registrar under this Act; or
- (b) require a certified or uncertified copy of, or an extract from, any document that he is entitled to inspect.

## **Rectification of registers**

**71.** (1) A person in respect of which an entry in a register—

- (a) has been omitted;
- (b) is incorrect; or
- (c) has been included in error,

may apply to the Registrar for rectification of the register.

(2) Upon receipt of the application under subsection (1), the Registrar may require the applicant to produce such document or to furnish the Registrar with such information as the Registrar deems necessary in order to form an opinion whether the register is to be rectified.

(3) The Registrar may require the person making the application under subsection (1) to give notice of that application to such other person as the Registrar may specify, being a person who appears to the Registrar to be concerned or to have an interest in the business.

(4) The Registrar may, without an application being made under subsection (1), rectify the register where, in his view, an entry—

- (a) has been omitted;
- (b) is incorrect; or
- (c) has been included in error.

(5) Notwithstanding subsection (1), the Registrar may refuse any application if the error, mistake or omission does not arise in the ordinary course of the discharge of the duties of the Registrar.

(6) Any person aggrieved by the refusal of the Registrar to rectify the particulars of his business in the register may appeal within thirty days of the decision of the Registrar to the court which may determine the matter.

(7) On appeal under subsection (6), the court may—

- (a) refuse the application; or
- (b) order the register to be rectified by the making of an entry, variation or deletion therein.

(8) Any order made by the court under this section shall direct that the notice of the order to be served on the Registrar in the manner as determined by the court and the Registrar shall, on receipt of the notice, rectify the register accordingly.

(9) Notwithstanding anything in this section, where it appears to a person that any particulars recorded in the register contains matter that is false, fraudulent or misleading, the person may apply to the court and the court may, as a result of evidence adduced before it, order the Registrar to rectify the register in the manner specified in such order and the Registrar, upon receipt of such order, shall rectify the register accordingly.

### **Relodging of lost registered documents**

**72.** (1) Where the Registrar has reasonable cause to believe that a document in relation to a limited liability partnership lodged under this Act has been lost or destroyed, he may by notice in writing direct the limited liability partnership to relodge the document in the manner and form as may be determined by the Registrar.

(2) The limited liability partnership or any compliance officer of the limited liability partnership shall, within fourteen days after the service of the notice under subsection (1) or such longer period as the Registrar may allow, comply with the direction of the Registrar.

(3) On and from the date of the lodgement made under subsection (1), the lodging of the document shall have the same force and effect as though it is made at the original date of the lodgement.

(4) No fee shall be payable upon the lodging of a document under this section.

(5) If a limited liability partnership fails to comply with the direction of the Registrar under subsection (1), the limited liability partnership and the compliance officer commit an offence.

### **Service for electronic lodgement of documents**

**73.** (1) The Registrar may provide a service for the electronic lodgement of documents required by this Act to be lodged with the Registrar.

(2) A document electronically lodged under this section shall be deemed to have satisfied the requirement for lodgement if the document is communicated or transmitted to the Registrar in such manner as may be determined by the Registrar.

(3) A document that is required to be stamped, signed or sealed shall, if it is to be electronically lodged, be certified to be true copy or authenticated in such manner as may be determined by the Registrar.

(4) A copy of or an extract from any document electronically lodged with the Registrar, or supplied or issued by the Registrar, under subsection (1) and certified to be a true copy of, or extract from, such document under the hand and seal of the Registrar shall be admissible in evidence in any proceedings.

(5) Where a document is electronically lodged with the Registrar, the Registrar or his authorized agents shall not be liable for any loss or damage suffered by any person by reason of any error or omission of whatever nature or however arising appearing in any document obtained by any person under the service referred to in subsection (1) if such error or omission was made in good faith and in the ordinary course of the discharge of the duties of the Registrar or of his authorized agents or occurred or arose as a result of any defect or breakdown in the service or in the equipment used for the provision of the service.

