



**SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA**

THE LIMITED LIABILITY PARTNERSHIPS ACT 2012

By:

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OVERVIEW

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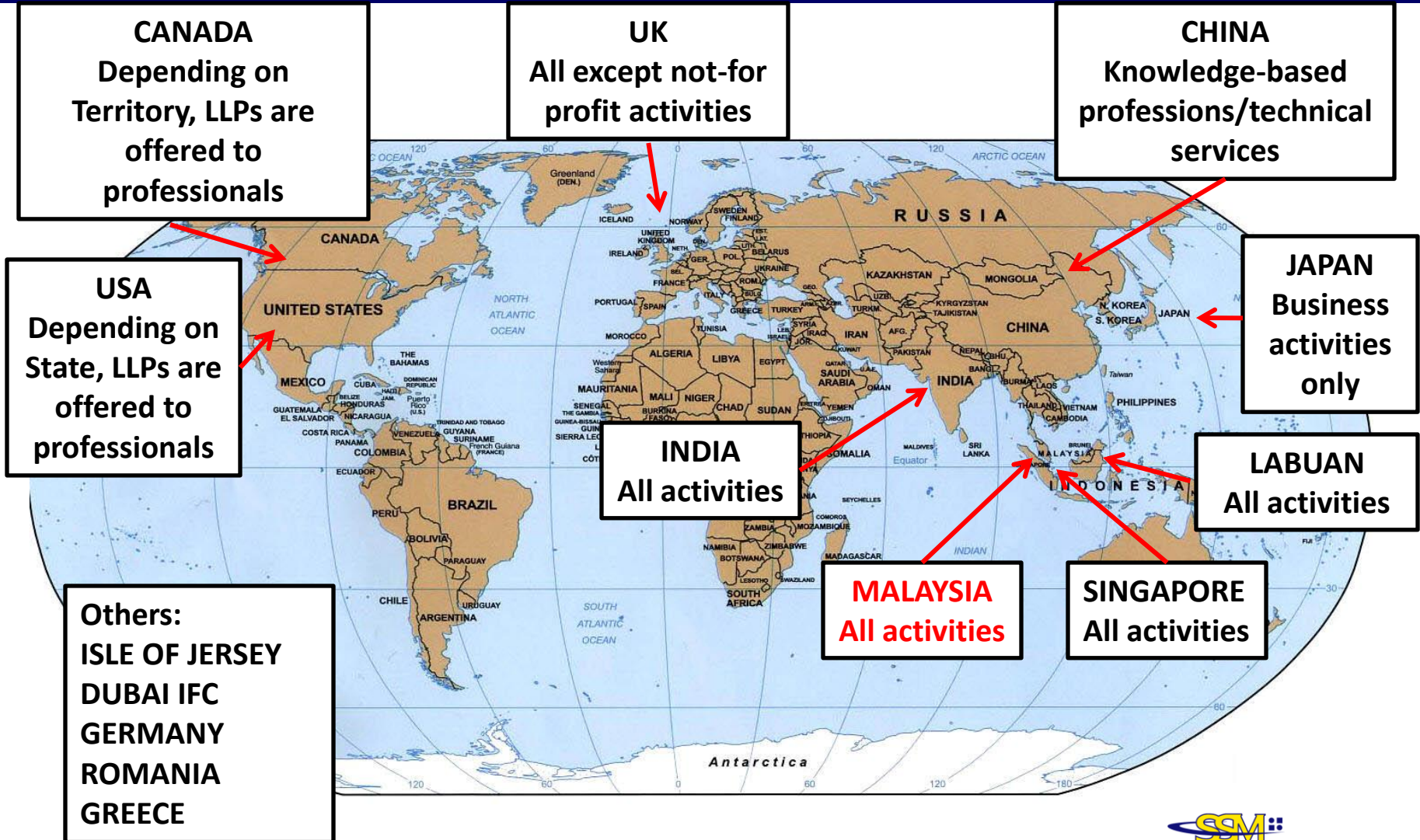
INTRODUCTION

- What is a limited liability partnership?
 - A new business vehicle.
 - A hybrid between company and conventional partnership offering fundamentally:
 - i. the privilege of limited liability accorded to the partners of the LLP; and
 - ii. the flexibility of internal management.

GENERAL CHARACTERISTICS

- LLP is a **body corporate** and shall have:
 - **legal personality** separate from its partners;
 - **perpetual succession**; and
 - **unlimited capacity**.
- Flexible internal arrangement through:
 - LLP agreement; or
 - In the absence of agreement, default provisions covering the mutual rights and duties of LLP and its partners.

