

LABUAN LIMITED PARTNERSHIPS AND
LIMITED LIABILITY PARTNERSHIPS BILL 2009

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A BILL

i n t i t u l e d

An Act to provide for the establishment, regulation and dissolution of Labuan limited partnerships and Labuan limited liability partnerships and for matters connected therewith or incidental thereto.

[]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Labuan Limited Partnerships and Limited Liability Partnerships Act 2009.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Interpretation

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

“approved liquidator” means a person approved under subsection 12(1) of the Labuan Companies Act 1990 [*Act 441*];

“Authority” means the Labuan Financial Services Authority established under section 3 of the Labuan Financial Services Authority Act 1996 [*Act 545*];

“authorized officer” means an officer duly authorized by the Authority under subsection 3(2);

“certificate” means a certificate issued under this Act;

“certified” means certified in the prescribed manner to be a particular document or to be a true copy thereof;

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

- (a) a corporation sole;
- (b) a trade union registered under any written law as a trade union; and
- (c) a society registered under any written law relating to co-operative societies;

“court” means a court of competent jurisdiction;

“designated partner”, in relation to a Labuan limited liability partnership, means a partner identified as a designated partner in the application made to the Authority under section 30 or a notice filed under section 31;

“general partner”, in relation to a Labuan limited partnership, means a person who is named as a general partner in the partnership agreement filed under subsection 5(2) and if more than one, means each general partner;

“Labuan” means the Federal Territory of Labuan;

“Labuan company” has the meaning assigned to it in the Labuan Companies Act 1990;

“Labuan limited liability partnership” means a limited liability partnership registered under section 30 or 48;

“Labuan limited partnership” means a limited partnership registered under section 5;

“Labuan trust company” means a company registered as a Labuan trust company under Part V of the Labuan Financial Services and Securities Act 2009 [*Act*];

“limited partner”, in relation to a Labuan limited partnership, means a person who is named as a limited partner in the register kept under subsection 9(5) and if more than one, means each limited partner;

“Minister” means the Minister for the time being charged with the responsibility for finance;

“partner” —

- (a) in relation to a Labuan limited partnership, means a limited partner or a general partner; and
- (b) in relation to a Labuan limited liability partnership, means a person who is a partner, including a designated partner, in that partnership and named as such in the application made to the Authority under section 30 or a notice filed under section 31,

as the case may be;

“partnership agreement” means an agreement in writing of the partners as to the affairs of a Labuan limited partnership or a Labuan limited liability partnership, as the case may be, and the rights and obligations of the partners among themselves;

“partnership interest” means a partner’s share of the profits and losses of a Labuan limited partnership or a Labuan limited liability partnership, as the case may be, and the right to receive distribution of partnership assets and other benefits conferred by the partnership agreement;

“prescribe”, where no mode is mentioned, means prescribe from time to time by order published in the *Gazette*, and a power to prescribe includes the power to make different provisions in the order for different persons, classes, categories or descriptions of persons, and “prescribed” shall be construed accordingly;

“property” includes—

- (a) assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, however acquired; and
- (b) legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in, such assets, including bank cheques, money orders, shares, securities, bonds, bank drafts and letters of credit;

“register”—

- (a) in respect of Labuan limited partnerships, means the register maintained under subsection 5(3); and
- (b) in respect of Labuan limited liability partnerships, means the register maintained under subsection 30(7);

“resident” means a person who—

- (a) in relation to a natural person, is a citizen or permanent resident of Malaysia; and
- (b) in relation to any other person, has established a place of business, and is operating, in Malaysia,

and includes a person who is declared to be a resident pursuant to section 43 of the Exchange Control Act 1953 [*Act 17*];

“ringgit” means a ringgit in the currency of Malaysia;

“specify”, where no mode is mentioned, means specify from time to time in writing, and a power to specify includes the power to specify differently for different persons, classes, categories or descriptions of persons, and “specified” shall be construed accordingly;

“statutory value” has the meaning assigned to it in subsection 10(2).

(2) For the purposes of this Act, a Labuan limited partnership is insolvent at a particular time when the general partner is unable to discharge the debts and obligations of the Labuan limited partnership, excluding liabilities to partners in respect of

their partnership interests, as they fall due, out of the assets of the Labuan limited partnership without recourse to the separate assets of a general partner not contributed to the Labuan limited partnership, and “solvent” shall be construed accordingly.

PART II

ADMINISTRATION OF THE ACT

Administration of the Act

3. (1) The Authority shall be responsible for the administration of this Act, subject to the general direction and control of the Minister.

(2) The Authority may authorize any of its members or officers to perform any of its functions, exercise any of its powers, or discharge any of its duties under this Act.

(3) Subject to such limitations, if any, as may be prescribed, an authorized officer shall perform all the functions, exercise all the powers and discharge all the duties of the Authority and every function so performed, power so exercised and duty so discharged shall be deemed to have been duly performed, exercised and discharged for the purposes of this Act.

(4) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Authority.

PART III

LABUAN LIMITED PARTNERSHIPS

Chapter 1

Establishment of Labuan limited partnership

Labuan limited partnership

4. (1) Subject to the provisions of this Act, a Labuan limited partnership may be formed by any person for any lawful purpose.

(2) A Labuan limited partnership shall consist of not less than two partners and not more than fifty partners who may be any person and of whom—

- (a) one at least shall be a general partner; and
- (b) one at least shall be a limited partner.

(3) A person may be a general partner and a limited partner at the same time in the same Labuan limited partnership.

(4) Where a Labuan limited partnership is formed for the purpose of carrying on any professional practice, the Labuan limited partnership—

- (a) shall consist of partners none of whom is a corporation; and
- (b) shall have in force professional indemnity insurance cover for an amount not less than the prescribed amount with any insurer approved by the Authority.

Registration of Labuan limited partnership

5. (1) An application for the registration of a Labuan limited partnership shall be made to the Authority and accompanied by the prescribed fee and such documents as may be specified by the Authority.

(2) The Authority shall not register a Labuan limited partnership unless there has been filed with the Authority a certified copy of a partnership agreement executed by each person who is, on the formation of the Labuan limited partnership, to be a partner and the partnership agreement shall state—

- (a) the name under which the Labuan limited partnership is to be conducted;
- (b) the intended address of the registered office of the Labuan limited partnership;
- (c) the full name and address of each general partner or, in the case of a corporation, the place where it is incorporated and its registered or principal office;

- (d) the term, if any, for which the Labuan limited partnership is to exist or, if for unlimited duration, a statement to that effect;
- (e) the nature of business to be undertaken; and
- (f) such other information as may be specified by the Authority.

(3) The Authority shall maintain a register of Labuan limited partnerships registered under this Act.

(4) Upon the registration of a Labuan limited partnership, the Authority shall issue a certificate of registration which shall be signed by the Authority or any of its authorized officers and sealed with its seal.

(5) A certificate issued under subsection (4) shall be conclusive evidence that a Labuan limited partnership has been registered with the Authority.

(6) The Authority may impose or attach any condition, restriction or term as it thinks fit to a registration under this section.

(7) Nothing in this section shall be construed as to require the Authority to register a limited partnership if it is not satisfied with the particulars or other information furnished under this Act.

Amendment of partnership agreement

6. (1) If any change is made or occurs in respect of any of the particulars in the partnership agreement of a Labuan limited partnership registered under section 5, the Labuan limited partnership shall, within thirty days, file with the Authority a notice signed by a general partner, specifying the nature of the change.

(2) The Authority shall register the notice referred to in subsection (1), and upon payment of the prescribed fee, the Authority may issue a certificate certifying the registration of the change in particulars in the partnership agreement.

(3) The certificate issued under subsection (2) shall be signed by the Authority or any of its authorized officers and sealed with its seal, and that certificate shall be *prima facie* evidence in all courts as to the change.

(4) The Authority may, in any particular case, require a notice filed under subsection (1) to be rectified by the Labuan limited partnership in such manner as the Authority considers fit.

(5) If a Labuan limited partnership fails to comply with subsection (1) or (4), each of the general partners shall be liable to an administrative penalty as specified by the Authority.

Name of Labuan limited partnership

7. (1) The name of a Labuan limited partnership shall end with the words “Limited Partnership” in full or the abbreviation “Ltd.P.”, “LP”, “L.P” or any other form of abbreviation in romanised character or words in the national language of a country which connotes a limited partnership or any abbreviation thereof as may be approved by the Authority.

(2) The name of a Labuan limited partnership may be in foreign characters, alphabet or language provided that an accurate and certified rendition of the name in the English language is employed and is clearly stated in every written communication sent by, or on behalf of, the Labuan limited partnership and every document issued or signed by, or on behalf of, the Labuan limited partnership.

(3) The name of a limited partner shall not appear in the name of a Labuan limited partnership unless it is also the name of one of the general partners or the Labuan limited partnership has been carried on under that name before the admission of that partner as a limited partner.

(4) The corporate name or any part of the corporate name of a limited partner shall not appear in the name of a Labuan limited partnership unless it is also the corporate name or part of

the corporate name of one of the general partners or the Labuan limited partnership has been carried on under that name before the admission of that corporate partner as a limited partner.

(5) A limited partner whose name or corporate name appears in the name of the Labuan limited partnership contrary to subsection (2) or (3) shall be liable as a general partner to any creditor of the Labuan limited partnership who has extended credit without actual knowledge that the limited partner is not a general partner.

(6) A Labuan limited partnership shall not be registered where the name of the Labuan limited partnership to be registered is in the opinion of the Authority in any way misleading or otherwise undesirable.

Change of name of Labuan limited partnership

8. (1) Subject to subsection (2), a Labuan limited partnership may change its name.

(2) Where a Labuan limited partnership changes its name, it shall, within thirty days, file a notice of the change signed by a general partner to the Authority specifying the nature of the change.

(3) If the Authority approves the change of name, the Authority shall, on payment of the prescribed fee, issue a certificate of registration of the Labuan limited partnership under the new name and upon the issue of the certificate of registration the change of name shall become effective.

(4) If the name of a Labuan limited partnership is, whether through inadvertence or otherwise and whether originally or by a change of name, a name by which the Labuan limited partnership could not be registered without contravention of section 7, the Labuan limited partnership shall change its name to a name to be approved by the Authority and if the Authority so directs, shall so change it within thirty days after the date of direction or such longer period as the Authority allows.

(5) If the Labuan limited partnership fails to comply with the direction given by the Authority under subsection (4), it shall be liable to an administrative penalty as specified by the Authority.

(6) A change of name pursuant to this Act shall not affect the identity of the Labuan limited partnership or any rights or obligations of the Labuan limited partnership, or render defective any legal proceedings by or against the Labuan limited partnership.

(7) Any legal proceedings that might have been continued or commenced by or against the Labuan limited partnership by its former name may be continued or commenced by or against the Labuan limited partnership by its new name.

Registered office of Labuan limited partnership

9. (1) A Labuan limited partnership shall have a registered office in Labuan which shall be the registered office of a Labuan trust company.

(2) A Labuan limited partnership may change the address of its registered office from time to time by filing a notice of change with the Authority.

(3) The change of address shall be registered by the Authority and shall take effect upon such registration.

(4) Notwithstanding subsection (3), until the end of a period of thirty days beginning on the date on which a change of address of a Labuan limited partnership is registered, a person may validly serve any document on the Labuan limited partnership at its previous registered office.