### **Issuing documents electronically**

**74.** The Registrar may, by electronic means, issue a document which is to be issued by him under this Act.

### **Information certified by Registrar admissible in evidence**

**75.** Any information supplied by the Registrar which is certified under his hand and seal to be a true extract from any documents lodged with or submitted to the Registrar under section 73 or issued by the Registrar under section 74 shall in any proceedings be admissible in evidence and be presumed, unless evidence to the contrary is adduced, to be a true extract from such document.



**Service of documents on limited liability partnerships**

**76.** A document may be served on a limited liability partnership by leaving it at or sending it by post to the registered office of the limited liability partnership.

**Power to issue guidelines, practice notes, *etc.***

**77.** (1) The Registrar may issue such notices, circulars, guidelines or practice notes as he considers appropriate under any provision of this Act.

(2) The Registrar may revoke, vary, revise or amend the whole or any part of any notice, circular, guideline or practice note issued under this section.

(3) A person to whom the notices, circulars, guidelines or practice notes referred to in subsection (1) apply, shall give effect to such notices, circulars, guidelines or practice notes.

**Power to take action**

**78.** (1) A person who—

- (a) fails to comply with any provision of this Act or its regulations; or
- (b) fails to comply with or give effect to any notice, circular, guideline or practice note issued by the Registrar,

commits a breach.

(2) If a person has committed a breach and the Registrar is satisfied that it is appropriate in all the circumstances to take action against that person, the Registrar may take any one or more of the following actions:

- (a) direct the person in breach to comply with or give effect to such provisions of the Act, regulations, notices, circulars, guidelines or practice notes;
- (b) impose an administrative penalty, in proportion to the severity or gravity of the breach, but in any event not exceeding ten thousand ringgit;

- (c) reprimand the person in breach; or
- (d) direct the person in breach to take such steps to remedy the breach or to mitigate the effect of such breach, including making restitution to any person aggrieved by such breach.

(3) The Registrar shall give a written notice to a person in breach of its intention to take action under subsection (2) and shall give the person in breach an opportunity to be heard prior to it taking any action under subsection (2).

(4) If the Registrar considers that the limited liability partnership or any of its partners has failed to comply with the direction given under paragraphs (2)(a) or (d), he may apply to the court for one or more of the following orders:

- (a) an order directing the limited liability partnership or its partners to comply with the direction;
- (b) an order directing the limited liability partnership or its partners to pay any costs incurred by the Registrar or other person relating to the issue of the direction by the Registrar or the breach of this Act or its regulations, notices, circulars, guidelines or practice notes relevant to the issue of the direction; or
- (c) any other order that the court considers appropriate.

(5) Where a person has failed to pay an administrative penalty imposed by the Registrar under paragraph (2)(b), the administrative penalty imposed by the Registrar may be sued for and recovered as a civil debt due to the Registrar.

(6) For the purpose of paragraph (2)(d), in determining whether or not restitution is to be made by a person in breach, the Registrar shall have regard to—

- (a) the profits that have accrued to such person in breach; or
- (b) whether one or more persons have suffered loss or been otherwise adversely affected as a result of the breach.

(7) Nothing in this section prejudices the operation of any section imposing penalties on a limited liability partnership or its partners in respect of any failure under subsection (1), nor any powers that the Registrar or other person or the court may have under this Act.

## **Fees**

**79.** The Registrar may charge a fee for any services provided by him otherwise than in pursuance of an obligation imposed on him under this Act.

## **Offence of false and misleading statements**

**80.** (1) A person who in every return, declaration, report, certificate, balance sheet or other document required by or for the purposes of this Act makes or authorizes the making of a statement false or misleading in any material particular knowing it to be false or misleading or intentionally omits or authorizes the omission or inclusion of any matter or thing thereby making the document to be misleading in a material respect commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not less than one hundred and fifty thousand ringgit and not more than five hundred thousand ringgit or to both.

(2) For the purpose of subsection (1), where a person at a meeting votes in favour of the making of a statement referred to in that subsection knowing it to be false, he shall be deemed to have authorized the making of that statement.

