



SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA

LIMITED LIABILITY PARTNERSHIP BILL

DISCUSSION DRAFT

LIMITED LIABILITY PARTNERSHIPS BILL

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LIMITED LIABILITY PARTNERSHIP BILL

An Act to provide for the registration and administration of limited liability partnerships.

PART I

PRELIMINARY

Short title and commencement

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“annual declaration” means a declaration required to be lodged by a limited liability partnership by section 31;

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

“corporation” means any body corporate formed or incorporated or existing within Malaysia or outside Malaysia and includes any foreign company but does not include—

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- (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; or
- (d) any trade union registered under any written law as a trade union;

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

“document” means any application, form, report, certification, notice, confirmation, declaration or other document to be filed or lodged with or submitted to the Registrar or, as the case may be, any certificate, notice or other document to be issued by the Registrar;

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

“conventional partnership” means a partnership registered under the Registration of Businesses Act 1956 [Act 197];

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“limited liability partnerships” has the meaning given to it under section 4(1);

“limited liability partnership agreement” in relation to a limited liability partnership, any agreement expressed or implied 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 and their rights and duties in relation to the limited liability partnership;

“officer”, in relation to a limited liability partnership, means—

- (a) any compliance officer;
- (b) a receiver or manager of any part of the undertaking of the limited liability partnership appointed under a power contained in any instrument;
- (c) any liquidator of the limited liability partnership appointed in a voluntary winding up, but does not include—
 - (i) any receiver who is also the compliance manager;
 - (ii) any receiver or manager appointed by the Court;
or
 - (iii) any liquidator appointed by the Court or by the creditors”;

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“partner” means, in relation to a limited liability partnership, any person who has been admitted as a partner in the limited liability partnership in accordance with the limited liability partnership agreement;

“private company” means—

- (a) any company which immediately prior to the commencement of the Companies Act 1965 was a private company under the repealed written laws;
- (b) any company incorporated as a private company by virtue of section 15 of the Companies Act 1965; or
- (c) any company converted into a private company pursuant to section 26(1) of the Companies Act 1965, being a company which has not ceased to be a private company under section 26 or 27 of the Companies Act 1965;

“professional partnership” has the meaning given to it under section 8(2);

“property” in relation to a limited liability partnership, means land, money, goods, things in action, goodwill, and every valuable thing, whether 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 property;

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

“Registrar” means the Registrar of Limited Liability Partnerships as designated under section 3(1) and includes any Assistant Registrars appointed under section 3(2);

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

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

[Jersey LLP Law 1997 Art. 1 (4), Singapore LLP ss 2(2),(3), (4)]

Appointment of Registrar of Limited Liability Partnerships, etc.

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

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(2) The Commission may appoint, on such terms and conditions as it may determine, from amongst persons in the employment of the Commission such number of Assistant Registrars, clerks and servants 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 any Assistant Registrar and shall be as valid and effectual as if done or signed by the Registrar.

(4) No person dealing with any 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.

PART II

FUNDAMENTALS OF A LIMITED LIABILITY PARTNERSHIP

Separate legal personality, capacity, etc

4. (1) A limited liability partnership registered under section 6(1) is a body corporate and shall have legal personality separate from that of its partners.

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(2) A limited liability partnership shall have perpetual succession where any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

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

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

[Jersey LLP Law 1997, Art. 2 (4); UK LLP 2000, s. 1, Singapore LLP s5]

Non-applicability of partnership law

5. The law relating to partnerships shall not apply to a limited liability partnership.

[Singapore LLP s6]

PART III

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FORMATION AND REGISTRATION

Formation of a limited liability partnership

6. (1) Any two or more persons 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 by filing an application for registration to the Registrar.

[DIFC s 8(1), CA s14(1), UK LLP s2(1)(a)]

(2) Where a limited liability partnership is formed for the purpose of carrying on a professional partnership, the limited liability partnership shall—

- (a) carry on a professional practice as prescribed by the Minister in Part I or Part II of First Schedule;
- (b) have in force professional indemnity insurance cover as determined by the relevant professional bodies for professional practices under Part I of First Schedule, or in the case of professional practices under Part II of First Schedule any other amount as may be prescribed by the Minister upon the recommendation by the Registrar; and
- (c) consist of partners none of whom is a body corporate.

[Labuan LPLLP s4(4)]

Limited liability partnership agreement

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

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

(2) The limited liability partnership agreement shall be printed and divided into numbered paragraphs and dated and shall state, in addition to other requirements –

- (a) the name of the limited liability partnership;
- (b) the nature of business of the limited liability partnership;
and
- (c) that the partners have agreed to become partners of the limited liability partnership.

[Singapore LLP s10, Companies Act 1965 s18, DIFC s 9(1), Labuan LPLLP s49, UK LLP s5]

Manner and particulars of registration

8. (1) The application filed to the Registrar under section 6 shall include a statement 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, identification, nationality and the usual place of residence of every person who is to be a partner of the limited liability partnership and, where any of these persons is a body corporate, the corporate name, place of incorporation or registration, registration number and registered office of the body corporate to which all notices and communications may be addressed;
- (e) the name, identification, nationality and the address of every person who is to be a compliance officer of the limited liability partnership; and
- (f) such other information concerning the proposed limited liability partnership as the Registrar may require.

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

(3) In this section, “identification” means, in the case of any person issued with an identity card, the number of the identity card, and in the case of a person not issued with an identity card, particulars of the passport or such other similar evidence of identification as is available.

[Singapore s16, DIFC s 8(3), BR Act 2004 Ed., s. 6; UK LLP 2000, s. 2]

Registration

9. (1) If the Registrar is satisfied that the requirements of this Act as to registration are complied with, the Registrar shall—

- (a) register the application 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 specified in the notice.

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(3) The notice of registration is conclusive evidence that the requirements of this Act in respect of registration and matters precedent and incidental to such registration have been complied with and that the limited liability partnership is duly registered under the 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) Any person aggrieved by the refusal of the Registrar to register a limited liability partnership of which he is to be a partner may, within 30 days of the date of the refusal, appeal to the Minister whose decision shall be final.

