



LIMITED LIABILITY PARTNERSHIPS ACT 2012
PRACTICE NOTE NO. 1/2016

RE: REQUIREMENTS RELATING TO THE LODGEMENT OF ANNUAL DECLARATION BY A LIMITED LIABILITY PARTNERSHIP

1. This Practice Note serves to clarify the requirements relating to the lodgement of annual declaration by a limited liability partnership (LLP) pursuant to section 68 of the Limited Liability Partnerships Act 2012 (LLPA 2012).

BACKGROUND

2. Every LLP is required to lodge with the Registrar an annual declaration executed by any two partners of the LLP stating their opinion that, as at the date of the declaration, the LLP—

- (a) appears to be able to pay its debts as they become due in the normal course of business; or
- (b) does not appear to be able to pay its debts as they become due in the normal course of business.

RELEVANT PROVISIONS RELATING TO LODGEMENT OF ANNUAL DECLARATION

3. Section 68 of the LLPA 2012 —

68. Annual declaration

(1) Every limited liability partnership shall lodge with the Registrar a declaration, containing the particulars as determined by the Registrar and accompanied by such documents as are required to be included in the declaration, by any two of its partners that in their opinion, the limited liability partnership –

- (a) appears as at that date to be able to pay its debts as they become due in the normal course of business; or*
- (b) does not appear as at that date to be able to pay its debts as they become due in the normal course of business.*

(2) The declaration referred to in subsection (1) shall be lodged annually within ninety days from the end of the financial year of the limited liability partnership.

(3) In the case of the first annual declaration, it shall be lodged not later than eighteen months from the date of the registration of the limited liability partnership.

(4) Notwithstanding subsections (2) and (3), the Registrar may, on application by a limited liability partnership and if he thinks fit, grant an extension of time for the lodging of the declaration referred to in subsection (1).

(5) if a limited liability partnership fails to lodge the declaration referred to in subsection (1) within the time or extended time referred to in subsection (2), (3) or (4), as the case may be, the limited liability partnership commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

(6) Any person who makes a declaration referred to in paragraph (1)(a) without having reasonable grounds for his opinion commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(7) Any person who, in connection with a declaration made under this section, makes a statement or furnishes information, whether directly or

indirectly that is false or misleading in a material particular, when he knows or ought to have known that the statement or information is false or misleading in a material particular, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine of not less than two hundred and fifty thousand ringgit and not more than five hundred thousand ringgit or to both.

(8) If an offence under subsection (5), (6) or (7) is committed with intent to defraud creditors of the limited liability partnership or for a fraudulent purpose, the person shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one million ringgit or to both.

TIME TO LODGE THE ANNUAL DECLARATION

4. In general, the annual declaration shall be lodged **annually** within **ninety (90) days** from the end of the financial year of the LLP.

5. However, in the case of the **first** annual declaration, it shall be lodged not later than **eighteen (18) months** from the date of the registration of the LLP. The eighteen-month period is to enable an LLP to determine its first financial year end. Once an LLP closes its financial year end, the lodgement of the first annual declaration shall be made within ninety (90) days.

6. As such, LLPs are advised to determine the first financial year end accordingly by taking into consideration that the first annual declaration shall be lodged within ninety (90) days from the financial year end and it does not exceed the eighteen-month period.

Illustration:

ABC PLT was registered on 1 March 2013 and will have eighteen months to lodge its annual declaration. The following scenarios will apply:

- (i) If ABC PLT determines its financial year end as 31 December 2013, the first annual declaration is required to be lodged on or before 31 March 2014 (90 days from 31 December 2013).*
- (ii) If ABC PLT determines its financial year end as 31 March 2014, the first annual declaration is required to be lodged on or before 29 June 2014 (90 days from 31 March 2014).*
- (iii) If ABC PLT determines its financial year end as at 31 August 2014, the first annual declaration is required to be lodged on or before 1 September 2014 (final day of the eighteen-month period)*

Note:

In all of the above scenarios, the lodgement of the first annual declaration is within 18 months from the date of the registration of ABC PLT regardless of the different financial year end dates.

7. Notwithstanding the above, an LLP may apply for an extension of time to the Registrar to lodge the annual declaration later than the period specified in paragraphs 4 and 5 respectively.

The application for an extension of time shall be made after the end of the financial year of the LLP and at least **(30) days** before the due date for the submission of the annual declaration with a fee as provided under item 18 of the Schedule of the LLP Regulations 2012.

8. The reasons which may be considered by the Registrar for granting an extension of time are as below:-

- a) The death of a partner/compliance officer *(to be supported with death certificate)*.
- b) Natural disaster such as fire, flood, etc. which destroyed records or documents of the LLP *(to be supported with police report)*.
- c) Theft *(to be supported with police report)*.
- d) The LLP is under an investigation where account books or records has been ceased and under the possession of SSM or other Authorities *(to be supported with relevant document/letter from the relevant Authority)*.
- e) The LLP is involved in a court case *(to be supported with relevant documents)*.
- f) Any other reason that the Registrar may deem fit to grant EOT.

9. Notwithstanding paragraphs 7 and 8, the Registrar reserves the right to reject the application for an extension of time if the Registrar is not satisfied with the reason(s) given for the need of an extension of time and the fee paid for the application will not be refunded.

CONTENTS AND FORMAT OF THE ANNUAL DECLARATION

10. Under section 68(1) of the LLPA 2012, the Registrar shall determine the contents of the annual declaration including the relevant accompanying documents, if any.

11. For this purpose, the annual declaration shall be lodged with the Registrar by every LLP via the *MyLLP* system and it shall be as per in the format provided therein and every part of the annual declaration shall be completed.

ANNUAL DECLARATION OF AN LLP IS PUBLIC INFORMATION

12. The annual declaration lodged with the Registrar is a public document and shall be available for the supply of information. The availability of annual declaration as public document will facilitate stakeholders in making informed business decisions when dealing with an LLP.

13. However, information related to financial indicators and capital contribution of an LLP will not be made available to the public but kept in SSM's registers for regulatory purposes. The

information may also be used for statistical and policy making purposes.

EFFECT OF THIS PRACTICE NOTE

14. This Practice Note is issued pursuant to section 77 for the purposes of section 68 of the LLPA 2012.

REGISTRAR OF LIMITED LIABILITY PARTNERSHIPS

COMPANIES COMMISSION OF MALAYSIA

29 February 2016