

KEY AMENDMENTS TO THE LIMITED LIABILITY PARTNERSHIPS ACT 2012: ENHANCING TRANSPARENCY AND GOVERNANCE

Introduction

A Limited Liability Partnership (“LLP”) is a distinctive business structure that combines the features of a private company and a traditional partnership. LLPs provide limited liability protection to their partners while allowing for flexible internal arrangements through agreements between partners. This hybrid model has become an increasingly popular choice for businesses seeking the benefits of both corporate and partnership structures. Governed by the Limited Liability Partnerships Act 2012,[1] LLPs in Malaysia are now subject to significant changes with the introduction of the Limited Liability Partnerships (Amendment) Act 2024 (“LLPAA”),[2] which has been gazetted on 17 October 2024, but at the time of writing has yet to be in force.

The LLPAA, passed to amend the Limited Liability Partnerships Act 2012, introduces key provisions related to the reporting framework and the disclosure of beneficial ownership information. Additionally, it aims to incorporate the concepts of corporate voluntary arrangement and judicial management for LLPs by adopting the framework under the Companies Act 2016. This article delves into the key amendments brought about by the LLPAA, with a particular focus on the introduction of the “Beneficial Ownership Framework” and its implications for LLPs and their partners.

Definition of Beneficial Ownership

One of the most critical amendments introduced by the LLPAA is the establishment of a “Beneficial Ownership Framework”. Under the new amendments, a beneficial owner is defined as a natural person who ultimately owns or controls an LLP, including individuals who exercise ultimate effective control over the LLP.[3]

Duties of Beneficial Owner

To enhance transparency and accountability, the LLPAA imposes several obligations on beneficial owners or those who believe they are beneficial owners of an LLP:

(a) Beneficial owners must notify the LLP and provide the required information as soon as practicable. This ensures that the LLP has up-to-date information on its beneficial owners.

(b) Beneficial owners are required to inform the LLP of any changes in their particulars. This includes any changes in their name, address, nationality, or other identifying information.

(c) Beneficial owners who cease to be such must notify the LLP of the date and particulars of their cessation.

Obligations of LLPs Regarding Beneficial Ownership

LLPs themselves are also subject to a range of new obligations under the LLPAA:

(a) LLPs must maintain a register of beneficial owners (“**Register**”) containing details such as the full name, address, nationality, identification, usual place of residence, and the dates when the person became and ceased to be a beneficial owner.[4]

(b) The Register must be kept at the registered office of the LLP or any other location in Malaysia as notified to the Registrar.[5]

(c) LLPs must lodge with the Registrar a notice on any change to the particulars in the register of beneficial owners of the LLP.[6]

(d) LLPs must record the date of notices requiring information and particulars within 14 days of receipt.[7]

(e) The Register must retain the information of beneficial owners for seven years from the date they cease to be beneficial owners.[8]

Specific Obligations for LLPs

In addition to the general obligations regarding the maintenance of the Register, LLPs have specific duties to identify and confirm beneficial ownership:

(a) Identify Beneficial Owners

By written notice, LLPs must require any partner to inform the LLP whether they are a beneficial owner and to provide sufficient details to identify the beneficial owners. This helps LLPs accurately identify and record their beneficial owners.[9] LLPs must, when having reasonable grounds to believe that any partner or person knows the identity of a beneficial owner, require such persons by written notice to confirm and provide particulars of the beneficial owner.[10]

(b) Confirm Beneficial Owners

When LLPs have reasonable grounds to believe that any partner or person knows the

identity of a beneficial owner, they must issue a written notice requiring confirmation and particulars of the beneficial owner.[11]

(c) Update Records

Upon receiving information, LLPs must record the notice's issuance date and the received information within 14 days.[12]

(d) Verify Changes

LLPs must verify changes in the particulars of beneficial owners and correct any inaccuracies in the Register upon confirmation. This includes confirming the change with the beneficial owner and making the necessary updates to the Register.[13]

Consequences of Non-compliance

To ensure strict adherence to these new requirements, the LLPAA outlines significant penalties for non-compliance:

(a) Fines: Non-compliance can lead to fines up to RM20,000, with an additional fine not exceeding RM500 for each day the offence continues after conviction.[14]

(b) False Statements: It is an offence to provide any false statements when complying with these notices.[15]

Incorporation of Corporate Voluntary Arrangement and Judicial Management

The introduction of corporate voluntary arrangement and judicial management further strengthens the framework by providing LLPs with mechanisms to manage financial difficulties and improve their chances of survival. As currently benefitted by companies under the Companies Act 2016, these corporate rescue mechanisms offer structured approaches to debt management and business continuity, ensuring that LLPs have the tools necessary to navigate financial challenges effectively.[16]

Additionally, the LLPAA's provisions regulating insolvency-related clauses in contracts for essential goods and services provide critical protections for LLPs during restructuring processes. These protections help ensure that LLPs can continue their operations without disruption, thereby supporting their efforts to rehabilitate and restructure their businesses.[17]

Conclusion

The amendments introduced by the LLPAA represent a significant step towards enhancing transparency and governance within LLPs. By establishing a comprehensive "Beneficial Ownership Framework", the LLPAA ensures that beneficial ownership information is accurately reported and maintained, promoting accountability and integrity in the management of LLPs.

In conclusion, the LLPAA not only enhances the regulatory framework for LLPs but also aligns it with global standards of transparency and governance. LLPs and their partners must familiarise themselves with these new requirements and take the necessary steps to ensure compliance. By doing so, they can contribute to a more transparent, accountable, and resilient business environment in Malaysia.

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1. Limited Liability Partnerships Act 2012.
 2. Limited Liability Partnerships (Amendment) Act 2024.
 3. Limited Liability Partnerships (Amendment) Act 2024, proposed s 20A(1).
 4. Limited Liability Partnerships (Amendment) Act 2024, proposed s 20B.
 5. Limited Liability Partnerships (Amendment) Act 2024, proposed s 20B(2).
 6. Limited Liability Partnerships (Amendment) Act 2024, proposed s 20B(3).
 7. Limited Liability Partnerships (Amendment) Act 2024, proposed s 20B(4).
 8. Limited Liability Partnerships (Amendment) Act 2024, proposed s 20B(5).
 9. Limited Liability Partnerships (Amendment) Act 2024, proposed s 20C(1).
 10. Limited Liability Partnerships (Amendment) Act 2024, proposed s 20C(2).
 11. Limited Liability Partnerships (Amendment) Act 2024, proposed s 20C(3).
 12. Limited Liability Partnerships (Amendment) Act 2024, proposed s 20C(4).
 13. Limited Liability Partnerships (Amendment) Act 2024, proposed s 20C(5).
 14. Limited Liability Partnerships (Amendment) Act 2024, proposed s 20C(6).
 15. Limited Liability Partnerships (Amendment) Act 2024, proposed s 20C(9).
 16. Limited Liability Partnerships (Amendment) Act 2024, proposed s 49A.
 17. Limited Liability Partnerships (Amendment) Act 2024, proposed s 49B.

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