(5) A Labuan limited partnership shall keep at its registered office—

(a) a register—

(i) showing, in the case of an individual, the full name and address for each limited partner and general

partner and, in the case of a corporation, its full name, the place where it is incorporated and its registered or principal office; and

- (ii) showing for each limited partner, where the participation of limited partners is defined by percentage interests or by the number of units or other similar rights held by them, the percentage interest or the number and class of units or other rights held;
- (b) a copy of the partnership agreement of the Labuan limited partnership and each amendment made thereto;
 - (c) a statement of the amount of contributions agreed to be made by limited partners and the time at which, or events on the happening of which, the contributions are to be made;
 - (d) a statement of the amount of money and the nature and value of any other property contributed by each limited partner and the dates thereof;
 - (e) a statement of the amount of contributions returned to limited partners and the dates thereof; and
 - (f) such other information as may be specified by the Authority.
- (6) The documents kept under subsection (5) shall be—
- (a) *prima facie* evidence of the particulars contained in, or required to be contained therein;
 - (b) amended within thirty days of any change in the particulars; and
 - (c) available for inspection and copying without charge during ordinary business hours at the request of a partner.

(7) If a Labuan limited partnership fails to comply with this section, the Labuan limited partnership and each of the general partners shall be liable to an administrative penalty as specified by the Authority.

Chapter 2

*Management and administration of Labuan limited partnership***Contribution of limited partner**

10. (1) Any contribution to be made by a limited partner to a Labuan limited partnership may be in the form of money in any currency, any other property, or services.

(2) Where the contribution of the limited partner is made or undertaken to be made otherwise than in cash—

- (a) there shall forthwith be assigned to that contribution or part of that contribution or to that intended contribution or part of that intended contribution, in accordance with the partnership agreement, a value to be known as a statutory value; and
- (b) the statutory value shall, for the purposes of this Act, be accepted as the value of that contribution or that part of the contribution or, of that intended contribution or that part of the intended contribution, as the case may be.

Rights and obligations of general partner

11. (1) A general partner in a Labuan limited partnership shall have all the rights and powers and shall be subject to all the restrictions and liabilities of a partner in a partnership without limited partners except that, without the written consent or ratification by all the limited partners, a general partner has no authority to—

- (a) do an act which makes it impossible to carry on the activities of the Labuan limited partnership;
- (b) possess any Labuan limited partnership property, or dispose of any rights in any Labuan limited partnership property, for other than a partnership purpose; or
- (c) admit a person as a general partner or a limited partner, unless the right to do so is given in the partnership agreement.

(2) A general partner shall, unless otherwise provided for in the partnership agreement or under this Act, carry out all the functions necessary and connected with the conduct of activities of the Labuan limited partnership, and shall discharge all obligations imposed on the general partner or on the Labuan limited partnership.

(3) A property of a Labuan limited partnership which is transferred to or vested in or held on behalf of any one or more of the general partners or which is transferred to or vested in the name of the Labuan limited partnership shall be held or deemed to be held by the general partner, or, if more than one, by the general partners jointly, as an asset of the Labuan limited partnership in accordance with the terms of the partnership agreement.

(4) A debt or an obligation incurred by a general partner in the conduct of the activities of a Labuan limited partnership shall be a debt or an obligation of the Labuan limited partnership.

(5) A general partner shall at all times act in good faith in the interests of the Labuan limited partnership.

Enforcement of judgments against property of Labuan limited partnership

12. (1) Subject to subsection (3), no judgment shall be enforced against a property of a Labuan limited partnership unless the judgment has been granted against a general partner in that partner's capacity as a general partner of that Labuan limited partnership.

(2) Creditors of a general partner or a limited partner, in that partner's capacity other than as a general partner or a limited partner of the Labuan limited partnership, shall have no claim against the property of that Labuan limited partnership.

(3) Nothing in subsection (1) shall preclude the enforcement of an order of the court relating to the property of a Labuan limited partnership in any case where, by reason of any of the events mentioned in paragraph 26(1)(a) or (b), a judgment could not be granted against a general partner in that partner's capacity as a general partner of that Labuan limited partnership.

Rights of limited partner

13. (1) A limited partner has the same right as a general partner—

- (a) during business hours, to inspect and make copies of or take extracts from the Labuan limited partnership books, documents and records; and
- (b) to be given, on demand, true and full information of all things affecting the Labuan limited partnership and to be given a formal account of partnership affairs whenever circumstances render it just and reasonable.

(2) A limited partner shall not be entitled to dissolve a Labuan limited partnership by notice except as expressly provided in the partnership agreement or as provided under subsection 26(3).

(3) Subject to any provision, express or implied, of the partnership agreement to the contrary, a Labuan limited partnership shall not be dissolved by—

- (a) in the case of a limited partner who is an individual, his death, legal incapacity, bankruptcy, retirement or withdrawal from the Labuan limited partnership; and
- (b) in the case of a limited partner which is a corporation, its dissolution, bankruptcy or withdrawal from the Labuan limited partnership.

Share of profits

14. (1) A limited partner has, subject to this Act and the partnership agreement, the right to a share of the profits of the Labuan limited partnership.

(2) A limited partner may receive from the Labuan limited partnership a share of the profits stipulated for such limited partner in the partnership agreement only if, at the time when and immediately after payment is made, the Labuan limited partnership is solvent.

(3) For a period of six months from the date of receipt by a limited partner of any payment representing a share of the profits of the Labuan limited partnership in circumstances where the

requirements of subsection (2) have not been met, such payment shall be repayable by such limited partner with interest at the prescribed rate to the extent that such share of the profits is necessary to discharge a debt or obligation of the Labuan limited partnership incurred during the period that the share of the profits represented an asset of the Labuan limited partnership.

Dealings by limited partner with Labuan limited partnership

15. (1) A limited partner may lend money to, borrow money from and enter into transactions with, the general partner on behalf of the Labuan limited partnership.

(2) Except where the limited partner is also a general partner, a limited partner having, with respect to anything done under subsection (1), a claim against the assets of the Labuan limited partnership shall rank as a creditor of the Labuan limited partnership in respect of such claim.

(3) For the purposes of this section, a claim under subsection (2) does not include a claim for a return of capital contributions.

Limited partners' rights as between themselves

16. (1) Subject to subsection (2), limited partners, in relation to one another, shall rank—

(a) *pari passu* in respect of the return of their contributions;
and

(b) *pro rata* to those contributions in respect of profits.

(2) Where there is more than one limited partner, the partnership agreement may provide that one or more of the limited partners is to have greater rights than the other limited partners as to—

(a) the return of contributions;

(b) profits; and

(c) any other matter.

Return of limited partner's contribution

17. (1) A limited partner shall not, on dissolution or otherwise, receive out of the capital of a Labuan limited partnership a payment representing a return of any part of his contribution to the Labuan limited partnership unless at the time of and immediately after such payment the Labuan limited partnership is solvent.

(2) For a period of six months from the date of receipt by a limited partner of any payment representing a return of contribution or part thereof received by such limited partner in circumstances where the requirements of subsection (1) have not been met, such payment shall be repayable by such limited partner with interest at the prescribed rate to the extent that such contribution or part thereof is necessary to discharge a debt or obligation of the Labuan limited partnership incurred during the period that the contribution represented an asset of the Labuan limited partnership.

(3) Notwithstanding the provision of this section, a limited partner shall not be liable to repay any payment representing a return of his contribution or part thereof, except—

- (a) as provided in subsection (2); or
- (b) in the case of fraud.

(4) Subject to subsections (1) and (2), a limited partner may demand payment representing the return of all or part of his contribution—

- (a) on the dissolution of the Labuan limited partnership;
- (b) at the time specified in the partnership agreement for its return; or
- (c) after he has given six months' notice in writing to all other partners if no time is specified in the partnership agreement either for the return of the contribution or for the dissolution of the Labuan limited partnership.

(5) A limited partner has, notwithstanding the nature of his contribution, only the right to demand and receive money in return for it, unless—

- (a) there is a statement to the contrary in the partnership agreement; or

- (b) all the partners consent to some other manner of returning the contribution.

(6) In this section, “payment” includes the release of any obligation forming part of the capital contribution, and any liability to make repayments pursuant to subsection (2) shall be construed accordingly.

Limited partner’s liability to Labuan limited partnership

18. A limited partner shall be liable to the Labuan limited partnership for the difference, if any, between the value of money or other property contributed by that limited partner to the Labuan limited partnership or the statutory value and the value of money or other property specified in the documents kept under subsection 9(5) to be contributed by that limited partner to the Labuan limited partnership.

Limited partner’s liability to creditors

19. (1) Except as provided in this Act, a limited partner shall not be liable for the debts and obligations of the Labuan limited partnership.

(2) A limited partner shall not be liable as a general partner unless the limited partner participates in the management of the Labuan limited partnership.

(3) Subject to subsection (4), if a limited partner participates in the management of the Labuan limited partnership in its dealings with persons who are not partners, that limited partner shall be liable, in the event of the insolvency of the Labuan limited partnership, for all debts and obligations of the Labuan limited partnership incurred during the period that the limited partner participated in the management of the Labuan limited partnership as though the limited partner were for that period a general partner.

(4) A limited partner shall be liable under subsection (3) only to a person who transacts with the Labuan limited partnership with actual knowledge of the participation of the limited partner in

the management of the Labuan limited partnership and who then reasonably believed the limited partner to be a general partner.

(5) A limited partner shall not be deemed to participate in the management of a Labuan limited partnership within the meaning of this section by doing one or more of the following:

- (a) being a contractor for or an agent or employee of the Labuan limited partnership or of a general partner or acting as a director, officer or shareholder of a corporate general partner;
- (b) consulting with and advising a general partner with respect to the activities of the Labuan limited partnership;
- (c) investigating, reviewing, approving or being advised as to the accounts or affairs of the Labuan limited partnership or exercising any right conferred by this Act;
- (d) acting as surety or guarantor for the Labuan limited partnership either generally or in respect of specific obligations;
- (e) approving or disapproving an amendment to the partnership agreement;
- (f) voting on, or otherwise signifying approval or disapproval of, one or more of the following:
 - (i) the dissolution and winding-up of the Labuan limited partnership;
 - (ii) the purchase, sale, exchange, lease, pledge, hypothecation, or creation of a security interest, or any other dealing in any asset by or of the Labuan limited partnership;
 - (iii) the creation or renewal of an obligation by the Labuan limited partnership;
 - (iv) a change in the nature of the activities of the Labuan limited partnership;
 - (v) the admission, removal or withdrawal of a general or a limited partner and the continuation of the Labuan limited partnership thereafter; and

(vi) transactions in which one or more of the general partners have an actual or potential conflict of interest with one or more of the limited partners; and

(g) bringing an action on behalf of the Labuan limited partnership pursuant to subsection 22(3).

(6) Subsection (5) shall not be construed to imply that the possession or exercise of any other power by a limited partner will necessarily constitute the participation by such limited partner in the management of the Labuan limited partnership.

Admission of additional limited partners and general partners

20. An additional limited partner or general partner shall not be admitted to a Labuan limited partnership except—

(a) in accordance with the partnership agreement or by consent of all existing partners; and

(b) by entry in the register under subsection 9(5).

Assignment

21. (1) A limited partner shall not assign his or its interest, in whole or in part, in the Labuan limited partnership unless—

(a) all the limited partners and all the general partners consent or the partnership agreement permits it; and

(b) the assignment is made in accordance with the terms of the consent or the partnership agreement, as the case may be.

(2) An assignee of the interest, in whole or in part, of a limited partner shall not become a limited partner in the Labuan limited partnership until his ownership of the assigned interest is entered in the register under subsection 9(5), and until so entered the

assignee has none of the rights of a limited partner exercisable against the partnership or against any of the partners other than the assignor.

(3) Subject to subsection (4), on becoming a limited partner, an assignee shall acquire the rights and powers and be subject to all the restrictions and liabilities that his assignor had in respect of the assigned interest immediately before the assignment.

(4) On becoming a limited partner an assignee shall not assume any liability of the assignor arising under subsection 14(3), 17(2) or 19(3) and, notwithstanding any term of the partnership agreement or any other agreement to the contrary, no such assignment shall relieve the assignor of any liability under those subsections.

(5) An assignment made under this section shall be registered with the Authority by the Labuan limited partnership.

(6) On the registration of an assignment under subsection (5) and upon payment of the prescribed fee, the Authority may issue a certificate to that effect.

(7) A limited partner who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Legal proceedings and service of documents

22. (1) Except as provided in this Act, legal proceedings by or against a Labuan limited partnership shall be instituted by or against any one or more of the general partners only and no limited partner shall be a party to or named in such proceedings.

(2) A general partner or, with the leave of the court, any other person shall have the right to join in or otherwise institute proceedings against one or more of the limited partners who may be liable to the Labuan limited partnership pursuant to subsection 14(3), subsection 17(2), section 18 or subsection 19(3).

(3) A limited partner may bring an action on behalf of a Labuan limited partnership if any one or more of the general partners with authority to do so have, without reasonable ground, refused to institute such proceedings.

(4) For the purpose of this Act, service of a document on a general partner in respect of a Labuan limited partnership may be effected by leaving it at, or sending it by post to, the registered office of the Labuan limited partnership.

(5) Where a document or notice has been served in accordance with subsection (4), the document or notice is deemed to have been properly served on the Labuan limited partnership.

Authority of general partner to sign

23. Where a general partner executes a document on behalf of the Labuan limited partnership, it shall be presumed in favour of any person who is not a partner that—

- (a) the general partner has the authority under which he purports to act; and
- (b) the executed document has been validly executed.

Chapter 3

Dissolution of Labuan limited partnership

Notice of dissolution

24. (1) Except as provided in sections 26 and 27, a Labuan limited partnership shall not be dissolved by an act of the partners until a notice of dissolution signed by a general partner has been filed by that general partner with the Authority.

(2) When a notice of dissolution is filed with the Authority, the Authority may cancel the registration of the Labuan limited partnership.

(3) If the Labuan limited partnership is dissolved in contravention of subsection (1), each of the general partners commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Dissolution of Labuan limited partnership

25. (1) In the event of the dissolution of a Labuan limited partnership, its affairs shall be wound up by the general partners unless the activities of the Labuan limited partnership are taken over and continued in accordance with subsection 26(2) or unless the court otherwise directs under subsection 27(2).

(2) If the affairs of the Labuan limited partnership are not wound up by the general partners after its dissolution, each of the general partners commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Dissolution of Labuan limited partnership on death of general partner

26. (1) Notwithstanding any provision, express or implied, in the partnership agreement to the contrary, but subject to subsections (2) and (3)—

- (a) where the sole or last remaining general partner is an individual, his death, legal incapacity, bankruptcy, retirement or withdrawal from the Labuan limited partnership; and
- (b) where the sole or last remaining general partner is a corporation, its winding-up or dissolution in other form, bankruptcy or withdrawal from the Labuan limited partnership,

shall cause the immediate dissolution of the Labuan limited partnership which shall forthwith be wound up—

- (A) in accordance with the partnership agreement; or
- (B) in accordance with the directions of the court on the application of a limited partner or a creditor of the Labuan limited partnership.

(2) A Labuan limited partnership shall not be required to be wound up under subsection (1) if, within sixty days of the dissolution, the limited partners, either unanimously or as otherwise provided for in the partnership agreement, elect one or more

general partners, in which event the Labuan limited partnership shall be deemed not to have been dissolved and the activities of the Labuan limited partnership may be taken over and continued as provided for in the partnership agreement or a subsequent partnership agreement.

(3) If a Labuan limited partnership is dissolved under subsection (1), and the activities of the Labuan limited partnership are not taken over and continued in accordance with subsection (2), a notice of dissolution signed by a limited partner shall be filed within thirty days by that limited partner to the Authority who may thereupon cancel the registration of the Labuan limited partnership.

(4) If the notice required to be filed under subsection (3) is not so filed, each of the limited partners shall be liable to an administrative penalty as specified by the Authority.

Power of court to order dissolution

27. (1) The court may, on the application of a partner, order the dissolution of a Labuan limited partnership if it is satisfied that—

- (a) the Labuan limited partnership is being conducted in a manner contrary to the terms of the partnership agreement of the Labuan limited partnership;
- (b) the Labuan limited partnership is being conducted in a manner oppressive to one or more of the limited partners;
or
- (c) circumstances have arisen which render it just and equitable that the Labuan limited partnership be dissolved.

(2) Where an order is made under subsection (1), the court may give such directions as it thinks fit as to the winding-up of the Labuan limited partnership.

(3) Where a Labuan limited partnership has been dissolved under this section, the partner making the application shall cause the

order of the court to be served on the Authority within thirty days after the making of the order and the Authority may thereupon cancel the registration of the Labuan limited partnership.

(4) If the order of the court is not served on the Authority as required under subsection (3), the partner referred to in that subsection commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Settling accounts on dissolution

28. Where accounts are settled after the dissolution of a Labuan limited partnership, the liabilities of the partnership to creditors shall be paid first, and then tax liabilities due to the Government, and then, subject to the partnership agreement or to a subsequent agreement, the other liabilities of the partnership shall be paid in the following order:

- (a) to general partners other than for capital and profits;
- (b) to limited partners in respect of the capital of their contributions;
- (c) to limited partners in respect of their share of the profits;
- (d) to general partners in respect of their contributions; and
- (e) to general partners in respect of their share of profits.

PART IV

LABUAN LIMITED LIABILITY PARTNERSHIPS

Chapter 1

Establishment of Labuan limited liability partnership

Labuan limited liability partnership

29. (1) Subject to the provisions of this Act, any two or more persons may form a Labuan limited liability partnership for any lawful purpose.

(2) An individual or a corporation may be a partner in a Labuan limited liability partnership.

Registration of Labuan limited liability partnership

30. (1) An application for the registration of a Labuan limited liability partnership shall be made to the Authority by any person who is, on registration, to be a designated partner, and accompanied by the prescribed fee and such documents as may be specified by the Authority.

(2) The application shall state—

- (a) the name under which the Labuan limited liability partnership is to be conducted;
- (b) the intended address of the registered office of the Labuan limited liability partnership;
- (c) the full name and address of each person who is to be a partner in the Labuan limited liability partnership and, where any of these persons is a corporation, the place where it is incorporated and its registered or principal office;
- (d) the full name and address of the person who is to be a designated partner and, where the person is a corporation, the place where it is incorporated and its registered or principal office;
- (e) the nature of business to be undertaken; and
- (f) such other information as may be specified by the Authority.

(3) Upon the registration of a Labuan limited liability partnership, the Authority shall issue a certificate of registration which shall be signed by the Authority or any of its authorized officers and sealed with its seal.

(4) A certificate of registration issued under subsection (3) shall be conclusive evidence that the Labuan limited liability partnership has been registered with the Authority.

(5) The Authority may impose or attach any condition, restriction or term as it thinks fit to a registration under this section.

(6) Nothing in this section shall be construed as to require the Authority to register a limited liability partnership if it is not satisfied with the particulars or other information furnished under this Act.

(7) The Authority shall maintain a register of Labuan limited liability partnerships registered under this Act.

Registration of changes in particulars

31. (1) If any change is made or occurs in any of the particulars registered in respect of a Labuan limited liability partnership registered under section 30, that Labuan limited liability partnership shall within thirty days after the change, or such further period as the Authority may on application allow, file with the Authority a notice signed by a designated partner, specifying the nature of the change.

(2) The Authority shall register the notice referred to in subsection (1), and upon payment of the prescribed fee, the Authority may issue a certificate certifying the registration of the change in particulars.

(3) The certificate issued under subsection (2) shall be signed by the Authority or any of its authorized officers and sealed with its seal, and that certificate shall be *prima facie* evidence in all courts as to the change.

(4) A person who ceases to be a partner or designated partner of a Labuan limited liability partnership may file with the Authority the notice referred to in subsection (1) if he has reasonable cause to believe that the limited liability partnership will not file the notice with the Authority.

(5) The Authority may, in any particular case, require a notice filed under subsection (1) to be rectified by the Labuan limited liability partnership in such manner as the Authority considers fit.

(6) If a Labuan limited liability partnership fails to comply with subsection (1), the Labuan limited liability partnership shall be liable to an administrative penalty as may be specified by the Authority.

Name of Labuan limited liability partnership

32. (1) The name of a Labuan limited liability partnership shall end with the words “Labuan Limited Liability Partnership” in full or the abbreviation “(Labuan) L.L.P.” or “(Labuan) LLP” or any other form of abbreviation in romanised character or words in the national language of a country which connotes a limited liability partnership or any abbreviation thereof as may be approved by the Authority.

(2) The name of a Labuan limited liability partnership may be in foreign characters, alphabet or language provided that an accurate and certified rendition of the name in the English language is employed and is clearly stated in every written communication sent by, or on behalf of, the Labuan limited liability partnership and every document issued or signed by, or on behalf of, the Labuan limited liability partnership.

(3) A Labuan limited liability partnership shall not be registered where the name of the Labuan limited liability partnership to be registered is in the opinion of the Authority in any way misleading or otherwise undesirable.

Change of name of Labuan limited liability partnership

33. (1) Subject to subsection (2), a Labuan limited liability partnership may change its name.

(2) Where a Labuan limited liability partnership changes its name, it shall deliver a notice of the change to the Authority in accordance with the provisions of subsection 31(1).

(3) If the Authority approves the change of name, the Authority shall, on payment of the prescribed fee, issue a certificate of registration of the Labuan limited liability partnership under the new name and upon the issue of the certificate of registration the change of name shall become effective.

(4) If the name of a Labuan limited liability partnership is, whether through inadvertence or otherwise and whether originally or by a change of name, a name by which the Labuan limited liability partnership could not be registered without contravention of section 32, the Labuan limited liability partnership shall change its name to a name to be approved by the Authority and if the Authority so directs, shall so change it within thirty days after the date of direction or such longer period as the Authority allows.

(5) If the Labuan limited liability partnership fails to comply with the direction given by the Authority under subsection (4), it shall be liable to an administrative penalty as specified by the Authority.

(6) A change of name pursuant to this Act shall not affect the identity of the Labuan limited liability partnership or any rights or obligations of the Labuan limited liability partnership, or render defective any legal proceedings by or against the Labuan limited liability partnership.

(7) Any legal proceedings that might have been continued or commenced by or against the Labuan limited liability partnership by its former name may be continued or commenced by or against the Labuan limited liability partnership by its new name.

Chapter 2

Conversion to Labuan limited liability partnership

Conversion from Labuan limited partnership to Labuan limited liability partnership

34. (1) A Labuan limited partnership may convert to a Labuan limited liability partnership if and only if the partners of the Labuan limited liability partnership to which the limited partnership is to be converted, comprises all the partners of the Labuan limited partnership and no one else.

(2) In this chapter, “convert”, in relation to a Labuan limited partnership converting to a Labuan limited liability partnership, means a transfer of the properties, interests, rights, privileges, liabilities, obligations and the undertaking of the Labuan limited partnership to the Labuan limited liability partnership.

Conversion from Labuan company to Labuan limited liability partnership

35. (1) A Labuan company may convert to a Labuan limited liability partnership 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 Labuan limited liability partnership to which it is to be converted comprises all the shareholders of the Labuan company and no one else.

(2) In this chapter, “convert”, in relation to a Labuan company converting to a Labuan limited liability partnership, means a transfer of the properties, interests, rights, privileges, liabilities, obligations and the undertaking of the Labuan company to the Labuan limited liability partnership.

Statements to be filed

36. (1) A Labuan limited partnership or a Labuan company may apply to convert to a Labuan limited liability partnership by filing with the Authority—

- (a) a statement by all the partners of the Labuan limited partnership or shareholders of the Labuan company, as the case may be, in such medium and form as the Authority may determine containing the following particulars:
 - (i) the name and registration number of the Labuan limited partnership or Labuan company; and
 - (ii) the date on which the Labuan limited partnership was registered under Part III of this Act or the Labuan Offshore Limited Partnerships Act 1997 [Act 565], or the date on which the Labuan company was incorporated under the Labuan Companies Act 1990; and

(b) all information as required under subsection 30(2).

(2) The Authority may, in any particular case, require the statements referred to in paragraph (1)(a) to be verified in such manner as the Authority considers fit.

Registration of conversion

37. (1) On receiving the statement from the Labuan limited partnership or Labuan company under section 36, the Authority may, subject to the provisions of this Act, register the statement and issue a certificate of registration in such form as the Authority may determine stating that the Labuan limited liability partnership is, on and from the date specified in the certificate, registered under this Act.

(2) Nothing in this section shall be construed as to require the Authority to register a Labuan limited liability partnership if it is not satisfied with the particulars or other information furnished under the provisions of this Act.

Effect of registration

38. (1) On and from the date of registration specified in the certificate of registration issued under subsection 37(1) (referred to in this section as the “date of registration”)—

- (a) there shall be a Labuan limited liability partnership by the name specified in the certificate of registration registered under this Act, with all the attributes described in Part IV of this Act and subject to the provisions of this Act;
- (b) all movable and immovable properties vested in the Labuan limited partnership or Labuan company, all interests, rights, privileges, liabilities and obligations relating to the Labuan limited partnership or Labuan company, and the whole of the undertaking of the Labuan limited partnership or Labuan company, as the case may be, shall be transferred to and shall vest in the Labuan limited liability partnership without further assurance, act or deed;
- (c) the Labuan limited partnership or Labuan company shall be deemed to be dissolved; and
- (d) the Labuan limited partnership or Labuan company shall be removed from the register of Labuan limited partnerships maintained by the Authority or register of companies maintained under the Labuan Companies Act 1990, respectively.

(2) If any property to which paragraph (1)(b) applies is registered with a relevant authority, the Labuan 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 that relevant authority of the conversion and of the particulars of the Labuan limited liability partnership in such medium and form as the Authority may determine.

Pending proceedings

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

Continuance of conviction, ruling, order or judgment

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

Existing agreements

41. Every agreement to which the Labuan limited partnership or Labuan 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 Labuan limited liability partnership were a party to such an agreement instead of the Labuan limited partnership or Labuan company; and
- (b) for any reference to the Labuan limited partnership or Labuan company, as the case may be, there were substituted in respect of anything to be done on or after the date of registration a reference to the Labuan limited liability partnership.

Existing contracts, etc.

42. All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements subsisting immediately before the date of registration relating to the Labuan limited partnership or Labuan company, or to which the Labuan limited partnership or Labuan company is a party, shall continue in force on and after that date as if they relate to the Labuan limited liability partnership and shall be enforceable by or against the Labuan limited liability partnership as if the Labuan limited liability partnership were named therein or were a party thereto instead of the Labuan limited partnership or Labuan company.

Continuance of employment

43. Every contract of employment to which section 41 or 42 applies shall continue in force on or after the date of registration as if the Labuan limited liability partnership were the employer thereunder instead of the Labuan limited partnership or Labuan company, as the case may be.

Existing appointment, authority or power

44. (1) Every appointment of the Labuan limited partnership or Labuan 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 Labuan limited liability partnership were appointed.

(2) Any authority or power conferred on the Labuan limited partnership or Labuan 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 Labuan limited liability partnership.

Application of sections 38 to 44

45. Sections 38 to 44 shall not apply to any approval, permit or licence issued under any written law to the Labuan limited

partnership or Labuan company which is in force immediately before the date of registration of the Labuan limited liability partnership.

Liabilities and obligations of partner before conversion

46. (1) Notwithstanding sections 38 to 44, every partner of a Labuan limited partnership that has converted to a Labuan limited liability partnership shall continue to be personally liable (jointly and severally with the Labuan limited liability partnership) for the liabilities and obligations of the Labuan limited 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 subsection (1), that partner shall be entitled, subject to any agreement with the Labuan limited liability partnership to the contrary, to be fully indemnified by the Labuan limited liability partnership in respect of such liability or obligation.

Notice of conversion in invoices and correspondence

47. (1) The Labuan limited liability partnership shall ensure that for a period of twelve months commencing fourteen days after the date of registration, every invoice or official correspondence of the Labuan limited liability partnership bears the following:

- (a) a statement that it was, as from the date of registration, converted from a Labuan limited partnership or Labuan company, as the case may be, to a Labuan limited liability partnership; and
- (b) the name and registration number, if applicable, of the Labuan limited partnership or Labuan company from which it was converted.

(2) Any Labuan limited liability partnership which contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for every day or part thereof during which the offence continues after conviction.

Chapter 3

*Recognized limited liability partnership***Registration of recognized limited liability partnership**

48. (1) A foreign limited liability partnership shall not have a place of business in Labuan or carry on business in Labuan unless it is registered as a recognized limited liability partnership under this Act.

(2) Every foreign limited liability partnership shall, prior to establishing a place of business, or carrying on business, in Labuan, file with the Authority for registration—

- (a) a certified copy of the certificate of its incorporation or registration in its place of incorporation or origin, or a document of similar effect;
- (b) a certified copy of its partnership agreement, if there is any;
- (c) a list of its partners containing the full name and address of each partner and, where any of these persons is a corporation, the place where it is incorporated and its registered or principal office;
- (d) the full name and address of the designated partner or any other person by any name called who shall be charged with the duties and obligations of a designated partner under this Act and, where the person is a corporation, the place where it is incorporated and its registered or principal office;
- (e) a memorandum of appointment or power of attorney under the seal of the foreign limited liability partnership or executed on its behalf in such manner as to be binding on the foreign limited liability partnership and, in either case, verified in the prescribed manner, stating the name of a Labuan trust company that is authorized to accept on its behalf service of process and any notice required to be served on the foreign limited liability partnership; and
- (f) a statutory declaration in the prescribed form made by an officer of the Labuan trust company,

and the Authority may, on payment of the prescribed fees, and subject to this Act and any condition which it may impose, register the foreign limited liability partnership under this Part as a recognized limited liability partnership.

(3) Upon the registration of a recognized limited liability partnership, the Authority shall issue a certificate of registration which shall be signed by the Authority or any of its authorized officers and sealed with its seal.

(4) A certificate of registration issued under subsection (3) shall be conclusive evidence that the recognized limited liability partnership has been registered with the Authority.

(5) Where a memorandum of appointment or power of attorney filed with the Authority under paragraph (2)(e) is executed by a person on behalf of a foreign limited liability partnership, a copy of the deed or document by which that person is authorized to execute the memorandum of appointment or power of attorney, verified by statutory declaration in the prescribed manner, shall be filed with the Authority and the copy shall for all purposes be regarded as an original.

Name of recognized limited liability partnership

49. (1) A foreign limited liability partnership shall not be registered under this Part where the name of the foreign limited liability partnership is in the opinion of the Authority in any way misleading or otherwise undesirable.

(2) If a recognized limited liability partnership is registered, either in error or otherwise, with a name with which it should not have been registered, the Authority may, after giving thirty days' notice to the recognized limited liability partnership requiring it to change its name, strike the same from the register upon its default in complying with the requirement.

(3) No recognized limited liability partnership shall use, in Labuan or elsewhere, in respect of acts done or to be done in Labuan, any name other than that under which it is registered under this Part.

Registered office of recognized limited liability partnership

50. (1) Every recognized limited liability partnership shall at all times have a registered office in Labuan, which office shall be the principal office of a Labuan trust company.

(2) Notice of the location of the registered office and any change thereof shall be filed with the Authority within one month after the date of registration of the recognized limited liability partnership or the date of the change, as the case may be.

(3) If default is made in complying with this section the recognized limited liability partnership and every designated partner commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Return to be filed where particulars, etc., changed

51. (1) If a change is made or occurs in any of the particulars in respect of a recognized limited liability partnership registered under section 48, that recognized limited liability partnership shall within thirty days after the change, or such further period as the Authority may on application allow, file with the Authority a notice specifying the nature of the change.

(2) Upon receipt of the particulars of the change under subsection (1), the Authority shall, subject to this Act, register the change and may, where the Authority deems fit, issue a certificate under its hand and seal, and that certificate shall be *prima facie* evidence in all courts as to the change of the particulars of the recognized limited liability partnership.

(3) If a recognized limited liability partnership fails to comply with subsection (1), the recognized limited liability partnership shall be liable to an administrative penalty as may be specified by the Authority.

Service on recognized limited liability partnership

52. (1) A process or notice required to be served on a recognized limited liability partnership shall be sufficiently served if addressed to the recognized limited liability partnership and left at or sent by post to its registered office in Labuan.

(2) Notwithstanding subsection (1)—

- (a) where a recognized limited liability partnership makes default in filing with the Authority the name and address of its registered office which is authorized to accept on its behalf service of process or notice;
- (b) if at any time the registered office so notified has ceased to exist; or
- (c) if for any other reason service of process or notice cannot be effected,

the notice may be served on the recognized limited liability partnership by leaving it at, or sending it by post to, a place of business established by the recognized limited liability partnership in Labuan, or, if no such place of business has been established, the notice may be served on the recognized limited liability partnership by registered post to a place of business of the recognized limited liability partnership in the country of its incorporation or registration.

Cessation of business in Labuan

53. If a recognized limited liability partnership ceases to have a place of business or to carry on business in Labuan it shall, within thirty days after it so ceases, file with the Authority notice of that fact, and as from the day on which the notice is so filed, its obligation to file any document, not being a document that ought to have been filed before that day, with the Authority shall cease, and the Authority shall forthwith remove the name of the recognized limited liability partnership from the register.

Liquidation or dissolution of recognized limited liability partnership in place of incorporation or origin

54. (1) If a recognized limited liability partnership goes into liquidation or is dissolved in its place of incorporation, establishment or origin, the recognized limited liability partnership shall,

within one month after the commencement of the liquidation or dissolution or within such further time as the Authority in special circumstances allows, file or cause to be filed with the Authority—

- (a) a notice of such liquidation or dissolution; and
- (b) when a foreign liquidator is appointed to such recognized limited liability in its place of incorporation, establishment or origin, a notice of such appointment.

(2) Upon receipt of the notice in paragraph (1)(a), the Authority shall forthwith appoint an approved liquidator and until such time that an approved liquidator is appointed to the recognized limited liability partnership, the foreign liquidator referred to in subsection (1) shall have the powers and functions of an approved liquidator.

(3) If the recognized limited liability partnership fails to file the notice under paragraph (1)(a), the Authority may, at any time thereafter, appoint an approved liquidator to the recognized limited liability partnership.

(4) Upon the appointment of an approved liquidator under subsection (2) or (3), the court shall be deemed to have ordered that the recognized limited liability partnership be wound up.

(5) The approved liquidator shall get in all the properties of the recognized limited liability partnership situate or recoverable in Labuan and shall, in so doing, have all the powers of an approved liquidator of a Labuan company under the Labuan Companies Act 1990.

(6) Before paying or transferring to a foreign liquidator referred to in subsection (1) any of the properties got in within Labuan, the approved liquidator shall—

- (a) pay to the Authority all penalties, costs, fees and charges due and owing;
- (b) pay the amount of all taxes payable under the Labuan Business Activity Tax Act 1990 [Act 445]; and
- (c) pay to any resident to whom, at the time of the appointment of the approved liquidator in Labuan, any debt incurred

bona fide by a recognized limited liability partnership in respect of supply of services to or for the recognized limited liability partnership is due, the amount of such debt,

and such penalties, costs, fees, charges, taxes and debts shall be a charge upon the properties of the recognized limited liability partnership ranking after the costs of the approved liquidator but in priority to all other charges and claims whatsoever.