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

[Singapore LLP s16, ROBA s5F]

Power to refuse registration

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10. (1) Notwithstanding any provision in this Act or any other written law, the Registrar shall refuse to register a limited liability partnership under this Act where he is satisfied that —

- (a) it would be contrary to the national security or interest for the limited liability partnership to be registered; or
- (b) the proposed business is likely to be used for—
 - (i) an unlawful purpose; or
 - (ii) purposes prejudicial to public peace, welfare or good order in Malaysia.

(2) Any person aggrieved by the decision of the Registrar under subsection (1) may, within 30 days of the date of the decision, appeal to the Minister whose decision shall be final.

[ROBA s5C, CA 1965 s16(8), Singapore LLP s17]

Names of limited liability partnerships

11. (1) The name of a limited liability partnership shall end with the words "*Perkongsian Liabiliti Terhad*" or the acronym "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;

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- (b) identical to that of any other limited liability partnership or corporation or to a business name;
- (c) identical to a name that is being reserved under section 12 of this Act or section 22 of 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 subsection (2)(d).

[Companies Act 1965 s22, RBR 1957 Rule 15, Singapore LLP ss18, 19, Jersey LLP Law Art 7, UK LLP Schedule Part I]

Application and reservation of name

12. (1) A person shall apply to the Registrar for the availability 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, and

if the proposed name is available, the person may reserve the proposed name for a period of 30 days from the date of lodgment of the application or such longer period as the Registrar may allow.

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(2) Upon receipt of an application under subsection (1) and on payment of the prescribed fee, if the Registrar is satisfied that the name is not one which may be rejected on any ground referred to in subsection 11 (2) (a), (b), (c) or (d), the Registrar may approve the name for registration purposes or reserve the name, as the case may be.

[Companies Act 1965 s22(6),(7), Dubai LLP s83(a), Singapore LLP s19(3)]

Change of name of limited liability partnership

13. (1) A limited liability partnership may change its name to a name that is acceptable by the Registrar in accordance to section 11(2).

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

- (a) enter the new name on the register in place of the former name,
- (b) alter the register; and
- (c) issue a notice of confirmation of the change of name.

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

(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 ; and

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.

[CA 1965 s23, Jersey LLP Law s7, UK LLP Schedule Part I]

Power of Registrar to require change of name

14. (1) If, in the opinion of the Registrar, the name by which a limited liability partnership is registered—

(a) is a name referred to in section 11(2); or

(b) so nearly resembles the name of any other limited liability partnership or corporation or a business name as to be likely to be mistaken for it,

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the Registrar may direct the limited liability partnership to change its name, and the limited liability partnership shall comply with the direction within 30 days after the date of the direction or such longer period as the Registrar may allow.

(2) Any limited liability partnership which fails to comply with a direction given under subsection (1) shall be guilty of an offence and on conviction shall be liable to a fine not exceeding RM... and default penalty.

[CA 1965 s23(3), UK LLP Schedule Part I, Singapore LLP s19]

Publication of name

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

(2) The name and the registration number of the limited liability partnership shall appear on every letterhead, invoice, bill or other documents issued by the limited liability partnership.

(3) If default is made in complying with this section, the limited liability partnership shall be guilty of an offence against this Act and on conviction shall be liable to a fine not exceeding RM... and default penalty.

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[CA 1965 s121, RBR 1957 Rule 13, Singapore LLP s27]

PART IV

PARTNERS

Partners of a limited liability partnership

16. Any individual or body corporate may be a partner in a limited liability partnership.

[Singapore LLP s7(1), DIFC LLP s8, UK LLP s2]

Limited liability of partners

17. (1) An obligation of the 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.

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(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 a wrongful act or omission of his 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 met out of the property of the limited liability partnership.

[California Corp Code, UPA 1994, s. 16306 (e); Delaware RUPA, s. 15-305; Jersey LLP Law 1997, Art. 4 (2); UK LLP 2000, s. 6 (4), Singapore LLP s9]

Liability of partners when limited liability partnership is insolvent

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

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- (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 the limited liability partnership becoming insolvent and knew or ought to have known at the time the distribution that the 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 2 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—
 - (i) it is at that time, unable to pay its debts as they become due in the normal course of business; or
 - (ii) at that time, the value of the assets of the limited liability partnership is less than the value of its liabilities.
- (b) “distribution” means any payment of dividends, distribution of profits, return or refund of capital by the limited liability partnership, whether in cash or in kind; and

- (c) a partner or former partner shall be deemed to have received a distribution if the distribution is received by his assignee.

[Labuan s 47, Jersey LLP Law Art 5]

Power of partner to bind the limited liability partnership

19. (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 he has no authority; or
 - (ii) does not know or believe him to be 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 —

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- (a) the person has notice that the former partner has ceased to be a partner of the limited liability partnership; or
- (b) notice that the former partner has ceased to be a partner of the limited liability partnership has been delivered to the Registrar.

(4) For the purpose of this section, no person is deemed to have notice of any records by reason only that they are made available by the Registrar for inspection.

[UK LLP 2000, s. 6, Jersey Art 15(3), Singapore LLP s9(2), UK LLP s6]

Cessation of partnership interest

20. (1) A partner of a limited liability partnership may cease to be a partner in accordance with the limited liability partnership agreement, or in the absence of such agreement, by that partner giving 30 days notice to the other partners of his intention to resign as partner.

(2) Without affecting the generality of subsection (1), a partner of a limited liability partnership shall cease to be a partner upon the death or dissolution of the partner.

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(3) Where a partner of a limited liability partnership ceases to be a partner, unless otherwise provided in the limited liability partnership agreement, the former 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 his 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, the former partner, his personal representative or its liquidator, as the case may be, shall not interfere in the management of the limited liability partnership.

[Delaware RUPA, s. 15-701 (a) and (b); UK LLP 2000, s. 4 (3), DIFC Art 23(1)]

Bankruptcy of partner

21. Unless otherwise provided in the limited liability partnership agreement, if a partner of a limited liability partnership is adjudicated a bankrupt by a Court in Malaysia or elsewhere —

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- (a) his bankruptcy shall not by itself cause him to cease being a partner of the limited liability partnership; and
- (b) the Official Assignee or trustee of the estate of the bankrupt partner shall be entitled to receive distributions from the limited liability partnership that the bankrupt partner is entitled to receive under the limited liability partnership agreement,

provided that the bankrupt partner, the Official Assignee or the trustee of the estate shall not be entitled to interfere with the management of the limited liability partnership.

