



UNIVERSITI PUTRA MALAYSIA

**IN SEARCH OF A REGIME OF LIMITED LIABILITY IN
MALAYSIAN PARTNERSHIPS**

ZUHAIRAH ARIFF BT. ABD GHADAS

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**IN SEARCH OF A REGIME OF LIMITED LIABILITY IN
MALAYSIAN PARTNERSHIPS**

By

ZUHAIRAH ARIFF BT. ABD GHADAS

Thesis Submitted in Fulfillment of the Requirement for the Degree of Doctor
of Philosophy in The Graduate School of Management
Universiti Putra Malaysia

October 2002



Dedicated to my beloved mother, Hjh Rahmah bt. Ambia, my husband Mohd Asri b. Sulong and jewels of my heart:

Mohd Amir Ariff b. Mohd Asri
Nur Mujahidah Ariff bt. Mohd Asri
Nur Athirah Ariffah bt. Mohd Asri
Nur Syuhada Ariffah bt. Mohd Asri
Mohd Harith Ariff b. Mohd Asri
Mohd Irfan Ariff b. Mohd Asri
Mohd Asyraaf Ariff b. Mohd Asri
Baby

Abstract of thesis presented to the Senate of University Putra Malaysia in fulfillment of the requirement for the degree of Doctor of Philosophy

**IN SEARCH OF A REGIME OF LIMITED LIABILITY IN
MALAYSIAN PARTNERSHIP**

By

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October 2002

Chairman: Prof.Dr. Shaik Mohd Noor Alam B. Shaik Mohd Hussain

Faculty: Modern Languages and Communication

For many years, partnership has been the oldest and the most basic entity choice which combines the efforts of more than one individual. As commerce progresses, partnership has to compete with other business entities, especially the company which gains much favour due to the advantage of limited liability. Being an unincorporated business association, partnership applies the principle of unlimited liability whereby partners are jointly and personally liable for partnership obligations to the extent they exceed the assets of the partnership.

The principle of unlimited liability in partnership is constantly criticized as it imposes heavy obligations and high business risks upon the partners. However, despite the disadvantages it carries, the principle of unlimited liability in partnership is neither replaced nor modified. Instead, the partnership laws are expanded to include alternatives, such as limited partnerships and limited liability partnerships, which

which provide the advantages of limited liability to the partners. The practice of limited partnerships and limited liability partnerships is already recognized and widely accepted in developed countries such as the United States of America, the United Kingdom of Great Britain and Northern Ireland, France and Germany. In Malaysia, the practice of partnership is still confined to general partnerships. There is neither development nor major amendment being made to the existing partnership laws. The latest development in Malaysian partnership laws was seen in Labuan when the Labuan Offshore Limited Partnership Act 1997 was passed to allow limited partnership to be practised in the Island.

With the development and expansion of partnership laws that allows limited liability to be practised in a partnership, it is high time for Malaysia to look at these alternatives as one of the means to expand business options and increase investments in this country. Nonetheless, in proposing the practice of limited liability in partnerships, there are many aspects which need to be clarified, such as the entity of the firm, the extent of limited liability which a partner has, the effect on partners' and third parties' rights and also the dividing line which differentiates a partnership with limited liability from a limited liability company.

With the above queries and concern in mind, it is the aim of this thesis to clarify the legal aspects of partnerships in the search of the application of limited liability in Malaysian partnerships.

Abstrak tesis yang dikemukakan kepada Senat Universiti Putra Malaysia
sebagai memenuhi keperluan untuk ijazah Doktor Falsafah

**PENCARIAN SATU REGIM YANG MEMBENARKAN AHLI
MENGHADKAN LIABILITI DALAM PERKONGSIAN DI MALAYSIA**

Oleh

ZUHAIRAH ARIFF BT. ABD GHADAS

Oktober 2002

Pengerusi: Profesor Dr Shaik Mohd Noor Alam B. Shaik Mohd Hussain

Fakulti: Fakulti Bahasa Moden dan Komunikasi

Buat masa yang lama, struktur perkongsian merupakan medium perdagangan yang tertua dan paling asas bagi pihak yang berniaga secara berkumpulan. Apabila ekonomi berkembang, perkongsian terpaksa bersaing dengan entiti perniagaan yang lain, terutama sekali syarikat, yang lebih disukai disebabkan kelebihan liabiliti berhadnya. Berbeza dengan struktur syarikat, ahli dalam perkongsian mengamalkan prinsip liabiliti tanpa had di mana ahli-ahli dan firma berkongsi bersama untuk membayar liabiliti perniagaan .

Prinsip liabiliti tanpa had adalah merupakan elemen utama struktur perkongsian yang sentiasa dikritik kerana ia menyebabkan ahli-ahli terpaksa menanggung liabiliti perniagaan yang tinggi dan secara tidak langsung menghalang perkembangan perniagaan dalam bentuk perkongsian. Walaupun prinsip ini dikritik berterusan, ia tidak dimansuhkan dan aplikasinya masih di teruskan sehingga hari ini.