(7) The recognized limited liability partnership shall be deemed to continue to exist in Labuan until the winding-up of its affairs in Labuan is completed.

Chapter 4

Capacity and transactions of Labuan limited liability partnership

Separate legal personality

55. (1) A Labuan limited liability partnership formed by being registered under this Act is a body corporate and has legal personality separate from that of its partners.

(2) A Labuan limited liability partnership shall have perpetual succession.

(3) A Labuan limited liability partnership shall have all the powers of a natural person.

(4) A Labuan limited liability partnership shall, by its name, be capable of—

- (a) suing and being sued;
- (b) acquiring, owning, holding and developing or disposing of property, both movable and immovable; and
- (c) having a common seal.

(5) Any change in the partners of a Labuan limited liability partnership shall not affect the existence, rights or liabilities of the Labuan limited liability partnership.

Limited liability of partners

56. (1) An obligation of the Labuan limited liability partnership whether arising in contract, tort or otherwise, is solely the obligation of the Labuan 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 Labuan limited liability partnership.

(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 Labuan limited liability partnership.

(4) Where a partner of a Labuan limited liability partnership is liable to any person, other than another partner of the Labuan limited liability partnership, as a result of a wrongful act or omission of his in the course of the business of the Labuan limited liability partnership or with its authority, the Labuan limited liability partnership is liable to the same extent as the partner.

(5) The liabilities of the Labuan limited liability partnership shall be met out of the property of the Labuan limited liability partnership.

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

- (a) when the Labuan limited liability partnership is insolvent and knew or ought to have known at the time of the distribution that the Labuan limited liability partnership was insolvent; or
- (b) which results in the Labuan limited liability partnership becoming insolvent and knew or ought to have known at the time of distribution that the Labuan limited liability partnership would become insolvent as a result of the distribution,

shall be personally liable to the Labuan limited liability partnership for the amount or value of the distribution if it was received within a period of six months before the commencement of the winding-up of the Labuan limited liability partnership.

(7) For the purposes of this section—

(a) a Labuan limited liability partnership is insolvent at a particular time 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 Labuan limited liability partnership's assets 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 Labuan 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 that partner or former partner's assignee.

Power of partner to bind the Labuan limited liability partnership

57. (1) Every partner of a Labuan limited liability partnership is the agent of the Labuan limited liability partnership and accordingly, the acts of a partner in the partner's capacity as a partner shall bind the Labuan limited liability partnership.

(2) Notwithstanding subsection (1), a Labuan limited liability partnership is not bound by anything done by a partner in dealing with a person if—

(a) the partner has in fact no authority to act for the Labuan limited liability partnership in that dealing; and

(b) the person knows that the partner has no authority or does not know or believe that partner to be a partner of the Labuan limited liability partnership.

(3) Where a person has ceased to be a partner of a Labuan limited liability partnership, that person is to be regarded, in relation to any person dealing with the Labuan limited liability partnership, as still being a partner of the Labuan limited liability partnership unless—

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

(4) For the purposes of subsection (2), no person is deemed to have notice of any lack of authority of a partner by reason only that the fact is made available by the Authority for inspection.

Relationship of partners

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

(2) In the absence of agreement on any matter, the mutual rights and duties of the partners of a Labuan limited liability partnership, and the mutual rights and duties of a Labuan limited liability partnership and its partners shall be determined, subject to the terms of any partnership agreement, by the following provisions:

- (a) all the partners of a Labuan limited liability partnership are entitled to share equally in the capital and profits of the Labuan limited liability partnership;
- (b) the Labuan limited liability partnership must indemnify each partner in respect of payments made and personal liabilities incurred by that partner—
 - (i) in the ordinary and proper conduct of the business of the Labuan limited liability partnership; and

- (ii) in or about anything necessarily done for the preservation of the business or property of the Labuan limited liability partnership;
- (c) every partner may take part in the management of the Labuan limited liability partnership;
- (d) no partner shall be entitled to remuneration for acting in the business or management of the Labuan limited liability partnership;
- (e) no person may be introduced as a partner without the consent of all existing partners;
- (f) any matter or issue relating to the Labuan limited liability partnership shall be decided by resolution passed by a majority in number of the partners, and for this purpose, each partner shall have one vote;
- (g) each partner shall render true accounts and full information of all things affecting the Labuan limited liability partnership to any other partner or that other partner's legal representatives;
- (h) if a partner, without the consent of the Labuan limited liability partnership, carries on any business of the same nature as and competing with the Labuan limited liability partnership, that partner must account for and pay over to the Labuan limited liability partnership all profits made by that partner in that business;
- (i) every partner must account to the Labuan limited liability partnership for any benefit derived by that partner without the consent of the Labuan limited liability partnership from any transaction concerning the Labuan limited liability partnership, or from any use by that partner of the property, name or any business connection of the Labuan limited liability partnership; and
- (j) no majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

Dealings by partners with the Labuan limited liability partnership

59. Unless otherwise provided in the partnership agreement, a partner may enter into a transaction with the Labuan limited liability partnership, including lending money to and borrowing money from it.

Assignment of interest

60. (1) Unless otherwise provided in the partnership agreement, a partner may assign the whole or any part of that partner's interest in the distribution from the Labuan limited liability partnership but only to the extent that the partner would have been entitled to receive.

(2) An assignment under subsection (1) shall not by itself—

- (a) cause the partner to cease being a partner of the Labuan limited liability partnership; and
- (b) entitle the assignee to interfere in the management of the Labuan limited liability partnership.

Admission and retirement of partners

61. (1) In addition to those persons named as partners in the partnership agreement, a person may become a partner of a Labuan limited liability partnership in accordance with an agreement with the existing partners.

(2) A partner of a Labuan limited liability partnership may cease to be a partner in accordance with the partnership agreement, or in the absence of such agreement, by that partner giving thirty days' written notice to the other partners of that partner's intention to resign as a partner.

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

(4) Where a partner of a Labuan limited liability partnership ceases to be a partner, unless otherwise provided in the partnership agreement, the former partner, his personal representative or its

liquidator, as the case may be, shall be entitled to receive from the Labuan limited liability partnership an amount—

- (a) equal to the former partner's capital contribution to the Labuan limited liability partnership and the former partner's right to share in the accumulated profits of the Labuan limited liability partnership after the deduction of losses of the Labuan limited liability partnership; and
- (b) determined as at the date the former partner ceased to be a partner.

(5) For the avoidance of doubt, a former partner, his personal representative or its liquidator, as the case may be, shall not interfere in the management of the Labuan limited liability partnership.

Bankruptcy of a partner

62. If a partner of a Labuan limited liability partnership is adjudicated a bankrupt—

- (a) his bankruptcy shall not by itself cause him to cease being a partner of the Labuan limited liability partnership; and
- (b) the Director General of Insolvency or any other person in a similar capacity, or trustee of the estate of the bankrupt partner shall not interfere in the management of the Labuan limited liability partnership but shall be entitled to receive distribution from the Labuan limited liability partnership that the bankrupt partner is entitled to receive under the partnership agreement.

Chapter 5

Management and administration of Labuan limited liability partnership

Registered office of Labuan limited liability partnership

63. (1) A Labuan limited liability partnership shall have a registered office in Labuan which shall be the registered office of a Labuan trust company.

(2) A Labuan limited liability partnership may change the address of its registered office from time to time by filing a notice of change with the Authority.

(3) The change of address shall be registered by the Authority and shall take effect upon such registration.

(4) Notwithstanding subsection (3), until the end of a period of thirty days beginning on the date on which a change of address of a Labuan limited liability partnership is registered, a person may validly serve any document on the Labuan limited liability partnership at its previous registered office.

(5) A Labuan limited liability partnership shall keep at its registered office—

(a) a register showing—

- (i) the full name and address of each partner who is an individual and, in the case of a corporation, its full name, the place where it is incorporated and its registered or principal office; and
- (ii) where the participation by partners is defined by percentage interests or by the number of units or other similar rights held by them, the percentage interest or the number and class of units or other rights held;

(b) a copy of the partnership agreement of the Labuan limited liability partnership, if any, and each amendment made thereto;

(c) a statement of the amount of contributions agreed to be made by partners and the time at which, or events on the happening of which, the contributions are to be made;

(d) a statement of the amount of money and the nature and value of any other property contributed by each partner and the dates thereof;

(e) a statement of the amount of contribution returned to partners and the dates thereof; and

(f) such other information as may be specified by the Authority.

- (6) The documents kept under subsection (5) shall be—
- (a) *prima facie* evidence of the particulars contained in, or required to be contained therein;
 - (b) amended within thirty days of any change in the particulars; and
 - (c) available for inspection and copying without charge during ordinary business hours at the request of a partner.

(7) If a Labuan limited liability partnership fails to comply with this section, the Labuan limited liability partnership and each of the partners shall be liable to an administrative penalty as specified by the Authority.

Designated partner

64. (1) A person identified as the designated partner in the application under paragraph 30(2)(d) is the designated partner on registration of the Labuan limited liability partnership.

(2) A partner may become a designated partner by and in accordance with an agreement with the other partners, and a partner may cease to be a designated partner in accordance with an agreement with the other partners.

(3) There must be at least one designated partner, and where no designated partner is appointed then every partner is a designated partner.

(4) Notwithstanding subsections (1), (2) and (3), a Labuan limited liability partnership may at any time deliver to the Authority—

- (a) a notice that specified partners are to be designated partners; or
- (b) a notice that every person who from time to time is a partner of the Labuan limited liability partnership is a designated partner,

and, once the notice is delivered, it shall have effect as if it were stated in the application for registration under sections 30 and 48.

(5) A notice delivered under subsection (4)—

(a) shall be in such form as specified by the Authority;
and

(b) shall be signed by a designated partner of the Labuan limited liability partnership or authenticated in a manner as specified by the Authority.

(6) A person ceases to be a designated partner if he ceases to be a partner.

Duties and responsibilities of designated partner

65. A designated partner shall be—

(a) answerable for the doing of all acts, matters and things, as are required to be done by the Labuan limited liability partnership under this Act; and

(b) personally liable to all penalties imposed on the Labuan limited liability partnership for any contravention of Parts IV and V unless the designated partner satisfies the court hearing the matter that he should not be so liable.

Annual solvency certificate

66. (1) A Labuan limited liability partnership shall file with the Authority, once in each calendar year, on or before the anniversary of the date of registration of the Labuan limited liability partnership or within such extended period as the Authority may grant, a certificate from the designated partner stating that he has considered the accounts, and certifying, with or without qualifications—

(a) that those accounts show that the Labuan limited liability partnership was solvent at the date to which they were made up;

(b) that he is unaware of any circumstances which render those accounts untrue; and

- (c) that no circumstances have occurred since the date to which those accounts were made up which would render the Labuan limited liability partnership insolvent,

and if such a certificate cannot be given without qualification, the respects in which it is qualified shall be set out.

(2) Any Labuan limited liability partnership which fails to comply with subsection (1)—

- (a) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit; and
- (b) upon conviction under paragraph (a), shall be wound up by the court pursuant to the provisions of Part X (in so far as they relate to a company limited by shares) of the Companies Act 1965 [*Act 125*] and the Companies (Winding-Up) Rules 1972 [*P.U. (A) 289/1972*], subject to such modifications and adaptations as may be necessary, and in particular, the modifications referred to in subsection 67(2).

(3) A designated partner who files a certificate referred to in subsection (1) without having reasonable grounds for his opinion commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Chapter 6

Dissolution of Labuan limited liability partnership

Receivership and winding-up

67. (1) Subject to sections 53 and 54—

- (a) in the case of receivership of a Labuan limited liability partnership, the provisions of Part VIII (in so far as they relate to a company limited by shares) of the Companies Act 1965 shall apply; and
- (b) in the case of winding-up of a Labuan limited liability partnership, the provisions of Part X (in so far as they relate to a company limited by shares) of the Companies Act 1965 and the Companies (Winding-Up) Rules 1972, or section 68 shall apply.

