



LLP or Sdn Bhd:

Which is the better vehicle
for your business?

Limited Liability Partnerships are a new vehicle for doing business since 2012. Many businesses use the LLP vehicle, especially professional firms e.g. accountancy firms, which are not allowed to operate as a Sdn Bhd.

In the past, these professional service firms used to operate under a conventional partnership which suffers from unlimited liability on the part of the partners should the partnership enter into a capital deficit position especially if the partnership gets sued.

In contrast, a Sdn Bhd provides a limited liability structure where liabilities are limited to the share capital of the company.

Given the choice, which is a better vehicle to use when an entrepreneur wishes to embark on a business?

In this commentary, we will show the differences between the use of an LLP and a Sdn Bhd. We will not comment too much on their similarities or on minor issues.

Incorporation Costs

LLP

LLP formation costs are likely to be about RM1,500 compared to company formation costs of about RM4,000. The savings are mainly because of the lesser government fees for forming a LLP (RM500) versus government fees for forming a Sdn Bhd (RM1,250). Professional fees may be lesser for forming a LLP due to a less complicated process compared to that for a Sdn Bhd. A specially tailored constitution (previously known as M&A or Memorandum and Articles of Association) for a company and a LLP agreement for a LLP can bump up the incorporation costs of the respective entities significantly due to the legal fees involved.

For companies incorporated under the Companies Act 2016, the M&A is called the “Constitution”. For companies incorporated under the previous Companies Act 1965, the M&A is still being referred to as Memorandum and Articles of Association.

Sdn Bhd

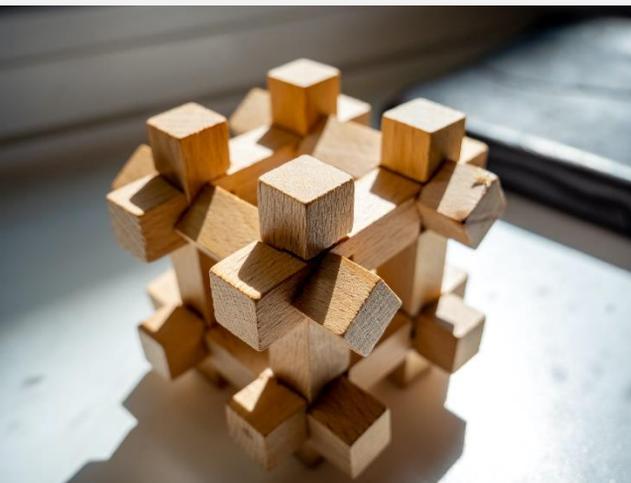
Company formation costs are about RM4,000.



Annual maintenance costs

LLP

An LLP generally has lower annual maintenance costs because a LLP does not need company secretarial services or an annual audit. However, if an LLP were to borrow money from the bank, the bank may insist on having audited accounts. The necessity for tax services will be the same for both types of entities



Sdn Bhd

Sdn Bhds require an annual audit and the services of a company secretary. Audit fees vary depending on the size of the company but typically for a company with RM1 million turnover, the audit fees may be about RM4,000. Company secretarial retainer fees may be approximately RM2,000 per year but additional fees may be charged for special exercises e.g. for issue of shares or drafting of Sdn Bhds require an annual audit and the services of a company secretary.

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Protection against liabilities

LLP

The partners in a LLP are partially protected against liabilities because the LLP's liability is generally limited to the paid-up capital of the LLP. However, an LLP partner is personally liable in tort without limit e.g. professional negligence but the other LLP partners are not personally liable. Unfortunately, the LLP is liable to the same extent as that partner in tort and the liabilities of the LLP shall be borne out of the property of the LLP.

Nevertheless, partners in an LLP still enjoy better protection than partners in conventional partnerships because all partners in a conventional partnership are exposed to unlimited personal liability.

Sdn Bhd

The shareholders and directors in a Sdn Bhd are not generally exposed to unlimited liability. The liability of the Sdn Bhd is limited to the share capital.



Administration Process

LLP

LLPs have simpler administration processes and do not require a company secretary unlike that for a Sdn Bhd. However, a LLP requires a compliance officer who is a partner of the LLP or an external company secretary. For good administration, LLPs should still maintain proper registers (e.g. of partners), minutes of meetings, etc.

Sdn Bhd

Sdn Bhds have more complicated administration processes. Some decisions made by a company require informing the Companies Commission of Malaysia (SSM) via the submission of forms, etc.

Transparency

LLP

LLPs need to file an annual declaration with the SSM within 90 days from the end of the LLP's financial year. The declaration will contain certain financial information of the LLP such as revenue and profit after tax for the year.

Sdn Bhd

Sdn Bhds which are exempt private companies do not have to file accounts with the SSM. These Sdn Bhds therefore enjoy more privacy compared to LLPs.

Income Tax of the Entity

LLP

Both the LLP and the Sdn Bhd are taxed in their own name. Although a LLP is a partnership, it is taxed like a company. Both LLPs and Sdn Bhd enjoy the lower SME income tax rate of 17% if conditions are met. However, LLPs do not enjoy as much tax incentives as Sdn Bhd e.g. Reinvestment Allowance, although they both enjoy certain tax incentives e.g. double deduction for Structured Internship Programme.

Sdn Bhd

Sdn Bhd enjoy more tax incentives



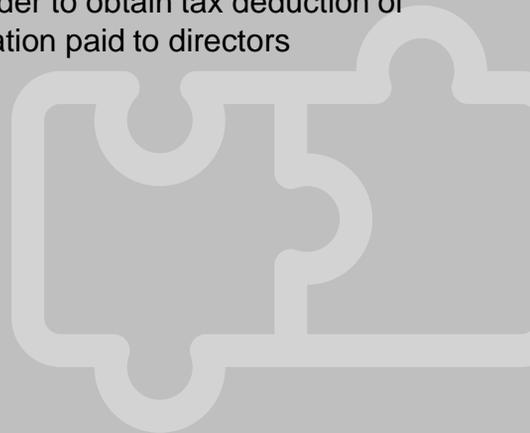
Income tax of the partners / shareholders

LLP

Partners of a LLP are taxed in the same way as the shareholders of a Sdn Bhd in that both of these parties are not taxed on their dividends received. However, the remuneration e.g. salaries and bonus of LLP partners, are taxed like those of an employee. Remuneration to be paid to the partners should be documented in the LLP agreement in order to obtain tax deduction.

Sdn Bhd

Sdn Bhd have simpler rules to comply with in order to obtain tax deduction of remuneration paid to directors



For Growth and Expansion

LLP

For professional service firms e.g. audit firms which are not allowed to be organised as a Sdn Bhd, the LLP structure is appropriate and is used by most of the large firms in the country. Nevertheless, a LLP is presently viewed as a vehicle for small businesses until such time when large LLPs start to sprout in the market.

Sdn Bhd

Sdn Bhds have more credibility because of the need to prepare annual audited accounts and the abundance of Sdn Bhds which are large businesses. Sdn Bhds may find it easier to raise funds generally. Public companies (i.e. Bhds) are the principal vehicles allowed for an IPO (Initial Public Offering or listing) on the stock exchange.

Ease of conversion from a conventional partnership to an LLP or Sdn Bhd

LLP

A conventional partnership can dispose of its business to a LLP similar to that for a company. However, this process involves complications on transfer of contracts, assets, liabilities, staff, etc. Stamp duty will also be applicable. Another route available is the “conversion” of a conventional partnership to a LLP provided by Section 29 of the LLP Act. Under this option, the properties, assets, liabilities, clientele, contracts, etc. will be automatically transferred to the LLP. Stamp duty or real property gains tax exemption which was previously allowed has expired.

Sdn Bhd

There is no option for a conventional partnership to be converted to a Sdn Bhd. Instead, the partners in a conventional partnership have to dispose of their partnership business (or parts of the partnership business) to the Sdn Bhd. The sale may attract stamp duty or real property gains tax, as the case may be.

Conclusion

Overall, the choice between using an LLP vs a Sdn Bhd depends on the entrepreneur's objectives. He may make use of the above considerations in arriving at his decision.

If you have any queries on LLPs or require assistance in forming an LLP or a Sdn Bhd, please feel free to contact us. Please note that the information above is given without prejudice and users should seek professional assistance before relying on any of the information herein.



*This article was written by **Poon Yew Hoe**, Managing Partner of Crowe Malaysia PLT. Professionally, he specialises in taxation and heads the tax division of the firm. Having been in practice since 1983, Yew Hoe has diverse experience in auditing, taxation and business advisory matters.*



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