Bagi mengatasi masalah liabiliti tanpa had dalam perkongsian, struktur perkongsian yang baru telah diperkenalkan di mana ahli-ahli dibenarkan menghadkan liabiliti mereka di dalam perniagaan. Struktur baru ini telah digunakan dengan meluas di negara-negara maju seperti Amerika Syarikat, United Kingdom, Perancis dan Germany. Di Malaysia, struktur perkongsian masih terhad kepada perkongsian biasa sahaja. Walaupun pada tahun 1997, Akta Perkongsian Terhad (Persisiran) Labuan telah diluluskan untuk membenarkan perkongsian terhad dipraktik di Labuan, ia hanyalah terhad di wilayah Labuan sahaja dan tidak dikembangkan ke negeri-negeri lain dalam Malaysia.

Berdasarkan perkembangan terbaru dalam struktur perkongsian pada masa kini, telah sampai masanya untuk mengembangkan pilihan medium perniagaan dalam negara ini. Dengan memperkenalkan struktur perkongsian yang membenarkan ahli menghadkan liabiliti, bukan sahaja pilihan struktur perniagaan akan bertambah, malahan ia juga akan dapat menarik lebih pelaburan ke dalam negara ini.

Walau bagaimanapun, beberapa aspek penting perlu dikaji sebelum struktur perkongsian terhad dan perkongsian liabiliti berhad boleh diperkenalkan di negara ini. Di antaranya, entiti struktur perkongsian itu, had liabiliti yang dibenarkan, hak ahli dan pihak ketiga dalam struktur baru itu dan juga aspek-aspek penentu yang membezakan perkongsian liabiliti berhad dengan syarikat. Berlandaskan persoalan-persoalan ini, maka menjadi objektif utama kajian ini untuk menyelaraskan aspek-aspek perundangan berkaitan struktur perkongsian liabiliti berhad untuk membolehkan ia dipraktikkan di Malaysia.

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My greatest debt goes to my husband and children who tolerated and supported me throughout the years of my study. Thank you for being the light of my life.

I certify that an Examination Committee met on 31st October 2002 to conduct the final examination of Zuhairah Ariff bt. Abd Ghadas on her Doctor of Philosophy thesis entitled “ In Search of A Regime of Limited Liability In Malaysian Partnerships” in accordance with Universiti Pertanian Malaysia (Higher Degree) Act 1980 and Universiti Pertanian Malaysia (Higher Degree) Regulations 1981. The Committee recommends that the candidate be awarded the relevant degree. Members of the Examination Committee are as follows:

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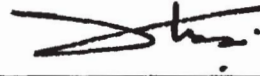
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DECLARATION

I hereby declare that the thesis is based on my original work except for quotations and citations which have been duly acknowledged. I also declare that it has not been previously or concurrently submitted for any other degree at UPM or other institutions.



Zuhairah Ariff bt. Abd Ghadas

Date: 30/12/02

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GLOSSARY OF TERMS

LLC: Limited Liability Companies

LLP Act: Limited Liability Partnership Act

LLP: Limited Liability Partnerships

LPA: Limited Partnership Act

PA: Partnership Act

UK: The United Kingdom of Great Britain and Northern Ireland

UK DTI: Department of Trade of United Kingdom

USA: The United States of America

US LLC: United States Limited Liability Companies



CHAPTER ONE

INTRODUCTION

The importance of partnership as a business vehicle is irrefutable. Its establishment in the commercial world was very much earlier than corporations. In fact, in the early days, it was the only business vehicle which was available for two or more persons with a common objective to conduct business. Today, partnerships are still widely practiced particularly in the small and medium enterprises. In fact, for the professionals, partnership is the most opted structure as there are still professions which do not allow incorporation. As of 1997, in the United Kingdom, there are approximately 600 000 partnerships¹, whilst in Malaysia, there are more than 800 000 unincorporated business associations registered with the Registrar of Businesses².

Partnerships have a long history of establishment. The laws governing partnership were traced in the civilized European world when the Eastern Roman Emperor Justinian (A.D.527-565) resolved to codify the law. The Emperor Justinian entrusted his leading academic lawyers and civil servants to codify the laws and as a result, the “*Institutes*” and the “*Digest*” were published in A.D 533. Book III Title XXV of the *Institutes* gave an account of partnership (*societas*) which was fully recognized as the basis of modern partnership law

Until the second half of the nineteenth century, partnership was recognized as an important business vehicle as it was the only business structure in which two or

¹ Department of Trade and Industry Statistical Bulletin of SMES 1997 shows that there are approximately 600 000 partnerships in the UK.