(2) The application of Part VIII and Part X (in so far as they relate to a company limited by shares) of the Companies Act 1965, and the Companies (Winding-Up) Rules 1972 under subsection (1) shall be subject to 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 Labuan 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 Labuan limited liability partnership;
- (c) references to the “memorandum” and “articles of a company” shall be taken as references to the partnership agreement of a Labuan limited liability partnership;
- (d) references to a “resolution” of a company shall be taken as references to a determination or decision of a Labuan limited liability partnership; and
- (e) references to “shares” of a member of a company shall be taken as references to the partnership interest of a partner in the Labuan limited liability partnership.

Alternative procedure for voluntary winding-up of Labuan limited liability partnership

68. (1) Where a Labuan limited liability partnership has ceased to operate and has discharged all its debts and liabilities, a partner of the Labuan limited liability partnership may, after giving notice in accordance with subsection (3), apply to the Authority, for a declaration of dissolution of the Labuan limited liability partnership.

(2) An application for a declaration of dissolution under subsection (1) shall be in writing and shall be accompanied by—

- (a) an affidavit made by the designated partner of the Labuan limited liability partnership stating—
 - (i) that the Labuan 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 (3) has been given in accordance with that subsection and the date on which the last of such notice was published or posted, as the case may be; and

(b) a copy of the notice given under subsection (3).

(3) Before making an application to the Authority under subsection (2), the applicant shall ensure that a notice to the effect that the applicant proposes to apply to the Authority for a declaration of dissolution of the Labuan limited liability partnership—

- (a) has been published in at least one widely circulated Malaysian newspaper and one international financial newspaper in an advertisement; and
- (b) has been sent by registered post to each partner of the Labuan limited liability partnership at the partner's last-known address.

(4) A written objection by a partner or creditor shall be made to the Authority within thirty days of the date of publication or posting of the notice, whichever is the later.

(5) On receipt of a written objection to the dissolution of the Labuan limited liability partnership under subsection (4), the Authority shall forthwith notify the applicant for the declaration of dissolution of the receipt of the objection and of the identity of the objector.

(6) The Authority may, by notice in writing, declare that the Labuan limited liability partnership is dissolved if—

- (a) no objection is received under subsection (4);
- (b) the partner or creditor, as the case may be, withdraws the objection made under subsection (4); or
- (c) the Authority decides that the objection made under subsection (4) is without justification.

(7) Upon the declaration of dissolution of the Labuan limited liability partnership under subsection (6), the Authority shall notify the Labuan limited liability partnership that, subject to the partnership agreement of the Labuan limited liability partnership,

it is entitled to distribute its surplus assets among its partners according to their respective rights and interests.

(8) The Labuan limited liability partnership shall notify the Authority that its surplus assets have been distributed in accordance with subsection (7).

(9) Notwithstanding the declaration of dissolution under subsection (6) and the distribution of assets under subsection (7)—

- (a) the liability, if any, of every partner of the Labuan limited liability partnership shall continue and may be enforced as if the Labuan limited liability partnership had not been dissolved; and
- (b) the High Court may wind-up the Labuan limited liability partnership according to Part X (in so far as they relate to a company limited by shares) of the Companies Act 1965 and the Companies (Winding-Up) Rules 1972, as if it had not been dissolved, or its surplus assets had not been distributed, as the case may be.

Revocation of dissolution

69. (1) The High Court may, on the application of the Authority, a partner or a creditor of a Labuan limited liability partnership within two years of the date of dissolution, order that the dissolution of a Labuan limited liability partnership be revoked.

(2) An order under subsection (1) may be granted by the High Court if—

- (a) at the time of the dissolution, the Labuan limited liability partnership was in operation;
- (b) the Labuan limited liability partnership had not discharged all its debts and liabilities; or
- (c) it is just and reasonable to do so.

(3) In granting an order under subsection (1), the High Court may direct that the Labuan limited liability partnership or any person

affected by the dissolution, be restored to the same position, to the extent possible, as if the Labuan limited liability partnership had not been dissolved.

(4) Upon revocation of the dissolution under subsection (1), the Labuan limited liability partnership shall notify the Authority by serving the sealed copy of the order on the Authority.

PART V

GENERAL

Accounts to be kept

70. (1) A Labuan limited partnership and Labuan limited liability partnership shall keep such accounting and other records as are sufficient to explain its transactions and disclose with reasonable accuracy at any time the financial position of the Labuan limited partnership and Labuan limited liability partnership.

(2) Every general partner or designated partner, as the case may be, shall cause appropriate entries to be made in the accounting and other records of the Labuan limited partnership or Labuan limited liability partnership, as the case may be, within sixty days of the completion of the transactions to which they relate.

(3) The accounting and other records of a Labuan limited partnership and Labuan limited liability partnership shall be kept at its registered office or at such other place in Labuan as the general partner or designated partner, as the case may be, thinks fit and shall at all times be open to inspection by any partner.

(4) Unless otherwise required in the partnership agreement, the accounts of a Labuan limited partnership and Labuan limited liability partnership shall not be required to be audited.

(5) A general partner or designated partner of a Labuan limited partnership or Labuan limited liability partnership, as the case may be, who fails to take all reasonable steps to secure compliance by the Labuan limited partnership or Labuan limited liability partnership, with the requirements of this section commits an offence against this Act.

Permitted purpose of establishment

71. (1) A Labuan limited partnership and a Labuan limited liability partnership shall be subject to the same restriction or prohibition as a Labuan company under the Labuan Companies Act 1990 unless expressly permitted under this Act or where such restriction or prohibition is permitted or waived under the Labuan Companies Act 1990, the same permission or waiver shall equally apply to a Labuan limited partnership and a Labuan limited liability partnership.

(2) Notwithstanding subsection (1), the Minister may by notice published in the *Gazette*, order that a Labuan limited partnership or Labuan limited liability partnership be restricted or prohibited from carrying on any specified business in Labuan and may, by notice published in the *Gazette*, impose conditions subject to which a specified business may be carried on by a Labuan limited partnership or a Labuan limited liability partnership.

(3) Any Labuan limited partnership or Labuan limited liability partnership which fails to comply with subsection (1) or fails to comply with the order of the Minister under subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Fees

72. (1) The Authority may charge fees in respect of services provided by the Authority under this Act.

(2) A Labuan limited partnership and Labuan limited liability partnership shall pay such annual fee as may be prescribed, on or before each anniversary of the date of its registration.

(3) Any fees collected by or paid to the Authority under this Act shall form part of and credited into its fund established under section 29 of the Labuan Financial Services Authority Act 1996.

Inspection and production of documents kept

73. (1) Subject to the provisions of this Act, a person may, if so authorized by the relevant Labuan limited partnership or Labuan limited liability partnership—

- (a) inspect a document served on, registered by or filed with the Authority under this Act and kept by the Authority or, if the Authority thinks fit, a copy thereof;
- (b) require to be given to him a copy of the certificate of registration of a Labuan limited partnership or Labuan limited liability partnership or of any document or part of any other document referred to in paragraph (a).

(2) A copy of the certificate given under paragraph (1)(b) shall be certified by the Authority and sealed with its seal.

Form of records

74. The records which a Labuan limited partnership and a Labuan limited liability partnership are required by this Act to keep may be kept in the form of photographic film or may be entered or recorded by a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

Offence by body corporate

75. If a body corporate commits an offence under this Act or any regulations made under this Act, any person who, at the time of the commission of the offence, was a director, manager, partner, secretary or other similar officer or was purporting to act in any such capacity—

- (a) may be charged severally or jointly in the same proceedings with the body corporate; and

- (b) if the body corporate is found to have committed the offence, shall be deemed to have committed that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—
- (i) that the offence was committed without his knowledge, consent or connivance; and
 - (ii) that he took all reasonable precautions and had exercised due diligence to prevent the commission of that offence.

Documents to be filed through Labuan trust company

76. (1) Every document required or permitted to be filed with the Authority under this Act shall be filed through a Labuan trust company.

(2) Every application to the Authority for any certificate or for any extract or copy of any certificate to be issued under this Act or of any document filed with the Authority shall be made through a Labuan trust company.

(3) Subsection (2) shall not apply where an application is made by any of the partners of a Labuan limited partnership or a Labuan limited liability partnership in respect of that Labuan limited partnership or Labuan limited liability partnership, as the case may be, and the document, certificate, extract or copy is for his own personal use.

(4) Where any document is required to be filed or registered with the Authority through a Labuan trust company, the Labuan trust company shall, without prejudice to its duty as may be contained in the Labuan Financial Services and Securities Act 200...[Act ...], ensure the validity, veracity and authenticity of that document.

General penalty

77. Any person who commits an offence under this Act or any regulations made under this Act for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

Power to impose administrative penalties

78. (1) The Authority may impose administrative penalties on any person who fails to comply with any provision of this Act.

(2) The Authority shall, before making a decision to impose an administrative penalty on a person, serve on him a written notice calling on him to show cause why the administrative penalty should not be imposed on him.

(3) If a satisfactory explanation is not received within such period as may be specified in the written notice, the Authority may impose an administrative penalty in an amount not exceeding five hundred ringgit for each day of non-compliance and such amount shall not in total exceed the sum of ten thousand ringgit.

(4) Where a person has failed to pay an administrative penalty imposed by the Authority under subsection (3), the penalty imposed by the Authority may be sued for and recovered as a debt due to the Authority.

Compounding of offences

79. (1) The Authority may, with the written consent of the Public Prosecutor, compound any offence committed by any person under this Act by making a written offer to such person to compound the offence upon payment to the Authority, within such time as may be specified in the offer, such amount not exceeding fifty per centum of the amount of the maximum fine for that offence.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer or within such extended period as the Authority may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1), no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound was made.

(4) Any money received by the Authority under this section shall be paid into and form part of the fund established under section 29 of the Labuan Financial Services Authority Act 1996.

Striking-off

80. (1) Notwithstanding any provision in this Act, where the Authority is satisfied that a Labuan limited partnership or a Labuan limited liability partnership—

- (a) has failed to pay any prescribed fees under this Act; or
- (b) has contravened any provision of this Act,

the Authority may serve a notice on the Labuan limited partnership or Labuan limited liability partnership notifying it that its name may be struck-off the register, unless the Labuan limited partnership or Labuan limited liability partnership takes any step or action to remedy the breach as may be specified in the notice within thirty days from the date of the notice or such longer period as may be extended by the Authority.

(2) In the event the Authority—

- (a) receives from the Labuan limited partnership or Labuan limited liability partnership, a notice stating that it is likely to be unable to remedy the breach specified in the notice under subsection (1); or
- (b) receives no reply from the Labuan limited partnership or Labuan limited liability partnership to the notice under subsection (1),

the Authority may within thirty days from the date of the expiration of the period mentioned in the notice or thereafter, strike-off the name of the Labuan limited partnership or Labuan limited liability partnership from the register unless the Labuan limited partnership or Labuan limited liability partnership satisfies the Authority that the name should not be struck-off.

(3) A Labuan limited partnership or Labuan limited liability partnership that has been struck-off the register under this section remains liable for all its claims, debts, liabilities and obligations, and the striking-off shall not affect the liability of any of its partners.

Restoration to register

81. (1) Where the name of a Labuan limited partnership or Labuan limited liability partnership has been struck-off the register under subsection 80(2), the Labuan limited partnership or Labuan limited liability partnership, or a partner or a liquidator thereof may, within three years immediately following the date of the striking-off, apply to the Authority to have the name of the Labuan limited partnership or Labuan limited liability partnership restored to the register, and upon payment to the Authority of the prescribed restoration fees and all other prescribed fees due, the Authority may restore the name of the Labuan limited partnership or Labuan limited liability partnership to the register.

