BASIC PRINCIPLES OF PARTNERSHIP LAW IN MALAYSIA

Edited by:

ZUHAIRAH ARIFF ABD GHADAS
&
HALYANI HASSAN

Ahmad Ibrahim Kulliyyah Of Laws (AIKOL)
International Islamic University Malaysia

IIUM Press
CONTENTS

Authors' Profile ................................................................. i
Contents ............................................................................... iii

CHAPTER 1
BUSINESS ORGANIZATIONS IN MALAYSIA
Zuhairah Ariff Abdul Ghadas

INTRODUCTION ................................................................. 1
SOLE PROPRIETORSHIP ......................................................... 1
  The advantages of sole proprietorships .................... 3
  The disadvantages of sole proprietorships ............... 3
PARTNERSHIPS ................................................................. 4
  The advantages of partnerships ............................... 6
  The disadvantages of partnerships ....................... 7
COMPANY ............................................................................. 7
  Types of Companies ................................................... 7
  Companies Limited by Shares ............................... 8
  Companies Limited by Guarantee ......................... 9
  Unlimited Companies ................................................. 9
  Foreign Companies ................................................... 9
General attributes of companies ............................... 9
  The advantages of companies ............................. 12
  Disadvantages ........................................................ 13
CONCLUSION ................................................................... 13
CHAPTER 2
HISTORICAL PERSPECTIVES OF PARTNERSHIPS
Zuhairah Ariff Abdul Ghadas

INTRODUCTION ........................................................................... 15
MALAYSIAN PARTNERSHIP LAWS ........................................ 19
DEVELOPMENT OF PARTNERSHIPS LAW IN MALAYSIA .......... 22

CHAPTER 3
REGISTRATION AND SALIENT FEATURES OF PARTNERSHIPS
Zuhairah Ariff Abdul Ghadas

INTRODUCTION ........................................................................... 23
IDENTIFICATION OF INDIVIDUAL PARTNER WITH THE FIRM ................................................. 23
   Unlimited Personal Liability Of Each Other ............... 27
   Non-Transferability Of A Partner’s Interest ............... 27
   Control By All Partners ................................................. 28
NATURE AND ELEMENTS ......................................................... 30
   Carrying On A Business ............................................... 31
PERSONS CARRYING ON IN COMMON ................................. 34
   With A View Of Profit .................................................... 37
FORMALITIES AND REGISTRATION ........................................ 40
COMPARISON WITH A COMPANY .......................................... 42
   Legal Entity ................................................................. 43
   Limited Liability ........................................................ 44
CHAPTER 4
LIABILITY OF PARTNERS
Zuhairah Ariff Abdul Ghadas

INTRODUCTION ................................................................. 45
RELATIONSHIP OF PARTNERS WITH THE THIRD PARTIES .............................................. 46
  Limited partnership ............................................ 59
LIABILITY OF PARTNERS FOR CONTRACTUAL DEBTS OF THE FIRM ........................................... 60
LIABILITY FOR TORT AND OTHER WRONGS ............... 61

CHAPTER 5
PROTECTION OF THE THIRD PARTIES AND PARTNERSHIP AGREEMENT
Zuhairah Ariff Abdul Ghadas

INTRODUCTION ................................................................. 69
  Contractual debts .............................................. 70
  Debts Other Than Contractual ............................. 73
RELATIONSHIP BETWEEN PARTNERS ......................... 73
FIDUCIARY DUTIES ....................................................... 74
PARTNERSHIP AGREEMENT ........................................... 78
  Management And Control .................................... 78
  Financial Affairs .............................................. 79
  Change Of Partners ........................................... 81
  Property Of The Firm .......................................... 82
CHAPTER 6
PARTNERSHIP PROPERTY
Halyani Hassan

INTRODUCTION ....................................................... 85
EXISTENCE OF PARTNERSHIP PROPERTY .............. 86
PROPERTY BROUGHT INTO PARTNERSHIP AS CAPITAL ....................................................... 86
TENANCY AS PARTNERSHIP PROPERTY ................. 87
PROPERTY ACQUIRED AFTER THE FORMATION OF PARTNERSHIP ........................................ 89
PROCEDURE AGAINST PARTNERSHIP PROPERTY .... 93