[Singapore LLP s12]

PART V

MANAGEMENT OF A LIMITED LIABILITY PARTNERSHIP

Minimum of 2 partners

22. (1) Every limited liability partnership shall have at least 2 partners.

(2) If a limited liability partnership carries on business with fewer than 2 partners for a period of more than 1 year, the remaining partner shall, notwithstanding section 17 (1) and (2), be

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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 of 1 year if, at the time the obligation was incurred, he —

- (a) was a partner of the limited liability partnership; and
- (b) knew that the limited liability partnership was carrying on business with fewer than 2 partners for a period of more than 1 year.

(3) A limited liability partnership and the partner shall be guilty of an offence against this Act if the limited liability partnership continues to carry on after the period of 1 year referred to in subsection (2) and on conviction shall be liable to a fine not exceeding RM... and default penalty.

[CA 1965 s 36, Singapore LLP s22, DIFC LLP Art 8, Jersey LLP Law Art 21, UK LLP ss 2,4]

Registered office

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

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(2) The Registrar must be notified of any change to the address of the registered office within 30 days of such change in such medium and form as the Registrar may determine.

(3) If default is made in complying with subsection (1) the limited liability partnership and its partners shall be guilty of an offence against this Act and on conviction shall be liable to a fine not exceeding RM... and default penalty.

[CA 1965 s119, Jersey LLP Law s8, UK LLP Schedule Part I, para 9]

Registers and documents to be kept at registered office

24. (1) A limited liability company shall keep at its registered office—

- (a) a register of the name and address of each partner and the compliance officer;
- (b) a copy of the most recent annual declaration;
- (c) a copy of any statement delivered to the Registrar under the law;
- (d) a copy of any certificate issued by the Registrar under the law; and

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- (e) if the partnership agreement has been reduced to writing, a copy of that agreement and any amendment made to it.

(2) The records kept under subsection (1) shall be made available for inspection and copying without charge during ordinary business hours at the request of a partner.

(3) If default is made against this section, the compliance officer shall be guilty of an offence and on conviction shall be liable to a fine not exceeding RM... and default penalty.

[Jersey LLP Art 8, CA 1965 s 120]

Compliance Officer

25. (1) Every limited liability partnership shall have at least one compliance officer who is a natural person of full age and capacity and who has his principal or only place of residence in Malaysia.

(2) A compliance officer shall be—

- (a) one of the partners of the limited liability partnership; or
- (b) a person qualified to act as a secretary under the Companies Act 1965.

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

(4) 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 15, 27 and 28; and
- (b) personally liable to all 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.

(5) If a limited liability partnership contravenes subsections (1) and (3), the limited liability partnership and every partner of the limited liability partnership shall be guilty of an offence.

[Singapore LLP s23, CA 1965 s 139A, DIFC LLP Art 24, UK LLP s8]

Disqualification to act as a compliance officer

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

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- (a) he is an undischarged bankrupt; or
- (b) he is subject to a disqualification order under section 130 and 130A of the Companies Act 1965.

(2) A person who is in default of this section shall be guilty of an offence and on conviction shall be guilty to a fine of RM... or term of imprisonment not exceeding ... years or both.

[Companies Act 1965 s125, 130, 130A, Singapore LLP ss33,34]

Registration of changes in particulars

27. (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 30 days, or such further period as the Registrar may on application allow.

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

(3) Any person who ceases to be a partner in a limited liability partnership may himself lodge with the Registrar the notice referred to in subsection (1) if he has reasonable believe that the limited liability partnership will not be lodge the notice with the Registrar.

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

(5) Any limited liability partnership which contravenes shall be guilty of an offence.

[Singapore LLP s 28, DIFC LLP Art 25, ROBA s5B]

Annual declaration

28. (1) Every limited liability partnership shall lodge with the Registrar a declaration, containing the prescribed particulars and accompanied by such documents as are required to be included in the declaration, by its compliance officer that in his opinion, the limited liability partnership either —

- (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 30 days following the anniversary of the registration of the limited liability partnership.

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(3) Notwithstanding subsection (2), 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).

(4) If a limited liability partnership fails to lodge the declaration referred to in subsection (1) within the time or extended time referred to in subsections (2) and (3), the limited liability partnership shall be guilty of an offence and on conviction shall be liable to a fine not exceeding RM....

(5) A compliance officer who makes a declaration referred to in subsection (1) (a) without having reasonable grounds for his opinion, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM... or to imprisonment for a term not exceeding ... months or to both.

(6) Any person who, in connection with a declaration made under this section, makes a statement or furnishes information, whether directly or indirectly, to a compliance officer that is false or misleading in a material particular, when he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular, shall be guilty of an offence and shall be liable on conviction —

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- (a) in the case where the person is an individual, to a minimum fine of RM... or to imprisonment for a term not exceeding ... years or to both; and
- (b) in any other case, to a minimum of RM....

(7) If an offence under this section is committed with intent to defraud creditors of the limited liability partnership or for a fraudulent purpose, the offender shall be liable on conviction —

- (a) in the case where the offender is an individual, to a fine not exceeding RM... or to imprisonment for a term not exceeding ... years or to both; and
- (b) in any other case, to a fine not exceeding RM....

[Companies Act 1965 s 165, Labuan LPLLP s44, Singapore LLP s24]

PART VI

ACCOUNTS

Accounting and other records

29. (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

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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 records referred to in subsection (1) for a period of not less than 7 years from the end of the financial year in which the transactions or operations to which those records relate are completed.

(3) The 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 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 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 partnership agreement, it shall not be necessary for a limited liability partnership to appoint an auditor or have its accounts audited.

(6) If a limited liability partnership contravenes subsection (1), (2) or (3), the limited liability partnership and every partner of

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the limited liability partnership shall be guilty of an offence and shall be liable on conviction —

- (a) in the case where the offender is an individual, to a fine not exceeding RM... or to imprisonment for a term not exceeding ... years or to both; and
- (b) in any other case, to a fine not exceeding RM...