## **Offence for improper use of the words “Perkongsian Liabiliti Terhad”**

**81.** Any person who carries on business under any name or title of which “Perkongsian Liabiliti Terhad” or the abbreviation “PLT” is the final word or abbreviation the person, unless the business is duly registered under this Act, commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

**Destruction, concealment, mutilation and alteration of records**

**82.** Any person who—

- (a) destroys, conceals, mutilates or alters; or
- (b) sends or attempts to send or conspires with any other person to remove from its premises or send out of Malaysia,

any book, record, accounts, document, computerized data, thing or matter kept or maintained with intent to defraud the Registrar commits an offence.

**Obstruction**

**83.** A person who—

- (a) refuses the Registrar access to any premises which the Registrar is entitled to have under this Act or in the execution of any duty imposed or power conferred by this Act;
- (b) assaults, obstructs, hinders or delays Registrar in effecting any entry which the Registrar is entitled to effect under this Act or in the execution of any duty imposed or power conferred by this Act; or
- (c) refuses to give the Registrar any information relating to an offence or a suspected offence under this Act or any other information which may reasonably be required of him and which he has in his knowledge or power to give,

commits an offence.

**Tipping-off**

**84.** (1) Any person who—

- (a) knows or has reasonable grounds to suspect that the Registrar is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act

or any subsidiary legislation made under this Act and discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or

- (b) knows or has reasonable grounds to suspect that a disclosure has been made to the Registrar under this Act and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure,

commits an offence.

(2) Nothing in subsection (1) makes it an offence for an advocate and solicitor or his employee to disclose any information or other matter—

- (a) to his client or the client's representative in connection with the giving of advice to the client in the course and for the purpose of the professional employment of the advocate and solicitor; or
- (b) to any person in contemplation of, or in connection with and for the purpose of, any legal proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any illegal purpose.

(4) In proceedings against a person for an offence under this section, it is a defence if the person proves that—

- (a) he did not know or suspect that the disclosure made under paragraph (1)(b) was likely to prejudice the investigation; or
- (b) he had lawful authority or reasonable excuse for making the disclosure.

### **Offences by body corporate**

**85.** (1) If a body corporate commits an offence under this Act or its subsidiary legislation, any person who at the time of the commission of the offence was a director, partner, chief executive officer, chief operating officer, manager, secretary or other similar

officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management—

- (a) may be charged severally or jointly in the same proceedings with the body corporate; and
- (b) if the body corporate is found guilty of the offence, shall be deemed to be guilty of that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—
  - (i) that the offence was committed without his knowledge, consent or connivance; and
  - (ii) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

(2) If any person would be liable under this Act or its subsidiary legislation to any punishment or penalty for his act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his, or of the employee of the agent, if the act, omission, neglect or default was committed—

- (a) by that person's employee in the course of his employment;
- (b) by the agent when acting on behalf of that person; or
- (c) by the employee of the agent in the course of his employment by the agent or otherwise on behalf of the agent acting on behalf of that person.

### **General penalty**

**86.** A person who commits an offence under this Act for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

**Compounding of offences**

**87.** (1) The Registrar may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under this Act or its subsidiary legislation by making a written offer to the person suspected to have committed the offence to compound the offence upon payment to the Registrar an amount of money not exceeding fifty per centum of the maximum fine for that offence within such time as may be specified in the written offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer, or such extended time as the Registrar may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made, and any equipment, instrument, material, book, record, account, document or thing seized under this Act or its subsidiary legislation in connection with the offence may be released by the Registrar, subject to such terms and conditions as it thinks fit to impose in accordance with the conditions of the compound.

(4) All sums of money received by the Registrar under this section shall be paid into the fund established under section 28 of the Companies Commission of Malaysia Act 2001.

**Institution of prosecution**

**88.** A prosecution for any offence under this Act shall not be instituted except by or with the written consent of the Public Prosecutor.

