LLP

PAVING WAY FOR LIBERALIZATION OF INDIA'S BUSINESS SECTOR

LIMITED LIABILITY PARTNERSHIP

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1. WHAT IS LIMITED LIABILITY PARTNERSHIP?

Limited Liability Partnership (LLP) is an alternative corporate business form that gives that gives the benefits of limited liability of a company and the flexibility of a partnership. 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 firm.

2. GOVERNING LAW

The Limited Liability Partnership (LLP) is governed by Limited Liability Partnership (LLP) Act, 2008 and Limited Liability Partnership Rules, 2009.

The LLP Rules, 2009 contains administrative provisions for formation, management, reconstruction and winding up of LLPs. The Indian Partnership Act, 1932 shall not be applicable to LLPs.

3. KEY FEATURES OF LLP

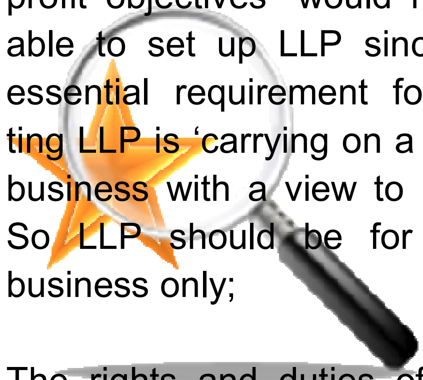
LLP shall be a body corporate and a legal entity separate from its partners. It will have perpetual succession; like a corporation. LLP can own assets in its name, sue and be sued. While LLP will be a separate legal entity, it shall be liable to the full extent for its assets and the liability of the partners would be limited to their agreed contribution to the LLP.

Further, no partner would be liable on account of independent or unauthorized actions of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful business decisions or misconduct. Unlike corporate shareholders, the partners have the right to manage the business directly.

In LLP, minimum of 2 partners are required to form LLP but there shall not be any upper limit on number of partners unlike an ordinary partnership firm where the maximum number of partners cannot exceed 20 (10 in case of banking).

LLP can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name. Liability of the partners is limited to the extent of his contribution in the LLP. There is no exposure of personal assets of the partner, except in cases of fraud.

An entity which has objectives like "charitable or other not for profit objectives" would not be able to set up LLP since the essential requirement for setting LLP is 'carrying on a lawful business with a view to profit'. So LLP should be for profit business only;



The rights and duties of partners in LLP will be governed by the agreement between partners and the partners have the flexibility to devise the agreement as per their choice. The duties and obligations of Designated Partners shall be as provided in the law; LLP shall maintain annual accounts. However, audit of the accounts is required only if the contribution exceeds Rs. 25 lakhs or annual turnover exceeds Rs.40lakhs.

Other features of LLP

The LLP Act, 2008 allows Foreign Nationals including Foreign Companies & LLPs incorporate a LLP in India provided at least one Designated Partner is resident of India. However, the LLP/Partners would have to comply with all relevant Foreign Exchange Laws/ Rules/ Regulations/ Guidelines.

4. ADVANTAGES OF LLP

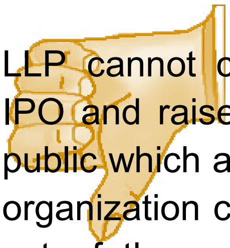
LLP is based on agreement between partners. There is flexibility without imposing detailed legal and procedural requirements. It can continue its existence irrespective of changes in partners. It has a separate legal entity.

The liability of each partner is limited to his share as written in the agreement filed at the time of creation of LLP as compared to partnership firms which have unlimited liability. LLP can become shareholder in company.

It has low cost of formation and is easy to form. Also, the partners are not liable to each other and are liable only for their own acts as compared to Partnership. There are less restrictions and compliances enforced by Govt on LLP as compared to the restriction imposed by the company.

It also is easier to dissolve or wind-up. There is no requirement to maintain statutory records except Books of Accounts. As a Juristic person LLP can sue and be sued in its own name. The partners are not liable to be sued for dues against LLP.

5. DISADVANTAGES OF LLP



LLP cannot come out with its IPO and raise money from the public which a company form of organization can easily do. Any act of the partner without the consent of the other may bind the LLP. Under some cases, liability may extend to personal assets of partners. There is no separation of Management from owners.

6. MANAGEMENT OF LLP

Day to day operations of LLP will be managed by Designated Partners, who are responsible for ensuring the compliances of all applicable laws.

Limited Liability Partnership is managed as per the LLP agreement, however in the absence of such agreement or 'Deed of Partnership', the LLP would be governed by the framework provided in Schedule 1 of Limited Liability Partnership Act, 2008. Designated members have some extra responsibilities on top of those of ordinary members.

The responsibilities of designated members

Designated members have the same rights and duties towards the Limited Liability Partnership but Designated Members are legally accountable if they fail to carry out their duties properly. The responsibilities given to designated members are as follows-

Appointing an auditor (if one is needed); Signing the accounts on behalf of the members; Delivering the accounts to the Registrar; Notifying the Registrar of any membership changes or change to the registered office address or name of the limited liability partnership; Acting on behalf of the limited liability partnership if it is wound up and dissolved.