(7) Any person who fails to comply with a requirement under subsection (4) shall be guilty of an offence and shall be liable on conviction —

- (a) in the case where the offender is an individual, to a fine not exceeding RM... or to imprisonment for a term not exceeding ... years or to both; and
- (b) in any other case, to a fine not exceeding RM...

[Companies Act 1965, s 167, s 159, DIFC LLP Art 26-29, Singapore s25]

PART VII

CONVERSION TO LIMITED LIABILITY PARTNERSHIPS

Conversion from conventional partnership to limited liability partnership

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30. (1) A conventional partnership may convert to a limited liability partnership by complying with the requirements as to the conversion set out in the Third Schedule.

(2) Upon such conversion, the partners of the conventional partnership, the limited liability partnership to which the conventional partnership has converted and the partners of that limited liability partnership shall be bound by the provisions of the Third Schedule that are applicable to them.

(3) The Minister may, by order published in the *Gazette*, amend, add to or vary the provisions in the Third Schedule.

(4) In this section, “convert”, in relation to a conventional partnership converting to a limited liability partnership, means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the conventional partnership to the limited liability partnership in accordance with the Third Schedule.

[Singapore LLP s20]

Conversion from private company to limited liability partnership

31. (1) A private company may convert to a limited liability

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partnership by complying with the requirements as to the conversion set out in the Fourth Schedule.

(2) Upon such conversion, the private company, its shareholders, the limited liability partnership to which the private company has converted and the partners of that limited liability partnership shall be bound by the provisions of the Fourth Schedule that are applicable to them.

(3) The Minister may, by order published in the *Gazette*, amend, add to or vary the provisions in the Third Schedule.

(4) In this section, “convert”, in relation to a private company converting to a limited liability partnership, means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the private company to the limited liability partnership in accordance with the Fourth Schedule.

[Singapore LLP s21]

PART VIII

FOREIGN LIMITED LIABILITY PARTNERSHIPS

Foreign limited liability partnerships

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32. (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) The Registrar may make regulations prescribing what comprise “carrying on a business” for the purposes of this Part.

(3) Notwithstanding, 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 30 days, but not being one of a number of similar transactions from time to time;

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- (i) invests any of its funds or holds property; or
- (j) import goods only temporarily pursuant to the Customs Act 1967 for the purpose of display, exhibition, demonstration or as trade samples with a view to subsequent re-exportation within a period of 3 months or within such further period as the Director General of Customs and Excise may in his discretion allow.

[Companies Act s 330, DIFC Art 36]

Requirements of a foreign limited liability partnership

33. (1) For the purpose of registration, a foreign limited liability partnership shall lodge with the Registrar—

- (a) a certified copy of the certificate of registration or similar document;
- (b) a certified copy of its charter or instrument defining its constitution; and
- (c) a list of its partners containing similar particulars as required under this Act,

subject to the provisions of this Act and on the payment of the prescribed fee, the Registrar may register the foreign limited liability partnership under this Part.

(2) Notwithstanding section 25(2), a foreign limited liability partnership shall—

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- (a) appoint at all times a compliance officer who has his principal or only place of residence in Malaysia; and
- (b) have a registered office in Malaysia to which all communications and notices may be addressed.

(3) A foreign limited liability partnership shall be required to lodge annual declaration once in every calendar year within 30 days of the anniversary of its registration, or any other period as the Registrar may allow upon application.

(4) The Registrar shall have the power to prescribe, waive or modify procedures or any requirements under this section in relation to different cases or classes of cases.

[Companies Act 1965 ss332, 332A, DIFC Art 37(2)]

PART IX

STRIKING OFF, WINDING UP AND DISSOLUTION

Receivership and winding up

34. (1) The provisions of Part VIII and Part X (in so far as they relate to a company limited by shares) of the Companies Act 1965 shall apply to receivership and winding up of a limited liability partnership, and the Companies (Winding-up) Rules 1972 shall apply to the winding-up of a limited liability partnership , subject to

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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;
- (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; and
- (f) such further modifications as the context requires for the purpose of the application of the relevant provision to a limited liability partnership.

[Labuan LPLLP 58]

Alternative simplified procedure for voluntary winding up

35. (1) Without prejudice to section 34, a limited liability partnership may be dissolved by complying with the requirements of this section.

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

(3) An application for a declaration of dissolution shall be in writing and shall be accompanied by—

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

(4) (a) Before making an application to the Registrar under this section, the applicant shall—

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- (i) publish a notice of the proposed dissolution of the limited liability partnership in at least one widely circulated Malaysian newspaper; and
 - (ii) notify each partner of the limited liability partnership of the proposed dissolution of the limited liability partnership.
- (b) For the purpose of this subsection, the notice of the proposed dissolution of a limited liability partnership shall state to the effect that the applicant proposes to apply to the Registrar for a declaration of dissolution of the limited liability partnership and that unless a written objection is made to the Registrar within 30 days of the publication or notification of such notice, the Registrar may dissolve the limited liability partnership.

(5) The Registrar shall not make a declaration of dissolution of a limited liability partnership earlier than 30 days after the date of the publication or notification made under subsection (4), whichever is later.

(6) On receipt of any written objection to the dissolution of the limited liability partnership, the Registrar shall forthwith notify the applicant of the receipt of the objection and the identity of the objector.

(7) Where any partner or creditor of the limited liability partnership, or any aggrieved person has objected to the limited

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liability partnership the Registrar shall not declare the dissolution thereof unless—

- (a) the partner, creditor or aggrieved person, as the case may be, withdraws the objection;
- (b) the Registrar decides that the objection is without justification;
- (c) the objector has not appealed to the Court against the Registrar's decision under subsection 7(b) within 21 days from the date he is notified of the Registrar's decision; or
- (d) the Court has upheld the Registrar's decision.

(8) Once the Registrar is satisfied that a limited liability partnership may be dissolved under this section, he shall notify the limited liability partnership that—

- (a) subject to the partnership agreement, the limited liability partnership is entitled to distribute its surplus assets among its partners according to their respective rights and interests; and
- (b) the limited liability partnership may distribute its surplus assets accordingly.