**Protection against suit and legal proceedings**

**89.** No action shall lie or be brought, instituted or maintained in any court against—

- (a) the Registrar, or agent or employee of the Commission;
- and

- (b) any other person for or on account of or in respect of any act done or purported to be done by him under the order, direction or instruction of the Registrar, or agent or employee of the Commission,

if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served by it and for the carrying into effect the provisions of this Act.

### **Protection to certain partners, officers or employees who make disclosures**

**90.** (1) Where a partner, an officer or employee of a limited liability partnership in the course of performance of his duties has reasonable belief of any matter which may or will constitute a breach or non-observance of the provisions this Act or its subsidiary legislation, or has reason to believe that a serious offence involving fraud or dishonesty has been, is being or is likely to be committed against the limited liability partnership or this Act by any partner or officer of the limited liability partnership, he may report the matter in writing to the Registrar.

(2) No partner, officer or employee of the limited liability partnership may be discharged, demoted, suspended, threatened or harassed or in any other manner be discriminated against the terms and conditions of the limited liability partnership agreement, contract of employment or other instrument by reason of the report submitted to him under subsection (1).

(3) No partner, officer or employee of the limited liability partnership shall be liable to be sued in any court nor be subject to any tribunal process, including disciplinary action for any report submitted by him under subsection (1) provided that the report is made in good faith.

(4) For the purpose of this section—

- (a) “a serious offence involving fraud or dishonesty” means an offence that is punishable by imprisonment for a term of not less than two years; and



(b) “officer” means—

- (i) a compliance officer; and
- (ii) a receiver or manager of any part of the undertaking of the limited liability partnership appointed under a power contained in any instrument.

### **Power to make regulations**

**91.** (1) The Minister may make regulations for or with respect to—

- (a) the duties and functions of the Registrar, Assistant Registrars and other employees appointed to assist with the administration of this Act;
- (b) the fees to be paid to the Registrar in respect of any obligation under this Act;
- (c) the manner in which the Registrar may deal with the property vested in him under section 54; and
- (d) all matters and things required or authorized by this Act to be prescribed or provided, for the carrying out of, or giving full effect to, the provisions of this Act.

(2) Any subsidiary legislation made under this Act may provide for any act or omission in contravention of the subsidiary legislation to be an offence and may provide for penalties of a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

### **Power to amend Schedules**

**92.** The Minister may, by order published in the *Gazette*, vary, delete, add to, substitute or otherwise amend the First Schedule, Second Schedule and Third Schedule.

## FIRST SCHEDULE

## [Section 2]

## PROFESSIONAL PRACTICE

Professional practice	Governing law	Governing body
1. Chartered accountant	Accountants Act 1967 [ <i>Act 94</i> ]	Malaysian Institute of Accountants
2. Advocate and solicitor	(i) Legal Profession Act 1976 [ <i>Act 166</i> ]  (ii) Advocates Ordinance of Sabah [ <i>Sabah Cap. 2</i> ]  (iii) Advocates Ordinance of Sarawak [ <i>Sarawak Cap. 110</i> ]	(i) Malaysian Bar  (ii) Sabah Law Association  (iii) Advocates' Association of Sarawak
3. Secretary	Companies Act 1965 [ <i>Act 125</i> ]	-Nil-

## SECOND SCHEDULE

## [Section 9]

## DEFAULT PROVISIONS FOR LIMITED LIABILITY PARTNERSHIPS

1. The mutual rights and duties of the partners and the mutual rights and duties of a limited liability partnership and its partners shall be determined, subject to the terms of any limited liability partnership agreement, by the provisions in this Schedule.

2. All the partners of a limited liability partnership are entitled to share equally in the capital and profits of the limited liability partnership.