CHAPTER 7
DISSOLUTION OF PARTNERSHIP
Halyani Hassan

INTRODUCTION ....................................................... 95
CONTRACTUAL DISSOLUTION .................................. 95
PARTNERSHIP AT WILL .......................................... 96
NOTICE OF DISSOLUTION ....................................... 98
DISSOLUTION BY DEATH OR BANKRUPTCY .......... 98
DISSOLUTION BY IlLEGALITY ................................... 99
DISSOLUTION BY COURT ......................................... 100

CHAPTER 8
SHIRKAH
Halyani Hassan & Mohammad Deen Mohd. Napiah

DEFINITION ....................................................... 105
SHIRKAH MUFAWADAH .......................................... 106
SHIRKAH AI-INAN .............................................. 106
ELEMENTS OF SHIRKAH ........................................ 106
Number of person .............................................. 107
Business ......................................................... 107
Formation ....................................................... 107
VIEW OF PROFIT .................................................. 108
RIGHTS OF PARTNERS ........................................... 109
FINANCIAL LIABILITY OF PARTNERS ......................... 113
DISSOLUTION OF SHIRKAH ................................. 114
RIGHT TO TERMINATE THE CONTRACT .................. 114
CONTRACT FOR A FIXED PERIOD ......................... 114
DEATH TERMINATE PARTNERSHIP ......................... 115
VITIATION OF THE PARTNERSHIP ......................... 115

CHAPTER 9
LIMITED PARTNERSHIP IN MALAYSIA
Zuhairah Ariff Abdul Ghadas

INTRODUCTION ..................................................... 117
LABUAN-THE MALAYSIAN OFFSHORE ....................... 117
LABUAN OFFSHORE LIMITED PARTNERSHIPS ............ 118
REGISTRATION .................................................... 120
TYPE OF PARTNERS .............................................. 122
LIABILITY OF PARTNERS ........................................ 124
THE INTERNAL RELATION BETWEEN PARTNERS ........ 125
TAX STATUS ...................................................... 126
DISSOLUTION OF THE LP ...................................... 126
OBSERVATION ...................................................... 128
CHAPTER 10
LABUAN LIMITED LIABILITY PARTNERSHIP
Zuhairah Ariff Abdul Ghadas

INTRODUCTION ............................................................... 131
LABUAN- THE MALAYSIAN OFFSHORE .......................... 132
LIMITED LIABILITY PARTNERSHIPS ............................... 133
  The Jersey LLPs ....................................................... 134
  The Body Corporate LLP ............................................ 136
  LLPs with a partnership status ................................. 137
  Observation .......................................................... 138
DIFFERENCES BETWEEN LLP AND A LIMITED
LIABILITY COMPANY .................................................... 139
DIFFERENCES BETWEEN LLP AND A PARTNERSHIP ......... 140
LABUAN LIMITED LIABILITY PARTNERSHIPS (LLLP) ....... 141
  Legal attributes ................................................... 141
  Registration .......................................................... 142
  Liability of partners .............................................. 143
  Internal Regulation ............................................... 144
  Dissolution .......................................................... 144
  Taxation .............................................................. 145
  Application of laws ............................................... 146
CONCLUSION ............................................................ 146
CHAPTER 1

BUSINESS ORGANIZATIONS IN MALAYSIA
Zuhairah Ariff Abdul Ghadas

INTRODUCTION

In Malaysia, generally, businesses can be carried out in the form of:

- Sole proprietorship
- Partnership
- Company

Among the three structures, only company is an incorporated business association whilst the sole proprietorship and partnership are unincorporated business association.

SOLE PROPRIETORSHIP

This is the most basic business associations which are available in the market place. It is regulated by the Business Registration Act 1956 (Amendment 1978). It is formed, managed and owned by one person, i.e. the owner or proprietor. Sole proprietorship is also known as sole trader or proprietorship.

General attributes of sole proprietorships: