Rocky path for LLP rollout

Amidst reports of obstacles and ambiguities, accounting firms in Malaysia have been slow to take up the option to register for limited liability partnership status

It has been well over two years since Malaysia introduced limited liability partnerships (LLPs), but to date the number of accountancy and audit firms that have registered under this new business structure has been rather small.

More importantly, the experience of firms seeking to convert to or register for LLP status reveals that the process has not been smooth sailing. A number of obstacles and ambiguities have come to light which need to be resolved.

Among the more obvious ambiguities are tax neutrality for the transfer of assets on conversion into an LLP and the recognition of Malaysian LLPs for double taxation agreement shelter, incentives and grants.

Pauline Lum FCCA, executive director of PwC Taxation Services Malaysia, has kept an eye on progress. 'We understand from Companies Commission of Malaysia (CCM) that to date about 30 accounting LLPs have been registered (20 audit and 10 non audit), against the total number of over 2,000 registered LLPs,' she says.

However, Lum believes it is still too early to determine whether this initial response will develop into a trend for accounting firms to register as LLPs, rather than the more familiar models of partnership or sole proprietorship.

The new business vehicle is a hybrid between a private company and a conventional partnership

She adds that there are a number of practical considerations to be made before embarking on registration. These include licensing, the costs involved in operating as an LLP (such as professional indemnity), client perception and education on how an accounting firm would operate as an LLP.

CCM, the registration body for all companies and firms including LLPs, did not respond to requests from *Accounting and Business* for information on the response to this new business vehicle.

After close to a decade of delays, the Limited Liability Partnerships Act 2012 came into operation in December of that year and CCM started receiving registrations in early 2013. Under the Act, any professional practice, namely chartered accountants (regulated under the Accountants Act 1967), advocates and solicitors, and company secretaries is permitted to form an LLP.

Hybrid vehicle

The new business vehicle that the Act introduced is a hybrid between a private company and a conventional partnership. It accords limited liability status to an innocent partner, thus protecting their personal assets from losses or damages due to the action of other partners, and offers flexibility in the internal management of a business.

There are other fundamental differences between an LLP and a company which could make it an attractive proposition. For example, there is no requirement to issue shares, hold annual general meetings, submit financial statements to CCM or commit to auditing of its accounts.

One major reason why the authorities enacted the LLP legislation was to encourage aspiring entrepreneurs, »

by making it easier for them to get their businesses up and running. This tied in with the government's efforts to improve public service delivery and simplify procedures, with the aim of reducing the administrative and compliance requirements for such entities.

Good news for accounting firms

Yivon Yau, a partner of 3E Accounting, an independent member of 3E Accounting International Network, says the introduction of the LLP is 'great news' for professional accounting firms. 3E Accounting was among the first batch of accounting firms to register as an LLP.

So what significant factors persuaded 3E Accounting to opt to become an LLP?

'An LLP is an alternative business vehicle to carry out business which combines the characteristics of a private company and a conventional partnership. Its salient features as a separate legal entity offering limited liability and perpetual succession are the main factors that made 3E Accounting choose to be registered as an LLP,' explains Yau.

The advantage of perpetual succession is that it removes the need to disband a partnership and review the partnership agreements when there is a change in partners.

Yau says perpetual succession is especially important when an accounting firm grows bigger and perhaps constitutes a group of partners with different areas of expertise, such as accounting, tax and secretarial.

'Any changes in relation to the partners of an LLP, such as retirement, will not affect the existence, rights or liabilities of the LLP,' she explains.

For 3E Accounting, the registration process took some eight months

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to complete and was not always straightforward. The firm first approached the Malaysian Institute of Accountants (MIA) and CCM in relation to the LLP setup in June 2014 and it was finally registered in February 2015.

'We believe 3E Accounting is amongst the first batch of accounting firms to register as an LLP,' says Yau. 'During our registration, there were lots of ambiguities on the setup procedures.'

'However, the steps are clearer now and also improved registration guidelines are published on the MIA portal. We believe this is the result of fine-tuning after more accounting firms registered as LLPs,' she adds.

Yau says MIA has developed very clear guidelines on registration of new LLPs and conversion from existing professional practice. 'We are seeing more accounting firms having 'PLT' [the Malay equivalent of LLP] in their names,' she says.

