

LIMITED LIABILITY PARTNERSHIP: AN EMERGING FORM OF BUSINESS ORGANISATION

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A business can be organized in several ways and a lot would depend on the form of business organization chosen. There are many types of business entities having its own pros and cons with the end goal to address the difficulties of the changing occasions and economy. It began with the ownership by the individual to limited companies. The need of the hour was a hybrid business entity combining the worthy aspects of General Partnership and Limited Company to take care of the mounting needs of professionals, service providers and small and medium business.

Naresh Chandra Committee¹ submitted its Report² on 23 July 2003 recommending the creation of LLP confining it to only professionals. The Report also talked about the need to simplify and rationalize entry and exit procedures. The basic notion was to boost Indian Professionals to participate in the International business community without the trepidation of being subjected to excessive liability and hence, the need for having a legal structure like LLP. The Committee did not support extension of LLP to trading or manufacturing firms. J.J. Irani Committee³ also examined the issue of LLP and made recommendations. The Committee recognized that Indian Economy is yet in its growing phase so the number of companies will rise over a period with emergence of new business opportunities and new technological advancements. Small companies will contribute considerably to the growth but they cannot be weighed down with the same level of compliance as big public listed companies. Small companies will be able to take swift decisions and survive only when there are less of sprints and there is low cost of compliance. This can be ensured through a new business vehicle like LLP.

Many professionals in India, such as advocates/lawyers, chartered accountants, company secretaries and doctors are barred from practicing through companies. The LLP structure would be particularly beneficial for providing such professional services.⁴ It may be possible that in the coming years such useful services will be provided by the Indian professionals to a large number of entities overseas. In order to provide varied solutions to the international clients, the multidisciplinary combinations will be required but in an increasingly litigious environment, it is a risky job to be a member of a partnership firm with unlimited personal liability and hence unattractive. Indeed, this is the prime reason that the partnership firms of professionals, such as accountants, lawyers etc. have not grown in size to successfully meet the challenges posed today by international competition. So, it is felt that there should be a new corporate entity as an alternative to the traditional partnership with limited liability and flexible business environment to organize and operate in flexible and efficient manner. It will be possible for the entrepreneurs, professionals and

¹Constituted by the Government under the Chairmanship of Shri Naresh Chandra, Indian Civil Servant who served as a Cabinet Secretary and Ambassador to the United States. He was awarded Padma Vibhushan for his service in 2007.

²Naresh Chandra Committee Report 2003 available on the Ministry of Corporate Affairs Website, <http://reports.mca.gov.in/Reports/3-Naresh%20Chandra%20committee%20report%20on%20regulation%20of%20private%20companies%20and%20partnerships%202003.pdf>, last visited on 12 October 2018.

³Appointed vide Notification F. No. 1/1/2004-CL-V dated 4th August 2004.

⁴ Professional services are those where unique functions are performed by independent contractors or consultants, whose occupation is the rendering of such services. Such service providers would include accountants, brokerage firms, business consultants, business development managers, engineers, law firms, software engineers and web designers. Such services may be delivered through a host of structures, including partnerships, firms and corporations, in addition to delivery by individuals holding professional licenses.

service providers to combine and operate in an efficient manner to give competition in the international market.

Further, allowing FDI in entrepreneurial projects carried out through the LLP model would encourage small entrepreneurs in India to explore business ventures with foreign investment/collaboration. It may also be considered for small enterprises not seeking access to capital markets through listing on stock exchange. Other than professionals and small entrepreneurs, the LLP structure may also be preferred by small businesses. Additionally, foreign entities having project offices in India could consider reducing risk by using the LLP structure.

There are some disadvantages attached to the traditional types of businesses prevalent in India, which make it really a dire necessity to have a hybrid entity like Limited Liability Partnership. The advantages attached to an LLP definitely outweighs the disadvantages:

1. The partners are liable to the extent of their contribution to the firm. They are not liable to the outside creditors personally.
2. There are no specific requirements regarding meetings, resolutions, annual meetings etc.
3. There is no limit on maximum number of partners. There should be minimum two partners and if the number of partners fall below two for six months, then the partner continuing shall be personally liable⁵. A Co-operative Society, Society and Corporation cannot be a member of an LLP. There is no mention in the Act regarding admission of HUF. The Ministry of Corporate Affairs clarified that HUF or Karta cannot become a partner of Limited Liability Partnership. As per Section 5 of the LLP Act, 2008 only an individual or a body corporate may be a partner⁶. HUF cannot be treated as a body corporate for the purposes of the LLP Act, 2008.
4. LLP is a separate entity and it can own properties in its own name.
5. LLP has a perpetual existence. Partners may come and go but they will not affect LLP's continuity.
6. LLP is a body corporate. It can sue and be sued in its own name.
7. Minor cannot be admitted as a partner. No mention of minor admitted to the benefits of partnership.
8. There shall be two designated partners liable for filing returns, documents etc. with the Registrar.
9. The agreement between the partners is the most important document in case of an LLP⁷.
10. Existing partnership firms and unlisted companies can be converted into LLP by following the procedure prescribed in the Act.

Though the most popular forms of business organisation are companies, yet an LLP is more advantageous than a Company. The cost of formation of a partnership firm is negligible and the incorporation cost of a private and a public company is comparatively more than the partnership firm and limited liability partnership, where the statutory fees is comparatively lesser than the cost of formation of company and it is not mandatory in case of a partnership firm to be registered though there are certain advantages of registering a firm where as in case of a company and LLP, there is a requirement of compulsory registration with ROC. The main difference which is the reason behind the move to LLPs is the liability factor where there is unlimited liability in case of a partnership firm which can extend to the personal assets of the partners and in case of a company, it is limited to the extent of unpaid capital. In LLP, the liability is limited to the extent of contribution to the LLP and the partners in LLP can only be made personally liable in case of deliberate fraud. Partnership firm is not a separate legal entity whereas a company and an LLP are a separate legal entity. There is no maximum limit on the number of partners in an LLP.