(2) Upon restoration of the name of the Labuan limited partnership or Labuan limited liability partnership to the register, the name of the Labuan limited partnership or Labuan limited liability partnership shall be deemed never to have been struck-off the register.

Effect of striking-off

82. (1) Where the name of a Labuan limited partnership or Labuan limited liability partnership has been struck-off the register, the Labuan limited partnership or Labuan limited liability partnership, and the partners, liquidators and receivers thereof, shall not—

- (a) commence or defend any legal proceedings, carry on any business or in any way deal with the properties of the Labuan limited partnership or Labuan limited liability partnership;
- (b) defend any legal proceedings, make any claim or claim any right for, or in the name of the Labuan limited partnership or Labuan limited liability partnership; or
- (c) act in any manner with respect to the affairs of the Labuan limited partnership or Labuan limited liability partnership.

(2) Notwithstanding subsection (1), where the name of a Labuan limited partnership or Labuan limited liability partnership has

been struck-off the register, the Labuan limited partnership or Labuan limited liability partnership, or a partner, liquidator or receiver thereof, may—

- (a) apply to the Authority for the Labuan limited partnership or Labuan limited liability partnership to be registered afresh;
- (b) continue to defend legal proceedings that were commenced against the Labuan limited partnership or Labuan limited liability partnership prior to the date of the striking-off; and
- (c) continue to carry on legal proceedings that were instituted on behalf of the Labuan limited partnership or Labuan limited liability partnership prior to the date of striking-off.

(3) The fact that the name of a Labuan limited partnership or Labuan limited liability partnership has been struck-off the register shall not be construed as preventing—

- (a) the Labuan limited partnership or Labuan limited liability partnership from being liable for any of its liabilities;
- (b) any person from making a claim against the Labuan limited partnership or Labuan limited liability partnership, and pursuing the claim through to judgment or execution; or
- (c) the court from granting any order as provided under this Act.

Secrecy

83. (1) No person who has by any means access to any record, book, register, correspondence, document, material or information, relating to the business and affairs of a Labuan limited partnership or Labuan limited liability partnership, as the case may be, shall give, divulge, reveal, publish or otherwise disclose to any person such record, book, register, correspondence, document, material or information.

(2) All proceedings, other than criminal proceedings, relating to a Labuan limited partnership or Labuan limited liability partnership

shall commence in the High Court, either under the provisions of this Act or for determining the rights or obligations of the partners.

(3) The proceedings in subsection (2) and any appeal therefrom, shall, unless the High Court otherwise orders, be heard *in camera* and no details of the proceedings shall be published by any person without leave of the High Court.

(4) The provisions of subsection (1) shall not apply—

(a) where disclosure is required—

- (i) pursuant to an order by any court in any proceedings;
- (ii) for the purpose of the performance of the Authority's supervisory functions as may be provided for under the Labuan Financial Services Authority Act 1996; or
- (iii) for the purposes of section 22 of the Labuan Business Activity Tax Act 1990; or

(b) if there is consent of all the partners of the Labuan limited partnership or Labuan limited liability partnership.

(5) Where the order referred to in subparagraph (4)(a)(i) has been obtained by an *ex-parte* application, the limited partners or partners of the Labuan limited partnership or Labuan limited liability partnership, as the case may be, may notify the person affected by the order and upon receipt of such notification, the affected person may file in the necessary application to the court to contest the order or otherwise comply with the order accordingly.

(6) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

(7) Nothing in this section shall prevent any court from exercising its discretion to require a person to produce any document or to give any evidence in any proceedings before the court which is relevant to those proceedings.

Right to information

84. (1) Notwithstanding any provision of this Act, the Authority may—

(a) for the purpose of satisfying itself that the provisions of this Act are being complied with and that the Labuan limited partnership or Labuan limited liability partnership, as the case may be, is in a sound financial position—

(i) have access to and inspect the books, records, vouchers, documents, cash and securities of a Labuan limited partnership or Labuan limited liability partnership; and

(ii) require any partner, officer or employee of a Labuan limited partnership or Labuan limited liability partnership to submit any information, statistics, return or document; and

(b) require, at any time, a Labuan limited partnership or Labuan limited liability partnership or any of its partners to produce to the Authority any information, statistics, return or document relating to the partnership at the time and place as may be specified by the Authority.

(2) Where any person is required under subparagraph (1)(a)(ii) or paragraph (1)(b) to provide the Authority any information, statistics, return or document, the person shall submit the information, statistics, return or document to the Authority in such form and manner and within such period as may be specified by the Authority in the request.

(3) Any person who fails to comply with subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

(4) Where any person is required to provide the Authority any information, statistics, return or document under subparagraph (1)(a)(ii) or paragraph (1)(b), such person shall not submit as true and accurate any information, statistics, return or document which he knows, or has reason to believe, to be false, inaccurate or misleading.

(5) Any person who fails to comply with subsection (4) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

(6) Any partner, officer or employee of a Labuan limited partnership or Labuan limited liability partnership, as the case may be, who obstructs or hinders the Authority or any authorized person while exercising any of the powers referred to in subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

(7) The disclosure by a person of any information to the Authority as required by the Authority under subsection (1) shall not be an offence under this Act.

Application of the Labuan Financial Services Authority Act 1996

85. In the event of any inconsistencies between any provision of this Act and the provisions in the Labuan Financial Services Authority Act 1996, the latter Act shall prevail.

Application of partnership law

86. (1) The rules of equity and of common law applicable to partnerships—

(a) shall continue to be applicable to a Labuan limited partnership, except in so far as they are inconsistent with the express provisions of this Act; and

(b) shall not apply to a Labuan limited liability partnership.

(2) The provisions of the Partnership Act 1961 [*Act 135*] shall not be applicable to a Labuan limited partnership and Labuan limited liability partnership established or registered under this Act.

Procedure where none laid down

87. In the event that any act or step is required or permitted to be done or taken under this Act and no form is prescribed or procedure laid down either in this Act or the regulations made under this Act, application may be made to the Authority for directions as to the manner in which the same may be done or taken, and any act or step done or taken in accordance with its directions shall be a valid performance of such act or step.

Power to exempt

88. The Minister may, on the recommendation of the Authority, exempt a Labuan limited partnership or Labuan limited liability partnership or a person or class of persons or class of Labuan limited partnerships or Labuan limited liability partnerships from any provision of this Act and may, in granting such exemption, impose such terms and conditions as the Minister thinks fit.

Regulations

89. (1) The Minister may, on the recommendation of the Authority, make regulations prescribing all matters and things required or authorized by this Act to be prescribed or provided, or which are necessary or convenient to be prescribed or provided, for the carrying out of, or giving full effect to, the provisions of this Act.

(2) The regulations made under this Act may provide for any act or omission in contravention of the regulations to be an offence and may provide for penalties of a fine not exceeding twenty-five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Protection against suit and legal proceedings

90. No action shall lie or be brought, instituted or maintained in any court against—

- (a) the Authority, any authorized officer, agent or servant of the Authority; and

- (b) any other person for or on account of or in respect of any act done or purported to be done by him under the order, direction or instruction of the Authority or any authorized officer, agent or servant of the Authority,

if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served by it and for the carrying into effect the provisions of this Act.

Repeal and savings

91. (1) For the purposes of this section, “effective date” shall mean the date appointed by the Minister in section 1.

(2) The Labuan Offshore Limited Partnerships Act 1997 [Act 565] is repealed with effect from the effective date.

(3) Notwithstanding subsection (2)—

- (a) all regulations, orders, notifications, exemptions and other subsidiary legislation, approvals, directions, decisions and other executive acts, howsoever called, made, given or done under or in accordance with, or by virtue of the Labuan Offshore Limited Partnerships Act 1997 shall be deemed to have been made, given, or done, under or in accordance with, the corresponding provisions of this Act, and shall continue to remain in full force and effect in relation to the persons to whom they applied until amended, repealed, rescinded, revoked or replaced under, in accordance with or by virtue of, the corresponding provisions of this Act;
- (b) every direction, notice, guideline or circular issued by the Authority or the Minister under the Labuan Offshore Limited Partnerships Act 1997 before the effective date and in force immediately before the effective date, shall be deemed to have been lawfully issued under this Act under the particular provision of this Act corresponding to the matter dealt with in the direction, notice, guideline or circular and shall remain in full force and effect until it is amended, repealed, rescinded, revoked or replaced under this Act;

- (c) an application for an approval or consent, or for any other purpose whatsoever, or an appeal relating to such application, made by a person to the Minister or to the Authority under the Labuan Offshore Limited Partnerships Act 1997 before the effective date, and pending immediately before the effective date, shall, if there is a corresponding provision in this Act, be dealt with as if it was made under that provision and, if there is no such corresponding provision in this Act, such application or appeal shall lapse on the effective date; and
- (d) all transactions or dealings lawfully executed or entered into, and all business lawfully done, under or in accordance with the Labuan Offshore Limited Partnerships Act 1997 by a person who was approved or registered under the Labuan Offshore Limited Partnerships Act 1997, with any other person, shall be deemed to have been lawfully and validly executed, entered into, or done, under and in accordance with this Act, and accordingly, any right or liability under such transactions or dealings, immediately before the effective date, shall be deemed to continue to be lawful and valid under this Act.

EXPLANATORY STATEMENT

This Bill seeks to provide for the establishment, regulation and dissolution of Labuan limited partnerships and Labuan limited liability partnerships and for matters connected therewith or incidental thereto.

PART I

2. Part I of the Bill contains preliminary matters.
3. *Clause 1* contains the short title and seeks to allow the Minister to appoint the date of commencement of the proposed Act.
4. *Clause 2* defines certain words and expressions used in the proposed Act.

PART II

5. *Clause 3* seeks to provide that the proposed Act is to be administered by the Authority.

PART III

6. Part III of the Bill contains provisions on the establishment, management and dissolution of a Labuan limited partnership.
7. *Clause 4* seeks to provide for the establishment of Labuan limited partnerships for any lawful purpose and the minimum number of general and limited partners.
8. *Clause 5* seeks to provide for the detailed procedures pertaining to the registration of a Labuan limited partnership.
9. *Clause 6* seeks to require a general partner of a Labuan limited partnership to register any amendment made to the partnership agreement with the Authority.
10. *Clauses 7* and *8* seek to provide for the requirements relating to the name of a Labuan limited partnership and the changes thereto.
11. *Clause 9* seeks to require a Labuan limited partnership to maintain a registered office in Labuan which shall be the registered office of a Labuan trust company and lists the documents to be maintained at the registered office.
12. *Clause 10* sets out the nature of contribution by a limited partner.
13. *Clause 11* deals with the rights and obligations of a general partner in the course of running a Labuan limited partnership.
14. *Clause 12* relates to the enforcement of judgments against the property of a Labuan limited partnership arising from a suit by a creditor of a partner.
15. *Clause 13* seeks to provide for the rights of a limited partner and for the restriction on the dissolution of a Labuan limited partnership by the limited partner.
16. *Clause 14* seeks to regulate the manner of distribution of profits to a limited partner.
17. *Clause 15* seeks to empower a limited partner to lend money to, borrow money from and enter into a transaction with the general partner of a Labuan limited partnership and provides for the limited partner's rank in the capacity as a creditor arising from a claim against the assets of the Labuan limited partnership.
18. *Clause 16* seeks to provide for the rights of limited partners as between themselves with respect of the return of their contributions and profits.
19. *Clause 17* seeks to provide for the return of a limited partner's contribution on the dissolution of a Labuan limited partnership and the circumstances which necessitate the refund of any contribution already paid to a limited partner.

20. *Clause 18* seeks to provide for the liability of a limited partner with respect to a Labuan limited partnership in circumstances where there is a difference between the value of money or other property contributed by that partner to the Labuan limited partnership or the statutory value and the value of the money or other property to be contributed by that partner.

