

Basic Principles of Partnership Law in Malaysia

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IIUM PRESS
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA



BASIC PRINCIPLES OF PARTNERSHIP LAW IN MALAYSIA

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International Islamic University Malaysia**



IIUM Press

Published by:

IUM Press
International Islamic University Malaysia

First Edition 2011
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Perpustakaan Negara Malaysia

Cataloguing-in-Publication Data

Basic Principles of Partnership Law in Malaysia: Zuhairah Ariff Abd Ghadas & Halyani Hassan

ISBN: 978967-418-110-9

Member of Majlis Penerbitan Ilmiah Malaysian - MAPIM
(Malaysian Scholarly Publishing Council)

Printed by

IUM PRINTING SDN. BHD.
No. 1, Jalan Industri Batu Caves 1/3
Taman Perindustrian Batu Caves
Batu Caves Centre Point
68100 Batu Caves
Selangor Darul Ehsan

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CHAPTER 4

LIABILITY OF PARTNERS

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INTRODUCTION

Under the law of partnerships, the principles of agency and contract are recognized as the main actors in regulating the liability and management structure of the firm. The internal relation between the firm with the partners and partners inter se is basically based upon the fundamental principles of contract, whilst the governing principle in determining liabilities of the firm with the third parties is the general principle of agency. The partnership agreement that forms the relationship between partners constitutes the contractual document which binds both the firm and its partners. On the other hand, provisions of the Partnership Act relating to liabilities of the firm to third parties apply the general principles of agency in order to make the firm liable for its partners' actions.

In a general partnership, partners are imposed with joint and several liability. No partner can escape liabilities of the firm to the third parties even for the transactions which they were not involved or have no prior knowledge. Therefore, in the general partnership, creditors have high assurance that their debts will be paid. By proposing to replace the joint and several liability concept with limited liability, interests of the third parties, particularly creditors of the firm, are also important to be discussed in order to assure them that their rights and interests will not be lessened or affected.