(9) On receipt of notification from a limited liability partnership that its surplus assets have been distributed in accordance with subsection (8), the Registrar may by notice in the Gazette, declare that the limited liability partnership is dissolved and, on the

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publication in the Gazette of the notice, the limited liability partnership shall be dissolved, provided that—

- (a) the liability, if any, of every officer and partner of the limited liability partnership shall continue and may be enforced as if the limited liability partnership had not dissolved; and
- (b) notwithstanding that a limited liability partnership has been dissolved, or that its surplus assets have been distributed in accordance with this section, the Court may wind up the limited liability partnership as if it had not been dissolved, or its surplus assets had not been distributed as the case may be.

(10) Where a limited liability partnership has been dissolved pursuant to this section, the Court, on an application made by any partner, creditor or aggrieved person at any time within 7 years has not discharged all its debts and liabilities or otherwise that it is just that the dissolution of the limited liability partnership be revoked, order that the dissolution of the limited liability partnership be revoked and upon an office 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; and the Court may by the order give such directions and make such provisions as seem just for placing the limited liability partnership and all other persons in the same position as nearly as may be as if the limited liability partnership has not been dissolved.

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[Labuan LPLLP s59, Companies Act 1965 s308]

Power of Registrar to strike off a limited liability partnership from the register

36. (1) 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 is acting in contravention of this Act;
 - (c) it is prejudicial to the national interests for a limited liability partnership to remain on the register;
 - (d) no liquidator is acting;
 - (e) the affairs of the limited liability partnership are fully wound up and for a period of six months the liquidator has been in default in lodging any return required to be made by him; or
 - (f) the affairs of the limited liability partnership are fully wound up under Division 2 of Part X of the Companies Act 1965 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,

the Registrar shall give notice to the limited liability partnership that at the conclusion of three months from the date of the notice, the

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limited liability partnership shall be struck off the register unless reason is shown to the contrary.

- (2) If by the end of the three month period the Registrar:
 - (a) has received confirmation that the limited liability partnership is no longer carrying on business or is not in operation; or
 - (b) has not received from the limited liability partnership sufficient reasons as to why the limited liability partnership should not be struck off the register,

the Registrar shall strike the name of the limited liability partnership off the register and the limited liability partnership shall be dissolved and shall publish a notice to that effect in the Gazette.

(3) Where a limited liability partnership is struck off the register under this section, the liability of every partner of the limited liability partnership continues and may be enforced as if the limited liability partnership had not been dissolved.

(4) Where a limited liability partnership has been struck off pursuant to this section, the Court, on an application made by any aggrieved person at any time within 7 years may, if satisfied that the limited liability partnership was, at the time of the striking off carrying on a business or otherwise that it is just that the limited liability partnership be restored to the register and upon an office copy of the order being delivered to the Registrar for registration the

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limited liability partnership shall be deemed to have continued in existence as if it had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the limited liability partnership and all other persons in the same position as nearly as may be as if the limited liability partnership has not been dissolved.

[ROBA s5C, Singapore LLP s17, Companies Act 1965 s 308]

PART X

ADMINISTRATION OF THE ACT

Registers

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

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

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

[Companies Act 1965 s 11(2), RBR 1957 Rule 14]

Rectification of registers

38. (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) Pursuant to 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.

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(6) Any person aggrieved by the refusal of the Registrar to rectify the particulars of his business in the register may appeal within 30 days of the decision of the Registrar to the High Court which may determine the matter.

(7) On an application 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 prescribed 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 High 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.

[Draft amendment to section 7, ROBA 1956]

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Form and manner of documents to be lodged with the Registrar

39. (1) The Registrar may determine the form and medium in which documents which are required to be lodged with him under this Act.

(2) The Registrar may direct any procedure, act or step to be taken in respect to any application, lodgement or submission required under this Act.

Electronic filing service

40. (1) The Registrar may provide a service for the electronic filing or lodging of documents required by this Act to be filed or lodged with the Registrar under this Act.

(2) A person who intends to use the service provided under subsection (1) shall become a subscriber to the service by paying the prescribed fee and by complying with such terms and conditions as may be determined by the Registrar.

(3) Only a subscriber to the service provided under subsection (1) may electronically file or lodge documents with the Registrar.

(4) A document electronically filed or lodged under this section shall be deemed to have satisfied the requirement for filing or lodgment if the document is communicated or transmitted to the

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Registrar in such manner as may be prescribed by regulations or approved by the Registrar.

(5) A document that is required to be stamped, signed or sealed shall, if it is to be electronically filed or lodged be certified or authenticated in such manner as may be prescribed by regulations or approved by the Registrar.

(6) A copy of or an extract from any document electronically filed or lodged with the Registrar under subsection (1) supplied or issued by the Registrar and certified to be a true copy thereof or extract therefrom under the hand and seal of the Registrar shall be admissible in evidence in any proceedings as of equal validity as the original document.

(8) Where a document is electronically filed or 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.

[CA 1965, s 11A]

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Issuing documents electronically

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

[CA 1965, s 11B]

Information certified by Registrar admissible as evidence

42. 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 40 or issued by the Registrar under section 41 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.

Fees

43. (1) The Minister may make regulations requiring the payment to the Registrar of such fees as may be prescribed in respect of:

- (a) the performance by the Registrar of such functions under the Act as may be specified in the regulations , including the receipt by him of any document under the Act which is required to be delivered to him; and
- (b) the inspection of documents or other materials held by him under this Act.

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

(3) Where a fee is provided for or charged under this Act for the performance of an act or duty by the Registrar, no action need be taken by the Registrar until the fee is paid, and where the fee is payable on the receipt by him of a document required to be delivered to him he shall be deemed not to have received it until the fee is paid.

[DIFC Art 56]

Power to call for information

44. (1) For the purposes of this Act, the Registrar may require any limited liability partnership or person—

- (a) to give information orally; or
- (b) to give information in writing within a time period specified in a notice issued by the Registrar.

(2) Any limited liability partnership or person who fails to supply any information, or who in supplying any information makes any statement which he knows to be false in material particular, or recklessly makes such statement, shall be guilty of an offence.

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(3) For the purposes of this Act, any notice, letter or document sent by ordinary or registered post shall be deemed to have been served on the person or limited liability partnership to whom it is addressed, on the day succeeding the day on which the notice, letter or document would have been received in the ordinary course of post if—

- (a) in the case of a limited liability partnership it is addressed to its last known registered office;
- (b) in the case of a person, it is addressed to his last known address.