She notes that registering as an LLP is becoming a more popular choice among entrepreneurs, who are attracted by the less onerous compliance requirements. She points in particular to the absence of a requirement for annual statutory audit and the fact that a local partner can act as compliance officer, which reduces compliance costs.

'Many existing companies also would like to convert to LLP. Nevertheless, the conversion procedures are not clear at the moment, especially for those companies with assets and properties,' Yau adds.

Lending issues still unresolved

One of the biggest challenges that faces limited liability partnerships (LLPs) is the difficulty in getting bank facilities and loans.

Yivon Yau, a partner at 3E Accounting, recounts the issues her firm faced: 'When we wanted to open bank accounts, many bankers were not aware of LLPs. The opening of our bank accounts took almost one month to complete. The banks informed us that the reason was that there is no online portal for bankers to search for LLP information. Instead, [requests for information] must go through the Companies Commission of Malaysia's [service] counters.

Yau states that so far, his firm has been unable to get an online banking facility from one leading Malaysian bank as it does not support LLPs. 'We understand from the bankers that PLTs will face issues in getting credit facilities, such as loans, as no statutory audit [of the LLP's financial statements] is required.

On this issue, Pauline Lum, executive director at PwC Taxation Services Malaysia, suggests there may be concerns in terms of the risk profile for assessment of an LLP's loan applications, as information about the entity would be limited.

'There is no requirement for the LLP to maintain audited accounts. Notwithstanding that, LLPs are required to maintain financial statements (non-audited) detailing assets, liabilities and their profit and loss account, which have to be furnished to CCM on an annual basis.

'Hence banks may be able to use these financial statements or [they] may have to consider other factors (such as the risk profiles of the partners) in their assessment of the LLP's ability to repay the loans, which could be onerous and time consuming,' she adds.

Key issues and ambiguities

Among the issues and uncertainties that the LLP rollout has thrown up, PwC Taxation Services Malaysia has identified the following:

a) Concerns of tax neutrality and cost when existing partnerships and/or companies decide to set up an LLP, from the perspective of assets transferred into the new vehicle.
b) Transfer mechanisms for items such as 'stock in trade' and provision accounts for existing partnerships and/or companies, which intend on setting up an LLP.
c) Tax treatment of interest incurred on loans for an LLP, since such expenses would be deductible for partners under a conventional partnership.
d) Recognition of Malaysian LLPs for double taxation agreement shelter, incentives, grants, etc.
e) Perception of an LLP (in terms of transparency).

Some of these issues have been resolved by the authorities since the legislation came into force. According to Lum, items (a), (b) and (c) have been addressed through the issuance of Public Ruling No. 3/2014, Real Property Gains Tax (Exemption) Order 2014 [PU (A) 229], and Stamp Duty (Exemption) Order (No. 2) 2014 [PU (A) 230].

However, Lum notes that discussions are still ongoing around the recognition of LLPs for double taxation agreement shelter, incentives and grants, as this involves review of and possible amendments to several agreements and guidelines. 'With regard to perception [of] LLPs, public awareness and education activities are ongoing,' she adds.

Another important consideration concerns the specific tax treatment and country requirements, Lum points out.

'Some countries (like Malaysia and India) tax the LLP, whilst others (like Singapore and the US) deem it as a 'flow-through entity', hence the partners of the LLP are taxed. This consideration would be relevant if the accounting LLP is considering expansion of operations regionally or globally,' she says.

Surprisingly, sections of the public – among them businessmen, government officials and bankers – have little or no knowledge of the LLP vehicle, which raises a host of difficulties for LLPs. This marketing issue is something the authorities will have to address if LLPs are to take off in Malaysia.

3E Accounting's Yau agrees that there are 'many people who are still not aware' of the existence of LLPs. Her firm has experienced negative impact from this lack of familiarity with the new form. 'This may affect the branding of the firm. We have situations where some of our customers question the genuineness of our firm,' she laments.

Nevertheless, she believes that the situation will improve as time goes on, and as the private sector becomes more familiar with LLPs.

Yau is confident that the uncertainties arising from the introduction of LLPs will also be resolved in due course. She cites the example of the Inland Revenue Department, which recently issued a public ruling on taxation for LLPs.

'Compared to the year when LLP was first introduced, we can see improvements along the way,' she says. 'Government agencies are working on clearing up the ambiguities.' ■

MK Lee, journalist