

## **LLP in India: As Advantageous Business Model**

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### **Abstract**

A Limited Liability Partnership (LLP) is a partnership in which some or all partners (depending on the jurisdiction) have limited liability. It therefore exhibits elements of partnerships and corporations. In an LLP, one partner is not responsible or liable for another partner's misconduct or negligence. This is an important difference from that of an unlimited partnership. In an LLP, some partners have a form of limited liability similar to that of the shareholders of a corporation. In some countries, an LLP must also have at least one "General Partner" with unlimited liability.

### **History and Origin**

The origin of the concept of limited liability partnerships can be traced to the growth of limited liability business forms in United States. Louisiana was the first state to adopt the limited partnership concept. The concept was soon embraced by other states. The first limited partnership act in the United States was adopted by New York in 1822 and was copied largely from the then-extant French statute. Within the following sixty years, all the states adopted limited partnership acts based generally upon the New York model. Most of the early limited partnership acts provided that a limited partner could neither "transact any business on account of the partnership, nor be employed for that purpose as agent, attorney, or otherwise. If a limited partner acted contrary to these prohibitions, the limited partner was deemed a general partner. Thus, under the early acts, the test of a limited partner's personal liability for the obligations of the partnership was whether the limited partner "interfered" with the general partner's management of the partnership business. The drafters of these statutes, however, made no attempt to define the type of conduct that would

constitute "interference" by a limited partner. When partnership creditors claimed that limited partners had "interfered" in violation of the acts, the courts were required to decide each case on its own facts.

**Keywords:** Partnership, Company, Limited Liability Partnership Acts.

## **1. Introduction**

The most known form of business organizations are sole proprietorship, partnership, company form of organization and non-profit organization. Based on the nature of business, its volume of trade, financial requirements an investor chooses the form of business organization which most suits to his requirements. The company form of business organization is most popular amongst all. But professionals like Chartered Accountants, Company Secretaries, Cost Accountants, Advocates, and Doctors are regulated not only by the legal entity structure under which they render services but also by their governing statutes of which they are members. These governing statutes do not allow them to operate as a corporate body even though they are contributing significantly to the development and growth of economy. In a partnership, main limitations are membership limits, unlimited liability, mutual agency and lack of perpetual succession. Whereas in company form of organization enormous compliances and administrative requirements coupled with high capital requirements acted as deterrents in formation of a company. Hence emanated the need for a HYBRIDE FORM OF BUSINESS ORGANISATION to bring the emerging entrepreneurs at par with the international competitors and enable the new entrants to establish business operations in India. This notion gave birth to the LLP framework and it was recognized

as a business organization by LIMITED LIABILITY PARTNERSHIP ACT, 2008 ( LLP ACT ) administered by the Registrar Of Companies in India. On 9th January 2009, the Government Of India passed an Act named " THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 ". The first LLP was registered on April 2, 2009.

## **2. Meaning of Limited Liability Partnership**

### **1. Concept of "limited liability partnership"**

- LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.
- The LLP can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name.
- The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.
- Further, no partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint

liability created by another partner's wrongful business decisions or misconduct.

- Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners or between the partners and the LLP as the case may be. The LLP, however, is not relieved of the liability for its other obligations as a separate entity.

Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.

## **2. Structure of an LLP**

LLP shall be a **body corporate** and a **legal entity** separate from its partners. It will have perpetual succession.

## **3. Advantages of LLP form**

LLP form is a form of business model which:

- (i) Is organized and operates on the basis of an agreement.
- (ii) Provides flexibility without imposing detailed legal and procedural requirements.
- (iii) Enables professional/technical expertise and initiative to combine with financial risk taking capacity in an innovative and efficient manner.

## **4. Difference between LLP & "traditional partnership firm"**

- Under "traditional partnership firm", every partner is liable, jointly with all the other partners and also severally for all acts of the firm done while he is a partner.
- Under LLP structure, liability of the partner is limited to his agreed contribution. Further, no partner is liable on account of the independent or unauthorized acts of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful acts or misconduct.

## **6. Difference between LLP & a Company**

- A basic difference between an LLP and a joint stock company lies in that the **internal governance structure** of a company is regulated by statute (i.e. Companies Act, 1956) whereas for an LLP it would be by a contractual agreement between partners.
- The **management-ownership divide** inherent in a company is not there in a limited liability partnership.
- LLP will have more flexibility as compared to a company.
- LLP will have lesser compliance requirements as compared to a company.

### **3. Key Elements of Limited Liability Partnership**

- Every LLP shall have at least 2 partners and there is no limit for the maximum numbers of partners. The partners to LLP can be an individual as well as body corporate.
- Every LLP shall have at least 2 Designated Partners and at least one of them shall be a Resident in India. If one or more of the partners of a LLP are body corporate then nominee of such ‘ BODY CORPORATE’ shall act as a designated partners.
- No limit on number of LLP of which a person can become a partner.
- Any individual or a body corporate can become a partner in LLP except in case of an individual, he should not be
  - Found to be of unsound mind or
  - An undischarged insolvent or
  - A person who has applied to be adjudicated as insolvent and the application is pending
- Incorporation document acts as like the Memorandum Of Association and LLP agreement acts as a Articles Of Association and should be subscribed by at least two partners, e-filed on LLP portal.
- Every LLP requires to have a Registered Office.
- As per section 34 (2) of LLP ACT, 2008, an LLP must prepare a “ Statement Of Accounts “ and “ Solvency Statement“ within a period of 6 months from its end.
- Every LLP must file an annual return ( form 10 ) with the Registrar within 60 days of the end of the financial year otherwise heavy penalty is imposed for late filing of returns viz Rs. 100 for each day of default continues.
- Ministry of Corporate Affairs and Government of India alongwith ROC is the administrating authority of LLP
- The Central Government has been empowered to apply any of the provisions of the Companies Act, 1956 to LLPs with suitable changes or modification. [ section 67 of LLP Act, 2008 ]. But, provisions of Indian Partnership Act, 1932 will not apply to LLP [ section 4 of LLP Act, 2008].
- It is believed that LLP Act is necessary to form partnership among professionals only. As such, LLP Act does not contain any such restrictions. LLP can be constituted for any ‘ business’ having profit motive.

### **4. Conclusion**

Concepts of good corporate governance practices or the corporate social responsibility make sound business only when the investments on these are in the enlightened business interests. Ultimately, the business of business remains business and constitutes the guiding principle for any business form. Be it sole proprietorship or

partnerships or LLP or a joint stock company, the effort always remains at minimizing the risks for self and wealth creation. The control over undesirable practices ultimately remains the subject of an efficacious regulatory system and perhaps, to some extent, are a matter of self-applied business ethics standards.

## **References**

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