LLP WORLDWIDE



LIMITED LIABILITY PARTNERSHIP ACT 2012

- Limited Liability Partnerships Act 2012
 - Passed in Parliament on 21 December 2011
 - Gazetted on 9 February 2012
- Date of implementation – yet to be determined by the Minister

RATIONALE FOR THE INTRODUCTION OF LLP IN MALAYSIA

Access to limited liability status

- To encourage entrepreneurship and to promote business growth.

Closing the gap in current framework

- To provide an alternative business vehicle to complement the traditional choices of business vehicles.
- To provide flexibility and freedom to select the best business model that suits needs and requirements of businesses on the basis of commercial criteria.
- More affordable vis-à-vis companies
- More protection vis-à-vis sole proprietorships/firms

TARGET AUDIENCE FOR LLP IN MALAYSIA

- Small businesses
- Professionals
- Joint ventures
- Venture capitals

FRAMEWORK FOR MALAYSIA

A legal framework to govern the registration, administration and dissolution of LLPs in Malaysia:

Formation	Administration	Dissolution
<ul style="list-style-type: none">• Registration of LLPs• Conversion by firms and private companies• Registration of foreign LLPs	<ul style="list-style-type: none">• Partners – duties and liabilities• Compliance Officer – duties and liabilities• Compliance requirements• Annual Declaration	<ul style="list-style-type: none">• Voluntary Winding up• Receivership & Court Ordered Winding Up• Striking Off

FORMATION & REGISTRATION OF LLP

FORMATION OF LLP

- LLP may be formed:
 - by a minimum of two persons (wholly or partly individuals or bodies corporate);
 - for any lawful business with a view of profit; and
 - in accordance with the terms of the LLP agreement.
- LLP formed for **professional practice** must:
 - consist of natural persons of the same profession; and
 - have in force professional indemnity insurance as approved by the Registrar.

REGISTRATION OF LLP

- Information required for registration:
 - proposed name of LLP
 - nature of business
 - address of registered office
 - name and details of partners
 - name and details of compliance officer
 - approval letter (in cases of professional practice).
- Name of LLP will end with “Perkongsian Liabiliti Terhad” or “PLT”

AVAILABILITY OF NAMES

- Name as approved by governing bodies
- Name search will not be applicable (except for Secretarial Firms)
- Similar names:
 - Unique LLP number will be issued upon registration
 - Unique identifier will be given to differentiate different profession (ACC, LAW, CS)
 - Example:
 - Wong & Co PLT (LLP1 – LAW) vs Wong & Co PLT (LLP1256 – LAW)
 - Wong & Co PLT (LLP 1- LAW) vs Wong & Co PLT (LLP 8888 – ACC)

APPROVAL LETTER FROM GOVERNING BODIES

- Confirmation of status from governing bodies:
 - Current partners (including membership number)
 - Registered address
 - Registration date with governing bodies (including any reference number)
 - Insurance coverage
 - Confirmation Reference Code
 - Solvency status for conversion cases

REGISTRATION OF LLP

- Power of Registrar to refuse registration on the following grounds:
 - charitable purpose;
 - unlawful purpose; or
 - purpose is prejudicial to public peace, welfare or good order or morality in Malaysia.

CONVERSION INTO LLP

Who can convert?

- Conventional partnerships:
 - registered under the Registration of Businesses Act 1956;
or
 - any partnership established by two or more persons for the carrying on any professional practice.
- Private companies incorporated under the Companies Act 1965.

CONVERSION OF CONVENTIONAL PARTNERSHIP INTO LLP

- Eligibility criteria:
 - Same partners and no one else.
 - At the date of application, the conventional partnership is solvent.
 - In cases of professional practice, the approval letter from the governing body.

CONVERSION OF CONVENTIONAL PARTNERSHIP INTO LLP

- Effect of conversion:
 - Vesting of assets of the conventional partnership into the LLP;
 - Pending proceedings may be continued, completed and enforced against or by the LLP.
 - Existing agreements, contracts shall have effect as though the LLP were a party.
 - Partner of conventional partnership shall continue to be personally liable (jointly and severally with the LLP) for liabilities and obligations incurred prior to the conversion.

CONVERSION OF PRIVATE COMPANY INTO LLP

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

CONVERSION OF PRIVATE COMPANY INTO LLP

- Effect of conversion:
 - Vesting of assets of the private company into the LLP;
 - Pending proceedings may be continued, completed and enforced against or by the LLP.
 - Existing agreements, contracts shall have effect as though the LLP were a party.
 - LLP continue to be liable for liabilities and obligations incurred prior to the conversion.