(4) Neither the Registrar nor any person appointed by the Commission under subsection 3(2) shall be liable to be sued in any court for any act or matter done or ordered to be done or omitted to be done, by him in good faith and in the intended exercise of any power or performance of any duty, conferred or imposed on him by or under this Act.

[Companies Act 1965 s7]

Power to conduct inspection

45. (1) For the purpose of ascertaining whether a limited liability partnership, its partners or compliance officer is complying with this

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Act, the Registrar may have access to any place or building and may inspect and make copies of or take extracts from any book, minute book, register or document required by 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 a compliance officer of a limited liability partnership or any person to produce to him such books, registers or documents as are in the custody or under the control of that partner, compliance officer or person.

(3) A limited liability partnership which its partner or compliance officer or any person who—

- (a) fails to produce any such books, registers or documents as required by the Registrar under this section; or
- (b) obstructs or hinders the Registrar while exercising any of the powers under this section,

shall be guilty of an offence against this Act and on conviction shall be liable to a penalty of not exceeding RM... or a term of imprisonment not exceeding ... years or both.

[Companies Act 1965 s7]

Power to conduct investigation

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46. (1) Where the Registrar has reason to suspect that a person has committed an offence against this Act, he may make such investigation as he thinks expedient for the due administration of this Act.

(2) Whenever it appears to any Magistrate upon written information and after such enquiry as he thinks necessary, that there is reasonable cause to believe that in any place or building there is any object, article, material, thing, accounts, book or other document including any travel or other personal document, which may be used as evidence of the commission of an offence against this Act, he may by warrant empower the Registrar to enter the place or building, by force if necessary, and there to search for, seize, take possession of and detain any such object, article, material, thing, accounts, book or other document.

(3) Whenever it appears to the Registrar that there is reasonable cause to believe that in any place or building there is concealed or deposited any object, article, material, thing, accounts, book or other document including any travel or other personal document which may be used as evidence of the commission of an offence against this Act, and the Registrar has reasonable grounds for believing that by reason of the delay in obtaining a search warrant, such object, article, material, thing, accounts, book or other document may be interfered with or destroyed or the object of the search is likely to be frustrated, he may in respect of the place

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or building exercise all the powers mentioned in subsection (2) in as full and ample measure as if he were empowered to do so by warrant issued under that subsection.

(4) The Registrar may grant permission to any person to inspect any accounts, book or other document seized and taken possession of by the Registrar during the course of an investigation under this Act if such person is entitled to inspect such accounts, book or document under this Act.

[Companies Act 1965 s7]

Power to call for examination

47. (1) For the purpose of any investigation under section 42, the Registrar may by notice in writing require any person supposed to be acquainted with the facts and circumstances of the case to appear before him and to be examined orally and shall reduce into writing any statement made by the person so examined.

(2) Such person shall be legally bound to answer all questions relating to such case put to him by the Registrar and to state the truth, whether or not the statement is made wholly or partly in answer to questions, and shall not refuse to answer any question on the ground that it tends to incriminate him.

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(3) A statement made by any person under this section shall be taken down in writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him and after he had been given an opportunity to make any correction he may wish:

Provided that where the person examined refuses to sign or affix his thumb print on the statement, the Registrar shall endorse thereon under his hand the fact of such refusal and the reason therefore, if any, stated by the person examined.

(4) Any statement made and recorded under this section shall be admissible as evidence in any proceedings under this Act in any court, either against the person who made it or any other person.

(5) Any person who—

- (a) without reasonable excuse fails to appear before the Registrar as required under subsection (1);
- (b) without reasonable excuse refuses to answer all questions put to him by the Registrar as required by subsection (2); or
- (c) knowingly furnishes to the Registrar information or statement that is false or misleading in a material particular,

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shall be guilty of an offence against this Act and on conviction shall be liable to a penalty of not exceeding RM... or a term of imprisonment not exceeding ... years or both.

[Companies Act 1965 s7]

Service of documents on a limited liability partnership

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

[Companies Act 1965 s350]

Power to issue guidelines, practice notes, etc

49. (1) The Registrar may issue such notices, circulars, conditions, guidelines and practice notes as he considers appropriate pursuant to any provision in this Act.

(2) The Registrar may revoke, vary, revise or amend the whole or any part of any notices, circulars, conditions, guidelines and practice notes issued under this section.

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

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[Draft CCMA]

Power of Registrar to take actions

50. (1) Where a person—

- (a) contravenes the provisions of this Act; or
- (b) fails to comply with or give effect to any notices, circulars, guidelines and practice notes issued by the Registrar,

that person has committed 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 notices, circulars, guidelines or practice notes;
- (b) impose a penalty, in proportion to the severity or gravity of the breach, but in any event not exceeding the amount of the general penalty;
- (c) reprimand the person in breach; or
- (d) require the person in breach to take such steps as the Registrar may direct to remedy the breach or to mitigate

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the effect of such breach, including making restitution to any person aggrieved by such breach.

(3) The Registrar shall not take any action under subsection (2) without giving the person in breach any opportunity to be heard.

(4) 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.

(5) Nothing in this section shall preclude the Registrar from taking any of the actions that it is empowered to take under this Act against the person in breach.

[Draft CCMA]

Power to make regulations

51. (1) The Minister may make regulations for or with respect to—
- (a) the duties and functions of the Registrar, Regional Registrars, Deputy Registrars, Assistant Registrars and

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other clerks and servants appointed to assist with the administration of this Act;

- (b) the establishment and functions of Regional Registrars; and
- (c) all matters or things which by this Act are required or permitted to be prescribed otherwise than by rules or which are necessary or expedient to be prescribed for giving effect to this Act.

(2) Regulations made under subsection (1) may prescribe any act in contravention of the regulations to be an offence and may prescribe penalties of a fine not exceeding RM... or imprisonment for a term not exceeding year or both.

[Companies Act 1965 s373]

Power to amend Schedules

52. The Minister may by order add to, delete, vary or amend all the Schedules to this Act and such order shall be published in the Gazette.