21. *Clause 19* seeks to provide for the liability of a limited partner to the creditors of a Labuan limited partnership if that limited partner participates in the management of the Labuan limited partnership and the circumstances when the limited partner would not be deemed to participate in the management of the Labuan limited partnership.

22. *Clause 20* seeks to provide for circumstances in which additional limited partners or general partners may be admitted to a Labuan limited partnership.

23. *Clause 21* deals with the assignment of a limited partner's interest, in whole or in part, in a Labuan limited partnership.

24. *Clause 22* seeks to provide that legal proceedings by or against a Labuan limited partnership shall be instituted by or against the general partners only. *Clause 22* also provides for the service of documents on the Labuan limited partnership.

25. *Clause 23* seeks to empower a general partner to execute a document for and on behalf of a Labuan limited partnership.

26. *Clause 24* seeks to require a general partner to file a notice of dissolution of a Labuan limited partnership with the Authority.

27. *Clauses 25, 26 and 27* relate to the procedures for winding-up a Labuan limited partnership.

Clause 25 seeks to empower a general partner of a Labuan limited partnership to wind-up the partnership in the event of dissolution.

Clause 26 seeks to provide for circumstances which may cause immediate dissolution of a Labuan limited partnership.

Clause 27 seeks to empower the court to order the dissolution of a Labuan limited partnership and to provide for the service of the order on the Authority.

28. *Clause 28* seeks to provide for the ranking of a creditor *vis-a-vis* a partner in settling a Labuan limited partnership's account in the event of dissolution.

PART IV

29. Part IV of the Bill contains provisions on the establishment, management and dissolution of a Labuan limited liability partnership, conversion to a Labuan limited liability partnership and recognized limited liability partnership.

30. *Clause 29* seeks to provide for the establishment of a Labuan limited liability partnership for any lawful purpose and the minimum number of partners.

31. *Clause 30* seeks to provide for the detailed procedures pertaining to the registration of a Labuan limited liability partnership.

32. *Clause 31* seeks to require the designated partner of a Labuan limited liability partnership to register any changes made to the registered particulars with the Authority.

33. *Clauses 32* and *33* seek to provide for the requirements relating to the name of a Labuan limited liability partnership and the changes thereto.

34. *Clauses 34* and *35* seek to provide for the conversion of a Labuan limited partnership or Labuan company, as the case may be, to a Labuan limited liability partnership upon satisfying certain requirements.

35. *Clause 36* seeks to require the Labuan limited partnership or Labuan company to file certain statements and information with the Authority for the purposes of conversion to a Labuan limited liability partnership.

36. *Clause 37* empowers the Authority to register the conversion of a Labuan limited partnership or Labuan company, as the case may be, to a Labuan limited liability partnership, or to refuse the registration of such conversion if it is not satisfied with the information given.

37. *Clause 38* provides for the effect of the registration of the conversion of a Labuan limited partnership or Labuan company to a Labuan limited liability partnership.

38. *Clauses 39, 40, 41, 42, 43, 44* and *47* deal with the transitional provisions with respect to the conversion of a Labuan limited partnership or Labuan company to a Labuan limited liability partnership.

39. *Clause 45* seeks to provide that *clauses 38* to *44* shall not apply to any approval, permit or licence issued under any written law to a Labuan limited partnership or Labuan company which is in force immediately before the date of registration of the Labuan limited liability partnership.

40. *Clause 46* seeks to provide that every partner of a Labuan limited partnership that has converted to a Labuan limited liability partnership shall continue to be personally liable for the liabilities and obligations of the Labuan limited partnership which were incurred prior to the conversion.

41. *Clause 48* seeks to provide for the detailed procedures pertaining to the registration of a foreign limited liability partnership before having a place of business in Labuan or carrying on business in Labuan as a recognized limited liability partnership under the proposed Act.

42. *Clause 49* seeks to provide for the requirements relating to the name of a recognized limited liability partnership and the changes thereto.

43. *Clause 50* seeks to require a recognized limited liability partnership to maintain a registered office in Labuan which shall be the principal office of a Labuan trust company.

44. *Clause 51* seeks to require a recognized limited liability partnership to notify the Authority of any changes made or which occur in any of the registered particulars.

45. *Clause 52* seeks to provide for the service of documents on a recognized limited liability partnership.

46. *Clause 53* seeks to require a recognized limited liability partnership which ceases to have a place of business or to carry on business in Labuan to notify the Authority of such fact and to empower the Authority to remove the name of the recognized limited liability partnership from the register.

47. *Clause 54* deals with the detailed procedures for the liquidation or dissolution of a recognized limited liability partnership in its place of incorporation, establishment or origin.

48. *Clause 55* seeks to provide that a Labuan limited liability partnership registered under the proposed Act is a body corporate and has legal personality separate from that of its partners.

49. *Clause 56* provides for the limited liability of partners in a Labuan limited liability partnership whereby a partner is not personally liable for any obligation of the Labuan limited liability partnership arising in contract, tort or otherwise solely by reason of being a partner of the Labuan limited liability partnership. *Subclause 56(6)* provides that a partner or former partner of a Labuan limited liability partnership who receives a distribution from the Labuan limited liability partnership when the Labuan limited liability partnership is insolvent shall be personally liable to the Labuan limited liability partnership for the amount or value of the distribution if it was received within a period of six months before the commencement of the winding-up of the Labuan limited liability partnership.

50. *Clause 57* deals with the power of a partner, being the agent of a Labuan limited liability partnership, to bind that partnership for the acts of that partner in the partner's capacity as a partner subject to certain exceptions.

51. *Clause 58* deals with the mutual rights and duties of the partners of a Labuan limited liability partnership, and the mutual rights and duties of a Labuan limited liability partnership and its partners in the absence of any partnership agreement.

52. *Clause 59* seeks to allow a partner of a Labuan limited liability partnership to enter into a transaction with the Labuan limited liability partnership, including lending money to and borrowing money from the Labuan limited liability partnership.
53. *Clause 60* deals with the assignment of a partner's interest in the distribution from the Labuan limited liability partnership and the effect thereto.
54. *Clause 61* deals with the procedures for the admission and retirement of partners of a Labuan limited liability partnership.
55. *Clause 62* seeks to provide for the effect of bankruptcy whereby the partner of a Labuan limited liability partnership shall not cease being a partner by reason of that partner's bankruptcy.
56. *Clause 63* seeks to require a Labuan limited liability partnership to maintain a registered office in Labuan which shall be the registered office of a Labuan trust company and lists the documents to be maintained at the registered office.
57. *Clause 64* seeks to require that at least one designated partner be appointed to a Labuan limited liability partnership.
58. *Clause 65* provides that a designated partner of a Labuan limited liability partnership shall be answerable for the doing of all acts, matters and things, as are required to be done by the Labuan limited liability partnership and shall be personally liable to all penalties imposed on the Labuan limited liability partnership for any contravention of Parts IV and V of the proposed Act.
59. *Clause 66* deals with the annual certificate required to be filed annually by the designated partner of a Labuan limited liability partnership certifying the solvency status of the Labuan limited liability partnership. The failure to comply with this requirement is an offence.
60. *Clauses 67 and 68* deal with receivership and winding-up procedures for a Labuan limited liability partnership. In the case of receivership of a Labuan limited liability partnership, the provisions of Part VIII (in so far as they relate to a company limited by shares) of the Companies Act 1965 shall apply. For the purpose of winding up, a Labuan limited liability partnership may choose to follow the procedures in Part X (in so far as they relate to a company limited by shares) of the Companies Act 1965 and the Companies (Winding-Up) Rules 1972, or the alternative procedure set out in *clause 68*.
61. *Clause 69* empowers the High Court to make an order to revoke the dissolution of a Labuan limited liability partnership if certain requirements are met.

PART V

Part V of the Bill contains general provisions.

62. *Clause 70* seeks to regulate the keeping and auditing of accounting and other records of a Labuan limited partnership and Labuan limited liability partnership.

63. *Clause 71* seeks to provide the same restriction or prohibition to a Labuan limited partnership and Labuan limited liability partnership as a Labuan company under the Labuan Companies Act 1990 unless expressly permitted under the proposed Act or where such restriction or prohibition is permitted or waived under the Labuan Companies Act 1990.

64. *Clause 72* seeks to confer a discretionary power on the Authority to impose the payment of any fee in respect of services provided by the Authority under the proposed Act and to require a Labuan limited partnership and Labuan limited liability partnership to pay such annual fee as may be prescribed before each anniversary of the date of its registration.

65. *Clause 73* deals with the inspection of documents of a Labuan limited partnership and Labuan limited liability partnership that have been filed with the Authority if so authorized by the Labuan limited partnership or Labuan limited liability partnership.

66. *Clause 74* governs the transaction records of a Labuan limited partnership and Labuan limited liability partnership.

67. *Clause 75* seeks to provide for the liability of directors, managers, partners, secretaries or other similar officers of a body corporate for offences committed by the body corporate.

68. *Clause 76* seeks to require that documents which need to be filed with the Authority under the proposed Act shall be filed through a Labuan trust company.

69. *Clause 77* seeks to impose a general penalty of a fine not exceeding five thousand ringgit for an offence committed under the proposed Act or any regulations made under the proposed Act for which no penalty is expressly provided.

70. *Clause 78* seeks to empower the Authority to impose administrative penalties for non-compliance of certain provisions under the proposed Act of an amount not exceeding five hundred ringgit for each day of non-compliance and such amount shall not in total exceed the sum of ten thousand ringgit.

71. *Clause 79* seeks to empower the Authority to compound any offence against the proposed Act with the written consent of the Public Prosecutor and any money received by the Authority under this clause shall be paid into and form part of the fund established under section 29 of the Labuan Financial Services Authority Act 1996.

72. *Clause 80* seeks to empower the Authority to strike-off the name of a Labuan limited partnership and Labuan limited liability partnership from the register for failure to pay any prescribed fee or contravening any provision of the proposed Act and to provide for the procedure for striking-off.

73. *Clause 81* seeks to provide the procedures governing the restoration to the register of a Labuan limited partnership and Labuan limited liability partnership which has been struck-off the register and its effect.

74. *Clause 82* deals with the effect of the striking-off of a Labuan limited partnership and Labuan limited liability partnership from the register.

75. *Clause 83* deals with the duty to maintain secrecy.

76. *Clause 84* seeks to empower the Authority to have access to and inspect the books, records, documents etc., of a Labuan limited partnership and Labuan limited liability partnership, and to require any partner, officer or employee of the Labuan limited partnership and Labuan limited liability partnership to provide information. *Subclause 84(4)* also seeks to require the person submitting any information to the Authority to submit true and accurate information.

77. *Clause 85* seeks to provide that in the event of inconsistencies, the provisions in the Labuan Financial Services Authority Act 1996 shall prevail over any provision of the proposed Act.

78. *Clause 86* seeks to provide for the applicability and non-applicability of the rules of equity and common law, and Partnership Act 1961 to a Labuan limited partnership or Labuan limited liability partnership, as the case may be.

79. *Clause 87* seeks to empower the Authority to lay down procedures where no form is prescribed or no procedure is laid down under the proposed Act with regard to any act or step that is required or permitted to be done under the proposed Act.

80. *Clause 88* seeks to empower the Minister, on the recommendation of the Authority, to exempt a Labuan limited partnership and Labuan limited liability partnership from any provision of the proposed Act.

81. *Clause 89* seeks to empower the Minister to make regulations and to provide for penalties of a fine not exceeding twenty-five thousand ringgit or to imprisonment for a term not exceeding three years or to both for any act or omission in contravention of the regulations

82. *Clause 90* provides for the protection of the Authority, any authorized officer, agent or servant of the Authority exercising any power under the proposed Act from legal suits if the acts were done in good faith.

83. *Clause 91* contains repeal and saving provisions.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.