3. The limited liability partnership 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 limited liability partnership; and

- (b) in or about anything necessarily done for the preservation of the business or property of the limited liability partnership.
4. Every partner may take part in the management of the limited liability partnership.
  5. No partner shall be entitled to remuneration for acting in the business or management of the limited liability partnership.
  6. No person may be introduced as a partner without the consent of all existing partners.
  7. No person shall assign all or part of his or its interest in the limited liability partnership without the consent of all existing partners.
  8. 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.
  9. Each partner shall render true accounts and full information of all things affecting the limited liability partnership to any other partner or that other partner's legal representatives.
  10. 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.
  11. Every partner must account to the limited liability partnership for any benefit derived by that partner without consent of the limited liability partnership from any transaction concerning the limited liability partnership, or from any use by that partner of the property, name or any business connection of the limited liability partnership.
  12. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

### THIRD SCHEDULE

#### [Section 44]

A foreign limited liability partnership shall not be regarded as carrying on a business in Malaysia for the reason only that within Malaysia it—

- (a) is or becomes a party to any action or suit or any administrative or arbitration proceeding or effects settlement of an action, suit or proceeding or of any claim or dispute;
- (b) holds meetings or carries on other activities concerning its internal affairs;
- (c) maintains any bank account;

- (d) effects any sale through an independent contractor;
- (e) solicits or procures any order which becomes a binding contract only if the order is accepted outside Malaysia;
- (f) creates evidence of any debt or creates a charge on movable or immovable property;
- (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to those debts;
- (h) conducts an isolated transaction that is completed within thirty one days, but not being one of a number of similar transactions from time to time;
- (i) invests any of its funds or holds property; or
- (j) import goods only temporarily pursuant to the Customs Act 1967 [Act 235] for the purpose of display, exhibition, demonstration or as trade samples with a view to subsequent re-exportation within a period of three months or within such further period as the Director General of Customs and Excise may in his discretion allow.

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## EXPLANATORY STATEMENT

The Limited Liability Partnerships Bill 2011 (“the proposed Act”) seeks to provide for the registration, administration and dissolution of limited liability partnerships and for related matters.

### PART I

- 2. Part I deals with preliminary matters.
- 3. *Clause 1* contains the short title of the proposed Act and seeks to allow the Minister to appoint the date of commencement of the proposed Act.
- 4. *Clause 2* defines certain words and expressions used in the proposed Act.

### PART II

- 5. Part II deals with the fundamentals of a limited liability partnership.
- 6. *Clause 3* seeks to provide that a limited liability partnership registered under the proposed Act is a body corporate and has legal personality separate from that of its partners.
- 7. *Clause 4* seeks to provide for the non-applicability of the Partnership Act 1961 and the rules of equity and of common law to a limited liability partnership.

PART III

8. Part III deals with the provisions on the formation and registration of a limited liability partnership.

9. *Clause 5* seeks to designate the Chief Executive Officer of the Companies Commission of Malaysia as the Registrar of Limited Liability Partnerships.

10. *Clause 6* seeks to provide for the formation of a limited liability partnership by two or more persons associated for carrying on any lawful business with a view to profit in accordance with the terms of the limited liability partnership agreement. However, this clause is subject to *clauses 7* and *8*.

11. *Subclause 7(1)* seeks to allow a limited liability partnership to carry on business with fewer than two partners for a period not exceeding six months or a longer period as may be determined by the Registrar which does not exceed one year. *Subclause 7(3)* makes it an offence for a limited liability partnership to carry on business in contravention of *subclause 7(1)* and the court may, upon conviction, order the limited liability partnership to be dissolved and its name to be struck-off the register.

12. *Clause 8* allows a limited liability partnership to be formed for the purpose of carrying on a professional practice which partners shall consist of natural persons who are practising the same professional practice and have in force professional indemnity insurance cover.

13. *Clause 9* provides that the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners shall be governed by the limited liability partnership agreement and in absence of any agreement as to any matter set out in the Second Schedule, the Second Schedule shall apply.

14. *Clauses 10, 11* and *12* seek to provide for the detailed procedures pertaining to the application for registration of a limited liability partnership and the power of the Registrar to register and to refuse the registration of the limited liability partnership under the proposed Act.

15. *Clauses 13, 14* and *15* seek to provide for the requirements relating to the name of a limited liability partnership, the reservation of names for the limited liability partnership and the changes to the names.