Having a closer look at the Limited Liability Partnership Act, 2008 in India reveals that it is structured on the lines of the legislation in UK i.e. the Limited Liability Partnership Act, 2000 and the Limited Liability Partnership Act 2005 of Singapore, which is broadly modelled on the Delaware Code or the Delaware Revised Uniform Partnership Act. The position with respect to liability is same in UK as that of India and US. The Income Tax Act in India has been amended to the effect that LLP will be treated as 'Partnership Firm' for the purpose of Income Tax whereas in case of UK, the provision is same as the United States and the profit

⁵Following can be members of an LLP, i) Individuals, ii) LLPs, iii) Companies, iv) Foreign LLPs and v) Foreign Companies

⁶ Circular No. 12/2013, dated 29-7-2013.

⁷If there is no such agreement then Schedule I shall be applicable to govern the relationship between partners and LLP.

distributed among partners is taxed as individual income. The concept of LLPs exists in many other countries viz. Canada, Kazakhstan, Panama, New Zealand, Japan, Singapore, Hong Kong etc. It has been recently introduced in Mauritius, Pakistan and Dubai.

Annual return is an obligatory filing to be made by all LLPs in India in the prescribed format with the Ministry of Corporate Affairs⁸. Annual return of an LLP is due within 60 days of close of financial year⁹. Audit of the Firm is of paramount importance. The Accounts are to be audited in accordance with the Rules prescribed. The Central Government has the power to exempt any class of LLPs from the requirement audit¹⁰. The notification has to be published in the Official Gazette. Rule 24(8) exempt the LLP from the audit of its account if its turnover does not exceed, in any financial year, Rs. 40 lakhs or its contribution does not exceed Rs. 25 lakhs. The accounts of LLP to avail exemption shall have a statement by the partners to the effect that the partners acknowledge their responsibilities for complying with the requirements with respect to accounting records and preparation of accounts. LLPs have to appoint auditor(s) for each financial year unless it is exempt from audit. The appointment of the auditor has to be made by the designated partners at any time of the year but within 30 days before the end of the financial year. The Auditor shall only be a Chartered Accountant.

LLP is treated as a partnership firm for the purpose of Income Tax. The Finance Act, 2009 amended Section 2(23) which defines 'Firm' to include a Limited Liability Partnership and partner to include partner of a Limited Liability Partnership. Income of the partnership firm is taxed at 30% plus 2% Education Cess plus 1% Secondary and Higher Education Cess. If Income exceeds Rs. 1 Crore, then surcharge of 12% is applicable.

With effect from Financial Year 2009-10

Profit	Remuneration
On the first Rs. 300000 of the Book Profit or in the case of Loss	Rs. 150000 or at the rate of 90% of the Book Profit whichever is more
On the balance of the Book Profit	At the rate of 60% of the Book Profit

Foreign Direct Investment in Limited Liability Partnerships is allowed¹¹ under automatic route. LLPs that operate in sectors/activities where 100% FDI is allowed through automatic route are allowed to have FDI¹². The eligible investments are Capital Contribution and Investment by way of 'profit share' will fall under the category of reinvestment earnings. The various modes of investments can be contribution by way of Cash through foreign inward remittance, through conversion of receivables or in kind not permissible, and debit to NRE/FCNR(B) account maintained with AD Category-I Bank in India. LLPs are not permitted to avail External Commercial Borrowing.

The law is volatile in nature because it always tries to keep pace with the changing situations and to fulfil the aspirations of the people but no law is perfect. It is the degree and extent of objectives achieved by the law which makes a good law. After economic liberalization, a more dynamic business environment calls for entrepreneurs to have a free hand to manage their business in an efficient manner, without wasting resources on non-essentials. Such resources can be conserved, to a considerable extent, by addressing concerns which arise from certain avoidable regulatory measures. Businesses should have an open but accountable environment to operate in, to maximize resource utilization. One of the appreciable step forward in this regard is the introduction of Limited Liability Partnerships in India but the loopholes left by the government which may be of a great concern in future need to be focused on.

The Ministry of Company Affairs has made efforts to do away with such omissions in the legal system of our country, but it is yet in nascent stage. While a great deal of thought yet needs to be put into certain aspects of the law, some features can be adopted from the laws of other countries. Nevertheless, even a law that is tried and tested in any other country has to be moulded to suit Indian conditions and circumstances. LLP is,

⁸Filing of annual return with the MCA is different from the filing of annual return with the Income Tax department.

⁹LLPs must uniformly maintain a financial year that starts on April 1st and ends on March 31st, therefore the Annual return of a LLP is due on or before May 30th of each financial year.

¹⁰LLPs exempted from audit can be audited in any other manner as decided by the partners. This may be mentioned in the LLP Agreement.

¹¹FDI Policy Circular No. 1/2014 dated 17-04-2014

¹²Sectors in which 100% FDI allowed are Software/ITES/R&D Services, Manufacturing, Infrastructure, Courier Services, and Pharmaceutical Sector – Greenfield Investments.

after all, a new concept and will require a lot of deliberation. The Centre must try to involve more and more people in the law-making process. The content of the law and its manner of implementation must ensure maximum advantage to everyone involved, and efforts must be made to make the LLP form of corporate governance widely accepted and popular. As the saying goes, a project well begun is half done. The Ministry has made a great beginning, and we hope that in future it culminates in the beginning of a new law in the country.