ADMINISTRATION OF LLP

PARTNERS: DUTIES AND LIABILITIES

- Any individual or body corporate can be a partner.
 - “Partner” means any person admitted as a partner in accordance to the LLP agreement and includes salaried partner.
- Any obligation arising from contract or tort will be the liability of the LLP and not the partners.
- A partner however will be jointly and severally liable for his own wrongful act or omission in the course of the business of the LLP.
- Liabilities of LLP will be borne out of the property of the LLP.

PARTNERS: DUTIES AND LIABILITIES

- Every partner is an agent of an LLP.
- However, the LLP is not bound by what the partner has done in dealing with a person if:
 - the partner acted without authority; or
 - the person with whom the partner was dealing knows that the partner acted without authority or does not know that he is a partner of the LLP.
- A former partner is still regarded as a partner of an LLP unless—
 - the person dealing with whom the partner was dealing knows that the partner has ceased to be a partner; or
 - Notice of cessation has been lodged with Registrar.

CESSATION AS PARTNER

- Automatic cessation:
 - Upon death/dissolution of a partner; or
 - in the case of a professional practice, the partner has been disqualified from carrying out the professional practice.
- Voluntary cessation:
 - a partner may cease to be a partner in accordance with the LLP agreement; or
 - in the absence of such an agreement, by giving a 30 days notice to the other partners.

EFFECT OF BANKRUPTCY OF A PARTNER

- Bankruptcy of a partner will not cause a partner to cease being a partner.
- However, a bankrupt partner is prohibited to take part in the management of the LLP unless—
 - Leave from Director General of Insolvency has been obtained; or
 - Leave of the Court has been obtained (applicable to both local or foreign partners).

REQUIREMENT FOR COMPLIANCE OFFICER

- LLP must appoint at least one compliance officer.
- Compliance officer must be either one of the partners or persons qualified to act as a secretary under the Companies Act 1965.
- Compliance officer must be—
 - A citizen or PR of Malaysia; and
 - Ordinarily resides in Malaysia.

DUTIES OF COMPLIANCE OFFICER

- Statutory duties of a compliance officer:
 - Registering any changes in registered particulars of the LLP;
 - Keeping and maintaining registers and records of the LLP; and
 - Ensuring publication of names of the LLP
- Will be personally liable for the contravention of the statutory duties unless the court is satisfied that he is not so liable.

OTHER COMPLIANCE REQUIREMENTS

- Registered office
 - LLP must have a registered office in Malaysia at all times.
- Keeping of certain registers and statutory records at the registered office
 - Notice of registration
 - Register of partners
 - Copies of LLP Agreement, annual declaration/any statement lodged with the Registrar
 - Instrument of charges.

OTHER COMPLIANCE REQUIREMENTS

- Keeping of proper accounting records
 - LLP must keep accounting and other records to sufficiently explain its financial position.
 - The accounts shall be prepared to give a true and fair view of the state of the affairs of the LLP.
- Annual declaration
 - Declaration by at least two partners on the solvency of the LLP.

DISSOLUTION OF LLP

METHODS OF DISSOLUTIONS

- Court Ordered Winding Up
- Voluntary Winding Up
- Striking off

RECEIVERSHIP AND COURT ORDERED WINDING UP

- Court Ordered Winding Up
 - Divisions 2 and 4 of Part X of Companies Act 1965 and the Companies Winding Up Rules 1972 will be applicable.
 - Appropriate modifications
- Receivership
 - Part VIII of the Companies Act 1965 will be applicable

VOLUNTARY WINDING UP

- Application in writing to the Registrar when all assets and liabilities have been discharged.
- Application must be preceded by notice to all partners and advertisement of the intention to wind up.
- Registrar will order dissolution only if there is no objection received.

STRIKING OFF

- Power of the Registrar to strike LLP off the register on the following grounds:
 - No longer carrying on business;
 - Contravention of the Act;
 - Prejudicial to national interests; or
 - No liquidator acting in cases of court ordered winding up;
 - Affairs have been fully wound up but no sufficient assets to obtain court order.

PROPOSED IMPLEMENTATION PLAN

IMPLEMENTATION PLAN

- Full leverage of electronic filing
- No prescribed forms
- Transactions based concept
- Target rolled out – after June 2012

THANK YOU