16. *Clause 16* seeks to empower the Registrar to require a limited liability partnership to change its name under certain circumstances.

17. *Clause 17* seeks to require a limited liability partnership to notify the Registrar of any changes made to the registered particulars.

18. *Clause 18* seeks to require a limited liability partnership to maintain a registered office in Malaysia.

19. *Clause 19* seeks to list the documents to be maintained by a limited liability partnership at its registered office.

20. *Clause 20* seeks to require a limited liability partnership to display its name and registration number outside the registered office and place of business subject to certain exceptions.

#### PART IV

21. Part IV deals with the management of a limited liability partnership.

22. *Clause 21* provides for the limited liability of partners in a limited liability partnership whereby a partner is not personally liable for any obligation of the limited liability partnership arising in contract, tort or otherwise solely by reason of being a partner of the limited liability partnership.

23. *Clause 22* provides that a partner or former partner of a limited liability partnership who receives a distribution from the limited liability partnership when the limited liability partnership is insolvent shall be personally liable to the limited liability partnership for the amount or value of the distribution if it was received within a period of two years before the commencement of the winding-up of the limited liability partnership.

24. *Clause 23* deals with the power of a partner, being the agent of a limited liability partnership, to bind that partnership for the acts of that partner in the partner's capacity as a partner subject to certain exceptions.

25. *Clause 24* deals with the cessation of a partner from the limited liability partnership and the effect of the cessation.

26. *Clause 25* seeks to provide for the effect of bankruptcy on the partner of a limited liability partnership.

27. *Clause 26* deals with the assignment of a partner's interest in the distribution from the limited liability partnership and the effect thereto.

28. *Subclause 27(1)* requires a limited liability partnership to appoint at least one compliance officer from amongst its partners or persons qualified to act as secretaries under the Companies Act 1965. *Subclause 27(6)* provides that if no compliance officer is appointed then all partners shall be deemed to be the compliance officer of the limited liability partnership. *Subclause 27(7)* provides that a compliance officer shall be answerable for the doing of all acts, matters and things as are required to be done by the limited liability partnership under *clauses 17, 19 and 20* and shall be personally liable to all penalties imposed on the limited liability partnership for any contravention of those clauses unless he satisfies the court hearing the matter that he should not be so liable.

29. *Clause 28* provides that a person shall not act as a compliance officer if he is an undischarged bankrupt or disqualified to act as a director or secretary under the Companies Act 1965.

PART V

30. Part V provides for the conversion of a conventional partnership or private company, as the case may be, to a limited liability partnership and the saving and transitional provisions in relation to the conversion.

31. *Clauses 29 and 30* seek to provide for the conversion of a conventional partnership or private company, as the case may be, to a limited liability partnership upon satisfying certain requirements.

32. *Clause 31* seeks to require a conventional partnership or private company to lodge certain statements with the Registrar for the purposes of conversion to a limited liability partnership.

33. *Clause 32* empowers the Registrar to register the conversion of a conventional partnership or private company, as the case may be, to a limited liability partnership, or to refuse the registration of such conversion if he is not satisfied with the information given.

34. *Clause 33* provides for the effect of the registration of the conversion of a conventional partnership or private company to a limited liability partnership.

35. *Clauses 34, 35, 36, 37, 38, 39 and 42* deal with the transitional provisions with respect to the conversion of a conventional partnership or private company to a limited liability partnership.

36. *Clause 40* seeks to provide that *clauses 33 to 39* shall not apply to any approval, permit or licence issued under any written law to a conventional partnership or private company which is in force immediately before the date of registration of the limited liability partnership.

37. *Clause 41* seeks to provide that every partner of a conventional partnership that has converted to a limited liability partnership shall continue to be personally liable for the liabilities and obligations of the limited liability partnership which were incurred prior to the conversion.

38. *Clause 43* provides that 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 limited liability partnership and kept at its registered office for seven years from the date of registration.