7. CAPITAL CONTRIBUTION TO LLP

Unlike in the case of a company, there is no requirement for minimum capital contribution for a LLP. However, the registration cost for LLP is determined on the basis of amount of contribution.

8. FDI IN LLP

The Government of India has not notified the policy for Foreign Direct Investment in LLP.

9. RESERVATION OF NAME BY A LLP REGISTERED OUTSIDE INDIA

A foreign LLP or a foreign company can reserve its existing name by which it is registered in the country of its incorporation by making an application to Ministry of Corporate Affairs. The reservation will be valid initially for three years and is renewable thereafter.

10. BRANCH OFFICE OF FOREIGN LLP

A LLP registered outside India can establish an office in India and has to comply with the provisions of LLP Act, 2008.

11. DIFFERENCE BETWEEN LLP AND TRADITIONAL PARTNERSHIP FIRMS

The basic difference is with regards to the liability of partners. In a Partnership firm the partners are jointly liable with all other partners and severally liable for the acts done by the firm while he is a partner. Under LLP, the liability of the partner is limited only to his agreed contribution. No partner is liable for the independent and unauthorized acts done by the other partner thus shielding all the partners from the joint liability.

LLPs are distinct from limited partnerships in that limited liability is granted to all partners, not to a subset of non-managing “Limited Partners”. As a result, LLPs are more suited for businesses where all investors wish to take an active role in management.

12. DIFFERENCE BETWEEN LLP AND COMPANY

The major difference between LLP and Company is that there are less regulatory and other Compliance regulations applicable on a LLP making it easy and cost effective to manage.

13. REGISTRATION OF LLP

LLPs are more complicated to set up and run than ordinary partnerships, as they have to meet many of the same requirements as limited companies.

14. PRE-REQUISITES FOR REGISTERING AN LLP

The pre-requisites are:
Minimum 2 Partners (Individual or body corporate); Minimum 2 Designated Partners who are individuals and at least one of them should be resident in India; Digital Signature Certificate; LLP Name; LLP Agreement; Registered Office.

15. TIME TAKEN FOR REGISTERING LLP

Designated Partner Identification Number (DPIN) Approval: 3-4 days
Form 1: 1 Week
Form 2: 3-4 days
Form 3 & 4 (file together): 1 week

16. PROCEDURE FOR FORMATION OF AN LLP

Step 1: Deciding the Partners and Designated Partners
Step 2: Obtaining DPIN No. & Digital Signature
Step 3: Checking the Name Availability of LLP.
Step 4: Drafting of LLP Agreement.
Step 5: Filing of Incorporation Document.
Step 6: Certificate of Incorporation

17. STRIKING OFF DEFUNCT LLP

The Act empowers Registrars to strike off names of LLPs which are not carrying on any business or operation. They will be under obligation to give an opportunity of being heard to LLP concerned. Details for manner of striking off would be prescribed through rules. Since LLPs would be governed by LLP Agreement it would be possible for LLPs to make suitable clauses in such Agreement prescribing time limits or duration of LLPs. In such cases, provisions for striking off names could be used.
Besides, the Act empowers Central Government to make rules in respect of winding up and dissolution of LLPs. It is proposed to prescribe a simple procedure for voluntary winding up of LLPs under such rules.

18. ELECTRONIC FILING WITH ROC AND MCA-21 E-GOVERNANCE FOR LLP'S STRUCTURE

The LLP Act contains enabling provisions for use of electronic mode for filing of documents with Registrars. Details have been specified in the LLP Rules, 2009. Authentication of documents as per Information Technology Act, 2000 has also been recognized in the LLP Act. Registration can also be made through website www.llp.gov.in

Application of Companies Act on LLP

Since LLP shall be in the form of a body corporate, it is proposed that to address various situations applicable to LLPs as such, the relevant provisions of the Companies Act, 1956 may be made applicable to LLPs at any time in the future by Notification by Central Government, with such changes or modifications as appropriate.

Taxation of LLPs in India

In India, the Govt has notified that LLP will be taxed in the same form as Partnerships i.e. Tax would be levied on LLP and the partners would be exempt from tax. No taxation would be levied on the conversion of Partnership Firms into LLPs.

Winding Up and Dissolution of LLP

The Winding up of a limited liability partnership may be either voluntary or by the Tribunal and Limited Liability Partnership, so wound up may be dissolved.

Circumstances in which limited liability partnership may be wound up by Tribunal.

Limited Liability may be wound up by the Tribunal,-

a) If the LLP decides that LLP be wound up by the Tribunal;

b) If, for a period of more than 6 months, the number of partners of the LLP is reduced below 2;

c) If LLP is unable to pay its debts;

d) If the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;

e) If the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years;

f) If the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

Rules for winding up and dissolution

The Central Government may make rules for the provisions in relation to winding up and dissolution of LLP.

19. CONCLUSION

The introduction of LLPs in India is a good beginning towards a long journey. The hybrid structure of LLP will facilitate entrepreneurs, service providers and professionals to organize and operate in an innovative and efficient manner for effectively competing in the global market.