[Companies Act 1965 s 374]

Direction to limited liability partnership to comply with the law

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53. (1) If a limited liability partnership or any of its partners fail to comply with:

(a) a provision of this Act, the regulations or other legislations administered by the Registrar; or

(b) a requirement made by the Registrar pursuant to any power under this Act, regulations or other legislations,

which requires any of them to deliver to or file with the Registrar any document, or to give notice to him of any matter, the Registrar may issue a direction that the limited liability partnership or any partner to make good the failure within a time specified in the direction.

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

(a) an order directing the limited liability partnership or partners to comply with the direction or with any provision of this Act or of the regulations or of any of the guidelines, practice notes administered by the Registrar relevant to the issue of the direction;

(b) an order directing the limited liability partnership or partners to pay any costs incurred by the Registrar or other person relating to the issue of the direction by the

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Registrar or the breach of this Act, its regulations or guidelines and practice notes relevant to the issue of the direction; or

- (c) any other order that the Court considers appropriate.

(3) Nothing in this section prejudices the operation of any section imposing penalties on a limited liability partnership or its partners in respect of a failure mentioned above, nor any powers that the Registrar or other person or the Court may have under any other provision of the law.

[DIFC Art 41]

Offence by a body corporate, bodies of persons and agents and servants

54. (1) Whenever an offence against this Act or against any regulation thereunder is committed by a body corporate any director, manager or secretary or other officer of the body corporate shall also be deemed to be guilty of that offence unless he shall prove that such offence was committed without his knowledge or consent and was not attributable to any neglect to his part.

(2) Whenever any agent or servant in the course of his employment does or omits to do any act the doing of which or omission to do by which his principal or employer would be an offence such agent or servant shall be guilty of that offence.

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(3) Any person who would have been guilty of an offence if anything had been done or omitted by him personally shall be guilty of such offence and liable to the same penalty if such thing had been done by his partner, agent or servant in the course of his employment, as the case may be, unless he proves to the satisfaction of the Court that the offence was committed without his knowledge or consent and that he took all reasonable precautions to prevent the doing or omission to do such thing.

(4) The provisions of this section shall be in addition to and not in derogation from any other provision of this Act.

[ROBA s 17]

False and misleading statements

55. (1) Every person who in every return, declaration, report, certificate, balance sheet or other document required by or for the purposes of this 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 accession of any matter or thing thereby making the document to be misleading in a material respect shall be guilty against this Act and upon conviction shall be liable to a fine of RM... or a term of imprisonment of ... years or both.

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(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.

[Companies Act 1965 s 364]

General penalty provisions

56. (1) A person who -

- (a) does that which by or under this Act he is forbidden to do;
- (b) does not do that which by or under this Act he is required or directed to do; or
- (c) otherwise contravenes or fails to comply with any provision of this Act,

shall be guilty of an offence against this Act.

(2) A person who is guilty of an offence against this Act shall be liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly mentioned as the penalty or punishment for the offence, or if a penalty or punishment is not so mentioned, to a penalty not exceeding RM ... or a term of imprisonment not exceeding ... years.

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(3) The penalty or punishment, pecuniary or other, set out in, or at the foot of, any section or part of a section of this Act shall indicate that the offence is punishable upon conviction by a penalty or punishment not exceeding that so set out and where the penalty or punishment is expressed to apply to a part only of the section, it shall apply to that part only.

[Companies Act 1965 s 369]

Default penalties

57. (1) Where in any section or part of a section of this Act there appears the expression "Default penalty" it shall indicate that any person who is convicted of an offence against this Act in relation to that section or part shall be guilty of a further offence against this Act if the offence continues after he is so convicted and liable to an additional penalty for each day during which the offence so continues of not more than the amount expressed in the section or part as the amount of the default penalty or, if an amount is not so expressed, of not more than RM....

(2) Where any offence is committed by a person by reason of his failure to comply with any provision of this Act by or under which he is required or directed to do anything within a particular period, that offence, for the purposes of subsection (1) shall be deemed to

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continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that the period has elapsed.

[Companies Act 1965 s 370]

Proceedings how and when to be taken

58. No prosecution for or in relation to any offence under this Act shall be instituted except with the consent of the Public Prosecutor.

[ROBA s 13]

Compounding of offences

59. The Registrar may, in a case where he deems fit to do so, compound any offence committed under this Act, by making a written offer to such person to compound the offence by paying to the Registrar such sum of money within such time as may be specified in the offer.

FIRST SCHEDULE

(Section 6(2))

PROFESSIONAL PRACTICE

A limited liability partnership shall be deemed to be formed for professional partnership if it carries on a business under Part I or Part II of this Schedule.

Part I

1. Any business consisting solely of the exercise of any profession which under the provisions of any written law can be exercised only by those who possess certain qualifications prescribed by such written law and whose names are registered or otherwise recorded in manner prescribed by any written law; or
2. Any business consisting solely of the exercise of any profession in which the exercise of such profession is required by any written law.

Part II

1. Any business solely of the exercise of any profession in which reliance is placed on the professional or expert advice provided in the exercise of such profession.

SECOND SCHEDULE

Section 7

**DEFAULT PROVISIONS FOR LIMITED LIABILITY
PARTNERSHIPS**

1. The mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the 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 him—
 - (a) in the ordinary and proper conduct of the business of the limited liability partnership; or
 - (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.

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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. Any matter or issue relating to the limited liability partnership shall be decided by resolution passed by a majority of in number of partners, and for this purpose each partner shall have one vote.
8. Each partner shall render true accounts and full information of all things affecting the limited liability partnership to any partner or his legal representatives.
9. 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, he must account for an pay over to the limited liability partnership all profits made by him in that business.
10. Every partner must account to the limited liability partnership for any benefit derived by him without consent of the limited liability partnership from any transaction concerning the limited liability partnership, or from any use by him of the property, name or any business connection of the limited liability partnership.

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11. 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 30

**CONVERSION FROM CONVENTIONAL PARTNERSHIP TO
LIMITED LIABILITY PARTNERSHIP**

Interpretation

1. In this Schedule, “convert” has the same meaning as in section 30 (5).

Eligibility for conversion

2. A conventional partnership may apply to convert to a limited liability partnership in accordance with this Schedule 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.