PART VI

39. Part VI deals with the registration and cessation of a foreign limited liability partnership's business in Malaysia and the liquidation or dissolution of a foreign limited liability partnership in its place of incorporation, establishment or origin.

40. *Clause 44* requires the registration of a foreign limited liability partnership before carrying on business in Malaysia. A foreign limited liability partnership is not considered as carrying on a business in Malaysia if it carries on activities as specified in the Third Schedule.

41. *Subclause 45(1)* lists out the documents that need to be lodged with the Registrar for the purposes of registration of a foreign limited liability partnership. *Subclause 45(2)* allows the Registrar to register the foreign limited liability partnership if certain requirements are fulfilled.

42. *Clause 46* deals with the requirements of a foreign limited liability partnership relating to the compliance officer, registered office, documents to be kept and annual declaration.

43. *Clause 47* seeks to require a foreign limited liability partnership which ceases to have a place of business or carry on business in Malaysia to notify the Registrar of such fact and seeks to empower the Registrar to remove the name of the foreign limited liability partnership from the register.

44. *Clause 48* deals with the detailed procedures for the liquidation or dissolution of a foreign limited liability partnership in its place of incorporation, establishment or origin.

## PART VII

45. Part VII deals with the winding-up, dissolution and striking-off procedures of a limited liability partnership.

46. *Clause 49* deals with receivership and winding-up procedures for a limited liability partnership. In the case of receivership of a limited liability partnership, the provisions of Part VIII (in so far as they relate to a company limited by shares) of the Companies Act 1965 shall apply. For the purpose of winding-up by the Court, Divisions 2 and 4 of Part X (in so far as they relate to a company limited by shares) of the Companies Act 1965 and the Companies (Winding-Up) Rules 1972 shall apply.

47. *Clause 50* provides for the procedures to be followed for the voluntary winding-up of a limited liability partnership.

48. *Clause 51* seeks to empower the Registrar to strike-off the name of a limited liability partnership from the register and to provide for the striking-off procedure.

49. *Clause 52* empowers the High Court to make an order to revoke the dissolution of a limited liability partnership if certain requirements are met.

50. *Clause 53* seeks to allow the Registrar to represent a limited liability partnership which has been dissolved under *clause 49, 50 or 51*, or its liquidator to do or cause to be done any administrative action to carry out, complete or give effect to any dealing, transaction or matter which the limited liability partnership if still existing would be legally or equitably bound.



51. *Clause 54* deals with the outstanding property of a limited liability partnership after it has been dissolved under *clause 49, 50 or 51* which was not got in, realized upon or otherwise disposed of or dealt with by the limited liability partnership or its liquidator whereby all the outstanding property shall be vested in the Registrar.

## PART VIII

52. Part VIII deals with enforcement provisions.

53. *Clause 55* seeks to allow the Registrar to order a person to provide any information or documents that are relevant, or evidence which the Registrar has reasonable grounds to believe is relevant, for the purposes of carrying out its functions and powers under the proposed Act.

54. *Clause 56* seeks to empower the Registrar to have access to any place or building and to inspect documents for the purpose of ascertaining a limited liability partnership's compliance with the proposed Act.

55. *Clause 57* empowers the Registrar to investigate the commission of any offence under the proposed Act or its subsidiary legislation.

56. *Clauses 58 and 59* deal with provisions relating to the power of search and seizure with warrant and search and seizure without warrant, respectively.

57. *Clause 60* deals with access to computerized data.

58. *Clause 61* provides that a search warrant issued under the proposed Act shall be valid and enforceable notwithstanding any defect, mistake or omission in the warrant or in the application of such warrant.

59. *Clause 62* seeks to impose a duty on the Registrar to prepare a list of things seized under the proposed Act and to deliver the list to the occupier of the premises.

60. *Clause 63* deals with the procedures for the release of things seized under the proposed Act.

61. *Clause 64* seeks to allow the Registrar to order the attendance of persons acquainted with the case.

62. *Clause 65* empowers the Registrar investigating a case under the proposed Act to examine orally any person supposed to be acquainted with the facts and circumstances of the case.

63. *Clause 66* deals with admissibility of statements in evidence.

64. *Clause 67* deals with the cost and damages arising from the seizure of things under the proposed Act.

## PART IX

65. Part IX deals with general provisions.

66. *Clause 68* deals with the declaration required to be lodged annually by a limited liability partnership certifying the solvency status of the limited liability partnership. The failure to comply with this requirement is an offence.

67. *Clause 69* seeks to regulate the keeping and auditing of accounting and other records of a limited liability partnership.

68. *Clause 70* provides that the Registrar must maintain registers as he considers necessary.

69. *Clause 71* provides procedures for the application to rectify the register and the powers of the Registrar to rectify the register.

70. *Clause 72* empowers the Registrar to direct a limited liability partnership to relodge a document with the Registrar which has been lost or destroyed.

71. *Clause 73* allows the Registrar to provide a service for the electronic lodgement of documents required by the proposed Act to be lodged with the Registrar.

72. *Clause 74* empowers the Registrar to issue a document by electronic means.

73. *Clause 75* deals with the admissibility of a document which is certified by the Registrar to be the true extract from the document which is lodged with or issued by the Registrar.

74. *Clause 76* seeks to provide for the service of documents on a limited liability partnership.

75. *Clause 77* seeks to empower the Registrar to issue notices, circulars, guidelines or practice notes under the proposed Act.

76. *Clause 78* seeks to empower the Registrar to take various administrative actions against persons for failing to comply with any provision of the proposed Act or its subsidiary legislation, notices, circulars, guidelines or practice notes.

77. *Clause 79* seeks to empower the Registrar to impose any fee in respect of the services provided by the Registrar under the proposed Act.

78. *Clause 80* seeks to make it an offence to provide false or misleading information or document to the Registrar.

79. *Clause 81* seeks to make it an offence for any person to carry on business under any name or title of which “Perkongsian Liabiliti Terhad” or the abbreviation “PLT” is the final word or abbreviation unless the business is duly registered under the proposed Act.

80. *Clause 82* makes it an offence to destroy, conceal, mutilate or alter any book, record, account, document, *etc.*, with intent to defraud the Registrar.

81. *Clause 83* makes it an offence to obstruct the Registrar conducting a search by refusing access to the premises, assaulting, obstructing, hindering or delaying the Registrar in the performance of his functions under the proposed Act, or refusing to produce any information relating to the offence under the proposed Act.

82. *Clause 84* seeks to provide for the offence of disclosing to any other person information that is likely to prejudice an investigation under the proposed Act.

83. *Clause 85* seeks to provide for the liability of directors, partners, managers, *etc.*, or other similar officers of a body corporate for offences committed by the body corporate.

84. *Clause 86* seeks to impose a general penalty of a fine not exceeding fifty thousand ringgit or imprisonment for a term not exceeding one year or to both for an offence committed under the proposed Act for which no penalty is expressly provided.

85. *Clause 87* seeks to empower the Registrar to compound any offence with the written consent of the Public Prosecutor.

86. *Clause 88* provides that the prosecution of an offence shall not be instituted except by or with the written consent of the Public Prosecutor.

87. *Clause 89* provides for the protection of the Registrar, or agent or employee of the Commission exercising any power under the proposed Act from legal suits if the acts were done in good faith.

88. *Clause 90* provides for the protection of a partner, an officer or an employee of a limited liability partnership who makes a report to the Registrar regarding certain matters in relation to the limited liability partnership.

89. *Clause 91* seeks to empower the Minister to make regulations and to provide for penalties of a fine not exceeding five hundred thousand ringgit or imprisonment for a term not exceeding three years or to both for any act or omission in contravention of the subsidiary legislation.

90. *Clause 92* empowers the Minister to vary, delete, add to, substitute or otherwise amend the First Schedule, Second Schedule and Third Schedule.

#### *FINANCIAL IMPLICATIONS*

This Bill will not involve the Government in any extra financial expenditure.

[PN(U<sup>2</sup>)2770]