Statements to be lodged

3. A conventional partnership may apply to convert to a limited liability partnership by lodging with the Registrar —

- (a) a statement by all of its partners in such medium and form as the Registrar may determine containing the following particulars:

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- (i) the name and registration number of the conventional partnership; and
 - (ii) the date on which the conventional partnership was registered under the Registration of Businesses Act 1956;
 - (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 referred to in section 10 (1).

Registration of conversion

4. On receiving the statements referred to in paragraph 3, the Registrar shall subject to the provisions of this Act, register the statements 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.

Registrar may refuse to register

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

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

Effect of registration

6. On and from the date of registration specified in the notice of registration issued under paragraph 4 (referred to in this Schedule as the date of registration) —

- (a) there shall be a limited liability partnership by the name specified in the notice of registration registered under this Act, with all the attributes described in Part II of this Act and subject to the provisions of this Act;
- (b) all movable and immovable property vested in the conventional partnership, all assets, interests, rights, privileges, liabilities, obligations relating to the conventional partnership and the whole of the undertaking of the conventional partnership shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and
- (c) the conventional partnership shall be deemed to be dissolved and if earlier registered under the Registration of Businesses Act 1956, removed from the register of businesses under that Act.

Registration in relation to property

7. If any property to which paragraph 6 (b) applies is registered with any 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 the authority of the conversion and of the particulars of the limited liability partnership in such medium and form as the authority may determine.

Pending proceedings

8. All proceedings by or against the conventional partnership 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

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

Existing agreements

10. Every agreement to which the conventional partnership was a party immediately before the date of registration, whether or not of

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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; and
- (b) for any reference to the conventional partnership, 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.

11. All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements subsisting immediately before the date of registration relating to the conventional partnership or to which the conventional partnership 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.

Continuance of employment

12. Where any contract or agreement referred to in paragraphs 10 and 11 relates to a contract or agreement of employment, such contract or agreement shall continue in force on or after the date of

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registration as if the limited liability partnership were the employer thereunder instead of the conventional partnership.

Existing appointment, authority or power

13. (1) Every appointment of the conventional partnership 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 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.

Application of paragraphs 6 to 13

14. Paragraphs 6 to 13 shall not apply to any approval, permit or licence issued under any written law to the conventional partnership which is in force immediately before the date of registration of the limited liability partnership.

Partner liable for liabilities and obligations of conventional partnership before conversion

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15. (1) Notwithstanding paragraphs 6 to 13, 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 sub-paragraph (1), he 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

16. (1) The limited liability partnership shall ensure that for a period of 12 months commencing 14 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 to a limited liability partnership; and
- (b) the name and registration number (if applicable) of the conventional partnership from which it was converted.

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(2) Any limited liability partnership which contravenes subparagraph (1) shall be guilty of an offence.

FOURTH SCHEDULE

Section 31

**CONVERSION FROM PRIVATE COMPANY TO
LIMITED LIABILITY PARTNERSHIP**

Interpretation

1. In this Schedule —
"company" means a private company within the meaning of the Companies Act 1965;
"convert" has the same meaning as in section 31 (5).

Eligibility for conversion

2. A company may apply to convert to a limited liability partnership in accordance with this Schedule 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 converts comprises all the shareholders of the company and no one else.

Statements to be lodged

3. A company may apply to convert to a limited liability partnership by lodging with the Registrar —

- (a) a statement 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 company; the date on which the company was incorporated under the Companies Act 1965;
 - (ii) that as at the application date, the company appears to be able to pay its debts as they become due in the normal course of business;
 - (iii) that as at the application date, all outstanding statutory fee or any amount owing to any government agency has been settled;
 - (iv) that the company has placed an advertisement in at least one widely circulated newspaper in Malaysia and in the Government Gazette of its intention to convert to a limited liability partnership;
 - (v) that all of its creditors have agreed with the application to convert to a limited liability partnership; and
- (b) a statement referred to in section 10 (1);

Registration of conversion

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4. On receiving the statements referred to in paragraph 3, the Registrar shall subject to the provisions of this Act, register the statements 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.

Registrar may refuse to register

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

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

Effect of registration

6. On and from the date of registration specified in the notice of registration issued under paragraph 4 (referred to in this Schedule as the date of registration) —

- (a) there shall be a limited liability partnership by the name specified in the notice of registration registered under

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this Act with all the attributes described in Part II of this Act and subject to the provisions of this Act;

- (b) all movable and immovable property vested in the company, all assets, interests, rights, privileges, liabilities, obligations relating to the company and the whole of the undertaking of the company shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and
- (c) the company shall be deemed to be dissolved and removed from the register of companies under the Companies Act 1965.

Registration in relation to property

7. If any property to which paragraph 6 (b) applies is registered with any 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 the authority of the conversion and of the particulars of the limited liability partnership in such medium and form as the authority may determine.

Pending proceedings

8. All proceedings by or against the company which are pending on the date of registration may be continued, completed and enforced by or against the limited liability partnership.

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Continuance of conviction, ruling, order or judgment

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

Existing agreements

10. Every agreement to which the 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 company; and
- (b) for any reference to the company, 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.

11. All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements subsisting immediately before the date of registration relating to the company or to which the company is a party, shall continue in force on and after that

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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 company.

Existing statutory books, registers, records, etc.

12. All statutory books, registers and other records that are required to be maintained or kept by the company under the Companies Act 1965, shall be transferred to the limited liability partnership and kept at its registered office.

Continuance of employment

13. Where any contract or agreement referred to in paragraphs 10 and 11 relates to a contract or agreement of employment, such contract or agreement shall continue in force on or after the date of registration as if the limited liability partnership were the employer thereunder instead of the company.

Existing appointment, authority or power

14. (1) Every appointment of the 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.

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(2) Any authority or power conferred on the 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.

Application of paragraphs 6 to 13

15. Paragraphs 6 to 13 shall not apply to any approval, permit or licence issued under any written law to the company which is in force immediately before the date of registration of the limited liability partnership.

Notice of conversion in invoices and correspondence

16. (1) The limited liability partnership shall ensure that for a period of 12 months commencing 14 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 company to a limited liability partnership; and
- (b) the name and registration number of the company from which it was converted.

(2) Any limited liability partnership which contravenes subparagraph (1) shall be guilty of an offence.